

JAN 23 2009

A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that small businesses are
2 an essential element in strengthening and diversifying Hawaii's
3 economy and creating jobs for our citizens. More than ninety-
4 five per cent of all Hawaii establishments are small businesses,
5 and they provide jobs for sixty per cent of all Hawaii
6 employees.

7 The legislature further finds that despite their
8 contribution to Hawaii's economy, small businesses are at a
9 disadvantage in terms of land ownership. The commercial and
10 industrial properties that exist within the State's urban
11 districts are primarily owned by a few landowners. These
12 landowners control large tracts of land and retain their
13 ownership by means of leases to small businesses, which in turn
14 supply services and products to the communities within or
15 adjacent to the commercial and industrial properties. Without
16 these neighborhood businesses, consumers would be compelled to
17 travel long distances and expend large amounts of time and
18 effort to locate these needed services and products.



1 In the city and county of Honolulu's "Annual Report on the
2 Status of Land Use on Oahu, Fiscal Year 2006" (February 2008),
3 growth projections show a decided shift away from the primary
4 urban center for industrial jobs. Approximately eighty per cent
5 of industrial jobs were located in the primary urban center in
6 2000, and by 2030 that projection drops to seventy-one per cent.
7 For that same period, industrial jobs in the Ewa region will
8 nearly double, from seven to thirteen per cent, and increase by
9 nearly fifty per cent, from seven to ten per cent in central
10 Oahu.

11 The legislature further finds that small businesses are
12 often dependent on commercial and industrial leases, which may
13 contain provisions that are so onerous as to force these
14 businesses to relocate to rural areas and away from the urban
15 centers. In practical terms, consumers will find that the auto
16 service center in Mapunapuna, or the small retailer in Kakaako,
17 is no longer in business near where the consumer lives or works.

18 The legislature finds that the proximity of small
19 businesses to urban communities serves to stabilize Hawaii's
20 economy, especially during the recessionary period that the
21 United States has entered. Thus, maintaining close geographic



1 ties between small businesses and the communities they serve is
2 a public purpose that requires legislative support.

3 The purpose of this Act is to stabilize Hawaii's economy by
4 addressing some of the burdensome provisions of existing
5 commercial and industrial leases of certain lands within urban
6 districts by clarifying provisions in long-term commercial and
7 industrial ground leases, without substantial reduction in the
8 economic benefit to the owners or impact on their ownership of
9 the land, without impairing their lease contracts, and without
10 the taking of any property rights without due process of law.

11 SECTION 2. Chapter 519, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§519- Leases of commercial and industrial property.

15 (a) Notwithstanding any other law to the contrary and unless
16 expressly stated to the contrary in the lease, any lease of
17 commercial or industrial leasehold property shall be subject to
18 the following terms and conditions:

19 (1) Whenever a lease condition requires that a lessee
20 obtain the approval of the lessor for the assignment,
21 transfer, or encumbrance of the leasehold property,



1 the approval of the lessor may not be unreasonably
2 withheld;

3 (2) Whenever a lessee is required by a lease with less
4 than twenty years remaining on its term to make major
5 and substantial improvements to any structures on the
6 leasehold property or to any infrastructure supporting
7 the leasehold property, that provision shall be
8 construed to require only reasonable maintenance and
9 repair work to satisfy federal, state, and county
10 laws, ordinances, and code requirements to ensure the
11 public's health, safety, and welfare, and not to
12 require the lessee to make substantial new
13 improvements to infrastructure or structures;

14 (3) Whenever a lease existing on July 1, 2009, or entered
15 into thereafter, provides for the renegotiation of
16 rent during the term of the lease and the renegotiated
17 rent is based, according to the terms of the lease, on
18 fair and reasonable annual rent as of the commencement
19 of the term, that provision shall:

20 (A) Be construed to require that the rent shall be
21 fair and reasonable to both the lessor and the
22 lessee to the lease; and



1 (B) Take into account the uses and intensity of use
2 approved by the lessor, and the surface and
3 subsurface characteristics of the site and the
4 neighborhood on the renegotiation date,
5 and provided further, that unless as otherwise
6 specified in the lease, if the lessee has subtenants
7 with subleases that provide for recovery by the lessee
8 of ground lease rent, those subtenants shall be
9 charged their pro-rata share of the fair and
10 reasonable annual rent as renegotiated pursuant to
11 this paragraph.

12 (b) For purposes of this section:

13 "Commercial or industrial leasehold property" means any
14 ground lease of real property:

- 15 (1) Situated in the State;
- 16 (2) Zoned by a county for commercial or industrial use;
- 17 (3) That is subject to a lease with a term of ten years or
18 more and an unexpired term of five years or more; and
- 19 (4) Where the lessor is the owner, directly or indirectly,
20 of fifty thousand square feet or more of industrial
21 and commercial property in the State.



1 "Lease" means a conveyance leasing privately owned land by
 2 a fee simple owner as lessor, or by a lessee as sublessor, to
 3 any person, for a term exceeding ten years in consideration of a
 4 return of rent or other remuneration."

5 SECTION 3. This Act applies to any lease in effect on its
 6 effective date, but does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun, before its effective date.

9 SECTION 4. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

INTRODUCED BY: Fransua Chun Leung
Norman Sakomfo
Robert J. Kim
John Lee
Michelle N. Scharf



Report Title:

Leasehold; Commercial and Industrial Property

Description:

Clarifies provisions contained in long-term commercial and industrial ground leases.



BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 17, 2009

Senator Roz Baker, Chair
Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: SB764 "Relating to Real Property"

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii opposes SB764, "Relating to Real Property". While BIA-Hawaii sympathizes with the situation of lessees in the Mapunapuna, Kalihi Kai and Sand Island areas, some of whom are members of the Citizens for Fair Valuation, **we cannot support** SB764 which seeks to alter the original renegotiation clauses of existing lease contracts by adding new terms and conditions. We believe it is bad policy to pass a bill that is targeted to only one lessor and its lessees and to alter the conditions and terms of their leases. Once enacted, such as law will set a precedent and cause even more uncertainty in lease agreements..

The proponents of the bill believe that they can resolve their problems by enactment of this bill that uses the terms "fair and reasonable". We believe such terminology would be open to challenges. BIA-Hawaii believes that both parties to a lease should clarify their understanding of what the terms of the lease are and abide by the terms once agreement is reached. BIA-Hawaii believes that the terms of a contract between private parties should not be changed by state law. We also hope that the lessees can come to satisfactory agreements with the lessor.

Thank you for the opportunity to express our views.



Chief Executive Officer
BIA-Hawaii



660 Mapunapuna Street, Honolulu, Hawaii 96819

Tel (808) 833-2502
Fax (808) 834-5630
www.GPRoadwaySolutions.com

February 16, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce & Consumer Protection
State Capitol
Honolulu, Hawaii

Hearing Date: Tuesday February 17, 2009, 8:30 a.m.

Testimony in Support of SB 764, Relating to Real Property

Dear Senators Baker and Ige and Members of the Committee:

My name is William Paik and I live in Kaimuki. I am the President of GP Roadway Solutions and our business is located at 660 Mapunapuna Street. We hold ground leases on four parcels, totaling 140,000 square feet. We are a statewide contractor for guardrail and highway signs.

I am well aware of the tough times we are facing with layoffs and business closings all around us. Our business volume is down and we are looking for ways to cut costs to avoid having to layoff our workers. The ground lease rent for my business is our biggest fixed cost. We cannot afford to pay double or triple our current rent, as our landlord would like to think .

The language of our lease calls for rent that is fair and reasonable for both sides. This bill will require our mainland landowner to consider not only what works for them, but also what works for my business.

Action is needed now. There are a number of lease negotiations occurring right now that could hurt Hawaii's economy. We don't need any more bad news.

I urge you to pass SB 764.



February 16, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce & Consumer Protection
State Capitol
Honolulu, Hawaii

Hearing Date: Tuesday February 17, 2009, 8:30 a.m.

Testimony in Support of SB 764, Relating to Real Property

Dear Senators Baker and Ige and Members of the Committee:

My name is Robert Creps and I am a Kailua resident. I am the Senior Vice President of Administration for Grace Pacific Corporation. Grace Pacific holds a ground lease for 78,000 square feet at 110 Puuhale Road, just off of Sand Island Access Road.

My neighbor lessees and I are faced with a mainland landowner who is insensitive to Hawaii's economy and how we do things here. The same landowner does not appear to understand ground leases either. Ground leases are like partnerships. You the landowner put up the land, I the lessee put up the money for improvements and run the business, from which comes the money to pay you a fair market rent.

At ten year intervals during the lease, the lease rent is reset. Many of my neighbors are in the midst of rent re-openings right now. They are being told that their rent should double or triple what they are currently paying, and on top of that increase 3 or 4 percent each year. And meanwhile the global economy is tanking, and the best news is that it will be several years before things get better.

We need this bill now. We need to clarify what "fair and reasonable annual rent" means. From the landowner's perspective, a fair return on the market value of the land may be reasonable. But that doesn't necessarily work for the lessee. The lessee has committed to a line of business and invested in leasehold improvements to conduct the business. SB 764 clarifies that the negotiation process should consider the uses and intensity of use approved by the landowner.

SB 764 is not re-writing private contracts as some detractors have claimed. SB 764 does not add, delete or change any of the words or terms of the leases. Please do not be misled by such claims.

Action is needed now. Fair and reasonable rent means fair and reasonable to both sides. I urge you to pass SB 764.

Thank you.

**SB 764
RELATING TO REAL PROPERTY**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 17, 2009

Chair Baker and Members of the Senate Committee on Commerce & Consumer Protection:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 764, "A BILL FOR AN ACT RELATING TO REAL PROPERTY." We respectfully oppose this bill.

This bill establishes various conditions on long term leases for commercial and industrial properties. As leases for commercial and industrial properties reflect contractual business decisions between a lessor and a lessee, we have concerns with the impact that this bill may have upon the scope within which leases may be negotiated and executed. This bill will limit the ability to freely negotiate leases in a manner that best suits the business requirements of both the lessor and the lessee. Agreements to provide lower lease rents at the beginning of a long term lease to allow the lessee to grow their business in exchange for a long term commitment by the lessee to maintain and improve the property may no longer be feasible under the provisions of this bill. By prohibiting the enforcement of higher standards for the repair, maintenance, and surrender, the overall maintenance of properties may decline, impacting both subject property and the surrounding community.

As presently drafted, the bill appears to also apply to current leases in effect prior to the effective date of this bill. We understand that changing contractual obligations in existing leases may give rise to questions of constitutionality.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify.

RECEIVED

February 15, 2009

'09 FEB 16 P1:03

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce &
Consumer Protection
State Capitol
Honolulu Hawaii 96813

SERGEANT-AT-ARMS
THE SENATE

RE: Senate Bill 764 Relating to Real Property
Hearing Date: February 17, 2009, 8:30 am., Room 229 State Capitol

Dear Senator Baker and Senator Ige and Members of Committee,

My name is Guy Kamitaki and I am one of the family members that own and operate the Ben Franklin Crafts Store at 2810 Paa St. in Mapunapuna. We employ over 50 people at this location.

We would like to urge you to pass Senate Bill 764 – Relating to Real Estate. Our ground lease with our current landlord, LTMAC Properties, LLC a mainland based REIT came up for renewal on 1/1/09.

As our ground lease states, we would like our ground lease negotiations to be “fair and reasonable” to allow us to continue doing business in this location. We do not consider doubling or tripling our ground lease payments to be “fair and reasonable.” We have been in this location for over 16 years and we have been operating stores in Hawaii for over 50 years.

We are currently having a difficult time leasing out some of the space in the building. We have about 8,000 square feet of retail and office space currently vacant.

We urge you to pass this legislation to better define the “fair and reasonable” clause in our lease and allow us to continue operating our store in the Mapunapuna area. Thank you for your consideration.

Aloha,



Guy Kamitaki



SERVCO PACIFIC INC.

2850 Pukoloa Street • Suite 300 • Honolulu, Hawaii 96819 • Telephone: (808) 564-1300 • Facsimile: (808) 523-3937 • www.servco.com

February 16, 2009

To: The Honorable Rosalyn H. Baker, Chair
and Committee Members
Committee on Commerce and Consumer Protection

From: Carol K. Lam
Senior Vice President
Servco Pacific Inc.
2850 Pukoloa Street, Suite 300
Honolulu, Hawaii 96819

Hearing Date: Tuesday, February 17, 2009, 8:30 a.m.

In Support of SB 764, Relating To Real Property

On behalf of Servco Pacific Inc. ("**Servco**"), I submit the following comments in support of the adoption of SB No. 764 (the "**Bill**").

This bill affects businesses and lessees in the Mapunapuna, Sand Island, and Kalihi Kai areas who are trying to negotiate with landowner, HRPT, a Boston-based real estate investment firm. Servco is a third generation local company that has long-term commercial and industrial ground leases with HRPT in Mapunapuna. Our ground leases specifically provide that "said rent shall be such fair and reasonable annual rent for the demised land". We and other similarly affected lessees are asking that you support us by adopting this bill which calls for our ground lease rents to be negotiated on terms that are "fair and reasonable" to BOTH the landowner and lessees. HRPT is demanding rents that are double or triple what their lessees are now paying. They are also requiring a rent escalator of 3% to 4% that compounds annually. These rent offers are not "fair and reasonable" and our local companies simply cannot afford these rents.

This bill will not cost the State anything. But without it, the State may lose additional revenues if companies are forced to shut down and more jobs are lost due to exorbitant ground lease rents that are not fair and reasonable given the difficult economy and challenges that we face today. With your support of this bill, you will be supporting our local companies, their workers, and the customers we serve throughout the State.

We thank you for the opportunity to share our comments with you.

RECEIVED

February 17, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce & Consumer Protection
State Capitol
Honolulu, Hawaii 96813

'09 FEB 16 P1:03

SERGEANT-AT-ARMS
THE SENATE

Re: SB 764 Re Real Property
Hearing Date: February 17, 2009, 8:30am, Room#229

Dear Senator Baker and Ige and Members of the Committee:

My name is Jason Ideta. I vote in the Kaneohe District and I am a lessee in the Mapunapuna area. My company is a small locally owned wholesale business that distributes auto parts directly to mechanics and other auto parts distributors on Oahu and the outer islands. We own an 18,000 square foot warehouse on 35,000 square foot property with a ground lease originally from Damon Estate. We have 40 full-time and 2 part-time employees who have worked very hard to build the business over the last 23 years.

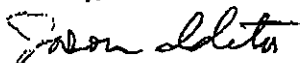
I am submitting my testimony in support of this bill due to the unfair business practices of my current landlord, HRPT. My lease calls for a "fair and reasonable" rate, but HRPT has been asking for anything but that. Market conditions have shown that they are asking for rates and annual increases that are way above current market levels. They are asking for rents that are more than double of what we are paying today, plus annual increases in a downward economy.

In these economic times, the last thing we need is to have an east coast investment company trying to cover their bad investments on the mainland by unfairly raising rents and putting a bunch of small local companies out of business. Being centrally located is very important in providing timely delivery to our customers which makes moving to leeward Oahu unfeasible. If our rents double, we will be forced to increase prices and cut costs by decreasing our work force to stay in business. Our customers will then pass on the increased costs to their customers. The cost to maintain and repair vehicles in Hawaii will increase. Most local businesses cannot raise prices and decrease service at the same time and remain competitive.

My company's employees and I support this bill because it will help our local economy stay afloat by supporting small businesses in the Mapunapuna Industrial area. This bill will provide an avenue for the lessor and lessee to live up to the spirit of the contract's "fair and reasonable" terms.

Thank you for your time.

Sincerely,



Jason Ideta
Pacific Jobbers Warehouse, Inc.

CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500
Honolulu, HI 96813

ROBERT M. CREPS, PRESIDENT
CAROL LAM, VICE PRESIDENT
CONNIE SMALES, SECRETARY
PHILLIP J. SILICH, TREASURER

CULLY JUDD, DIRECTOR
KEALI'I LOPEZ, DIRECTOR
GUS COSSETTE, DIRECTOR
MICHAEL STEINER, EXEC. DIRECTOR

February 14, 2009

Hand Delivered Testimony, Addendum & Video

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce & Consumer Protection
State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 764 - Re Real Property --Testimony in Support**
Hearing Date: February 17, 2009, 8:30 a.m., Room #229

Dear Senators Baker and Ige and Members of the Committee:

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation ("CFV"), a non-profit coalition of businesses with long-term ground leases in the Mapunapuna, Kalihi Kai and Sand Island areas. These are the old Damon Estate lands which were purchased by HRPT; a mainland based Real Estate Investment Trust (REIT). These ground leases, which typically last for 50 years, call for the renegotiation of rents that are "fair and reasonable," every 10 years.

Rent Increases

Senate Bill 764 seeks to establish that "Fair and Reasonable" rents should be applicable to both the lessor and the lessee. Unlike other ground leases in Hawaii which call for rent to be calculated upon land value at a certain rate of return, the HRPT leases call for "fair and reasonable" rents. CFV supports these Bills as they seek to set parameters that encourage open and transparent negotiations resulting in ground lease rental rates that are "fair and reasonable" to both parties and would not simply favor HRPT, who is now the largest industrial and commercial landowner in the State.

To be "fair and reasonable," rents should take into account the original agreed upon use and stewardship of the land. It is not "fair and reasonable" to increase rents based upon a single fee simple sale of land in the middle of captive space. At a minimum, to be "fair and reasonable" HRPT needs to take into consideration the agreed upon use of the land under lease, other newly signed ground leases for similar properties, the rates currently in force for neighboring properties, the general condition of the neighborhood, and the overall condition of the economy.

During the Damon years, Damon recognized that adverse economic times affected its lessees' ability to pay rent. They lowered rents during the hard times of the 1990's and negotiated in an open and transparent manner working to insure the long-term success of their tenants in order to keep people employed and their land generating revenue. At present, the new owner, HRPT, is seeking to increase rents from roughly \$4.00 per foot per year to between \$8.00 and \$10.00 per sq foot. In addition, HRPT is requiring annual increases of between 3.5% and 4.5%.

To illustrate the magnitude of this increase, we need to first look at what a typical lessee is currently paying for just over one acre (45,000 square feet) of space. Assuming a flat rent of \$4.00 per square foot per year, the following chart reflects the monthly, annual and 10 year payments:

	Monthly		Annual	
	Rate	Amount	Rate	Amount
Each Year	0.33	15,000	4.00	180,000
10 yr Total			4.00	1,800,000

HRPT, per its published statements, is now demanding rents of between \$8.00 and \$10.00 per square foot **plus** annual increases of 3.5% to 4.5%. Assuming the same 45,000 square foot lot, the following chart illustrates the cost of rent at \$8.00 with a 4% annual increase or step-up:

	Monthly		Annual	
	Rate	Amount	Rate	Amount
Year 1	0.67	30,000	8.00	360,000
Year 2	0.69	31,200	8.32	374,400
Year 3	0.72	32,448	8.65	389,376
Year 4	0.75	33,746	9.00	404,951
Year 5	0.78	35,096	9.36	421,149
Year 6	0.81	36,500	9.73	437,995
Year 7	0.84	37,960	10.12	455,515
Year 8	0.88	39,478	10.53	473,735
Year 9	0.91	41,057	10.95	492,685
Year 10	0.95	42,699	11.39	512,392
10 Year Average	0.80	36,018	9.60	432,220
10 Year Total				4,322,199

Within this example, the lessee's rent will increase from \$180,000 per year to an average of \$432,220 per year with a final year's rent at \$11.39 per square foot and a total cost of operation during the 10 year period of \$4,322,199. When compared to the 10 year operating cost of \$1,800,000, this equates to an increase of slightly more than a 140% over current levels.

10 Year Stats	
Total 10 Year Payments w/Step up Rent	4,322,199
Total 10 Year at Current Fixed \$4 level	1,800,000
Percent Increase of Total Paid Rent	140.12%

HRPT's Stated Objective

Based upon the examples shown, it is clear that HRPT's desire is to use their Hawaiian lands to the benefit of their corporate investors and not the local business owners who work the land. This message was emphasized during HRPT's 2nd Quarter Earnings Call on August 5, 2008. When asked how Hawaii rents will impact HRPT's profit, Adam D. Portnoy, Managing Director of HRPT, speaking on behalf of HRPT said:

“We are pushing rates very hard especially in places like Hawaii. If you want to Google us and look at some of the articles written about us in Hawaii press, we’ve gotten a lot of flack in that market because we’re pushing rates so hard and trying to push the rates so hard. In fact, there’s been a little bit of backlash from a lot of the tenants. So rest assured that we’re doing everything we can, as much as we can and as fast as we can to try to increase the rates there to push cash flow to HRPT.”

HRPT appears to be looking to Hawaii to cure its cash needs without regard to our local businesses’ ability to keep their employees working and business operating. In spite of area rentals being shown in the low \$6.00 range with existing buildings (Jackson Auto on Nimitz Hwy), Portnoy reaffirmed that “... you’re going to see over the next 18-24 months [HRPT] continue to try to push rates as much as we can.”

Contract Language

Many contracts include definitions to assist the parties in performing their obligations under a contract; however, the former Damon Estate leases that contain the “fair and reasonable” provision do not.

CFV lessees are now dealing with a Massachusetts based, publicly-traded REIT that announced to its stakeholders that they will pull cash from Hawaii by “pushing rates” and bring that cash back to their mainland offices. CFV members report that there has been very little effort from HRPT to “negotiate” or establish a “fair and reasonable” rent as is specified by the express language of their leases. In fact, HRPT is requiring its tenants to sign confidentially agreements before negotiations even begin – something Damon Estates never required.

The pending bills would establish parameters to ensure that rent adjustments under these particular leases be fair to both the lessor and the lessees. The bill does not add any new terms or delete existing terms from the lease or change any words in the lease.

Not a Private Dispute

The situation with these leases is not a private dispute between a group of lessees and one lessor, which assumes incorrectly that the lessees have equal bargaining power. HRPT is a monopolistic owner and, especially in light of the current recession in Hawaii where every day brings news of more lay-offs and downsizing, tenants need the assistance of the legislative body to set parameters in which ground lease rents are negotiated in an open and transparent manner to provide “fair and reasonable” rents.

The issue here is the continued economic viability of the Mapunapuna/Kalihi Kai/Sand Island industrial properties, the businesses that are located there and the continued employment of hundreds, if not, thousands, of employees who work there. Moreover, this bill addresses a state-wide concern as the lessees in the Mapunapuna area provide goods and services across the entire State of Hawaii. Among the lessees businesses are Grace Pacific, Servco, Sony, Coca Cola, Ameron, Olelo Television, Bacon Universal and Inter-Island Solar Supply, all of which have multi-island responsibilities. In addition, there are numerous electrical and plumbing supply houses that service contractors all over the state, general and sub-contractors who have jobs throughout the state and many others who provide goods and services to consumers and businesses on every island within the State.

Accordingly, significant increases in operating expenses will clearly impact the economy of the State of Hawaii. What happens to the Mapunapuna lessees is or should be a state-wide concern for legislators in this economy. This Bill recognizes that landlords and tenants, owners and lessees, need to come together to negotiate, in an open and transparent manner, to achieve rents that are “fair and reasonable” to all parties in order to preserve the businesses that provide for our way of life.

Negotiating under Duress

Even though these businesses provide services throughout the state, they are forced to negotiate with a single owner. To state the obvious, ground leases are for just the ground. It is the lessees' responsibility to construct and maintain their buildings, which will revert to the land owner at the end of lease. In addition to the good-will built up over years of occupying the same location, the lessees' buildings represent a huge investment. Moving to another location is not realistic due to the high level of investment as well as the potential moving costs, loss of customers and employees and the fact that there may be 20 or more years left on the original ground lease.

Without parameters to ensure that "fair and reasonable" rents will apply to both parties, the mainland owner can use its power to its advantage and demand rents that are not fairly negotiated.

Course of Conduct

Most ground leases in the Mapunapuna area have a term of 50 years. As mentioned, Damon would work with its tenants during tough times to ensure the viability of the businesses and protect its long-term relationship. Lessees have relied upon this conduct for the past 30 years.

With the sale of the property to the mainland-based HRPT, the old ways have been discarded. Instead of "fair and reasonable" negotiations, HRPT is demanding confidentiality agreements be signed before meaningful discussions can take place. No longer can neighbors meet to "talk story" without the fear of repercussion or law suit. Instead of level rents for each new segment of the leases, HRPT is only offering rents with annual increases that range between 3% and 4.5%. In addition, HRPT is requiring the lessees to grant HRPT a right of first refusal to the lease in all re-openings.

These changes are not consistent with the course of conduct that was established over the years with Damon Estate. These changes are material and go beyond what would be considered "fair and reasonable" to both parties. It is only reasonable to the land owner.

Existing Remedies Do Not Work

Should the owner and lessee fail to reach agreement, the lease requires the parties to enter arbitration. However, arbitration is not a viable method to determine the rent valuation.

Because the lessor has required the lessee to sign confidentiality agreements in advance of negotiations, and that agreement prohibits the lessee from disclosing any terms offered, the lessor has made it impossible for the lessees to obtain a determination of what is "fair and reasonable" and to learn about the results of any other lessees' negotiations. Of course, the lessor is working with "inside information" as it has data for all current rents, pending negotiations, signed leases, and mediated or arbitrated outcomes.

Arbitration is a lengthy and costly process that puts an extreme burden on the lessee. In these hard times, business owners are working frantically to salvage their existence and keep their employees employed. It is not within their projections to be forced to spend thousands of dollars to fight with the lessor – who truly should be a business associate and not an adversary. Furthermore, an arbitration, which may take weeks and weeks to complete, will deprive the business owner of the opportunity to watch over the day-to-day operations, which could lead to failure in these quick moving and unexplainable economic times.

Finally, while the pool of appraisers in Hawaii is limited, the potential number of arbitrations will rise dramatically if HRPT continues its announced course of "pushing rents" as high as possible. As such, there is a real possibility that local appraisers will court HRPT as a steady and lucrative source of business. Will

this sway the process to the land owner's benefit? Will the individual lessee, who has no access to "fair and reasonable" data, be at a disadvantage?

Citizens for Fair Valuation

Citizens for Fair Valuation ("CFV") is a non-profit coalition of businesses that lease land from HRPT in and around the Mapunapuna area. CFV's members meet every other week to discuss how best to approach the owner, HRPT, to obtain rents that are "fair and reasonable" to both parties. To-date, CFV has sent seven (7) separate invitations to HRPT offering to meet to discuss how we can mutually obtain "fair and reasonable" rents for everyone concerned; however, each offer was rejected by HRPT. Furthermore, HRPT has done everything possible to disenfranchise Citizens for Fair Valuation as an organization and has taken aggressive steps to "divide and conquer" its tenants and keep them under a veil of secrecy.

HRPT is an extremely large Real Estate Investment Trust (REIT) that must return at least 90% of its profits to its Stakeholders in order to maintain its preferred tax status. Most of its holdings are commercial high-rise office buildings located on the mainland and not long-term ground leases in Hawaii. HRPT is not accustomed to doing business here and, in the opinion of the writer, cares little for the "Aloha" that comes with the responsibility of owning Hawaiian land.

Conclusion

As a final comment in support of this legislation, the lessees with HRPT leases are hard working business people who would rather conduct their business, which is getting harder to do each day, than campaign for new legislation. They do not object to paying rent that is fairly negotiated and determined by applicable economic and market factors including, but not limited to, applicable comparables, the current use of the property and the characteristics of neighborhood (i.e. daily flooding, poor streets, stream flooding, crime, construction, etc). They do, however, strongly object to a lessor who uses "take-it-or leave-it" tactics while insisting upon rents that range from \$8.00 to \$10.00 per sq. ft., with annual increases set between 3.5% and 4.5 %. As a comparison, the Jackson Auto dealership on Nimitz Highway, is listed at \$6.24 per sq. ft. for the land and improvements (buildings) and does not have the infrastructure problems that the Mapunapuna lessees have to live with on a daily basis.

In these hard times, small businesses need assistance. The state simply cannot afford to see more closures and the loss of employment. In particular, the businesses in the Mapunapuna, Kalihi Kai and Sand Island area represent a foundation upon which these islands were built. These are proud people who are not looking for a bail-out; they just want the comfort of knowing that both parties in these lease renegotiations will act in an open and transparent manner that will produce "fair and reasonable" rents for all concerned.

Thank you



Michael Steiner

Executive Director

Citizens for Fair Valuation

Telephone: (808) 221-5955

Email: MSteiner@SteinerAssoc.com

Web Site: www.FairValuation.org

Video at: <http://www.fairvaluation.org/video.aspx?video=cfv.wmv>

Addendum to Testimony of Michael Steiner

In Support of SB 764

Hearing Date: February 17, 2009, 8:30 a.m., Room # 229

Partial List of Lessees in the Mapunapuna/Kalihi-Kai/Sand Island Area

	Company
1	179 Sand Island Warehouse, LLC
2	Affordable Casket Outlet
3	A S N Enterprises
4	A-1-A Electricians
5	Ahua Enterprises
6	Al Castillo
7	Albert Young
8	Allied Building Products Corp.
9	All Nations Fellowship
10	Allwaste of Hawaii LTD
11	Aloha Auto Auction
12	Aloha Products
13	American Electrical Co., LLC
14	American Savings Bank
15	American Tire (Hawaiian Island Tire)
16	Ameron Hawaii
17	Anches, Jerome
18	Associated Construction
19	AT&T Wireless
20	Bacon - Universal Company, Inc.
21	Bank of Hawaii
22	Ben Franklin
23	Beth Israel Jewish Ministries Int'l
24	Big Rock
25	Blackburn & Associates
26	BOC Group, Inc.
27	Boise Cascade Corp
28	Bond, Jan Tr
29	Boulware, Michael H
30	C & F Machinery Corp
31	Carmen, Wade & Paula
32	Chevron USA Inc
33	Coca-Cola
34	Concrete Coring Co of Hawaii
35	Cossette Investments
36	Deer, Donald G 1989 REV TR/ETAL
37	Dennis Sullivan
38	Dimauro, Pender, leona
39	Diversified Energy Services
40	First Hawaiian Bank
41	Foster Equipment Co., Ltd.
42	Genre Properties
43	Grace Pacific Corporation
44	Grapac Properties
45	Gray, James, TRS
46	GSH&K Investment
47	H Q INC
48	Hart, Doris J TR
49	Hawaii Concrete Product, Inc
50	Hawaii Nut & Bolt, Inc

	Company
51	Hawaii Stage & Lighting
52	Hawaiian Bitumuls Paving
53	HIE Holdings Inc
54	Hirahara, Ronald Y TR
55	Honolulu Disposal Service
56	Honolulu Painting Co
57	Honolulu Warehouse Co Ltd
58	Horizon Waste Services
59	HSI Electric, Inc.
60	Hydro-Scape Irrigation Supply
61	I DOI Hauling Contr, Inc.
62	Intech, Inc.
63	Inter-Island Solar Supply
64	Island Lighting
65	Ito-En (USA) Inc.
66	Jack Endo Electric
67	John Wagner Assoc Inc
68	Kahai St Dev Partnership
69	Kaiser Foundations Helath Plan
70	Kaya, Darlyne
71	Ken Yee
72	Ken's Auto Fender Ltd
73	Kilgo, A TR
74	Killebrew, George III Fam Tr
75	Kimi, William J Jr.
76	Kobatake, Gilbert D. Tr
77	Komohana Corp
78	Langer Hawaii Corp
79	Leeward Auto Wreckers Inc
80	Luria, Mark T.
81	M.C. Auto Body& Paint
82	Marcus & Associates Inc.
83	McKillican American
84	MHI LLC
85	Mid Pac Petroleum, LLC
86	Moanalua Exchange Ltd
87	Moanalua Mortuary
88	Monier Inc
89	Moos Machine Works, Inc
90	Mr. Sandman Inc.
91	MW Group Ltd.
92	Nakasone, Lillian KG
93	Nordic Construction Ltd
94	Oahu Metal & Supply Inc.
95	Okuhara Foods Inc
96	Olelo Community Television
97	Pacific Allied Products Ltd
98	Pacific Jobbers Warehouse
99	Pacific Machinery
100	Pflueger Group LLC

	Company
101	Philip Services Hawaii Ltd
102	Pioneer Electric Inc
103	Plywood Hawaii, Inc.
104	Pohounui Partners LLC
105	Polynesian Adventure Tours
106	Prime Construction Inc.
107	R & H Machinery Inc.
108	R WO & Associates Inc.
109	Ralph S. Inouye Co., Ltd.
110	Rasko Supply
111	Refuse Inc
112	Renfro, Charles & Carol S
113	Royal Construction Co. Ltd
114	RSI Roofing & Building Supply
115	S I Center Partners
116	Sawdust
117	Sears Roebuck & Co
118	Servco Pacific, Inc.
119	SLSS Partners
120	Snyder, Family Tr
121	Sony Electronics, Inc.
122	Specialty Surfacing Co.
123	STI Industries
124	Stoneridge Recoveries LLC
125	Sugai, Rodney Y Trust
126	Sin Industries Inc.
127	Sylvia, Robert C. Tr
128	Tagupa, James Tr
129	Takane, Janlu M
130	Takiguchi, Raymond K Tr
131	Tesoro Hawaii Corporation
132	Time Warner Entertainment
133	Tokunaga Masonry
134	Tri-Palm Industries Inc.
135	Tropical Ethanol Prod Ltd
136	Twentieth Century Furn Inc.
137	United Truck Rentals
138	UTR Liquidation * Repos Inc
139	Value Service & Supply
140	W T Yoshimoto Corp
141	Walker-Moody Construction
142	Wallner, Family Trust
143	Warehouse Rentals Inc.
144	WASA Electrical Service
145	Webco Hawaii, Inc.
146	Weggeland, Francis M
147	WESCO Distribution Inc.
148	White Cap Construction Supplu
149	Won, Philip W.
150	World Carpets Inc

BENDET, FIDELL, SAKAI & LEE

EDWARD R. BENDET
JAY M. FIDELL
WESLEY H. SAKAI, JR.
DENIS LEE
YURIKO J. SUGIMURA
KYLE T. SAKUMOTO
THOMAS R. SYLVESTER*
LORI L. Y. HIJII

ATTORNEYS AT LAW
A LAW CORPORATION
SUITE 1500
DAVIES PACIFIC CENTER
841 BISHOP STREET
HONOLULU, HAWAII 96813

AREA CODE 808
TELEPHONE 524-0544
TELEFAX 521-7739
lawyers@bfsll.com
WWW.LEXPACIFIC.COM

OF COUNSEL
KEITH S. AGENA

*Also licensed in California

February 14, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Senate Committee on Commerce &
Consumer Protection
State Capitol
Honolulu, Hawaii 96813

Re: Senate Bill 764, Re Real Property
Hearing Date: February 17, 2009, 8:30 a.m., Room #229

Dear Senators Baker and Ige and Members of the Committee:

My name is Jay Fidell and I am general counsel of Citizens for Fair Valuation, Inc., a Hawaii non-profit corporation, which represents industrial and commercial ground lessees in Mapunapuna, Kalihi Kai and Sand Island.

The members of Citizens for Fair Valuation include various industrial and commercial ground lessees in these areas in which HRPT is the landlord. Many of these and other HRPT lessees in the area have gotten very high rent renegotiation proposals.

Although the HRPT lease form provides that the lease rent will be "fair and reasonable", the lease does not explain what "fair and reasonable" means. I do not believe that setting the rent at twice the rent or more is "fair and reasonable", particularly in view of the fact that these ground lessees are generally unable to afford to pay those increases and still operate their businesses and pay their employees.

If they cannot get a fair and reasonable rent from HRPT, they are at risk of losing their businesses and their improvements will revert to HRPT.

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
February 14, 2009
Page 2

If they are charged higher rent, and in most cases it is double what they are paying now, they will have to raise their costs to their customers who buy their products and they in turn will have to increase their prices to the consumers that they serve. In this economy, people can't afford those higher prices and, so there will probably be less purchasing which will then affect their abilities to keep their workers employed.

This bill provides that the rent increase shall be "fair and reasonable" to both lessor and lessee and that the determination of the increase will depend on actual factors affecting to or relating to my property and not some imagined "highest and best use". Fair and reasonable rent will allow these lessees to continue to operate their business, pay their debts, service their customers and keep their employees working.

For these and other reasons, I urge you to pass this Bill. Thank you for allowing me to testify on this bill.

Very truly yours,



Jay M. Fidell
Of BENDET, FIDELL, SAKAI & LEE

JMF:dt

BENDET, FIDELL, SAKAI & LEE

EDWARD R. BENDET
JAY M. FIDELL
WESLEY H. SAKAI, JR.
DENIS LEE
YURIKO J. SUGIMURA
KYLE T. SAKUMOTO
THOMAS R. SYLVESTER-
LORI L. Y. HIJII

ATTORNEYS AT LAW
A LAW CORPORATION
SUITE 1500
DAVIES PACIFIC CENTER
841 BISHOP STREET
HONOLULU, HAWAII 96813

AREA CODE 808
TELEPHONE 524-0544
TELEFAX 521-7738
CABLE-LEXPAC
yjs@bfl.com

OF COUNSEL
KEITH S. AGENGA

*Also licensed in California

February 14, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN SUPPORT OF SB 764 RE REAL PROPERTY
Hearing: Tuesday, February 17, 2009, 8:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Ige and Members of the Committee:


I'm Jane Sugimura and my firm is counsel to Citizens for Fair Valuation ("CFV").

Prior to the session, representatives of CFV and I met with representatives of BIA and Land Use Research Foundation ("LURF") regarding this bill. When they objected to provisions relating to the lessors' approval of an assignment, transfer or encumbrance of property (i.e., subsection (1) at page 4 of SB7764) and improvements to structures and infrastructures on the land (i.e., subsection (2) at page 4 of the bill), CFV agreed to delete them. They had no such concerns regarding the language in subsection (3) containing the "fair and reasonable annual rent" language.

Although we were able to get the final changes made to the House companion, we were not able to get the senate bill changed. Accordingly, we ask that this Committee amend this bill to incorporate the language in the House companion, a copy of which is attached, and pass this bill out.

Thank you for allowing me to testify.

Very truly yours,


Yuriko J. Sugimura
Of BENDET, FIDELL, SAKAI & LEE
YJS:ss

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

H.B. NO. 1593

A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that small businesses are an essential element in strengthening and diversifying Hawaii's economy and creating jobs for our citizens. More than ninety-five per cent of all Hawaii establishments are small businesses, and they provide jobs for sixty per cent of all Hawaii employees.

The legislature further finds that despite their contribution to Hawaii's economy, small businesses are at a disadvantage in terms of land ownership. The commercial and industrial properties that exist within the State's urban districts are primarily owned by a few landowners. These landowners control large tracts of land and retain their ownership by means of leases to small businesses, which in turn supply services and products to the communities within or adjacent to the commercial and industrial properties. Without these neighborhood businesses, consumers would be compelled to travel long distances and expend large amounts of time and effort to locate these needed services and products.

In the city and county of Honolulu's "Annual Report on the Status of Land Use on Oahu, Fiscal Year 2006" (February 2008), growth projections show a decided shift away from the primary urban center

for industrial jobs. Approximately eighty per cent of industrial jobs were located in the primary urban center in 2000, and by 2030 that projection drops to seventy-one per cent. For that same period, industrial jobs in the Ewa region will nearly double, from seven to thirteen per cent, and increase by nearly fifty per cent, from seven to ten per cent in central Oahu.

The legislature further finds that small businesses are often dependent on commercial and industrial leases, which may contain provisions that are so onerous as to force these businesses to relocate to rural areas and away from the urban centers. In practical terms, consumers will find that the auto service center or the small retailer in Mapunapuna is no longer in business near where the consumer lives or works.

The legislature finds that the proximity of small businesses to urban communities serves to stabilize Hawaii's economy, especially during the recessionary period that the United States has entered. Thus, maintaining close geographic ties between small businesses and the communities they serve is a public purpose that requires legislative support.

The purpose of this Act is to stabilize Hawaii's economy by addressing some of the burdensome provisions of existing commercial and industrial leases of certain lands within urban districts by clarifying provisions in long-term commercial and industrial ground leases, without substantial reduction in the economic benefit to the owners or impact on their ownership of the land, without impairing their lease contracts, and without the taking of any property rights without due process of law.

SECTION 2. Chapter 519, Hawaii Revised Statutes, is amended by

adding a new section to be appropriately designated and to read as follows:

"§519- Leases of commercial and industrial property. (a)

Notwithstanding any other law to the contrary and unless expressly stated to the contrary in the lease, any lease of commercial or industrial leasehold property shall be subject to the following terms and conditions:

(1) Whenever a lease existing on July 1, 2009, or entered into thereafter, provides for the renegotiation of rent during the term of the lease and the renegotiated rent is based, according to the terms of the lease, on fair and reasonable annual rent as of the commencement of the term, that provision shall;

(A) Be construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease; and

(B) Take into account the uses and intensity of use approved by the lessor, and the surface and subsurface characteristics of the site and the neighborhood on the renegotiation date; and

(2) Unless otherwise specified in the lease, if the lessee has subtenants with subleases that provide for recovery by the lessee of ground lease rent, those subtenants shall be charged their pro-rata share of the fair and reasonable annual rent as renegotiated pursuant to this paragraph.

(b) For purposes of this section:

"Commercial or industrial leasehold property" means any ground lease of real property:

- (1) Situated in the State;
- (2) Zoned by a county for commercial or industrial use;
- (3) That is subject to a lease with a term of ten years or more and an unexpired term of five years or more; and
- (4) Where the lessor is the owner, directly or indirectly, of fifty thousand square feet or more of industrial and commercial property in the State.

"Lease" means a conveyance leasing privately owned land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, for a term exceeding ten years in consideration of a return of rent or other remuneration."

SECTION 3. This Act applies to any lease in effect on its effective date, but does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____