

**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
INTERIM DIRECTOR

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Statement of
MARY ALICE EVANS, Interim Director

before the
SENATE COMMITTEE ON WAYS AND MEANS

Friday, March 1, 2024

9:55 AM

State Capitol, Conference Room 211

in consideration of
BILL NO SB2044, SD1
RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.

Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Senate Committee on Ways and Means:

The Office of Planning and Sustainable Development (OPSD) **supports** SB2044, SD1, which establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax, requires an unspecified amount of the conveyance tax collected to be deposited into the Dwelling Unit Revolving Fund (DURF), and requires the Department of Taxation to adopt rules.

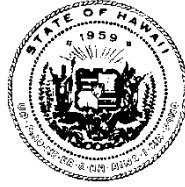
This bill closes a loophole that enables parties (typically large investors and corporate entities) to avoid paying conveyance tax by transferring real property through entity-level transactions. Instead of conveying the real property directly (subject to the conveyance tax), one party acquires the entity that owns the real property from another party (and thus avoiding the conveyance tax).

Per the Legislature's direction and funding in Act 88, SLH 2021, Sec. 39, OPSD recently completed the *TOD Infrastructure Finance and Delivery Strategy*, which identified possible revenue sources, including the conveyance tax, to fund infrastructure for housing development (see https://files.hawaii.gov/dbedt/op/lud/Reports/TOD_InfraFin_Strategy_20231221.pdf). The study identified the need for regular, predictable revenue sources to help finance regional public infrastructure to facilitate transit-oriented development on state, county, and private lands. OPSD supports depositing the conveyance tax collected on the transfer of the controlling interests into DURF, increasing a regular source of additional funding for infrastructure and housing development.

Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



DEAN MINAKAMI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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HONOLULU, HAWAII 96813
FAX: (808) 587-0600

Statement of DEAN MINAKAMI

Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON WAYS & MEANS

March 01, 2024 at 9:55 a.m.
State Capitol, Room 211

In consideration of
S.B. 2044 SD1

RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.

HHFDC supports SB 2044 SD1, which establishes that the transfer of a controlling interest in an entity that owns real property in the state shall be subject to the conveyance tax, with an unspecified percentage or dollar amount collected to be deposited into HHFDC's Dwelling Unit Revolving Fund (DURF).

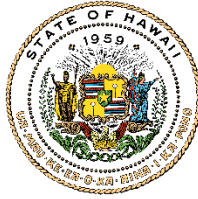
This bill closes a loophole that enables parties (usually large investors) to avoid paying conveyance tax by transferring real property through entity-level transactions. That is, rather than conveying the real property, one party acquires the entity that owns the real property from another party.

HHFDC supports depositing the conveyance tax collected on the transfer of the controlling interests into DURF, which is primarily used to carry out the purposes of our housing development programs and regional state infrastructure programs.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN KP KANAKAOLE
FIRST DEPUTY
DEAN D. UYENO
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
Ways and Means

Friday, March 1, 2024
9:55 AM

State Capitol, Conference Room 211 and Via Videoconference

In consideration of
SENATE BILL 2044, SENATE DRAFT 1
RELATING TO THE CONTROLLING INTEREST TRANSFER TAX

Senate Bill 2044, Senate Draft 1 proposes to establish that the transfer of a controlling interest in an entity that owns real property in Hawai'i shall be subject to conveyance tax and that the conveyance tax collected from such transfer will be distributed through the existing framework of Section 247-7, Hawaii Revised Statutes. **The Department of Land and Natural Resources (Department) supports the use of this bill to close an existing loophole for avoiding payment of conveyance tax on certain transactions and offers two amendments, with comments, that would further strengthen the State's ability to help protect resources and preserve lands for conservation purposes by (1) repealing the dollar cap amount of conveyance taxes paid into the Land Conservation Fund and (2) providing for an immediate cash infusion into the Land Conservation Fund.**

The Department of Taxation reports that FY 2023 conveyance tax revenue totaled \$92.1 million (down from \$188.4 million in FY 2022). Using the most recent growth rate projected by the Council on Revenues (January 8, 2024), FY 2024 conveyance tax revenue would total nearly \$110 million. If the Land Conservation Fund (LCF) could receive a straight ten percent allocation of this revenue (almost \$11 million in FY 2024)—as initially prescribed by Act 156, Session Laws of Hawai'i 2005—then the cash balance of the LCF would receive an immediate \$5.9 million boost.

This additional funding would drive a faster recovery from COVID-driven downturns in LCF revenue for the Legacy Land Conservation Program, which continues to suffer from a \$15 million transfer to the general fund (the largest amount transferred from a special fund at that time) and an ongoing, annual \$1.7 million reduction created by tightening down the dollar amount revenue cap. Otherwise, without an increased revenue stream, we estimate that (1) available LCF cash at the end of FY 2025 would be only \$2.1 million, and (2) available LCF cash for the FY 2026-2027 biennium would total \$12.3 million, leaving just \$8 million of that available for two cycles of competitive grant awards that enable land acquisition and land management for resource protection purposes. The Department also notes that—unlike the Rental Housing Revolving Fund and the Dwelling Unit Revolving Fund, which collectively received about \$950 million in general fund appropriations and bond-funded cash to date—the LCF does not receive general fund appropriations or bond-funded cash and relies solely on conveyance tax revenue for nearly all of its operating budget.

Therefore, the Department requests that the Committee consider amending Sections 7 and 9 of this measure to read as follows:

SECTION 7. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

"§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

(1) Ten per cent [~~or \$5,100,000, whichever is less,~~] shall be paid into the land conservation fund established pursuant to section 173A-5; [~~and~~]

(2) Fifty per cent or \$38,000,000, whichever is less, shall be paid into the rental housing revolving fund established by section 201H-202[~~."~~]; and

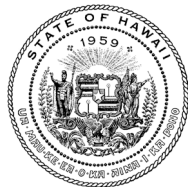
(3) per cent or \$, whichever is less, shall be paid into the dwelling unit revolving fund established by section 201H-191."

SECTION 9. This Act, upon its approval, shall take effect retroactively on July 1, 2023[2025].

Thank you for the opportunity to testify in support of this measure.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
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**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 2044, S.D. 1, Relating to the Controlling Interest Transfer Tax.

BEFORE THE:

Senate Committee on Ways and Means

DATE: Friday, March 1, 2024
TIME: 9:55 a.m.
LOCATION: State Capitol, Room 211

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

The Department of Taxation ("Department") offers the following comments regarding S.B. 2044, S.D. 1 for your consideration.

Summary of Bill Provisions

S.B. 2044, S.D. 1 makes several changes to chapter 247, Hawaii Revised Statutes ("HRS"), which governs the conveyance tax. The bill takes effect on January 1, 2025. The bill adds a new section to chapter 247 designating the transfer of a controlling interest in an entity as a taxable transaction for purposes of the conveyance tax, provided that:

- (1) The transfer or acquisition of the controlling interest occurs within any thirty-six-month period;
- (2) The controlling interest was transferred in a single transaction or a series of transactions by a single person or acquired by a single person or a group of persons acting in concert;

- (3) The entity has an interest in real property located in this State;
- (4) The transfer is not otherwise exempt under section 247-3; and
- (5) The transfer was made for valuable consideration.

A “controlling interest” is defined, for a for profit corporation, as “either fifty per cent or more of the total combined voting power of all classes of stock of the profit corporation entitled to vote, or fifty per cent of the capital, profits, or beneficial interest in the voting stock of the profit corporation” and for any other corporation or partnership, association, trust, or entity as “fifty per cent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity.”

This new section also specifies that “all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place” and requires the Department to adopt administrative rules to make such a determination. The new section also gives the Department the option to enforce certain obligations of the seller, directs all taxes collected pursuant to the new subsection to be “deposited into the dwelling unit revolving fund established by section 201H-191.”

S.B. 2044, S.D.1 also expands the definition of “transfers or conveyances” in HRS section 247-1 to include “the transfer or acquisition within any thirty-six-month period of a controlling interest in any entity with an interest in real property located in this State for valuable consideration.” The bill also removes the conveyance tax exemption in HRS section 247-3 for conveyances from an entity that is party to a merger or consolidation to the surviving or new entity.

Department Comments

The Department appreciates the amendment made by the Committee on Housing, which clarifies that the conveyance tax will be based on the fair market value of the real property owned by the entity at the time the controlling interest is transferred or acquired. The Department notes the added difficulty of determining the amount of the fair market value and the Department's lack of subject-matter expertise in assessing the fair market value of real property, unlike the counties, which specialize in taxing the fair market value of real property under Article VIII, section 3 of the Hawaii State Constitution.

If this Committee intends to pass this measure, the Department requests that “fair market value” be defined by an amendment to HRS section 247-2 as follows:

"Fair market value" means, for purposes of transfers or acquisitions of a controlling interest pursuant to section 247- , the value of real property, as stated on the most recent real property assessment issued by the county in which the real property is located.

The Department also notes that it will be difficult for the Department to identify when transfers of controlling interests occur. Real estate sales are publicly reported and available in the Bureau of Conveyances, which accepts conveyance tax forms and remittances. However, records from entity transfers are not publicly available or reported to the Bureau of Conveyances. Additionally, the Business Registration Division of the Department of Commerce and Consumer Affairs, the primary agency monitoring business ownership, does not publish information on entity interest transfers.

While some entity ownership information is reported on income tax returns to the Department, these returns do not indicate whether the entity holds real estate. Effective enforcement of the conveyance tax on controlling interest transfers may require an amendment to Title 14 of HRS imposing annual reporting requirements on entities for their Hawaii real estate holdings, though implementation of a new reporting requirement would likely be costly.

This absence of information also makes it difficult to perform an effective cost-benefit analysis on the bill. With no information on the amount real property transactions that occur from sales of controlling interest, the Department does not have sufficient information to produce a credible estimate of revenue impacts.

The Department defers to the Bureau of Conveyances, who accepts the conveyance tax forms and remittances, regarding the revenue allocation provisions in sections 2 and 6 of the bill.

Thank you for the opportunity to provide comments on this measure.

PARTNERS IN CARE

Oahu's Continuum of Care

Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.

TESTIMONY IN SUPPORT OF SB 2044 SD1: RELATING TO THE CONTROLLING INTEREST TRANSFER TAX

TO: Senate Committees on Ways and Means
FROM: Partners In Care (PIC)
Hearing: **Friday, March 1, 024; 9:55 AM; CR 211 or via videoconference**

Chair Dela Cruz, Vice Chair Moriwaki, and Members, Committee on Ways and Mean:

Thank you for the opportunity to provide testimony **in support of SB 2044 SD1**, which establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax. Requires that an unspecified percentage or amount (whichever is less) of the tax revenues collected to be deposited into the Dwelling Unit Revolving Fund (DURF). Partners In Care (PIC) is a coalition of more than 60 non-profit homelessness providers and concerned organizations.

We urge your continued prioritization of funding needed to create affordable rental housing. Infrastructure costs are a large component of the cost to develop housing. This bill would support the creation of affordable housing which is needed to prevent homelessness and give hope to the people of Hawai'i.

This bill would close a loophole in the law which has been used to avoid paying the conveyance tax upon "selling" some properties. If a homeowner sells a house, they pay the conveyance tax. However, the conveyance tax law currently allows entities to transfer the controlling interest in a company, without paying any tax. The State needs to close this loophole and use the tax revenues generated to build more critically needed affordable housing. However, you cannot build housing if the infrastructure is inadequate.

Infrastructure is needed across the Hawaiian Islands to remove barriers to creating affordable housing. Dedicating these new tax revenues to the Dwelling Unit Revolving Fund (DURF) would expand the State's ability to overcome this huge barrier. DURF could not only promote housing development but also address overall infrastructure through regional state infrastructure programs. This would help to reduce the per unit cost to construct units.

The key to ending homelessness is building affordable rentals. This will create resiliency for the future, as well as bringing hope to Hawaii's families. With the tough budget decisions now and in the future, the State would benefit from any additional revenue to build infrastructure. Partners In Care urges your support to close this loophole in the law.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE TAX, Extend Tax to Controlling Interest Transfers

BILL NUMBER: SB 2044 SD 1

INTRODUCED BY: Senate Committee on Housing

EXECUTIVE SUMMARY: Establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax established in chapter 247, HRS. Requires an unspecified amount of the conveyance tax collected to be deposited into the Dwelling Unit Revolving Fund. Requires the Department of Taxation to adopt rules.

SYNOPSIS: Adds a new section to chapter 247, HRS, providing that the transfer of a controlling interest in an entity shall be considered a taxable transaction of the entity's real property if (1) The transfer or acquisition of the controlling interest occurs within any thirty-six-month period; (2) The controlling interest was transferred in a single transaction or a series of transactions by a single person or acquired by a single person or a group of persons acting in concert; (3) The entity has an interest in real property located in this State; (4) The transfer is not otherwise exempt under section 247-3; and (5) The transfer was made for valuable consideration.

Provides that for the sole purpose of determining whether a transfer or acquisition pursuant to the exercise of an option occurred within the thirty-six-month taxable transfer period, the date that the option agreement was executed shall be the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this section, the date the option is exercised shall be the date of the transfer or acquisition of the controlling interest.

Provides that for purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department of taxation shall adopt rules to determine when persons are acting in concert, which shall consider the following: (1) Persons shall be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and (2) When persons are not commonly owned or controlled, they shall be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity; provided that, if the acquisitions are completely independent and each purchaser buys without regard to the identity of the other purchasers, the acquisitions shall be considered separate acquisitions.

Provides that the Department of Taxation may, at the director's option, enforce the obligation of the seller (to pay tax) against (1) In the transfer or acquisition of a controlling interest of a profit corporation, the director may enforce the obligation against: (A) The corporation in which a controlling interest is transferred or acquired; (B) The person or persons who acquired the

controlling interest in the corporation; or (C) When the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and (2) In the transfer or acquisition of a controlling interest of any other corporation, partnership, association, trust, or other entity, the director may enforce the obligation against either: (A) The entity in which a controlling interest is transferred or acquired; or (B) The person or persons who transferred or acquired the controlling interest in the entity.

Defines "Controlling Interest" as (1) For a profit corporation, either fifty per cent or more of the total combined voting power of all classes of stock of the profit corporation entitled to vote, or fifty per cent of the capital, profits, or beneficial interest in the voting stock of the profit corporation; and (2) For any other corporation or a partnership, association, trust, or entity, fifty per cent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity."

Amends section 247-1, HRS, to state that "transfers or conveyances" shall include the transfer or acquisition within any thirty-six-month period of a controlling interest in any entity with an interest in real property located in this State for valuable consideration.

Amends section 247-2, HRS, to provide that the basis of the tax in the case of a transfer or acquisition of a controlling interest pursuant to section 247- , the fair market value of the real property owned by the entity at the time the controlling interest is transferred or acquired.

Amends section 247-3, HRS, to repeal the exemption for conveyances by entities that are parties to a merger or consolidation.

Amends section 247-7, HRS, to add a third earmark of ___% or \$_____, whichever is less, to be paid to the Dwelling Unit Revolving Fund (HRS section 201H-91).

Makes other conforming amendments.

EFFECTIVE DATE: January 1, 2025.

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 value transferred.

The proposed measure attempts to make the conveyance tax into a comprehensive revenue generating tax by imposing the conveyance tax rates on “complex transactions” resulting in the indirect transfer of real property. Just as the federal tax code imposes withholding tax on transfers of “U.S. real property holding corporations” as well as U.S. real property, this bill is trying to ensure that transfers of entities holding Hawaii real property are taxed under the conveyance tax just like the transfers of the real property itself.

We see two major policy concerns with this measure.

First, this additional taxable transaction increases the cost of restructuring ownership of entities by eliminating the exemption for conveyances of real property by an entity upon merger or consolidation. Upon a transfer of a controlling interest of an entity, the entity generally continues operations with either additional capital and/or new management, without specific values or consideration attributed to the entity’s underlying real estate or other properties.

This tax increase will have a negative impact on entities looking for ways of staying in business. As costs and overhead increase, employers must find ways to stay in business by either increasing prices to their customers or cutting back on costs. This measure will increase the cost for the alternative of raising capital through restructuring.

Second, the agency set up to capture the tax is the Hawaii bureau of conveyances. It records deeds and other conveyance instruments that are presented to it. There is no problem having the bureau review documents for certain exemptions based on the tenor of the document or having the department of taxation brought in to review more complex exemptions or documents. But with this bill, someone will need to look out for transactions (purchases and sales of interests in entities) that aren’t normally required to be reported to anyone. Certainly, the bureau is not institutionally equipped to do that, it would be a stretch for the department of taxation which has had only limited involvement with this tax before, and the bill itself doesn’t appear to give taxpayers or the agencies guidance as to how taxpayers are supposed to be reporting, or how agencies are supposed to be collecting the tax on the more complex transactions. Suppose, for example, company A holding real property merges into company B, with company B surviving. At present, the transaction is evidenced by a certificate of merger filed with the department of commerce and consumer affairs and nothing needs to be filed at the bureau of conveyances. If the intent is now to require the certificate of merger to be filed at the bureau which would make the transaction subject to the conveyance tax, it is not delineated in the measure.

The Committee on Housing in its report stated that the Department of Taxation testified that this measure imposes a voluntary reporting requirement and stated that the voluntary reporting was sufficient to address concerns about the institutional inability of the Bureau as described above. We take issue with that conclusion. The law as it is now drafted does not impose a requirement to report any transactions that may be considered pieces of controlling interest transactions that are potentially taxable under this bill. We question how the Department of Taxation, or anyone else, would be apprised of the necessary information to enforce the law. And if the only way that

Re: SB 2044 SD 1

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the information would come to the Department is by voluntary compliance, it would seem that a large advantage could be gained by bad actors or even taxpayers ignorant of the law's requirements over the law-abiding chumps who know about the law and comply.

If this bill is to move forward, more serious thought should be given to reporting and compliance issues, as well as delineating responsibilities for its enforcement.

Digested: 2/28/2024

March 1, 2024, 9:55 a.m.
Hawaii State Capitol
Conference Room 211 and Videoconference

To: Senate Committee on Ways and Means
Sen. Donovan M. Dela Cruz, Chair
Sen. Sharon Y. Moriwaki, Vice-Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

RE: TESTIMONY OPPOSING SB2044 SD1 — RELATING TO THE CONTROLLING INTEREST TRANSFER TAX

Aloha Chair Dela Cruz and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments **opposing** [SB2044 SD1](#), which would extend the conveyance tax to include the transfer of a controlling interest of an entity with real property located in the state.

Put simply, this is a complex bill that seeks to expand the scope of the conveyance tax to include business transactions, presumably in the hopes of generating sizable tax revenues.

Assuming that the headaches associated with administration and collection of this tax are not enough to give the Committee pause, there is reason to be concerned about the effect it could have on Hawaii business and real estate.

Even when applied directly, transfer taxes can have a negative impact on the economy. A report by the Sage Policy Group noted that high transfer taxes can “lead to decreases in population, real incomes, real estate transactions, investment in structures, and quality of the built environment.”¹

¹ [“The Unintended Consequences of Excessive Transfer Taxes,”](#) Sage Policy Group, Inc. on behalf of the Community Coalition for Jobs and Housing, June 2022, p. 3.

The same report added that transfer taxes are not a reliable source of tax revenues, and are particularly volatile in areas with especially high tax rates.²

In the case of this bill, those negative features of the conveyance tax are compounded by the fact that this bill would create complications and disincentives for the transfer or restructuring of local businesses. Thus it would act as yet another burden on Hawaii businesses, discourage investment and hinder economic growth.

Looking at the broader picture, one must consider that tax increases in general are not a good idea for Hawaii's economy — especially not now when it already has one of the highest tax burdens in the nation.³ Consider these points:

>> Hawaii's population has been declining for the past six years.⁴ Tens of thousands of Hawaii residents have moved to the mainland over the past six years — and mainly to states without income taxes, such as Washington, Nevada, Texas and Florida.⁵ Their departure from the islands is not only emotionally distressing, but economically depressing as well.

>> Fewer people remaining means fewer people to work at our private businesses, or even staff our government agencies. It also means fewer people to pay for Hawaii's ever-increasing tax burden.

>> Higher taxes for those who remain is more fuel for the exodus of our friends, neighbors and family to places that are more affordable. It's a downward spiral economically fostered by the relentless upward spiral of more and more taxes.

>> Hawaii taxes high-income earners at 11%, second only to California at 13.3%.⁶ Hawaii's top 1.5% of taxpayers already pay 34.9% of all income taxes in the state.⁷

>> Hawaii is suffering from a stagnant economy, and both the Economic Research Organization at the University of Hawai'i⁸ and the state Department of Business, Economic Development and Tourism⁹ have predicted continued slow economic growth in 2024. Tax hikes could exacerbate this slowdown, since

² ["The Unintended Consequences of Excessive Transfer Taxes,"](#) p. 2.

³ Jared Walczak and Erica York, ["State and Local Tax Burdens, Calendar Year 2022,"](#) Tax Foundation, April 7, 2022.

⁴ Maria Wood, ["Where People from Hawaii Are Moving to the Most,"](#) 24/7 Wall Street, Jan. 23, 2022.

⁵ Katherine Loughhead, ["How Do Taxes Affect Interstate Migration?"](#) Tax Foundation, Oct. 11, 2022.

⁶ Timothy Vermeer, ["State Individual Income Tax Rates and Brackets for 2023,"](#) Tax Foundation, Feb. 21, 2023.

⁷ ["Hawaii Individual Income Tax Statistics,"](#) Hawaii Department of Taxation report for Tax Year 2021, August 2023, Table 12A.

⁸ Carl Bonham, Byron Gagnes, Steven Bond-Smith, et al., ["State Facing Headwinds as Maui Recovery Begins,"](#) Economic Research Organization at the University of Hawai'i, Dec. 15, 2023.

⁹ Hawaii Department of Business, Economic Development, and Tourism, ["Hawaii Economic Growth Remains Low for 2024 as Recovery Continues,"](#) Dec. 11, 2023.

entrepreneurs will be less likely to want to invest their capital — or “wealth assets,” as the case may be¹⁰ — in Hawaii’s economy.

In short, Hawaii’s residents and businesses need a break from new taxes, tax increase, fees and surcharges. This is not the time to make Hawaii a more expensive place to live and do business.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

¹⁰ Aaron Hedlund, “[How Do Taxes Affect Entrepreneurship, Innovation, and Productivity?](#)” Center for Growth and Opportunity at Utah State University, Dec. 23, 2019; Ergete Ferede, “[The Effects on Entrepreneurship of Increasing Provincial Top Personal Income Tax Rates in Canada,](#)” Fraser Institute, July 10, 2018; Robert Carroll, Douglas Holtz-Eakin, Mark Rider and Harvey S. Rosen, “[Personal Income Taxes and the Growth of Small Firms,](#)” National Bureau of Economic Research, October 2000.



February 29, 2024

Senator Donovan Dela Cruz, Chair
Senator Sharon Moriwaki, Vice Chair
Members of the Senate Ways and Means Committee

RE: **SB 2044 SD1– RELATING TO CONTROLLING INTEREST TRANSFER TAX**
Hearing date – March 1, 2024 at 9:55 AM

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and members of the committee,

Thank you for allowing NAIOP Hawaii to submit testimony in **OPPOSITION to SB 2044 SD1– RELATING TO CONTROLLING INTEREST TRANSFER TAX**. NAIOP Hawaii is the Hawaii chapter of the nation’s leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders, and other professionals.

SB2044 establishes a conveyance tax for the transfer of a controlling interest in an entity that owns real property in the State. Hawaii already has one of the worst conveyance taxes in the country. Additionally, the measure seeks to deposit funding into the Dwelling Unit Revolving Fund (DURF).

NAIOP Hawaii opposes this measure which proposes to consider the transfer of a controlling interest in an entity as a taxable transaction for real property purposes. We are concerned that this approach may lead to an increase in taxes for businesses engaging in legitimate transactions such as mergers, acquisitions, or changes in ownership structure. Passage of this bill will discourage investment, hinder economic growth, and burden business owners when attempting to restructure entity holdings.

Furthermore, this measure creates ambiguity for large corporate entities conducting business in Hawaii. Specifically, the definition of "controlling interest" and the conditions triggering taxation, introduces complexity and ambiguity as to when the new tax will apply. Additionally, small businesses will face challenges in the navigation of new tax obligations and compliance requirements introduced by this bill. The additional financial and administrative burden will result in disproportionate, negative

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effect on small businesses. SB 2044 SD1 is anticipated to result in legal disputes, administrative challenges, and increased compliance costs for all affected entities.

Moreover, imposing a conveyance on the transfer of a controlling interest in a Special Purpose Entity (SPE) poses an issue for landowners who are simply looking to finance smaller holdings. Typically, in financing a single asset, lenders prefer a new SPE to provide additional financial certainty for a particular project.

Ultimately, this measure may result in: 1) fewer transactions triggering payment of conveyance tax; and 2) a meaningful reduction in economic activity due to additional costs in setting up a required SPE. NAIOP Hawaii is concerned that this increase in conveyance taxes may reduce the private sectors investment into long term projects which stimulate economic activity. Hawaii is already rated as one of the least business friendly States in the nation and increasing this tax rate will further discourage much needed investment here locally. Rather, additional efforts to encourage investment in Hawaii and incentivize the creation of new projects and businesses in Hawaii would stimulate our economy by creating jobs and tax revenue.

Accordingly, NAIOP Hawaii respectfully recommends that SB 2044 SD1 be deferred.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read 'Reyn Tanaka', with a long horizontal flourish extending to the right.

Reyn Tanaka, President
NAIOP Hawaii



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February 29, 2024

Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair
Senate Committee on Ways and Means

Comments and Concerns Regarding SB 2044, S.D. 1 Relating to the Controlling Interest Transfer Tax (Establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax established in Chapter 247, Hawaii Revised Statutes [HRS]. Requires an unspecified amount of the conveyance tax collected to be deposited into the Dwelling Unit Revolving Fund [DURF]. Requires the Department of Taxation [DoTax] to adopt rules.)

Friday, March 1, 2024, 9:55 a.m.; State Capitol, Conference Room 211 & Videoconference.

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. LURF's mission 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.

SB 2044, S.D. 1. This bill proposes amendments to Chapter 247, HRS to establish that the transfer of a controlling interest in an entity that owns real property in Hawaii shall constitute a transaction subject to the State conveyance tax, and that such tax revenues collected shall be deposited into the DURF. In short, the measure attempts to expand the application of the conveyance tax from conveyances of real estate to conveyances of controlling interests in entities owning real estate in this State.

Background. The measure does not specifically include the reason for the proposed expansion of the application of the conveyance tax to conveyances of controlling interests in entities owning real estate, however, it is presumed that the bill is intended to close the existing loophole for Hawaii entities holding Hawaii real property to avoid payment of conveyance taxes, and also as a method to increase the State's general fund to raise more revenue for various programs now funded and sought to be funded by the State conveyance tax.

Based on the following reasons and considerations, LURF **opposes SB 2044, S.D. 1**, and must request that this bill **be held** in this Committee.

LURF's Position.

1. Transfers of “Controlling Interests” are not “Conveyances” of Real Property, and Rightfully Should Not be Made Subject to the Conveyance Tax Law.

SB 2044, S.D. 1 would inappropriately subject sales of controlling interests in an entity to the conveyance tax regardless of whether real estate may be the primary or largest asset owned by the entity. Given that transfers of controlling interests are not conveyances of real property, and given the clear intent underlying HRS Chapter 247, the method sought to be used to impose a conveyance tax on transfers of stock (i.e., amendment or expansion of the existing conveyance tax laws) is improper.

Furthermore, as far as LURF is aware, proponents of this measure have not justified the existence of or the need to close any loophole used by Hawaii landholding entities to avoid the payment of conveyance taxes; and have not presented any information, credible and material facts or circumstances required to prove that this proposed legislation is in fact necessary, or that the State's economy will significantly improve as a result of taking the action proposed.

If a revenue generating tax is what is actually intended by the proponents of this bill, then that should be made clear and the true purpose of this measure, as well as the terms and provisions relating to all aspects of such an expansion of the conveyance tax, including administration, imposition, compliance, and enforcement, should be fully vetted by the public.

2. Proper, Efficient, and Effective Implementation of the Conveyance Tax Proposed by this Bill, would Require Administration and Enforcement by Personnel and Agencies with the Expertise to Render Complex, Time-Consuming, and Subjective Determinations.

In the effort to establish that transfers of controlling interests in entities owning real property are taxed identically to conveyances of actual real property, SB 2044, S.D. 1 in effect creates a broad, complex, revenue generating tax, which, as discussed above, is far from what was intended when the conveyance tax was initially enacted by the Hawaii Legislature.

The bill itself is fraught with terms, requirements and exemptions relating to the imposition of, and compliance with the proposed expanded conveyance tax, which would assumedly continue to be administered by the Hawaii Bureau of Conveyances (Bureau). LURF questions the ability of the Bureau, as well as the costs which may need to be incurred, especially given the current non-tax expertise of its staff, to administer and enforce the requirements prescribed by the bill, as well as collect the conveyance tax, particularly in complex transactions. By way of example, in computing the amounts of conveyance taxes to be imposed by this bill, LURF questions whether the Bureau

would be able to identify and determine technical tax issues such as the amounts which should be excepted or deducted from the amounts of consideration being transferred as prescribed by federal laws.

And despite the inclusion of certain definitions of terms to be construed in HRS Chapter 247 and additional factors that have been delineated in this bill, as a practical matter, in order that SB 2044, S.D. 1 be properly and effectively implemented, determinations as identified in the measure must still be made pursuant to rules directed to be adopted by the DoTax yet administered and enforced by the Bureau. These determinations including, for example, whether or not a controlling interest is even being transferred or acquired, and whether or not an individual or group of persons are acting in concert for the purpose of effectuating a transfer or acquisition, involve assessments of subjective issues which entail significant time, expense, knowledge, and expertise of individuals in specialized subject matter areas (both conveyancing and taxation) who may not presently exist or who may not currently be qualified to conduct such specific reviews.

3. The Hawaii Conveyance Tax was Never Intended to be and Should not Operate as a Revenue-Generating Tax.

LURF's position is that the Hawaii Conveyance Tax was never intended as a revenue-generating tax. Hawaii Revised Statutes ("HRS"), Chapter 247 (Conveyance Tax), was purposefully enacted in 1966 to provide the 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. As such, the conveyance tax should not be utilized as a vehicle to generate revenue, especially for non-conveyance tax-related funds and programs.

Since the enactment of HRS Chapter 247, however, the State Legislature has proposed, and has successfully implemented changes to the law 1) to allow application of conveyance tax revenue to a number of non-conveyance type uses (e.g., 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 impose conveyance taxes to the point said revenues now appear to far exceed the initially stated purposes or needs identified in the Act. Moreover, supplemental funding for some of those expanded uses for which conveyance tax revenues were subsequently authorized has since been determined to be unnecessary, and certain funds have been recommended to be discontinued, creating an even stronger basis for legal objection and challenge.

Such expansions and deviations, including the allocation of conveyance tax to the DURF specifically for the purpose of funding infrastructure programs in TOD areas as 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, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

Specifically created programs and special funds deserve funding through broad taxes imposed on the general public and the State General Fund, rather than through the conveyance tax, which targets few. Moreover, because the conveyance tax is dependent upon activity in the fluctuating real estate market, it is considered an undependable source and should not be relied upon to fund important programs.

4. The proposed measure may create a significant disincentive for business in Hawaii.

At a time when the Hawaii economy is still stumbling from the impact of the Covid pandemic and the Maui fires, and is attempting to encourage business expansion in, and attract business operations to Hawaii, SB 2044, S.D. 1, **particularly by its elimination of the exemption for conveyances of real property by an entity pursuant to merger or consolidation**, would actually create a disincentive, and will have a substantial negative impact on persuading new and existing land-holding businesses to open/re-open, restructure, or expand in Hawaii, or to relocate their operations to this State. The proposed added cost of doing business in Hawaii as a result of this bill would certainly appear to negatively outweigh any positive revenue impact resulting from the imposition of conveyance taxes pursuant to this measure.

5. The imposition of conveyance tax as proposed by this bill may drive up the cost of lands for agricultural production, affordable and market homes, and commercial development.

The proposed imposition of the conveyance tax on transfers of controlling interests which affect **agricultural lands** will be passed on to farmers and other agricultural operators, making it even harder for agriculture to survive in Hawaii; the proposed imposition of the tax on transfers which affect **land intended for housing developments** will be passed on to home buyers and will thus increase the price of homes and exacerbate the affordable housing problem in Hawaii; and the proposed imposition of the conveyance tax onto transfers which affect **commercial properties** will also be passed on to small businesses, creating yet another substantial financial burden on them.

For the reasons stated above, LURF respectfully recommends that **SB 2044, S.D. 1 be held in this Committee.**

Thank you for the opportunity to provide comments regarding this proposed measure.

SB-2044-SD-1

Submitted on: 2/28/2024 4:14:48 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

Submitted By	Organization	Testifier Position	Testify
Galen Fox	Individual	Support	Written Testimony Only

Comments:

Chair Dela Cruz, Vice Chair Moriwaki, Members,

I support SB 2044 SD 1.

The bill would require that the transfer of a controlling interest in an entity that owns real property in the State will be subject to the conveyance tax established in chapter 247, HRS.

Hawaii’s rising and high cost of housing is fueling the State's homelessness crisis and forcing local families to move out of the State. The conveyance tax, a one-time tax at the time of real property sales, is an appropriate revenue source to help with affordable housing and homeless services. Although housing prices in the State have risen dramatically over the past thirteen years, the State's conveyance tax has not been updated since Act 59 (2009). Presently, revenue from the State's conveyance tax is significantly lower than the rates of other high-cost areas in the country.

We should capture the conveyance tax on transferring controlling interest in an entity to support needed affordable housing in our state.

Aloha, Galen Fox

SB-2044-SD-1

Submitted on: 2/28/2024 5:04:19 PM

Testimony for WAM on 3/1/2024 9:55:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Godbey Carson	Individual	Support	Written Testimony Only

Comments:

I **support** SB 2044 SD 1, which would require that the transfer of a controlling interest in an entity that owns real property in the State will be subject to the conveyance tax established in chapter 247, HRS.

Hawaii’s rising and high cost of housing is fueling the State's homelessness crisis and forcing local families to move out of the State. The conveyance tax, a one-time tax at the time of real property sales, is an appropriate revenue source to help with affordable housing and homeless services. Although housing prices in Hawaii have risen dramatically over the past thirteen years, the State's conveyance tax has not been updated since 2009. Presently, revenue from Hawaii's conveyance tax is significantly lower than the rates of other high-cost areas in the country.

Please pass this bill so we can capture the conveyance tax on transferring controlling interest in an entity to support needed affordable housing in our state.

Thank you for your consideration of my testimony.

Ellen Godbey Carson, Honolulu, Hawaii