

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

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

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 494, S.D.2, Relating to Vacant and Abandoned Residential Property

BEFORE THE:

House Committee on Judiciary & Hawaiian Affairs

DATE: Thursday, March 16, 2023

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

Chair Tarnas, Vice-Chair Takayama, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 494, S.D.2, for your consideration.

S.B. 494, S.D.2, adds a new section to chapter 46, Hawaii Revised Statutes (HRS), which requires each county to establish expedited processing of demolition permits for vacant residential structures so that permits are issued not more than 21 business days from the date of the permit application. The expedited processing shall commence no later than January 1, 2024 and shall not include permits for partial demolition of vacant residential structures or for the complete or partial demolition of a vacant residential structure as part of a renovation, reconstruction, or new construction on the parcel. All building permit applications, submitted by the same parcel owner, for the renovation, reconstruction, or new construction on the parcel shall be denied if submitted within 365 days of the approval of the expedited demolition permit.

S.B. 494, S.D.2, also adds a new section to chapter 667, HRS, and amends section 231-63, HRS, to allow the Department to satisfy state tax liens through the nonjudicial or power of sale foreclosure procedures for vacant and abandoned residential properties at any time after establishing vacancy and abandonment, as outlined in section 231-63, HRS. The measure further amends section 231-63, HRS, to specify that the Department shall establish that a residential structure is vacant and abandoned by mailing the owner of the residential structure by certified mail with return receipt, a sworn statement establishing that the Department has conducted at least two

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separate inspections, each at least seven days apart and at different times of day, and at each inspection, no occupant was present and there was no evidence of occupancy. Section 231-63 requirements are exempted for properties with liens that have existed for three or more years.

Section 5 of the bill, on pages 9 and 10, appropriates an undetermined amount from the general revenues of the State for fiscal year 2023-2024 to assist the counties in implementing section 2 of the bill. The sums appropriated shall constitute the State's share of the cost of the mandated program under article VIII, section 5, of the State constitution.

The bill has a defective effective date of March 22, 2075.

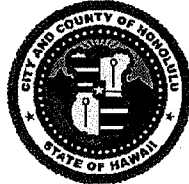
The Department is able to implement this measure with an appropriate effective date.

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

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DAWN TAKEUCHI APUNA
DIRECTOR

JIRO SUMADA
DEPUTY DIRECTOR

March 16, 2023

The Honorable David A. Tarnas, Chair
and Members of the Committee on Judiciary
and Hawaiian Affairs
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members of the Committee:

**Subject: Senate Bill No. 494, SD 2
Relating to Vacant and Abandoned Properties**

Senate Bill No. 494, SD 2, requires each county to establish expedited procedures to approve permits for the demolition of vacant residential structures. The Bill also allows the Department of Taxation to foreclose by non-judicial power of sale foreclosure procedures where liens exist on vacant and abandoned properties.

The Department of Planning and Permitting (DPP) **supports the general intent** of this Bill and is currently assessing the requirements of the Bill to determine realistic timeframes for expedited processing of these permits. In addition, the DPP is also assessing the time needed for permitting departments to establish the legal framework necessary to execute on expedited permitting procedures, which may involve the adoption of rules through the public rulemaking process. As such, if this matter passes, the City and County of Honolulu (City) requests the Committee impose a delayed effective date that would enable the counties to reasonably determine prudent timeframes for implementation.

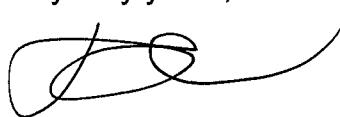
In addition, we question the amendment that would require the denial of a building permit application for new construction, rehabilitation, renovation or reconstruction on the parcel for which an expedited demolition permit was approved, if that application is submitted within 365 days of the issuance of the demolition permit. Often, property owners will submit building permit applications prior to, or concurrently with a demolition permit because of the time it takes to review and approve an application. By mandating that a building permit application be delayed for a year will only lead to delays in construction. We ask that this portion of the Bill be deleted.

The Honorable David A. Tarnas, Chair
and Members of the Committee on Judiciary
and Hawaiian Affairs
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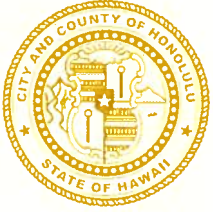
Finally, the DPP notes that the City has sought non-judicial foreclosure rights on liens against properties, including vacant and abandoned properties, as well, and respectfully requests the House consider non-judicial power of sale foreclosure procedures on county liens as well.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dawn Takeuchi Apuna', with a long, sweeping flourish extending to the right.

Dawn Takeuchi Apuna
Director



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
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TOMMY WATERS
CHAIR & PRESIDING OFFICER
HONOLULU CITY COUNCIL
DISTRICT 4
TELEPHONE: (808) 768-5004
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March 16, 2023

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
Members of the Committee

RE: Testimony in Support of SB494 SD2 – Relating to Vacant and Abandoned Residential Property

Aloha e Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

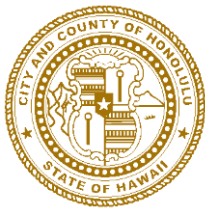
Thank you for the opportunity to share my support for **Senate Bill 494 Senate Draft 2**, Relating to Vacant and Abandoned Residential Property. The purpose of this bill is to reduce the potential hazards associated with vacant and abandoned residential properties by requiring each county to establish an expedited procedure for approvals of demolition permits for vacant residential properties; and allowing the Department of Taxation to seek the non-judicial foreclosure sales of vacant and abandoned residential properties with outstanding recorded state tax liens. My support for this measure is specific to public nuisances, specifically the habitual or bad actors who continue to ignore the fines, liens, and other administrative penalties that the City and County of Honolulu's Department of Planning and Permitting assesses. Neighbors of these public nuisance properties are negatively affected and experience frustration with having owners address these issues.

In 2021, I introduced Bill 17, which became Ordinance 21-19 requiring owners of public nuisances that reach specific thresholds to have administrative liens attached to other city fees and provided no reduction in fines. Despite this new ordinance, however, the City continues to face challenges with forcing these owners to come under compliance. In these specific instances, having the authority to commence non-judicial foreclosure proceedings will give the counties a final tool to encourage compliance and, if necessary, take steps to remove the public nuisance through the foreclosure process. This enforcement action is vital to ensuring that property owners who neglect to address public nuisances, penalties, and fines can face foreclosure actions to protect our communities and maintain a high quality of life for neighboring residents. Thank you for hearing this important measure.

Me ka ha'aha'a,

Council Chair Tommy Waters

District 4 (Hawai'i Kai, Kuli'ou'ou, Niu Valley, 'Āina Haina, Wailupe, Wai'ālae-Iki, Kalani Valley, Kahala, Wilhelmina Rise, Kaimukī, portions of Kapahulu, Diamond Head, Black Point, Waikīkī, and Ala Moana Beach Park)



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March 15, 2023

TO: CHAIR DAVID A. TARNAS, COMMITTEE ON JUDICIARY & HAWAIIAN
AFFAIRS
VICE CHAIR GREGG TAKAYAMA, COMMITTEE ON JUDICIARY &
HAWAIIAN AFFAIRS

FROM: COUNCILMEMBER CALVIN SAY
HONOLULU CITY COUNCIL, DISTRICT V

SUBJECT: TESTIMONY IN SUPPORT OF SENATE BILL 494, SD 2

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee on Judiciary & Hawaiian Affairs:

I am a current member of the Honolulu City Council representing District 5 and serving as the Chair of the Zoning Committee. I stand in support of Senate Bill 494, SD 2, which aims to authorize the State and the County in which the affected real property is situated to place a lien on the property for unpaid civil fines resulting from a violation of a land use law in connection with the property. It also authorizes the State and applicable County to sell the property after all notices, orders, and appeal proceedings, if any, are exhausted and use those revenues to pay unpaid civil fines related to that property.

Within the district I represent, we have multiple properties with Notices of Violations and/or Notices of Orders which have resulted in substantial fines to the property owners. These properties have brought health and safety hazards to the neighboring residents and community, however the accruing fines have not been a strong enough incentive to move the property owners to corrective action.

Our City Corporation Counsel is currently able to initiate a Judicial Foreclosure process, which has been successful in similar instances, however this is a long process that takes valuable resources away from other pressing legal matters. It also leaves the community with detrimental public nuisances such as fires, trash, and vermin. SB 494, SD 2 would allow the City to keep our neighborhoods safe by stopping illegal activities, health hazards, and other public nuisances on properties in a more efficient and expeditious manner.

Thank you for this opportunity to testify in **support** of Senate Bill 494, SD 2. Thank you for your time and consideration.

SB-494-SD-2

Submitted on: 3/14/2023 12:37:45 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Samuel M Mitchell	Maikiki NB-10	Support	Remotely Via Zoom

Comments:

The Makiki Neighborhood Board strongly supports SB494 SD2 because we have a large abandoned home on Pensacola St. that has burned down twice. And the owner refused to pay city fines and clean up the area. We had this problem for over four years.

Samuel Mitchell Makiki NB-10

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Restrict DOTAX Ability to Foreclose Tax Lien Property

BILL NUMBER: SB 494 SD 2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Requires counties to establish expedited procedures to approve demolition permits for vacant and abandoned residential properties. Allows the Department of Taxation to satisfy certain tax liens through the nonjudicial foreclosure of vacant and abandoned residential properties at any time after establishing vacancy and abandonment. Appropriates moneys.

SYNOPSIS: Adds a new section to chapter 46, HRS, requiring each county to establish an expedited procedure to approve permits for the demolition of vacant residential structures located within the county.

Adds a new section to chapter 667, HRS, providing that a state tax lien may be foreclosed by nonjudicial or power of sale foreclosure if the structure on the property is vacant and abandoned.

Amends section 231-63, HRS, which normally deals with nonjudicial foreclosure of a tax lien, to allow such foreclosure against vacant and abandoned residential realty only if the Department of Taxation has established that the parcel and residential structure are vacant and abandoned. The bill imposes several procedural and substantive conditions on the Department:

- (1) The department shall establish that a residential structure is vacant and abandoned by mailing to the residential structure's owner by certified mail with return receipt a sworn statement establishing that the department has conducted at least two separate inspections, each at least seven days apart and at different times of day, and at each inspection, no occupant was present and there was no evidence of occupancy. The department shall maintain a copy of the statement and return receipt on file for the owner's inspection and review.
- (2) Prima facie evidence that a residential structure is not vacant and abandoned shall include but is not limited to delivery of certified United States mail and ongoing and current utility usage.
- (3) A residential structure shall not be deemed vacant and abandoned where the structure is:
 - (A) Undergoing construction, renovation, or rehabilitation that is proceeding diligently;
 - (B) Used on a seasonal basis but is otherwise secure;
 - (C) The subject of any ongoing probate action, action to quiet title, or other ownership dispute;
 - (D) Damaged by natural disaster but the owner intends to repair and reoccupy; or

(E) Occupied by a mortgagor, relative, or lawful tenant.

EFFECTIVE DATE: March 22, 2075.

STAFF COMMENTS: The bill recites that its purpose is to allow DOTAX to seek nonjudicial foreclosure sale of vacant and abandoned property with an outstanding recorded state tax lien.

DOTAX already has the power in section 231-63, HRS, to proceed with nonjudicial foreclosure and does not have to wait for three years unless it wants to sell the property at public auction outside of the power of sale foreclosure process in chapter 667, HRS. The new provisions proposed by this bill allow for earlier foreclosure but only after significant and burdensome conditions are met.

Under the bill, to proceed with nonjudicial foreclosure DOTAX must establish that the property is vacant and abandoned. The bill has further provisos saying, for example, that DOTAX can establish that property is vacant and abandoned by inspecting the property for activity on two separate occasions, each seven days apart, and on different times of day. Even if DOTAX does so, however, prima facie evidence that the property is not abandoned can be established by certified mail delivery or utility usage, so DOTAX needs to eliminate those conditions to truly establish vacancy and abandonment. There may be additional unstated conditions that might not be satisfied by the inspection requirement. If the bill is enacted, why would DOTAX even go down this road if it can avoid all the hassle if it waits three years? And how is it better, more efficient, and more equitable than now, when DOTAX doesn't even have to wait three years?

Digested: 3/15/2023

TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF SB 494, SD2

I write in strong support of SB 494, with a request for an amendment to strengthen the bill.

I support SB 494 because it will finally equip our state with better enforcement measures to address blighted and vacant properties. This is essential for saving lives, preserving safety and maintaining our neighborhoods.

I live in lower Makiki within a few blocks of two vacant and blighted houses that were left vacant and rotting for years, on Kinau and Pensacola Streets. Trash and garbage piled up inside the outside the houses, creating constant dangers of fire. They had numerous citations and violations, but never any effective action to remove the blight. The houses were an ugly eyesore, and more importantly, a constant danger, and refuge for drugs, crime and rats. As was fully predictable, both properties caught fire, at separate times. The raging fires that ensued endangered lives and properties of everyone around, as well as for the fire fighters who needed to respond. The house on Pensacola remains, a charred carcass continuing to endanger the community.

This bill will allow more expeditious demolition permits and judicial foreclosure for blighted properties.

The wording of the bill is ambiguous in section 46-__ (c), as “abandon” could be read to mean to require abandoning ownership of the property by all owners and borrowers, which is an unworkable standard. I recommend amending it to say “abandon occupancy.”

“The owner of a residential structure shall establish that the residential structure is vacant by providing the county planning department with sworn statements from each borrower who has at least one loan secured by the parcel and each and every owner of the residential structure and parcel expressing their intent to vacate and abandon **occupancy of** the property.”

Thank you for your consideration of my testimony.

Ellen Godbey Carson
Honolulu, Hawaii