



STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Public Safety, Intergovernmental, and
Military Affairs

Date: Tuesday, March 19, 2019
Time: 1:20 P.M.
Place: Conference Room 229, 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 a 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.

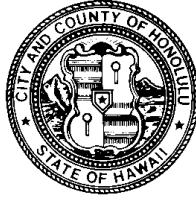
To that end, the Department respectfully requests that, wherever applicable, the text of the measure be further amended so that statutory references to the "state tax collector" are replaced by references to "the department" (for Sections 4 and 5's changes to chapter 231, HRS) or "the department of taxation" (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.

DEPARTMENT OF PLANNING AND PERMITTING
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March 19, 2019

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental , and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara 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.

We respectfully ask that this Bill be held in Committee.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in blue ink that reads "Kathy K. Sokugawa".

Kathy K. Sokugawa
Acting Director