



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2087, RELATING TO THE CONVEYANCE TAX.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, January 29, 2020 **TIME:** 10:10 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Clare E. Connors, Attorney General, or
Tammy Y. Kaneshiro, Deputy Attorney General

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

S.B. No. 2087 raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000 and creates a new conveyance tax exemption under section 247-3, Hawaii Revised Statutes (HRS), for owner-occupants who have obtained a current certification of owner-occupancy status from the Hawaii Housing Finance and Development Corporation (HHFDC) and are conveying real property that is subject to a government assistance program for affordable housing.

This bill may be subject to constitutional challenge under the Equal Protection and/or Privileges and Immunities Clauses of the United States Constitution.

The Equal Protection Clause prohibits discrimination against a nonresident based solely on residency. See, e.g., Williams v. Vermont, 472 U.S. 14 (1985) (use tax credit for sales taxes paid on cars purchased in other states invalidated because it was only available to Vermont residents). The Hawaii Supreme Court has recognized that the Equal Protection Clause applies where a tax operates unequally on persons or property of the same class. In re Swann, 7 Haw. App. 390, 776 P.2d 395 (1989).

Similarly, under the Privileges and Immunities Clause, a state may not impose higher taxes on a nonresident individual than it imposes on its own citizens.

Under this bill, residents may be favored over nonresidents and therefore the bill may be challenged under the Equal Protection Clause and/or the Privileges and Immunities Clause.¹

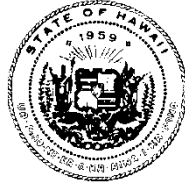
However, even if challenged, we believe the bill is defensible. Should someone challenge the bill on constitutional grounds, the Court would likely apply the rational basis test since nonresidents are not considered to be a suspect class. See Hawaii Boating Assoc. v. Water Transportation Facilities Div., 651 F.2d 661 (9th Cir. 1981) (holding that “non-residents of Hawaii” did not comprise a suspect classification so as to require application of the strict scrutiny test). Under the rational basis test, the State would have to demonstrate that the statute has a rational relation to a legitimate State interest. “[T]he constitutionality of a statute under the rational basis test does not depend on whether it provides a perfect solution to a problem. If a statute furthers a state objective even to the lightest degree, this court will affirm its validity.” Doang v. Dep’t of Educ., 63 Haw. 501, 506 (1981).

Therefore, in order to strengthen the defense of this bill, we recommend that a legitimate State interest, to which the favoring of residents over nonresidents is substantially related, be articulated within the preamble of the bill.

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¹ We are aware that other existing tax statutes have residency requirements. To date, these statutes have not been subjected to constitutional challenge.

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
INTERIM 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
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON WAYS AND MEANS

January 29, 2020 at 10:10 a.m.
State Capitol, Room 211

In consideration of
S.B. 2087
RELATING TO THE CONVEYANCE TAX.

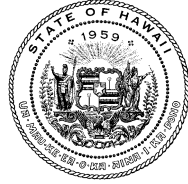
The HHFDC ***offers the following comments*** on S.B. 2087. We appreciate the intent of this bill, which increases the conveyance tax rates, and exempts from conveyance taxes the transfer of real property from an owner-occupant where the property is subject to a government assistance program to provide affordable housing.

The net result of this proposal would be to provide additional resources that may be used to finance affordable rental housing for low-income households without increasing the fixed costs of such housing.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

P.O. BOX 259
HONOLULU, HAWAII 96809
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RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Rona M. Suzuki, Director
Department of Taxation

Re: S.B. 2087, Relating to Conveyance Tax

Date: Wednesday, January 29, 2020

Time: 10:10 A.M.

Place: Conference Room 211, State Capitol

The Department of Taxation (Department) offers the following comments regarding S.B. 2087. The measure raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000 and exempts affordable housing qualified by the Hawaii Housing Finance and Development Corporation from the conveyance tax. The measure is effective on July 1, 2020.

The Department of Land and Natural Resources, Bureau of Conveyances administers the conveyance tax. The Department works with the Bureau on the forms and makes forms available to taxpayers. We respectfully request that the measure be made effective no earlier than January 1, 2021 to allow sufficient time for the Department to make the necessary form and instruction changes.

Thank you for the opportunity to provide comments.



January 24, 2020

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 2087, Relating to the Conveyance Tax (Raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000; exempts affordable housing qualified by the Hawaii Housing Finance and Development Corporation from the conveyance tax.)

Wednesday, January 29, 2020, at 10:10 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 utility companies. 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 2087. Because this bill does not contain a purpose clause, it must be presumed that the measure is intended as a method to generate revenue. A further presumption is made that the drafters of the bill intend that such revenue will be paid into the state treasury to the credit of the general fund of the State. To effectuate this presumed purpose, SB 2087 proposes to increase the rate of real estate conveyance tax 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 transfer or conveyance of certain properties is inappropriate, improper, and illegal, given the following¹:

1. The Hawaii Conveyance Tax was never intended as a revenue-generating tax.

Chapter 247 (Conveyance Tax) of the HRS 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 managed to implement 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.

Such expansions and deviations, including the unspecified use of conveyance tax proposed by the current measure, go beyond the scope of the original intent of the conveyance tax law, and are concerning to LURF since the proposed bill, particularly if unlawfully targeting specific 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. 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 the State's general fund, proponents of this bill are urged to look to other possible legitimate means to do so, including funding support through other state and county charges, fees or taxes.

Given that alternative methods to secure revenues exist, expansions and deviations of HRS Chapter 247 which go beyond the scope of the original intent

¹ Further opposition to SB 2087 may be warranted but shall be reserved until the actual purpose of the measure and details regarding disposition and use of the revenues to be collected are disclosed, as is proper and appropriate with any proposed bill for which the intended purpose is to generate revenue.

of the conveyance tax law are concerning particularly if solely looked to as an additional source of funding for affordable housing, particularly if based on an increase of conveyance tax revenues applicable only to the transfer of what may be considered or labeled to be “luxury” properties.

Understanding the importance of the conveyance tax issues raised by SB 2087, **LURF respectfully requests that this bill be deferred 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.



AMERICANS FOR DEMOCRATIC ACTION

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January 27 , 2020

Honorable Chair Dela Cruz & WAM Committee Members

RE: SB 2087 RELATING TO THE CONVEYANCE TAX

Support for hearing on January 29

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 2087 as it would progressively raise the conveyance tax. This discourages the use of property as investments. Priority should be given to housing for residents and not for house flippers.

Thank you for your favorable consideration.

Sincerely,

John Bickel, President





49 South Hotel Street, Room 314 | Honolulu, HI 96813
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COMMITTEE ON WAYS AND MEANS
WEDNESDAY, 1/29, 10:10 am, Room No. 211
SB2087 RELATING TO THE CONVEYANCE TAX

TESTIMONY

Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members:

The League of Women Voters of Hawaii supports this bill, which increases the conveyance tax on properties valued at more than \$2,000,000.

This increase will bring more dollars into our government funds; these dollars can support efforts to provide more affordable housing, or to maintain and upgrade existing public housing, for instance. The amount of the increase is not likely to deter purchasers of these very valuable properties.

Thank you for the opportunity to submit testimony.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE, Tax Hike, Exemption for Affordable Housing

BILL NUMBER: SB 2087

INTRODUCED BY: DELA CRUZ, KEITH-AGARAN, KIDANI, Kanuha, Nishihara, Shimabukuro

EXECUTIVE SUMMARY: Raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000. Exempts affordable housing qualified by the Hawaii Housing Finance and Development Corporation from the conveyance tax.

SYNOPSIS: Amends section 247-2, HRS, to raise the conveyance tax rates 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

Amends section 247-3, HRS, to exempt any document or instrument conveying real property subject to a government assistance program for affordable housing that is 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; provided that the owner-occupant obtains a current certification of owner-occupancy status from the Hawaii housing finance and development corporation in order to qualify for the exemption.

EFFECTIVE DATE: July 1, 2020.

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.

This bill proposes to raise conveyance tax rates yet again.

Digested 1/27/2020

LATE



SB 2087, RELATING TO THE CONVEYANCE TAX

JANUARY 29, 2019 · SENATE WAYS AND MEANS
COMMITTEE · CHAIR SEN. DONOVAN M. DELA
CRUZ

POSITION: Support.

RATIONALE: IMUAlliance supports SB 2087, relating to the conveyance tax, which raises the conveyance tax rates for residential investment properties with a value of at least \$2,000,000 and exempts affordable housing qualified by the Hawaii Housing Finance and Development Corporation from the conveyance tax.

Today, **the lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** 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 2019* report found that a full-time worker would need to earn \$36.82/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 111 hours per week to afford a modest one-bedroom apartment at fair market value and 146 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five 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 \$16.68/hour, according to NLIHC, 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, 63 percent of households are severely cost-burdened, following NLIHC data, 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, with only 74 homes available for every 100 households earning 80 percent of their respective area's median income.

Unsurprisingly, our state is now experiencing population decline. Hawai'i saw domestic out-migration increase for a third consecutive year in 2019, as the state's high cost of living continued to push people to the mainland. Census estimates show that our state's population dropped by more than 4,700 people, to 1,415,872, from July 2018 to July 2019, when births, deaths, and migration were accounted for. That's the biggest numerical population drop since 2015 and it made Hawai'i one of just ten states in the country to lose population in 2019, according to the U.S. Census Bureau. People are simply being priced out of paradise.

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 the conveyance tax for residential investment properties valued in excess of \$2,000,000. In fact, **we urge the committee to amend this measure by increasing conveyance taxes for all residential investment properties**, 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, there exists a direct nexus between increasing conveyance tax rates and disincentivizing the actions of real estate speculators, who are driving up Hawai‘i’s housing costs and, in turn, rental prices with no regard for local residents.

We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we must take bold action **now** to increase our affordable housing supply for working families.

LATE

January 29, 2020

The Honorable Donovan Dela Cruz, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, HI 96813

RE: S.B. 2087, Relating to the Conveyance Tax

HEARING: Wednesday, January 29, 2020, at 10:10 a.m.

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

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **strongly opposes** S.B. 2087 which increases the Conveyance Tax for residential investment properties with a value of at least \$2 million.

Additionally, this measure also exempts affordable housing qualified by the Hawai'i Housing Finance and Development Corporation from 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, this measure proposes to increase the Conveyance Tax to the following rates:

Property Value	Current Rate: <i>Per \$100</i>	Proposed: <i>Per \$100</i>	% Tax Increase	Current Tax Rate in Dollars (rounded)	Proposed Tax Rate in Dollars (rounded)
\$2 mil - \$3.99 mil	\$0.60	\$1.00	66.67%	\$24,000 (\$3.99 mil property)	\$40,000 (\$3.99 mil property)
\$4 mil - \$5.99 mil	\$0.85	\$2.00	135.29%	\$60,000 (\$5.99 mil property)	\$120,000 (\$5.99 mil property)
\$6 mil - \$9.99 mil	\$1.10	\$3.00	172.72%	\$110,000 (\$9.99 mil property)	\$300,000 (\$9.99 mil property)
\$10 mil +	\$1.25	\$4.00	220%	\$125,000 (\$10 mil property)	\$400,000 (\$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.

Mahalo for the opportunity to testify.