

STAND. COM. REP. NO.

3095

Honolulu, Hawaii

FEB 29 2020

RE: S.B. No. 2697

S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirtieth State Legislature  
Regular Session of 2020  
State of Hawaii

Sir:

Your Committee on Ways and Means, to which was referred S.B. No. 2697 entitled:

"A BILL FOR AN ACT RELATING TO TAXATION OF REAL ESTATE INVESTMENT TRUSTS,"

begs leave to report as follows:

The purpose and intent of this measure is to disallow dividends paid deductions for real estate investment trusts for a three-year period, applicable to taxable years beginning after December 31, 2020.

Your Committee received testimony in support of this measure from Aloha Immigration, Church of the Crossroads, Faith Action for Community Equity, Fergus and Company, Hawaii Appleseed Center for Law and Economic Justice, Hawaii State Teachers Association, Housing Now Coalition, Sierra Club of Hawaii, Stand Up Maui, and twenty-one individuals.

Your Committee received testimony in opposition to this measure from Ala Moana Center and Brookfield Properties; Alexander and Baldwin; The Chamber of Commerce Hawaii; Douglas Emmett, Inc.; Extra Space Storage Inc.; Hawaii Association of REALTORS; Hawaii Construction Alliance; Hawaii Operating Engineers Industry Stabilization Fund; Host Hotels and Resorts, Inc.; Land Use Research Foundation of Hawaii; Maui Chamber of Commerce; NAIOP Hawaii; Nareit Hawaii; OPTrust; Pacific Resource Partnership; Park



Hotels and Resorts Inc.; Public Storage; The RMR Group LLC; Simon Property Group; Taubman Centers; and two individuals.

Your Committee received comments on this measure from the Department of Taxation and the Tax Foundation of Hawaii.

Your Committee finds that real estate investment trusts were established by the federal government to give investors, especially small investors, access to income-producing real estate. The federal real estate investment trust provisions allow a dividends paid deduction to the real estate investment trust, thereby allowing the real estate investment trust itself to not pay tax on income distributed to its shareholders, who would then pay tax on that income. Existing state law conforms to these provisions, but creates an anomaly because a real estate investment trust that does business in Hawaii, but pays dividends to shareholders outside the State, results in no Hawaii income tax collected either from the real estate investment trust or from its shareholders. This is due to the fact that shareholders pay any tax on dividends to the state in which they reside, not where the income was generated.

Your Committee also finds that real estate investment trusts in Hawaii own real estate assets that generate an annual income of \$1,300,000,000, which, if taxed at the current corporate rate assessed to all other corporations, would generate Hawaii tax revenues of between \$57,000,000 to \$83,000,000 per year. However, under current law, many real estate investment trusts and their shareholders pay a mere fraction of the Hawaii state income tax compared to what other corporations pay.

Your Committee therefore finds that it would be more equitable to decouple from the federal system in this regard so that corporations and other business entities doing business in Hawaii pay a fair tax burden, commensurate with the substantial privileges and resources in Hawaii that were used to generate their profits. Real estate investment trusts would continue to receive their generous federal tax exemptions and benefit from Hawaii's low property tax rates.

Your Committee also recognizes that Hawaii is experiencing a severe affordable housing crisis with a lack of affordable rental



and for sale units. It is therefore in the State's interest to promote the development of affordable housing.

Your Committee has amended this measure by:

- (1) Allowing the dividends paid deduction for real estate investment trusts that provide affordable housing in the State;
- (2) Making a correction to accurately reflect the underlying text of section 235-2.3(b), Hawaii Revised Statutes;
- (3) Changing the effective date to July 1, 2050, to facilitate further discussion on the measure; and
- (4) Making technical nonsubstantive amendments for purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2697, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2697, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Ways and Means,




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DONOVAN M. DELA CRUZ, Chair



The Senate  
Thirtieth Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Ways and Means**  
**WAM**

Bill / Resolution No.:* <b>SB 2697</b>	Committee Referral: <b>WAM</b>	Date: <b>2/27/20</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
DELA CRUZ, Donovan M. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
ENGLISH, J. Kalani				X
HARIMOTO, Breene	X			
INOUYE, Lorraine R.	X			
KAHELE, Kaiali'i	X			
KANUHA, Dru Mamo	X			
KIDANI, Michelle N.	X			
MORIWAKI, Sharon Y.	X			
RIVIERE, Gil	X			
SHIMABUKURO, Maile S.L.				X
TANIGUCHI, Brian T.				X
FEVELLA, Kurt	X			<del>X</del> <b>GA</b>
<b>TOTAL</b>	<b>10</b>			<b>3</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original             Yellow             Pink             Goldenrod File with Committee Report             Clerk's Office             Drafting Agency             Committee File Copy				

\*Only one measure per Record of Votes