



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 4, 2015

TIME: 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): WRITTEN TESTIMONY ONLY.

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

Chair Luke 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).

In 1978, article VIII, section 3, of the State Constitution, however, was amended 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

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, Clarify home exemption

BILL NUMBER: HB 1293

INTRODUCED BY: Jordan, Brower, Creagan, Hashem, Yamashita and 4 Democrats

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: 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 3/2/15