

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2012

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

H.B. NO. 1831, RELATING TO LEASEHOLD CONVERSION.

BEFORE THE:

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

DATE: Tuesday, January 24, 2012

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): David M. Louie, Attorney General, or
Colette L. Honda, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General (the "Department") has concerns regarding this bill as currently drafted.

This bill establishes a program for the mandatory lease-to-fee conversion of *business* properties in the same manner that the Legislature addressed the issue of the *residential* leasehold system.

In Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984), the United States Supreme Court upheld the lease-to-fee scheme of the Hawaii Land Reform Act of 1967 because the Act's purpose, specifically set forth in the statute, of promoting home ownership and reducing the effects of a land oligopoly in Hawaii satisfied the "public use" requirement of the Constitution. More recently, the United States Supreme Court upheld a city's condemnation of private property to further the city's redevelopment and economic revitalization plans. Kelo v. City of New London, Connecticut, 545 U.S. 469 (2005).

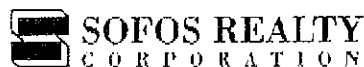
This bill appears to exceed the authority laid out by the U.S. Supreme Court in Hawaii Housing Authority v. Midkiff. While it is clear that public policy favors residential landowners owning land under their own houses, it is not clear that public policy favors the redistribution of commercial and industrial properties from one private landowner to another private landowner. Essentially, while Midkiff approved conversion of leasehold residential properties, we do not believe that, as drafted, the conversion of industrial and commercial property would similarly withstand judicial scrutiny.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 24, 2012 1:07 AM
To: ERBtestimony
Cc: darakawa@lurf.org
Subject: LATE TESTIMONY - Testimony for HB1831 on 1/24/2012 8:30:00 AM

Testimony for ERB 1/24/2012 8:30:00 AM HB1831

Conference room: 312
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: David Arakawa
Organization: Land Use Research Foundation of Hawaii
E-mail: darakawa@lurf.org
Submitted on: 1/24/2012

Comments:



Commercial Brokerage - Property Management

January 24, 2012

VIA FACSIMILE 586-8479

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

RE: HOUSE BILL HB1831 - RELATING TO LEASEHOLD CONVERSION
HEARING DATE/TIME/LOCATION: TUESDAY, JANUARY 24, 2012,
AT 8:30 A.M., STATE CAPITOL, CONFERENCE ROOM 312

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

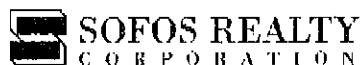
PETITION:

We wish to support passage of House Bill HB1831 which establishes a program for the mandatory lease-to-fee conversion of business properties in the same manner that the legislature addressed the problem of the residential leasehold system.

Many ground leases are near expiration and there is a concern that if ground leases are not extended, we may see closures of businesses and loss of employment in a very fragile economy. The bill if approved would be fair to both the lessor and lessee as the lessor would continue to receive a fair rent if the lease is extended or a fair price should the lessor sell the land to the lessee. The lessee could then continue its business services and/or products and continue providing employment to its long time employees.

We urge your approval of this bill.

Print Name	Signature	Address
Steven Sofos		3228 Oahu Avenue
		Honolulu, HI 96822



Commercial Brokerage • Property Management

January 24, 2012

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Honorable Representative Isaac W. Choy, Vice Chair
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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 House Bill HB1831 which is to encourage the
extension of ground leases by requiring lessors who do not extend a ground
lease to offer to sell the leased fee interest in the land to the lessee who
requests the extension.

The Bill, if passed, will provide a fair return to the lessor if the ground lease
is extended and the opportunity for the lessee's business to continue which
will provide for continuation of business services or products to the local
economy and continuation of employment to the workers of the lessee. If
the ground lease is not extended, the lessor will also receive a fair return for
it's interest in the land when the land is sold and allows the lessee's business
to continue to provide business services or products to the local economy
and continuation of employment to the workers of the lessee. It would be a
win-win situation to both the lessor and lessee and to our economy.

Please approve HB1831.

Aloha,



S. Steven Sofos
President/CEO