

**LATE**

April 1, 2013

COMMUNITY MEDIA

The Honorable Representative Sylvia Luke  
Chair, House Committee on Finance  
House of Representatives  
415 S. Beretania Street, Room 306  
Honolulu, HI 96813

**Board of Directors**  
Jim Boersema  
*Chair*

Dear Chair Luke and Members of the House Finance Committee:

**Subject: Testimony in Support of SB 1258 SD1 HD1;**

Jill Takasaki Canfield  
Lubuw Falanruw  
Rochelle Gregson  
Ormond Hammond  
Shelee Kimura  
Nelson Lau  
Dee Jay Mailer  
Jon E. Murakami  
Diane Peters-Nguyen  
Mario R. Ramil  
Mike Rosenberg  
Tyler M. Tokioka  
John Williamson  
Scott Wong

My name is Roy Amemiya, CEO and President of 'Ōlelo Community Television dba 'Ōlelo Community Media testifying in support of SB 1258 SD1 HD1 Relating to Real Estate Appraisers. Thank you for this opportunity to testify. 'Ōlelo is Oahu's provider of Public, Education and Government access cable television. We have proudly served in that role since 1989.

Our flagship media center is located in Mapunapuna is under a long term lease expiring in 2044. The fixed rent period expires in 2014 and we will be entering into rent negotiations very shortly. A number of other properties in Mapunapuna are currently in renegotiation with the same landlord. SB 1258 will require the arbitration panel consisting of real estate appraisers to record decisions and information on how those decisions were derived with the State Bureau of Conveyances. It would have the effect of providing both the landowner and the leasehold tenant with valuable data on previously arbitrated transactions so that the parties have common information when engaged in negotiations. This bill can greatly alleviate often contentious negotiations by avoiding parties starting at very polar positions.

For a non-profit like 'Ōlelo, any funds expended in lease negotiations is money that does not go towards serving our clients.

Accordingly, we ask that you pass SB 1258. Further, we point out that the only difference between the Senate and House versions is the defected effective date. The bill can avoid conference committee if the original effective date is restored.

Thank you,



Roy K. Amemiya, Jr.  
President/CEO  
'Ōlelo Community Media



LAND USE RESEARCH  
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408  
Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)

**LATE**

March 11, 2013

Representative Angus L.K. McKelvey, Chair  
Representative Derek S.K. Kawakami, Vice Chair  
House Committee on Consumer Protection and Commerce

**Testimony in Opposition to SB 1258, SD1 Relating to Real Estate Appraisers. (Requires real estate appraisers, acting as arbitrators, to record arbitration awards, the records of the awards, if separately issued, and any supplementary, dissenting, or explanatory opinions with the bureau of conveyances within 90 days of the determination of the award and its notification to the parties.)**

**Monday, March 11, 2012 at 2:00 p.m. in Conference Room 325**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to provide this testimony in **opposition to SB 1258, SD1.**

**SB 1258, SD1.** This bill alters the terms of the confidentiality clauses in many existing commercial and industrial leases, by requiring real estate appraisers, acting as arbitrators, to record arbitration awards, the records of the awards, if separately issued, and any supplementary, dissenting, or explanatory opinions with the bureau of conveyances within 90 days of the determination of the award and its notification to the parties.

LURF **opposes SB 1258, SD1**, based upon the following:

- **The SB 1258, SD1 is premature, as it should await the completion of the Legislative Reference Bureau (“LRB”) Report required by SCR 90, SD1 (2012) “Requesting the Legislative Reference Bureau to Update Their 2003 Report Analyzing the Major Problems Faced by Commercial Lessees by Incorporating an Economic Analysis to Determine if There is a Nexus Between the Existence of High Lease Rents in Hawaii and the Stagnation of Hawaii’s Economy.”** The 2013 LRB Report, could not complete such an economic analysis, but recommended that the “Chairs of the appropriate subject matter

*committees in the House and Senate consult with UHERO to draft legislation that ensures a workable approach, including a sufficient timetable and funding.”* Instead of passing SB 1258, SD1, the Legislature should provide for funding for an economic analysis to determine whether there is actually a strong a nexus between lease rents and the stagnation of Hawaii’s economy, which could establish a legal basis to change the terms of existing lease contracts.

- **There is no factual justification for SB 1258, SD1.** The latest LRB Report (dated 2003) concluded that *“there was no indication of a broad-based compelling need for legislation altering existing lease agreements, which would be required to pass constitutional muster. Instead, the Bureau found that the primary problem facing lessees was the lack of available fee simple commercial and industrial property on the market.”* (See, LRB Report No. 5, 2003, “Real Property Leases,” by Eric Maehara, Research Attorney)
- **The SB 1258, SD1 violates the Contracts Clause of the United States Constitution, because it alters and violates the confidentiality clauses of existing lease contracts.** The Legislature should not inject itself into existing private leases, by changing the confidentiality clauses of leases, which are very important contract terms which were mutually agreed to by the parties. With respect to prior legislation that altered the terms of existing contracts, the U.S. District Court, District of Hawaii (“Court”) ruled that Act 189 (SLH 2009) (“Act 189”) violated the Contracts Clause of the U.S. Constitution. Although Act 189 involved a different law, the Court ruled that the law impaired the contractual relationship between the parties; and that Act 189 did not “reasonably or justifiably further the legitimate purpose of stabilizing Hawaii’s economy.” While inapplicable to this bill, the Court also held that Act 189 violated the Equal Protection Clause of the U.S. Constitution by unfairly targeting one lessor, HRPT. (See, *HRPT Properties Trust v. Lingle*, 715 F.Supp.2d 1115 [D. Hawaii 2010])

LURF believes that a court would similarly find SB 1258, SD1, unconstitutional, based on, among other things, the following:

- ❖ **Violates terms of existing lease contracts.** Under the law, confidentiality provisions in leases, especially relating to lease renegotiations, are important mutually bargained-for terms of lease contracts. SB 1258, SD1, would violate such existing contract terms, by requiring publicizing such information. A court would likely rule that SB 1258 clearly “impairs the contractual relationship and expectations of lessors”; and
- ❖ **There is “no factual basis to reasonably or justifiably further the legitimate purpose of stabilizing Hawaii’s economy.”** The latest State study regarding commercial and industrial lease rents – the 2003 LRB Report, does not support the allegations in SB 1258, in fact, just the opposite. Furthermore, as noted above, last year, the Legislature passed SCR 90, SD1 (2012) “*Requesting the Legislative Reference Bureau to Update Their 2003 Report Analyzing the Major Problems Faced by Commercial Lessees by Incorporating an Economic Analysis to Determine if There is a Nexus Between the Existence of High Lease Rents in Hawaii and the Stagnation of Hawaii’s Economy – and the LRB recommended that the Senate and the House fund such*

*an economic analysis during the 2013 session.* In fact, SB 1258 totally ignores the recommendations of the LRB relating to SCR 90, SD1 (2012). Given the total lack of factual basis or economic analysis to support SB 1258, and the Legislature's total disregard for its own SCR 90, SD1 (2012) and request for an economic analysis - - LURF believes that a court would find that there is no factual basis to justify SB 1258, SD1.

- **The bill violates the spirit and intent of the USPAP Ethics rule relating to confidentiality.** Act 227, Session Laws of Hawaii 2011 ("Act 227, SLH 2011), requires appraisers in arbitration proceedings to certify compliance with the most current Uniform Standards of Professional Appraisal Practice ("USPAP"). USPAP includes and Ethics Rule which requires an appraiser to protect the confidential nature of the appraiser-client relationship. While there may be exceptions to this USPAP Ethics Rule – SB 1258, SD1, violates the spirit and intent of the USPAP Ethics Rule. We do not believe that the legislature should pass a bill that violates the USPAP Ethics Rule, and claim a local exception.

**Conclusion.** For all of the reasons set forth above, LURF believes that the intent and application of SB 1258, SD1 is not factually justified, violates the confidentiality terms of existing lease contracts, would result in an unconstitutional violation of the Contracts Clause of the U.S. Constitution and should therefore **be held in this Committee.**

Thank you for the opportunity to express our **strong opposition to SB 1258, SD1.**

**LATE**

April 1, 2013

COMMITTEE ON FINANCE  
Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
Members of the Committee  
State Capitol  
Honolulu, Hawaii 96813

**RE: SB1258, SD1, HD1, Testimony in Support**  
**Hearing: April 1, 2013, 2:00pm; Room 308**

Dear Chair Luke, Vice-Chair Nishimoto and Johanson and Members of the Committees,

My name is Jason Ideta and I am writing in strong support of SB 1258, SD1, HD1. I work for a small auto parts business with 68 employees and am a lessee in the Mapunapuna area.

As a lessee, I am at a significant disadvantage when it comes to negotiating or arbitrating my leases with huge lessors like Common Wealth, Kamehameha Schools, etc. This bill will help to create transparency for both parties involved and create a more open and free market for everyone, especially for individual leases like me.

When the legislature passed Act 227, which tried to create transparency to the arbitration process, appraisers/arbitrators have insisted upon adding confidentiality clauses to hide the information and intentionally bypass the law. SB 1258 will help to fix this problem by requiring the recordation of the arbitration data with the Bureau of Conveyance.

I strongly encourage you to support and pass SB 1258, SD1, HD1 to bring openness and a little more fairness to the leasehold market that is controlled by a handful of very large landowners.

Thank you for your time and consideration.

Sincerely,

Jason Ideta  
Pacific Jobbers Warehouse, Inc.  
808-772-5922

**LATE**

**SB1258**

Submitted on: 4/1/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James McCully	Individual	Support	Yes

Comments: Aloha Chair Luke I have previously submitted testimony in strong support of this bill. I will be available to answer questions of the committee at the FIN 2:00 hearing. Mahalo, James McCully

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**LATE**

March 29, 2013

**VIA FACSIMILE**  
**1-800-535-3859**

Honorable Representative Sylvia Luke, Chair  
Honorable Representative Scott Y. Nishimoto Vice Chair  
Honorable Representative Aaron Ling Johanson, Vice Chair  
House Members of Committee on Consumer Protection & Commerce

**RE: TESTIMONY IN SUPPORT OF MEASURE SB1258 SD1 HD1 - RELATING TO  
REAL ESTATE APPRAISERS - HEARING SCHEDULED FOR MONDAY,  
APRIL 1, 2013, AT 2:00 P.M.,**

Dear Honorable Chair Sylvia Luke, Vice Chair Scott Nishimoto, Vice Chair Aaron Ling  
Johanson, and Members of the House Committee on Finance:


PETITION:

I support passage of SB1258 SD1 HD1 which would require real estate appraisers acting as arbitrators in ground rent renegotiation to fully disclose arbitration awards, records of arbitration awards and any opinions related to such arbitration proceedings.

It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide openness and transparency in the reporting of their awards and decisions in arbitration proceedings. However with the enactment of Act 227, the arbitrators have incorporated confidentiality clauses to prevent the disclosure of their awards and decisions to participants in the real estate market from understanding the real estate market in an open and transparent manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect the interests of the people of Hawaii by making data which affects commercial and industrial lease valuations available to everyone.

We urge your approval of this bill.

Sincerely,

  
\_\_\_\_\_  
Print Name Aaron Ling  
Address 5301 Mahele Pl

March 29, 2013

**LATE**

**VIA FACSIMILE**  
**1-800-535-3859**

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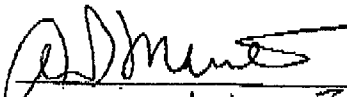
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lease valuations available to everyone.

We urge your approval of this bill.

Sincerely,

  
\_\_\_\_\_  
Print Name Allen I. Marston  
\_\_\_\_\_  
Address 1720 Kamehameha Lp.  
\_\_\_\_\_



**LATE**

March 29, 2013

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**1-800-535-3859**

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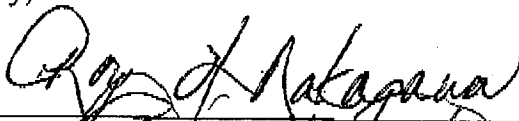
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We urge your approval of this bill.

Sincerely,



Print Name

Roy H. Nakagawa

Address

P.O. Box 235790 Honolulu, HI 96823

**LATE**

March 29, 2013

**VIA FACSIMILE**  
**1-800-535-3859**

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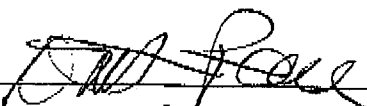
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We urge your approval of this bill.

Sincerely,

  
\_\_\_\_\_  
Print Name DAK RICE  
Address 1729 Nalapa Pl Hon. 96821

**LATE**

March 29, 2013

**VIA FACSIMILE**  
**1-800-535-3859**

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Honorable Representative Aaron Ling Johanson, Vice Chair  
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We urge your approval of this bill.

Sincerely,

*Megan Rice*

Print Name Megan Rice

Address 1729 Kalahehi Pl Hou. 96821

**LATE**

March 29, 2013

**VIA FACSIMILE**  
**1-800-535-3859**

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We urge your approval of this bill.

Sincerely,



Print Name Aaron Sakaguchi

Address 2957 Palakoua #415  
Honolulu HI 96815

**LATE**

March 29, 2013

**VIA FACSIMILE**  
**1-800-535-3859**

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We urge your approval of this bill.

Sincerely,

Print Name

Address

  
Gilbert Sakaguchi  
2957 Kalaniana'olaha Ave  
#410  
Honolulu HI 96815

**LATE**

March 29, 2013

VIA FACSIMILE  
1-800-535-3859

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We urge your approval of this bill.

Sincerely,

*Alice Y. Lau*

Print Name Alice Y. Lau

Address 5341 Kaunaloa Dr

**LATE**

March 29, 2013

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**1-800-535-3859**

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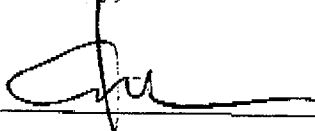
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Sincerely,



Print Name LEE, DENNIS

Address 1481 KULOKA ST., PEARL CITY

**LATE**

March 29, 2013

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**1-800-535-3859**

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We urge your approval of this bill.

Sincerely,

*Ann L Pang*

Print Name Ann L Pang

Address 3161 Ala Ilima St #501  
Honolulu, HI 96818



**LATE**

March 29, 2013

**VIA FACSIMILE**  
**1-800-535-3859**

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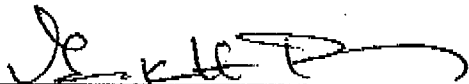
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Sincerely,



Print Name Gary Ktt Pong

Address 3661 Ala Ilima St 501

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PETITION:

I support passage of SB1258 SD1 HD1 which would require real estate appraisers acting as arbitrators in ground rent renegotiation to fully disclose arbitration awards, records of arbitration awards and any opinions related to such arbitration proceedings.

It was the intent of the Legislature in enacting Act 227 that the arbitrators would provide openness and transparency in the reporting of their awards and decisions in arbitration proceedings. However with the enactment of Act 227, the arbitrators have incorporated confidentiality clauses to prevent the disclosure of their awards and decisions to participants in the real estate market from understanding the real estate market in an open and transparent manner. This action frustrates the intent of Act 227. Passage of this bill will improve and protect the interests of the people of Hawaii by making data which affects commercial and industrial lease valuations available to everyone.

We urge your approval of this bill.

Sincerely,



Print Name

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