

HB 1830 HD2

Measure Title: RELATING TO REAL ESTATE APPRAISERS.

Report Title: Real Estate Appraisers; Arbitration Awards;
Recordation

Description: 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. Specifies that information recorded is a public record. Effective 7/1/2112. (HD2)

Companion:

Package: None

Current Referral: CPN

Introducer(s): ONISHI, NAKASHIMA, SAIKI

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 12, 2014

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

Committee on Commerce and Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, vice Chair

RE: Testimony in Support of HB 1830 HD2 - Relating to Real Estate Appraisals
Hearing: March 14, 2014, 9:00 am; Room 229
State Capitol, 415 South Beretania Street

Aloha Chair Baker, Vice Chair Taniguchi 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 1830 HB2 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.

Language Amendments:

While in strong support of this bill, I would respectfully request two technical adjustments be made to HB 1830 HD2 to bring it in line with SB 2476 SD1, which has already passed this Committee.

1. Please amend the initial line to: **[[§466K-6]] Appraisers in arbitration proceedings[-]; recordation; non-confidentiality;** and,
2. Please amend Section 4 to read: **SECTION 4. This Act shall take effect upon its approval.**

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 HD2, which is to provide consumers the ability to make better, more informed decisions regarding lease arbitrations. Contrary to LURF's statements:

- **HB 1830 HD2 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 HD2 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 HD2 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 HD2 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 HD2 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 HD2 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 HD2 to continue the work started with Act 227.

Mahalo



Michael Steiner

Executive Director, Citizens for Fair Valuation

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**CENTRAL PARK COMMUNITY ASSOCIATION
99-1046 IWAENA STREET
AIEA, HAWAII 96701**

March 13, 2014

**The Twenty-seventh Legislature
Regular Session of 2014
Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair**

**Re: Testimony in Support of HB 1830 HD2-Relating to Real Estate Appraisals
Hearing: March 14, 2014, 9:00 am; Room 229
State Capitol, 415 South Beretania Street**

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

My name is William S. Alexander and I own Earle M. Alexander, Ltd, a lessee of the Queen Emma Land Company (QEL) in Halawa Valley at 99-1046 Iwaena St. I am also the President of the Central Park Community Association (CPCA), a business association of land lessees in Halawa Valley's Central Park light industrial area.

My company and a number of other CPCA member businesses are currently and have previously arbitrated or negotiated land lease rent resets with QEL and Kamehameha Schools/Bishop Estate (KS/BE) over the past four and a half years. Having prior arbitration data available to us as lessees before and during these contentious and difficult arbitrations and negotiations would have been extremely helpful to us as lessees and to the lessors in deciding whether to settle through negotiation or to go to arbitration. Such data would also have helped both parties in preparing for arbitration and have been useful to the arbitrators in reaching a decision.

I strongly support passage of HB 1830 HD2 but would ask you to amend the effective date to "upon passage" to ensure the recordation of arbitration awards and the related supporting documentation be made available to the public at long last.

Please clarify the effective date and pass this bill.

Thank you for your support in bringing transparency to a dark process.

Sincerely,

**William S. Alexander, President
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March 12, 2014

THE TWENTY-SEVENTH LEGISLATURE
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Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, vice Chair

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Hearing: March 14, 2014, 9:00 am; Room 229
State Capitol, 415 South Beretania Street

Aloha Chair Baker, Vice Chair Taniguchi 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 negotiations 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.

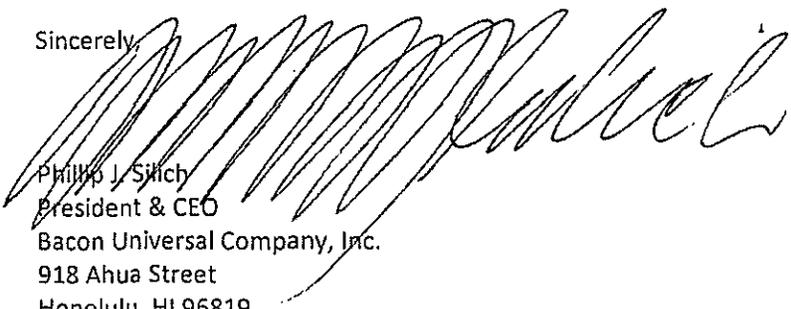
I strongly support passage of HB 1830 HD2 as the recordation of arbitration awards and all of the documents that support the arbitration panel's decision will help open the mystery of how rents are set and provide information to consumers so we can all make better, more informed decisions.

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 HD2 will allow consumers, like me, to obtain arbitration data so we can better understand the market and make informed decisions.

Please pass HB 1830 HD2.

Sincerely,



Phillip J. Silich
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HB1830

Submitted on: 3/13/2014

Testimony for CPN on Mar 14, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Carol A. VanCamp	Japanese Chamber of Commerce & Industry	Support	No

Comments: Our nearly 300-member organization supports this bill as a step in the right direction to providing more transparency and relevant market data to the leasing process.

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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HB1830

Submitted on: 3/13/2014

Testimony for CPN on Mar 14, 2014 09:00AM in Conference Room 229

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

Comments: Please support this bill,It's very important for my business.

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HB1830

Submitted on: 3/13/2014

Testimony for CPN on Mar 14, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
rodney kim	siba	Support	No

Comments: we strongly support this bill

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