

Honolulu, Hawaii

FEB 28 2013

RE: S.B. No. 1258  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 1258 entitled:

"A BILL FOR AN ACT RELATING TO REAL ESTATE APPRAISERS,"

begs leave to report as follows:

The purpose and intent of this measure is to require real estate appraisers, acting as arbitrators, to record arbitration awards, the records of the awards, if separately issued, and any supplementary, dissenting, or explanatory opinions with the Bureau of Conveyances within ninety days of the determination of the award and its notification to the parties.

Your Committee received testimony in support of this measure from the Hawaii Council of Associations of Apartment Owners; Citizens For Fair Valuation; Hilo Bay Printing Co., Ltd.; Pacific Jobbers Warehouse, Inc.; Grace Pacific Corporation; Bacon Universal Company, Inc.; Earle M. Alexander, Ltd.; Sofos Realty Corporation; Mutual Plumbing Supply Co., Inc.; Ginoza Realty, Inc.; JN Group, Inc.; and thirty-three individuals. Your Committee received testimony in opposition to this measure from the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs; Appraisal Institute, Hawaii Chapter; and Land Use Research Foundation.

Your Committee finds that Act 227, Session Laws of Hawaii 2011 (Act 227), was intended to require real estate appraisers, when acting as arbitrators in long-term ground lease rent valuations, to provide relevant data related to the findings of



fact and methodologies employed to support their conclusions, within the record of the award. Act 227 was intended to bring data, openness, and transparency to a market controlled by few landlords and very few commercial and industrial appraisers. Unfortunately, since the enactment of Act 227, many real estate appraisers when acting as arbitrators have required participants in an arbitration to agree to confidentiality agreements that limit the disclosure of the arbitration award details and processes. Your Committee further finds that these agreements frustrate the legislative intent of Act 227 and constrain the development of an open market valuation process.

Your Committee additionally finds that Act 227 requires appraisers in arbitration proceedings to certify compliance with the most current Uniform Standards of Professional Appraisal Practice (USPAP). Although your Committee has heard testimony that this measure might be in conflict with USPAP's ethical rule, your Committee notes that USPAP has a jurisdictional exception rule that "provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP."

Your Committee also finds that because the USPAP rule of jurisdictional exception applies to this measure, there is no ethical conflict with USPAP. Your Committee notes that in subsequent conversations between the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs and interested stakeholders, the Professional and Vocational Licensing Division indicated it would be withdrawing its opposition to this measure based on further review of the USPAP.

Your Committee concludes that this measure supports the openness and transparency originally contemplated by Act 227 by requiring the recordation of arbitration data with the Bureau of Conveyances.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to



this report, your Committee is in accord with the intent and purpose of S.B. No. 1258, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1258, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,



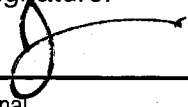
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ROSALYN H. BAKER, Chair



The Senate  
Twenty-Seventh Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

Bill / Resolution No.:* <b>SB 1258</b>	Committee Referral: <b>CPN</b>	Date: <b>2/26/13</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="checked" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
GALUTERIA, Brickwood (VC)	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama	✓			
TANIGUCHI, Brian T.	✓			
WAKAI, Glenn	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<b>6</b>			<b>1</b>
Recommendation: <input checked="checked" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center;"></div>				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes