HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.B. NO. 1318

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that some of the primary goals enumerated in the United States Constitution, promotion of the public welfare and personal rights, are served by public policies that incentivize widespread home ownership. The Hawaii State Constitution echoes these objectives in its declaration that "all persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty, and the pursuit of happiness, and the acquiring and possessing of property." The legislature finds that the operation of the State's current real estate market does not promote the right of Hawaii's residents to acquire and possess residential property in their home state as guaranteed by the Hawaii State Constitution.

The legislature further finds that homeownership deeply impacts the stability of state residents' lives and the State's economy, broadens the public tax base, and promotes resident investment in the future of the State. Therefore, overcoming barriers to homeownership for the people of the State is of the highest priority to the State.

In recent years, the legislature notes that the growth of Hawaii's population has outpaced that of new home construction. The result is a severe shortage in the supply of available housing for purchase. Concomitantly, demand for residential real property has sharply increased. According to the Hawaii housing finance and development corporation's *Hawaii Housing Planning Study, 2011*, approximately fifty thousand dwelling units would need to be constructed between 2012 and 2016 to meet new demand for housing generated by changing demographic and economic factors. However, from 1990 to 2010, the number of units added each year ranged from three thousand five hundred to eleven thousand. As reported in the 2011 study, Hawaii ranked number forty-eight in the country for homeownership. It is projected that the shortage in available homes for purchase will worsen, with more and more Hawaii residents unable to purchase a home.

The legislature finds that the unusually high level of participation by out-of-state and foreign buyers in Hawaii's residential real estate market greatly exacerbates the housing shortage problem. As of 2011, out-of-state ownership accounted for large portions of Hawaii's housing market. In the most extreme cases, nonresidents owned nearly seventy and seventy-four per cent of all condo units in Maui and Kauai counties, respectively. While some of these buyers intend to occupy the real estate they purchase, a large number purchase these properties solely to profit from their resale.

Because of Hawaii's rapidly and consistently increasing home and land prices, and long-established trends toward high rental costs, real estate speculation in Hawaii can be an attractive option to investors. Historically, this had led to a series of periods of rapid price inflation and market instability, sometimes called housing bubbles, that raise the market value of residential real estate even long after investment interests have exited the market. Most notoriously, during the so-called Japan Bubble in the late 1980s through early 1990s, Japanese investors accounted for the vast majority of real estate purchasers in Hawaii. In 1989 and 1990 alone, these investors purchased more than $7,300,000,000 worth of property in Hawaii and generally paid more than 20 per cent over market price.

In addition to its persistent market effects, an investor-based real estate economy and the artificial inflation of land value that it causes have an immediate impact on Hawaii's housing market. Rapid and unstable spikes in real estate prices foster an economic environment that favors rapid acquisition and disposal, often called flipping, over long-term cultivation and improvement of assets in the hopes of a distant return. Residential real estate can be particularly susceptible to these pressures because of the high costs associated with long-term maintenance of properties and the fixed costs related to ownership, such as property taxes and association fees.

The 2011 Hawaii housing finance and development corporation study showed that over 40 per cent of Hawaii households were renter-occupied, statewide. It also showed that while rental vacancy rates have been trending upward since 2005, this has not resulted, as expected, in market pressure toward lower rents. In fact, median contract rental prices have increased over that period. The study authors attribute this to the high cost to owners of maintaining the property, including large mortgage payments, property taxes that are based on assessed value, and costly property management services. With little doubt of a steadily increasing land value and a rental market where demand far exceeds supply, non-occupant property owners may have little incentive to maintain or improve residences after achieving a certain minimum return on initial investment. Non-occupant owners are unaffected by unappealing living conditions on their properties as long as the unmet housing demand is high and the value of the underlying land continues to rise. In Hawaii, these conditions are all but guaranteed. Meanwhile, tenants in the rental market and their neighbors pay ever-higher monthly rents for ever-worse living conditions and live among vacant properties that contribute to neighborhood blight. Every substandard or vacant rental housing unit represents a lost opportunity for homeownership, asset building, and neighborhood renewal.

The legislature further finds that the high cost of housing makes it increasingly difficult for Hawaii residents to compete in a housing market that is inherently weighted against them. Many Hawaii residents rent from nonresident investor owners, often with a cost and at terms that are disadvantageous to the renter, due to the prioritization of profit over other factors by these owners. Non-occupant real estate buyers may be out-of-state individuals who benefit from lower costs of living elsewhere and favorable exchange rates, corporate or commercial investor entities with access to assets and liquidity far beyond the capacity of individual Hawaii homebuyers, or in-state buyers with the disproportionally large asset holdings necessary for market leverage. These buyers are able to make down payments significantly larger than the market standard, tender all-cash offers, and offer more than asking price, therefore, driving up prices statewide and forcing Hawaii residents to compete in a market that is designed to remain out of their reach.

The legislature finds that Hawaii has a unique history of landownership that has been characterized by a concentration of the fee title to lands in the hands of a few. In 1967, the legislature determined that this concentrated ownership, combined with a growing population and prevailing lease agreements that were disadvantageous to developers and private purchasers, resulted in critical shortages of residential fee simple property in the State's urban areas. Further, it artificially inflated the cost of fee simple, residential lots. Without intervention, the Hawaii real estate market appears primed to slide back to the land oligarchy model that necessitated the radical land reforms of the last century.

To protect public welfare and ensure land ownership rights for Hawaii residents, the legislature enacted the Land Reform Act of 1967, which provided for condemnation of residential tracts and transfer of ownership to existing lessees. Although the Act was challenged as an illegal taking under the United States Constitution, it was upheld by the United States Supreme Court. In reviewing the issue, the Supreme Court stated that determining public purpose was the province of the legislature, and "the Court has made clear that it will not substitute its judgment for a legislature's judgment as to what constitutes a public use 'unless the use be palpably without reasonable foundation.'" *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241.

The legislature declares that the predomination of non-occupant investor buyers in Hawaii's real estate market is a significant impediment to home ownership for Hawaii residents and is contrary to the objectives of the state and federal constitutions. Further, promoting owner-occupancy of residential real property in Hawaii is vital for the welfare and security of the people, the effective use of the State's limited resources, and the stabilization and sustainable growth of the State's economy.

The purpose of this Act is to safeguard opportunities for owner occupancy of residential real property in Hawaii in the face of barriers created by the State's investor-dominated housing market. To this end, this Act assesses a surcharge on the conveyance tax imposed on transfers of residential real estate to non-occupant owners.

SECTION 2. Section 247-2, Hawaii Revised Statutes, is amended to read as follows:

"**§247-2 Basis and rate of tax**[~~.~~]**; surcharge.** (a) The tax imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit), paid or to be paid for all transfers or conveyance of realty or any interest therein, that shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the following rates:

(1) Except as provided in paragraph (2):

(A) Ten cents per $100 for properties with a value of less than $600,000;

(B) Twenty cents per $100 for properties with a value of at least $600,000, but less than $1,000,000;

(C) Thirty cents per $100 for properties with a value of at least $1,000,000, but less than $2,000,000;

(D) Fifty cents per $100 for properties with a value of at least $2,000,000, but less than $4,000,000;

(E) Seventy cents per $100 for properties with a value of at least $4,000,000, but less than $6,000,000;

(F) Ninety cents per $100 for properties with a value of at least $6,000,000, but less than $10,000,000; and

(G) One dollar per $100 for properties with a value of $10,000,000 or greater; and

(2) For the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax:

(A) Fifteen cents per $100 for properties with a value of less than $600,000;

(B) Twenty-five cents per $100 for properties with a value of at least $600,000, but less than $1,000,000;

(C) Forty cents per $100 for properties with a value of at least $1,000,000, but less than $2,000,000;

(D) Sixty cents per $100 for properties with a value of at least $2,000,000, but less than $4,000,000;

(E) Eighty-five cents per $100 for properties with a value of at least $4,000,000, but less than $6,000,000;

(F) One dollar and ten cents per $100 for properties with a value of at least $6,000,000, but less than $10,000,000; and

(G) One dollar and twenty-five cents per $100 for properties with a value of $10,000,000 or greater,

of such actual and full consideration; provided that in the case of a lease or sublease, this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, that shall include on-site as well as off-site improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than $1.

(b) There shall be assessed a surcharge on the tax imposed under rates established under subsection (a) for the sale of a condominium or single family residence for which the seller is ineligible for a county homeowner's exemption on property tax. The surcharge shall be calculated and assessed as follows:

(1) Fifteen per cent of the tax imposed pursuant to the rates established by subsection (a) if the sale occurs within one year of the seller's acquisition of the condominium or residence; and

(2) Seven per cent of the tax imposed pursuant to the rates established by subsection (a) if the sale occurs within two years of the seller's acquisition of the condominium or residence."

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SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2015.

INTRODUCED BY: Bert Kobayashi

JAN 29 2015

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Report Title:
Conveyance Tax; Non-occupant Property Owner

Description:
Assesses conveyance tax surcharge on residential property sold by a non-occupant owner.

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