
MUTUAL PLUMBING SUPPLY

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March 29, 2010

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I strongly support passage of SB 771, HD1 which will extend the effective life of Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community.

Lat session this Committee and both Houses approved SB 764 which became law under Act 189. Unfortunately, the core issues upon which we sought your redress have only worsened during this past year. The seven (7) different companies that make up HRPT have continued to bully lessees requiring lessees us to waive our rights under Act 189. In addition, the rental demands of roughly \$10 per square foot (\$7.00 plus 3% or 4% per annum increases) are unfair and unreasonable given the market and two recent arbitration awards (one at \$5.26 flat and another at \$5.75 flat).

This is simple greed and price gouging especially when HRPT's own appraisers have submitted rates in the \$6.50 range during the recent arbitrations!

Please, stay your position by passing SB2020 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,

Allison Kojima
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SERVCO PACIFIC INC.

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March 29, 2010

To: The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
and Committee Members
House Committee on Judiciary

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

Hearing Date: Tuesday, March 30, 2010, 2:30 p.m.
Conference Room 325/State Capitol

In Support of Senate Bill 2020 HD1, Relating to Real Property

On behalf of Servco Pacific Inc. ("*Servco*"), I submit the following comments in support of the adoption of SB 2020 HD1 (the "*Bill*").

Servco recently completed a ground rent arbitration with Masters Properties, LLC (which is one of seven different companies that make up HRPT) for Servco's 10-acre site in Mapunapuna. The hearing lasted one-week, and both Servco and Masters Properties fully presented their views on rent. That arbitration panel unanimously decided on a rent of \$5.26/SF for the 10-year period beginning February 2009 *with no step ups or annual increases*.

We understand that since that arbitration award was announced, HRPT has continued to insist on *both* a first year rent that is well in excess of the Servco award *and* on 3% to 4% annual rent increases.

We support the passage of SB 2020 HD1 to extend the life of Act 189 and to remind HRPT that it needs to set rents that are fair and reasonable to both the Lessor and Lessee.

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

CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500
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ROBERT M. CREPS, PRESIDENT
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CULLY JUDD, DIRECTOR
KEALI'I LOPEZ, DIRECTOR
GUS COSSETTE, DIRECTOR
MICHAEL STEINER, EXEC. DIRECTOR

March 29, 2010

Testimony to the House Committee on Judiciary
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol

Testimony in Strong Support of SB 2020, HD1
Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Michael Steiner. 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.

Need for SB 2020

SB 2020 seeks to extend the sunset date of Act 189. No other changes or amendments are contained in the bill.

With the passage of Act 189, Citizens for Fair Valuation had hoped that HRPT and its seven subsidiaries would alter its business model such that open and transparent negotiations would lead to acceptable rents for both parties and that Act 189 would sunset as written.

Unfortunately, HRPT's subsidiaries have instead chosen to continue to intimidate lessees through take-it-or-leave-it (TIOLI) offers that almost are twice the going market rate, demanding lease amendments to include terms favorable just to HRPT, and going so far as to **require lessees to waive their Act 189 rights now and forever.**

SB 2020 is needed to again remind HRPT and its subsidiaries that its lease contracts call for good faith negotiation and ultimately "fair and reasonable rents." HRPT continues to ignore the commitments made to legislators and lessees during the 2009 legislative hearings.

HRPT – Intimidation Continues

Most ground leases in the Mapunapuna area have a term of 50 years. Damon would talk with its lessees to negotiate fair and reasonable lease terms as it recognized the economic value of working together. Current lessees have relied upon the course of action established by Damon. In a 1993 affidavit, Trustee Hebden Porteus confirmed this course of action by saying,

Since I have been a Trustee, it has been a conscious long-term business decision of the Estate to establish a spirit of cooperation with lessees, which in our view has worked to the mutual advantage of the Estate and its lessees.

With the sale of the property to Massachusetts-based HRPT, the old ways were discarded. Instead of "fair and reasonable" good faith negotiations, HRPT demanded that lessees sign confidentiality agreements before negotiations could begin. This was clearly an attempt to control the disclosure of rent comparables and pit neighbor against neighbor.

On April 9, 2009, HRPT's Sr. VP, David Lepore, wrote, "Our Honolulu office is fully committed to meeting its goal of responding to any tenant inquiry within one business day..." On point, a tenant wrote to the local office in the middle of June 2009 only to receive a reply in mid-January of 2010, a delay of seven (7) months. How can a business plan or budget when the lessor that controls your rent, and effectively your business livelihood, does not communicate in a timely and efficient manner?

To make matters worse, HRPT is now forcing lessees to waive their rights under Act 189 before negotiations can begin. Offer letters, signed by Ms. Jan Yokota, include the following condition:

Act 189: Lessor and Lessee acknowledge and agree that Act 189 of the 2009 Hawaii State Legislature, together with any similar related and/or unrelated, and/or successor act, statute, law, ordinance or regulation which purports to change existing lease terms, shall not apply to the terms of the Lease, and any and all rental and/or value determinations shall be made without regard thereto.

Is this fair and reasonable?

Fair and Reasonable

Merriam-Webster's Online Dictionary defines "fair" as, "marked by impartiality and honesty; free from self-interest, prejudice, or favoritism." To be fair, then, means not to be unfair. The same dictionary defines "reasonable" as, "being in accordance with reason; not extreme or excessive." To be reasonable, then, means not to be unreasonable.

By the nature of these definitions, the term "fair and reasonable rent" should imply negotiations that are good faith, open and honest with results that are not excessive. In other words, the conflicting interests of both the lessor and lessee are to be balanced in determining rent and that extremes on either side are to be avoided.

Trustee Hebden Porteus, again in his 1993 affidavit, defined "fair and reasonable" as follows:

It was thus never the intent or understanding of the parties, that "fair and reasonable" defined in terms of the lease be anything other than market rent, as any rent below market would be unfair and unreasonable to the Estate, while any rate above market would similarly be unfair and unreasonable to the lessee.

Rent Demands, Appraisals and Recent Arbitration Awards

Should the lessor and lessee fail to reach agreement through negotiation, the lease requires the parties to enter arbitration. This process is extremely expensive, time consuming and intimidating. Arbitration is like a trial and the costs can be huge. For the everyday business owner in the area, arbitration is an economically terrifying process. In addition to cost, it means having to confront the oligarchic landowner in an arena that is alien and unknown.

However, while some 20 businesses are still waiting for their rent resets from 2008 and 2009, two arbitration proceedings have been completed:

1. **1. Servco:** HRPT demanded \$7.00 per square foot *plus* a 4.0% annual increase, an average of \$8.40 per foot over the period. HRPT's appraiser said the rent should start at roughly \$6.40 – \$2.00 less than the average of the offer demand. The arbitration panel award came in at a flat rate of \$5.26 per square foot.

Servco Arbitration Award = \$5.26 Flat					
	Actual Dollars	Award Value Up and Down		Current Rent Upward	
		Differences	Percent change	Dollars	Percent change
HRPT Demand *	8.40	3.14	59.70%	5.45	184.75%
HRPT Appraiser * *	6.82	1.56	29.56%	3.87	131.02%
Panel Award	5.26	0.00	0.00%	2.31	78.31%
Servco Appraiser	4.35	(0.91)	-17.30%	1.40	47.46%
Servco Current	2.95	(0.44)	-43.92%	0.00	0.00%

* HRPT Demand was \$7 plus 4% per annum or \$4.2 M (Avg 8.40 Ending \$10)

** HRPT Appraisal: \$6.38 for first 5 years and \$7.25 for second 5 years - Average is \$6.82

2. **HSI:** HRPT demanded \$10.25 per square foot. Again, HRPT's appraiser came in at roughly \$6.50 per foot – **\$3.75 less than the rent demand**. The arbitration panel award came in at a flat rate of \$5.75 per square foot.

HSI Arbitration Award = \$5.75 Flat					
	Actual Dollars	Award Value Up and Down		Current Rent Upward	
		Differences	Percent change	Dollars	Percent change
HRPT Demand	10.25	4.50	78.26%	6.60	180.82%
HRPT Appraiser	6.48	0.73	12.70%	2.83	77.53%
Panel Award	5.75	0.00	0.00%	2.10	57.53%
HSI Appraiser	4.45	(1.30)	-22.61%	0.80	21.92%
HSI Current	3.65	(0.37)	-36.52%	0.00	0.00%

HRPT's rent demands are clearly well in excess of a "fair and reasonable" or "market" offer. A quick look at the spread between demand, HRPT's own appraisal, and ultimate panel award will confirm that HRPT continues to adhere to the corporate goals outlined in August of 2008, when Adam D. Portnoy, Managing Director of HRPT declared,

We are pushing rates very hard especially in places like Hawaii. [w]e'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.

Despite these arbitration awards, HRPT has steadily refused to negotiate or accept lessees' offers to pay within the now established range. Clearly, the need to extend Act 189 is apparent.

Comparable Rents

HRPT has argued that "fair and reasonable rent" means "market rent." Well, the "market" has now produced two comparables: Servco, located in upper Mapunapuna, came in a \$5.26 flat;

and, HSI, located in Sand Island, came in at \$5.75 flat. However, HRPT and its subsidiaries continue to demand rental rates that are close to \$10 per foot (\$7.00 plus 4% per annum).

In a Pacific Business News article dated January 29, 2010, HRPT's Director of Investor Relations, Tim Bonang, said,

I think the fact that the Servco arbitration still came out at close to an 80 percent increase is where the market is right now. At the end of the day, absent any legislative interference, our rental rates have been driven by the market. For better or worse that's the way the agreements have been set up.

In reference to the Servo award, Ms. Jan Yokota, VP of REIT Management (HRPT's Property Manager company), declared in her February 18, 2010, written testimony to the Senate Committee on Judiciary and Government Operations that,

The three member panel of appraisers set the rent at \$5.26 per square foot. The process worked and we can now move forward.

If two senior members of HRPT and/or its affiliated companies have publically stated that the market works, why is Ms. Yokota still demanding renewal rates that are almost twice the comparable rate?

Opponents to Act 189

In their opposition to Act 189, opponents argue that:

HRPT is a Single-Entity – Actually, HRPT does not directly own any land in Hawaii. The Damon Estate land, consisting of 224 acres or about 10 million sq. ft., was purchased by seven (7) wholly owned Limited Liability Companies. These include: (1) Masters Properties, LLC; (2) Orville Properties, LLC; (3) Robin 1 Properties, LLC; (4) Tanaka Properties, LLC; (5) LtMac Properties, LLC; (6) TSM Properties, LLC; and, (7) Z&A Properties, LLC.

Under this legal structure, HRPT is not directly liable or responsible to claims. The seven entities provide a great deal of protection and yet, HRPT continues to claim that Act 189 targets a single entity?

Act 189 substantially impairs the existing contract – This is simply not the case as Act 189 merely says that "fair and reasonable" should apply to both parties. In addition the Act requires appraisers to "consider" certain aspects when doing a valuation. That is not a change, let alone a "substantial" change.

Act 189 does not have a significant and legitimate public purpose – Commercial and industrial businesses have long been recognized as a fundamental part of a community's economic base and that those businesses are often the engine of economic growth within a community. The Legislature is aware that "[t]he commercial and industrial properties that exist within the State's urban districts are primarily owned by a few landowners" and that the small businesses on these lands are needed to supply crucial goods and services to Honolulu businesses (Act 189, §1).

It is therefore appropriate and legitimate for the Legislature to extend Act 189 in order to reduce the likelihood that industrial operations serving Honolulu would have to reduce their workforce, raise consumer prices or worse, be forced to close their doors forever.

Act 189 materially affects the most essential term in a lease: the lessee's obligation to pay rent – Nothing could be further from the truth. Act 189 does not set rents, it does not alter or even discuss lessees' obligation to pay rent, it merely says that the valuation of the rent should be consistent with the existing language of the contract which calls for "fair and reasonable annual rent" and that fair and reasonable should apply to both parties. Act 189 only reinforces existing contract terms – it does not change the terms!

Litigation

Shortly after Act 189 became law, HRPT and its subsidiaries challenged the constitutionality of the Act in federal court. The matter is being heard by Judge Susan Oki Mollway. HRPT's motion for summary judgment was denied by the court as were those filed by the Attorney General, on behalf of the State, and CFV as Intervenor. Judge Mollway requested the parties do limited discovery regarding the intent of the original parties.

HRPT has since filed another motion for summary judgment. The Court set a hearing for May 10, 2010; however, HRPT filed a motion to advance the hearing date in order to influence the Legislature. Judge Mollway denied their motion saying that,

This court does not see its role as seeking to influence prospective legislation. This court rather sees its job as deciding matters properly before it in cases filed in this court.

Following Judge Mollway's sound reasoning, this Legislature, as one of the three branches of government, should not be seeking to influence or affect a court's decision in a pending lawsuit. It should rather concentrate on fulfilling its duties and obligations to enact laws to address constituent concerns and to protect and promote the public interest.

Act 189 is such a law. It was passed to address very legitimate concerns of local, small businesses in the Mapunapuna/Sand Island area and it is absolutely necessary that Act 189 remain in place to maintain those businesses as viable entities which will continue to provide jobs in this recession. Act 189 is needed to help protect our near-town commercial and industrial businesses from the heavy-handed tactics of the mainland lessor who clearly does not understand the meaning of "fair and reasonable."

CFV sincerely believes, as does the State Attorney General's office, that Act 189 is constitutional and that the State will prevail in this litigation, even though it may ultimately take years to conclude.

Based on the foregoing, CFV respectfully asks that you maintain your position from last session, stand your ground and pass SB 2020 to keep Act 189 alive.

Conclusion

The lessees with HRPT leases are hard working business people who need to attend to their businesses. Lessees do not object to paying rent that is fair and reasonable and fairly negotiated and determined by applicable economic and market factors including, but not limited to, applicable comparables, and the use and characteristics of property and neighborhood (i.e., regular flooding on the streets and in the streams). They do, however, strongly object to a lessor who uses "take-it-or leave-it" tactics while continuing to insist on rents that far and away exceed what the market will bear.

In these hard times, small businesses need your continued assistance and support. Our State cannot afford to suffer any more business closures and loss of employment. In particular, the businesses in the Mapunapuna, Kalihi Kai and Sand Island area are an important part of the economy of these islands. Their proprietors are proud people who are not looking for a hand-out. They want so much to be able to trust their landlord. Absent that, they just want the comfort of knowing that their landlord will negotiate in good faith, in an open, transparent and fair-minded manner that will produce "fair and reasonable" rents for all concerned. It's not asking much, but without it they face disaster.

The members of CFV sincerely appreciate your consideration of their concerns and tribulations and respectfully request that you please pass SB 2020 extending the sunset date of Act 189 to June 30, 2015.

Thank you.

Michael Steiner

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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

In Support of SB 2020, HD 1

Testimony of Jon M. Van Dyke

On Behalf of Citizens for Fair Valuation

VIA Facsimile: (808) 586-8494

Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

Introduction

SB 2020 Relating to Real Property would extend the life of Act 189 (2009).

Separation of Powers

It has been clearly established since the 1930s that decisions regarding economic and social welfare matters are to be made by the legislative branch and that courts will defer to such decisions unless they are arbitrary and capricious. This deferential (or "rational basis") level of judicial review was explained in *United States v. Carolene Products*, 304 U.S. 144 (1938), where the Court said in a democratic society the people's representatives should be free to address economic situations without close judicial scrutiny, and that the powers given to courts to examine (and sometimes strike down) legislation should be reserved to situations involving violations of specific constitutional rights, situations where the political processes themselves need protection, and situations involving "discrete and insular minorities." Among the many other cases confirming that a deferential "rational basis" level of judicial review applies to legislation involving economic and social welfare issues are *Railway Express Agency, Inc. v. New York*, 302 U.S. 106 (1949); *Williamson v. Lee Optical*, 348 U.S. 483 (1955); *Dandridge v. Williams*, 397 U.S. 471 (1970); and *Federal Communications Commission v. Beach Communications, Inc.*, 508 U.S. 307 (1993).

The Contract Clause in Article I, Section 10, is written as a limitation on state power ("No State shall...pass any...Law impairing the Obligation of Contracts..."), but it has also been interpreted to give state legislatures broad power to adjust contractual relationships for important societal purposes. A leading constitutional law specialist, Erwin Chemerinsky (Dean of the new law school at the University of California Irvine), has explained that state statutes "are upheld even if they interfere with contractual rights, so long as they meet a rational basis test. Not surprisingly, virtually all laws have been found to meet *this deferential scrutiny*." ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 637 (3d ed. 2006) (emphasis added). The U.S. Supreme Court articulated this deferential level of scrutiny in *Home Building & Loan Assoc. v. Blaisdell*, 290 U.S. 398 (1934), where the Court upheld a Minnesota law

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designed provide relief for debtors by creating a moratorium on the foreclosure of mortgages during the Depression. Even though the original purpose of the Contract Clause was to limit this type of debtor-relief legislation, the Court ruled that the Minnesota law did not violate the Contract Clause because it was an emergency measure designed “to protect the vital interests of the community” and “a basic interest of society.” *Id.* at 439 and 445.

Since then, federal (and Hawaii) decisions have deferred broadly to state legislation relating to contractual situations. The governing test, as explained in *In re Herrick*, 82 Hawaii 329, 340, 922 P.2d 942, 953 (1996), is “(1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and legitimate public purpose; and (3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.” With regard to the first criterion, the Court went on to explain that an impairment is not “substantial” unless it interferes with the “legitimate expectations of the contracting parties,” and that in reaching such a determination courts must examine “the severity of the impairment” and “the extent to which the subject matter has been regulated in the past.” *Id.* at 341, 922 P.2d at 954.

The deferential approach taken by courts is illustrated in *Energy Reserve Group v. Kansas Power & Light*, 459 U.S. 400, 413 (1983), where the U.S. Supreme Court upheld a Kansas law that restricted a natural gas producer from charging higher prices, explaining that “in reviewing economic and social regulation, courts properly defer to legislative judgments as to the necessity and reasonableness of a particular measure.” (Emphasis added.) Other U.S. Supreme Court cases applying deferential review when rejecting Contract Clause claims include *El Paso v. Simmons*, 379 U.S. 497, 513 (1965); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983); *Keystone Bituminous Coal Assoc. v. DeBenedictis*, 480 U.S. 470 (1987); and *General Motors v. Romein*, 503 U.S. 181 (1992). The only U.S. Supreme Court case in recent decades striking down a state statute based on the Contract Clause is *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), which is frequently characterized as an anomaly, based on its unique facts.

It is thus clear from these precedents that the Legislature is within its power to enact legislation (as it did in Act 189, which would be extended in HB 2284) to explain to negotiators and arbitrators working with long-term ground leases that allow for “fair and reasonable” rent resets that this term should “[b]e construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease” and that they should “[t]ake into account any and all relevant attendant circumstances to the lease” including “[t]he uses and intensity of the use of the leased property” and “[t]he surface and subsurface characteristics of the leased property and the surrounding neighborhood.” These modest interpretive guidelines cannot be viewed as imposing a “substantial impairment” on the contractual rights of either party, and they are “a reasonable

and narrowly-drawn means of promoting the significant and legitimate public purpose,” namely the problem created by the concentration of ownership of industrial and commercial lands near Honolulu’s business center.

As Section 1 of Act 189 explains, this statute was designed “to stabilize Hawaii’s economy, especially during the United States’ current recessionary period,” and to do so “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 1 also explains that “maintaining close geographic ties between small businesses and the communities they serve is a public purpose that requires legislative support.” These are certainly significant and legitimate public purposes, and they are directly promoted by the provisions in Section 2.

It is thus clear from the governing case law that enacting legislation to address economic concerns is within the power of the legislative branch and that courts will defer to such enactments unless they are arbitrary or capricious or impose a substantial impairment on preexisting contractual rights without any significant and legitimate public purpose.

The Current Challenge to the Constitutionality of Act 189

HRPT and its affiliate companies, which now own the former Damon Estate Lands as well as most of the former Campbell Estate Lands, has brought a claim in the U.S. District Court for the District of Hawaii challenging the constitutionality of Act 189, claiming that violates the Contract Clause, the Equal Protection Clause, the Bill of Attainder Clause, the Due Process Clause, the Commerce Clause, the Takings Clause, and the Ex Post Facto Clause of the U.S. Constitution. Governor Lingle is actively defending the constitutionality of Act 189, as is Citizens for Fair Valuation, which was accepted as an Intervenor-Defendant in the case. On December 22, 2009, the Honorable Susan Oki Mollway, Chief Judge of the U.S. District Court for the District of Hawaii, issued an Order denying the motions for summary judgment filed by the parties and stating that the record was not yet adequate to determine whether HRPT and its affiliates were injured by the statute and thus had “standing” to challenge it. The parties are now engaged in the process of supplementing the record regarding the original intent of the parties to the Damon Estate’s longterm ground leases, and further motions for summary judgment are likely to be filed in the coming weeks.

Act 189 thus survived the initial challenge filed by HRPT seeking to have the statute declared unconstitutional on its face and further proceedings will be held to determine whether HRPT and its affiliates can establish that they have been injured and thus have standing to challenge the statute. If HRPT is able to meet this burden, then the court will address the substantive issues

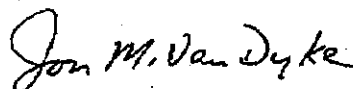
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Testimony of Jon M. Van Dyke In Support of SB 2020

related to the claims raised by HRPT. To prevail, HRPT will ultimately have to establish that its contractual rights have been substantially burdened and that Act 189 is not reasonably related to a significant and legitimate public purpose, and it will have to overcome the deferential level of judicial review applicable to economic regulations described above. It is difficult to predict the time frame for these forthcoming proceedings, and there may be an appeal after the ruling of the U.S. District Court.

The District Court's action in dismissing the initial motion for summary judgment filed by HRPT and its affiliates means that Act 189 is still now the governing law, and indicates that no barriers preclude the extension of Act 189 for another five years through the enactment of HB 2284. The deferential "rational-basis" level of judicial review described above will be applied to this enactment.



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March 29, 2010

VIA EMAIL JUDTestimony@capitol.hawaii.gov

Representative Jon-Riki Karamatsu
Representative Kenneth Ito

Re: SB 2020, HD1, Real Property - Testimony in Support
Hearing on March 30, 2010, 2:30 p.m., Room 325

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Jay Fidell and I am general counsel for Citizens for Fair Valuation, Inc., a Hawaii nonprofit corporation, and I write in ardent support of SB 2020.

I support the passage of Senate Bill 2020 which is a bill to extend Act 189. The only question is the length of the extension; no other changes or amendment are contained in the bill. The purpose of Act 189 is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community.

Act 189 does not change the terms or language of the leases. In fact, Act 189 should strengthen the relationship between lessors and lessees. In the 2009 Legislative session, SB764 was passed by both House and Senate and the Governor allowed it to become law as Act 189.

The concerns about HRPT's rent renegotiation process, which were raised last year and which resulted in the enactment of Act 189, have only worsened. Please extend Act 189 by passing SB 2020. Act 189 is needed to redress the problems facing the many businesses in the Mapunapuna, Sand Island and Kalihi Kai areas. Please stand your position and continue to support Act 189.

Representative Jon-Riki Karamatsu
Representative Kenneth Ito
March 29, 2010
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BROKEN PROMISES

Last year, after extensive discussion and debate, this Legislature passed Act 189 and the governor let it become law. The final bill included a one year sunset date. This was included because HRPT had so often and vigorously promised the committees and legislators before whom it appeared that it would clean up its act. The sunset date was set at one year on the understanding and assumption that HRPT would be faithful to those promises.

But HRPT has not been faithful to those promises. It has continued to do all of the bad things it was doing before. That includes making comparables secret and confidential so neighboring tenants would not have the benefit of knowing about them or using them in renegotiations; sending out Take-it-or-Leave-it (TIOLI) offers and ignoring tenant counteroffers; refusing to communicate with tenants and failing to respond to tenant inquiries for six months at a time; demanding that tenants agree to waive their rights given to them by this Legislature under Act 189; demanding that tenants agree to various lease amendments that favored only HRPT; and disregarding arbitration awards that HRPT didn't like.

These strategies are not intended to achieve fair and reasonable rents but to systematically push rents and landlord profits as high as humanly possible, much higher than fair and reasonable, despite the requirements of the lease.

Believe it or not, HRPT is now telling the Legislature that it has cleaned up its act since last year. That is simply not true, as dozens of witnesses have attested. HRPT has not cleaned up its act at all, and in fact has gotten worse since last year. As a result, this year CFV submitted SB 2020 to extend the sunset for five years. Act 189 should certainly not be permitted to sunset - the reasons for the one year sunset have not been met in any way. The Legislature cannot afford to forget or excuse all the promises that HRPT made to it.

RED HERRING

Last year, HRPT also opposed the bill on the basis that Act 189, which says the rent shall be fair and reasonable for both parties, somehow changed the contract language, which provides that the rent shall be fair and reasonable, and is therefore unconstitutional. But all you need to do is read it to see that it doesn't change the lease at all. The Legislature didn't buy HRPT's red herring argument then, and it shouldn't be distracted by that argument now.

There is no question that this Act affects so much land and so many people and businesses that it affects the state in general and of course the state's economy, and is therefore a legitimate issue for legislative action.

Representative Jon-Riki Karamatsu
Representative Kenneth Ito
March 29, 2010
Page 3

As soon as Act 189 was passed, HRPT filed a federal suit challenging the constitutionality of the Act, and it moved for summary judgment. The court denied that motion with all cross motions. Discovery is now in process, and it is not likely that the case will be resolved any time soon. HRPT has said it will appeal any result it doesn't like and that won't be resolved any time soon either.

No ruling or order has been made to impugn or deny the constitutionality of the Act, and in the absence of such ruling the Act must be treated as constitutional for all purposes. The Attorney General of Hawaii is actively and aggressively defending the constitutionality of the Act in the suit HRPT has filed. Citizens for Fair Valuation is an intervenor in that case, and through its attorney Professor Jon Van Dyke, noted constitutional expert at the William S. Richardson School of Law at UH, is also actively defending the constitutionality of the Act. HRPT is in no position to tell you that it has somehow won the case.

HRPT argues that because it filed this suit, the Legislature should let Act 189 expire. That argument makes no sense at all and is an attempt to fool the Legislature. The Legislature diligently considered and passed Act 189 last year and owes it to itself and its constituents to stick by the decision it made. For the public to have confidence in the Legislature, the Legislature should not change with the season. It should demonstrate continuity and consistency, along with individual and collective courage, on issues like this.

SCORCHED EARTH

The only question before the house is whether Act 189 should be extended, and the bottom line answer is that if the Legislature extends the Act it will be sending a message to HRPT to be fair and reasonable. Contrariwise, if the Legislature does not extend the Act it will be sending an entirely different kind of message to HRPT - namely, that HRPT is free to continue its bad acts.

HRPT would tell the Legislature to send our people away without redress, to have them seek redress elsewhere. But in practical fact, there is no other place they can go. The citizens of this state have a right to ask the Legislature to redress their grievances, and the Legislature has a right, and the power, to do so in accordance with its perception of public need and its conscience. The Legislature redressed that grievance properly and in the way it saw fit, and there is no reason why it should reverse itself now less than a year later.

The reality is that HRPT takes the same scorched earth approach in arbitration as in court. Arbitration by MAI appraisers in these proceedings costs hundreds of thousands of dollars and months or even years to complete. Before you ever get to your own attorneys' fees, the fees of three arbitrators sitting on such a

Representative Jon-Riki Karamatsu
Representative Kenneth Ito
March 29, 2010
Page 4

panel will be \$45,000 or more. The cost of arbitration these days is multiples more than it was a few years ago.

To litigate in court is to litigate on HRPT's most familiar turf, and costs even more than any arbitration. HRPT is highly litigious and as a national REIT its resources are practically endless. It would be to HRPT's interest for this Legislature to send these tenants into that kind of economic meat grinder to set the rent. Many of them would not come out again.

And the resolution of one arbitration or court case does not resolve things for the hundreds of tenants involved. For maximum intimidation, HRPT would put each tenant to the test and expense of fighting separately in endless dispute and backbreaking expense. The threat of this prospect would make most people capitulate, and that result is exactly what is intended.

FAIR AND REASONABLE?

After great effort and expense, Servco won its recent arbitration against HRPT. The result was \$5.26 per foot without any step-ups and thus dramatically less than what HRPT was demanding. In another lengthy arbitration, HRPT tenant HSI got an award of \$5.75 per foot, again without any step-ups and again dramatically less than what HRPT was demanding.

But HRPT doesn't like these awards and refuses to accept them for neighboring tenants. Is that fair and reasonable? There are dozens of tenants stuck in limbo, who even years after the dates on which their rents were to be "renegotiated" have had no meaningful response or negotiation with HRPT. They don't know when they will have to go to arbitration, how they will pay for it, what will happen or what their rents will be. Their business plans and their needs for capital and financing are completely sidelined for the lack of any certainty under their leases - so much for Hawaii's historic *noblesse oblige*.

These tenants are victims of a systematic pattern of intimidation. If a given tenant wants what was awarded in those two arbitrations, he has to spend the money that those tenants spent in their lengthy arbitrations, whether he can afford it or not. And even then, he has no idea of what will happen or when. Otherwise, the tenant has to take HRPT's outrageous Take-it-or-Leave-it offer, driving rents higher and higher, way over anything close to fair and reasonable. And the fearful capitulation of one tenant is then used as a comparable in HRPT's efforts to push the rents higher and higher for others.

HRPT implements these strategies through no fewer than seven (7) corporate subsidiaries. The result is a dysfunctional leasehold market, where one dominating landlord is forcing hundreds of businesses into financial distress.

Representative Jon-Riki Karamatsu
Representative Kenneth Ito
March 29, 2010
Page 5

This has a predictably adverse effect on those tenants and their employees, customers and suppliers and, through them, our troubled economy.

The most chilling point of all is that HRPT continues to vigorously oppose a bill that says no more than the rent will be fair and reasonable, just as provided in the lease. Why would any landowner oppose language that calls for the rent to be fair and reasonable except if it wishes the rent to be unfair or unreasonable instead? The answer is clear, and frankly so is the motivation.

HRPT is concerned only with making its own unreasonable rental increase expectations come true, not with the welfare of our people or our state. It's the Legislature that needs to be concerned with the welfare of our people and our state. The citizens of our state should have the comfort of knowing that the Legislature supports them in their efforts to achieve good faith negotiations. The Legislature should not be distracted by specious arguments from HRPT and its agents. Please see through those arguments and pass SB 2020 to extend the sunset date of Act 189 to June 30, 2015.

Thank you for your consideration of my views in this matter.

Very truly yours,



Jay M. Fidell
Of BENDET FIDELL

JMF:dt

Electricians, Inc.
2875 Paa Street - Honolulu, HI 96819
Telephone (808) 839-2242 - Fax (808) 839-1344

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB 2020 HD1: Relating to Real Property – **Testimony in Strong Support**
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I support passage of SB 2020, HD1 which will extend the sunset of Act 189. The issues brought before the legislature during the last session have only worsened and no relief is in sight. Extending Act 189, by the passing of SB 2020, will help the welfare of the Hawai'i business community and bring stability from the egregious rent and conditional demands being forced upon the lessees of near-town industrial and commercial land.

Please approve SB 2020 and extend Act 189.

Sincerely,



Lance Yamamura
2875 Paa Street
Honolulu, HI
839-2242
lyamamura@electriciansinc.com



Reit Management
& Research LLC
PROPERTY MANAGEMENT
DIVISION

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary

Tuesday, March 30, 2010 at 2:30 p.m.
State Capitol, Conference Room 325

RE: SB 2020, HD 1 - Relating to Real Property

Chair Karamatsu, Vice Chair Ito and Members of the Committee:

My name is Jan Yokota, Vice President of the Pacific Region for Reit Management & Research LLC, the property manager for HRPT Properties Trust ("HRPT"). Through its affiliated companies, HRPT owns industrial zoned land in Māpunapuna and Sand Island and in the James Campbell Industrial Park, and, as landlord, leases many of its Hawai'i properties pursuant to long-term leases which provide for the periodic reset of rent to the then "fair and reasonable" rate.

SB 2020, HD 1 proposes to amend Act 189, Session Laws of Hawai'i 2009, by extending its repeal date from June 30, 2010 to June 30, 2014. As you know, the purpose of Act 189 is to define by statute the meaning of the term "fair and reasonable" in HRPT's leases.

HRPT respectfully, but strongly, opposes SB 2020, HD 1. HRPT has consistently testified before the Hawai'i State Legislature that actions that seek to change legal contracts, such as Act 189, are unconstitutional. Act 189 violates the Contracts Clause of the U.S. Constitution and is unfair to HRPT for the following reasons:

- Act 189 was targeted at (and continues to target) a single landowner—HRPT, changing the agreed upon terms of previously negotiated long-term commercial and industrial lease contracts, for the sole benefit of a small group of lessees. A state statute violates the Contracts Clause of the U.S. Constitution if the state law:
 - Substantially impairs an existing contractual relationship;
 - Does not have a "significant and legitimate public purpose"; and

- Is without a reasonable and narrowly drawn relationship between the impaired contract and the claimed public purpose.
- Under federal law governing Hawai‘i, an impairment of a contract is substantial if, among other things, it alters a financial term or deprives a private party of an important right.
 - Act 189 materially affects the most essential term in a commercial and industrial lease: the lessee’s obligation to pay rent.
 - Act 189 re-defines an existing term in an existing contract and would command appraisers and courts to interpret the existing term under this new legislation, contrary to the intent of the original lessor, Damon Estate.
 - As Governor Lingle admitted when she allowed the bill to become law without her signature, the purpose of the Act was to “change the process for renegotiating the amount of rent during the term of an existing commercial or industrial lease” and “this bill impacts the negotiations of lease rent...”
- There is no significant and legitimate public purpose for the Act. The stated purpose of Act 189 is to “maintain close geographic ties between small businesses and the communities they serve” and thereby “stabilize Hawai‘i’s economy.” As the Attorney General advised the Legislature last year, there is no support for the proposition that altering HRPT’s contractual rights for the benefit of a few lessees will keep small businesses close to urban communities and that this will, in turn, stabilize Hawai‘i’s economy. The Act is also targeted at, and impacts, a single landowner and a small number of HRPT’s lessees.

In August 2009, HRPT filed a lawsuit in U.S. District Court challenging the constitutionality of Act 189. The case was assigned to Judge Susan Oki Mollway, who held an initial hearing in mid-December and requested that the parties conduct further discovery. Based on the evidence found, HRPT filed a renewed Motion for Summary Judgment, asking Judge Mollway to declare Act 189 unconstitutional.

Judge Mollway scheduled a hearing on this Motion for May 10, 2010. HRPT requested that the hearing be moved up to April 5 or April 12, which were both dates that were available on Judge Mollway’s calendar, so that the Legislature could have the benefit of her guidance before the end of this legislative session. The request to advance the hearing was opposed by both the State Attorney General and Citizens for Fair Valuation. It is expected that Judge Mollway will issue a ruling on HRPT’s Motion shortly after the May 10, 2010 hearing.

I would also like to take this opportunity to address concerns that have been raised in prior testimony.

- One of the concerns expressed by testifiers is that HRPT’s rent reset proposals include “step-ups” and that such “step-ups” are highly unusual. Actually, Damon Estate did negotiate periodic rent step-ups in a number of their leases. In addition,

several Māpunapuna and Sand Island lessees have entered into subleases with third parties that include annual step-ups. The Campbell leases provide for annual rent increases based on the Consumer Price Index.

- With respect to rent negotiations, we begin rental discussions with our tenants before the reset date and always attempt first to resolve our rental rates through negotiation. In the past few months, we have come to agreement on lease rent without going through the full arbitration process with eleven tenants, including four tenants with leases that include the term “fair and reasonable rent.” Since we last testified before your committee in early February, we have come to agreement on lease rent with seven additional tenants. If the parties do not agree, however, there is an arbitration mechanism in the leases to address a stalemate.
- I also note that we have been providing transaction comparables to commercial real estate brokers and appraisers upon request, where permitted by the leases.
- Finally, regarding the flooding issue in Māpunapuna, we have spent over \$750,000 for engineering studies that have resulted in a remedy to resolve the tidal flooding problem. After years of research and planning, the first phase of drainage system improvements will begin shortly. The project should be completed by late April and we anticipate that most or all of the daily tidal flooding will cease.

In closing, we respectfully request that the Committee hold this bill given the pending litigation and the serious questions regarding Act 189’s constitutionality.

Thank you for the opportunity to testify on this bill.



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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation

Aloha Madame President,

I write to ask that the House over-ride the Governor's veto on this bill.

When businesses like ourselves enter into real estate valuation and rent arbitration proceedings, the survival of our company, like many others, is put into the hands of an arbitrary appraiser. Depending on the appraiser's decision, a business may be forced to shut its doors, and in today's harsh economic climate, that would mean job losses for dozens of our men and their families.

SB771 would require the appraisers to follow their own industry rules and guidelines (USPAP), when acting as arbitrators, and to produce a reasoned report along with their final award. This would allow for increased transparency regarding how arbitration awards are determined. Any available information should not be withheld by the appraisers. We as local businesses have the right to understand the rationale used in determining valuation, in hopes that the data would be used to make more informed decisions.

Rent arbitrations involve millions of dollars, and the arbitration awards set valuation comparables for future transactions, regardless of their accuracy or validity. Requiring reasoned explanations of awards will provide all users of real estate information the ability to make informed decisions. SB771 is good public policy and should be enacted. An override of the Governor's veto will provide the entire community with valuable information regarding the process in which valuations and rents are set.

Please, over-ride the Governor's veto and pass SB771.

Mahalo,

Sharon Ishii

A-1 A-Lectrician, Inc.

2849 Kaihikapu St. Honolulu, HI 96819

(808) 839-2771

sharon@a-1-a.com



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March 29, 2010

The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 2020, H.D.1 Relating to Real Property

HEARING: Tuesday, March 30, 2010 at 2:30 p.m.

Aloha Chair Karamatsu, Vice Chair Ito and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, submitting testimony on behalf of its 8,800 members in Hawai'i. HAR opposes S.B. 2020, H.D.1 which extends Act 189, SLH 2009 to June 30, 2014.

Although HAR empathizes with the lease situation businesses are facing in Mapunapuna, Kalihi Kai and Sand Island, we are deeply concerned with the unintended consequences this legislation may have on commercial and industrial leases in Hawai'i.

Act 189, which went into effect on July 1, 2009, only applies to leases renegotiations when the terms of the lease are based on "fair and reasonable" annual rent. As we noted in our prior testimony in opposition, the measure is a disincentive for lessors to include lease terms requiring a "fair and reasonable" annual rent.

HAR believes that the process of appraisals, mediation, arbitration and as a last option the court system should be the appropriate venue for lease interpretation and contractual disputes.

Mahalo for the opportunity to submit testimony.



March 9, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB2020 HD1 Re Real Property
Hearing Date: March 30, 2010, 2:30pm, Room#325

Dear Representative Karamatsu, Representative Ito and Members of the Committee:

My name is Jason Ideta and I strongly support SB2020 HD1. 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 the Damon Estate, which is set to be renegotiated in 2012. We have 51 full-time and 2 part-time employees who have worked very hard to build the business over the last 24 years.

Since the passage of Act 189, HRPT has continued its unfair practices and has disrespected the intentions of the legislature to improve rent negotiations by encouraging the parties to be fair and reasonable. By passing this bill as is, you will send a message to the people of Hawaii that you care about the plight of small businesses and will not be intimidated or swayed by a large company with its fancy D.C. lawyers and well paid lobbyist. I respectfully ask for your support on this bill and thank you for the opportunity to testify.

Sincerely,



Jason Ideta

Pacific Jobbers Warehouse, Inc.
2809 Kaihikapu Street
Honolulu, HI 96819
772-5922

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB2020 HD1 Re Real Property
Hearing Date: March 30, 2010, 2:30pm, Room#325

Dear Representative Karamatsu, Representative Ito and Members of the Committee:

My name is Jason Ideta and I strongly support SB2020 HD1. 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 the Damon Estate, which is set to be renegotiated in 2012. We have 51 full-time and 2 part-time employees who have worked very hard to build the business over the last 24 years.

Since the passage of Act 189, HRPT has continued its unfair practices and has disrespected the intentions of the legislature to improve rent negotiations by encouraging the parties to be fair and reasonable. By passing this bill as is, you will send a message to the people of Hawaii that you care about the plight of small businesses and will not be intimidated or swayed by a large company with its fancy D.C. lawyers and well paid lobbyist. I respectfully ask for your support on this bill and thank you for the opportunity to testify.

Sincerely,



Melvin Sasaki
Pacific Jobbers Warehouse, Inc.
2809 Kaihikapu Street
Honolulu, HI 96819
772-5922

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

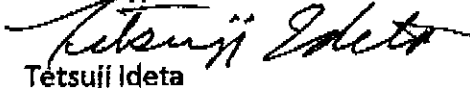
Re: SB2020 HD1 Re Real Property
Hearing Date: March 30, 2010, 2:30pm, Room#325

Dear Representative Karamatsu, Representative Ito and Members of the Committee:

My name is Jason Ideta and I strongly support SB2020 HD1. 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 the Damon Estate, which is set to be renegotiated in 2012. We have 51 full-time and 2 part-time employees who have worked very hard to build the business over the last 24 years.

Since the passage of Act 189, HRPT has continued its unfair practices and has disrespected the intentions of the legislature to improve rent negotiations by encouraging the parties to be fair and reasonable. By passing this bill as is, you will send a message to the people of Hawaii that you care about the plight of small businesses and will not be intimidated or swayed by a large company with its fancy D.C. lawyers and well paid lobbyist. I respectfully ask for your support on this bill and thank you for the opportunity to testify.

Sincerely,



Tetsuji Ideta

Pacific Jobbers Warehouse, Inc.
2809 Kaihikapu Street
Honolulu, HI 96819
772-5922

**CENTRAL PARK COMMUNITY ASSOCIATION
99-1046 IWAENA STREET
AIEA, HAWAII 96701**

March 28, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

RE: Testimony in Strong Support of SB 2020 HD1

Dear Representatives Karamatsu, Ito and Members of the Committee:

Central Park Community Association (CPCA) was formed in 1982 and is an association of businesses that operate in Central Park, Halawa Valley and are land lessees in that Park. Our members and their sub-tenants employ hundreds of individuals and most members are small businesses as are their tenants. The board of CPCA supports passage of SB2020 HD1 which will extend the life of Act 189 and assist the lessees of HRPT in the Mapunapuna, Sand Island, and Kalihi Kai areas in obtaining fair and reasonable land rent for their businesses from HRPT.

As businesses and lessees ourselves we are acutely aware of the critical role land rent plays in the survival and success of our businesses. We have followed closely the activities of HRPT and Citizens for Fair Valuation as we are also negotiating land rent in Halawa with our land owners. HRPT has not negotiated in good faith with their lessees and Act 189 helps in leveling the playing field and causes the parties, lessor and lessee, to negotiate new land rent in an open and transparent manner in order to agree on a rent which is fair and reasonable to both parties. Given the dominance of only seven land owners in the ownership of commercial land in Hawaii (as much as 85%), law such as Act 189 is needed to keep excessive land rent from destroying many small businesses in the State and saving the jobs of their thousands of employees.

The market for commercial land is very limited in Hawaii as the seven large land owners do not sell their land and thus create an artificial scarcity which leads to high prices which are not economically justified. Land rent needs to be fair and reasonable if Hawaii is to be economically successful especially during these harsh economic times. Excessive and increasing land rent destroys businesses and constantly drains Hawaii businesses of working capital, sending much of it out of the State to the further detriment of our economy.

Most of our industrial areas are rundown and not great places to operate a business. Lessees often can't afford to maintain their buildings and improvements due to high land rent. Such conditions lead to lower productivity and higher costs in the long run. Act

189 is a small but needed step to improve this situation. Though CPCA and its member lessees are not directly affected by Act 189, we believe it does have value in assisting us in our negotiations with our land owners for the same reasons it is valuable to HRPT's lessees.

Please continue what the legislature agreed to during your last session by passing SB2020 HD1. Thank you for your attention.

Aloha,

William S. Alexander, President
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wsalema@aol.com
Also President of Earle M. Alexander, Ltd
Lessee at 99-1046 Iwaena St. Aiea, Hi 96701



PLYWOOD HAWAII

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March 29, 2010

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

Dear Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I strongly support passage of SB 2020, HD1, to extend Act 189 as passed last year.

Our company faces renegotiation of rent in July of this year, one month after the expiration of Act 189. We advised our landlord of our intention to exercise our first 5 year option in June of 2009, and received a reply in January of 2010 asking for a new lease rate of \$7.00 per foot per year plus a 3% annual increase. Our current rate is \$3.87 with no step-up per year.

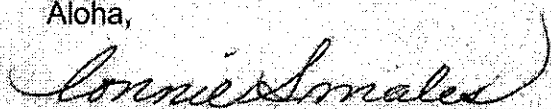
We are a small family owned business that employs 11 people. Our current base rent is \$125,654.00 per year. The new rent would raise to a total of \$216,713 per year in year 1, and would increase to nearly \$244,000 in year five. This dramatic and unreasonable increase is not in line with current appraisals or comparables. The current alternative is a "take it or leave it" choice leaving those who want to remain at their location little choice but to bear the heavy costs of the arbitration panel, attorneys and appraisers to set a reasonable rent. Added to that situation is the burden of defining the unique lease language if no guidance is set by the legislature.

As a business owner confronted by a large landowner, who currently owns a reported 35% of commercial land on the Island of Oahu, it is difficult to negotiate with an entity with very deep pockets who continues to insist on inflated rent values even when confronted with opposing values indicating a much lower value. In addition, no step-ups are contained in the original lease nor have they been awarded by the arbitration panels that have recently concluded their reviews.

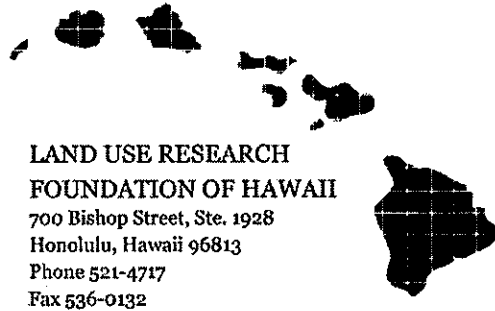
I urge the approval of this bill to provide assistance to small businesses that face a very difficult rent renegotiation in very unsettling times. The impact of this renegotiation on our employees and customers is considerable. The alternative to passage of this bill is for each lessee who wants to remain to individually pay the heavy expenses of arbitration. The economic impact of this potential reality is considerable.

Again I urge passage of this bill and thank you for your consideration of our views.

Aloha,

A handwritten signature in cursive script that reads "Connie Smales". The signature is written in dark ink and is positioned above the printed name.

Connie Smales, President



LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132

Via E-Mail - <http://www.capitol.hawaii.gov/emailtestimony>

March 30, 2010

Opposition to SB 2020, HD1 Relating to Real Property
(Sunset date extension re Act 189 - Alteration of commercial lease renegotiation terms)

House Committee on Judiciary

Hearing Date: Tuesday, March 30, 2010 at 3:30 p.m. in CR 325

Honorable Chair Jon Riki Karamatsu, Vice Chair Ken Ito, and House Committee on Judiciary,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF respectfully requests that this Committee to **hold this bill, because this measure would extend Act 189, which interferes with the terms of existing contracts, and such alteration of commercial and industrial contracts is unconstitutional, special legislation targeted at one landowner.**

Act 189 (2009): LURF understands that Act 189 was proposed by lessees who claim they are having trouble negotiating their leases with one lessor - HRPT. Act 189 alters the existing terms of HRPT leases by inserting a new definition of "fair and reasonable annual rent." HRPT, which is the sole target of Act 189, has filed a federal lawsuit challenging the constitutionality of Act 189 (HRPT Properties Trust, *et al.*, v. Linda Lingle, in her capacity as Governor of the State of Hawaii, Civil No. 09-0375). We hope that the federal court case and/or further negotiations, arbitration and mediation can resolve such differences and result in renegotiated leases which can be accepted by both parties.

SB 2020, HD1. Act 189 is proposed to sunset on June 30, 2010. This bill, however, proposes to extend that sunset date for four years, to June 30, 2014; provided that the repeal of this Act shall not affect renegotiations of any lease or sublease rental amount,

the renegotiation date for which occurred before July 1, 2014; provided further that this Act shall not apply to any lease scheduled for renegotiation after June 30, 2014.

LURF'S OBJECTIONS. LURF **opposes SB 2020, HD1 and the extension of Act 189**, based on, among other things, the following:

- **The stated purpose for Act 189 is not legally justifiable.** Under the circumstances, “stabilizing Hawaii’s economy by maintaining close geographic ties between small businesses and the communities they serve” is not a justifiable valid public purpose which would justify altering the terms of existing lease contracts. Act 189 is an unconstitutional violation of the Contracts clause of the United States Constitution. There is no credible evidence that changing the terms of contracts will assure that small businesses stay close to their customers, or that small businesses will fail if they move to another location – this unconstitutional law cannot be “fixed” by merely stating an illogical “purpose and intent” for the bill, without credible facts supporting it. The purported intent and purpose, which is to “stabilize the State’s economy,” “during the recessionary period,” by “preserving the proximity of small businesses to urban communities” is a **“pretext”** (alleged reason, ploy, ruse, red herring, bogus).
 - Is there any “proof” or evidence to support the stated purpose for Act 189? Or, is the stated purpose mere pretext?
 - How many leases will this law effect? The testimony confirms that affect of Act 189 will be limited to the leases with one lessor – HRPT. How will affecting only HRPT leases assure the proximity of small businesses to the urban communities they serve and stabilize the entire State’s economy?
 - If that alleged purpose of supporting small businesses were really true, why does the law only apply to leases with one lessor, HRPT?
 - If Act 189 was an attempt to stabilize the economy by changing the terms of lease negotiations - shouldn’t the law apply to the terms of all of the existing business leases in the state? Instead, this bill is meant to affect the lease negotiations with only one lessor, HRPT.
 - If the alleged purpose is to truly help lessees, “especially during the recessionary period” - - **Why does SB 2020, HD1 extend Act 189 for five years, until June 30, 2015? Is there any evidence that the “recession” will last 5 years?**

- **Act 189 is a “special law” targeted against a single land owner (HRPT Properties Trust), which violates Article XI, section 5 of the Hawaii Constitution.** The proponents private real estate attorney and witnesses who supported Act 189 admitted that the lease alterations in the bill are directed only to one lessor, – HRPT. According to the testimony, there is no other landowners who include the terms “fair and reasonable” in their leases. The proponents’ paid legal witness claimed that in the future, there could be other leases which include the terms “fair and reasonable” in their rent renegotiation clauses, however, this is clearly a “class of one” because legislators, the proponents’ private real estate attorney, and witnesses in support and in opposition to the bill have all stated that if this legislation passes, no other landowner would be foolish enough to include the term “fair and reasonable” in their leases. Act 189 is a **“special law,”** which is prohibited by the Hawaii Constitution, because it applies to one particular lease renegotiation provision in the leases of just one particular lessor - HRPT, discriminates against one particular lessor - HRPT, and operates in

favor of certain lessees, by granting them a special or exclusive privilege. The proponents of this bill and the Governor have admitted that this bill is to target HRPT; we also understand that the proponents have reportedly testified that the bill is being used as “leverage” in their lease negotiations with HRPT; and there is no testimony or evidence regarding any other lessors in the state who utilize the lease renegotiation language which is the subject of this bill.

- **It is also not responsible and prudent public policy to pass a state-wide ‘special law’ because of a dispute between one lessor and a group of lessees.** How many state-wide leases are affected? Does a dispute with one lessor warrant a new state-wide law purporting to save Hawaii’s economy?
- **It is unfair and unconstitutional to change the terms of existing contracts to favor one party.** The Attorney General has issued prior opinions finding that such alterations in the terms of existing leases are unconstitutional. Moreover, with respect to Act 189, the targeted lessor, HRPT, has submitted testimony and evidence confirming that this legislation would alter historical precedent in defining “fair and reasonable annual rent” in HRPT’s prior leases. The term has been defined as “land value multiplied by rate of return” in the following cases: Mapunapuna lease (1997), Pahounui lease (1998) and Moanalua lease (2000).
 - **This Bill substantially impairs the contractual relationship between the lessor and lessee.**
 - The proposed law is **not designed to promote a significant and legitimate public purpose.**
 - The proposed law is **not a reasonable and narrowly-drawn means of promoting a significant and legitimate public purpose.**
- **There is no need for this legislation – current lessees are going through the renegotiation process as provided in the existing contracts.** The written and oral testimony at the various committee hearings on Act 189 confirm that HRPT has successfully renegotiated a mutually acceptable rent rate in dozens of leases which have been up for renegotiation.
- **Other remedies and less intrusive means to achieve public purposes exist – “Don’t legislate, just arbitrate.”** Instead of creating a new law that alters only HRPT’s current lease contracts, the disgruntled lessors should just use the existing rights and remedies in their lease contracts – arbitration, or they could request inexpensive mediation. The written and oral testimony relating to Act 189 confirms that HRPT has always accepted lessees’ requests for arbitration and mediation.
- **The Hawaii State Department of the Attorney General (Attorney General) has opined that legislation similar to Act 189 would be illegal.** We believe that in the current Federal court challenge, the provisions of Act 189 will fail to meet the legal test to determine whether a statute is constitutional under the Contracts Clause, as set forth in the Hawaii Supreme Court case of Applications of Herrick & Irish, 82 Haw. 329, 922 P.2d 942 (1996) and quoted by the Attorney General in its prior opinions relating to other bills which have attempted to alter existing lease terms to benefit lessees:

“In deciding whether a state law has violated the federal constitutional prohibition against impairments of contracts, U.S. Const., art I, § 10, cl.1, we must assay the following three criteria:

- 1) whether the state law operated as a substantial impairment of a contractual relationship;
- 2) whether the state law was designed to promote a significant and legitimate public purpose; and
- 3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.”

➤ **Legislation similar to Act 189, which altered lease terms to the benefit of lessees and to the detriment of lessors, has been found to be unconstitutional by the Attorney General.** Over the past several years, legislation similar to Act 189 has been introduced with the recurring theme of legislatively altering the terms and conditions of existing leases to the benefit of lessees and to the detriment of lessors:

- In 2008, HB 1075 proposed virtually identical alterations of existing lease contracts to favor the lessee, however, the Senate Economic Development and Tourism Committee (EDT) held the bill. EDT later placed the contents of HB 1075 into HB 2040, SD2, however that bill was held in Conference Committee.
- In 2007, SB 1252 and SB 1619, proposed virtually identical alterations of existing lease contract to favor the lessee;
- In 2006, SB 2043, would have imposed a surcharge tax on the value of improvements to real property subject to reversion in a lease of commercial or industrial property;
- In 2000, SB 873 SD 1, .D 2 also attempted to alter existing lease contract terms to the detriment of lessors and to the benefit of lessees by proposing to alter existing lease terms to require a lessor to purchase a lessee’s improvements at the expiration of the lease term. The Department of Attorney General opined that SB 873, SD 1, HD 2 violated the Contracts Clause (Article I, Section 10) of the U.S. Constitution as follows: “SB 873, as presently worded, will substantially impair existing leases without furthering any apparent public purpose... [It is] unlikely that SB 873 will be found to be a ‘reasonable and narrowly-drawn means of promoting... [a] significant and legitimate public purpose.’” Governor Cayetano relied on the Attorney General’s opinion, and vetoed SB 873, SD 1, HD 1.
- In 2001, in response to HB 1131, HD 1, yet another bill which proposed to alter existing lease contracts to favor lessees, the Attorney General again reaffirmed its opinion that the proposed bill violated the Contracts Clause of the U.S. Constitution.
- In 1987, in the Hawaii Supreme Court case of Anthony v. Kualoa Ranch, 69 Haw. 112, 736 P.2d 55 (1987), the Court ruled that a statute requiring a lessor to purchase a lessee’s improvements at the expiration of the lease term violated the Contracts Clause. The Court observed that:

“This statute, as applied to leases already in effect, purely and simply, is an attempt by the legislature to change contractual remedies and obligations, to the detriment of all lessors and to the

benefit of all lessees, without relation to the purposes of the leasehold conversion act; without the limitations as to leaseholds subject thereto contained in the conversion provisions; not in the exercise of the eminent domain power; but simply for the purpose of doing equity, as the legislature saw it. If there is any meaning at all to the contract clause, it prohibits the application of HRS §516-70 to leases existing at the time of the 1975 amendment. Accordingly, that section, as applied to leases existing at the time of the adoption of the 1975 amendment, is declared unconstitutional.”

CONCLUSION. The intent and application of Act 189, and proposed SB 2020 HD1, which intends to extend Act 189, are unconstitutional, profoundly anti-business and bad public policy, and therefore we respectfully request that **SB 2020, HD1 be held in this Committee.**

Thank you for the opportunity to express our **opposition to SB 2020, HD1.**

Grace Pacific

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March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB 2020, HD 1 Re: Relating to Real Property – **Testimony in Support**
Hearing Date: Tuesday March 30, 2010, 2:30 PM, Room 325

Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Robert Creps, and I am the Senior Vice President of Administration for Grace Pacific Corporation, which holds five ground leases with affiliates of HRPT Properties Trust in the Mapunapuna and Sand Island areas. I have also served as the President of the Citizens for Fair Valuation since December 2007.

Act 189 was passed last year with a one year sunset provision, based on the belief that HRPT needed a little more time to get its act together in the rent re-setting process.

Based upon my personal observations, HRPT has yet to get their act together. One year ago, prior to Act 189, there were more than 20 rent re-sets pending with dates of January 1, 2009 and earlier. Today, only one has settled, and that was through a costly arbitration proceeding.

HRPT has not changed as they had promised.

Further, there are approximately 80 rent re-sets coming up in December of 2012 between affiliates of HRPT and lessees in Mapunapuna.

Act 189 reminds HRPT to abide by the terms of their contract with our lessees. To allow HRPT to re-write the rent re-set process, as they currently seek to do, would be a disaster for all of us in 2012.

I respectfully request that you approve SB 2020 HD 1.

Thank you.

A handwritten signature in cursive script, appearing to read 'Robert Creps'.



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March 29, 2010

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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I strongly support passage of SB 771, HD1 which will extend the effective life of Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community.

Last session this Committee and both Houses approved SB 764 which became law under Act 189. Unfortunately, the core issues upon which we sought your redress have only worsened during this past year. The seven (7) different companies that make up HRPT have continued to bully lessees requiring lessees us to waive our rights under Act 189. In addition, the rental demands of roughly \$10 per square foot (\$7.00 plus 3% or 4% per annum increases) are unfair and unreasonable given the market and two recent arbitration awards (one at \$5.26 flat and another at \$5.75 flat).

This is simple greed and price gouging especially when HRPT's own appraisers have submitted rates in the \$6.50 range during the recent arbitrations.

Please, stay your position by passing SB2020 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,

William Paik
President

GP Roadway Solutions
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GP Roadway Solutions
March 29, 2010

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

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Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,

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March 29, 2010

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

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This is simple greed and price gouging especially when HRPT's own appraisers have submitted rates in the \$6.50 range during the recent arbitrations!

Please, stay your position by passing SB2020 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,

Janel Bumanglag
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jbumanglag@gproadwaysolutions.com

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB 2020 HD1: Relating to Real Property – **Testimony in Strong Support**
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I support passage of SB 2020, HD1 which will extend the sunset of Act 189. The issues brought before the legislature during the last session have only worsened and no relief is in sight. Extending Act 189, by the passing of SB 2020, will help the welfare of the Hawai'i business community and bring stability from the egregious rent and conditional demands being forced upon the lessees of near-town industrial and commercial land.

Please approve SB 2020 and extend Act 189.

Aloha,

Janel Bumanglag
P.O. Box 4319
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808-674-2112 x.229
jbumanglag@gproadwaysolutions.com

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

SB 2020 HD1: Relating to Real Property – Testimony in Strong Support
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I support the passage of SB 2020, HD1 which will extend the life of Act 189. As a result of the predatory pricing policies the seven lessors who control all of the former Damon Estate lands, Act 189 should be extended to redress ongoing grievances and assist our near-town commercial and industrial businesses, which are the backbone of our economy.

Thank you for your support in approving SB 2020, HD1.

Aloha,

Janel Bumanglag
P.O. Box 4319
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jbumanglag@gproadwaysolutions.com

March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

SB 2020 HD1: Relating to Real Property – Testimony in Strong Support
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I support the passage of SB 2020, HD1 which will extend the life of Act 189. As a result of the predatory pricing policies the seven lessors who control all of the former Damon Estate lands, Act 189 should be extended to redress ongoing grievances and assist our near-town commercial and industrial businesses, which are the backbone of our economy.

Thank you for your support in approving SB 2020, HD1.

Aloha,

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153 A. Alamaha Street
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873-7461
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March 29, 2010

**TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol**

**TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation**

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I strongly support passage of SB2020, HD1 which will extend the effective life of Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community.

Last session this Committee and both Houses approved SB 764 which became law under Act 189. Unfortunately, the core issues upon which we sought your redress have only worsened during this past year. The seven (7) different companies that make up HRPT have continued to bully lessees requiring lessees to waive our rights under Act 189. In addition, the rental demands of roughly \$10 per square foot (\$7.00 plus 3% or 4% per annum increases) are unfair and unreasonable given the market and two recent arbitration awards (one at \$5.26 flat and another at \$5.75 flat).

This is simple greed and price gouging especially when HRPT's own appraisers have submitted rates in the \$6.50 range during the recent arbitrations!

Please, stay your position by passing SB2020 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground lease calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,





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March 29, 2010

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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leaschold; Lease Rent Renegotiation

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I respectfully and strongly request that you approve SB2020.

Aloha,

Lenny Santos

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Email Address

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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

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I respectfully and strongly request that you approve SB2020.

Aloha,

Nicole Beaudoin
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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

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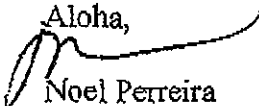
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I respectfully and strongly request that you approve SB2020.

Aloha,


Noel Perreira
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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

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I respectfully and strongly request that you approve SB2020.

Aloha,

Bridget Kawasaki

Bridget Kawasaki

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TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

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I respectfully and strongly request that you approve SB2020.

Aloha,

Bill Turner
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March 29, 2010

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

March 30, 2010, at 2:30 p.m., Room 325

Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1

Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I strongly support passage of SB 771, HD1 which will extend the effective life of Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community.

Last session this Committee and both Houses approved SB 764 which became law under Act 189. Unfortunately, the core issues upon which we sought your redress have only worsened during this past year. The seven (7) different companies that make up HRPT have continued to bully lessees requiring lessees to waive our rights under Act 189. In addition, the rental demands of roughly \$10 per square foot (\$7.00 plus 3% or 4% per annum increases) are unfair and unreasonable given the market and two recent arbitration awards (one at \$5.26 flat and another at \$5.75 flat).

This is simple greed and price gouging especially when HRPT's own appraisers have submitted rates in the \$6.50 range during the recent arbitrations!

Please, stay your position by passing SB2020 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,


Gary John Kaha'i Hiram

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David M. Takiguchi
2625 Myrtle Street
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March 29, 2010

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
March 30, 2010, at 2:30 p.m., Room 325
Hawaii State Capitol

TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I strongly support passage of SB 771, HD1 which will extend the effective life of Act 189. The purpose of the Act is to help stabilize our economy by setting parameters that will encourage open and transparent negotiation in long-term ground leases which support Hawaii's critical commercial and industrial business community.

Last session this Committee and both Houses approved SB 764 which became law under Act 189. Unfortunately, the core issues upon which we sought your redress have only worsened during this past year. The seven (7) different companies that make up HRPT have continued to bully lessees requiring lessees us to waive our rights under Act 189. In addition, the rental demands of roughly \$10 per square foot (\$7.00 plus 3% or 4% per annum increases) are unfair and unreasonable given the market and two recent arbitration awards (one at \$5.26 flat and another at \$5.75 flat).


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Please, stay your position by passing SB2020 and extend the life of Act 189. You had Hawaii's best interest at heart last year, and now additional fortitude is required to restate your position.

Act 189 does not change the terms of the leases. Act 189 merely says that when a long-term ground leases calls for "fair and reasonable rents," that those rates be fair and reasonable to both parties.

I respectfully and strongly request that you approve SB2020.

Aloha,


David M. Takiguchi
2625 Myrtle Street
Honolulu, HI 96816

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

SB 2020 HD1: Relating to Real Property – Testimony in Strong Support
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I support the passage of SB 2020, HD1 which will extend the life of Act 189. As a result of the predatory pricing policies the seven lessors who control all of the former Damon Estate lands, Act 189 should be extended to redress ongoing grievances and assist our near-town commercial and industrial businesses, which are the backbone of our economy.

Thank you for your support in approving SB 2020, HD1.

Aloha,

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Howard Eguchi Jr

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jreguchi@gmail.com
March 29, 2010

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB 2020 HD1: Relating to Real Property – **Testimony in Strong Support**
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I support passage of SB 2020, HD1 which will extend the sunset of Act 189. The issues brought before the legislature during the last session have only worsened and no relief is in sight. Extending Act 189, by the passing of SB 2020, will help the welfare of the Hawai'i business community and bring stability from the egregious rent and conditional demands being forced upon the lessees of near-town industrial and commercial land.

Please approve SB 2020 and extend Act 189.

Aloha,

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VIA EMAIL: JUDtestimony@capitol.hawaii.gov

Honorable Representative Jon Riki Karamatsu, Chair
Honorable Representative Ken Ito, Vice-Chair
Members of the House Judiciary Committee

**RE: SENATE BILL SB2020 RELATING TO REAL PROPERTY
TESTIMONY IN SUPPORT
HEARING DATE: TUESDAY, 03/30/10, AT 2:30 P.M., ROOM 325**

Dear Honorable Chair Jon Riki Karamatsu and Vice-Chair Ken Ito:

I support passage of Senate Bill SB2020 which is a bill to extend Act 189. The purpose of the Act was to help stabilize our economy by addressing some of the vague provisions of existing commercial and industrial leases by clarifying provisions in such leases without substantial impact of the economic benefit to the owners or impact their ownership of the land, without impairing their lease contracts or without taking any property rights without due process of law. In 2009 Senate (SB764) which preceded Act 189 was passed by both House and Senate and the Governor allowed it to become law.

I am a lessee of commercial real estate and the Bill, if passed, would be a step in the right direction to help other Leasehold Reform to be enacted for the citizens of Hawaii.

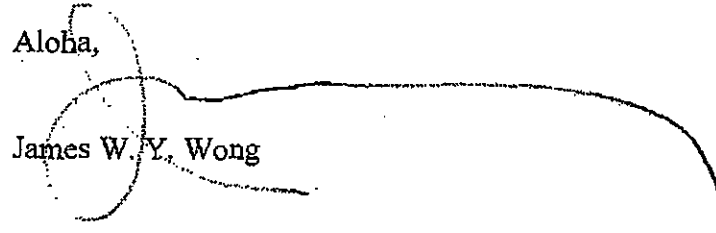
The issues brought before the legislature during the last session have only worsened. However, extending Act 189 by the passing of SB2020 will help the welfare of the Hawaii community and businesses and to stabilize the rents lessors charge and lessees pay.

The leasehold properties for which I am or was a ground lessee includes King University Plaza, Moiliili Plaza, University Plaza, Hale Anue, Waiakamilo Shopping Center, Waialae Plaza, Central Plaza, Waipahu Shopping Plaza, Kapolei Medical Park, Kailua Post Office, Windward Town & Country Plaza Phase 1 and 2, Windward Shopping Center (former Kailua Daiei property), Kapalama Shopping Center, and Kapalāma Industrial leases.

I urge your approving Senate Bill SB2020.

Aloha,

James W. Y. Wong



TESTIMONY IN STRONG SUPPORT OF SB 2020, HD 1
Real Property; Leasehold; Lease Rent Renegotiation

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: SB 2020 HD1: Relating to Real Property – **Testimony in Strong Support**
Hearing Date: Tuesday, March 30, 2010, 2:30 PM, Room 325

Dear Representatives Karamatsu, Ito and Members of the Committee:

I have grave concerns about HRPT's role as a landlord in Hawaii.

HRPT is a real estate investment trust based in Massachusetts, which bought the Damon Estate's industrial holdings in Mapunapuna and Kalihi Kai, and a large part of Campbell Industrial park making them the largest owner of industrial zoned property in Hawaii.

It looks as though HRPT bought the Damon property without doing thorough due diligence and is not willing to face the fact that it screwed up, and instead is slamming its tenants. It is an investment trust and has a fiduciary duty to maximize profits for its investors. This is normal and understandable. How it is going about it is not. It seems to have in mind a profit margin that is unrealistic and unsustainable, trying to double or triple ground rents immediately and then through annual step-ups, double rents again over ten years. It employs hardball tactics that are unreasonable and unconscionable. It overrules its own lease and its own arbiters when things are not to its liking and is unresponsive to tenants. Over all it is the picture of the Hollywood bad landlord.

I would ordinarily be opposed to any government interference in a commercial deal, but this is the exception. This is not really a deal, more of a one way street and the tenants are being systematically screwed. If this involved only a few tenants, it would not matter much but this involves hundreds of businesses and millions of dollars in wages and tax revenue that will be in serious jeopardy if this single entity is allowed to run roughshod over our community.

In an economy where maintaining existing jobs and resources is critical, to have a major landowner trying to take so much out of the state and put companies out of business is of major concern, not only to those companies, but to the state as a whole. The biggest source of jobs is the small business sector and this is the sector that is being hammered. As businesses go down, tax revenues go down and jobs disappear. The public employee's unions don't generate enough taxes to pay for themselves, let alone all of the other programs and entitlements the state is responsible for. As we ruin our small

business base, we ruin our tax base. HRPT has purchased properties totaling millions of square feet. If allowed to maximize rents the way it wants to, it will vacuum up tens of millions, and in the near future, hundreds of millions of dollars and suck them right out of our state. I hate to think what that will do to our economy.

HRPT puts nothing back. In classic absentee landlord style, profits are taken out of Hawaii. Unfortunately there is little recourse. A lease is a lease and HRPT holds all of the cards. There is a bill before the legislature to extend a law passed last year which defines an esoteric and very unusual clause in the lease which states that any rents will be "fair and reasonable." This is a clause in the very Hawaiian existing Damon lease, the intent of which would seem obvious. HRPT does not see it that way. It promised last year to abide by the intent of the law and has since completely ignored it and is suing the state to overturn it. To HRPT it is only "fair and reasonable" if it gets everything. It has recruited several other landholders to fight the bill tooth and nail. Why the fuss? Isn't "fair and reasonable" fair and reasonable? Taking no prisoners is not fair and reasonable. This is not really a war. It is supposed to be a negotiated settlement between two parties. Something is missing here and it is the "fair and reasonable."

Grant Merritt
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