

**LATE**

March 8, 2013

**VIA FACSIMILE**  
**586-8437**

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Derek S. K. Kawakami, Vice Chair  
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258, SD1 - RELATING TO REAL ESTATE APPRAISERS - HEARING SCHEDULED FOR MONDAY, MARCH 11, 2013, AT 2:00 P.M.**

Dear Honorable Chair Angus McKelvey, Vice Chair Derek Kawakami, and Members of the House Committee on Consumer Protection & Commerce:

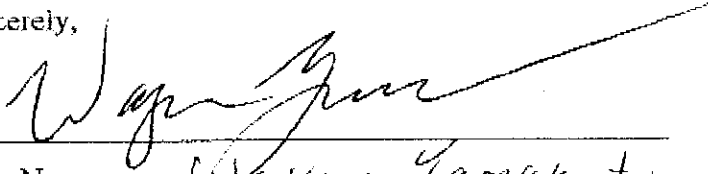
PETITION:

I support passage of SB1258 SD1 which would require real estate appraisers acting as arbitrators in ground rent renegotiation to fully disclose arbitration awards, records of arbitration awards and any opinions related to such arbitration proceedings.

It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide openness and transparency in the reporting of their awards and decisions in arbitration proceedings. However with the enactment of Act 227, the arbitrators have incorporated confidentiality clauses to prevent the disclosure of their awards and decisions to participants in the real estate market from understanding the real estate market in an open and transparent manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect the interests of the people of Hawaii by making data which affects commercial and industrial lease valuations available to everyone.

We urge your approval of this bill.

Sincerely,



Print Name Wayne Yamamoto

Address 157 Pinihi

March 8, 2013

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We urge your approval of this bill.

Sincerely,



Print Name Chet Okayama  
Address 3229 Huelani Dr.

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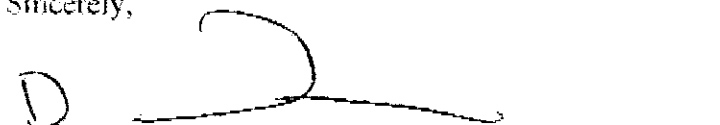
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Sincerely,



Print Name DAVID NIIAS

Address 178 ALIHOA WAY, HNL

March 8, 2013

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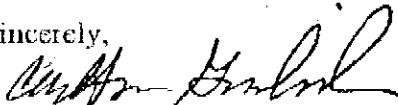
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Sincerely,



Print Name

Carl Han Gushiken

Address

1110 Akipohi St. #B

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We urge your approval of this bill.

Sincerely,

  
\_\_\_\_\_  
Print Name Paul Ricky Cassidany  
Address 1029 Iiwi St. 96816

March 8, 2013

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Honorable Representative Derek S. K. Kawakami, Vice Chair  
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We urge your approval of this bill.

Sincerely,



Print Name Paul Cassidy

Address 320 S. Ditchhead Rd

March 8, 2013

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Honorable Representative Derek S. K. Kawakami, Vice Chair  
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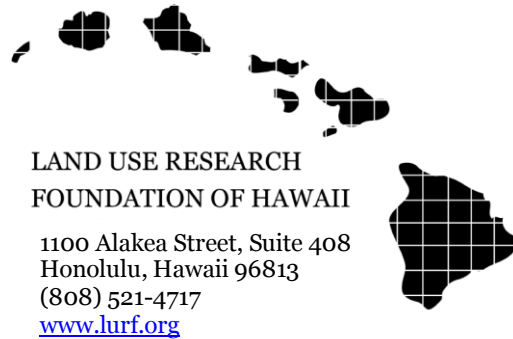
We urge your approval of this bill.

Sincerely,



Print Name Mahealani Uehara

Address PO BOX 235922 HONOLULU, HI 96823



LAND USE RESEARCH  
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408  
Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)

**LATE**

March 11, 2013

Representative Angus L.K. McKelvey, Chair  
Representative Derek S.K. Kawakami, Vice Chair  
House Committee on Consumer Protection and Commerce

**Testimony in Opposition to SB 1258, SD1 Relating to Real Estate Appraisers. (Requires 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 90 days of the determination of the award and its notification to the parties.)**

**Monday, March 11, 2012 at 2:00 p.m. in Conference Room 325**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission 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 appreciates the opportunity to provide this testimony in **opposition to SB 1258, SD1.**

**SB 1258, SD1.** This bill alters the terms of the confidentiality clauses in many existing commercial and industrial leases, by requiring 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 90 days of the determination of the award and its notification to the parties.

LURF **opposes SB 1258, SD1**, based upon the following:

- **The SB 1258, SD1 is premature, as it should await the completion of the Legislative Reference Bureau (“LRB”) Report required by SCR 90, SD1 (2012) “Requesting the Legislative Reference Bureau to Update Their 2003 Report Analyzing the Major Problems Faced by Commercial Lessees by Incorporating an Economic Analysis to Determine if There is a Nexus Between the Existence of High Lease Rents in Hawaii and the Stagnation of Hawaii’s Economy.”** The 2013 LRB Report, could not complete such an economic analysis, but recommended that the “Chairs of the appropriate subject matter



*committees in the House and Senate consult with UHERO to draft legislation that ensures a workable approach, including a sufficient timetable and funding.”* Instead of passing SB 1258, SD1, the Legislature should provide for funding for an economic analysis to determine whether there is actually a strong a nexus between lease rents and the stagnation of Hawaii’s economy, which could establish a legal basis to change the terms of existing lease contracts.

- **There is no factual justification for SB 1258, SD1.** The latest LRB Report (dated 2003) concluded that *“there was no indication of a broad-based compelling need for legislation altering existing lease agreements, which would be required to pass constitutional muster. Instead, the Bureau found that the primary problem facing lessees was the lack of available fee simple commercial and industrial property on the market.”* (See, LRB Report No. 5, 2003, “Real Property Leases,” by Eric Maehara, Research Attorney)
- **The SB 1258, SD1 violates the Contracts Clause of the United States Constitution, because it alters and violates the confidentiality clauses of existing lease contracts.** The Legislature should not inject itself into existing private leases, by changing the confidentiality clauses of leases, which are very important contract terms which were mutually agreed to by the parties. With respect to prior legislation that altered the terms of existing contracts, the U.S. District Court, District of Hawaii (“Court”) ruled that Act 189 (SLH 2009) (“Act 189”) violated the Contracts Clause of the U.S. Constitution. Although Act 189 involved a different law, the Court ruled that the law impaired the contractual relationship between the parties; and that Act 189 did not “reasonably or justifiably further the legitimate purpose of stabilizing Hawaii’s economy.” While inapplicable to this bill, the Court also held that Act 189 violated the Equal Protection Clause of the U.S. Constitution by unfairly targeting one lessor, HRPT. (See, *HRPT Properties Trust v. Lingle*, 715 F.Supp.2d 1115 [D. Hawaii 2010])

LURF believes that a court would similarly find SB 1258, SD1, unconstitutional, based on, among other things, the following:

- ❖ **Violates terms of existing lease contracts.** Under the law, confidentiality provisions in leases, especially relating to lease renegotiations, are important mutually bargained-for terms of lease contracts. SB 1258, SD1, would violate such existing contract terms, by requiring publicizing such information. A court would likely rule that SB 1258 clearly “impairs the contractual relationship and expectations of lessors”; and
- ❖ **There is “no factual basis to reasonably or justifiably further the legitimate purpose of stabilizing Hawaii’s economy.”** The latest State study regarding commercial and industrial lease rents – the 2003 LRB Report, does not support the allegations in SB 1258, in fact, just the opposite. Furthermore, as noted above, last year, the Legislature passed SCR 90, SD1 (2012) “*Requesting the Legislative Reference Bureau to Update Their 2003 Report Analyzing the Major Problems Faced by Commercial Lessees by Incorporating an Economic Analysis to Determine if There is a Nexus Between the Existence of High Lease Rents in Hawaii and the Stagnation of Hawaii’s Economy – and the LRB recommended that the Senate and the House fund such*

*an economic analysis during the 2013 session.* In fact, SB 1258 totally ignores the recommendations of the LRB relating to SCR 90, SD1 (2012). Given the total lack of factual basis or economic analysis to support SB 1258, and the Legislature's total disregard for its own SCR 90, SD1 (2012) and request for an economic analysis - - LURF believes that a court would find that there is no factual basis to justify SB 1258, SD1.

- **The bill violates the spirit and intent of the USPAP Ethics rule relating to confidentiality.** Act 227, Session Laws of Hawaii 2011 ("Act 227, SLH 2011), requires appraisers in arbitration proceedings to certify compliance with the most current Uniform Standards of Professional Appraisal Practice ("USPAP"). USPAP includes and Ethics Rule which requires an appraiser to protect the confidential nature of the appraiser-client relationship. While there may be exceptions to this USPAP Ethics Rule – SB 1258, SD1, violates the spirit and intent of the USPAP Ethics Rule. We do not believe that the legislature should pass a bill that violates the USPAP Ethics Rule, and claim a local exception.

**Conclusion.** For all of the reasons set forth above, LURF believes that the intent and application of SB 1258, SD1 is not factually justified, violates the confidentiality terms of existing lease contracts, would result in an unconstitutional violation of the Contracts Clause of the U.S. Constitution and should therefore **be held in this Committee.**

Thank you for the opportunity to express our **strong opposition to SB 1258, SD1.**

March 9, 2013

**LATE**

**THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair**

**Testimony in Support of SB 1258, SD1 – Relating to Real Estate Appraisals  
Hearing: March 11, 2013, 2:00 pm; Room 325**

Aloha Chair McKelvey, Vice-Chair Kawakami and Members of the Committees,

My name is William Paik and I am writing in strong support of SB 1258, SD1, which would require real estate appraisers acting as arbitrators in ground rent arbitrations to fully disclose and record the arbitration awards, along with the record of the award and any opinions related to the arbitration award with the Bureau of Conveyance.

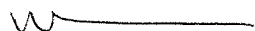
Businesses need information to make informed decisions. It is time the appraisers release the data which creates the market for long-term lease rents. Without data, it is impossible to make the hard decisions that affect the bottom-line of my business and my ability to maintain operations.

The 2011 Legislature passed Act 227 to bring this data to the public. However, the appraisal community continues to frustrate the legislature's intent by forcing confidentiality agreements upon arbitration participants in order to keep the data locked away from the public scrutiny. Opposition testimony went so far as to incorrectly state the release of data to be unethical. However, as Senator Baker noted in her Commission Report, upon further review of USPAP, that opposition was withdrawn.

Data regarding real estate transactions are readily available; recordation of the arbitration data with the Bureau of Conveyance will allow interested consumers to better understand the market. I urge you to support and pass SB 1258, SD1 and bring light into a market that is controlled by too few individuals.

Please pass SB 1258, SD1.

Mahalo,



William Paik  
GP Roadway Solutions  
(808) 226-4641