

# 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  
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MICHAEL STEINER, EXEC. DIRECTOR

February 22, 2014

HOUSE OF REPRESENTATIVES  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2014

COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair

**RE: Testimony in Support of HB 1830 HD1 – Relating to Real Estate Appraisals**  
**Hearing: February 24, 2014, 2:10 pm; Room 325**  
**State Capitol, 415 South Beretania Street**

Aloha Chair McKelvey, Vice Chair Kawakami 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 House Bill 2043 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 provide valuation reports, rotate between the roles of experts, presenting testimony to an arbitration panel or sitting as an arbitrator upon a panel. 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 HB 1830 HD1, which is to provide consumers the ability to make better, more informed decisions regarding lease arbitrations. Contrary to LURF’s statements:

- **HB 1830 HD1 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.
- **HB 1830 HD1 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.
- **HB 1830 HD1 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.
- **HB 1830 HD1 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 HB 1830 HD1 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 HB 1830 HD1 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 HB 1830 HD1 to continue the work started with Act 227.

Mahalo



Michael Steiner

Executive Director, Citizens for Fair Valuation

Telephone: (808) 221-5955

Email: [MSteiner@SteinerAssoc.com](mailto:MSteiner@SteinerAssoc.com)





LAND USE RESEARCH  
FOUNDATION OF HAWAII

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

February 23, 2014

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

**Opposition to HB 1830, Relating to Real Estate Appraisers. (Requires real estate appraisers, acting as arbitrators, to record arbitration awards, the record of an award, and any supplementary, dissenting, or explanatory opinions with the bureau of conveyances within a specified period of time. Specifies that information recorded is a public record. Effective July 1, 2020).**

**Monday, February 24, 2014 at 2:10 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 express its **strong OPPOSITION to HB 1830**, based on, among other things, the following:

- **HB 1830, HD 1, requires confidential information in lease arbitration awards be publicly recorded and declares that the confidential information recorded is a public record. Thus this measure alters and violates the confidentiality clauses of existing lease contracts, and therefore violates the Contracts Clause of the United States Constitution.** (*See, HRPT Properties Trust v. Lingle*, 715 F.Supp.2d 1115 [D. Hawaii 2010]; also 2012 LRB Report, Findings 2, 3 and 4; and Recommendation , pp. 18-19)
- **There is no factual justification for HB 1830, HD1, as the latest LRB Report 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.”); and this measure includes numerous **factual inaccuracies.** (See, 2003 Legislative Reference Bureau Report No. 5, “*Real Property Leases*,” by Eric Maehara, Research Attorney, and 2012 LRB Report, Finding #5, p. 19).**

- **HB 1830, HD1, is premature, the Legislature should fund, and await the completion of the Legislative Reference Bureau (“LRB”) Report required by SCR 90, SD1 (2012).** (See SCR 90, SD1 (2012) and the *2013 LRB Report required by SCR 90, SD1 (2012)*, Executive Summary, p. vii and Recommendation, p. 20)
- **HB 1830, HD1, should also be referred to the Department of the Attorney General for a legal opinion regarding whether it violates the U.S. Constitution; and should also be referred to the House Committees on the Judiciary (JUD) and Finance (FIN).** This bill should be reviewed by the House JUD and FIN, due to the legal issues regarding alteration of existing lease contracts, and the impact on the State lease programs administered by the Department of Land and Natural Resources and other state departments and the State budget.
- **The bill violates the spirit and intent of the USPAP Ethics rule relating to confidentiality.**

**HB 1830, HD1.** This measure applies to existing private lease contracts with confidentiality clauses. It requires real estate appraisers, acting as arbitrators for those existing private leases with confidentiality clauses, to record arbitration awards, the record of an award, and any supplementary, dissenting, or explanatory opinions with the bureau of conveyances within a specified period of time. Specifies that the information recorded (related to any private leases with confidentiality clauses) is a public record; and that violation of the recording requirements in this measure constitutes a violation for purposes of licensing or certification as a real estate appraiser. Effective July 1, 2020

Many existing leases in Hawaii provide for confidentiality of the terms relating to the lease and lease rents. 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 HB 1830, HD1**, based upon the following:

- **This measure alters and violates the confidentiality clauses of existing lease contracts, and therefore violates the Contracts Clause of the United States Constitution.** 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 Hawaii legislation that altered the terms of existing contracts, the U.S. District Court, District of Hawaii (“Court”) recently 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.” (*See, HRPT Properties Trust v. Lingle*, 715 F.Supp.2d 1115 [D. Hawaii 2010]) While inapplicable to this bill, the Court also held that Act 189 unfairly targeting one lessor, HRPT, and thus also violated the Equal Protection Clause of the U.S. Constitution.

LURF believes that a court would find this measure 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. HB 1830, HD1, would violate such existing contract terms, by requiring publicizing such information. A court would likely rule that this measure, 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 Legislative Reference Bureau Report No. 5, “*Real Property Leases*,” by Eric Maehara, Research Attorney (“*2003 LRB Report on Legislation Regarding Real Property Leases*”) does not support the allegations in this measure, in fact, just the opposite.

Furthermore, in 2012, 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*.” In 2013, the Legislative Reference Bureau (“LRB”) prepared the *LRB Report required by SCR 90, SD1* (“*2013 LRB Report required by SCR 90, SD1*”) and in that report, the LRB recommended that the Senate and the House fund such an economic analysis during the 2013 session.

This measure totally ignores the findings of the *2003 LRB Report on Legislation Regarding Real Property Leases* and the also ignores the recommendations of the *2013 LRB Report required by SCR 90, SD1*.

LURF believes that a court would find that there are no facts and economic analysis to justify passage of HB 1830, HD1, based on the total lack of credible factual basis or economic analysis to support this measure, and given the Legislature’s own SCR 90, SD1 (2012) and the *2013 LRB Report required by SCR 90, SD1*, which urges an economic analysis relating to the exact issue that is the basis of this measure.

- **There is no factual justification for this measure.** The bill includes numerous undocumented assertions and factual inaccuracies which are inconsistent with the latest *2003 LRB Report on Legislation Regarding Real Property Leases*, which 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.”

The *2003 LRB Report on Legislation Regarding Real Property Leases* did not find any problems with the lease arbitration and appraisal process, and concluded that industrial and commercial lease rents in Hawaii are a result of the supply and demand: “*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, 2003 LRB Report on Legislation Regarding Real Property Leases, and 2013 LRB Report, Finding #5, p. 19)*

- **This measure is premature, the Legislature should fund, and await the completion of the 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.”** In 2012, both the Senate and the House passed SCR 90, SD1 (2012), which requested that the LRB 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. SCR 90, SD1 (2012), also required LRB to submit a final report of the economic analysis, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2013.

The 2013 LRB Report required by SCR 90, SD1, which was submitted to the Legislature for the 2013 session, stated that it 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 this measure, 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.

- **This measure violates the spirit and intent of the USPAP Ethics rule relating to confidentiality.** Act 227, Session Laws of Hawaii 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.

Major ethical conflicts will arise whenever lease contracts which are subject to an appraisal and arbitration proceedings include confidentiality clauses. While there may be local exceptions to this USPAP Ethics Rule – this measure violates the spirit and intent of the USPAP Ethics Rule. We do not believe that the legislature should claim a local exception, and pass a bill that violates the spirit and intent of the USPAP Ethics Rules relating to confidentiality.

**Conclusion.** For all of the reasons set forth above, LURF believes that the intent and application of HB 1830, HD1, is not factually justified, is premature, 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 HB 1830, HD1.**



**February 22, 2014**

**THE HOUSE  
State Capitol  
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**RE: Testimony in Support of HB 1830 HD1 – Relating to Real Estate Appraisals  
Hearing: February 24, 2014, 2:10 pm; Room 325**

Aloha Chair McKelvey, Vice Chair Kawakami 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.

As my company is currently in lease reset talks and arbitration is possible, having prior arbitration data available would really help me determine if I should settle or arbitrate.

I strongly support passage of HB 1830 HD1 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.

HB 1830 HD1 will allow consumers, like me, to obtain arbitration data so we can better understand the market and make informed decisions.

Please pass HB 1830 HD1.

Sincerely,

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



## kawakami3-Benigno

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 20, 2014 4:54 PM  
**To:** CPCtestimony  
**Cc:** ctoma@jnautomotive.com  
**Subject:** Submitted testimony for HB1830 on Feb 24, 2014 14:10PM

### **HB1830**

Submitted on: 2/20/2014

Testimony for CPC on Feb 24, 2014 14:10PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joseph Nicolai	JN Group, Inc.	Support	No

Comments: I strongly support HB 1830 as it will promote a more open and transparent market place.

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](mailto:webmaster@capitol.hawaii.gov)

# KAPOLEI MEDICAL PARK

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

VIA FACSIMILE  
586-8437

February 21, 2014

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

RE: TESTIMONY IN SUPPORT OF HB1830 HD1 – RELATING TO REAL  
ESTATE APPRAISERS. HEARING SCHEDULED FOR MONDAY,  
FEBRUARY 24, 2014, AT 2:10 P.M., CONFERENCE ROOM 325

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

I strongly support HB1830 HD1. 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.

HB1830 HD1 will allow consumers, like me, to obtain arbitration data so we  
can better understand the market and make informed decisions.

Please pass HB1830 HD1.

Aloha,

James W. Y. Wong



# PARADISE PARK, INC.

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

VIA FACSIMILE  
586-8437

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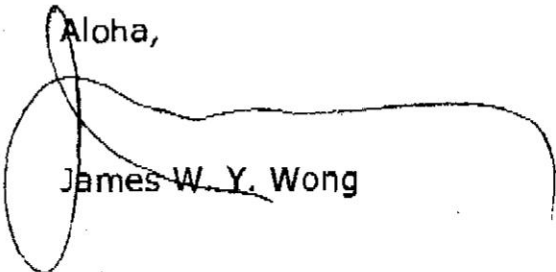
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Please pass HB1830 HD1.

Aloha,



James W. Y. Wong

# WAIAKAMILO SHOPPING CENTER

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

VIA FACSIMILE  
586-8437

February 21, 2014

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Honorable Representative Derek S. K. Kawakami, Vice Chair  
Members of the House Committee on Consumer Protection  
and Commerce

**RE: TESTIMONY IN SUPPORT OF HB1830 HD1 - RELATING TO REAL  
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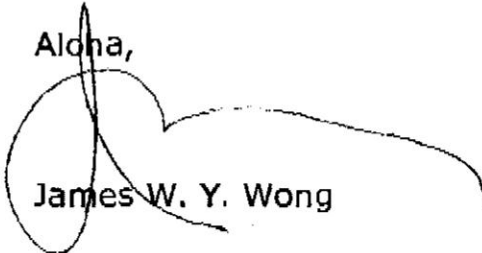
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Please pass HB1830 HD1.

Aloha,

  
James W. Y. Wong



# Waialae Plaza

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

VIA FACSIMILE  
586-8437

February 21, 2014

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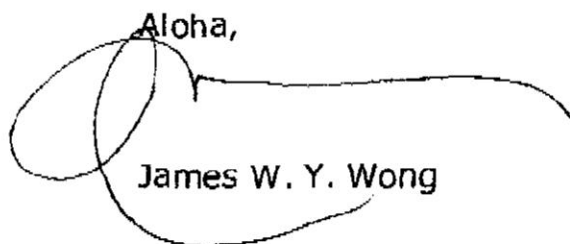
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Aloha,



James W. Y. Wong

# JAMES W. Y. WONG

## HONOLULU OFFICE

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

Via Facsimile  
586-8437

## ANCHORAGE OFFICE

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

February 21, 2014

Honorable Representative Angus I. K. McKelvey, Chair  
Honorable Representative Derek S. K. Kawakami, Vice Chair  
Members of the House Committee on Consumer Protection  
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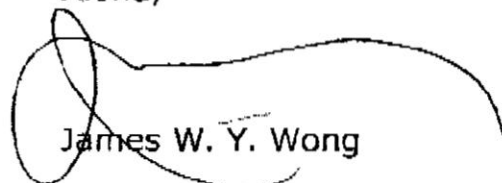
My name is James W. Y. Wong and I strongly support HB1830 HD1. If this  
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Aloha,



James W. Y. Wong

**kawakami3-Benigno**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 21, 2014 10:00 AM  
**To:** CPCtestimony  
**Cc:** okstender@gmail.com  
**Subject:** Submitted testimony for HB1830 on Feb 24, 2014 14:10PM

**HB1830**

Submitted on: 2/21/2014

Testimony for CPC on Feb 24, 2014 14:10PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
oswald k. stender	self-employed	Support	No

Comments: I am a licensed real estate broker and real estate consultant and I strongly support HB1830. I represent lessees in their negotiating rental resets with their Lessors. The problem is trying to deal with Lessors on a level playing field. The lessors have locked up all the attorneys and appraisers and the lessors have an attitude of "take or leave it". This bill will require transparency of information regarding comps and will require lessor's appraisers to follow USPAP thus leveling the playing field on land appraisals. Mahalo for your support on this bill. OK Stender,

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.

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February 11, 2014

**HOUSE OF REPRESENTATIVES  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2014**

**COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

**Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair**

**RE: Testimony in Support of HB 2043 – Relating to Real Estate Appraisals  
Hearing: February 12, 2014, 2:10 pm; Room 325  
State Capitol, 415 South Beretania Street**

Aloha Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

My name is Phillip J. Silich and I own Bacon Universal Company, Inc., which is located in 918 Ahua Street, Mapunapuna and employs approximately 100 people.

My company, like so many other Leasehold tenants is severely disadvantaged when entering into negotiation to extend our lease as we at present simply have no knowledge as to how our neighbors have been assessed. On the contrary the Lessor now has full knowledge of every Lessee valuation and thus has a grossly unfair competitive advantage. Having prior arbitration data available would greatly help me determine if I should settle or arbitrate.

I strongly support passage of HB 2043 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.

HB 2043 will allow consumers, like me, to obtain arbitration data so we can better understand the market and make informed decisions.

Please pass HB 2043.

Sincerely,

Phillip J. Silich  
President & CEO  
Bacon Universal Company, Inc.  
918 Ahua Street  
Honolulu, HI 96819  
Email: [psilich@baconuniversal.com](mailto:psilich@baconuniversal.com)  
Phone: 808-839-7202 ext. 2400



## kawakami3-Benigno

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 23, 2014 2:00 PM  
**To:** CPCtestimony  
**Cc:** jwmccully54@gmail.com  
**Subject:** Submitted testimony for HB1830 on Feb 24, 2014 14:10PM

### HB1830

Submitted on: 2/23/2014

Testimony for CPC on Feb 24, 2014 14:10PM in Conference Room 325

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

Comments: Aloha Chair McKelvey The Chair and many members of this committee were active in the development and passage of Act 227, 2011 , which was to the benefit of Hawaii's consumers. HB1830 is vitally important to implementing the reforms in appraisal practice addressed in 466k-6, which Act 227 mandated. Without full release through recordation the Awards and Reports of lease reset Arbitrations conducted by appraisers may remain unseen, to the detriment of both stakeholders and the economy at large. This bill will allow leasehold market data to be accessed by any interested parties. Currently just the appraisers, attorneys and landowners, essentially the very experts who generate the controversy, have that data available. When a rent reset amount is proposed to a lessee, usually once every 10 years, that lessee has no way to research and determine if a truly "Fair Market Rent" amount has been offered by the Lessor. With this bills passage a lessee can have a report generated to determine whether or not to accept the rent proposal, and most critically can verify the data themselves or by hiring an expert. I urge you to improve 466k-6 by passing this bill as it has been amended. Mahalo for your continued support James McCully Mahalo James McCully

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