

Honolulu, Hawaii

MAR 19 2014

RE: H.B. No. 1830
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 1830, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO REAL ESTATE APPRAISERS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require arbitration awards, records of awards, and related supporting materials under chapter 466K, Hawaii Revised Statutes, to be public records;
- (2) Require licensed or certified real estate appraisers who are named or appointed in a submission agreement to appraise or arbitrate entered into after July 1, 2014, to record with the Bureau of Conveyances all arbitration awards; records of awards, if separately issued; and any supplementary, dissenting, or explanatory opinions on awards within ninety days of the notification of the determination of the award to the parties;
- (3) Specify that no agreement between the parties or the appraisers acting as arbitrators may preclude or deny the requirement to record an award, the record of the award, or any supplementary, dissenting, or explanatory opinions; and



- (4) Clarify that failure to comply is a violation of real estate appraiser license or certification requirements.

Your Committee received testimony in support of this measure from Citizens for Fair Valuation; Central Park Community Association; Bacon-Universal Company, Inc.; Japanese Chamber of Commerce and Industry of Hawaii; Chika Nakano Repair Shop, Inc.; Sand Island Business Association; McCully Works, Inc.; David S. De Luz, Sr. Enterprises, Inc.; Kapolei Medical Park Venture; Waiakamilo Shopping Center; Waialae Plaza; and one individual. Your Committee received testimony in opposition to this measure from the Land Use Research Foundation of Hawaii.

Your Committee finds that Act 227, Session Laws of Hawaii 2011 (Act 227), was intended to bring data, openness, and transparency to a market controlled by few landlords and very few commercial and industrial appraisers. Unfortunately, since the enactment of Act 227, many appraisers acting as arbitrators have required confidentiality clauses to be added to submission agreements, which govern arbitration between the parties. These confidentiality clauses frustrate the legislative intent of Act 227. Your Committee further finds that the development of an open market valuation process requires that these arbitration awards, records of awards, and related supporting materials must be public records.

Your Committee additionally finds that this measure does not change existing lease agreements and therefore is not in violation of the Contracts Clause of the United States Constitution. Rather, this measure requires appraisers acting as arbitrators to file arbitration reports with the Bureau of Conveyances, thereby allowing public access to data that has previously been kept solely in the hands of those who control the land.

Your Committee also finds that Act 227 requires appraisers in arbitration proceedings to certify compliance with the most current Uniform Standards of Professional Appraisal Practice (USPAP). Your Committee notes that USPAP has an exception to its confidentiality rule, which provides that an appraiser must not disclose confidential information to anyone other than "third parties as may be authorized by due process of law." Act 227's requirement for appraisers acting as arbitrators to report the basis of an award would therefore fall under this exception permitted by USPAP.

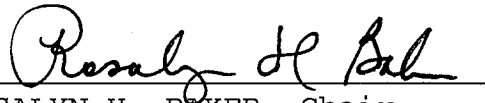


Your Committee has amended this measure by:

- (1) Amending the purpose section for clarity;
- (2) Inserting an effective date of upon approval; and
- (3) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1830, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1830, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1830 HD2	CPN	3/14/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
TANIGUCHI, Brian T. (VC)				/
NISHIHARA, Clarence K.	/			
WAKAI, Glenn				/
SLOM, Sam	/			
TOTAL	3			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;">Clarence K. Nishihara</div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes