

STAND. COM. REP. NO.

2780

Honolulu, Hawaii

MAR 19 2010

RE: H.B. No. 2132  
H.D. 1  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 2132, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE FORECLOSURES,"

begs leave to report as follows:

The purpose of this measure is to require foreclosing mortgage lenders to formally notify their mortgagors, prior to the initiation of foreclosure proceedings, with written notice of default and the mortgagee's right to foreclose, together with notification to the mortgagor of the availability of counseling through mortgage counseling agencies approved by the United States Department of Housing and Urban Development.

Your Committee received testimony with comments on this measure from the Department of Commerce and Consumer Affairs. Testimony in opposition to the measure was received from the Hawaii Bankers Association, the Hawaii Credit Union League, the Hawaii Financial Services Association, and the Hawaii State Bar Association's Collection Law Section. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that mortgagors whose property is subject to foreclosure should be notified of the availability of mortgage counseling, which may allow the mortgagors to work out repayment plans, consider refinancing options, and obtain financial counseling. Testimony submitted regarding this measure highlighted several areas of concern with this measure, including



the location of the proposed new section within chapter 667, Hawaii Revised Statutes, and the possibility that a foreclosure could be void if conditions of notification of the mortgagor are not met. Testimony received by your Committee clearly indicated a preference for a similar measure, S.B. No. 2472, S.D. 2, an earlier version of which was previously heard and approved by the Committee.

Accordingly, your Committee has amended this measure by deleting its contents and inserting language from S.B. No. 2472, S.D. 2, with certain amendments. As amended, the measure provides as follows:

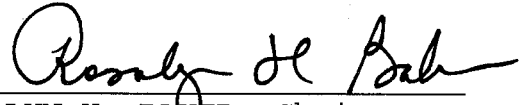
- (1) The provisions of the measure shall apply to power of sale foreclosure proceedings under part I of chapter 667, Hawaii Revised Statutes, for mortgaged property where the mortgagee is an owner-occupant of the property;
- (2) A foreclosing mortgagee must provide a consumer who is an owner-occupant of a mortgaged property that is subject to foreclosure a written notice of the availability of credit counseling no later than thirty days prior to initiating any power of sale foreclosure under section 667-5, Hawaii Revised Statutes;
- (3) The notice must be sent by mail to the address of the mortgaged property or to the address designated by the mortgagor, return receipt requested;
- (4) If a mortgagor, who is a consumer and an owner-occupant of a mortgaged property, requests in writing a copy of the promissory note and mortgage document, then the mortgagee may not initiate foreclosure proceedings until the mortgagee has sent those copies to the mortgagor; and
- (5) At any power of sale foreclosure of a mortgaged property that is owned and occupied by the mortgagor who is a consumer, a public sale price of seventy per cent of the fair market value of the mortgaged property shall be fair and reasonable.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to



this report, your Committee is in accord with the intent and purpose of H.B. No. 2132, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2132, H.D. 1; S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,



ROSALYN H. BAKER, Chair



