JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

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DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
H.B. No. 1351, Relating to the Conveyance Tax

BEFORE THE:
House Committee on Water & Land

DATE:	Tuesday, February 14, 2023
TIME:	8:30 a.m.
LOCATION:	State Capitol, Room 430

Chair Ichiyama, Vice-Chair Poepoe, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 1351 for your consideration.

H.B. 1351 seeks to amend section 247-2, Hawaii Revised Statutes, by adding a conveyance tax fee schedule specifically for: (1) foreign entities and (2) foreign nationals who have not claimed a county homeowner's exemption on property tax for each of the five years immediately preceding the sale. The tax rates for sales by foreign entities and foreign nationals are greater than the rates imposed under section 247-2(1) and (2), HRS. The measure is effective as of July 1, 2023.

First, the Department recommends that the terms "foreign entity" and "foreign national" be defined. The Department considers a foreign entity to be an entity that is domestic or foreign which is not organized or incorporated to do business in the State. If the intent of the bill is to limit the new conveyance tax fee schedule to entities which are not incorporated or organized to do business in the United States, then that should be made explicit to avoid any ambiguity.

Second, the Department notes that a taxpayer may be subject to tax under both sections 247-2(2) and (3), as the paragraphs are not mutually exclusive. If the intent of the bill is for a taxpayer to only be subject to tax under section 247-2(2) or 247-2(3), the

Department suggests amending paragraph (2) by adding a proviso after subparagraph (G) that reads: “provided that this paragraph shall not apply to transfers or conveyances for which paragraph (3) applies.”

Third, to avoid ambiguity as to application of the rates in paragraph (3), the Department recommends amending paragraph (3) to read:

(3) For the sale of a condominium or single family residence for which the seller is a foreign national who has not claimed a county homeowner's exemption on property tax for each of the five years immediately preceding the sale or a foreign entity:

(A) Thirty cents per $100 for properties with a value of less than $600,000;

(B) Fifty cents per $100 for properties with a value of at least $600,000, but less than $1,000,000;

(C) Eighty cents per $100 for properties with a value of at least $1,000,000, but less than $2,000,000;

(D) One dollar and twenty cents per $100 for properties with a value of at least $2,000,000, but less than $4,000,000;

(E) One dollar and seventy cents per $100 for properties with a value of at least $4,000,000, but less than $6,000,000;

(F) Two dollars and twenty cents per $100 for properties with a value of at least $6,000,000, but less than $10,000,000; and

(G) Two [dollars] and fifty cents per $100 for properties with a value of $10,000,000 or greater,

Finally, the Department recommends that the effective date in section 4 of the bill be amended to read, “This Act, upon approval, shall apply to transfers of interests in real property dated after December 31, 2023.” This will provide the Department and the Bureau of Conveyances sufficient time to update any relevant forms, instructions and computer processing systems to account for the increased rates.

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

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
H.B. NO. 1351, RELATING TO THE CONVEYANCE TAX.

BEFORE THE:
HOUSE COMMITTEE ON WATER AND LAND

DATE: Tuesday, February 14, 2023 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Janine R. Udui, Deputy Attorney General

Chair Ichiyama and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill amends section 247-2, Hawaii Revised Statutes (HRS), to impose a conveyance tax rate for the sale of condominiums or single-family residences by foreign entities or foreign nationals who have not claimed a county homeowner's exemption on property tax for five years prior to the sale of the property. (Page 4, lines 4-9). The purpose of the tax on foreign entities or non-resident foreign nationals is to provide residents greater access to housing by "making it less attractive for foreign buyers to purchase and resell homes as a short-term investment." (Page 1, lines 6-12).

This bill could be subject to challenge as a violation of the Commerce Clause of the United States Constitution, which provides that Congress shall have the power "[t]o regulate Commerce with foreign Nations, and among the several States . . . ." U.S. Const. art I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce," known as the Dormant Commerce Clause. *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 98 (1994). The doctrine prohibits states from "advancing their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state," *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Nat.*

Res., 504 U.S. 353 (1992) (internal brackets omitted), upon concern about "economic protectionism," i.e., "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Dep't of Revenue of Ky. V. Davis*, 553 U.S. 328, 337 (2008). A tax on interstate commerce will be sustained "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 279 (1977). Further, when foreign commerce is involved, "additional scrutiny is required," and the tax shall not "create an enhanced risk of [international] multiple taxation . . . or impair federal uniformity in an area where federal uniformity is essential. *Caterpillar, Inc. v. C.I.R. 568 N.W. 2d 695, 698 (1997)(*citing *Japan Line, Ltd v. County of Los Angeles*, 441 U.S. 434, 446 and 448 (1979)). "If a state tax contravenes either of the two *Japan Line* factors, or any of the *Complete Auto* factors, the tax violates the Commerce Clause." *Id*. at 698 (citations omitted).

Here, the proposed conveyance tax rate on foreign entities or foreign nationals selling in-state property is higher than the conveyance tax rate currently set in section 247-2(2), HRS, for resident sellers who are ineligible for a county homeowner's exemption on property tax. As the words "foreign entity" and "foreign national" are not defined, the words could be interpreted to refer to an entity incorporated in another state or a foreign national who is a lawful permanent resident of another state. As such, the proposed tax could be seen as discriminating against residents of other states, and may be challenged as unconstitutional under the standard Dormant Commerce Clause.

Simply limiting the definitions of "foreign entities" and "foreign nationals" to clarify that the bill only applies to foreign entities or individuals residing outside of the United States may not remedy the infirmity because the bill could still be subject to challenge as violating the Foreign Commerce Clause. "Absent a compelling justification . . . a state may not advance its legitimate goals by means that facially discriminate against foreign commerce." *Kraft General Foods Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71, 81 (1992). Additionally, multiple taxation of instrumentalities of foreign commerce or tax laws that are inconsistent with Congress' power to regulate commerce with foreign nations could also be determined to violate the Foreign Commerce Clause. *See Japan Line, Ltd v. County of Los Angeles*, 441 U.S. at 446-448. Finally, foreign entities and nationals, by virtue of their status as in-state property owners, may have additional rights under the constitution that could be negatively impacted by discriminatory tax rates.

The Department has not identified specific cases where the Foreign Commerce Clause has been analyzed in the context of a discriminatory state conveyance tax on the sale of in-state property by foreign entities or foreign nationals. As such, a determination of the outcome of constitutional challenges to the bill pursuant to the Foreign Commerce Clause is hard to predict. Because the stated finding at page 1, lines 6-9, “by making it less attractive for foreign buyers to purchase and then re-sell homes as short-term, investments, residents will have greater access to housing” appears to be discriminatory, we do not have a recommendation as to how this bill may be amended to avoid being challenged.

Thank you for the opportunity to offer these comments.

HAWAI'I
AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Jan Lubin	Bill South	P.O. Box 23404
Alan Burdick, Vice President	Keola Akana	Shannon Matson	Michael Vernon	Honolulu
Doug Pyle, Secretary	Juliet Begley	Jenny Nomura		Hawaii 96823
	Stephanie Fitzpatrick	Stephen O'Harrow		

February 10, 2023

TO: Chair Ichiyama and Members of the WAL Committee

RE: HB 1351 Relating to Conveyance Tax

Support for Hearing on Feb. 14

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 this bill as it would increase the conveyance tax rates by adding a fee schedule for properties that are sold by foreign entities or non-resident foreign nationals. A big problem in our housing situation is that too much of our housing stock is serving the profits of non-residents and not the housing needs of our citizens. As this bill would discourage non-resident investors, it helps redirect our resources to where they are needed, local resident units.

Sincerely,

John Bickel, President

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

February 14, 2023

The Honorable Linda Ichiyama, Chair
House Committee on Water & Land
State Capitol, Conference Room 430 & Videoconference

RE: House Bill 1351, Relating to the Conveyance Tax

HEARING: Tuesday, February 14, 2023, at 8:30 a.m.

Aloha Chair Ichiyama, Vice Chair Poepoe, 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 1211, which amends the conveyance tax by adding a fee schedule for properties that are sold by foreign entities or non-resident foreign nationals.

This measure proposes to create a new Conveyance Tax rate for the sale of when a condominium or single-family residence for which the seller is a foreign entity or a foreign national who has not claimed a county homeowner's exemption on property tax for each of the five years preceding the sale. The following are examples of the new rate increases:

Proposed Property Value:	Proposed Rate:	Proposed (in $):
< $600,000	$0.30	**$1,500 ($500k property)**
$600,000 - $0.99 mil	$0.50	**$4,000 ($800k property)**
$1 mil - $1.99 mil	$0.80	**$12,000 ($1.5 mil property)**
$2 mil - $3.99 mil	$1.25	**$37,500 ($3 mil property)**
$4 mil - $5.99 mil	$1.70	**$85,000 ($5 mil property)**
$6 mil - $9.99 mil	$2.10	**$189,000 ($9 mil property)**
$10 mil+	$2.25	**$247,500 ($11 mil property)**

In 2022, according to Title Guaranty's Buyer Statics report[1], **total foreign sales accounted for approximately 2% of all real estate transactions**. The scale of those transactions would do little to address the cost of housing in the market. International investment can also help with Hawaii's affordable housing challenges. For example, South Korean developer SamKoo built Kapiolani Residence and The Central in the Ala Moana area in which 60% of the units were designated as affordable for households earning between 80% to 120% of the Area Median Income.

[1] Title Guaranty. (2022). *Buyer Statistics 2022 Q3.* https://www.tghawaii.com/wp-content/uploads/Buyer-Stats-Oahu-Q3-2022.pdf

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With inflation hitting a 40-year high and rising interest rates, Hawaii's real estate market experienced a 22.64% decrease in sales from the previous year for single-family homes and 20.06% decrease for condominiums.[2] Any Conveyance Tax increase would be counterproductive during our current real estate market which has slowed. Furthermore, this would affect development projects including affordable housing rentals or for sale projects, where home builders purchase uninhabitable property and make it habitable.

According to the Department of Business Economic Development and Tourism's 2019 report on Housing Demand in Hawai'i, the state needs up to 45,497, housing units to meet demand in Hawai'i by 2030[3]. **Ultimately, we have a housing supply problem, and the Conveyance Tax proposed in this measure adds to the cost of housing**.

or the foregoing reasons, awai'i ssociation of ® strongly opposes this measure. ahalo for the opportunity to testify.

[2] Hawai'i REALTORS®. (2023). *2022 Statewide Housing Data.* https://www.hawaiirealtors.com/wp-content/uploads/2023/01/2022-Annual-Statewide-Statistics-Report.pdf

[3] Department of Business, Economic Development & Tourism. (2019). *Hawaii Housing Demand 2020-2030.* https://files.hawaii.gov/dbedt/economic/reports/housing-demand-2019.pdf

HOUSE BILL 1351, RELATING TO THE CONVEYANCE TAX

FEBRUARY 14, 2023 · HOUSE WATER AND LAND COMMITTEE · CHAIR REP. LINDA ICHIYAMA

POSITION: Support with amendments.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports and suggests amendments** for HB 1351, relating to the conveyance tax, which amends the conveyance tax by adding a fee schedule for properties that are sold by foreign entities or non-resident foreign nationals.

The revenue from the conveyance tax is, in part, used to fund the development of affordable housing, as well as to protect conservation land and natural resources. As noted by the Hawai'i Appleseed Center for Law and Economic Justice, these are two places in our social structure where the impact of an out-of-control real estate market has serious, adverse impacts.

Since the onset of the pandemic, Hawai'i's luxury real estate market has been booming. Yet, conveyance taxes have not risen concurrently, so that the sellers of high-end properties are not currently paying their fair tax share to support our state's public interest. In fact, while the cost of housing and the value of real estate have continued to skyrocket, our islands' conveyance tax rates have not been updated since 2005.

Our state’s conveyance tax rates are only 0.50 to 1.25 percent on multi-million dollar properties. In contrast, high-cost cities–such as Seattle and San Francisco–have been updating their transfer (conveyance) taxes to rates between 2 to 7 percent for luxury homes. If Hawai’i’s conveyance tax were raised merely to 2 to 6 percent on properties worth $2 million and higher, the state would generate an additional $300–400 million in revenue every year.

Thus, we urge your committee to amend this bill by instituting the conveyance tax increases from Senate Bill 678, along with the proposed taxes on foreign-sold properties, and lifting the current caps on the amount of conveyance taxes that are paid into the Rental Housing Revolving Fund and the Legacy Land Use Conservation Fund, and by creating a new fund for homeless services. SB 678 would have resulted in the following funding increases for essential state services:

- **Affordable Housing:** Between $38–$150 million more in annual funding;
- **Land Conservation:** Between $5–30 million more in annual funding;
- **Homeless Services:** Between $0–30 million more in annual funding; and
- **General Fund:** Between $60–90 million more in annual funding.

We need new revenue to address Hawai’i’s affordable housing and homelessness crises. According to the 2019 Hawai‘i Housing Planning Study, our state needs approximately 11,857 additional housing units each year to meet the needs of its residents by the year 2025, with 30 percent of that need being concentrated for people earning at or below people earning 30 percent of Area Median Income (AMI), which equates to $25,000 per year for a single person.

Additionally, the 2022 Point In Time Count estimated that there are around 5,973 individuals living unsheltered in Hawai‘i. This figure does not account for the “hidden homeless”—people relying on public assistance, relatives, or friends for shelter because they cannot afford to live on their own. Finally, eliminating the caps on the amount of conveyance tax revenue deposited into the Land Conservation Fund and Rental Housing Revolving Fund, as proposed in SB 678, would increase their deposits to $18.8 and $94 million respectively, far above their current allocations.

Kris Coffield · Chairperson, DPH Education Caucus · (808) 679-7454 · kriscoffield@gmail.com

HB 1351, RELATING TO THE CONVEYANCE TAX

FEBRUARY 14, 2023 · HOUSE WATER AND LAND COMMITTEE· CHAIR REP. LINDA ICHIYAMA

POSITION: Support with amendments.

RATIONALE: Imua Alliance **supports and suggests amendments** for HB 1351, relating to the conveyance tax, which amends the conveyance tax by adding a fee schedule for properties that are sold by foreign entities or non-resident foreign nationals.

The revenue from the conveyance tax is, in part, used to fund the development of affordable housing, as well as to protect conservation land and natural resources. As noted by the Hawai'i Appleseed Center for Law and Economic Justice, these are two places in our social structure where the impact of an out-of-control real estate market has serious, adverse impacts.

Since the onset of the pandemic, Hawai'i's luxury real estate market has been booming. Yet, conveyance taxes have not risen concurrently, so that the sellers of high-end properties are not currently paying their fair tax share to support our state's public interest. In fact, while the cost of housing and the value of real estate have continued to skyrocket, our islands' conveyance tax rates have not been updated since 2005.

Our state's conveyance tax rates are only 0.50 to 1.25 percent on multi-million dollar properties. In contrast, high-cost cities–such as Seattle and San Francisco–have been updating their transfer (conveyance) taxes to rates between 2 to 7 percent for luxury homes. If Hawai'i's conveyance tax were raised merely to 2 to 6 percent on properties worth $2 million and higher, the state would generate an additional $300–400 million in revenue every year.

Thus, we urge your committee to amend this bill by instituting the conveyance tax increases from Senate Bill 678, along with the proposed taxes on foreign-sold properties, and lifting the current caps on the amount of conveyance taxes that are paid into the Rental Housing Revolving Fund and the Legacy Land Use Conservation Fund, and by creating a new fund for homeless services. SB 678 would have resulted in the following funding increases for essential state services:

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We need new revenue to address Hawai'i's affordable housing and homelessness crises. According to the 2019 Hawaiʻi Housing Planning Study, our state needs approximately 11,857 additional housing units each year to meet the needs of its residents by the year 2025, with 30 percent of that need being concentrated for people earning at or below people earning 30 percent of Area Median Income (AMI), which equates to $25,000 per year for a single person.

Additionally, the 2022 Point In Time Count estimated that there are around 5,973 individuals living unsheltered in Hawaiʻi. This figure does not account for the "hidden homeless"—people relying on public assistance, relatives, or friends for shelter because they cannot afford to live on their own. Finally, eliminating the caps on the amount of conveyance tax revenue deposited into the Land Conservation Fund and Rental Housing Revolving Fund, as proposed in SB 678, would increase their deposits to $18.8 and $94 million respectively, far above their current allocations.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

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

SUBJECT: CONVEYANCE, Tax Hike for Properties Sold by Foreign Entities or Non-resident Foreign Nationals

BILL NUMBER: HB 1351

INTRODUCED BY: MATAYOSHI, AMATO, BELATTI, COCHRAN, HOLT, HUSSEY-BURDICK, KAHALOA, KAPELA, KILA, KITAGAWA, KOBAYASHI, LOWEN, MARTEN, NAKASHIMA, NISHIMOTO, PERRUSO, POEPOE, TAM, Ganaden

EXECUTIVE SUMMARY: Amends the conveyance tax by adding a fee schedule for properties that are sold by foreign entities or non-resident foreign nationals.

SYNOPSIS: Amends section 247-2, HRS, by adding a new rate schedule for the sale of a condominium or single family residence for which the seller is a foreign entity, or a foreign national who has not claimed a county homeowner's exemption on the property in any of the five years immediately preceding the sale. The new rate schedule is double the tax of the existing rate schedule for the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax.

EFFECTIVE DATE: July 1, 2023.

STAFF COMMENTS: We are concerned that the law creates a discrimination against foreigners in applying taxes, which offends the Foreign Commerce Clause of the U.S. Constitution. Only the federal government may discriminate between citizens and foreigners in applying taxes. *Kraft General Foods v. Iowa,* 505 U.S. 71 (1992). Why? Discriminatory treatment of foreign commerce may create problems, such as the potential for international retaliation, that concern the nation as a whole. So, the Federal Government can impose tariffs and taxes discriminating against foreign visitors and entities, but the States can't.

Digested: 2/11/2023

HB-1351
Submitted on: 2/10/2023 10:52:14 AM
Testimony for WAL on 2/14/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

The problem of foreign buyers is global, and some places have decided to prohibit foreign buyers from purchasing homes and/or land. Hawaii should do that.

HB-1351
Submitted on: 2/12/2023 7:20:22 PM
Testimony for WAL on 2/14/2023 8:30:00 AM

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

Comments:

Please support HB1351.