

Honolulu, Hawaii

, 2009

APR 30 2009

RE: S.B. No. 764
S.D. 2
H.D. 2
C.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 764, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO REAL PROPERTY,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to alleviate the economic burden on lessees of certain commercial, industrial, and agricultural properties by:

- (1) Requiring, for commercial and industrial leases that include a provision that rental amounts shall be based on a "fair and reasonable" annual rent, that the provision shall be construed to require that rent be fair and reasonable to both the lessor and the lessee, taking into account all relevant attendant circumstances;



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- (2) Requiring, for leases of agricultural lands classified by the Land Study Bureau as Class A or B in counties with a population of over 500,000 where the lessee has made improvements or is seeking to make improvements to the land, that renegotiations of the lease shall include an extension of the lease for not less than seventy-five per cent of the original lease term; and
- (3) Prohibiting the amendment of a land use district boundary for Class A or B agricultural lands where:
 - (A) A farming operation as defined in section 165-2, Hawaii Revised Statutes, is being conducted on the land;
 - (B) The land is important for agriculture based on the stock of similarly situated lands in the area;
 - (C) The district boundary amendment would harm the productivity or viability of existing agricultural activity in the area; and
 - (D) The district boundary amendment would cause fragmentation of or intrusion of nonagricultural uses into largely intact areas of Class A and B agricultural lands.

Your Committee finds that small businesses are essential to the strength and diversity of Hawaii's economy. Your Committee further finds that despite their contribution to the State's economy, small businesses are at a disadvantage in terms of land ownership since the commercial and industrial properties that exist within the State's urban districts are primarily owned by a few landowners who lease parcels of land to small businesses. Your Committee finds that the proximity of small businesses to urban communities is a stabilizing factor, in terms of both localized economy and neighborhood character, that is especially important during the current recessionary period.

Your Committee finds that this measure will help to stabilize Hawaii's economy by addressing some of the burdensome or vague provisions of existing commercial and industrial leases of certain lands within urban districts without substantial reduction in the economic benefit to landowners, without impairing existing lease contracts, and without the taking of any property rights without due process of law.



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Your Committee has amended this measure by:

- (1) Deleting the portions of this measure that apply to agricultural lands;
- (2) Deleting provisions that specified that interpretation of "fair and reasonable" rental amount shall include consideration of:
 - (A) Past renegotiation practices and policies throughout the previously renegotiated lease rents; and
 - (B) The gross income generated by the lessee on the renegotiation date;
- (3) Specifying that the renegotiation of rent provisions shall apply to a lessee who is a master lessee only if:
 - (A) The master lessee agrees to limit any sublease rental amounts renegotiated or renewed to the lesser of the "fair and reasonable" amount or the rental amount as calculated under the renewal or renegotiation provisions of the sublease; or
 - (B) The master lessee agrees to make a good faith effort to require a sublessor who subleases to another person to limit any sublease rental amount renegotiated or renewed to the lesser of the "fair and reasonable" amount or the rental amount as calculated under the renewal or renegotiation provisions of the sublease;
- (4) Defining "sublease" to mean a conveyance subleasing privately owned land by a master lessee or sublessor to any person or entity in consideration of a return of rent or other remuneration;
- (5) Adding a savings clause;
- (6) Changing the effective date to July 1, 2009;
- (7) Adding a provision to repeal this Act on June 30, 2010 and specifying that this Act does not apply to any lease or sublease scheduled for renegotiation after June 30, 2010; and



- (8) Making technical, nonsubstantive changes for the purpose of clarity and accuracy.

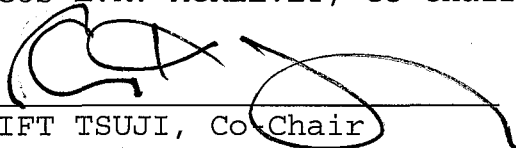
As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 764, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 764, S.D. 2, H.D. 2, C.D. 1.


Respectfully submitted on behalf
of the managers:

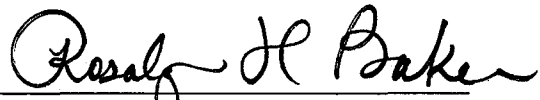
ON THE PART OF THE HOUSE

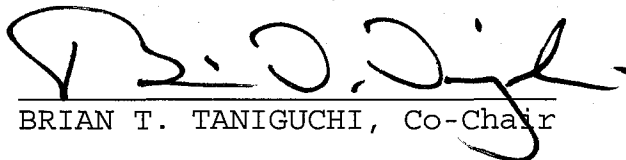
ON THE PART OF THE SENATE


ANGUS L.K. MCKELVEY, Co-Chair


CLIFT TSUJI, Co-Chair


JON RIKI KARAMATSU, Co-Chair


ROSALYN H. BAKER, Chair

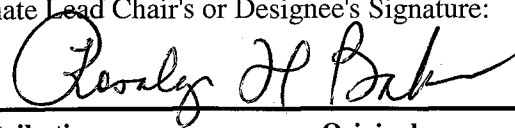
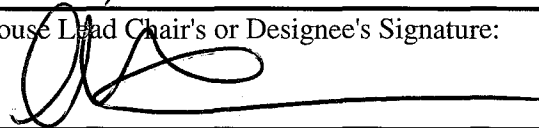

BRIAN T. TANIGUCHI, Co-Chair



Hawaii State Legislature

CCR 91

Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: SB 764, SD 2, HD 2					Date/Time: 1:42 4-30-09				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
BAKER, Rosalyn H., Chr.	✓				MCKELVEY, Angus L.K., Co-Chr.	✓			
TANIGUCHI, Brian T., Co-Chr.	✓				TSUJI, Clift, Co-Chr.	✓			
SLOM, Sam				✓	KARAMATSU, Jon Riki, Co-Chr.	✓			
					OSHIRO, Blake K.	✓			✓
					THIELEN, Cynthia	✓			
TOTAL	2	-	-	1	TOTAL	4	-	-	1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is:					House Recommendation is:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature:					House Lead Chair's or Designee's Signature:				
									
Distribution: Original					Yellow				
File with Conference Committee Report					House Clerk's Office				
					Pink				
					Senate Clerk's Office				
					Goldenrod				
					Drafting Agency				