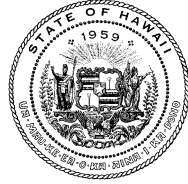


DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
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STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

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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. 2089, 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) requests delaying the effective date for S.B. 2089. The measure amends the conveyance tax exemption to leases. Under current law, all real property leases for a period of less than 5 years are exempt. S.B. 2089 amends the exemption by limiting it to residential real property leases for a period one year or less. 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 this measure be made effective January 1, 2021 to allow sufficient time to make the necessary form and instruction changes.

Thank you for the opportunity to provide comments.



January 27, 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 2089, Relating to the Conveyance Tax (Amends the exemption from conveyance tax for realty leases of less than five years by applying the exemption only to residential leases of one year or less.)**

**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 2089.** Because this bill does not state the underlying purpose of, or any justified, specific need for the proposed measure, it must be presumed that the bill is intended simply as a method to generate revenue. A further presumption is made that the drafters of the bill intend that such revenue be paid into the state treasury to the credit of the general fund of the State. To effectuate this presumed purpose, SB 2089 proposes to repeal the existing statutory exemption from the imposition of the conveyance tax on realty leases of less than five years, and to apply said exemption only to residential leases of one year or less.

**LURF's Position.** The proposed amendment to expand the conveyance tax to include short-term leases, and to presumably apply to all rental agreements for real estate

including month-to-month leases, is believed to be inappropriate, improper, and illegal, for the following reasons<sup>1</sup>:

**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 (the “Bureau”), and not to bolster the State’s general fund.

Despite the underlying specific justification for the enactment of HRS Chapter 247, the State Legislature has nevertheless proposed and implemented changes to the law to 1) 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 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 which go beyond the scope of the original intent of the conveyance tax law including the present measure, are concerning to LURF particularly if they fail to clearly identify and justify the need to generate additional revenue to cover costs specifically relating to the recording of real estate transactions performed by the Bureau. Any such proposed expansions, especially if unreasonable or impractical, or 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. The proposed amendment would raise significant practical considerations and the need to establish enforcement issues.**

Application of the conveyance tax to short-term rental agreements, including month-to-month leases, would prompt the need to establish new laws, regulations, and mechanisms to address enforcement issues which would arise as a result. Unlike long-term leases, short-term leases presently do not need to be

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<sup>1</sup> Further opposition to SB 2089 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 for any proposed bill for which the intended purpose is to generate revenue.

recorded, so there would be no triggering event at which time payment of the conveyance tax would be required.

LURF also understands that the term of most residential rental agreements is typically less than one year, so that pursuant to this proposed measure, the conveyance tax would be assessed and payable each and every time a residential property is leased, generating a significant increase in manpower and other administrative costs for collection.

And ironically, applying the conveyance tax to short-term leases as set forth in the proposed measure is reportedly unlikely to result in a large amount of tax per transaction, thus making it questionable as to whether the additional tax revenue would even be worth the additional administrative costs generated by the measure.

The expanded application of conveyance tax proposed would also add to the cost of rentals when passed down to tenants, or if required to be paid upfront at the time the lease is entered into, which would be contrary to efforts being made by the State and counties to address the current lack of affordable housing.

### **3. Other legal and voluntary alternatives may be available to increase the general fund.**

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 of the conveyance tax law are concerning particularly if solely looked to as an additional source of general funds, particularly if based on an expanded and unwarranted imposition of conveyance tax.

Understanding the importance of the conveyance tax issues raised by SB 2089, **LURF respectfully requests that this bill be deferred by this Committee** to allow stakeholders, including, but not limited to government agencies, the public, property owners, renters, tax experts and other interested parties to work together to come to a consensus regarding the bill's purpose, as well as alternatives to increasing general fund revenues.

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

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE TAX

BILL NUMBER: SB 2089

INTRODUCED BY: DELA CRUZ, KIDANI, Keith-Agaran, Shimabukuro

EXECUTIVE SUMMARY: Amends the exemption from conveyance tax for realty leases of less than 5 years by applying the exemption only to residential leases of 1 year or less. An exemption also should be allowed for commercial leases that are not required to be recorded.

SYNOPSIS: Amends section 247-2, HRS, to provide that all commercial leases and all residential leases of more than one year will be subject to the tax, based on the present discounted value (at 6%) of the rent called for under the leases.

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.

Existing law, section 247-2, HRS, provides that conveyance tax is not required to be paid for leases with a full unexpired term of less than five years. For leases not meeting the exemption, conveyance tax is required, based on the present value (at 6%) of the rent payments called for under the lease. If the lease calls for percentage rent or other compensation that is contingent upon the occurrence of a future event, the administrative practice has been to treat the future events as not occurring for purposes of calculating the tax to be paid at inception.

Section 501-121, HRS, requires that leases of registered land for a term of one year or more shall be registered.

Section 502-83, HRS, requires recording of leases for a term of more than one year in the bureau of conveyances.

Conveyance tax is supposed to be imposed only on documents that are required to be recorded, so it would not make sense to require tax to be paid on documents that need not be recorded. The bill does require tax to be paid on commercial leases of any term, which appears to be problematic.

Digested 1/27/2020

**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. 2074, Relating to 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. 2089 which amends the exemption from conveyance tax for realty leases of less than 5 years by applying the exemption only to residential leases of 1 year or less.

Under this measure, it would apply the Conveyance Tax to residential property that is set for more than one year and all property leases, such as commercial or industrial.

According to the Asset Limited, Income Constrained, Employed (ALICE) Report prepared by United Way many households earning more than the federal poverty level still cannot afford housing, child care, food, transportation and health care. At a time when the Legislature has prioritized addressing the high cost of living, this measure will have the effect of passing on the cost to ultimately renters who happen to lease for more than one year and on all commercial tenants, which would be passed on to consumers adding to the cost of basic necessities.

HAR would note that this would also hurt small businesses and non-profits, many of which lease or sublease its space.

Mahalo for the opportunity to testify.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Ways and Means  
Wednesday, January 29, 2019 at 10:10 A.M.  
Conference Room 211, State Capitol**

**LATE**

**RE: SB 2089, RELATING TO CONVEYANCE TAX**

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

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 2089, which would amend the exemption from conveyance tax for realty leases of less than 5 years by applying the exemption only to residential leases of 1 year or less.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Conveyance Tax was created to cover the administrative costs of recording real estate transactions, such as those performed by the Bureau of Conveyance. We have concerns with this measure, because we do not believe that the conveyance tax is being used in a manner consistent with the purpose for which it was originally established.

Thank you for the opportunity to testify.

**LATE**

**SB-2089**

Submitted on: 1/28/2020 12:29:28 PM

Testimony for WAM on 1/29/2020 10:10:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jared Watumull	Individual	Oppose	No

Comments:

I am writing in opposition to SB2089. By requiring all commercial leases to pay conveyance taxes it will create an undo hardship on small business in our state. Most landlord's make tenant's pay all the taxes and so this bill will just increase the costs of doing business in Hawaii. I strongly urge you all to oppose this bill. Thank you