

DAVID Y. IGE
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To: The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair;
and Members of the Senate Committee on Judiciary

From: Isaac W. Choy, Director
Department of Taxation

Date: February 4, 2021
Time: 9:15 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 18, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 18, but has serious concerns regarding its ability to administer the new tax and provides the following comments for the Committee's consideration.

S.B. 18 creates a new Empty Homes Tax (EHT) on vacant residential real property. The EHT is deemed a "conveyance tax" and applies to a unit that is vacant (not in use for at least 50 days in a calendar year). The EHT is imposed at five per cent of the county real property tax assessed value of the unit per year. S.B. 18 is effective upon its approval and applies to taxable years beginning after December 31, 2020.

First, although the EHT seems to be intended to be a conveyance tax due upon the transfer or conveyance of residential real property, the measure in its current form does not accomplish the intent. The EHT is imposed yearly whether or not a transfer or conveyance occurs. If the intent was to create a conveyance tax due upon transfer, the Department suggests creating new brackets or a surcharge on existing conveyance tax laws codified in chapter 247, Hawaii Revised Statutes.

Second, the measure defines "vacant" to mean that the residential real property is in use less than 50 days in a calendar year. The word "use" can be interpreted very broadly, and this measure does not provide a specific definition to resolve the ambiguity. For example, "use" could include a unit storing personal property, using it as a mailing address, or stopping by on a weekly basis only to care for the property. To clarify this ambiguity, the Department suggests specifically defining "use." In addition, it appears that the measure could also penalize an owner who leases or rents the property to a tenant who does not "use" the unit.

The Department also has serious concerns about its ability to determine whether property is “vacant.” There is no reasonable way that the Department will be able to prove that a property was somehow occupied for 50 days in a calendar year. Thus, if the EHT were to become law, the State would need to rely on voluntary compliance alone as no determination on eligibility may be made.

Third, the Department notes that the measure contains no exemptions from the EHT. There are instances where an owner may have legitimate reasons for leaving a unit vacant such as military deployment, ongoing renovations, hospitalization or being away from Hawaii for medical treatment, legal disputes over ownership of the property, inability to find a tenant or buyer, or a situation where the unit is vacant because the owner is caring for another.

Finally, the implementation of a new tax requires the development of new forms, substantial changes to the Department’s computer system, and taxpayer education. As such the Department respectfully requests the EHT be made applicable no earlier than January 1, 2022. In its current form, application of the EHT by “taxable years” may cause confusion.

Thank you for the opportunity to provide comments.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 18, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 4, 2021 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Janine R. Udui,
Deputy Attorney General, at 586-1470)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

S.B. 18 proposes to impose an empty homes tax on the transfer or conveyance of vacant residential real property in the amount of five percent of the county real property tax assessed value of the unit per year. See S.B. 18, page 2, lines 1-4 and lines 13-14. Here, "vacant" means "that the residential real property is in use less than fifty days in a calendar year." See *id*, page 1, lines 15-16.

Although the empty homes tax in S.B. 18 is intended to be a conveyance tax, the tax appears to be an assessment of property tax based on the use of the residential real property being transferred or conveyed. As such, the empty homes tax as contemplated by this bill may be prohibited by the Constitution of the State of Hawaii.

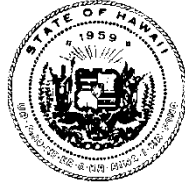
Article VIII, section 3, of the Constitution of the State of Hawaii provides:

Section 3. The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

Insofar as all functions, powers, and duties relating to the taxation of real property shall be exercised exclusively by the counties, the empty homes tax may be challenged as an unconstitutional property tax levied by the State. Based on the foregoing, we respectfully recommend this bill be held.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
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 JUDICIARY

February 4, 2021 at 9:15 a.m.
State Capitol, Via Videoconference

In consideration of
S.B. 18
RELATING TO TAXATION.

The HHFDC *offers the following comments* on S.B. 18. This bill would impose a tax of 5 percent of the county real property tax assessed value of residential real property that is in use less than fifty days per calendar year. All taxes generated would be deposited into the Dwelling Unit Revolving Fund (DURF).

HHFDC takes no position on the tax policy implications of this bill.

HHFDC appreciates the consideration of infusing funds into DURF provided that it does not adversely affect priorities set forth in the Executive Biennium Budget. DURF was established pursuant to Act 105, SLH 1970 to carry out the purposes of the Housing Development Program. Funds may be used for the acquisition of real property; development and construction of residential, commercial, and industrial properties; interim and permanent loans to developers; development of regional infrastructure; and any and all things necessary to carry out the purposes of the Housing Development Program, including administrative expenses. The Executive Biennium Budget includes a General Obligation Bond appropriation of \$20,000,000 in FY2022-2023 for infusion into DURF.

Thank you for the opportunity to provide written comments on this bill.

February 4, 2021

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
Via Videoconference

RE: Senate Bill 18, Relating to Taxation

HEARING: Thursday, February 4, 2021, at 9:15 a.m.

Aloha Chair Rhoads, Vice Chair Keohokalole, 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** Senate Bill 18, which establishes an empty homes conveyance tax against certain residential property owners who own a vacant residential unit in the State. Vacant means a property is in use less than 50 days in a calendar year.

Under this measure, this would create a 5% tax on the county real property tax assessed value upon the conveyance of said property. Based on the December 2020 median sales prices for a single-family home, the following would be the impacts of the tax:

County:	Median Sales Price:	5% Empty Homes Conveyance Tax:
Hawai'i Island	\$485,000	\$24,250
Kaua'i	\$915,000	\$45,750
Maui	\$865,000	\$43,250
Oahu	\$870,000	\$43,500

Under this measure, there could be numerous reasons why a home is left vacant, such as serving in the military or kupuna needing to move to a care home. This measure is also broad in that it could apply to new home sales.

Also, families could be dealing with the loss of a loved one in which the property could be in probate. Or, someone may have been devastated with severe property damage, such as by flood or fire. A tax of this size would be extremely difficult to these families. Furthermore, the Conveyance Tax applies even if someone sells their property for a loss.

HAR would also note that this measure would be extremely difficult to enforce in determining if a property is vacant.

Finally, this measure seems counterproductive in that we should be encouraging the sale of vacant properties. This may have the opposite effect of encouraging owners to keep their properties as they would be unable to pay the empty home conveyance tax.

Mahalo for the opportunity to testify.

Presentation to The
Committee on Judiciary
February 4, 2021, 9:15 AM
State Capitol Conference Video Conference

Testimony in Opposition to S18

TO: The Honorable Karl Rhoads, Chair
The Honorable Jarret Keohokalole, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawai'i Bankers Association (HBA). HBA represents eight Hawaii banks and two banks from the continent with branches in Hawai'i.

HBA is opposed to this bill that exacts an exorbitant conveyance tax simply because a residential real property is vacant for 49 days or less in a calendar year. There are many valid reasons a housing unit may be vacant for 49 days or less.

Although it is a last resort for a bank, a bank may have to take possession of a housing unit at a foreclosure and it may not even be a foreclosure brought by the bank, but maybe the condominium association. A foreclosure process in today's world may be endless due to the pandemic. In pre-Covid times, one could expect a foreclosure to last as long as two years, not counting any period in bankruptcy. It is quite possible, even probable that the housing unit would be vacant during such time. Any conveyance tax on the property will eventually be borne by the bank, even though the bank is not the owner of the property. The normal process after foreclosure, if the bank ends up as the owner of the property, is for the bank to sell it as soon as possible because the bank does not want to inventory the house. Normally, the bank does not rent the house because month-to-month rentals are difficult to obtain and an occupied unit is more difficult to sell. The time the unit may be vacant will easily be longer than 49 days (the closing itself may take 45 days) and through no fault of the bank, they may be subject to an onerous and prodigious tax.

A home may be vacant because it might be a rental home that has yet to be rented. It is not unusual for a rental home to be vacant for 49 days or less. Thus, this bill may become a punishment for owners of rental housing. Rental housing is very much needed. The 20189 DBEDT State Data Book (the latest available) shows that 42% of the housing units in the State are rentals. This bill will severely impact the rental housing market.

At any time, a housing unit may be vacant because it is being renovated or repaired. Just the time needed to obtain a building permit is longer than 49 days, and thus this bill acts as a disincentive to any construction renovation and be harmful to the economy.

Vacations must be limited to 49 days or less each year, which means 7 weeks and no less or you will pay a fine in the form of a conveyance tax. If you are called to active duty in the military, you may face an onerous tax.

You will not be able to live in Hawai`i and work on the mainland. I know someone, born and raised in Hawai`i, who works in Silicon Valley and was offered the chance to move back to Hawai`i and commute to Silicon Valley once a month for one week or less. That would be impossible to do if this bill were enacted.

Pacific Business News reported that at the end of 2020, the median price on Oahu was \$870,000.00. a 5% conveyance tax would be \$43,500 which is not a tax but a penalty.

Thank you for the opportunity to submit this testimony in opposition to ~~SB 2216~~. Please let us know if we can provide further information.

SB18

Neal K. Okabayashi
(808) 524-5161



SB 18, RELATING TO TAXATION

FEBRUARY 3, 2021 · SENATE JUDICIARY
COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: Imua Alliance supports SB 18, relating to taxation, which establishes an empty homes conveyance tax against certain residential property owners who own a vacant residential unit in the state.

Hawai'i is facing a looming eviction crisis. During COVID-19, unemployment skyrocketed to levels not seen since the Great Depression. A recent study found that our state is experiencing the slowest unemployment rate recovery in the nation, moreover, with our rate hovering at approximately 9 percent in December. Thousands of people who haven't lost their jobs have instead seen their employment hours and earnings slashed, as the economic downturn lingered throughout 2020 and into the new year.

Financial precarity has become the norm for many families, who are unable to pay their full mortgages or rent and have accumulated housing debts. Currently, the state's eviction moratorium protects these families from being removed from their homes. Yet, the eviction moratorium will eventually expire as the public health emergency passes, leaving thousands of people at risk of losing their housing. It is entirely plausible, though heartbreaking, that landlords may try to increase rental and other housing costs to recover economic losses that they incurred during the pandemic, which would take a huge toll on tenants who are still struggling to get back on their feet.

Today, **our state’s ongoing 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 2020* report found that a full-time worker would need to earn \$38.76/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 117 hours per week to afford a modest one-bedroom apartment at fair market value and 153 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 42 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 \$17.17/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, over 60 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 over 80 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.

Notably, housing costs increased during the pandemic. In Honolulu, median single-family home prices reached a record of \$880,000 last October, **driven largely by sales to residential property investors.** 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 8,866 people from July 2019 to July 2020, when births, deaths, and migration were accounted for. That population drop is nearly double the loss seen in 201,

when Hawai'i one of just ten states in the country to lose population, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Without question, Hawai'i's lack of affordable housing exacerbates our state's homelessness crisis. In a recently released report, Chief Medical Examiner Dr. Masahiko Kobayashi said that 127 people who were considered homeless at the time of their deaths died on O'ahu in 2019, up from 120 deaths in 2018 and an increase of 46 percent from 2017 (87 deaths). Roughly 30 percent of children who are living on the streets will be approached for sexual exploitation within 48 hours of being away from home, according to the National Center for Missing and Exploited Children, with over 80 percent being approached for the commercial sex trade during the course of their time on streets. A federal study found that an estimated 38,600 runaway youth have been sexually assaulted, in the company of someone known to be sexually abusive, or engaged in sexual activity in exchange for money, food, or shelter.

Unsheltered keiki are perceived as easy targets for sex traffickers because they lack stable shelter, a supportive environment, and financial resources, placing them at greater risk of forced prostitution and sexual servitude. Traffickers exploit our limited number of available shelter beds to lure young people into exploitation. As the homeless childcare provider Covenant House observes, traffickers tell homeless youth that shelters are full and ask, "Where are you going to go? Why don't you come with me? I'll take care of you." Coupled with threats of and actual physical and sexual violence against the victims or their families, these coercive techniques compel runaway youth to remain enslaved.

LGBTQ youth, who comprise an estimated 40 percent of the runaway and homeless youth population in the United States, are exponentially more likely to fall prey to human traffickers because of discrimination, family and community trauma, and a longing for comfort and acceptance (an estimated 26 percent of LGBTQ adolescents are rejected by their families and put out of their homes simply for being open and honest about who they are). In providing care for victims of human trafficking, we have heard their stories hundreds of times.

Given these problems, **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 guarantee access to affordable housing for working families and ensure that people who are participating in our state's housing market do not face price gouging as they strive to achieve a successful financial recovery.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org

SB-18

Submitted on: 1/31/2021 5:57:48 PM

Testimony for JDC on 2/4/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy lee	Individual	Support	No

Comments:

Houselessness is a crisis in the State of Hawaii. Among other factors, the prevalence of vacation homes contributes to this issue. If the State is not seeing alternative revenue because of an influx of vacant residential units, a tax should be imposed at the expense of vacation home owners to alleviate the strains on our low income communities.



LATE

The Senate
The Thirty-First Legislature
Regular Session of 2021

To: Senate Committee on Judiciary

Date: February 4, 2021

Place: Via Videoconference
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: Senate Bill 18, Relating to Taxation

Chair Kari Rhoads, Vice Chair Jarrett Keohokalole and Members of the Committee:

Rental By Owners Awareness Association (RBOAA) fully supports compliance with State taxation laws and County zoning regulations.

We respectfully request that SB 18 be deferred and offer the following comments:

1. Privacy and Constitutional Concerns:

This Bill presents significant privacy and constitutional concerns regarding the State requiring knowledge as to the coming and going of an owner or person(s) in a dwelling unit. The Bill does not define how the State would determine occupancy or empty status.

2. Hardship to Persons who are Sick or Disabled:

This Bill penalizes a person who may become ill or injured and not be able to travel or must be confined to a hospital or rehabilitation facility and unable to be present for 50 days in their home.

3. Hardship During Pandemic:

This Bill penalizes everyone who is an out of state or foreign owner and due to a pandemic, such as we have had with Covid-19, are prevented from travel or entry into the United States.

4. Conveyance Tax Rate is Extreme:

The Bill provides for a penalty tax added to the Conveyance tax at the rate of 5% of the property value. For a home of \$600,000 this would be an added tax of \$30,000. This is extremely unreasonable.

For these reasons, as well as many other **unworkable features and punitive nature** of this Bill, we respectfully request that this Bill be deferred.

Sincerely,

Alicia Humiston President,
Rentals by Owner Awareness Association