

STAND. COM. REP. NO.

2615

Honolulu, Hawaii

FEB 26 2010

RE: S.B. No. 2373
S.D. 2

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

Madam:

Your Committee on Judiciary and Government Operations, to which was referred S.B. No. 2373, S.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 in a deed or other covenant running with the land a provision that requires the transferee to pay a fee in connection with a future transfer of the property to a declarant, other person imposing the deed or restriction or covenant, or a third party designated by a transferor of the property.

Your Committee received written comments in support of this measure from three nonprofit entities, two financial organizations, and one private entity. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that private transfer fees are created by a private party through a deed restriction or covenant on real property. This restriction requires every transferee or buyer of the real property to pay a transfer fee to the private party which created that restriction. Because this private transfer fee is paid every time that real property is transferred, the private party imposing this restriction may be deemed to be retaining a part of the fee simple interest in the real property that is being transferred. This restriction could constitute an inappropriate restraint on the transfer of real property. Your Committee notes



that this measure provides exemptions to the general prohibition on transfer fees for legitimate changes required by a deed restriction or other covenant running with the land in connection with the transfer of real property. Your Committee also notes its concern about the grandfathering of covenants that existed prior to this measure, particularly with respect to conservation easements or land trusts.

Accordingly, your Committee has amended this measure by changing the effective date to July 1, 2050, to continue the discussions on this matter. Your Committee has also made technical, nonsubstantive amendments for the purposes of clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2373, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2373, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Government Operations,



BRIAN T. TANIGUCHI, Chair



The Senate
 Twenty-Fifth Legislature
 State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO

Bill / Resolution No.:* <i>SB 2313, SDI</i>	Committee Referral: <i>CPN, JGO</i>	Date: <i>2/19/10</i>		
<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
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)				✓
BUNDA, Robert	✓			
GABBARD, Mike	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	5	-	-	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes