

SB 1106



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March 3, 2009

The Honorable Donna Mercado Kim, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: S.B. 1106, S.D. 1, Relating to Taxation

HEARING DATE: Wednesday, March 4, 2009 at 9:30 a.m.

Aloha Chair Kim and Members of the Committee on Ways and Means:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance of the Government Affairs Committee of the Hawai'i Association of REALTORS® ("HAR"), here to testify on behalf of the HAR and its 9,600 members in Hawai'i. S.B. 1106, S.D.1, Relating to Taxation, requires a nonresident seller of real property located in Hawaii to furnish to the Bureau of Conveyances a tax clearance certificate issued from the Department of Taxation ("DoTax") that certifies that the HARPTA withholding requirements were satisfied as a condition to recording a change in title on the real property.

HAR **opposes** S.B. 1106, S.D.1, unless the following conflict can be resolved.

Proposed HRS §235-68(h) states in part that:

. . . Every nonresident person that is a transferor under this section shall submit to the bureau of conveyances a certified tax clearance certificate issued from the department stating that the transferor properly made a return of the amount withheld to the department not more than twenty days following the transfer date. Submission of the tax clearance certificate shall be made a condition to recording of any transfer of title of real property located in Hawaii by a nonresident person that is a transferor under this section. [Emphasis added.]

HRS §235-68(c) currently states that:

(c) Every transferee required by this section to withhold tax under subsection (b) shall make a return of the amount withheld to the department of taxation not more than twenty days following the transfer date. [Emphasis added.]



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Proposed HRS §235-68(h) thus appears to be in conflict with HRS §235-68(c). HAR respectfully suggests that current HRS §235-68(c) be left as is and that proposed HRS §235-68(h) as set forth above be amended to read as follows:

. . . Every nonresident person that is a transferor under this section shall submit to the bureau of conveyances a certified tax clearance certificate issued by [from] the department stating that the transferor has paid all general excise, transient accommodations, and income taxes [has paid properly made a return of the amount withheld to the department not more than twenty days following the transfer date]. Submission of the tax clearance certificate shall be made a condition to recording of any transfer of title of real property located in Hawaii by a nonresident person that is a transferor under this section.

The above amendment is consistent with language contained in S.B. 1230, S.D.1, and HAR believes that it is consistent with the DoTax's testimony submitted to the Committee on Commerce and Consumer Protection on S.B. 1106.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



Title Guaranty of Hawaii, Inc.

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March 3, 2009

Via Email: WAMTestimony@Capitol.hawaii.gov

The Honorable Donna Mercado Kim, Chair
The Honorable Shan S. Tsutsui, Vice Chair
Members of The Senate Committee On Ways and Means
415 South Beretania Street, Room 211
Honolulu, Hawaii 96813

Re: Senate Bill 1106, S.D. 1, Relating to Taxation
Hearing Date: Wednesday, March 4, 2009
Hearing Time: 9:30 a.m.

Dear Senators Kim and Tsutsui, and Members of the Senate Committee on Ways And Means:

I am writing on behalf of Title Guaranty of Hawaii, Inc. and Title Guaranty Escrow Services, Inc. We respectfully oppose the adoption of Senate Bill 1106, S.D. 1 Relating to Taxation. We testified earlier that we support the philosophy of making sure that valid taxes are collected; however, as with the original draft of the Bill the mechanism suggested by S.D. 1 places an undue burden on the Bureau of Conveyances and imposes an overbroad condition on a person's ability to sell property whether or not they are a nonresident transferor.

First, as presently drafted, S.D. 1 requires a nonresident transferor to submit a certified tax clearance certificate to the Bureau. There is no provision for creating an index at the Bureau to document compliance with this requirement. How will a potential buyer be able to determine whether his or her seller has complied with this law?

Second, as presently drafted, S.D. 1 requires the submission of the tax clearance certificate to the Bureau "not more than twenty days following the transfer date." However, the next sentence of the draft states that "[s]ubmission of the tax clearance certificate shall be made a condition to recording of any transfer of title of real property located in Hawaii by a nonresident person that is a transferor under this section." Literally read, this is confusing if the submission of the certificate is a condition precedent to the recording of a transfer that has already occurred. If the intent of this draft is to make any *subsequent* transfer of title by the transferor subject to the tax clearance certificate requirement, then the draft should so state.

Third, the nonresident transferor may not have any other land to sell, or he or she might not engage in a real estate transaction for years or even decades after having

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submitted their tax clearance certificate. That non-resident may become a resident during that period and HARPTA may not even apply. And again, when that subsequent sale occurs the draft provides no mechanism for the Bureau to verify that the non-resident transferor complied with this Bill.

While we are sure the Bill is well-intentioned, its passage will create confusion, delay and additional expense for the Bureau of Conveyances and for persons buying and selling real property in this State without appreciably aiding the collection of the tax imposed by HARPTA. We respectfully urge the Committee to decline to pass this Bill.

Thank you very much for your consideration and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pietsch, Jr.", written over a horizontal line.

David T. Pietsch, Jr.
Executive Vice President