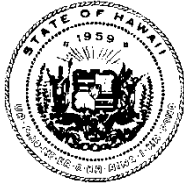


DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON FINANCE

February 27, 2018 at 12:00 p.m.
State Capitol, Room 308

In consideration of
H.B. 2441, H.D. 1
RELATING TO HOUSING.

HHFDC ***offers the following comments*** on H.B. 2441, H.D. 1. This bill increases the conveyance tax rate for properties that are not subject to the homeowner's exemption to 3 percent of the value. We note that HHFDC-assisted affordable housing projects would be subjected to this increased tax rate.

H.B. 2441, H.D. 1 also would add an unspecified allocation of conveyance taxes for the Housing Finance Revolving Fund, which is administered by the HHFDC and which funds many of our financing programs. We appreciate the over-all concept of this provision as it supports our goals and objectives, but we are concerned about the cost implications generated by this proposal.

Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
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Phone: (808) 587-1540 / Fax: (808) 587-1560
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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Tuesday, February 27, 2018
Time: 12:00 P.M.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 2441, H.D. 1, Relating to Housing

The Department of Taxation (Department) offers the following comments on H.B. 2441, H.D. 1, for the Committee's consideration.

H.B. 2441, H.D. 1, lowers the conveyance tax rate for properties with a value less than \$2,000,000. The adjusted rates are as follows:

Value of Property	Proposed Rate	Current Rate
less than \$600,000	\$.05 per \$100	\$.10 per \$100
\$600,000 less than \$1,000,000	\$.10 per \$100	\$.20 per \$100
\$1,000,000 less than \$2,000,000	\$.15 per \$100	\$.30 per \$100

H.B. 2441, H.D. 1, increases the conveyance tax for condominiums and single family residences for which the purchaser is ineligible for a county homeowner's exemption. The increase is to a flat rate of three percent of the value. The adjusted rates are as follows:

Value of Property	Proposed Rate	Current Rate
Less than \$600,000	3 per cent	\$.15 per \$100 (.15%)
\$600,000 less than \$1,000,000	3 per cent	\$.25 per \$100 (.25%)
\$1,000,000 less than \$2,000,000	3 per cent	\$.40 per \$100 (.4%)
\$2,000,000 less than \$4,000,000	3 per cent	\$.60 per \$100 (.60%)
\$4,000,000 less than \$6,000,000	3 per cent	\$.85 per \$100 (.85%)
\$6,000,000 less than \$10,000,000	3 per cent	\$1.10 per \$100 (1.1%)
\$10,000,000 or greater	3 per cent	\$1.25 per \$100 (1.25%)

Section 3 of H.B. 2441, H.D. 1, allocates an unspecified percentage of conveyance tax revenues into the housing finance revolving fund. The bill has a defective effective date of January 1, 2050, but otherwise applies to taxable years beginning after December 31, 2018.

The Department notes that the House Committee on Housing amended the bill to apply to taxable years beginning after December 31, 2018 to give the Department time to update its forms and instructions. The Department appreciates this amendment, however, the concept of taxable years apply to conveyance tax. If the Committee wishes to move this measure forward, the Department suggests that the effective date be stated as a specific date no earlier than January 1, 2019. This will allow the Department time to update the relevant forms and instructions and be clear as to when this measure applies.

Thank you for the opportunity to provide comments.



HB2441 HD1
RELATING TO THE CONVEYANCE TAX
House Committee on Finance

February 27, 2018

12:00 p.m.

Room 308

The Office of Hawaiian Affairs **SUPPORTS** HB2441 HD1, which will provide substantial and much-needed housing relief to Native Hawaiians and other residents of Hawai'i.

This bill will help provide much-needed housing relief for the state's current affordable housing crisis. It has become abundantly clear that our islands' residents have a dire and growing need for affordable housing opportunities: recent research indicates a projected demand for 65,000 more housing units by 2025, with half of this demand for units at or below 60% of the Area Median Income (AMI);¹ only 11 percent of this demand would be for housing units at or above 140% AMI,² or for units that do not meet the State's current definition of "affordable housing."³ With 48% of households in the State already unable to afford basic household necessities including housing, food, transportation, health care, and child care,⁴ the lack of affordable housing opportunities and rising housing costs require bold and aggressive policies that meaningfully prioritize the housing needs of local residents.

As such, this measure's conveyance tax increase for certain high-end property transactions, with a commensurate contribution to the rental housing revolving fund, may help to curb the foreign investment and speculation transactions that have fueled the rise in our islands' housing costs, while providing targeted relief to Hawai'i residents most in need of affordable housing. Notably, data indicate only 1.1% of Native Hawaiians, and 2.0% of Hawai'i residents own homes valued over \$2 million.⁵ **In other words, 98% of**

¹ See SMS, HAWAI'I HOUSING PLANNING STUDY, at 34 (2016), available at

https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

² Notably, an individual earning 140% AMI would be making up to **\$102,620 per year**; at 140% AMI, a family of four would earn **\$146,440 a year**. See HHFDC 2017 INCOME, SALES, AND RENT GUIDELINES, HONOLULU COUNTY INCOME SCHEDULE BY FAMILY SIZE available at http://dbedt.hawaii.gov/hhfdc/developers/copy2_of_copy_of_copy2_of_copy_of_income-sales-rent-guidelines/.

³ See SMS, HAWAI'I HOUSING PLANNING STUDY, at 34 (2016), available at

https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

⁴ ALOHA UNITED WAY, ALICE: A STUDY OF FINANCIAL HARDSHIP IN HAWAI'I (2017),

⁵ See U.S. Census Bureau latest 5-year estimates for 2011-2015, Hawai'i, Owner-occupied housing units value.

Hawai'i residents do not own properties whose sales would be currently affected by the conveyance tax increase proposed by this measure.

The Native Hawaiian community may particularly benefit from this bill. Native Hawaiians are particularly reliant on the rental housing market, as research shows that Native Hawaiians are less likely to own a home, and have homeownership rates lower than the state average.⁶ Native Hawaiian renters also have a particular need for affordable rental units, as more than half of Native Hawaiian renters, many of whom already live in overcrowded situations⁷ to reduce costs, live in homes they are struggling to afford.⁸ Native Hawaiians may therefore be disproportionately impacted by the lack of affordable rental housing opportunities in the state. **By generating increased revenues to facilitate the development of affordable rental housing units, this measure may directly address the particular housing needs of the Native Hawaiian community.**

Therefore, OHA urges the Committee to **PASS** HB2441 HD1. Mahalo for the opportunity to testify on this matter.

⁶ The Native Hawaiian homeownership rate for non-DHHL properties is only 38.9%, 18.3 percentage points below the statewide rate of 57.2%. See Census Bureau. (2017). American Community Survey (ACS) 1-year Estimates: 2016; DHHL: Homestead Services Division. (01/24/17) Commission submittal

⁷ The average Native Hawaiian household size was 3.63, notably larger than the 2.62 average for non-Native Hawaiian households. See SMS, HAWAI'I HOUSING PLANNING STUDY, at 70 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf

⁸ 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals. 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. See *id.* at 70.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR HOUSE BILL 2441, HOUSE DRAFT 1, RELATING TO HOUSING

House Committee on Finance
Hon. Sylvia Luke, Chair
Hon. Ty J.K. Cullen, Vice Chair

Tuesday, February 27, 2018, 12:00 PM
State Capitol, Conference Room 308

Honorable Chair Luke and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in support of House Bill 2441, relating to housing.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2017* report found that a full-time worker would need to earn \$35.20/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015. Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 116 hours per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom—a number that is equivalent to working 20 hours a day with no days off year-round. In the past three years alone, Honolulu rent has increased by more than 25 percent. While 43 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$15.64/hour, scarcely enough to meet their basic needs. One out of every four households in Hawai'i report that they are “doubling up” or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, 54 percent of households are cost-burdened, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to 83 percent of extremely low-income households. Homelessness is directly tied to our state's exorbitant cost of living and penchant for catering to people who use the islands as their own private Monopoly board. We beseech you to seek innovative ways of making Hawai'i more affordable for our economically disadvantaged neighbors.

Our state’s cost of housing has skyrocketed over the last decade, leaving many families searching for affordable alternatives, in shelters, or on the streets. For context, the median price of condominiums on O’ahu increased 6 percent in the summer of 2017 to a record \$425,000, while the median price for single-family homes increased by 3 percent to \$795,000, according to the Honolulu Board of Realtors, a number that they expect to increase by at least another 5 percent in 2018. Average fair market rent for two-bedroom apartments in *outlying* communities in the City and County of Honolulu now exceeds \$2,000, with the cost of a four-bedroom home in urban Honolulu now exceeding \$1.1 million. At least 43 percent of residences in Hawai’i are owner unoccupied, according to the National Low-Income Housing Coalition, meaning that nearly 50 percent—and by some estimates over half—of Hawai’i’s homes are likely investment properties.

The time for deliberation is over. It’s time to act. Experts at DBEDT now estimate that Hawai’i needs 66,000 new housing units by the year 2025 to keep up with demand, more than 80 percent of which is needed to meet the demand of people who qualify for affordable housing. Yet, for every 100 extremely low-income renters on O’ahu, there exist only 40 affordable rentals, according to the Urban Institute, of which only 11 are “naturally affordable,” meaning they are affordable without federal subsidies. Though our state is committed to a goal of building 22,500 affordable rental housing units in the next 10 years, figures from the Hawai’i Housing Finance and Development Corporation show that in 2015 and 2016, we added only approximately 1,000 affordable rental units to our state’s inventory, with further plans finalized for a mere 3,240 more affordable rentals by 2022. Analysts believe that boosting the overall housing supply will lower home prices—and, in turn, rent—for all residents, an ancillary benefit that cannot be overstated in our undersaturated, luxury-driven, “investor first” housing market.

Conveyance taxes are levied on transfers of real property. Currently, HRS §247-7 caps the amount of conveyance tax collections paid into the rental housing revolving fund at the lesser of 50 percent or \$38 million. Per the Hawai’i Housing Finance and Development Corporation, the revolving fund exists “for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units.” To increase available funding for affordable housing, we support raising conveyance tax rates and requiring that a percentage of conveyance tax collections be paid into the Housing Finance Revolving Fund.

We need housing now. Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE, Hike Rates and Allocate to Housing Finance Revolving Fund

BILL NUMBER: HB 2441, HD-1

INTRODUCED BY: House Committee on Housing

EXECUTIVE SUMMARY: Hikes tax rates. Adds an earmark to the Housing Finance Revolving Fund of an unspecified amount.

SYNOPSIS: Amends section 247-2, HRS, to increase rates to unspecified levels.

Amends section 247-2, HRS, to raise the conveyance tax rates as follows:

For a condominium or single-family residence for which the purchaser is ineligible for a county homeowner's exemption on real property tax:

Minimum Property Value	Current Tax (per \$100 of consideration)	New Tax (per \$100 of consideration)
\$0	\$ 0.15	\$ 3.00
\$600,000	0.25	3.00
\$1,000,000	0.40	3.00
\$2,000,000	0.60	3.00
\$4,000,000	0.85	3.00
\$6,000,000	1.10	3.00
\$10,000,000	1.25	3.00

For all other conveyances:

Minimum Property Value	Current Tax (per \$100 of consideration)	New Tax (per \$100 of consideration)
\$0	\$ 0.10	\$ 0.05
\$600,000	0.20	0.10
\$1,000,000	0.30	0.15
\$2,000,000	0.50	0.50
\$4,000,000	0.70	0.70
\$6,000,000	0.90	0.90
\$10,000,000	1.00	1.00

Amends section 247-7, HRS, to provide for an additional earmark:

(A) ___% of the tax or \$____, whichever is less, to the housing finance revolving fund.

EFFECTIVE DATE: January 1, 2050; tax provisions apply to taxable years beginning after December 31, 2018.

STAFF COMMENTS: The conveyance tax was enacted by the 1966 legislature after the repeal of the federal law requiring stamps for transfers of real property. It was enacted for the sole purpose of providing the department of taxation (which at the time also administered the real property tax) with additional data for the determination of market value of properties transferred. This information was also to assist the department in establishing real property assessed values and at that time the department stated that the conveyance tax was not intended to be a revenue raising device.

Prior to 1993, the conveyance tax was imposed at the rate of 5 cents per \$100 of actual and full consideration paid for a transfer of property. At the time all revenues from the tax went to the general fund. The legislature by Act 195, SLH 1993, increased the conveyance tax to 10 cents per \$100 and earmarked 25% of the tax to the rental housing trust fund and another 25% to the natural area reserve fund. As a result of legislation in 2005 and in 2009, the conveyance tax rates were substantially increased and bifurcated between nonowner-occupied residential properties and all other properties. Tax brackets were based on the amount of the value transferred. Until 2005, 50% of the receipts went into the general fund and the other half was split with the affordable rental housing program and the natural area reserve program. Beginning in 2005, another 10% was taken for the land conservation fund. In 2009, legislators reduced the amount of conveyance tax revenues earmarked to the rental housing trust fund from 30% to 25% until June 30, 2012 in an effort to generate additional revenues for the state general fund. Act 164, SLH 2014, increased the earmark to 50% as of July 1, 2014, and Act 84, SLH 2015, imposed the \$38 million cap on the earmark.

This bill raises the conveyance tax to generate significantly more revenues for the rental housing trust fund and the land conservation fund.

As with any earmarking of revenues, the legislature will be preapproving each of the programs fed by the fund into which the tax monies are diverted, expenses from the funds largely avoid legislative scrutiny, and the effectiveness of the programs funded becomes harder to ascertain. It is also difficult to determine whether the fund has too little or too much revenue.

If the legislature deems the programs and purposes funded by this special fund to be a high priority, then it should maintain the accountability for these funds by appropriating the funds as it does with other programs. Earmarking revenues merely absolves elected officials from setting priorities. If the money were appropriated, lawmakers could then evaluate the real or actual needs of each program.

Digested 2/25/2018

HB-2441-HD-1

Submitted on: 2/25/2018 11:58:09 PM

Testimony for FIN on 2/27/2018 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Smart	Individual	Oppose	No

Comments:

The cost of purchasing a home already prices most residents out of the market. With the median single family home price over \$750,000, you are driving the population into debt and then homelessness. Stop raising our expenses. You should be looking for ways to encourage developers to build low cost home/mobile/modular homes that anyone can purchase. Government should not interfere in the purchase of homes. Government has created the shortage and it is government that is issuing the permits to build the luxury condos that only people outside of Hawaii can afford. You are robbing Peter who may be working multiple jobs -- to pay Paul who may only work part-time or not at all. Stop these "redistribution of wealth" schemes. If you like socialism, move to Venezuela, however, if you like to eat, I don't recommend it. Vote NO on raising the cost of living on us by increasing fees/taxes.

February 27, 2018

The Honorable Sylvia Luke, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

LATE

RE: H.B. 2441, HD1, Relating to Housing

HEARING: Tuesday, February 27, 2018, at 12:00 p.m.

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its almost 9,500 members. HAR **strongly opposes** House Bill 2441, HD1, which amends the Conveyance Tax to 3% on all condominiums and single-family residences for which the purchaser is ineligible for a county homeowner's exemption on property tax. This measure also requires an unspecified percentage to be deposited into the Housing Finance Revolving Fund.

In 2005, the Conveyance Tax was increased on a tiered scale on 1) the sale of realty for all transfers or conveyance of realty or any interest (i.e. commercial, timeshare, agricultural, industrial, etc. and condominium or single-family residences for which the purchaser is eligible for a county homeowner's exemption); and 2) the sale of a condominium or single-family residence for which the purchaser is ineligible for a county homeowner's exemption.


In 2009, the Legislature once again increased the Conveyance Tax on 1) the sale of realty from 30 cents per \$100 (.30%) for properties over \$1,000,000 to a maximum of \$1.00 (1%) per \$100 for properties over \$10,000,000 -- an increase of over 333%, and 2) the sale of a property ineligible for a county homeowner exemption from 30 cents per \$100 to \$1.25 per \$100 (1.25%) -- an increase of over 416.66%.


HAR has serious concerns with the increase in 3% of the value of a sale of a condominium or single-family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax. Under the proposed rate, on the conveyance of a \$300,000 condominium, it would be a \$9,000 conveyance tax. Under the current rate, the tax is \$450 (\$15 cents per \$100)—an increase of over 1,900%.

Real estate is an opportunity to build equity and wealth through investment. With Hawaii's high cost of housing it is also used as an opportunity for individuals to invest in for their children, so they have a place to call home in the future. This measure would severely impact these opportunities.



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The Conveyance Tax applies to the conveyance of multi-family rentals, land for residential subdivisions, mixed-income and multi-use properties, commercial properties, resort properties, and agricultural lands, as well as condominium and single-family homes. It also applies when one conveys property between family members. It also applies whether or not a property is sold at a gain or a loss

The tax applies to the entire purchase price, and does not take into account the amount of indebtedness that may be on the property being sold, or whether the seller may be selling at less than what the seller originally acquired the property for. Thus, in certain circumstances the seller may not have the cash to be able to pay the Conveyance Tax, or the amount of tax may be so high relative to the net proceeds that the seller is receiving as to become confiscatory.

Furthermore, the problem linking special funding to the Conveyance tax is that when the real estate market is down, there are not enough funds to pay for the programs and special funds it covers. Then, the Conveyance Tax would need to be increased to cover the program. However, when the market is up, there are excess funds over and above the program's needs. This becomes a cyclical issue, and unreliable in forecasting these program's needs.

Mahalo for the opportunity to testify in strong opposition to this measure.



LAND USE RESEARCH
FOUNDATION OF HAWAII

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LATE

February 27, 2018

Representative Sylvia J. Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
House Committee on Finance

Comments, Concerns and Opposition to HB 2441, HD1, Relating to Housing (Amends conveyance tax rates. Requires that a percentage of conveyance taxes collected be deposited into the Housing Finance Revolving Fund.

Tuesday, February 27, 2018, 12:00 p.m., in Conference Room 308

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to provide **comments, concerns and opposition to HB 2441, HD1**, based on, among other things, the following:

- **The Hawaii Conveyance Tax was never intended as a State ATM machine, or revenue-generating tax – this bill is inconsistent with the intent of the Conveyance Tax;**
- **This measure appears to be illegal and in violation of Sections 37-52.3 and 37-52.4, Hawaii Revised Statutes (“HRS”), because it attempts to use the Conveyance Tax to subsidize, or increase subsidies to special funds which do not have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program;**
- **As noted in the prior testimony of the Hawaii Housing Finance and Development Corporation (HFDC) Executive Director in opposition to HB 2441, the substantial increase in Conveyance Tax costs, can have unintended consequences of making HHFDC-assisted affordable housing projects infeasible, and discouraging the purchase and rehabilitation of affordable housing units; and**
- **Other legal and voluntary alternatives may be available to increase funding or incentivize support for affordable housing.**

SB 2441, HD1. The stated purpose of this bill is to encourage homeownership among Hawaii residents by: (1) Increasing the conveyance tax rate to three percent of the value of the sale of investment properties, defined as condominiums or single family residences for which the purchaser is ineligible for a county homeowner's real property tax exemption; (2) lowering the conveyance tax rates for properties with a value under two million dollars; and (3) requiring that a portion of conveyance tax revenues be designated into the Housing Finance Revolving Fund (HFRF) to assist Hawaii Housing Finance and Development Corporation financing programs.

It appears that this bill is intended as a method to generate revenue for the identified funds specifically proposed to be subsidized by the conveyance tax, which in this case, includes the general fund of the State; the land conservation fund established pursuant to section 173A-5; and the rental housing revolving fund established by section 201H-202. To do so, this bill proposes an increase the rate of real estate conveyance tax of three percent of the total value of the property, for the sale of condominium or single family residences for which the purchaser is ineligible for a county homeowner's exemption on property tax.

LURF's Position. The proposed increase of the conveyance tax rate for the sale of certain properties is inappropriate, improper, illegal, and may have unintended negative consequences on developers of projects which include affordable housing, given the following:

1. **The Hawaii Conveyance Tax was never intended as a revenue-generating tax.**

Hawaii Revised Statutes ("HRS"), Chapter 247 (Conveyance Tax), was purposefully enacted in 1966 to provide the State Department of Taxation ("DoTax") with informational data for the determination of market value of properties transferred, and to assist the DoTax in establishing real property assessed values. In short, the sole intent of the conveyance tax was originally to cover the administrative costs of collecting and assessing said informational data, which necessarily entails the recording of real estate transactions, as performed by the Bureau of Conveyances.

Since the enactment of HRS Chapter 247, however, the State Legislature has proposed, and has successfully implemented changes to the law 1) to allow application of conveyance tax revenue to a number of non-conveyance type uses (land conservation fund; rental housing trust fund; and natural area reserve fund) to the point where there is no longer any clear nexus between the benefits sought by the original Act and the charges now proposed to be levied upon property-holding entities transferring ownership; and 2) also to increase the tax rates to the point where said revenues now appear to far exceed the initially stated purpose of the Act.

These expansions and deviations which go beyond the scope of the original intent of the conveyance tax law are concerning since the proposed bills, particularly if unlawfully targeting certain types of transactions or property owners, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

2. **HB 2441, HD1, appears to be illegal and in violation of Sections 37-52.3 and 37-52.4, Hawaii Revised Statutes (“HRS”), because it attempts to use the Conveyance Tax to subsidize, or increase subsidies to special funds which do not have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program.**

Special funds are subject to Sections 37-52.3 and 37-52.4 HRS. Criteria for the establishment and continuance of special and revolving funds was enacted by the 2002 Legislature through Act 178, SLH 2002, Sections 37-52.3 and 37-52.4, HRS. To be approved for continuance, a special fund must:

- a. serve the purpose for which it was originally established;
- b. reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- c. provide an appropriate means of financing for the program or activity; and
- d. demonstrate the capacity to be financially self-sustaining.

The first and second criteria are nearly identical to those in Act 240, SLH 1990, codified in Section 23-11, HRS, requiring the Auditor to review all legislative bills in each session to establish new special or revolving funds. It appears that the intent of HB 2441, HD1 is to find an additional source of funding for affordable housing by increasing conveyance tax revenues for the sale of condominiums of single family residences for which the purchaser is ineligible for a county homeowner’s exemption on their real property tax. However, the State Auditor has in the past concluded that such an arrangement where there is no *clear link* with the funding source (individuals and companies involved in specific, particular types of real estate transactions) should be repealed.

3. **This bill has the unintended consequence of discouraging the development and rehabilitation of affordable housing,**

- a. As noted in the testimony of the HHFDC Executive Director opposing HB 2441, this bill would subject HHFDC-assisted affordable housing projects to the substantially increased conveyance tax costs; and
- b. Affordable housing projects could become infeasible, if the substantially increased conveyance tax costs are imposed on affordable housing developers who rehabilitate or purchase to preserve condominiums or single family residences for affordable housing.

4. **Other legal and voluntary alternatives may be available to increase funding or incentivize support for affordable housing.**

In lieu of improperly imposing increases of conveyance taxes to increase the State’s general fund, or to subsidize or increase revenue for certain unrelated special funds with no clear link to the conveyance tax purposes or beneficiaries, proponents of those special funds or programs are urged to look to other possible legitimate means to do

so, including funding support through other “related” or “linked” state and county charges, fees or taxes.

Given the “*clear nexus*” requirement for special and revolving funds, and also given that general funding and alternative methods to secure revenues for these funds exist, expansions and deviations of HRS Chapter 247 which go beyond the scope of the original intent of the conveyance tax law are concerning since this proposed bill, particularly if it unlawfully targets transactions involving the sale of interests by a particular group of individuals or entities which own investment real property in the State, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

Understanding the importance of the conveyance tax issues raised by HB 2441,HD1, **LURF respectfully requests that this bill be deferred, or held by this Committee** to allow stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties to work together to come to a consensus regarding the bill’s purposes and unintended consequences, as well as more proper alternatives to fund affordable housing through the general fund and perhaps other broad-based supplemental funding by Hawaii’s taxpayers and visitors.

Thank you for the opportunity to provide **comments and concerns and opposition** relating to this proposed measure.

Please feel free to contact David Arakawa, LURF Executive Director, if there are any questions.