



STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Friday, February 23, 2018
Time: 11:00 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2188, S.D. 1, Relating to the Conveyance Tax

The Department of Taxation (Department) offers the following comments on S.B. 2188, S.D. 1, for the Committee's consideration.

Section 1 of S.B. 2188, S.D. 1, imposes an additional 1% conveyance tax on condominiums and single family residences with a value of more than \$2,000,000. The resulting effective tax rates for condominiums and single family residences for which the purchaser is eligible for a county homeowner's exemption are as follows:

Value of Property	Proposed Rate	Current Rate
\$2,000,000 less than \$4,000,000	\$1.50 per \$100	\$.50 per \$100
\$4,000,000 less than \$6,000,000	\$1.70 per \$100	\$.70 per \$100
\$6,000,000 less than \$10,000,000	\$1.90 per \$100	\$.90 per \$100
\$10,000,000 or greater	\$2.00 per \$100	\$1.00 per \$100

The resulting effective tax rates for condominiums and single family residences for which the purchaser is ineligible for a county homeowner's exemption are as follows:

Value of Property	Proposed Rate	Current Rate
\$2,000,000 less than \$4,000,000	\$1.60 per \$100	\$.60 per \$100
\$4,000,000 less than \$6,000,000	\$1.85 per \$100	\$.85 per \$100
\$6,000,000 less than \$10,000,000	\$2.10 per \$100	\$1.10 per \$100
\$10,000,000 or greater	\$2.25 per \$100	\$1.25 per \$100

Section 2 of this bill allocates 100% of the revenue from the additional tax rate to the revolving affordable housing fund of the county where the property is located. Additionally, the bill limits the use of the revenue to specific uses related to the purchase, planning, design, and construction of housing; making grants or loans to nonprofits such as community land trusts; and investment in public infrastructure. S.B. 2188, S.D. 1 has a defective effective date of July 1, 2050.

The Department is able to administer the changes proposed by this bill. If the Committee wishes to move this measure forward, the Department requests the effective date be made no earlier than January 1, 2019. This will allow the Department time to update the relevant forms and instructions.

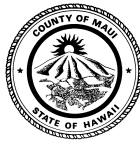
Thank you for the opportunity to provide comments.

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Stacy Crivello

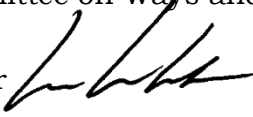
Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



COUNTY COUNCIL
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February 21, 2018

TO: The Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Mike White
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 23, 2018; TESTIMONY IN SUPPORT OF SB 2188 SD 1, RELATING TO THE CONVEYANCE TAX**

Thank you for the opportunity to testify in support of this important measure. The purpose of this bill is to establish an additional conveyance tax rate for the sale of certain condominiums or single family residences and allocate the revenue collected in each county from the additional conveyance tax rate to the respective county's affordable housing fund.

This measure is included in the Maui County Legislative Package. Therefore, I offer this testimony on behalf of the Maui County Council.

I **support** this measure for the following reasons:

1. In each of the four counties, creating additional affordable housing units is a top priority. Demand is far outpacing supply and creative solutions and resources are needed for each county to uniquely address the dire shortage of housing.
2. Placing a conveyance tax on properties at least \$2 million in value is a new way to generate additional revenue. Since the value is relatively high compared to average home prices, the transactions are not likely to adversely impact owners or working families.
3. Without a drastic change in the way affordable housing is supported, the ongoing housing supply crises will not be resolved. This proposal adds another tool to supplement the counties current efforts and will help to purchase existing housing units and other interests in real property; allow for the planning, design, or construction of housing units; allow for grants or loans to nonprofit organizations, including community land trusts; and allow for investment in public infrastructure.

For the foregoing reasons, I strongly **support** this measure.



February 20, 2018

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Comments, Concerns and Opposition to SB 2188, S.D. 1, Relating to the Conveyance Tax (Establishes an additional conveyance tax for the sale of certain condominiums or single-family residences; requires that the revenue collected in each county from the additional conveyance tax be allocated to the respective county's affordable housing fund.)

Friday, February 23, 2018, at 11:00 a.m., in Conference Room 211

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. One of LURF's missions 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 this bill.

SB 2188, S.D. 1. While this measure does not contain a purpose clause, it is presumed that it is intended as a method to generate revenue for the identified fund specifically proposed to be subsidized by the conveyance tax, which in this case, is each county's affordable housing fund. To do so, this bill proposes to establish an additional conveyance tax for the sale of condominiums and single-family residences with values of at least \$2,000,000.

LURF's Position. The proposed establishment of an additional conveyance tax for the sale of certain condominiums or single-family residences is inappropriate, improper, and illegal, 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, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

2. **SB 2188, S.D. 1, 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 special funds which a) do not have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; and b) were not established by the Legislature through criteria contained in the HRS.**

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 SB 2188, S.D. 1 is to find an additional source of funding for affordable housing by increasing conveyance tax revenues for the transfer of “luxury” properties. However, that 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 types of real estate transactions) should be repealed.

Moreover, in the present case, SB 2188, S.D. 1 proposes to require that revenue from the additional tax rate be allocated to the **affordable housing fund in each county where said revenue was collected**. LURF believes that such county special funds which have not been properly established pursuant to the criteria for State special funds

as set forth in HRS Sections 37-52.3 and 37-52.4 (and are therefore not subject to examination and audit by the State Auditor), **do not even qualify for consideration as repositories for conveyance tax revenues in the first place.**

3. 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 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 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 SB 2188, S.D. 1, **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 purpose, as well as alternatives to funding 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 relating to this proposed measure.



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1259 A'ala Street, Suite 300
Honolulu, HI 96817

February 23, 2018

The Honorable Donovan Dela Cruz, Chair

Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: Senate Bill 2188, SD1, Relating to the Conveyance Tax

HEARING: Friday, February 23, 2018, at 11:00 a.m.

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

I am Ken Hiraki, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,500 members. HAR **strongly opposes** Senate Bill 2188, SD1, which establishes an additional conveyance tax rate for the sale of certain condominiums or single family residences. Requires that the revenue collected in each county from the additional conveyance tax rate be allocated to the respective county's affordable housing 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%.

This measure proposes to increase the Conveyance Tax to the following for condominiums and single-family residences:

Property Value:	Current Rate:	Proposed Rate:	Rate Increase:	In Dollars (rounded):
\$2 mil - \$3.99 mil	50 cents per \$100	\$1.50 per \$100	200%	\$60,000 (\$3.99 mil property)
\$4 mil - \$5.99 mil	70 cents per \$100	\$1.70 per \$100	142.85%	\$102,000 (\$5.99 mil property)
\$6 mil - \$9.99 mil	90 cents per \$100	\$1.90 per \$100	111.11%	\$190,000 (\$9.99 mil property)
\$10 mil +	\$1.00 per \$100	\$2.00 per \$100	100%	\$200,000 (\$10 mil property)



For the sale of a condo or single-family residence for which the purchaser is ineligible for a county homeowner's exemption, the conveyance tax is increased at the following rates:

Property Value:	Current Rate:	Proposed Rate:	Rate Increase:	In Dollars (rounded):
\$2 mil - \$3.99 mil	60 cents per \$100	\$1.60 per \$100	166.66%	\$64,000 (\$3.99 mil property)
\$4 mil - \$5.99 mil	85 cents per \$100	\$1.85 per \$100	117.64%	\$111,000 (\$5.99 mil property)
\$6 mil - \$9.99 mil	\$1.10 per \$100	\$2.10 per \$100	90.91%	\$210,000 (\$9.99 mil property)
\$10 mil +	\$1.25 per \$100	\$2.25 per \$100	80%	\$225,000 (\$10 mil property)

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 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 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 programs. 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.

While HAR supports the counties affordable housing initiatives, we strongly oppose increasing the Conveyance Tax to do so.

Mahalo for the opportunity to testify on this measure.

SB-2188-SD-1

Submitted on: 2/21/2018 4:01:42 PM

Testimony for WAM on 2/23/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments: