

January 26, 2010

**The Honorable Rosalyn H. Baker, Chair**

Senate Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: S.B. 2020 Relating to Real Property**

**HEARING: Wednesday, January 27, 2010 at 9:00 a.m.**

Aloha Chair Baker, Vice Chair Ige, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. HAR **opposes** S.B. 2020 that extends Act 189, SLH 2009 to June 30, 2015.

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.

For the above reasons, we ask the Committee to hold this measure.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



January 26, 2010

Senator Rosalyn H. Baker, Chair  
Senator David Y. Ige, Vice Chair  
Senate Committee on Commerce and Consumer Protection

Wednesday, January 27, 2010; 9:00 A.M.  
State Capitol, Conference Room 229

**RE: SB 2020 - Relating to Real Property**

Chair Baker, Vice Chair Ige 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 leases many of its Hawai'i properties pursuant to long-term leases.

S.B. 2020 proposes to amend Act 189, Session Laws of Hawai'i 2009, by extending its repeal date from June 30, 2010 to June 30, 2015.

HRPT respectfully, but strongly, opposes S.B. 2020. HRPT has consistently testified before the Hawai'i State Legislature that actions that seek to change legal contracts, such as Act 189, are unconstitutional. There are a number of reasons why we believe that Act 189 is unconstitutional.

Act 189 was targeted at a single landowner—HRPT—and changed the agreed upon terms of previously negotiated long-term commercial and industrial lease contracts, for the sole benefit of a small group of lessees. This violates the Contracts Clause of the U.S. Constitution.

This is the case because Act 189 materially affects the most essential term in HRPT's contracts with its tenants: the 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 legislative definition—contrary to the intent of the original lessor, Damon Estate. In addition, it is clear that the intent of Act 189 is to reduce the amount of rent lessees would be obligated to pay when their rents are re-set under the lease contract. In other words, the purpose

of Act 189 is to take an economic benefit from one contracting party, the lessor, and give that economic benefit to the other contracting party, the lessee.

In allowing Act 189 to become law without her signature, Governor Lingle admitted in writing that 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 that “this bill impacts the renegotiations of lease rent by interjecting . . . its construction of ‘fair and reasonable annual rent’ in commercial or industrial leases.” Governor Lingle’s written statement is a judicial admission in the pending litigation.

Also, the objectives of Act 189 are not appropriate for legislative action.

First, Act 189 does not just incidentally impair contracts, but rather makes impairment its primary objective. Act 189’s proponents testified that the Act was intended to “level the playing field” between HRPT and its lessees. Such “leveling the playing field between contracting parties” is expressly forbidden as a legitimate public purpose under the Contracts Clause.

Second, Act 189 is aimed at, and has direct impact upon, a *single* landowner and a small number of HRPT’s lessees. Taken together, Act 189’s redefinition of the “fair and reasonable rent” lease term and the Act’s definition of “commercial or industrial leasehold property” undeniably describe HRPT alone. Governor Lingle admitted in her written statement that the law “appears to be targeted at a single landowner for the benefit of its lessees”.

Third, the stated purpose behind Act 189—i.e., to “maintain close geographic ties between small businesses and the communities they serve” and thereby “stabilize Hawai‘i’s economy”—is without support. As the Attorney General advised the Legislature last year, neither logic nor any legislative finding whatsoever supports the proposition that altering HRPT’s contractual rights for the benefit of a few lessees will keep “small businesses” close to urban communities, much less that this will in turn “stabilize” Hawai‘i’s economy.

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. On December 7, 2009, Judge Mollway held a hearing on the case.

At the hearing, Judge Mollway expressed concern “to the extent there’s a change in the bargain that is caused by the passage of a statute because it interprets a term in a way different from what the parties intended at the time of the contract.” Judge Mollway stated on the record: “If there is a change, then there may well be numerous constitutional problems with this statute.”

In mid-December, Judge Mollway issued an order in which she requested that the parties conduct further discovery. The discovery process is ongoing and it is expected that Judge Mollway will issue a final ruling on the matter after this process is concluded.

Given the pending litigation and the serious questions regarding Act 189’s constitutionality, we respectfully request that the Committee hold this bill. Thank you for the opportunity to testify on this bill.

EDWARD R. BENDET  
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YURIKO J. SUGIMURA  
THOMAS R. SYLVESTER\*  
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January 26, 2010

Senator Rosalyn Baker, Chair  
Senator David Ige, Vice-Chair  
Senate Committee on Commerce & Consumer Protection  
State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2020 - Re Real Property - Testimony in Strong Support**  
**Hearing Date: January 27, 2010, 9:00 a.m., Conference Room #229**

Dear Senators Baker, Ige and Members of the Committee:

My name is Jay Fidell. I am an attorney at law and counsel for Citizens for Fair Valuation ("CFV"), a nonprofit coalition of businesses with long-term ground leases in the Mapunapuna, Kalihi Kai and Sand Island areas.

I write in strong support of SB 2020, which seeks to extend the sunset date of Act 189 from June 30, 2010 to June 30, 2015. No other changes or amendments are contained in the bill.

With the passage of Act 189, Citizens for Fair Valuation had hoped that lessor, HRPT, 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 has instead chosen to continue its campaign to intimidate lessees through take-it-or-leave-it (TIOLI) offers that are twice the going market rate, demanding lease amendments to include terms favorable just to HRPT, and even going so far as to require lessees to waive their rights under Act 189, now and forever.

HRPT has bent every effort and stratagem to further leverage its oligarchic control of the land to force rates artificially higher than the actual rental market. As the largest owner of commercial and industrial land in Oahu, HRPT apparently feels it is entitled to force lessees into astronomical rents without regard for its obligation under the lease to provide "fair and reasonable rents."

Should the parties fail to reach agreement through negotiation, the lease requires arbitration. This process is extremely expensive, time consuming and

Senator Rosalyn Baker, Chair; Senator David Ige, Vice-Chair  
Senate committee on Commerce & Consumer Protection  
January 26, 2010  
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intimidating. Lessees need to hire attorneys, appoint an appraiser to sit on the panel, contract with experts to provide economic information, and appraisers to express their expert opinion as to the rent. This is like a trial and the costs can be huge. For the everyday small business owner in the area, arbitration is an economically terrifying process. It means having to confront the oligarchic landowner in an arena that is alien and unknown.

SB 2020 is needed to remind HRPT that its leases call for good faith negotiation of "fair and reasonable rents." HRPT seems to have deliberately chosen to ignore Act 189 and the spirit of its assurances to its lessees and the legislature over these past several months.

Act 189 does not change the terms of the existing leases. Act 189 does not set rents. Act 189 does not say rents should be below or above what is fair and reasonable to both the parties. Act 189 merely reminds HRPT of the terms of the contract and seeks rents that are fair and reasonable for both parties. It is not a measure that stops HRPT from raising rents, only from raising them beyond fair and reasonable. Clearly, that is exactly what HRPT would like to do, and what it is trying very hard to accomplish.

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. In adopting Act 189, the Legislature was 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 supply crucial goods and services to Honolulu businesses.

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

In the circumstances, I respectfully request that you pass out SB 2020 extending 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

Jay M. Fidell

January 26, 2010

Honorable Senator Rosalyn Baker, Chair  
Members of Committee on Commerce and Consumer Protection  
Committee on Commerce and Consumer Protection

RE: Senate Bill SB2020

Dear Honorable Chair Baker and Members of the Committee on Commerce and Consumer Protection:

I support the passage of Senate Bill SB2020 which is a bill to extend Act 189. As a lessee of multiple industrial properties in the Mapunapuna area we need Act 189 extended to stabilize the rents lessors charge and the rents that we as lessees pay

Please approve Senate Bill SB2020.

Aloha,



**Gregory M. Wood (S)**  
General Manager  
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January 26, 2010

Senator Rosalyn Baker, Chair  
Senator David Ige, Vice-Chair  
Senate Committee on Commerce & Consumer Protection  
State Capitol  
Honolulu, Hawaii 96813

Re: SB 2020 Relating to Real Property  
Hearing Date: January 27, 9:00am, Room#229

Dear Senator Baker and Ige and Members of the Committee:

My name is Jason Ideta and I support SB2020. 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. We have 49 full-time and 2 part-time employees who have worked very hard to build the business over the last 24 years.

The Damon Estate was "fair and reasonable" with its tenants during its tenure by increasing rents during the good times and decreasing rent increases during the bad times. Even when the increases were already in the contract, they deferred then waived the scheduled increases on their own volition. This is how the contract was meant to be exercised.

In HRPT's prior written testimony, they have stated that this bill interferes with the expectations of the parties and changes the agreed upon terms of the affected lease contracts. The fact is that HRPT has chosen to ignore the expectations and agreed upon terms that the lease rents be "fair and reasonable" by trying to impose rents that are 50 to 90% above market rents. HRPT states that the lease is "designed to re-align the rental rate to market, whether the result is an increase OR a decrease to the rental rate." In the latest Colliers Monroe Friedlander 3<sup>rd</sup> quarter 2009 Industrial Market Briefing, market indicators show a decrease in industrial rental rates for 2008, 2009, and 2010. Yet, HRPT insists that they are being fair by asking for annual increases and rates that are clearly above market. They claim to have "worked diligently with tenants to reach creative lease solutions that reflect the current market conditions," but the unprecedented support for Citizens for Fair Valuation by small businesses proves otherwise. None of us would be here in this room today if HRPT lived up to its part of the contract.

If our rents double, we may have to increase prices and cut costs by decreasing our work force to stay in business. Our customers will then pass on the increased costs to their customers. The cost to maintain and repair vehicles in Hawaii will increase. Most local businesses cannot raise prices and decrease service at the same time and remain competitive with our large mainland competitors.

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 through your committee, 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.



**Via E-Mail**

**January 27, 2009**

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

Honorable Chair Senator Rosalyn Baker, Vice Chair David Y. Ige, and  
Member of the Committee on Commerce and Consumer Protection

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.** Act 189 is proposed to sunset on June 30, 2010. This bill, however, proposes to extend that sunset date for five years, to June 30, 2015; 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, 2015; provided further that this Act shall not apply to any lease scheduled for renegotiation after June 30, 2015.



**LURF'S OBJECTIONS.** LURF **opposes SB 2020 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 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, which intends to extend Act 189, are unconstitutional, profoundly anti-business and bad public policy, and therefore we respectfully request that **SB 2020 be held in this Committee.**

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



January 26, 2010

**TESTIMONY TO THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**  
January 27, 2010, 9:00 A.M., Room 229  
Hawaii State Capitol

Senator Rosalyn H. Baker, Chair  
Senator David Y. Ige, Vice Chair

**TESTIMONY IN SUPPORT OF SB 2020 RELATING TO REAL PROPERTY**

Dear Senators Baker, Ige and Members of the Committee:

I support SB 2020 and respectfully request that extend the life of Act 189. My name is Bonnie L. Cooper, and I, with Brian Joy, own Big Rock Manufacturing Inc. which is located in the Mapunapuna area, and presently employ only seven people.

Many of my business neighbors and myself, have long time employees who have lost their jobs, had their hours reduced, and I know of many businesses which are barely surviving. This past year, our business has slowed tremendously and we are trying to cut expenses before we have to cut benefits and lay off more workers or worse yet, go out of business.

Rent is one of the largest expenses we face. Up to now, the rents charged by the Damon Estate were "fair and reasonable," which is what the lease specifically calls for. The new owner, HRPT, continues to demand rents that are in excess of the current market and, on top of that, are demanding we pay annual escalations of 3% to 4%. Rent escalations are not part of our lease terms and just not feasible in these times of decline.

In addition, HRPT is requiring that we sign away our rights under the existing law (Act 189) now and throughout the life of our leases. I know "life is not fair", but considering the state of the economy one would think they would have at least a *little* compassion for the Hawaiian businesses.

HRPT, by prohibiting access to comparable rent information is forcing lessees into take-it-or-leave-it deals, and denying the ability to negotiate a fair rent. Through their sheer size and oligopolistic control of the market, they are subverting market forces to provide unprecedented returns. The small businesses and consumers of Hawaii need Act 189 extended to remind HRPT that it needs to set fair rents.

The issues brought before the legislature during the last session have only worsened. HRPT has not abided by its word to improve relationships and honor the course of action set by the Damon Estate. Act 189 was written to redress these issues and unfortunately HRPT has failed in its obligation to provide "fair and reasonable" rents. Instead, it has redoubled its efforts to intimidate and force lessees into costly arbitrations proceedings while ignoring the arbitration results achieved by others. These actions seem to be driven by simple greed.

Passage of SB2020 will extend Act 189 and hopefully remind the landowner to negotiate terms based on what is happening here, in Hawaii's economy, rather than trying to make up for losses on the mainland. This is my 27<sup>th</sup> year. I want to stay in business and I want to keep my workers employed. Please continue what you agreed to do last session by passing SB2020. Thank you.

Bonnie L. Cooper  
Vice President & Co Owner  
Big Rock Manufacturing Inc.  
Email: [Bcooper@bigrockhawaii.com](mailto:Bcooper@bigrockhawaii.com)



January 26, 2010

Honorable Senator Rosalyn Baker, Chair  
Members of Committee on Commerce and Consumer Protection  
Committee on Commerce and Consumer Protection

RE: Senate Bill SB2020

Dear Honorable Chair Baker and Members of the Committee on Commerce and Consumer Protection:

I support passage of Senate Bill SB2020 which is a bill to extend 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. Act 189 does not change the terms or language of the leases. In fact, Act 189 should strengthen the relationship between lessor and lessee. In 2009 Senate (SB764) which preceded Act 189 was passed by both House and Senate and the governor allowed it to become law.

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 by stabilizing our downward spiraling economy.

I respectfully request that you approve Senate Bill SB2020.

Aloha,



Brian S. Joy  
President & Co Owner  
Big Rock Manufacturing Inc.

E: [BJoy@bigrockhawaii.com](mailto:BJoy@bigrockhawaii.com)