

**HB2288**

**HD1 SD1**



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March 22, 2010

**The Honorable Brian T. Taniguchi**  
Senate Committee on Judiciary and Government Operations  
State Capitol, Room 219  
Honolulu, Hawaii 96813

**RE: H.B. 2288, HD1, SD1 - Relating to Private Transfer Fees**

**HEARING: Tuesday, March 23, 2010 at 9:30 a.m.**

Dear Chair Taniguchi and Members of the Committee:

I am Gary Slovin, an attorney for Goodwill Anderson Quinn & Stifel, submitting comments on behalf of the Hawaii'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii'i, and its 8,800 members in Hawaii'i. HAR supports H.B. 2288, HD1, SD1. H.B. 2288, HD1, SD1 prohibits the imposition of fees for a future transfer of real property, with certain limited exceptions.

A Private Transfer Fee ("PTF") is a fee imposed by a private party which requires the payment of a certain amount (usually a percentage of sales price), potentially in perpetuity. PTFs may be imposed via deed restrictions or covenants. Sometimes, PTFs may be imposed as part of a new housing development upon the initial and subsequent purchasers of the property. These restrictions run with the land, and may not necessarily be disclosed to subsequent buyers until the closing of a property sale.

Presently, there is no regulation over the imposition of PTFs, no limitation on the application of the fees, and no accountability or oversight of the recipients of the fees. HAR strongly supports prohibiting PTFs because they decrease housing affordability, serve no public purpose, and provide no benefit to property purchasers.

HAR believes that, left unregulated, PTFs can be misused, and may create significant financial barriers to homeownership. Because PTFs are funds due at closing, they can be a substantial burden on real property buyers, who are already financially committed to the costs of down payments, appraisals, title insurance, surveys, recording costs, mortgage points, attorney's fees, conveyance taxes, and other taxes and fees.

By supporting a prohibition on PTFs, HAR does not intend for any legitimate fees that may be part of typical real estate transactions to be inadvertently captured by the bill. HAR has met with a broad range of interested parties (including representatives from the banking industry, condominium associations, title companies, developers and financial services) to make sure that all legitimate fees are exempted from this measure.





HAR has worked with various interested parties regarding the exemptions language, and believes that H.B. 2288 HD1, SD1, as written, addresses the various stakeholders' concerns. We believe that these concerns have been addressed in the SD1, but would respectfully request that one clarifying amendment be made as follows to the exemption relating to shared appreciation for affordable housing:

(5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:

(A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives; or

(B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or

(C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller, **provided such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;**

We feel that including the 10-year limitation language is beneficial because, while it is typical for government-affiliated affordable housing projects to already include a 10-year restriction, other affordable housing projects would not be subject to a time limitation. Therefore, we believe that this added language would close a potential loophole that may exist in the language as presently drafted.

We have spoken to Alexander & Baldwin (A&B), the proponent of the exemption, and have confirmed that A&B is agreeable to the clarifying language. We have also discussed this amendment with Senator Baker, and understand that she does not have an issues with the added language.

We respectfully request that the Committee pass this measure with the amendments suggested above. Thank you for the opportunity to testify.



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Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 2288, SD1 Relating to Private Transfer Fees  
(Provided by Mark Fox, Director of External Affairs)  
Senate Committee on Judiciary and Government Operations  
Tuesday, March 23, 2010, 9:30AM, Room 016

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy supports H.B. 2288, SD1 to protect against inappropriate or unscrupulous transfer fees that are attached as covenants and triggered upon future land sales.

In particular, we appreciate and support the addition by the Committee on Commerce and Consumer Protection of the amendment to allow legitimate transfer fees associated with the stewardship of conservation interests in certain real property.

Nonprofit conservation organizations often work with willing private landowners to place conservation easements on lands. These conservation easements run with the land and limit development and other uses of that land in order to protect the land's conservation, open space, agricultural, historic, and/or cultural values. Under federal law, nonprofit organizations that hold permanent conservation easements are required to annually monitor and, if necessary, enforce the easement to ensure that the landowner continues to abide by the easement terms. Oftentimes, conservation easements will include provisions for a transfer fee when portions of a property are transferred to a third party. Such transfers increase the nonprofits' monitoring and enforcement responsibilities and costs; thus, the transfer fee to cover those increased costs.

The amendment added to the bill by the prior committee above will allow transfer fees only on conservation interest transactions that would also meet the rigorous purpose, interest type, and organizational requirements of the federal tax laws related to tax deductions.

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**HB 2288 HD1 SD1  
RELATING TO PRIVATE TRANSFER FEES**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**MARCH 23, 2010**

Chair Taniguchi and Members of the Senate Committee on Judiciary & Government Operations:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 2288 HD1 SD1 "A BILL FOR AN ACT RELATING TO PRIVATE TRANSFER FEES."

We support this bill.

The purpose of this bill is to prohibit deed restrictions or covenants that require a transferee of real property to pay transfer fees to the person imposing the deed restriction or covenant in connection with a transfer of real property. The bill also provides exemptions for certain usual and customary fees, assessments, or charges encompassed in various real property transactions. We concur with the intent and purpose of this bill and believe that the exemptions contained in this bill will enable the assessment of legitimate charges that arise from the transfer of real property.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.