

Honolulu, Hawaii

APR 05 2013

RE: H.B. No. 680
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred H.B. No. 680, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose and intent of this measure is to impose a conveyance tax on the transfer or conveyance of a controlling interest of an entity with an interest in real property in the State.

Prior to the public hearing on this measure, your Committee circulated for review and comment a proposed S.D. 1.

The proposed S.D. 1 replaced the contents of the measure with provisions that, after June 30, 2014:

- (1) Impose the conveyance tax on every conveyance of an interest in real property;
- (2) Define the terms "consideration," "conveyance," "grantee," "grantor," "interest in real property," and "real property";
- (3) Define and discuss the application of the term "controlling interest";



- (4) Provide that certain conveyances shall be taxed at the lowest tax rate;
- (5) Prohibit the disclosure of a certificate of conveyance;
- (6) Provide that the computation of the conveyance tax shall conform to the United States Constitution;
- (7) Provide that the amount of the conveyance tax shall be based upon the amount of consideration paid, rather than the value of the property;
- (8) Provide that a conveyance that effectuates a mere change of identity or form of ownership or organization shall be exempt from the conveyance tax;
- (9) Provide that, if a grantor fails to pay the conveyance tax or is exempt from the conveyance tax, the grantee shall pay the conveyance tax;
- (10) Establish a presumption that all conveyances are taxable and that the value of property conveyed as consideration is determined by fair market value;
- (11) Provide that the imprinting of a seal shall not be necessary for a conveyance where no instrument evidencing the conveyance is recorded or filed with the registrar of conveyances or the assistant registrar of the land court;
- (12) Require the grantor and the grantee to file a certificate of conveyance;
- (13) Require the filing of an exemption certificate under certain circumstances; and
- (14) Provide that, under certain conditions, a certificate may be accepted even if not signed by all the grantors or all the grantees.

Your Committee received testimony in support of this measure from the Department of Land and Natural Resources and Hawaii Appleseed Center for Law and Economic Justice.



Your Committee received testimony in opposition to this measure from the Land Use Research Foundation of Hawaii, NAIOP Hawaii, and a private individual.

Your Committee received comments on this measure from the Department of Taxation and the Tax Foundation of Hawaii.

Your Committee finds that certain transfers of entity ownership are essentially equivalent to the sale of an interest in real property. Your Committee also finds that the proposed S.D. 1 applies the conveyance tax to these conveyances in a more in-depth manner than the original measure.

Your Committee has amended the measure by deleting its contents and inserting those of the proposed S.D. 1 and has further amended the measure by:

- (1) Providing that the lowest tax rate shall apply to any document or instrument conveying real property, or any interest therein, to or from a wholly owned corporation or limited liability company;
- (2) Exempting from the conveyance tax, and requiring an exemption certificate to be filed for, the following conveyances:
 - (A) Any conveyance from a limited partner to a general partner of a limited partnership that owns an affordable rental housing project for which low-income housing tax credits have been issued under section 235-110.8 or 241-4.7, Hawaii Revised Statutes, or section 42 of the Internal Revenue Code of 1986, as amended; and
 - (B) Any conveyance that consists solely of a change in controlling interest in an entity holding an interest in realty between persons with ownership interests in the entity for a minimum of three years immediately preceding the transfer;
- (3) Replacing the term "real estate transfer tax" with "conveyance tax";
- (4) Clarifying that certificates of conveyance may be disclosed to county officials for official county

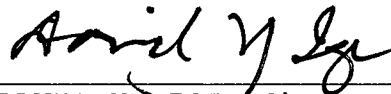


business purposes, including real property tax assessment;

- (5) Removing substantive provisions regarding the basis and rate of the conveyance tax from the definition of the term "consideration," and leaving them more appropriately in section 247-2, Hawaii Revised Statutes;
- (6) Clarifying that the exemption for a transfer or acquisition made pursuant to a binding written contract shall apply to binding written contracts entered into prior to July 1, 2014;
- (7) Replacing certain instances of the term "value of the real property" with "amount of consideration" and making conforming amendments to further clarify that the amount of the conveyance tax is based on the amount of consideration, rather than the value of real property;
- (8) Clarifying that the presumption that all conveyances are taxable and that the value of property conveyed as consideration is determined by fair market value shall prevail until disproven;
- (9) Changing the effective date to July 1, 2050, to facilitate further discussion on the measure; and
- (10) Making technical nonsubstantive amendments for the purposes of consistency, clarity, and style.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 680, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 680, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,



DAVID Y. IGE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 680, HD2	WAM	4-1-13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
IGE, David Y. (C)	✓			
KIDANI, Michelle N. (VC)	✓			
CHUN OAKLAND, Suzanne	✓			
DELA CRUZ, Donovan M.	✓			
ENGLISH, J. Kalani				✓
ESPERO, Will	✓			
KAHELE, Gilbert	✓			
KEITH-AGARAN, Gilbert S.C.	✓			
KOUCHI, Ronald D.		✓		
RUDERMAN, Russell E.	✓			
THIELEN, Laura H.	✓			
TOKUDA, Jill N.	✓			
SLOM, Sam			✓	
TOTAL	10	1	1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Michelle N. Kalani</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes