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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Tuesday, February 26, 2019
Time: 12:30 P.M.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 287, H.D. 1, Relating to Vacant and Abandoned Residential Property

The Department of Taxation (Department) offers the following comments on H.B. 287, H.D. 1, for the Committee's consideration.

H.B. 287, H.D. 1, makes several significant changes to Hawaii property and foreclosure law. A summary of key provisions are as follows:

- Adds a new section to chapter 46, Hawaii Revised Statutes (HRS), directing each county to establish an expedited procedure to approve permits for the demolition of vacant residential structures located within the county;
- Sets forth procedures for the owner of a residential structure to establish that the residential structure is vacant, sets limitations on when a residential structure may be deemed vacant, and provides statutory definitions for "parcel" and "residential structure";
- Adds a new section to chapter 667, HRS, providing that a state tax lien on a parcel upon which a residential structure exists may be foreclosed by nonjudicial or power of sale foreclosure procedures set forth in chapter 667 by the State Tax Collector, provided that the State Tax Collector has established its lien and that a residential structure is vacant and abandoned as provided in subsection 231-63(b), HRS;
- Amends section 231-62, HRS, by adding language to subsection (b) stating that liens that have existed for three or more years, as well as liens on vacant and abandoned residential real property which have existed for any length of time, may be enforced by the State Tax Collector by foreclosure without suit as provided in section 231-63 and chapter 667, HRS;
- Amends section 231-63, HRS, by adding a new subsection which states that a state tax lien on a parcel upon which a vacant and abandoned residential structure exists may be foreclosed by the State Tax Collector using nonjudicial or power of sale foreclosure procedures set forth in chapter 667, HRS, at any time; provided that the State Tax

Collector has established that the parcel and residential structure is vacant and abandoned by meeting the following requirements:

- The Department must establish that a residential structure is vacant and abandoned by mailing to the structure's owner by certified mail with return receipt a sworn statement establishing that the Department has conducted an unspecified minimum number of inspections, each at least an unspecified number of days apart and at different times of day, and that at each inspection no occupant was present and there was no evidence of occupancy;
- The Department must maintain a copy of the statement and return receipt on file for the owner's inspection and review;
- *Prima facie* evidence that a residential structure is not vacant and abandoned shall include but is not limited to delivery of certified U.S. mail and ongoing and current utility usage;
- A residential structure shall not be deemed vacant and abandoned where the structure is:
 - Undergoing construction, renovation, or rehabilitation that is proceeding diligently;
 - Used on a seasonable basis but is otherwise secure;
 - The subject of any ongoing probate action, action to quiet title, or other ownership dispute;
 - Damaged by natural disaster but the owner intends to repair and reoccupy; or
 - Occupied by a mortgagor, relative, or lawful tenant.
- Adds statutory definitions for "parcel" and "residential structure" to subsection 231-63(b), HRS; and
- Has a defective effective date of January 28, 2081.

The House Committee on Judiciary amended the previous version of this measure by removing extraneous references to subsection 231-62(b), HRS, and by defecting the effective date to January 28, 2081.

First, the Department notes that the existing language of section 231-63, HRS, allows nonjudicial foreclosure by the State Tax Collector (i.e., the Oahu Collection Branch Chief) only on real property which has been subject to a state tax lien for three years. Section 5 of this measure would add a new provision to section 231-63, HRS, allowing the State Tax Collector to foreclose a state tax lien *at any time* on a parcel upon which a vacant and abandoned residential structure exists, using the nonjudicial/"power of sale" foreclosure procedures set forth by chapter 667, HRS. Before exercising this power, the State Tax Collector must establish that the parcel and residential structure are vacant and abandoned by following a set of prescribed requirements within the measure's new statutory language.

The Department appreciates the inclusion of its suggested amendments to the previous version of this measure's draft language. These revisions will help clarify ambiguity in the measure, reduce Taxpayer confusion, and improve tax administration by clearly delineating the powers and responsibilities of both the State Tax Collector and the Department when dealing with tax liens in judicial and non-judicial foreclosure situations.

To that end, the Department respectfully requests that, wherever applicable, the text of the measure be further amended so that statutory references to the "state tax collector" are replaced by references to "the department" (for Sections 4 and 5's changes to chapter 231, HRS) or "the department of taxation" (for Section 3's changes to chapter 667, HRS). This will help further reduce ambiguity for taxpayers and members of the public while promoting efficient tax administration.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: ADMINISTRATION, Restrict DOTAX Ability to Foreclose Tax Lien Property

BILL NUMBER: HB 287, HD-1

INTRODUCED BY: House Committee on Judiciary

EXECUTIVE SUMMARY: Allows the Department of Taxation to utilize nonjudicial foreclosures on abandoned property on which there is a recorded tax lien. Such property already may be foreclosed under existing law. This measure may well constrain the Department's ability to use nonjudicial foreclosure on other properties.

SYNOPSIS: Adds a new section to chapter 46, HRS, directing the counties to establish an expedited procedure to approve permits for the demolition of vacant residential structures.

Adds a new section to chapter 667, HRS, providing that a state tax lien may be foreclosed by nonjudicial or power of sale foreclosure if the structure on the property is vacant and abandoned.

Amends section 231-62, HRS, which normally deals with judicial foreclosure, by providing that liens that have existed for three or more years, as well as liens on vacant and abandoned residential real property which have existed for any length of time, may be enforced by the state tax collector by foreclosure without suit.

Amends section 231-63, HRS, which normally deals with nonjudicial foreclosure, to allow such foreclosure against vacant and abandoned residential realty at any time (subsection (a) allows nonjudicial foreclosure against any realty on which a tax lien has existed for three years) provided that a number of conditions are met:

(1) The department of taxation shall establish that a residential structure is vacant and abandoned by mailing to the residential structure's owner by certified mail with return receipt a sworn statement establishing that the department of taxation has conducted at least _____ separate inspections, each at least _____ days apart and at different times of day, and at each inspection, no occupant was present and there was no evidence of occupancy. The department of taxation shall maintain a copy of the statement and return receipt on file for the owner's inspection and review.

(2) Prima facie evidence that a residential structure is not vacant and abandoned shall include but is not limited to delivery of certified U.S. mail and ongoing and current utility usage.

(3) A residential structure shall not be deemed vacant and abandoned where the structure is:

(A) Undergoing construction, renovation, or rehabilitation that is proceeding diligently;

- (B) Used on a seasonable basis but is otherwise secure;
- (C) The subject of any ongoing probate action, action to quiet title, or other ownership dispute;
- (D) Damaged by natural disaster but the owner intends to repair and reoccupy; or
- (E) Occupied by a mortgagor, relative, or lawful tenant.

EFFECTIVE DATE: January 28, 2081.

STAFF COMMENTS: The bill recites that its purpose is to allow DOTAX to seek nonjudicial foreclosure sale of vacant and abandoned property with an outstanding recorded state tax lien.

DOTAX already has the power in section 231-63, HRS, to proceed with nonjudicial foreclosure if the tax lien has existed for at least three years. The new provisions proposed by this bill allow for earlier foreclosure but only after significant and burdensome conditions are met.

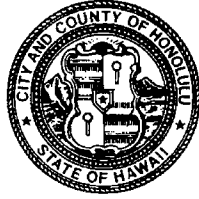
For example, DOTAX must establish that the property is vacant and abandoned. The bill has further provisos saying, for example, that DOTAX can establish that property is vacant and abandoned by inspecting the property for activity on ___ separate occasions, each ___ days apart, and on different times of day. Even if DOTAX does so, however, prima facie evidence that the property is not abandoned can be established by certified mail delivery or utility usage, so DOTAX needs to eliminate those conditions to truly establish vacancy and abandonment. There may be additional unstated conditions that might not be satisfied by the inspection requirement. Why would DOTAX even go down this road if it can avoid all the hassle if it waits three years?

Digested 2/25/2019

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February 26, 2019

The Honorable Sylvia Luke, Chair
and Members of the Committee on Finance
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

LATE

Dear Chair Luke and Committee Members:

**SUBJECT: House Bill 287, HD 1
Relating to Vacant and Abandoned
Residential Properties**

The Department of Planning and Permitting (DPP) **opposes** House Bill No. 287, SD 1, which requires the counties to expedite demolition permits for vacant and abandoned residential homes.

Currently, demolition permit applications for residential properties submitted to the DPP are routed to various City and State departments for approval, prior to the DPP issuing the permit. Also, the routing of the permit application is incumbent on the applicant's due diligence, and the DPP has no control over when the applicant will complete the routing process and return it to the DPP with approvals from all required agencies. This Bill also leaves blank the number of days that would be required to process and approve a demolition permit.

We respectfully ask that this Bill be held in Committee.

Thank you for the opportunity to testify.

Very truly yours,

Handwritten signature of Kathy K. Sokugawa in black ink.
Kathy K. Sokugawa
Acting Director