

JAN 21 2022

S.B. NO. 2547

A BILL FOR AN ACT

RELATING TO VACANCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, in 2015, the
2 research and economic analysis division of the department of
3 business, economic development, and tourism estimated that the
4 demand for housing would increase by an additional 64,700 to
5 66,000 housing units during the 2015-2025 period.
6 Unfortunately, Hawaii is not expected to create the necessary
7 units by 2025. Further decreasing the supply of available
8 housing units are off-island foreign investors who purchase
9 second homes in Hawaii and allow them to remain vacant for most
10 of the year. Foreign high-end second home purchases have
11 increased from \$500,000,000 per year from 2008 to 2015 to
12 \$1,000,000,000 per year for 2016 and 2017. United States
13 investors outside Hawaii purchase an additional \$4,000,000,000
14 to \$5,000,000,000 each year in Hawaii's real estate market and
15 also allow many of those homes to remain vacant for most of the
16 year. These vacant units contribute to Honolulu having a
17 long-term vacancy rate of 5.3 per cent and available vacancy



1 rate of 3.4 per cent, which are among the highest in the nation.
2 This high vacancy rate reduces the amount of available homes for
3 Hawaii residents and significantly contributes to the high
4 rental costs and lack of affordable housing. Additionally,
5 empty homes also deprive local businesses of economic benefits
6 from collateral spending and deprive local and state governments
7 of general excise tax revenue needed to fund public
8 infrastructure that remains available to the homeowners
9 throughout the year.

10 The legislature finds that imposing a vacancy surcharge
11 will establish a disincentive to maintaining vacant dwellings
12 and facilitate the renting or sale of available housing, all
13 while generating revenue for the State. A report published by
14 the University of California, Los Angeles, Luskin School of
15 Public Affairs, for the Honolulu mayor's office of housing,
16 dated July 2020, indicated that a vacancy tax could raise more
17 than \$500,000,000 a year.

18 The purpose of this Act is to help increase the number of
19 available housing units in the State by imposing a surcharge on
20 vacant units as a disincentive for owners who keep housing units
21 vacant, and create a special fund for the vacancy tax revenues



1 to pay for enforcement and provide rental assistance to local
2 residents.

3 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
4 amended by adding a new section to part I to be appropriately
5 designated and to read as follows:

6 "§201- Vacant homes special fund. (a) There is
7 established a vacant homes special fund into which shall be
8 deposited the following moneys:

- 9 (1) Appropriations by the legislature;
10 (2) Gifts, donations, and grants from public agencies and
11 private persons; and
12 (3) All proceeds collected by the department of taxation
13 pursuant to chapter 237, part .

14 All interest earned or accrued on moneys deposited in the
15 fund shall become part of the fund. The fund shall be
16 administered by the department; provided that the department may
17 contract with a public or private agency to provide the
18 day-to-day management of the fund.

19 (b) Subject to legislative authorization, moneys from the
20 fund may be appropriated to the counties for:

- 21 (1) Enforcement of chapter 237, part ; and



1 (2) Rental assistance programs."

2 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
3 amended by adding a new part to be appropriately designated and
4 to read as follows:

5 **"VACANCY SURCHARGE**

6 **§237-A Definitions.** For the purposes of this part:

7 "Individual" means a natural person.

8 "Residential real property" means fee simple or leasehold
9 real property on which is situated:

10 (1) At least one dwelling unit; or

11 (2) A residential condominium or cooperative apartment,
12 the primary use of which is occupancy as a residence;
13 that is not subject to taxation pursuant to chapter 237D.

14 **§237-B Imposition of surcharge.** (a) There is hereby
15 levied and shall be assessed and collected annually, a surcharge
16 against persons licensed pursuant to section 237-9 on account of
17 the person's vacant residential real property in the State. The
18 surcharge shall be measured by the application of rates against
19 the average annual rental value of the residential real
20 property. The surcharge shall be in addition to any other taxes
21 under this chapter, if any.



1 (b) All surcharges under this part shall be paid by the
2 owner.

3 (c) Any residential real property dwelling unit that was
4 vacant during the previous year shall be assessed a surcharge
5 of:

6 (1) per cent of the average annual rental value of
7 the residential real property published pursuant to
8 section 237-D if that residential real property was
9 vacant for one hundred twenty days or more but less
10 than one hundred eighty days during the previous year;
11 or

12 (2) per cent of the average annual rental value of
13 the residential real property published pursuant to
14 section 237-D if that residential real property was
15 vacant for one hundred eighty days or more during the
16 previous year,

17 provided that if the residential real property consists of more
18 than one dwelling unit, then the surcharge shall be calculated
19 on the proportional average annual rental value of the vacant
20 dwelling unit published pursuant to section 237-D.



1 (d) Residential real property shall be considered occupied
2 on any day that the residential real property was:

3 (1) The primary, legal, or voting residence of any
4 individual;

5 (2) The temporary residence of a military service member
6 or dependent;

7 (3) The temporary residence of a student;

8 (4) Rented to an individual for fair market value pursuant
9 to a long-term or short-term rental agreement; or

10 (5) Lawfully leased, let, or rented for fair market value
11 and for which taxes were paid under chapter 237D.

12 **§237-C Exemptions.** (a) The surcharge imposed by this
13 part shall not apply for the following periods of vacancy:

14 (1) For a twelve-month period of vacancy following the
15 death of a registered owner;

16 (2) For a twenty-four-month period of vacancy for
17 residential real property undergoing redevelopment or
18 major renovations that the owner can demonstrate
19 tenancy is untenable;



(3) For a twelve-month period of vacancy during which an owner or lessee resides in a hospital or a long-term or supportive care facility;

(4) For the first six-month period of vacancy during which the owner or lessee is required to live elsewhere to satisfy an employment requirement;

(5) For any period of vacancy necessary to comply with a court order or executive order; or

(6) For any period of vacancy during which the owner or lessee is serving in the military and deployed to another location.

(b) This part shall not apply to any residential real property:

(1) Owned by the United States or for which the United States is a lessee;

(2) Owned by the State and not leased to a private party;

(3) For which the State is the lessee;

(4) Owned by a county and not leased to a private party;

or

(5) For which a county is the lessee.



1 **§237-D Average annual rental value; calculation.** (a)

2 Before January 15 of each year, the department of business,
3 economic development, and tourism shall publish on its website a
4 list of average annual rental values for residential real
5 property.

6 (b) The list of average annual rental values shall include
7 values specific to each geographic region, the size of the
8 residential real property, the number of bedrooms, the number of
9 bathrooms, and other characteristics deemed relevant to rental
10 value by the department of business, economic development, and
11 tourism.

12 (c) Each owner assessed a surcharge pursuant to section
13 237-B shall calculate the surcharge based upon the applicable
14 average annual rental value divided by three hundred sixty-five
15 days, then multiplied by the total number of days the
16 residential real property was vacant.

17 (d) The director of business, economic development, and
18 tourism may adopt, amend, or repeal rules pursuant to chapter 91
19 to carry out this section.

20 **§237-E Return and payments; penalties.** (a) On or before

21 February 20 of each year, each owner of residential real



1 property shall file a return with the director of taxation in a
2 form pursuant to subsection (b) and notwithstanding section
3 237-30, shall remit the amount of any surcharge required by
4 section 237-B.

5 (b) The director of taxation shall prescribe the form of
6 the return. The return shall:

7 (1) State the number of days during the previous year that
8 the residential real property was:

9 (A) Occupied for any reason specified by section
10 237-B(d);

11 (B) Vacant for any reason specified by section
12 237-C(a); and

13 (C) Vacant for any reason not specified by section
14 237-C(a);

15 (2) Require the submission of any documents necessary to
16 support the information submitted pursuant to
17 paragraph (1); and

18 (3) Include a certification, signed and subject to penalty
19 pursuant to section 710-1063, that the statements made
20 are true and correct to the best of the owner's
21 knowledge, information, and belief.



1 **§237-F Assessment of surcharge upon failure to make**
2 **return; limitation period; penalty; exceptions; extension by**
3 **agreement.** (a) If any owner of a residential real property
4 fails to make a return as required by this part, fails to obtain
5 a license pursuant to section 237-9, or fails to remit the
6 amount of any surcharge required by this part, the director of
7 taxation shall make an estimate of the surcharge liability of
8 the owner from any information the director of taxation obtains,
9 and according to the estimate so made, assess any surcharges,
10 interest, and penalty due from the owner, give notice of the
11 assessment to the owner, and make demand upon the owner for
12 payment.

13 (b) The penalty for failure to submit a return and the
14 surcharges under to this section shall be the greater of:

15 (1) Not more than \$ per day for each day after
16 February 20 or a date specified by the director of
17 taxation that the return is not filed; or

18 (2) An amount equal to the surcharge that would have been
19 imposed under this part.

20 The penalty imposed shall be in addition to any surcharge and
21 interest owed.



1 (c) Interest shall be calculated on the sum owed at the
2 rate of eight per cent a year.

3 (d) The assessment shall be presumed to be correct until
4 and unless, upon an appeal duly taken as provided in
5 section 237-42, the contrary shall be clearly proved by the
6 owner assessed, and the burden of proof upon that appeal shall
7 be upon the owner assessed to disprove the correctness of
8 assessment.

9 (e) After a return is filed under this part, the director
10 of taxation shall cause the return to be examined and may make
11 further audits or investigation as the director of taxation
12 considers necessary. If the director of taxation determines
13 that there is a deficiency with respect to the payment of any
14 surcharge due under this part, the director of taxation shall
15 assess the surcharge and interest due, give notice of the
16 assessment to the owner liable, and make demand upon the owner
17 for payment.

18 (f) Except as otherwise provided by this section, the
19 amount of surcharge, interest, or penalty imposed by this part
20 shall be assessed or levied within three years after the return
21 was filed, or within three years of the due date prescribed for



1 the filing of the return, whichever is later, and no proceeding
2 in court without assessment for the collection of any of the
3 surcharge, interest, or penalty shall begin after the expiration
4 of the period. Where the assessment of the surcharge, interest,
5 or penalty imposed under this part has been made within the
6 period of limitation applicable thereto, the surcharge,
7 interest, or penalty may be collected by levy or by a proceeding
8 in court under chapter 231; provided that the levy is made or
9 the proceeding began within fifteen years after the assessment
10 of the surcharge, interest, or penalty. Notwithstanding any
11 other provision to the contrary in this section, the limitation
12 on collection after assessment in this section shall be
13 suspended for the period:

- 14 (1) The owner or lessee agrees to suspend the period;
15 (2) The assets of the owner or lessee are in control or
16 custody of a court in any proceeding before any court
17 of the United States or any state, and for six months
18 thereafter;
19 (3) An offer in compromise under section 231-3(10) is
20 pending; and



1 (4) During which the owner or lessee is outside the State
2 if the period of absence is for a continuous period of
3 at least six months; provided that if at the time of
4 the owner's return to the State the period of
5 limitations on collection after assessment would
6 expire before the expiration of six months from the
7 date of the owner's return, the period shall not
8 expire before the expiration of the six months.

9 (g) In the case of a false or fraudulent return with
10 intent to evade the surcharge, or of a failure to file the
11 annual return, the surcharge, interest, or penalty may be
12 assessed or levied at any time; provided that the burden of
13 proof with respect to the issues of falsity or fraud and intent
14 to evade surcharge shall be upon the State.

15 (h) Where, before the expiration of the period prescribed
16 in subsection (f), both the department and the owner have
17 consented in writing to the assessment or levy of the surcharge,
18 interest, or penalty after the date fixed by subsection (f), the
19 surcharge, interest, or penalty may be assessed or levied at any
20 time prior to the expiration of the period agreed upon. The
21 period so agreed upon may be extended by subsequent agreements



1 in writing made before the expiration of the period previously
2 agreed upon.

3 **§237-G Overpayment; refunds.** (a) Upon application by an
4 owner, if the director of taxation determines that any
5 surcharge, interest, or penalty has been paid more than once, or
6 has been erroneously or illegally collected or computed, the
7 surcharge, interest, or penalty shall be credited by the
8 director of taxation on any surcharges or taxes then due from
9 the owner under this part. The director of taxation shall
10 refund the balance to the owner or the owner's successors,
11 administrators, executors, or assigns in accordance with section
12 231-23. No credit or refund shall be allowed for any surcharge,
13 interest, or penalty imposed by this part, unless a claim for a
14 credit or refund is filed as follows:

15 (1) If a return is timely filed, or is filed within three
16 years after the date prescribed for filing the return,
17 then the credit or refund shall be claimed within
18 three years after the date the return was filed or the
19 date prescribed for filing the return, whichever is
20 later; or



1 (2) If a return is not filed, or is filed more than three
2 years after the date prescribed for filing the return,
3 a claim for credit or refund shall be filed within:

4 (A) Three years after the payment of the surcharge;

5 or

6 (B) Three years after the date prescribed for the
7 filing of the return,

8 whichever is later.

9 Paragraphs (1) and (2) are mutually exclusive; provided
10 that this limitation shall not apply to a credit or refund
11 pursuant to an appeal made under section 237-42.

12 (b) As to all surcharge payments for which a refund or
13 credit is not authorized by this section, including, without
14 prejudice to the generality of the foregoing, cases of
15 unconstitutionality, the remedies provided by appeal or by
16 section 40-35 are exclusive.

17 **§237-H Records to be kept; examination.** Every owner of
18 residential real property shall keep in the English language
19 within the State, and preserve for a period of three years,
20 suitable records relating to the surcharge levied and assessed
21 under this part, and other books, records of account, and



1 invoices as may be required by the department, and all those
2 books, records, and invoices shall be open for examination at
3 any time by the department or the Multistate Tax Commission
4 under chapter 255, or the authorized representative thereof.

5 **§237-I Reward.** The department may remit a reward of up to
6 twenty-five per cent of collected surcharge, interest, and
7 penalty on a single unreported violation to an individual who
8 provides evidence leading to the determination that a
9 residential real property was vacant for more than one hundred
10 eighty days and for which a surcharge is owed under this part;
11 provided that the person providing the evidence is not the
12 owner, related to the owner, employed by the owner, or employed
13 in a position related to the enforcement of this part or any
14 other tax law.

15 **§237-J Disposition of tax revenues.** Notwithstanding
16 section 237-31, all revenues collected under this part shall be
17 paid into the vacant homes special fund established pursuant to
18 section 201- .

19 **§237-K County disclosure of residential properties not**
20 **occupied by an owner.** No later than January 1 of each year,
21 each county shall provide to the director of taxation a list of



1 residential real properties that are classified as not being
2 occupied by the owner, including residential property classified
3 as "non owner occupied", "residential A", or "residential
4 investor".

5 **§237-L Administration and enforcement; rules.** (a) All of
6 the other provisions of chapter 237 not inconsistent with this
7 part and that may appropriately be applied to the taxes,
8 persons, circumstances, and situations involved in this part,
9 including, without prejudice to the generality of the foregoing,
10 provisions as to penalties and interest, and provisions granting
11 administrative powers to the department, and provisions for the
12 assessment, levy, and collection of taxes, shall be applicable
13 to the surcharges imposed by this part as if the surcharges are
14 taxes, and to the assessment, levy, and collection thereof.

15 (b) The director of taxation may adopt, amend, or repeal
16 rules pursuant to chapter 91 to carry out this part."

17 SECTION 4. Section 237-9, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Except as provided in this section, any person who
20 has a gross income or gross proceeds of sales or value of
21 products upon which a privilege tax or surcharge is imposed by



1 this chapter, as a condition precedent to engaging or continuing
2 in [~~such~~] the business, or who owns residential real property in
3 the State that is not used as the owner's primary residence,
4 shall in writing apply for and obtain from the department of
5 taxation, upon a one-time payment of the sum of \$20, a license
6 to engage in and to conduct [~~such~~] the business, upon condition
7 that the person shall pay the taxes, surcharges, or both,
8 accruing to the State under this chapter, and the person shall
9 thereby be duly licensed to engage in and conduct the business.
10 The license shall not be transferable and shall be valid only
11 for the person in whose name it is issued and for the
12 transaction of business at the place designated therein. The
13 license may be inspected and examined, and shall at all times be
14 conspicuously displayed at the place for which it is issued[~~-~~];
15 provided that any license obtained because the person owns
16 residential real property in the State that is not used as the
17 owner's primary residence shall be displayed as required by the
18 director of taxation by rule."

19 SECTION 5. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2022-2023 for
2 enforcement of the vacancy surcharge established in this Act.

3 The sum appropriated shall be expended by the department of
4 taxation for the purposes of this Act.

5 SECTION 6. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so
7 much thereof as may be necessary for fiscal year 2022-2023 to
8 determine average annual residential real property rental values
9 for various geographic regions.

10 The sum appropriated shall be expended by the department of
11 business, economic development, and tourism for the purposes of
12 this Act.

13 SECTION 7. Pursuant to article VIII, section 5 of the
14 Hawaii State Constitution, there is appropriated out of the
15 general revenues of the State of Hawaii the sum of \$
16 or so much thereof as may be necessary for fiscal year 2022-2023
17 to the counties of the State for the costs of providing to the
18 department of taxation the list of residential real properties
19 that are classified as not being occupied by the owner, as
20 follows:

21 City and county of Honolulu \$



1 County of Maui \$

2 County of Hawaii \$

3 County of Kauai \$

4 The sum appropriated shall be allotted by the department of
5 taxation and expended by the respective counties for the
6 purposes of this Act.

7 SECTION 8. In codifying the new sections added by
8 section 3 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 9. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on July 1, 2022;
14 provided that section 3 shall take effect on January 1, 2023.

15

INTRODUCED BY: _____

Lana Alcasio



Report Title:

Taxation; DOTAX; DBEDT; Vacancy; Occupancy; Empty Home
Surcharge; GET; Counties; Appropriations

Description:

Establishes a general excise tax surcharge on an owner that allows a residential real property to remain vacant for 120 days or more a year. Requires persons who own residential real property, but do not live there, to obtain a general excise tax license. Requires the counties to disclose to the Department of Taxation a list of properties classified as not being occupied by an owner of that property. Requires the Department of Business, Economic Development, and Tourism to calculate average annual rental value for the basis for the surcharge amount. Appropriates funds.

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