



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:
S.B. NO. 2216, RELATING TO TAXATION.

BEFORE THE:
SENATE COMMITTEE ON HOUSING

DATE: Tuesday, January 28, 2020 **TIME:** 1:30 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Patrick K. Kelly, Deputy Attorney General

Chair Chang and Members of the Committee:

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

This bill establishes an "empty homes tax" on certain residential property owners in the State who own a vacant residential unit. The bill provides for the assessment and collection each month of an empty homes tax on a vacant unit in the aggregate amount of five per cent of the gross value of the unit per year. For the reasons discussed below, a State tax on the use of real property may be considered prohibited by the Constitution of the State of Hawaii.

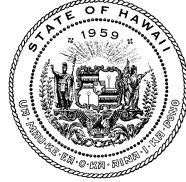
Article VIII, section 3, of the Constitution of the State of Hawaii provides:

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, a State tax on real property may be challenged as unconstitutional. We respectfully ask that these concerns be addressed.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
Phone: (808) 587-1540 / Fax: (808) 587-1560
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RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Stanley Chang, Chair;
The Honorable Dru Mamo Kanuha, Vice Chair;
and Members of the Senate Committee on Housing

From: Rona M. Suzuki, Director
Department of Taxation

Re: **S.B. 2216, Relating to Taxation**

Date: Tuesday, January 28, 2020

Time: 1:30 P.M.

Place: Conference Room 225, State Capitol

The Department of Taxation (Department) appreciates the intent of this bill and is providing comments to facilitate our administration of a new tax being created. S.B. 2216 establishes a new empty homes annual tax to be administered by the Department at a rate of five percent of the gross value of a unit subject to this tax. The measure takes effect on July 1, 2020.

1. The base on which the tax is calculated needs to be clarified. Section B states, “[t]he tax, in the aggregate, shall be equal to five per cent of the gross value of the unit per year.” “Gross value” must be defined. Alternately, “gross value” could be replaced with the county real property tax assessed value.
2. It is not clear how many days in a year the unit must be empty to trigger the new tax. The number of days in a month or year that a unit must be empty to trigger the tax needs to be specified. In addition, certain instances of a unit being empty should be considered for exemption (e.g., the unit is advertised to be rented, unit is being renovated, unit cannot be inhabited because of damage or other issues with the landlord-tenant code, or the unit is listed for sale).
3. The requirement in Section D requires that payment is made by “cash, bank draft, cashier’s check, money order, or certificate of deposit” should be removed. Limiting payment to these methods removes the taxpayer’s ability to pay the tax online (i.e., credit card, electronic fund transfer).
4. The provisions in Section D and E that require payment of the tax and filing of the return to be transmitted to the district that the residential real property should be removed. The Department’s current procedures and computer system make this requirement obsolete.
5. The implementation of a new tax requires the development of new forms, substantial changes to the Department’s computer system, and taxpayer education. We would not be able to implement the changes in this legislation by July 1, 2020. The Department respectfully requests the effective date be amended to January 1, 2021.
6. The Department requests that Section 231-8.5, HRS, be amended to include the

Department of Taxation Testimony
HOU SB 2409
January 28, 2020
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newly added Chapter to authorize the Department to require mandatory e-filing of returns for this tax.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, Empty Homes Tax

BILL NUMBER: SB 2216

INTRODUCED BY: S. CHANG, FEVELLA, KANUHA, MORIWAKI, K. RHOADS,
RUDERMAN, Dela Cruz

EXECUTIVE SUMMARY: Imposes an empty homes tax against residential property owners who own a vacant residential unit. This measure is of questionable constitutionality because our state constitution gives the counties the exclusive right to impose real property tax.

SYNOPSIS: Adds a new chapter to the HRS to impose an empty homes tax against residential property owners who own a vacant residential unit. The tax is to be 5% of the gross value of the unit per year. Monthly payments of the tax appear to be required, with a later filed annual reconciliation return, as is required under the general excise tax. Administrative provisions of the GET are incorporated by reference.

EFFECTIVE DATE: July 1, 2020.

STAFF COMMENTS: Although the proposed empty homes tax is ostensibly modeled on the GET, it looks and quacks like a real property tax in that it is imposed against the property owner just like the real property tax is now; it is imposed based on usage of real property (vacant versus otherwise); and is based on the value of the real property involved.

As such, the tax is likely to run afoul of article VIII, section 3 of the Hawaii Constitution that grants the counties exclusive authority to impose real property tax. The Hawaii Supreme Court has recently stated that “[a]rticle VIII, section 3 was expressly and manifestly designed to transfer to the counties broad powers of real property taxation,” that “the purpose of the amendment was to place the burden of the real property taxation system at the county level,” and further, that the amendment, along with the legislative enactments contained in HRS Chapter 246A, which provided for the orderly transfer of property taxation power to the counties, “covered the whole subject [of real property taxation] and embraced the entire law in that regard.” *In re Kaheawa Wind Power, LLC*, No. SCAP-17-00000816, slip op. at 26-27 (Haw. Jan. 21, 2020) (quoting *In re Gardens at West Maui Vacation Club*, 90 Haw. 334, 341, 978 P.2d 772, 779 (1999)). The state, therefore, is precluded from imposing a tax on real property, vacant or otherwise.

Digested 1/26/2020

January 28, 2020

The Honorable Stanley Chang Chair

Senate Committee on Housing
State Capitol, Room 225
Honolulu, HI 96813

RE: S.B 2216, Relating to Taxation

HEARING: Wednesday, January 28, 2020, at 1:30 p.m.

Aloha Chair Chang, Vice Chair Kanuha 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 **opposes** S.B. 2216 which establishes an empty homes tax against certain residential property owners who own a vacant residential unit in the State

Under this measure, a property owner would be fined monthly 5% of the gross value of the unit. To put that in perspective, based on the median value as of December 2019, the following would be the amount owed based on property type:

	Median:	Monthly Fine:	Yearly Total:
<i>Single Family Home</i>	\$ 820,000	\$41,000	\$492,000
<i>Condominium</i>	\$ 425,500	\$21,275	\$255,300

There are numerous reasons why a person would have their home vacant for a period of time, such as serving in the military or traveling out of State for work.

Additionally, this measure is so broad it could have the unintended consequence of applying to property owners that are having difficulty finding a renter or properties undergoing renovation.

Finally, this measure would be difficult to enforce. If a property owner is letting family stay in their property for free, there would be no books and records to prove that their unit was not vacant.

Mahalo for the opportunity to testify.



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Chuck Huxel	Stephen O'Harrow	P.O. Box 23404
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Doug Pyle, Secretary	Stephanie Fitzpatrick	Dave Nagaji		

January 27 , 2020

TO: Chair Chang and Committee on Housing

RE: SB 2216 Relating to Taxation

Support for hearing on January 28

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 2216 as it would tax vacant residential property. Our state has a housing crisis. The problem is not that we do not have units as we do have units. The problem is that we are not building units for working people to use. We are building units for rich people to invest. This bill would help to discourage such construction for the purposes of investment. We hope this will divert more resources to constructing homes for working people.

Sincerely,
John Bickel
President





LATE

**SENATE COMMITTEE ON HOUSING
State Capitol, Conference Room 225
415 South Beretania Street
1:30 PM**

January 28, 2020

RE: SENATE BILL NO. 2216, RELATED TO TAXATION

Chair Chang, Vice Chair Kanuha, and members of the committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is opposed to S.B. 2216 which proposes to establish an empty homes tax against certain residential property owners who own a vacant residential unit in the State.

The bill proposes that the state Department of Taxation oversee, administer and enforce the proposed "empty home tax." The bill does not define what criteria will be used in determining an empty home nor recognize factors that may contribute to why a home is empty or vacant for a period of time.

Rather than threaten homeowners to occupy or rent out their home by leveling a tax, the legislature should consider incentivizing homeowners to keep their homes occupied and/or rented to make more units available in the rental market.

We are opposed to S.B. 2216 and appreciate the opportunity to express our views on this matter.

LATE

Presentation to The
Committee on Housing
January 28, 2020 1:30 P.M.
State Capitol Conference Room 225

Testimony in Opposition to SB 2216

TO: The Honorable Stanley Chang, Chair
The Honorable Dru Mamo Kanaha, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and two banks from the continent with branches in Hawaii.

HBA is opposed to this bill to tax the owner of an empty home monthly at the rate of 5% of the gross value to property. We believe that this bill would harm the housing economy without gain.

A home may be unoccupied but not vacant because it might be a second home or a rental home that has yet to be rented. Thus, this bill may become a punishment for owners of rental housing. Rental housing is very much needed. The 2018 DBEDT State Data Book (the latest available) shows a homeowner ship rate of 59.5% which indicates that a large amount of our population relies on rental housing to provide a roof over their heads.

Let's consider a house worth \$720,000 and the owner goes on a vacation thus leaving the home "vacant". Five percent of the value of the home is \$36,000 and thus, the price of a vacation is an empty home tax of \$3,000 a month if the owner decide to go to another island for a vacation. For a house valued at \$720,000, it is likely that \$3,000 is higher than the real property tax for the fiscal year.

At any time, the rental unit will be vacant because it has to be renovated or repaired or a suitable tenant has not yet been found. Thus, at any time, for valid reason, the house could be empty and should not be subject to an onerous tax.

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

Neal K. Okabayashi
(808) 524-5161



LATE

SB 2216, RELATING TO TAXATION

JANUARY 28, 2019 · SENATE HOUSING COMMITTEE
· CHAIR SEN. STANLEY CHANG

POSITION: Support.

RATIONALE: IMUAlliance supports SB 2216, relating to down payments, which establishes an empty homes tax against certain residential property owners who own a vacant residential unit in the State.

Today, **the 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 2019* report found that a full-time worker would need to earn \$36.82/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 111 hours per week to afford a modest one-bedroom apartment at fair market value and 146 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 43 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 \$16.68/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, 63 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 83 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.

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 more than 4,700 people, to 1,415,872, from July 2018 to July 2019, when births, deaths, and migration were accounted for. That's the biggest numerical population drop since 2015 and it made Hawai'i one of just ten states in the country to lose population in 2019, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Establishing a tax on vacant homes is a novel policy to pursue to increase our state's housing supply. **Urban Honolulu currently has a vacancy rate of approximately 12 percent, or 30,000 units, which is one of the highest vacancy rates in the country.** Vancouver has already implemented a vacancy tax. Its real estate boom led to the average sale price of all categories of residential property rising to roughly \$1.4 million U.S. dollars for a detached house in 2016, leaving Vancouver residents reeling. Vancouver, like Hawai'i, is a magnet for nonresident real estate investment. After implementing a vacancy tax, however, the city took in nearly \$30 million in new revenue and, as intended, vacancy rates began to decline.

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 increase our affordable housing supply for working families.

SB-2216

Submitted on: 1/27/2020 11:44:59 AM

Testimony for HOU on 1/28/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tanya Aynessazian	Individual	Support	No

Comments: