

Honolulu, Hawaii

MAR 19 2010

RE: H.B. No. 2288
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. 2288, H.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this measure is to prohibit private fees attached to deeds or covenants of real property that impose fees on all future transferees of that property.

Your Committee received testimony supporting the intent of this measure with amendments from the Nature Conservancy, the Hawaii Financial Services Association, the Maui Coastal Land Trust, Oceanside Partners, the Hawaii Association of REALTORS, and Alexander & Baldwin, Inc. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that private transfer fees are deed restrictions or covenants on real property that require all future transferees of the property to pay a transfer fee to the private party which created the restriction. Private transfer fees effectively cloud title to property by reserving part of the fee simple interest to the transfer fee creator. This acts as a restraint on the transfer of real property and can negatively impact property values.

Your Committee concludes that private transfer fees decrease housing affordability, serve no public purpose, and provide no



benefit to property purchasers or the community except in limited cases concerning conservation land.

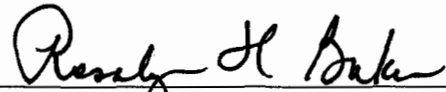
Your Committee has amended this measure by:

- (1) Including in the list of exemptions to the transfer fee prohibition:
 - (A) Any consideration payable by a person who purchases real property that was initially transferred at below then prevailing market value pursuant to an affordable housing program established by the original seller;
 - (B) Any amount payable pursuant to a deed restriction or other covenant running with the land that was required by a litigation settlement approved by the court before this measure takes effect; and
 - (C) Any reasonable fee attached to conservation land payable to a qualified organization for educating the new owners or for the management, stewardship, or enforcement of a qualified real property;
- (2) Invalidating deed restrictions or covenants running with the land to secure payment of transfer fees that are filed after this measure takes effect, with the clarification that such invalidation does not infer that such restrictions or covenants filed prior to the effective date of this measure are valid per se;
- (3) Rejecting any recovery for payees for any consideration paid upon transfer pursuant to a deed restriction before this measure takes effect;
- (4) Clarifying the exemption applicable to fees, charges, assessments, and fines payable to real property associations, by deleting property homeowners associations, including cooperative housing corporations and planned community associations, and adding statutory references to the definitions of those terms; and
- (5) Making this measure effective upon approval.



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. 2288, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2288, 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



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 2288 HD1	Committee Referral: CPN, J90	Date: 3/12/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
IGE, David Y. (VC)				✓
ESPERO, Will	✓			
GREEN, M.D., Josh	✓			
IHARA, Jr., Les	✓			
SAKAMOTO, Norman				✓
HEMMINGS, Fred	✓			
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center;"><i>Will Espero</i></div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes