

Charlotte A. Carter-Yamauchi
Director

Shawn K. Nakama
First Assistant

Research 808-587-0666
Revisor 808-587-0670
Fax 808-587-0681



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

SB1121

RELATING TO HOMESTEAD EXEMPTIONS

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Government Operations

Thursday, February 9, 2023, 3:00 p.m.
Conference Room 225 & Via Videoconference

Chair McKelvey and Members of the Committee:

Good afternoon Chair McKelvey and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written **comments** on S.B. No. 1121, Relating to Homestead Exemptions.

The purpose of this measure, pursuant to section 2(a) of the measure, is to require the Legislative Reference Bureau to conduct a study to determine the appropriate amount of an increase to the homestead exemption under the United States Bankruptcy Code. Section 2(b) of the measure also requires the study to examine the State's real property exemption for a person's principal residence in bankruptcy proceedings, pursuant to section 651-92, Hawaii Revised Statutes, and include:

- (1) A breakdown and comparison of real property and homestead exemptions in states similar in size to the State or with a similar tax structure;
- (2) A comparison of how real property and homestead exemptions are applied in other states, comparing their similarities and differences to the State's homestead exemption;

- (3) Any fiscal implications to the State, counties, and private sectors as a result of an increased homestead exemption; and
- (4) An assessment of the number and frequency of claims for the homestead exemption in the State.

Section 2(c) of the measure also authorizes the Bureau, in conducting the study, to seek input from any individual or entity the Bureau deems necessary to complete the study.

Section 2(d) of the measure further requires the Bureau to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2024.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

As an initial matter with regard to the study required of the Bureau, the language of section 2(a) of the measure is unclear, as it requires the Bureau to "determine the appropriate amount of an increase to the homestead exemption *under the United States Bankruptcy Code.*" We note that the Title 11 of the United States Code, commonly known as the "United States Bankruptcy Code," is a federal law. In light of the remaining provisions of the measure, we assume that the measure's proponents are not seeking to amend federal law; rather, they intend to comport state law with federal law. It remains unclear, however, whether the reference to the United States Bankruptcy Code in section 2(a) of the measure is intended to mean that the Bureau "shall conduct a study to determine the appropriate amount of an increase to the state homestead exemption *that conforms to any equivalent exemption established in Title 11 of the United States Code,*" or whether it is intended to read that the Bureau "shall conduct a study to determine the appropriate amount of an increase to the state homestead exemption; *provided that the amount determined is not in violation of or preempted by Title 11 of the United States Code.*" As explained below, the necessity of the study may depend upon the intended reading of section 2(a).

The Bureau notes that the existing language of section 651-92, Hawaii Revised Statutes, provides that real property shall be exempt from attachment or execution as follows:

- (1) An interest in one parcel of real property in the State of Hawaii, of a fair market value not exceeding \$30,000, owned by the defendant who is either the head of a family or an individual sixty-five years of age or older; and
- (2) An interest in one parcel of real property in the State of Hawaii, of a fair market value not exceeding \$20,000, owned by the defendant who is a person.

The equivalent federal exemption appears in Title 11 United States Code Section 522(d)(1). Specifically, the exemption applies to the "debtor's aggregate interest, not to exceed

\$15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . . ." However, by operation of Title 11 United States Code Section 104(a), this amount is adjusted every three years, on April 1, to reflect the change in the Consumer Price Index for All Urban Consumers, rounded to the nearest \$25. According to a notice in the February 4, 2022, *Federal Register*, the exemption amount was increased to \$27,900, effective April 1, 2022.

Title 11 United States Code Section 522(b), essentially authorizes a debtor to choose whether the federal exemption will apply, or whether state law will apply, unless state law specifically does not authorize the debtor to elect Title 11 United States Code Section 522(d)(1), to apply.

Accordingly, if the intent of section 2(a) of the measure is for the study to determine the appropriate amount of an increase to the state homestead exemption *that conforms to any equivalent exemption established in* Title 11 of the United States Code, it would appear that a study would be unnecessary, as the Committee could simply amend the measure by deleting its contents and inserting amendments to section 651-92, Hawaii Revised Statutes, that reflect applicable language from Title 11 United States Code Sections 104(a) and 522(d)(1).

However, if the intent of section 2(a) of the measure is for the study to determine the appropriate amount of an increase to the state homestead exemption; *provided that the amount determined is not in violation of or preempted by* Title 11 of the United States Code, then we note that the Bureau has found no provision in Title 11 that establishes a minimum amount or a maximum amount for a state's homestead exemption. Accordingly, it appears that the State may choose to establish a homestead exemption at any amount, based upon its own policy preferences.

If the Committee wishes the Legislature to have pertinent factual information upon which to make a policy determination for establishing a state homestead exemption, the Bureau believes that it can provide the Legislature with the information required in section 2(b)(1) and 2(b)(2) of the measure.

However, the Bureau has serious concerns with the remainder of the work requested of the Bureau in this measure. The Bureau has no specific expertise or experience regarding bankruptcy law or policy, civil remedies and defenses, homestead exemptions, financial institutions and businesses, or fiscal analysis. Given the full scope of the requests made by this measure, the Bureau would need to contract the services of relevant experts and analysts to provide the Legislature with any meaningful information concerning "fiscal implications," as required in section 2(b)(3) of the measure, or an "assessment" of the number and frequency of claims for the homestead exemption in the State, under section 2(b)(4) of the measure. We note, however, that the Bureau's annual operating budget does not contain funds for the contracting of study services.

Further, the Bureau anticipates that it would not be able to obtain the data necessary for the assessment requested under section 2(b)(4). It is our experience that if an agency does not regularly compile requested statistics in the normal course of its operations, those statistics will not be obtained and made available for the Bureau to review in a timely manner. Notably, we could not find any statistics on the number or frequency of claims for homestead exemptions on the website for the United States Bankruptcy Court for the District of Hawaii. Further, on February 6, 2023, we contacted the court directly and have confirmed that the court does not compile this information. Accordingly, we believe that obtaining the data necessary for the requested "assessment" is simply not possible.

With regard to section 2(c) of the measure, we note there is no guarantee that any entity will honor any of the Bureau's requests for input, even if the entity is a state or county governmental entity.

In light of the foregoing concerns, the Bureau offers several workable alternatives for the Committee's consideration:

- (1) It would seem more immediately beneficial to amend the measure to delete the requested study and establish a Homestead Exemption Working Group of stakeholders to determine the appropriate amount of an increase to the homestead exemption and report back to the Legislature with proposed legislation. If the measure is amended to create a working group in this manner and the Committee desires to keep the Bureau involved, we would respectfully request that the measure be further amended to have the Bureau assist with only conducting research and assisting the working group in drafting proposed legislation. Further, we would ask that the working group submit to the Bureau by September 1, 2023, any draft documents, information, and other materials deemed necessary by the Bureau, to allow us adequate time to prepare any relevant bill drafts.
- (2) If the Committee desires the Bureau to provide the Legislature with pertinent factual information upon which to make a policy decision regarding the state homestead exemption amount, then we would respectfully request that:
 - (A) Section 2(a) of the measure be clarified by replacing its existing language with a requirement that the Bureau conduct a study on potentially relevant factors in amending the homestead exemption in section 651-92, Hawaii Revised Statutes;
 - (B) Section 2(b)(3) of the measure be deleted;
 - (C) Section 2(b)(4) of the measure be deleted; and

- (D) Section 2(c) of the measure be amended to include language that requires any state or county agency to respond to the Bureau's request for input within thirty days of receipt of the Bureau's request;
- (3) If the Committee wishes for the Bureau to remain responsible for the study as drafted, we would respectfully request that the measure be amended by inserting an appropriation sufficient for the hiring of experts in fiscal analysis and bankruptcy and by exempting the Bureau from the public procurement code to expedite the procurement process, or providing the Bureau additional time in which to complete the study, or both.

If the measure is amended to adopt any of the three alternatives suggested by the Bureau, then the Bureau believes that its amended responsibilities could be manageable; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for the opportunity to submit written comments.