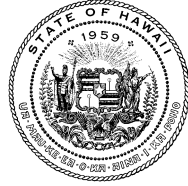


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Clarence K. Nishihara, Chair;
The Honorable J. Kalani English, Vice Chair;
and Members of the Senate Committee on Public Safety, Intergovernmental, and
Military Affairs

From: Isaac W. Choy, Director
Department of Taxation

Date: February 16, 2021
Time: 1:00 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 818, Relating to Vacant and Abandoned Residential Property

The Department of Taxation (Department) offers the following comments on S.B. 818 for your consideration.

As it relates to taxation, S.B. 818 allows the Department seek sale of vacant and abandoned residential properties real property through nonjudicial foreclosure, provided there is a recorded State tax lien, at any time after establishing vacancy and abandonment. This measure is effective upon approval.

First, the Department notes that it is unable to determine whether a property is vacant or not. The Department is required to send a notice by certified mail not less than an unspecified number of times stating that it visited the property and had observed no occupant present. While the delivery of the notice by certified mail constitute prima facie evidence, the Department would be unable to determine if non-delivery of the notice was for other reasons than the unit being vacant. Although the measure provides exception, there are other reasons that a property is vacant that are legitimate. The Department suggests providing a more specific definition of “vacant and abandoned” and a more comprehensive list of exceptions.

Second, the measure provides that a unit is not vacant if the occupants are legally present. The Department has no means of determining whether someone is legally present. For example, an unrelated individual could be present that the owner has authorized to be present.

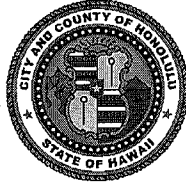
Finally, the Department suggests deleting Section 3 of this measure as it anticipates costly and extensive litigation over this measure exercising foreclosure in this manner.

Thank you for the opportunity to provide comments.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
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DEAN UCHIDA
DIRECTOR DESIGNATE
DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR
EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 16, 2021

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: Senate Bill No. 818
Relating to Vacant and Abandoned
Residential Property**

The Department of Planning and Permitting (DPP) **has concerns about** Senate Bill No. 818, which would require the counties to establish expedited procedures to approve demolition permits for vacant and abandoned residential homes.

We understand the urgency in removing a structure that poses a health and safety problem. Fire-damaged homes, dilapidated structures and abandoned dwellings endanger neighboring properties and often are magnets for illegal activity. But we do not see the need to mandate expedited procedure approvals. The DPP's review time for a demolition permit is less than five days to three or more months, depending on a number of factors that often are beyond our control.

For example, storm water quality review, which is a federal requirement, can lead to delays. Also, the property owners must file an affidavit proving ownership, and occasionally this document is not filed at the time of application, or the owner lives out of state or country and obtaining the affidavit takes weeks, sometimes months. Demolition applications for dwellings more than 50 years old must be submitted to the State Historic Preservation Division (SHPD) and its review time is unpredictable. The Honolulu Board of Water Supply also reviews these applications.

We also find problematic the section that states: "An application for a building permit for new construction, rehabilitation, or reconstruction on the parcel for which the expedited demolition permit was approved shall be denied if the permit application for

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
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new construction, rehabilitation, or reconstruction is submitted within (blank) days of the approval of the expedited demolition permit.” In many cases, an owner will submit both the building permit application for new construction and a demolition permit application at the same time to save on storm water review fees. In these cases, both the building and demolition permits are issued at the same time.

Thank you for this opportunity to testify

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Uchida", written in a cursive style.

Dean Uchida
Director Designate

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 818

INTRODUCED BY: SAN BUENAVENTURA, CHANG, ENGLISH, FEVELLA, INOUYE, KIM, MISALUCHA, RIVIERE, SHIMABUKURO, Gabbard, Kidani, Moriwaki, Nishihara, Taniguchi, Wakai

EXECUTIVE SUMMARY: Requires counties to establish expedited procedures to approve demolition permits for vacant and abandoned residential homes. Allows the department of taxation to seek sale of the property through nonjudicial foreclosure of vacant and abandoned residential properties with outstanding recorded state tax liens at any time after establishing vacancy and abandonment.

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 of a tax lien, 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 of a tax lien, 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 reasonable 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: Upon approval.

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 and does not have to wait for three years. The new provisions proposed by this bill require a three year waiting period, and 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. If the bill is enacted, why would DOTAX even go down this road if it can avoid all the hassle if it waits three years? And how is it better, more efficient, and more equitable than now, when DOTAX doesn't even have to wait three years?

Digested 2/12/2021