

Honolulu, Hawaii

March 2, 2012

RE: H.B. No. 1829  
H.D. 2

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1829, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO LEASES,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Require lessors of commercial and industrial property to afford lessees the option of renewing their leases; and
- (2) Require, in leasehold renegotiations, that a rent based on fair market value shall apply even if the value is lower than the existing rent and the contract bars the lowering of rent upon renegotiation.

Citizens For Fair Valuation and several concerned citizens supported this measure. The Department of the Attorney General, Department of Land and Natural Resources, Office of Hawaiian Affairs, Hawaii Housing Finance and Development Corporation, Kamehameha Schools, Land Use Research Foundation of Hawaii, Reit Management & Research LLC, Queen Emma Land Company, Small Landowners Association, and several concerned citizens opposed this measure.



Your Committee is aware that the current draft of this measure creates serious constitutional and legal concerns. Your Committee has amended this measure in an attempt to address some of those concerns. As this measure progresses, your Committee intends that those concerns will continue to be discussed and that all legal issues relating to this measure will be satisfactorily resolved.

Your Committee has amended this measure by:


- (1) Adding additional background information to section 1 of this measure;
- (2) Limiting the provisions regarding commercial and industrial leases to all new leases entered into after July 1, 2012;
- (3) Providing new definitions for the terms "fee simple", "excess rent", "leasehold", "market rent", "fair market rent", "fee simple interest", and "leasehold interest";
- (4) Deleting the definition of "legal and equitable owners";
- (5) Restricting the application to property that is larger than 50,000 square feet;
- (6) Excluding the State and any county or other political subdivision of the State from the property addressed by the bill as well as from the phrases "fee owner" and "lessor";
- (7) Removing the requirement that leases renewed under the new section created in Chapter 519, Hawaii Revised Statutes (HRS), regarding commercial and industrial leases have a rate of return not more than five percent;
- (8) Adding a provision as to how the market rent or fair market rent shall be established;
- (9) Removing the requirement that land value should be in part based upon the tax-assessed valuation from 1985 adjusted by the increase in the consumer price index;
- (10) Requiring fair market rent or market rent to be determined in conformance with the Uniform Standards of Professional Appraisal Practice;



- (11) Requiring any disputes over value be settled by alternative dispute resolution mutually agreed upon by the lessor and the lessee and not by arbitration under Chapter 658A, HRS;
- (12) Substituting the Department of Business, Economic Development, and Tourism for the Hawaii Housing Finance and Development Corporation as the entity to adopt rules to implement the new chapter established by Section 2 of this measure;
- (13) Providing that the renewal for a lease under the new section created in Chapter 519, HRS, regarding commercial and industrial leases shall not be for a term of not less than thirty-five years and defining how it shall be renegotiated, along with how any increased value of the leasehold interest will be shared;
- (14) Specifying that the new section created in Chapter 519, HRS, regarding commercial and industrial leases shall only apply to ground leases that are in compliance with all terms of the lease contract at the time the rent is reset; and
- (15) Making technical, nonsubstantive changes for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1829, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1829, H.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

  
GILBERT KEITH-AGARAN, Chair



