



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committee on  
ECONOMIC REVITALIZATION & BUSINESS**

**Tuesday, March 22, 2011  
8:00 AM  
State Capitol, Conference Room 312**

**In consideration of  
SENATE BILL 975, SENATE DRAFT 1  
RELATING TO APPRAISALS**

Senate Bill 975, Senate Draft 1 requires a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when acting as an appraiser in an arbitration proceeding to determine the fair market value, fair rental value, or fair and reasonable rent of real estate; clarifies that the Uniform Standards of Professional Appraisal Practice apply to appraisers providing appraisals in arbitration proceedings to determine the fair market value, fair rental value, or fair and reasonable rent of real estate. The Department of Land and Natural Resources (Department) opposes this measure.

The Department's primary reason for opposing this bill is that it will substantially increase the costs of an arbitration proceeding without necessarily providing a corresponding benefit.

The Department's Land Division contracts for the majority of appraisals in the Department, primarily for valuations of fair market rent for new leases, lease reopenings, and easements, and for remnant sales. Each of these requires an appraisal and each is subject to arbitration, with the exception of remnant sales. The majority of our applicants, who generally are required to absorb the cost of the appraisals (exception: lease reopenings, for which the Department pays) and half the cost of any arbitration, would object to a more onerous and costly arbitration process.

Arbitration is customarily viewed as an alternative means to dispute resolution that is less costly, less contentious, and less time-consuming than litigation. Senate Bill 975, Senate Draft 1, by requiring an arbitrator to follow USPAP, effectively adds a significant labor burden on the arbitrator, which will be reflected in their fees. A small percentage of our lessees might believe they will derive some benefit from Senate Bill 975, Senate Draft 1, i.e. those that are paying significant lease rents of \$50,000 or \$100,000 or more a year, because of the economy of scale,

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

but Senate Bill 975, Senate Draft 1 applies indiscriminately to all arbitrations, and added arbitration fees would be a significant deterrent to the majority of our lessees.

The Department agrees with the testimony of the Appraisal Institute urging the Committee to deny the passage of this bill. "Arbitration" is not the same as "appraisal." An arbitrator does not serve the same function as an appraiser. Appraisers may act as arbitrators. However, when they are acting as arbitrators, they are undertaking an arbitration process and not an appraisal practice.

Senate Bill 975, Senate Draft 1 has been introduced to the Legislature in prior years in various guises, most recently in 2010. The Department has reviewed prior testimony both for and against, and one email in our files dated March 12, 2010 from Attorney Rosemary T. Fazio to the Governor's Office of the previous Administration was especially persuasive. She writes (this is an excerpt): "Further, arbitration awards cannot be appealed. Arbitration awards can only be 'vacated' based upon very limited statutory grounds – for example if the arbitrator were bribed by one of the parties. Hawaii Revised Statutes 658A-23. Because arbitration awards cannot be appealed, what difference does it make whether or not the arbitrators issue lengthy decisions? Unlike labor arbitrations, where the parties have an ongoing relationship which will be affected by an arbitration award, a rent arbitration just settles rent as of a specific point in time. It does not alter the conduct of the parties for the rest of the lease contract. It does not apply to future rent renegotiations, when the real estate market has changed."

For the forgoing reasons, the Department opposes this measure.

# CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500  
Honolulu, HI 96813

ROBERT M. CREPS, PRESIDENT  
CAROL LAM, VICE PRESIDENT  
CONNIE SMALES, SECRETARY  
PHILLIP J. SILICH, TREASURER

CULLY JUDD, DIRECTOR  
OSWALD STENDER, DIRECTOR  
MICHAEL STEINER, EXEC. DIRECTOR

March 20, 2011

Committee on Economic Revitalization & Business  
Representative Angus L. K. McKelvey, Chair  
Representative Isaac W. Choy, Vice Chair  
Members of the Committee  
415 South Beretania Street  
Honolulu, HI 96813

**Testimony in Support of SB 975, SD1 – Relating to Appraisals – Use of USPAP**  
**Hearing: March 22, 2011, 8:00 am; Room 312**

Aloha Chair McKelvey, Vice-Chair Choy 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 Senate Bill 975, SD1 which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an appraisal/arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

Under HRS 466K-4, real estate appraisers are required to comply with USPAP when performing appraisals in connection with federally or non-federally related real estate transactions. CFV strongly believes it is entirely appropriate to extend the same professional and ethical requirements to those appraisers who sit on appraisal/arbitration panels which determine fair market value, fair market rental or fair and reasonable rents of real estate.

**Lease Contracts call for “Appraisal” not “Arbitration”:**

When the lessor and lessee cannot negotiate a mutually acceptable valuation for rent or market value, most commercial ground leases call for “appraisal” — not “arbitration”. The following comes from a typical Damon Estate lease, currently in force with Commonwealth REIT:

**Appraisal.** In case the parties hereto shall fail to agree on the net annual rent hereunder payable . . . [said rent] shall be determined by three impartial real estate appraisers . . . (who shall in this case be a member of the Honolulu Chapter of the American Institute of Real Estate Appraisers or other similar organization) . . . and the three appraisers so appointed shall thereupon proceed to determine the matter in question and the decision of said appraisers or a majority of them shall be final, conclusive and binding upon both parties.

The Damon Estate leases, as is true with many other commercial leases, use the term “appraisal” to refer to the process in which the panel of appraisers is to determine the rent or market value. The term “arbitration” is not used anywhere in the lease contract. However, our judicial system has come to consider the term “appraisal,” when coupled with “final and binding,” to mean arbitration. Regardless of

the term, it is clear that the appraisers who sit on the appraisal/arbitration panel are engaged to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

**Lease Contracts Require Appraisers to Set Rents:**

As shown above, most commercial ground leases specifically call for licensed appraisers to sit as appraiser/arbitrators. This was done for the obvious reason that their training and experience makes them more qualified than a lay person. Indeed, in a 1996 deposition, local attorney Bert Kobayashi stated,

It is ordinarily the function of appraisers to appraise market value of real property. By specifying the use of appraisers as the means of determining new rent, the subject leases obviously contemplated that the new ground lease rent will be determined in accordance with the standards, training, and expertise normally employed by appraisers in the evaluation of market rents...

**National Appraisal Subcommittee:**

In a February 2, 2010 letter, National Appraisal Subcommittee, Executive Director James R. Park wrote,

... an appraiser is defined by USPAP as one who is expected to perform valuation services ... When acting as an appraiser performing appraisal practices, compliance with USPAP is required. According to USPAP, an individual is performing *appraisal practice* when providing valuation services, including by not limited to appraisal, appraisal review or appraisal consulting.

Park clarified that,

USPAP states the use of other nomenclature for an appraisal, appraisal review, or appraisal consulting assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to USPAP.

**Professional Appraisers:**

Appraisers should be held to the highest standards of their profession. This is especially true when engaged to perform "*appraisal practice*" as an appraisal/arbitration panelist in order to determine fair market value, fair market rental or fair and reasonable rents of real estate. Page 203 of Advisory Opinion 21 of the 2004 version of USPAP states,

Many appraisers have professional roles in addition to their appraiser roles. For example, some appraisers are also attorneys, accountants, brokers, or consultants. Appraisers sometimes also encounter questions in their personal lives about value. An appraiser who contemplates providing a valuation service in some other professional capacity should use special care in establishing whether that service is truly not part of appraisal service. [A]ny valuation service by an appraiser falls within appraisal practice. If a person's identity as an appraiser, appraisal expertise, and ethical reputation contribute to his or her being chosen to provide a service, that service likely is included in appraisal practice. As such, that service should be performed in compliance with USPAP. (emphasis added)

It is clear that when an appraiser sits on an arbitration panel to determine the fair market value or rent of a property, that appraiser is providing a valuation service. Indeed, the lease document establishes the

appraisal/arbitration process as the final and binding determination of value. As such it is the appraiser, sitting on the arbitration panel, who determines the ultimate valuation or rent of a property and the Uniform Standards of Professional Appraisal Practices (USPAP) must apply.

**Appraisers are NOT exempt from statutory requirements when acting as Arbitrators:**

Opponents of this bill will argue that regardless of the lease contract requirement to engage licensed appraisers, appraisers are acting as arbitrators and not appraisers when impaneled to perform an appraisal/arbitration. Opponents will cite the matter of Wong vs. Chalmers 1990 Revocable Trust, Civil No. 94-811 DAE (D. Haw., Jan 24, 1996), wherein Judge Ezra wrote,

As an initial matter, the court rejects KUA 'S argument that Defendants disregarded the law by not following professional standards for appraisers. The court finds that these guidelines do not govern the arbitration proceeding because here Hallstrom, Hulten and Vernon were acting as arbitrators, not as appraisers. The fact that the arbitrators were required to be licensed appraisers is immaterial here.

However, this position was directly addressed and dismissed by Judge Susan Oki Mollway in the recent matter of HRPT Properties vs. Linda Lingle, 2009 WL5103309 (D. Hawaii Dec. 23, 2009). Judge Mollway specifically countered this argument and addressed Judge Ezra's opinion as follows,

This argument misreads Judge Ezra's ruling. Whether rent had to be set by appraisers in that case had been disputed, and a court order had issued compelling arbitration. In characterizing the appraisers as arbitrators, Judge Ezra was rejecting a lessee's argument that the lessor had "disregarded the law by not following professional standards for appraisers." **In no way did Judge Ezra suggest that appraisers acting as arbitrators were free to ignore a statute imposing requirements on appraisers.** When Judge Ezra said, "the fact that the arbitrators were required to be licensed appraisers is immaterial here," **he was certainly not saying that arbitrators required to be licensed appraisers were unrestrained by statutory requirements applicable to appraisers.** (emphasis added)

**Added Expenses:**

Opponents of this bill will argue that SB 975, SD1 will cause additional expense and time in rendering awards. This is simply not the case. Appraisers are currently charging between \$15,000 and \$25,000 each for their services on an arbitration panel. This typically includes background work, two days of hearings and finalization. Assuming \$20,000 per appraiser and a total of 40 hours work, the average hourly rate is \$500 per hour. At this rate, most lessees involved in arbitration, with total costs related to the arbitration easily surpassing \$75,000, would gladly pay an extra thousand or two to know that the panel followed the highest standards of their profession. (See Exhibit 1 attached.)

**Vacating an Award:**

Opponents of this bill seem to be afraid that SB 975, SD1 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.

Citizens for Fair Valuation

**Testimony in Support of Senate Bill 975, SD1** – Relating to Appraisal

Hearing: Tuesday, March 22, 2011, 8:00 AM, Room 312

**Single Standard:**

Citizens for Fair Valuation believes there should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding. By applying USPAP in all such circumstances, the appraisal community can be assured the public will hold them in their highest regard. Requiring conformance with USPAP will add much needed transparency to the process and results, and this will ultimately enhance public trust in the process and results.

The passage of SB 975, SD1 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding. Please support SB 975, SD1 and approve this bill.

Mahalo

*Michael Steiner*

Michael Steiner

Executive Director

Citizens for Fair Valuation

Telephone: (808) 221-5955

Email: [MSteiner@SteinerAssoc.com](mailto:MSteiner@SteinerAssoc.com)

Web Site: [www.FairValuation.org](http://www.FairValuation.org)

<b>Arbitration Panel: Cost per Appraiser</b> (3 req'd)			
<b>Engagement Costs / Hours Worked *</b>			
<b>Hrs</b>	<b>15,000</b>	<b>20,000</b>	<b>25,000</b>
<b>16</b>	<b>938</b>	<b>1,250</b>	<b>1,563</b>
<b>40</b>	<b>375</b>	<b>500</b>	<b>625</b>
<b>50</b>	<b>300</b>	<b>400</b>	<b>500</b>
<b>60</b>	<b>250</b>	<b>333</b>	<b>417</b>
<b>70</b>	<b>214</b>	<b>286</b>	<b>357</b>
<b>80</b>	<b>188</b>	<b>250</b>	<b>313</b>
<b>90</b>	<b>167</b>	<b>222</b>	<b>278</b>
<b>100</b>	<b>150</b>	<b>200</b>	<b>250</b>
<b>125</b>	<b>120</b>	<b>160</b>	<b>200</b>
<b>150</b>	<b>100</b>	<b>133</b>	<b>167</b>
* Typical arbitration has 2 days of hearings			

<b>Estimated Costs for Real Estate Arbitration</b>		
1	Your appraiser Arbitration Panelist	20,000
2	Half of 3rd arbitration panelist	10,000
3	Attorney (150 hrs @\$250 each)	37,500
4	Experts (one appraiser, rpt and 2 days)	7,500
5	Experts (economist or other, rpt, 2 days)	7,500
6	Court Reporter/transcripts (2 days est)	1,500
7	Online research (est)	1,500
8	Photocopies and other misc	1,500
<b>Estimated Cost for Real Estate Arbitration *</b>		<b>87,000</b>
* GET not included		

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

March 20, 2011

Committee On Economic Revitalization & Business  
Representative Angus L. K. McKelvey, Chair  
Representative Isaac W. Choy, Vice-Chair  
Members of the Committee  
415 South Beretania St.  
Honolulu, HI 96813

RE: Testimony in Support of SB 975, SD1 – Relating to Appraisals – Use of USPAP  
Hearing Date: March 22, 2011, 8:00 am; Room 312

Dear Senators Baker, Taniguchi and Members of the Committee,

My name is William S. Alexander and I am the President of Central Park Community Association (CPCA) in Halawa Valley on Oahu. I am writing to you to express strong support for passage of Senate Bill SB 975, SD1 which would require real estate appraisers to comply with their national professional standards (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rent of real estate.

CPCA was formed in 1982 and is an association of businesses that operate in Central Park, Halawa Valley and are land lessees in that Park. Our members and their sub-tenants employ hundreds of individuals and most members are small businesses as are their tenants.

Current law requires all appraisers to comply with USPAP when performing appraisals in connection with real estate transactions; however, even when a lease contract specifically calls for a licensed appraiser to determine value, opponents of this bill will argue that appraisers acting as arbitrators in determining value and rent should be exempt from USPAP in direct violation of these national standards which are observed elsewhere in the US.

Hawaii Revised Statutes should be amended to require all appraisers in Hawaii to follow the nationally recognized ethical and professional standards established in USPAP whether appraising or establishing value as an arbitrator in real estate transactions. There should be a single standard for all such transactions including the establishment of land rent.

As businesses and lessees we are acutely aware of the critical role land rent plays in the survival and success of our businesses. SB 975, SD1 should help our lessees of commercial/industrial land when appraisers are arbitrating new rent or appraising real



estate for fair market value for establishing rent. Given the dominance of seven land owners in the ownership of such land in Hawaii and their influence on the appraisal industry and appraisers, law such as SB 975, SD1 is needed to help keep excessive land rent increases from destroying many small businesses in the State and saving the jobs of their thousands of employees.

The market for such land is very limited in Hawaii as the seven large land owners do not wish to sell thus creating an artificial scarcity which leads to high land valuations which are not economically justified. Land rent needs to be fair and reasonable if Hawaii is to continue to be economically successful. Excessive land rent destroys businesses and constantly drains Hawaii businesses of working capital and sends much of the rent collected out of the State to the further detriment of our economy.

Most of our industrial areas are rundown and not great places to operate a business. Lessees often can't afford to maintain their buildings and improvements due to high land rent. Such conditions lead to lower productivity and higher costs in the long run. Passage of SB 975, SD1 would be a step in the right direction to improve this situation.

With millions of dollars of rent riding on the valuation of land in Halawa Valley in the current negotiations/arbitrations between the land owners and CPCA members, we see this as a critical issue to our economic future.

Please support SB 975, SD1 and its passage into law. Thank you for your consideration of my testimony.

Mahalo,

William S. Alexander, President  
208-265-0270  
wsalema@aol.com  
Also President of Earle M. Alexander, Ltd  
Lessee at 99-1046 Iwaena St. Aiea, HI 96701

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**From:** mutual plumbing [mutualpls@hawaiiantel.net]  
**Sent:** Monday, March 21, 2011 6:55 AM  
**To:** ERBtestimony  
**Subject:** SB 975 Scheduled for 3/22/11 8:00 am in Room 312 at the State Capitol

March 21, 2011

Committee on Economic Revitalization & Business Rep. Angus L.K. McKelvey, Chair Rep. Isaac W. Choy, Vice  
Chair Members of the Committee  
415 South Beretania Street  
Honolulu, HI 96813

Testimony in Support of SB 975, SD1 – Relating to Appraisals – Use of USPAP  
Hearing: March 22, 2011, 8:00 am; Room 312

Aloha Chair McKelvey, Vice-Chair Choy and Members of the Committee,

My name is Clyde Kojima and we have a family-owned business, Mutual Plumbing Supply, which employs 15 people on the island of Oahu.

I support passage of Senate Bill 975, SD1 which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

Most long-term ground lease contracts require a licensed appraiser to sit on an appraisal/arbitration panel if the parties cannot negotiate terms. While current law requires real estate appraisers to comply with USPAP when performing appraisals, opponents to this bill argue that appraisers are exempt from following USPAP when acting as arbitrators even though they are using their professional skills, knowledge and experience to determine a valuation.

National Appraisal Subcommittee Executive Director James R. Park, wrote, "an appraiser is defined by USPAP as one who is expected to perform valuation services." He continued to say, "USPAP states the use of other nomenclature for an appraisal, appraisal review, or appraisal consulting assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to USPAP."

With literally hundreds of thousands of dollars riding on the valuation of rents, I believe all involved parties should expect the appraiser/arbitrator to be held to the highest of professional standards. As such, the Hawaii Revised Statutes should be amended to require appraisers to follow the nationally recognized ethical and professional standards covered under USPAP when providing appraisal related services through arbitration to determine value and/or rental rates of real estate.

There should a single standard that real estate appraisers follow whether they are performing appraisals in or outside of an arbitration proceeding.  
Requiring licensed real estate appraisers, when serving as an arbitrator, to comply with USPAP will improve the integrity and transparency of the process allowing appraisers to better serve the public.

The passage of SB 975, SD1 will provide uniformity of valuations for real estate transactions whether within or outside of an arbitration proceeding.  
Please support SB 975, SD1 and pass this bill.

Mahalo

Clyde Kojima  
Mutual Plumbing Supply Co., Inc.  
2812 Awaawaloa Street  
Honolulu, HI 96819  
PH: (808) 839-9076  
FAX: (808) 833-2085  
[mutualpis@hawaiiantel.net](mailto:mutualpis@hawaiiantel.net)

March 21, 2011

Committee on Economic Revitalization & Business  
Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair  
Members of the Committee  
415 South Beretania Street  
Honolulu, HI 96813

**Testimony in Support of SB 975, SD1 – Relating to Appraisals – Use of USPAP**  
**Hearing: March 22, 2011, 8:00 am; Room 312**

Aloha Chair McKelvey, Vice-Chair Choy and Members of the Committee,

My name is Chelsey Kojima and I work at Mutual Plumbing Supply Co., Inc. which employs 16 people on the island of Oahu.

I support passage of Senate Bill 975, SD1 which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value, fair market rental or fair and reasonable rents of real estate.

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Mahalo

Chelsey Kojima  
2812 Awaawaloa Street  
Honolulu, HI 96819  
[chelseymps@hawaiiantel.net](mailto:chelseymps@hawaiiantel.net)  
P: (808) 839-9076  
F: (808) 833-2085

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**From:** Allison Kojima [allisonkmps@hawaiiantel.net]  
**Sent:** Monday, March 21, 2011 6:51 AM  
**To:** ERBtestimony  
**Subject:** SB 975 Bill Hearing Scheduled for 3/22/11 8:00 am in Room 312 at the State Capitol

March 21, 2011

Committee on Economic Revitalization & Business Rep. Angus L.K. McKelvey, Chair Rep. Isaac W. Choy, Vice Chair Members of the Committee  
415 South Beretania Street  
Honolulu, HI 96813

Testimony in Support of SB 975, SD1 – Relating to Appraisals – Use of USPAP  
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Aloha Chair McKelvey, Vice-Chair Choy and Members of the Committee,

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Please support SB 975, SD1 and pass this bill.

Mahalo

Allison Kojima  
Mutual Plumbing Supply Co., Inc.  
2812 Awaawaloa Street  
Honolulu, HI 96819  
PH: (808) 839-9076  
FAX: (808) 833-2085  
[allisonkmpps@hawaiiantel.net](mailto:allisonkmpps@hawaiiantel.net)

# McCully Works

40 Kamehameha Ave.

Hilo, Hi. 96720

March 21, 2011

In SUPPORT of SB975- Relating to Appraisals

Committee on Economic Revitalization and Business

Chairman Angus McKelvey Vice-Chair Issac Choy

Aloha Chairman McKelvey and members of the Committee,

I am a small businessman on the Big Island of Hawaii, a farmer who has invested in industrial buildings on leasehold land to support my family and provide for my retirement. In the past 20 years I have built or invested in leasehold improvements that host more than 40 small business's who employ more than 200 employees. All of these businesses are affected by this obscure subject, the appraisal and arbitration of leasehold lands, because the underlying valuation of the land becomes an inflationary driver that affects everyone. It is essential to our economy that this process, the appraisal and arbitration of the underlying lands value, be done in an open, transparent, and verifiable way. This bill addresses this issue directly.

An argument by those opposed to this bill, SB975 is that it will add expense and no value to the process of determining valuation of leasehold lands. In testimony against HB771 in the previous legislative session, and repeated in testimony against SB975 it was stated;

Because arbitration awards cannot be appealed, what difference does it make whether or not the arbitrators issue lengthy decisions? Unlike labor arbitrations, where the parties have an ongoing relationship, which will be affected by an arbitration award, a rent arbitration just settles rent as of a specific point in time.

This argument is obviously self-serving to the interest of the landowners , the appraisers and the specialist attorneys. A detailed report, providing rationale and basis for an arbitration decision, becomes a **data point** that is likely superior to any other piece of information for subsequent leasehold valuation questions. It allows the market to be better understood by all participants, not just the above-mentioned insiders who currently control the arbitration process. It creates a verifiable history so that all participants can then make better informed decisions. The current system, with its unilateral and arbitrary control of information suggest more of a medieval "guild" economy than a modern, information based economy.

Here's why:

Real Estate is considered an imperfect market because buyers and sellers are not always well informed. Information, which includes sales prices, financing, lease terms (especially including leasehold renegotiation values) are frequently confidential and unavailable to individuals who are not parties to the transaction. It is difficult to find published information that contains data in the detail needed to analyze the accuracy of a transaction. In commercial real estate, with relatively infrequent transactions as compared to residential, the problems are compounded. The one group

of people who have the greatest access to this closely held information, renegotiated lease valuations, is the appraisal community. The appraisers control the information and they wish to keep it that way. In practice this has worked to the exclusive benefit of the landowners. This should not be surprising given that the 5 largest landowners control 73.83% of all leasehold lands, and they constantly employ the same few appraisers, fewer than 20 specialist appraisers do the vast majority of lease valuations and subsequent arbitrations.

Yes, the same people who value the lands take turns arbitrating the value of lands. The fact is, they create this information, these valuations, through selective application of appraisal principles and methodology. A detailed report showing how and why they made their decisions could be compared by anyone to federally mandated principles and practices as contained in USPAP. The appraisers obviously don't want this, in fact the Hawaii Chapter of the Appraisal Institute actively opposes this bill.

This bill is a continuation of attempts to reform leasehold practices that date to the Big 5, pre-Statehood. The concentration of ownership that constituted a land oligopoly eventually led to Act 307, The Land Reform Act. This long overdue reform forced the fee conversion of residential leasehold property. Yet it might surprise you to know that at its peak, leasehold residential house lots only comprised app. 25% of the total residential market. In commercial leasehold tenancy, which this bill is specific to, more than 50% of the current market is still leasehold, and controlled by the above mentioned few large landowners.

The bill in front of you, SB975, is quite modest in its attempt to reform the current dysfunctional market. Despite its limited scope it is an important component in the revival of our small business economy, and it has the most basic elements of fairness and equity as it's underlying principles. Please support SB975.

Mahalo,

James McCully

McCully Works & Mauna Kea Orchids  
[www.maunakeaorchids.com](http://www.maunakeaorchids.com)  
Hilo, Hawaii



# **JAMES W. Y. WONG**

3737 Manoa Road, Honolulu, HI 96822  
Phone: (808) 946-2966 Fax: (808) 943-3140

March 21, 2011

**VIA EMAIL: ERBTESTIMONY@CAPITOL.HAWAII.GOV**

Honorable Rep. Angus L. K. McKelvey, Chair  
Honorable Rep. Isaac W. Choy, Vice Chair  
Members of the House Committee on Economic Revitalization & Business

**RE: SENATE BILL SB975 - RELATING TO APPRAISALS  
HEARING SCHEDULED FOR TUESDAY, MARCH 22, 2011,  
AT 8:00 A.M., HAWAII STATE CAPITOL, CONFERENCE ROOM 312**

Dear Honorable Chair Angus McKelvey, Vice Chair Isaac Choy, and Members of the House Committee on Economic Revitalization & Business:

I wish to support passage of Senate Bill SB975 which is a bill requiring real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practices (USPAP) when acting as an appraiser or an arbitrator in an arbitration proceeding to determine the fair market value or fair market rental of real estate. Current law requires all real estate appraisers to comply with USPAP when performing appraisals in connection with federally or non-federally related real estate transactions. There should be only one standard real estate appraisers should follow when they are performing appraisals work. Without complying with USPAP, real estate appraisers performing an appraisal valuation in arbitration proceedings could arrive at a different value than if they were appraising the same property in connection with federally or non-federally related real estate transactions.

The passage of SB975 will provide for uniformity of valuations of real estate whether it's a federally or non-federally related real estate transaction or an arbitration proceeding.

**Please approved Senate Bill SB975.**

Sincerely,

James W. Y. Wong