JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR OF TAXATION

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
**DEPARTMENT OF TAXATION**
Ka ʻOihana ʻAuhau
P.O. BOX 259
HONOLULU, HAWAIʻI 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

# TESTIMONY OF
# GARY S. SUGANUMA, DIRECTOR OF TAXATION

**TESTIMONY ON THE FOLLOWING MEASURE:**
H.B. No. 148, Relating to Taxation.

**BEFORE THE:**
House Committee on Housing

**DATE:** Wednesday, February 15, 2023
**TIME:** 9:30 a.m.
**LOCATION:** State Capitol, Room 312

Chair Hashimoto, Vice-Chair Aiu, and Members of the Committee:

The Department of Taxation (Department) offers the following comments regarding H.B. 148, for your consideration.

H.B. 148 seeks to amend chapter 247, Hawaii Revised Statutes (HRS), by adding a new section which will create a conveyance tax vacancy surcharge of three percent of the actual and full consideration of a prolonged vacant property. For purposes of the bill, “prolonged vacant property” means real property that has been vacant for 180 days or more in a calendar year.

The measure shall take effect on July 1, 2023.

First, the Department suggests amending the definition of "prolonged vacant property" by adding a lookback period, such as three years prior to the date of transfer or conveyance, as verification of a property's vacancy status will be challenging if the Department is required to review the vacancy history for an indefinite period of time.

Second, the Department suggests that the term "prolonged vacant property" is further defined to clarify what constitutes a vacancy. For example, it is unclear whether units that are occupied by short-term renters for cumulative periods of 180 days would qualify as a prolonged vacant property.

Finally, the Department requests that the effective date of the measure is amended to January 1, 2025 to provide the Department with sufficient time to promulgate administrative rules and/or issue guidance and make the necessary form and system changes.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE, Conveyance Tax Vacancy Surcharge; Prolonged Vacant Property

BILL NUMBER: HB 148, SB 1606

INTRODUCED BY: HB by PERRUSO, COCHRAN, GANADEN, HUSSEY-BURDICK, KAPELA, KILA, MARTEN, MATAYOSHI, TODD, WARD, Chun, Tam; SB by SHIMABUKURO, AQUINO, CHANG, Awa, Kidani, Moriwaki, Wakai

EXECUTIVE SUMMARY: Establishes a surcharge on the conveyance tax upon the transfer or conveyance of prolonged vacant property.

SYNOPSIS: Adds a new section to chapter 247, HRS, imposing a surcharge of 3% ($30.00 per $1000) of the actual and full consideration for the conveyance of prolonged vacant property or any interest therein, that shall include any liens or encumbrances thereon at the time of transfer.

The surcharge has the same exemptions as in section 247-3, HRS.

Defines "prolonged vacant property" as property that has been vacant for 180 days or more in a calendar year.

EFFECTIVE DATE: July 1, 2023.

STAFF COMMENTS: The first obvious question for this bill is how the tax assessor is going to prove that a particular property has been vacant for 180 days or more without violating either Hawaii constitutional or statutory rights of privacy.

Next, there may be perfectly good reasons why a particular property would be without its owner for an extended period of time. Here is a list of some of them from City & County of Honolulu Bill 76 (2020), https://hnldoc.ehawaii.gov/hnldoc/document-download?id=7996, that listed the following reasons as exemptions from its "vacant residential" classification proposed by that bill, and should be considered for exemption under this bill:

- The owner or tenant of the parcel, or portion thereof, is undergoing medical care that requires the owner or tenant to reside in a place other than on the parcel, or portion thereof, for longer than 45 days during the previous tax year;
- Title to the property was transferred during the previous tax year;
- The owner of the parcel, or portion thereof, is deceased and a determination of ownership is pending before a probate court of competent jurisdiction;
- The dwelling unit thereon is undergoing maior renovations that require the owner or tenant of the parcel, or portion thereof, to vacate the parcel, or portion thereof, for longer than 45 days during the previous tax year: or
- The parcel, or portion thereof, is subject to a court order that prohibits occupancy.

Digested: 2/13/2023

Church of the Crossroads
United Church of Christ

*A Just Peace and Open and Affirming Congregation*

## TESTIMONY IN SUPPORT OF BILL HB 148, WITH A REQUEST FOR AMENDMENTS

*The Church of the Crossroads celebrates 100 years of being Hawaii's first intentionally multiethnic church, dedicated to missions that include peace, justice, and stewardship of the environment.*

In January 2023, our church congregation voted unanimously to advocate for an Empty Homes Tax or Fee, seeking:

- *To impose a fax or fee on residences that are not used as homes for Hawaii residents at least six months a year, and use the proceeds for affordable housing solutions. This would increase our supply of housing without need for government subsidies, while shifting our housing market to focus on housing needs of local residents rather than upper end investment properties.*

We definitely need better solutions for our affordable housing crisis, so thank you for your consideration of how conveyance taxes could help. We support HB 148 as a concept, because an increased conveyance tax on residential properties which are vacant for prolonged periods can encourage greater use of our housing stock as actual homes for Hawaii's residents, and provide a source of revenues to address affordable housing and homelessness.

However, we believe this bill needs much better definitions, and some equity exemptions, to make it into a constructive tax policy with the intended effect, and to minimize unintended consequences. **We recommend the following amendments:**

- **"Prolonged vacant property" means real property which has on it a dwelling unit, condominium unit, apartment building, duplex, accessory dwelling unit, auxiliary dwelling unit, or ohana dwelling unit, which was not the principal residence of a Hawaii resident for at least 180 days in each calendar year."**
- **"Principal residence" means the usual place where a person lives, makes his or her home and conducts his or her daily affairs, and is generally the residential address used on documentation related to billing, paying bills and receiving mail, identification, taxation and insurance purposes, including, without limitation, income tax returns, driver's licenses, personal identification, vehicle registration and utility bills. A person may only have one principal residence.**
- **Dedicate all revenues from this tax for affordable housing solutions.**

These amendments will mirror the Honolulu definition for principal residence, and allow for greater equity to allow Hawaii residents to be temporarily on travel, in medical care, on deployment, or visiting family during the year without losing their tax-exempt status of using the property as their “principal residence.”

We also encourage the committee to consider other equity exemptions tailored to vacant homes taxes, such as those found in Section 4 of Bill 9, the Empty Homes Tax pending in Honolulu City Council: https://hnldoc.ehawaii.gov/hnldoc/document-download?id=12939

Thank you for your consideration of our testimony, and for helping find better solutions for our affordable housing crisis.

Submitted on behalf of the Church of the Crossroads
By Ellen Godbey Carson
Email: office@churchofthecrossroadshawaii.org

HAWAI'I REALTORS®
808-733-7060
808-737-4977
1259 A'ala Street, Suite 300
Honolulu, HI 96817

February 15, 2023

**The Honorable Troy N. Hashimoto, Chair**
House Committee on Housing
State Capitol, Conference Room 312 & Videoconference

**RE: House Bill 148, Relating to Taxation**

**HEARING: Wednesday, February 15, 2023, at 9:30 a.m.**

Aloha Chair Hashimoto, Vice Chair Aiu, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 11,000 members. HAR strongly **opposes** House Bill 148, which establishes a surcharge on the conveyance tax upon the transfer or conveyance of prolonged vacant property.

Under this measure, it proposes to create a 3% conveyance tax vacancy surcharge upon the conveyance of a prolonged vacant property. Prolonged vacant property is defined as real property that has been vacant for 180 days or more in a calendar year. Based on January 2023 median sales prices for single-family homes, the following are examples of the impact of the tax.

| County: | Median Sales Price (Jan 2023): | Existing Conveyance Tax: | 3% Vacant Homes Surcharge: | New Total: |
|---|---|---|---|---|
| Hawai'i Island | $539,000 | $539 | **$16,170** | **$16,709** |
| Kaua'i | $809,500 | $1,619 | **$24,285** | **$25,904** |
| Maui | $1,162,500 | $3,488 | **$34,875** | **$38,363** |
| Oahu | $970,000 | $1,940 | **$29,100** | **$31,040** |

Under this measure, there could be numerous reasons why a home is left vacant, such as serving in the military or kupuna needing to move to a care home. Also, families could be dealing with the loss of a loved one in which the property could be in probate which can take a while to settle. Or, someone may have been devastated with severe property damage, such as by flood or fire. **A tax of this size would be extremely difficult to these individuals and families.**

Moreover, from an enforcement perspective, it would be very difficult to determine whether a property is vacant for more than 180 days in a calendar year.

For the foregoing reasons, Hawai'i Association of REALTORS® strongly opposes this measure. Mahalo for the opportunity to testify.

GRASSROOT
INSTITUTE OF HAWAII

LATE

February 15, 2023
9:30 a.m.
Conference Room 312
Via Videoconference

**To: House Committee on Housing**
**Rep. Troy N. Hashimoto, Chair**
**Rep. Micah P.K. Aiu, Vice Chair**

**From: Grassroot Institute of Hawaii**
**Joe Kent, Executive Vice President**

RE: HB148 — RELATING TO TAXATION

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB148, which would levy a 3% surcharge on the conveyance of any property that has been vacant for more than 180 days in a calendar year.

The rationale for this bill is that a conveyance tax on vacant homes would discourage speculative investment — or at least encourage owners of those homes to rent them out in order to avoid the tax liability.

In support of this idea, the preamble cites the Vancouver empty homes tax, positing that a higher tax would be effective in achieving those goals.

However, we must caution against the assumption that the Vancouver tax is applicable in this context. First, the Vancouver tax was not a conveyance tax. In addition, preliminary data on the Vancouver tax does not take into account the long-term effect of the tax, as shelter-in-place orders and the COVID-19 emergency likely played a role in reducing vacancies as well.

Putting aside the question of whether a vacant homes tax is a good idea in general — upcoming research from the Grassroot Institute of Hawaii suggests that vacant homes have not had a meaningful effect on Hawaii home prices or rents over the past decade — we must make a distinction between a tax on vacant homes and a tax on the conveyance of vacant homes as envisioned in this bill.

A tax hike that inflates the cost of selling a home, vacant or not, will have the effect of discouraging the sale of such homes or inflating their price. Because no distinction is made concerning the value of the homes covered by this bill, this would include more affordable homes and homes sold to Hawaii residents.

Essentially, this bill is an experiment in taxation based on the hope that it will discourage real estate speculation. There is no data from a comparable tax measure to suggest that this bill will do anything other than raise the sales price of certain homes. Higher sales prices for Hawaii homes is the last thing we need right now.

In general, tax increases are not a good idea for Hawaii's economy, especially not now when Hawaii residents already bear one of the highest tax burdens in the nation.[1] Hawaii's population has been suffering a net decline for each of the past six years, with the state's high cost of living and lack of employment opportunities being among the most cited reasons.

Other issues to consider as you deliberate on this measure include the fact that:

>> Hawaii is predicted to enter an economic slowdown later this year.[2] Tax hikes might only exacerbate this slowdown, since entrepreneurs will be less likely to want to invest their capital — or "wealth assets," as the case may be.[3]

>> Hawaii has a progressive income tax that taxes high-income earners at 11%, second only to California at 13.3%.[4] Hawaii's top 1% already pays 24.9% of all income taxes in the state.[5]

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

[2] Annalisa Burgos, "Experts: Hawaii's economy poised to slow down 'significantly,' but stop short of recession," Hawaii News Now, Jan. 22, 2023.

[3] 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.

[4] Timothy Vermeer and Katherine Loughead, "State Individual Income Tax Rates and Brackets for 2022," Tax Foundation, Feb. 15, 2022.

[5] "Hawaii Individual Income Tax Statistics," Hawaii Department of Taxation report for Tax Year 2020, Sept. 29, 2022, Table 13A.

>> Hawaii’s continuing population decline leaves remaining residents with a higher tax burden. Many residents leaving Hawaii move to states without income taxes. Washington, Nevada, Texas and Florida — four of the top five destinations for Hawaii residents moving to the mainland — do not have income taxes.[6]

>> State lawmakers increased taxes and fees substantially following the Great Recession of 2007-2008,[7] despite a windfall in revenues from an economic boom over the past decade. Taxes and fees ballooned on motor vehicles, transient accommodations, estates, fuel, food, wealthy incomes, property, parking and businesses.

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

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President,
Grassroot Institute of Hawaii

[6] Katherine Loughead, “How Do Taxes Affect Interstate Migration?” Tax Foundation, Oct. 11, 2022.
[7] “Tax Acts (by Year),” Tax Foundation of Hawaii, accessed Jan. 30, 2023.

**TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF HB 148**

**I write in support of HB 148 with a request for amendments.**

While I write as an individual, I have served as President of the Hawaii State Bar Association and the Institute for Human Services, and have spent hundreds of volunteer hours devoted to efforts to address our problems of affordable housing and homelessness. We definitely need better solutions, so thank you for your consideration of how conveyance taxes could help.

An increased conveyance tax on residential properties which are "prolonged vacant" is a good concept. It can encourage greater use of our housing stock as actual homes for Hawaii's residents, and provide a source of revenues to address affordable housing and homelessness.

However, in my opinion, this bill needs much better definitions, and some equity exemptions, to make it into a constructive tax policy with the intended effect.

- There is no definition of "vacant property". As written, "prolonged vacant property"could potentially mean vacant lands, conservation lands, agricultural lands, parking lots, etc. Yet the preamble refers only to housing needs and vacant homes, so that focus should be carried into the definition to restrict it to housing.
- Assuming housing is the focus, then, there still needs to be a clear definition of what "vacant" means (it is not defined elsewhere in the statutes that I could find). The current definition of "prolonged vacant property" could mean the tax could apply to homes where the owner/renter/occupant has been away cumulatively 190 days during the year, whether for travel, medical care, vacation, school, military deployment, etc., even if the person still uses the house for their "principal residence."
- There is insufficient clarity on whether the bill is referring to "any" calendar year during the (potentially many) years the owner held the property, or only the immediate past calendar year prior to sale. The latter poses issues of retroactivity (which could be limited to years after enactment) and evidentiary challenges in going back over potentially decades of time.

I believe much more detail is needed for this bill to create an effective tax policy that does not have unintended consequences. Assuming the tax is intended to apply only to properties with a housing unit (rather than vacant lands), **I recommend the following amendments:**

- **"Prolonged vacant property" means real property which has on it a dwelling unit, condominium unit, apartment building, duplex, accessory dwelling unit, auxiliary dwelling unit, or ohana dwelling unit, which was not the principal residence of a Hawaii resident for at least 180 days in each calendar year."**
- **"Principal residence" means the usual place where a person lives, makes his or her home and conducts his or her daily affairs, and is generally the residential address**

**used on documentation related to billing, paying bills and receiving mail, identification, taxation and insurance purposes, including, without limitation, income tax returns, driver's licenses, personal identification, vehicle registration and utility bills. A person may only have one principal residence.**

This definition regarding "principal residence" mirrors the Honolulu definition for principal residence, so that consistency would be useful. And this definition allows for greater equity in that the occupant can be temporarily on travel, in medical care, on deployment, or visiting family during the year without losing their status of using the property as their "principal residence."

The committee may want to consider other equity exemptions tailored to vacant homes taxes, such as those found in Section 4 of Bill 9, the Empty Homes Tax pending in Honolulu City Council: https://hnldoc.ehawaii.gov/hnldoc/document-download?id=12939

Thank you for your consideration of my testimony and helping address our affordable housing crisis.

Ellen Godbey Carson, Honolulu, Hawaii

**HB-148**
Submitted on: 2/13/2023 7:43:44 PM
Testimony for HSG on 2/15/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Will Caron | Individual | Support | Written Testimony Only |

Comments:

Vacant homes negatively impact Hawaii’s housing supply by taking units out of the local housing market, and Hawaii’s property taxes are amongst the lowest in the nation. These factors have enabled investors to purchase units as investment properties and allow them to sit empty, rather than contribute to the local rental stock.

Foreign investment in high-end second homes increased from $500,000,000 per year from 2008 to 2015 to $1,000,000,000 per year for 2016 and 2017. Continental investors purchase another $4,000,000,000 to $5,000,000,000 each year in Hawaii’s real estate market. In Honolulu, the long-term vacancy rate of 5.3 per cent and available vacancy rate of 3.4 per cent are among the highest in the nation.

Implementing a surcharge on the conveyance tax for prolonged vacant properties can disincentivize empty investment properties and generate revenue for the state. One of the leading examples comes from Vancouver, British Columbia, which implemented a 1% empty homes tax on the property’s assessed taxable value in 2018. The goal of that law is to encourage conversion to rental use, but subsequent findings suggest that many owners chose to pay the tax rather than rent their property. This generated nearly $30,000,000 in revenue and reduced the vacancy rate by 15%. However, the number of owners who chose to pay the tax rather than rent out their unit suggest that a steeper vacancy tax may be more effective at returning units to the rental market.

Please support HB148.

**HB-148**

Submitted on: 2/14/2023 7:21:31 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| John Chang | Individual | Oppose | Written Testimony Only |

Comments:

Please defer HB148.  This Bill presents significant legal challenges.

Fist, the Bill is likely to not conform to existing Federal and State laws.  It changes the basis of the convenyance tax from transactional to a tax based upon HOW an owner uses their home.  This would completely change the nature of the tax itself.

Secondly, the Bill would be nearly impossible to implement.  How would the state determine WHEN a a dwelling is occupied without either violating a constitutional right to privacy or compelling self reporting into each and every owner's whereabouts.  This would not conform to Federal or State law.

Lastly, the proponents of this Bill have patterned it after Canadian law.  It needs to be pointed out that Canadian law has no obligation to follow the US Constitition.  What may have been legally allowed in Canada does not comport with US law.

For the above reasons, we respectfully request that this Bill be held.

LATE

**HB-148**
Submitted on: 2/15/2023 4:05:42 AM
Testimony for HSG on 2/15/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Ruth Love | Individual | Oppose | Written Testimony Only |

Comments:

Unnecessary