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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: Wednesday, February 28, 2018
Time: 10:30 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2415, Relating to the Conveyance Tax

The Department of Taxation (Department) offers the following comments on H.B. 2415 for the Committee's consideration.

S.B. 2415 increases the conveyance tax rates for condominiums and single family residences with values of at least \$2,000,000 and for which the purchaser is ineligible for a county homeowner's exemption. S.B. 2415 is effective July 1, 2018. The adjusted rates are as follows:

Value of Property	Proposed Rate	Current Rate
\$2,000,000 less than \$4,000,000	\$1.00 per \$100	\$.60 per \$100
\$4,000,000 less than \$6,000,000	\$2.00 per \$100	\$.85 per \$100
\$6,000,000 less than \$10,000,000	\$3.00 per \$100	\$1.10 per \$100
\$10,000,000 or greater	\$4.00 per \$100	\$1.25 per \$100

The Department respectfully requests the effective date of the tax rate changes made by Section 1 of the bill be changed to January 1, 2019 to allow the Department time to update the relevant forms and instructions.

Thank you for the opportunity to provide comments.

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

SENATE COMMITTEE ON WAYS AND MEANS

February 28, 2018 at 10:30 a.m.
State Capitol, Room 211

In consideration of
S.B. 2415
RELATING TO THE CONVEYANCE TAX.

The HHFDC *offers the following comments and requested amendment* to S.B. 2415. HHFDC has concerns with the proposed increase in the conveyance tax rates on non-owner-occupied properties at or above \$2 million in value, because of the potential impact on the economic feasibility of affordable rental housing projects.

Accordingly, we respectfully request that if the Committee intends to move this bill forward, that affordable housing be exempted from the conveyance tax. A proposed amendment is attached for the Committee's consideration.

Thank you for the opportunity to testify.

PROPOSED AMENDMENT TO S.B. 2415

SECTION X. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

"§247-3 Exemptions. The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;

PROPOSED AMENDMENT TO S.B. 2415

- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity;
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; ~~and~~
- [+](17)[+]Any document or instrument that conforms to the transfer on death deed as authorized under chapter 527~~[+]~~; and
- (18) Any document or instrument conveying real property subject to a government assistance program qualified by the Hawaii housing finance and development corporation and administered or operated by the State, the corporation, the United States, or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development and acquisition for the provision of affordable housing for qualified persons in the State."

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE, Tax Hike on Properties Above \$2M

BILL NUMBER: SB 2415

INTRODUCED BY: ESPERO, HARIMOTO, S. Chang

EXECUTIVE SUMMARY: Increases the rates for certain conveyance tax categories. Repeals the statutory cap on the disposition of conveyance taxes dedicated for deposit into the rental housing revolving fund for the financing of affordable rental housing development

SYNOPSIS: 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	\$ 0.15
\$600,000	0.25	0.25
\$1,000,000	0.40	0.40
\$2,000,000	0.60	1.00
\$4,000,000	0.85	2.00
\$6,000,000	1.10	3.00
\$10,000,000	1.25	4.00

There is no tax rate change proposed for all other conveyances.

EFFECTIVE DATE: July 1, 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. Because 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 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 feed the rental housing revolving fund, land conservation fund, and the general fund.

Lawmakers need to ask which taxpayers are going to be impacted by these hikes. Although the intent may be to soak the rich fat cats, the increases will affect developments of multi-unit property, including affordable housing being developed.

Digested 2/26/2018



February 23, 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 2415, Relating to the Conveyance Tax (Raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000.)

Wednesday, February 28, 2018, at 10:30 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 2415. Since this measure does not contain a purpose clause, it is not clear why the proposed conveyance tax rate increase is being used as a method to generate revenue for the State's general fund, or whether such an increase is even warranted. This bill nevertheless proposes to increase the conveyance tax rates for residential investment properties with a value of at least \$2,000,000.

LURF's Position. The proposed increase of the conveyance tax rate for the sale of certain properties 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.

Without any facts or information evidencing a need for additional conveyance tax revenue for conveyance tax-related costs, the proposed use of such revenues to increase the general fund for undisclosed purposes must be considered expansions and deviations which go beyond the scope of the original intent of the conveyance tax law, and are concerning since the proposed bill, 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. If the intent of SB 2415 is 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, the bill must be considered illegal and in violation of Sections 37-52.3 and 37-52.4, Hawaii Revised Statutes (“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 2415 is to find an additional source of funding for affordable housing by increasing conveyance tax revenues for the transfer of “luxury” properties. 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. Other legal alternatives are available to increase general funding or incentivize support for special funds.**

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 this bill 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 2415, **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 increasing the State’s general fund.

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

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 28, 2018

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE GIL KEITH AGARAN, VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **CONCERNS REGARDING S.B. 2415 RELATING TO THE CONVEYANCE TAX.** Raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000.

HEARING

DATE: Wednesday, February 28, 2018
TIME: 10:30 a.m.
PLACE: Conference Room 211

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

The General Contractors Association (GCA) is an organization comprised of over 500 general contractors, subcontractors, and construction related firms. The GCA is the largest construction association in the State of Hawaii and its mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is has grave concerns regarding S.B 2415, Relating to the Conveyance Tax, which proposes to increase the conveyance tax for residential investment properties with a value of at least \$2,000,000.00. While GCA understands the intent of this measure to increase available funding for state expenses, the proposed increase to the conveyance tax may be detrimental to those with residential investment properties who may actually providing affordable rental units, potentially multi-units on a single property, to those in need of reasonably priced rentals. This proposal may not be taking into account that any increase to the conveyance tax to those with residential investment properties may be passed on to renters of these properties. Furthermore, the measure does not appear to satisfy the “clear nexus” criteria that requires that such should be funded by a broad tax which is imposed on all residents who benefit from those programs, and not by the conveyance tax, which is only imposed on the sellers of real property.

Thank you for this opportunity to share our concerns regarding S.B. 2415 and we respectfully request that you defer this measure.



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

TESTIMONY FOR SENATE BILL 2415, RELATING TO THE CONVEYANCE TAX

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

**Wednesday, February 28, 2018, 10:30 AM
State Capitol, Conference Room 211**

Honorable Chair Dela Cruz and committee members:

I am Kris Coffield, representing IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in support of Senate Bill 2415, relating to the conveyance tax.

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 the Department of Business, Economic Development, and Tourism 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 increasing conveyance taxes on residential investment properties valued in excess of \$2,000,000. That said, **we urge the committee to consider amending this measure to increase conveyance taxes for all residential investment properties valued at \$1,000,000 and above**, noting that the wealth gap in our state is widening and an exponentially greater number of residents are unable to afford rent, much less the benefits of buying and selling a home. According to a study released in May of 2016 by DBEDT, there are “clear distinctions” between the average price of homes bought by local residents, mainlanders, and foreigners. Analyzing purchases made between 2008 and 2015, DBEDT found: “The average sale price was highest among foreign buyers. The average sale price of the total of 5,775 homes sold to foreign buyers from 2008 to 2015 was \$786,186, 28.3 percent higher than the average sale price to the mainlanders (\$612,770) and 64.7 percent higher than the average sale price to local

buyers (\$477,460).” Thus, increasing conveyance tax prices directly impacts the real estate speculators driving up Hawai’i’s housing costs and, in turn, rental prices, i.e. those most responsible for pricing local residents out of paradise.

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

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

February 28, 2018

The Honorable Donovan Dela Cruz, Chair

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

RE: Senate Bill 2415 Relating to the Conveyance Tax

HEARING: Wednesday, February 28, 2018, at 10:30 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 2415 which raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000.

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 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	\$1.00 per \$100	66.66%	\$40,000 (\$3.99 mil property)
\$4 mil - \$5.99 mil	85 cents per \$100	\$2.00 per \$100	135.29%	\$120,000 (\$5.99 mil property)
\$6 mil - \$9.99 mil	\$1.10 per \$100	\$3.00 per \$100	172.72%	\$300,000 (\$9.99 mil property)
\$10 mil +	\$1.25 per \$100	\$4.00 per \$100	220%	\$400,000 (\$10 mil property)



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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 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, according to the Department of Business, Economic Development and Tourism, nearly 66,000 housing units are needed to meet long-term demand over the next ten years, including affordable rentals. We should work on efforts to reduce the cost of housing. An increase in the conveyance tax for residential investment property, would more than likely also burden the individuals renting these units.

Mahalo for the opportunity to testify on this measure.