

February 4, 2011

Committee on Economic Revitalization & Business
Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair
Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in Support of HB 847 – Relating to Appraisals – Reasoned
Report Hearing: February 08, 2011, 8:00 am; Room 312**

Aloha Chair McKelvey, Vice-Chair Choy and Members of the Committee:

I write on behalf of Sony Hawaii, a division of Sony Electronics Inc. that has been doing business in Honolulu since 1968 and since 1985 has maintained operations in the Mapunapuna area under a ground lease. In addition to being a proud member of the Hawaiian business community, Sony Hawaii, along with Sony Corporation, sponsors the Sony Open golf tournament, the largest charity event in Hawaii and a tournament that has raised over \$10 million for local not-for-profits since 1999.

Sony Hawaii supports passage of House bill 847 ("HB 847"). If enacted, HB 847 will provide companies like Sony Hawaii with the information and market certainty necessary to continue to invest and create jobs in Hawaii.

Consistent with the fundamental tenets of a fair and open marketplace, HB 847 would require commercial appraisers, when sitting on an arbitration panel to determine the fair market value, fair market rental, or fair and reasonable rent for a commercial property, to produce a written, reasoned report that supports and explains their decision. The report should, at a minimum, include information concerning the findings of fact, the appraiser's rationale for the award, and information regarding the evidence that – including the data, methodologies, and analysis – provided the basis for the award.

Currently, appraisal arbitrators do not make any of this information available. Awards simply state a "go-forward" dollar value. This denies the lessor and the lessee without even the most basic of information regarding the rationale behind the rent award. A reasoned report will provide a foundation upon which businesses can learn and better anticipate valuation decisions. In addition, a reasoned report will, for the first time, allow others to make a more informed decision regarding their rent negotiations.

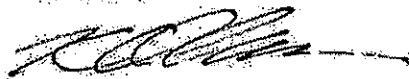
As suggested above, companies cannot make important decisions that affect their ability to properly plan for future investment or hiring needs without the essential information regarding something as fundamental and simple as the cost of doing business. And with rents higher than ever before and leases covering terms of a decade or more, the cost of such leases is one of the most important variables affecting

the cash flow and profitability of a company doing business in Hawaii. Indeed, how can a company be expected to take the risk inherent in building a new plant or hiring new employees when one of its primary costs is left to the unsubstantiated and potentially capricious decision of appraisers? Simply put, the functionality of a fair market is premised up the free-flow of information. When such information is not made available the market fails all parties – businesses, employees, and consumers.

It is time to bring transparency to the process of commercial arbitrations, and HB 847 will provide the basis to do just that.

Sony Hawaii urges you to support HB 847.

Mahalo,



Karl Okemura
Senior Vice President
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ROBERT M. CREPS, PRESIDENT
CAROL LAM, VICE PRESIDENT
CONNIE SMALES, SECRETARY
PHILLIP J. SILICH, TREASURER

CULLY JUDD, DIRECTOR
OSWALD STENDER, DIRECTOR
MICHAEL STEINER, EXEC. DIRECTOR

February 4, 2011

Committee on Economic Revitalization & Business
Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair
Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in Support of HB 847 – Relating to Appraisals – Reasoned Report
Hearing: February 8, 2011, 8:00 am; Room 312**

Aloha Chair McKelvey, Vice-Chair Choy and Members of the Committee:

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation (CFV), a non-profit coalition of lessees. I support the passage of House Bill 847 which would require commercial appraisers, when sitting on an arbitration panel to set fair market value or rents, to produce a written reasoned report that supports and explains their decision and provides rationale, including the data, methodologies, and analysis, for the award.

A reasoned report will provide all of the interested parties, be they buyers, sellers, lessors, lessees, investors, banks, brokers or other appraisers, with valuable information upon which more informed decisions can be based. Businesses like predictability and having reasoned reports that detail the rationale behind an award will provide key information for future decisions regarding lease options.

Long-term ground leases:

Under most long-term ground leases in Hawaii, the lease provides that in the event the lessor and lessee cannot agree to renewal rents, the parties will employ a panel of licensed real estate appraisers, with each party naming one appraiser and those two appointing the third appraiser, to ultimately determine the lease rent.

Why only licensed real estate appraisers? Because they have the knowledge, skills and experience to render professional valuations. In 1993, during a rent arbitration, former Damon Estate Trustee Hebdon Porteus, when questioned on this issue opined in his affidavit,

The lease language expressly provides that where the parties do not agree, the rent will be determined by three appraisers. It was never the intent of the Estate that the rent would be decided by salespersons, economists or planners ...

Arbitrations are like trials:

Although the lease contracts call for final and binding *appraisal*, Hawaii courts have determined that “final and binding” decisions are considered to be an arbitration. Lessees and lessors are spending incredible

amounts of money in arbitration. Depending on complexity, with attorney fees, experts, depositions, court reporters, transcripts and appraiser fees, each side's expenses can easily surpass \$75,000. Obviously, the days of simple arbitration are long gone.

And, when the arbitration is finally all is said and done, and the appraisers come back with the award of rents typically expressed in a single sentence such as:

NOW THEREFORE, In accordance with the Lease, the submission agreement and applicable laws of the State of Hawaii, the Arbitrators have unanimously determined the fair and reasonable annual rent of the demised premises, as of February 1, 2009, to be Two Million, Two Hundred Thousand dollars.

And, if the panel of appraisers are not unanimous in their decision, the resulting rents often vary tremendously, with no reason provided. A recent Sand Island arbitration, covering five parcels for one lessee, ended without unanimous agreement and the rents for similar, somewhat contiguous lots varied from \$5.95 to \$6.88 per foot, which adds hundreds of thousands of dollars to the annual rent. Reading this, are you not curious as to why the award was such?

Indeed, every parcel received a different rate and yet, none of the parties involved knows why. We can speculate that the lots are somewhat different in size and location; however, the business owners are ultimately left in the dark as to what methodologies and evidence weighed significantly in the decision. A reasoned report would provide clarity!

Added costs:

Opponents to HB 847 will argue that a reasoned report will double or triple the cost of arbitration. This committee should know that appraisers are currently demanded between \$15,000 and \$25,000 each for their appraisal/arbitration services. The assignment typically includes background work, two days of hearings, decision making and finalization. Assuming each appraiser receives \$20,000 for total of 40 hours work, the average rate is \$400 per hour. As a participant in an arbitration where hundreds of thousands of dollars of rent is at issue, I would certainly pay for a couple of extra hours of appraiser time in order to receive a reasoned report that details the methodologies and evidence that weighed significantly in the decision.

Businesses like predictability:

As each arbitration is concluded and a reasoned report is filed with the court, a book of knowledge regarding appraisals becomes available. Businesses with similar properties could review the data and decide if it is best to arbitrate or negotiate their rent values. This could save the lessor and lessee thousands of dollars and avoid a long drawn out, confrontational situation.

Knowing why rents are what they are will allow businesses to develop financial plans well into the future. This in turn will provide a basis for decisions concerning potential growth, investment, employee count and more. Having a predictor for future rents allows for better financial planning

Vacating an arbitration award:

Opponents of this bill seem to be afraid that a reasoned report will create a basis upon which lessees will ask the courts to vacate the arbitration award. This is simply not true. The Committee should know that

with or without HB 847, it remains extremely difficult to vacate the award of an arbitration panel as arbitration awards are given wide deference and judicial review is limited.

There are only certain enumerated grounds under which an arbitration award can be vacated, which include evident partiality of the panel, corruption of the panel, misconduct of the panel, and the panel exceeding its powers. Mistakes of law or fact by the panel in making its award are generally not sufficient grounds to vacate an arbitration award.

Trust in the System:

Hawaii businesses need to re-establish their trust in the system. Without trust, the underlying core of our culture is eroded. For too many years, the process to establish rents through arbitration has been shrouded under a black veil. Lessees never get to know the real reason their rents are what they are and this only breeds more animosity into the system.

The time has come to lift the veil of secrecy in rent arbitrations. It is time to let the light of reason touch the data so all can learn and benefit from the decisions of a few. It is time for appraisers to tell us why and how they determined our future rents.

The passage of HB 847 will provide the openness and transparency needed to our trust in the process. Please support HB 847 and approve this bill.

Mahalo

Michael Steiner

Michael Steiner

Executive Director

Citizens for Fair Valuation

Telephone: (808) 221-5955

Email: MSteiner@SteinerAssoc.com

Web Site: www.FairValuation.org

From: mutual plumbing [mutualpls@hawaiiantel.net]
Sent: Friday, February 04, 2011 6:51 AM
To: ERBtestimony
Subject: HB 847 Hearing Scheduled for Feb. 8, 2011

Committee on Economic Revitalization & Business Rep. Angus L.K. McKelvey, Chair Rep. Isaac W. Choy, Vice Chair Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Support of HB 847 – Relating to Appraisals – Reasoned Report
Hearing: February 08, 2011, 8:00 am; Room 312

Aloha Chair McKelvey, Vice-Chair Choy and Member of the Committee,

My name is Allison Kojima and we own a family business, Mutual Plumbing Supply, which employs 15 people on the island of Oahu.

I support passage of House Bill 847 which would require commercial appraisers, when sitting on an arbitration panel to determine the fair market value, fair market rental or fair and reasonable rent for a commercial property, to produce a written reasoned report that supports and explains their decision. The report should, at a minimum, include information concerning the findings of fact, the appraiser's rationale for the award, and information regarding the evidence that, including the data, methodologies, and analysis, provided the basis for the award.

At present, appraisal arbitrators do not make any of this information available. Awards simply state a go-forward dollar value. This leaves both the lessor and the lessee in the dark to guess at the rationale behind the rent award. A reasoned report will provide a foundation upon which businesses can learn and better anticipate valuation decisions. A reasoned report will, for the first time, allow others to make a more informed decision regarding their rent negotiations.

With appraisal arbitrations now costing between \$50,000 and \$100,000 and rents higher than ever before, the business community should not be deprived of knowledge that will affect their economic decisions. Opponents argue that this will raise costs and delay awards; however, the truth is that businesses would eagerly agree to pay a bit more, perhaps an hour or two, to receive what they should be entitled to -- a reasoned report explaining the rationale behind the award.

We are not looking to vacate or avoid the final and binding nature of arbitration, we merely want to know why the panel found the way it did.

This is not too much to ask and it is the proper thing to do. It is time to bring transparency to the process of commercial arbitrations and HB 847 will provide the basis to do just that.

Please support HB 847 and approve this bill.

Mahalo,

Allison Kojima
Mutual Plumbing Supply Co., Inc.



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Committee on Economic Revitalization & Business

February 4, 2011

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

Members of the Committee

415 South Beretania Street

Honolulu, HI 96813

RE: Testimony in Support of HB 847 – Relating to Appraisals – Reasoned Report

Hearing: February 08, 2011, 8:00 am; Room 312

Aloha Chair McKelvey, Vice-Chair Choy and Member of the Committee,

My name is Phillip J. Silich and I own Bacon-Universal Co., Inc. which employs 40 people on the island of Oahu.

I support passage of House Bill 847 which would require commercial appraisers, when sitting on an arbitration panel to determine the fair market value, fair market rental or fair and reasonable rent for a commercial property, to produce a written reasoned report that supports and explains their decision. The report should, at a minimum, include information concerning the findings of fact, the appraiser's rationale for the award, and information regarding the evidence that, including the data, methodologies, and analysis, provided the basis for the award.

At present, appraisal arbitrators do not make any of this information available. Awards simply state a go-forward dollar value. This leaves both the lessor and the lessee in the dark to guess at the rationale behind the rent award. A reasoned report will provide a foundation upon which businesses can learn and better anticipate valuation decisions. A reasoned report will, for the first time, allow others to make a more informed decision regarding their rent negotiations.

With appraisal arbitrations now costing between \$50,000 and \$100,000 and rents higher than ever before, the business community should not be deprived of knowledge that will affect their economic decisions. Opponents argue that this will raise costs and delay awards; however, the truth is that businesses would eagerly agree to pay a bit more, perhaps an hour or two, to receive what they should be entitled to – a reasoned report explaining the rationale behind the award.

We are not looking to vacate or avoid the final and binding nature of arbitration, we merely want to know why the panel found the way it did. This is not too much to ask and it is the proper thing to do. It is time to bring transparency to the process of commercial arbitrations and HB 847 will provide the basis to do just that.

Please support HB 847 and approve this bill.

Mahalo

Phillip J. Silich

Bacon-Universal co., Inc.

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February 4, 2011

VIA WEB

Honorable Representative Angus L. K. McKelvey, Chair
Honorable Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Economic, Revitalization, and Business

**RE: HOUSE BILL HB847 - RELATING TO APPRAISALS
HEARING SCHEDULED FOR TUESDAY, FEBRUARY 8, 2011, AT
8:00 A.M., HAWAII STATE CAPITOL, CONFERENCE ROOM 312**

Dear Honorable Chair Angus McKelvey and Members of the House Committee on Economic, Revitalization, and Business:

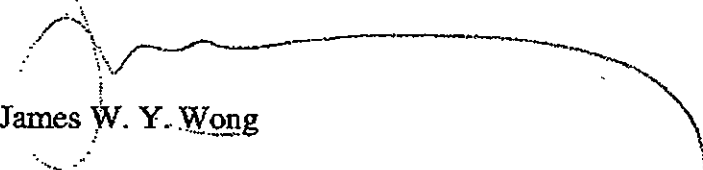
I support passage of House Bill HB847 which is a bill requiring real estate appraisers to include a reasoned report, including the appraiser's rationale for the award and the data, methodologies and analysis that provided the basis of the award.

As a lessee of numerous leasehold commercial properties, I have been involved in 4 arbitration proceedings where real estate appraisers involved in the arbitration proceedings failed to disclose the data, methodologies and analysis that provided the basis of the award. In one arbitration proceeding I sought to vacate the award on the basis that the appraisers erred but was unable to require the appraisers to disclose the data, methodologies and analysis that provided the basis of the award.

We need HB847 passed to provide for the appraisers to be held accountable when they issue awards and to allow participants in an arbitration proceedings to clearly understand how the award is determined.

Please approve House Bill HB847.

Aloha,


James W. Y. Wong

EDWARD R. BENDET
JAY M. FIDELL
YURIKO J. SUGIMURA
THOMAS R. SYLVESTER*
KEITH S. AGENA
LORI LEI Y. HIJII
DOMINQUE M. TANSLEY
JENNIFER L. STRINGFELLOW

BENDET FIDELL

ATTORNEYS AT LAW
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AREA CODE 808

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*Also licensed in California

February 6, 2011

Rep. Angus McKelvey, Chair
Rep. Isaac Choy, Vice Chair
House Committee on Economic Revitalization and Business

RE: Testimony in Support of HB846 and HB847 RE APPRAISALS
Hearing: Tuesday, February 8, 2011 at 8 a.m., Conf. Rm. 312

Chair McKelvey, Vice-Chair Choy and Members of the Committee:

I am an attorney and I have been licensed to practice law in the State of Hawaii since 1978. Over the years, I and my firm have had clients who have been affected by the manner in which appraisals are currently done.

I support passage of HB 846 which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

Although current law requires all real estate appraisers to comply with USPAP when performing appraisals in connection with federally or non-federally related real estate transactions, it is appropriate Hawaii Revised Statutes extend the same ethical consideration when an appraiser is sitting on an a panel that will ultimately determine value or rental rates of real estate. There should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding. Applying USPAP in all such circumstances would provide additional transparency and trust in the process and results.

I also support passage of House Bill 846 which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

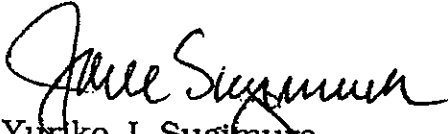
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ethical consideration when an appraiser is sitting on an a panel that will ultimately determine value or rental rates of real estate.

There should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding. Applying USPAP in all such circumstances would provide additional transparency and trust in the process and results.

Thank you for allowing me to testify on these bills.

Very truly yours,

A handwritten signature in black ink, appearing to read "Yukiko J. Sugimura". The signature is fluid and cursive, with the first name being the most prominent.

Yukiko J. Sugimura
Of BENDET FIDELL

February 7, 2011

Representative Angus L.K. Mckelvey, Chair
Representative Isaac W. Choy, Vice Chair
Economic Revitalization & Business Committee
Ted Yamamura, Government Relations Chair
The Hawaii Chapter of the Appraisal Institute
(808) 270-0604
Tuesday, February 8, 2011

Testimony Against HB 847, Relating to Appraisals

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 26,000 members and 91 chapters throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

We speak in opposition to HB 847, Relating to Appraisals, which would require real estate appraisers to comply with requirements specifically targeted at real estate appraisers who act as arbitrators. Our concerns are as follows:

- (1) The title of the Bill is misleading since the subject matter deals with Chapter 658A, HRS, Uniform Arbitration Act – not appraisals.
- (2) Section 1, Page 1 of HB 847. The "purpose" of the Act specifically identifies real estate appraisers. This is discriminatory against real estate appraisers and should apply to anyone acting as an arbitrator and providing an award.
- (3) The proposed Chapter 658A-19(b) is vague as to the nature and extent of the findings of fact, rational, and a basis for the award. HB 847 could increase litigation by parties seeking to vacate an award because they perceive the findings of fact, rational, and a basis for the award to be insufficient in detail. Courts may become more involved in matters surrounding arbitrations.
- (4) Any proposed modifications to Chapter 658A-19 should apply to anyone acting as an arbitrator.
- (5) Section 4, Page 3 of HB 847. Inasmuch as the Uniform Standards of Professional Appraisal Practice (USPAP) contains no provisions nor claims any jurisdiction with regard to arbitrators and arbitrations, Section 4 should be deleted in its entirety.

If it is the desire of the House Committee to pass HB 847, we respectfully propose the following changes:

PROPOSED CHANGES TO HB 847 (Proposed changes are highlighted in red)

HB 847 - RELATING TO APPRAISALS [ARBITRATION AWARDS]

SECTION 1. The purpose of this Act is to require a[n] ~~real-estate appraiser~~ [arbitrator] to include a reasoned report, including the ~~appraiser's~~ rationale for the award and the data, methodologies, and analysis that provided the basis of the award.

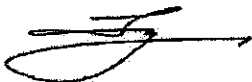
SECTION 2. Section 658A-19, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§658A-19]]~~ Award. (a) An arbitrator shall make a record of an award. The record of an award shall include but not be limited to findings of fact, the appraiser's [arbitrator's] rationale for the award, and information regarding the evidence that, including the data, methodologies, and analysis, provided the basis for the award. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

~~—(b) In an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rent of real property where the arbitrator is a real estate appraiser licensed under chapter 466K, the record of an award shall include but not be limited to findings of fact, the appraiser's rationale for the award, and information regarding the evidence that, including the data, methodologies, and analysis, provided the basis for the award.~~

~~SECTION 4. In the event of any conflict between the uniform standards of professional appraisal practice as developed by the Appraisal Standards Board of the Appraisal Foundation and any arbitration process, including chapter 658A, Hawaii Revised Statutes, the uniform standards of professional appraisal practice rules and standards then in effect shall prevail.~~

We urge the Committee to deny the passage of HB 847, or adopt and incorporate our proposed amendments to the Bill. Thank you for this opportunity to testify.



Ted Yamamura
Government Relations Chair

Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair
Members of the Committee
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Support of HB 847 – Relating to Appraisals – Reasoned Report
Hearing: February 08, 2011, 8:00 am; Room 312

Aloha Chair McKelvey, Vice-Chair Choy and Members of the Committee,

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We are not looking to vacate or avoid the final and binding nature of arbitration, we merely want to know why the panel found the way it did. This is not too much to ask and it is the proper thing to do. It is time to bring transparency to the process of commercial arbitrations and HB 847 will provide the basis to do just that.

Please support HB 847 and approve this bill.

Mahalo

Grant Merritt
151-B Pu'uhale Road
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February 6, 2011

Honorable Representative Angus L. K. McKelvey, Chair
Honorable Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Economic, Revitalization, and Business

RE: **HOUSE BILL HB847 - RELATING TO APPRAISALS**
HEARING DATE/TIME/LOCATION: February 8, 2011/8:00a.m./Room 312

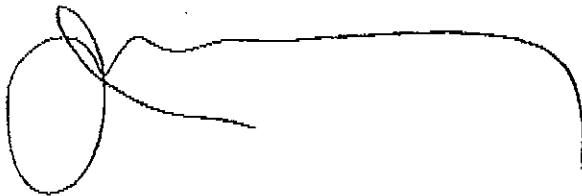
Dear Honorable Chair Angus McKelvey and Members of the House Committee on Economic, Revitalization, and Business:

I wish to support passage of House Bill HB847 which is a bill requiring real estate appraisers to include a reasoned report, including the appraiser's rationale for the award and the data, methodologies and analysis that provided the basis of the award. Currently appraisers in an arbitration proceeding have only issued a one sentence statement identifying the award amount but fail to disclose how the award was determined.

The passage of House Bill HB847 will provide for transparency and a clear understanding by both parties in an arbitration proceeding as to how an award has been determined.

I urge your approval of this bill.

Aloha,



Anthony Martyak
520 Lunalilo Home Road, #115
Honolulu, HI 96825

February 6, 2011

Honorable Representative Angus L. K. McKelvey, Chair
Honorable Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Economic, Revitalization, and Business

RE: **HOUSE BILL HB847 - RELATING TO APPRAISALS**
HEARING DATE/TIME/LOCATION: February 8, 2011/8:00a.m./Room 312

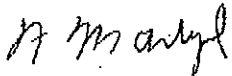
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I urge your approval of this bill.

Aloha,



Anthony P. MARTYAK