

CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500
Honolulu, HI 96813

ROBERT M. CREPS, PRESIDENT
CULLY JUDD, VICE PRESIDENT
CONNIE SMALES, SECRETARY

PHILLIP J. SILICH, TREASURER
OSWALD STENDER, DIRECTOR
MICHAEL STEINER, EXEC. DIRECTOR

March 6, 2014

**HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014
COMMITTEE ON WATER & LAND**

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair
Members of the Committee

**RE: Testimony in Support of SB 2476 SD1 – Relating to Real Estate Appraisals
Hearing: March 7, 2014, 10:00 am; Room 325
State Capitol, 415 South Beretania Street**

Aloha Chair Evans, Vice Chair Lowen 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 passage of SB 2476 SD1, as is, which would require real estate appraisers, when acting as arbitrators, to record all arbitration awards, the records of the arbitration awards and any supplementary, dissenting, or explanatory opinions with the Bureau of Conveyances within ninety days of the determination of the arbitration award and the notification of its determination to the parties.

Act 227 (Session Laws of Hawaii 2011) requires appraisers in arbitration proceedings to certify compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Act 227 further requires appraisers to provide relevant data related to the findings of fact and methodologies employed to support their conclusions, within the record of the award.

Since the passage of Act 227, real estate appraisers when acting as arbitrators have circumvented the intent of the legislature, which is to bring data, openness and transparency to a market controlled by few landowners and very few commercial/industrial appraisers. Without the release of the data and analysis that support the arbitration awards, lessees are ill-equipped to make decisions involving hundreds of thousands of dollars.

Recordation of the arbitration awards and rationale documents will allow interested parties access to underlying information required to make informed decisions.

Understanding the Market:

With very few industrial and commercial appraisers in State, the same few appraisers are being called upon to fill the role of expert, judge and jury as they will provide expert valuation reports and testimony for one arbitration then switch to being a panel member of another arbitration passing judgment. In essence, rather than buyers and sellers coming together at arm's length, our local appraisal community is determining and controlling the "market" with confidentiality as their shield.

With more and more lessors and lessees unable to negotiate fair and reasonable rents, the resulting spike in arbitrations puts a great deal of responsibility in the hands of our commercial/industrial appraisers. Their appraisal and arbitration results create a “market,” that is secreted away and unavailable to interested parties. Rather than working against the legislative intent, the appraisal community should welcome the opportunity to provide information for all to benefit.

Act 227 was enacted to bring understanding to the market making process. Its intent was to provide data to the market such that others would be better equipped to make informed judgments as to the value of their properties and the rents being demanded by lessors.

Informed Decisions:

Citizens for Fair Valuation believes informed decisions are better decisions. Most long-term lessees are “captive” to their leases, meaning they are not free to move as they are contractually bound by their leases even if the rent demand is beyond their capability.

Mapunapuna lessees, with 10 or more years left on the lease, are “captive” lessees. In such a closed transaction, lessees are at a distinct disadvantage, leaving extremely expensive arbitration as their only option should they not agree with the lessor’s “take-it-or-leave-it” rent offer.

Making arbitration data available to the public, will help create a more open and transparent market. The long-term ground lease rent valuation market controls what lessees pay and that in turn is reflected in the cost of goods and services provided to the public. It is time the process is unveiled.

Opposition Testimony:

Neither the Appraisal Institute nor the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs have opposed this measure. The Land Use Research Foundation (LURF), an advocacy group representing many of the State’s largest landowners, submitted opposing testimony which misleads the reader from the goal of SB 2476 SD1, which is to provide consumers the ability to make better, more informed decisions regarding lease arbitrations. Contrary to LURF’s statements:

- **SB 2476 SD1 does not change existing lease agreements.** This bill simply requires appraisers, acting as arbitrators, to file their award and related reports with the Bureau of Conveyances thus allowing public access to data heretofore kept solely in the hands of those who control the land.
- **SB 2476 SD1 is not “premature”** and the Legislature should not rely on the results of the unfunded SCR 90 (Session 2012), which was intended to study the macro effects of long-term ground leases on the overall economy of the State. SCR 90 will not address consumers’ access to market-making data or provide any additional consumer protection.
- **SB 2476 SD1 does alter existing leases.** Contrary to LURF’s assertion, ground leases throughout the State simply do not have confidentiality clauses restricting an appraiser, acting as an arbitrator, from filing the HRS 466K-6 required arbitration documentation with the Bureau of Conveyance.
- **SB 2476 SD1 does violate the “spirit and intent of USPAP’s Ethic’s rule.”** As proven in testimony on SB 1258 (2013), USPAP clearly states an appraiser may **disclose** assignment results to “third parties

as may be authorized by due process of law.” Furthermore, opposition testimony fails to recognize USPAP’s Rule of Jurisdictional Exception which is defined as: “An assignment condition established by applicable law or regulation which precludes an appraiser from complying with a part of USPAP.”

Added Expenses:

Opponents of this bill may argue that SB 2476 SD1 will cause additional expense in rendering and recording the records of awards. Over the past two years, appraisers have consistently raised their fees from roughly \$15,000 per arbitration to what is now close to \$50,000 per arbitration.

State Revenue:

In comparison to the fees charged by the appraiser/arbitrator as well as experts and attorneys, the cost of recordation at the Bureau of Conveyance starts in the \$30 range. These costs, in addition to creating a more informed and educated market, will accrue to the benefit of the State.

Vacating an Award:

Opponents of this bill seem to be afraid that SB 2476 SD1 will create a basis for lessees to vacate arbitration awards. Again, this is just not the case. The truth is that it remains extremely difficult to vacate the award of an arbitration panel. Arbitration awards are given wide deference by the courts 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.

Please pass SB 2476 SD1 to continue the work started with Act 227.

Mahalo

Michael Steiner

Michael Steiner

Executive Director, Citizens for Fair Valuation

Telephone: (808) 221-5955

Email: MSteiner@SteinerAssoc.com

lowen2-Nga

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 06, 2014 8:59 AM
To: waltestimony
Cc: cnrs@interpac.net
Subject: Submitted testimony for SB2476 on Mar 7, 2014 10:00AM

SB2476

Submitted on: 3/6/2014

Testimony for WAL on Mar 7, 2014 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
brian nakano	Chika Nakano Repair Shop	Support	No

Comments: My name is brian nakano and I own chika nakano repair shop in hilo Hawaii. My company employs 11 people. I strongly support passage of sb 2476 sd1. Sincerely, Brian Nakano Chika Nakano Repair

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

March 6, 2014

**HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014
COMMITTEE ON WATER & LAND**

**RE: Testimony in Support of SB 2476, SD1 – Relating to Real Estate Appraisals
Hearing: March 7, 2014, 10:00 am; Room 325
State Capitol, 415 South Beretania Street**

Aloha Chair Evans, Vice Chair Lowen and Members of the Committee,

My name is Jason Ideta and I am one of the owners at Pacific Jobbers Warehouse, Inc., which is located in Mapunapuna and employs 82 people.

My company is currently in the arbitration process with the largest commercial land holder in the state of Hawaii, Select Investment REIT. Having prior arbitration data available would really help me determine if I should settle or arbitrate.

I strongly support passage of SB 2476 SD1 as the recordation of arbitration awards and all of the documents that support the arbitration panel's decision will help open the mystery of how rents are set and provide information to consumers so we can all make better, more informed decisions.

Lessors are very familiar with the arbitration process and the appraisers who sit as arbitrators. As a course of business, they are party to numerous arbitrations and have unrestricted access to arbitration data. As a lessee, I am at a disadvantage and the lack of information limits my ability to make an informed decision.

SB 2476 SD1 will allow consumers, like me, to obtain arbitration data so we can better understand the market and make informed decisions, which will help to keep a local business like mines competitive with the national chains.

Please pass SB 2476.

Sincerely,

Jason Ideta
Pacific Jobbers Warehouse, Inc.
2809 Kaihikapu Street
jasoni@pjwhawaii.com
808-772-5922

JAMES W. Y. WONG

HONOLULU OFFICE

3737 Manoa Road
Honolulu Hawaii 96822
Phone: (808) 946-2966
FAX: (808) 943-3140

VIA EMAIL

lowen2@capitol.hawaii.gov

ANCHORAGE OFFICE

411 West 4th Avenue, Ste 200
Anchorage, Alaska 99501
Phone: (907) 278-3263
FAX: (907) 222-4852

March 6, 2014

Honorable Representative Cindy Evans, Chair
Honorable Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Water and Land

RE: TESTIMONY IN SUPPORT OF SB2476 – RELATING TO REAL ESTATE
APPRAISERS. HEARING SCHEDULED FOR FRIDAY, MARCH 7, 2014, AT
10:00 A.M., CONFERENCE ROOM 325

Dear Honorable Chair Cindy Evans, Vice Chair Nicole Lowen, and members of
the House Committee on Water and Land:

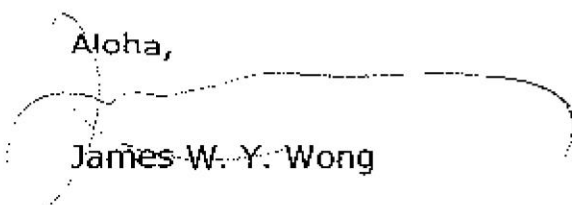
My name is James W. Y. Wong and I strongly support SB2476. If this
measure is passed, it will require the recordation of arbitration awards and
all of the documents that support the arbitration panel's decision will help
open the mystery of how rents are set and provide information to consumers
so we can all make better, more informed decisions.

Lessors are very familiar with the arbitration process and practically all
Lessees in Hawaii have a clause "if rental or fair market value cannot be
agreed by both Lessor and Lessee to resolve the issue, an arbitration clause
is enforced". Since all appraisers have access to these arbitrations, they
have the data more accessible than us as Lessees which puts the Lessees at
a disadvantage.

SB2476 will allow consumers, like me, to obtain arbitration data so we can
better understand the market and make informed decisions.

Please pass SB 2476.

Aloha,


James W. Y. Wong

KAPOLEI MEDICAL PARK

3737 Manoa Road • Honolulu Hawaii 96822
Telephone (808) 946-2966 • FAX: (808) 943-3140

VIA EMAIL

lowen2@capitol.hawaii.gov

March 6, 2014

Honorable Representative Cindy Evans, Chair
Honorable Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Water and Land

RE: TESTIMONY IN SUPPORT OF SB2476 – RELATING TO REAL ESTATE
APPRAISERS. HEARING SCHEDULED FOR FRIDAY, MARCH 7, 2014, AT
10:00 A.M., CONFERENCE ROOM 325

Dear Honorable Chair Cindy Evans, Vice Chair Nicole Lowen, and members of
the House Committee on Water and Land:


I strongly support SB2476. If this measure is passed, it will require the
recordation of arbitration awards and all of the documents that support the
arbitration panel's decision will help open the mystery of how rents are set
and provide information to consumers so we can all make better, more
informed decisions.

Lessors are very familiar with the arbitration process and practically all
Lessees in Hawaii have a clause "if rental or fair market value cannot be
agreed by both Lessor and Lessee to resolve the issue, an arbitration clause
is enforced". Since all appraisers have access to these arbitrations, they
have the data more accessible than us as Lessees which puts the Lessees at
a disadvantage.

SB2476 will allow consumers, like me, to obtain arbitration data so we can
better understand the market and make informed decisions.

Please pass SB 2476.

Aloha,



James W. Y. Wong

PARADISE PARK, INC.

3737 Manoa Road • Honolulu Hawaii 96822
Telephone (808) 946-2966 • FAX: (808) 943-3140

VIA EMAIL
lowen2@capitol.hawaii.gov

March 6, 2014

Honorable Representative Cindy Evans, Chair
Honorable Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Water and Land

RE: TESTIMONY IN SUPPORT OF SB2476 – RELATING TO REAL ESTATE
APPRAISERS. HEARING SCHEDULED FOR FRIDAY, MARCH 7, 2014, AT
10:00 A.M., CONFERENCE ROOM 325

Dear Honorable Chair Cindy Evans, Vice Chair Nicole Lowen, and members of
the House Committee on Water and Land:

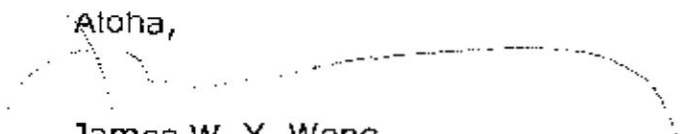
I strongly support SB2476. If this measure is passed, it will require the
recording of arbitration awards and all of the documents that support the
arbitration panel's decision will help open the mystery of how rents are set
and provide information to consumers so we can all make better, more
informed decisions.

Lessors are very familiar with the arbitration process and practically all
Lessees in Hawaii have a clause "if rental or fair market value cannot be
agreed by both Lessor and Lessee to resolve the issue, an arbitration clause
is enforced". Since all appraisers have access to these arbitrations, they
have the data more accessible than us as Lessees which puts the Lessees at
a disadvantage.

SB2476 will allow consumers, like me, to obtain arbitration data so we can
better understand the market and make informed decisions.

Please pass SB 2476.

Aloha,



James W. Y. Wong

Waialae Plaza

3737 Manoa Road • Honolulu Hawaii 96822
Telephone (808) 946-2966 • FAX: (808) 943-3140

VIA EMAIL

lowen2@capitol.hawaii.gov

March 6, 2014

Honorable Representative Cindy Evans, Chair
Honorable Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Water and Land

RE: TESTIMONY IN SUPPORT OF SB2476 – RELATING TO REAL ESTATE
APPRAISERS. HEARING SCHEDULED FOR FRIDAY, MARCH 7, 2014, AT
10:00 A.M., CONFERENCE ROOM 325

Dear Honorable Chair Cindy Evans, Vice Chair Nicole Lowen, and members of
the House Committee on Water and Land:

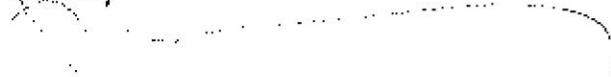
I strongly support SB2476. If this measure is passed, it will require the
recordation of arbitration awards and all of the documents that support the
arbitration panel's decision will help open the mystery of how rents are set
and provide information to consumers so we can all make better, more
informed decisions.

Lessors are very familiar with the arbitration process and practically all
Lessees in Hawaii have a clause "if rental or fair market value cannot be
agreed by both Lessor and Lessee to resolve the issue, an arbitration clause
is enforced". Since all appraisers have access to these arbitrations, they
have the data more accessible than us as Lessees which puts the Lessees at
a disadvantage.

SB2476 will allow consumers, like me, to obtain arbitration data so we can
better understand the market and make informed decisions.

Please pass SB 2476.

Aloha,


James W. Y. Wong

WAIAKAMILO SHOPPING CENTER

3737 Manoa Road • Honolulu Hawaii 96822
Telephone (808) 946-2966 • FAX: (808) 943-3140

VIA EMAIL
lowen2@capitol.hawaii.gov

March 6, 2014

Honorable Representative Cindy Evans, Chair
Honorable Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Water and Land

RE: TESTIMONY IN SUPPORT OF SB2476 – RELATING TO REAL ESTATE APPRAISERS. HEARING SCHEDULED FOR FRIDAY, MARCH 7, 2014, AT 10:00 A.M., CONFERENCE ROOM 325

Dear Honorable Chair Cindy Evans, Vice Chair Nicole Lowen, and members of the House Committee on Water and Land:

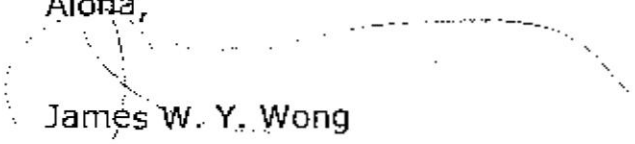
I strongly support SB2476. If this measure is passed, it will require the recordation of arbitration awards and all of the documents that support the arbitration panel's decision will help open the mystery of how rents are set and provide information to consumers so we can all make better, more informed decisions.

Lessors are very familiar with the arbitration process and practically all Lessees in Hawaii have a clause "if rental or fair market value cannot be agreed by both Lessor and Lessee to resolve the issue, an arbitration clause is enforced". Since all appraisers have access to these arbitrations, they have the data more accessible than us as Lessees which puts the Lessees at a disadvantage.

SB2476 will allow consumers, like me, to obtain arbitration data so we can better understand the market and make informed decisions.

Please pass SB 2476.

Aloha,


James W. Y. Wong

DARRYL P. WONG

1836 Punahou Street • Honolulu, Hawaii 96822 • (808) 946-2966

VIA EMAIL

lowen2@capitol.hawaii.gov

March 6, 2014

Honorable Representative Cindy Evans, Chair
Honorable Representative Nicole E. Lowen, Vice Chair
Members of the House Committee on Water and Land

RE: TESTIMONY IN SUPPORT OF SB2476 – RELATING TO REAL ESTATE APPRAISERS. HEARING SCHEDULED FOR FRIDAY, MARCH 7, 2014, AT 10:00 A.M., CONFERENCE ROOM 325

Dear Honorable Chair Cindy Evans, Vice Chair Nicole Lowen, and members of the House Committee on Water and Land:

My name is Darryl P. Wong and I strongly support SB2476. If this measure is passed, it will require the recordation of arbitration awards and all of the documents that support the arbitration panel's decision will help open the mystery of how rents are set and provide information to consumers so we can all make better, more informed decisions.

Lessors are very familiar with the arbitration process and practically all Lessees in Hawaii have a clause "if rental or fair market value cannot be agreed by both Lessor and Lessee to resolve the issue, an arbitration clause is enforced". Since all appraisers have access to these arbitrations, they have the data more accessible than us as Lessees which puts the Lessees at a disadvantage.

SB2476 will allow consumers, like me, to obtain arbitration data so we can better understand the market and make informed decisions.

Please pass SB 2476.

Aloha,


Darryl P. Wong

lowen2-Nga

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 06, 2014 11:43 AM
To: waltestimony
Cc: cvancamp3@hawaii.rr.com
Subject: Submitted testimony for SB2476 on Mar 7, 2014 10:00AM

SB2476

Submitted on: 3/6/2014

Testimony for WAL on Mar 7, 2014 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carol A. VanCamp	Individual	Support	No

Comments: Our nearly 300-member organization strongly supports SB2476 as it will provide more transparency in the renewal process for state land lessees. The ultimate goal should be that the process is fair for all parties and having this data available will be a step in that direction.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 05, 2014 11:56 PM
To: waltestimony
Cc: jwmccully54@gmail.com
Subject: Submitted testimony for SB2476 on Mar 7, 2014 10:00AM

SB2476

Submitted on: 3/5/2014

Testimony for WAL on Mar 7, 2014 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James McCully	Individual	Support	No

Comments: Aloha Chair Evans Please support this bill, which is essentially the companion bill to H 1830. It is critical to fully implementing the reforms contained in HRS466k-6. Without recordation of the Awards and Report of Awards generated by appraisers when serving on arbitration panels the public can never gain the benefit of this important market information. Mahalo for your Support James McCully

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov