

Honolulu, Hawaii

April 22, 2010

RE: H.B. No. 2288  
H.D. 1  
S.D. 2  
C.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

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

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 2288, H.D. 1, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PRIVATE TRANSFER FEES,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to prohibit real property deed restrictions or other covenants running with the land from requiring transferees to pay fees for the future transfer of the property, except certain fees or charges relating to:

- (1) Payments to a lender on a mortgage loan secured by the property;
- (2) Payments to a condominium association, cooperative housing corporation, limited-equity cooperative, or planned community association pursuant to a declaration, covenant, or law applicable to the association or corporation;



- (3) Lease payments and charges to landlords;
- (4) Payments to the holder of an option to purchase an interest in real property, or holder of a right of first refusal or first offer to purchase such interest, for waiving the option or right upon transfer of the property to another person;
- (5) Payments by a developer of real property for resale to others;
- (6) Payments to a government entity;
- (7) Payments made pursuant to a deed restriction or other covenant running with the land required by a litigation settlement approved by a court before the effective date of this bill; and
- (8) Payments to a qualified organization for its management of conservation land or for educating the new owners of the property on the conservation restrictions imposed upon the property.

Private transfer fees created through a deed restriction or covenant on real property require every buyer of the property to pay the fee to the party that created that restriction. Because this transfer fee is paid every time the property is transferred, the party imposing the restriction retains a perpetual interest in the transferred property. These fees may create prohibitive costs for homeownership, negatively impact the marketability of real property, discourage buyers, and depress property values. This bill would prohibit these fees while exempting certain usual and customary fees, assessments, or charges that are typical for various real property transactions.

Your Committee on Conference has amended this bill by:

- (1) Clarifying that any deed restriction, covenant running with the land, or lien:
  - (A) To the extent that it purports to secure the payment of a transfer fee prohibited by this bill; and



(B) Created, filed, or recorded on or after the effective date of this bill;

is void and unenforceable;

(2) Inserting a sunset date of June 30, 2015, for the provisions of this bill; and

(3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 2288, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2288, H.D. 1, S.D. 2, C.D. 1.

Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE



ROSALYN H. BAKER, Chair



ROBERT N. HERKES, Co-Chair



BRIAN T. TANIGUCHI, Co-Chair



JON RIKI KARAMATSU, Co-Chair



KEN ITO, Co-Chair



