

# HB1293 HD1

Measure Title: RELATING TO REAL PROPERTY TAXATION.

Report Title: Real Property; Tax Exemption

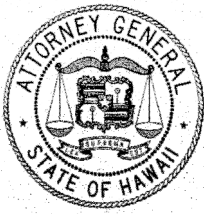
Description: Clarifies that the real property tax exemption for property owned as a primary home covers persons who own, but cannot occupy in, the primary home due to a serious medical condition; provided that they do not rent or lease out that property. (HB1293 HD1)

Companion:

Package: None

Current Referral: CPN, WAM

Introducer(s): JORDAN, BROWER, CREAGAN, HASHEM, YAMASHITA, Keohokalole, Rhoads, San Buenaventura, Tsuji



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2015**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1293, H.D. 1, RELATING TO REAL PROPERTY TAXATION.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Tuesday, March 17, 2015

**TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S): WRITTEN TESTIMONY ONLY.**

(For more information, contact Mary Bahng Yokota,  
Deputy Attorney General, at 586-1470)

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Chair Rosalyn H. Baker and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill attempts to amend a real property tax exemption in section 246-26, Hawaii Revised Statutes (HRS).

Article VIII, section 3, of the State Constitution, however, was amended in 1978 to provide that “all functions, powers and duties relating to taxation of real property shall be exercised *exclusively* by the counties, with the exception of the county of Kalawao” (emphasis added). As reflected in the article XVIII, section 6, of the State Constitution and section 246A-2, HRS, the real property tax exemptions as provided by law and in effect upon ratification were required to be enacted by ordinance and the elimination or diminishment thereof was prohibited for eleven years. This eleven-year period under the State Constitution and section 246A-2, HRS, lapsed. State ex rel Anzai v. City and County of Honolulu, 99 Haw. 508, 521, 57 P.3d 433, 446 (2002). It lapsed more than 25 years ago. And, “increases in such exemptions, or the additions of new and further exemptions or dedications of lands, may be established or granted *only* by agreement of a majority of the *political subdivisions*, and such increases or additions shall be enacted *by ordinance in each political subdivision*” (emphases added). Haw. Const. art. XVIII, § 6 (1978). Indeed, an attempt to statutorily extend certain provisions was ruled to be unconstitutional by the Supreme Court of the State of Hawaii in State ex rel Anzai. Thus, this

bill is subject to a constitutional challenge on the basis that it violates article VIII, section 3, of the State Constitution.

Accordingly, we recommend that this bill be held.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: REAL PROPERTY, Clarify home exemption

BILL NUMBER: HB 1293, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 246-26 to provide that a taxpayer who does not occupy the real property as a primary home due to a medical condition that renders the taxpayer incapable of occupying the real property shall be entitled to the exemption, unless the taxpayer leases or rents out the real property.

EFFECTIVE DATE: July 1, 2030; applicable to tax years beginning after December 31, 2014

STAFF COMMENTS: As a result of the 1978 Constitutional Convention and subsequent ratification by the electorate, the real property taxing powers have been transferred to each of the respective counties. Therefore, the state no longer has any power over the property tax, and has no business telling the counties what they can and cannot exempt. It is questionable why this measure was submitted for introduction.

Digested 3/16/15