

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 764  
S.D. 1

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

Madam:

Your Committee on Commerce and Consumer Protection, to which  
was referred S.B. No. 764 entitled:

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

begs leave to report as follows:

The purpose of this measure is to establish a fair and  
reasonable standard for lease provisions in long term industrial  
and commercial ground leases.

Specifically, the measure:

- (1) Establishes that whenever a lease condition requires a lessee to obtain approval to assign, transfer, or encumber the lease, the lessor may not unreasonably withhold approval;
- (2) States that any lease provision contained in a lease that has less than twenty years left on its term that requires the lessee to make major and substantial improvements shall be construed to only require the lessee to make reasonable repairs and maintenance;
- (3) Requires that all leases existing or entered into on after July 1, 2009, that includes a renegotiation clause that renegotiates rent on a "fair and reasonable annual rent" be construed to mean that a fair and reasonable rent is a requirement and that such a determination take into account the uses, intensity, subsurface and surface



characteristics, and neighborhood of the leased site on the renegotiation date; and

- (4) Establishes that, unless not allowed under the lease, sublessees shall be charged their pro rata share of the renegotiated lease.

Your Committee received testimony in support of this measure from GP Roadway Solutions, Grace Pacific Corporation, Ace Hardware/Ben Franklin Crafts, Servco Pacific, Inc., Citizens for Fair Valuation, Sawdust, and three private citizens. Testimony in opposition to this measure was received from Building Industries Association Hawaii, Alexander & Baldwin, Inc., and Land Use Research Foundation of Hawaii. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that the issue of fair and reasonable rent negotiations merits further consideration by the Legislature. Your Committee further finds that it is important to support local employers and small businesses in these difficult economic times.

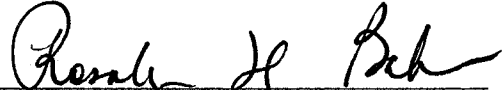
Your Committee has amended this measure by:

- (1) Amending section one to accurately reflect the purpose and intent of this measure;
- (2) Removing the provision relating to the assignment, transfer, or encumbrance of leasehold property;
- (3) Removing the provision limiting the improvements to structures on leasehold property that may be required of lessees; and
- (4) Making technical, nonsubstantive changes for the purpose of clarity and accuracy in the language of this measure.

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 S.B. No. 764, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 764, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.



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

  
A handwritten signature in cursive script, appearing to read "Rosalyn H. Baker", is written over a horizontal line.

ROSALYN H. BAKER, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

|   |  |   |     |         |
|---|--|---|-----|---------|
| Bill / Resolution No.:*<br><div style="font-size: 1.2em; font-family: cursive;">SB 764</div>  | Committee Referral:<br><div style="font-size: 1.2em; font-family: cursive;">CPN, JGO</div> | Date:<br><div style="font-size: 1.2em; font-family: cursive;">2/17/2009</div> |     |         |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____   |  |   |     |         |
| The Recommendation is:<br><div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended<br/>2312         </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments<br/>2311         </div> <div style="text-align: center;"> <input type="checkbox"/> Hold<br/>2310         </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit<br/>2313         </div> </div> |  |   |     |         |
| Members   | Aye  | Aye (WR)  | Nay | Excused |
| BAKER, Rosalyn H. (C)   | ✓  |   |     |         |
| IGE, David Y. (VC)  | ✓  |   |     |         |
| ESPERO, Will  | ✓  |   |     |         |
| GREEN, M.D., Josh   | ✓  |   |     |         |
| IHARA, Jr., Les   | ✓  |   |     |         |
| SAKAMOTO, Norman  | ✓  |   |     |         |
| HEMMINGS, Fred  |  |   |     | ✓       |
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| <b>TOTAL</b>  | 6  | 0   | 0   | 1       |
| Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted           <input type="checkbox"/> Not Adopted         </div>  |  |   |     |         |
| Chair's or Designee's Signature:<br><div style="font-size: 1.5em; font-family: cursive; text-align: center;">David Y. Ige</div>   |  |   |     |         |
| Distribution: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="text-align: center;">Original<br/>File with Committee Report</div> <div style="text-align: center;">Yellow<br/>Clerk's Office</div> <div style="text-align: center;">Pink<br/>Drafting Agency</div> <div style="text-align: center;">Goldenrod<br/>Committee File Copy</div> </div>   |  |   |     |         |

\*Only one measure per Record of Votes