

**STATE OF HAWAII  
OFFICE OF PLANNING  
& SUSTAINABLE DEVELOPMENT**

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LT. GOVERNOR

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Statement of  
**MARY ALICE EVANS, Interim Director**

before the  
**HOUSE COMMITTEE ON HOUSING**

Wednesday, March 13, 2024

10:00 AM

State Capitol, Conference Room 312

in consideration of  
**BILL NO SB2044, SD2**  
**RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.**

Chair Evslin, Vice Chair Aiu, and Members of the House Committee on Housing:

The Office of Planning and Sustainable Development (OPSD) **supports** SB2044, SD2, which establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax, requires an unspecified amount of the conveyance tax collected to be deposited into the Dwelling Unit Revolving Fund (DURF), and requires the Department of Taxation to adopt rules.

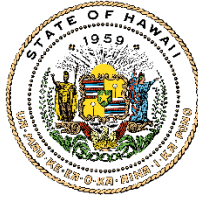
This bill closes a loophole that enables parties (typically large investors and corporate entities) to avoid paying conveyance tax by transferring real property through entity-level transactions. Instead of conveying the real property directly (subject to the conveyance tax), one party acquires the entity that owns the real property from another party (and thus avoiding the conveyance tax).

Per the Legislature's direction and funding in Act 88, SLH 2021, Sec. 39, OPSD recently completed the *TOD Infrastructure Finance and Delivery Strategy*, which identified possible revenue sources, including the conveyance tax, to fund infrastructure for housing development (see [https://files.hawaii.gov/dbedt/op/lud/Reports/TOD\\_InfraFin\\_Strategy\\_20231221.pdf](https://files.hawaii.gov/dbedt/op/lud/Reports/TOD_InfraFin_Strategy_20231221.pdf)). The study identified the need for regular, predictable revenue sources to help finance regional public infrastructure to facilitate transit-oriented development on state, county, and private lands. OPSD supports depositing the conveyance tax collected on the transfer of the controlling interests into DURF, increasing a regular source of additional funding for infrastructure and housing development.

Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

RYAN KP KANAKAOLE  
FIRST DEPUTY

DEAN D. UYENO  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the House Committee on  
Housing

Wednesday, March 13, 2024  
10:00 AM

State Capitol, Conference Room 312 and Via Videoconference

In consideration of  
SENATE BILL 2044, SENATE DRAFT 2  
RELATING TO THE CONTROLLING INTEREST TRANSFER TAX

Senate Bill 2044, Senate Draft 2 proposes to establish that the transfer of a controlling interest in an entity that owns real property in Hawai'i shall be subject to conveyance tax and that the conveyance tax collected from such transfer will be distributed through the existing framework of Section 247-7, Hawaii Revised Statutes. **The Department of Land and Natural Resources (Department) supports the use of this bill to close an existing loophole for avoiding payment of conveyance tax on certain transactions and offers two amendments, with comments, that would further strengthen the State's ability to help protect resources and preserve lands for conservation purposes by (1) repealing the dollar cap amount of conveyance taxes paid into the Land Conservation Fund and (2) providing for an immediate cash infusion into the Land Conservation Fund, the Rental Housing Revolving Fund, and the Dwelling Unit Revolving Fund.**

The Department of Taxation reports that FY 2023 conveyance tax revenue totaled \$92.1 million (down from \$188.4 million in FY 2022). Using the most recent growth rate projection published by the Council on Revenues (January 8, 2024), FY 2024 conveyance tax revenue would total nearly \$110 million. If the Land Conservation Fund (LCF) could receive a straight ten percent allocation of this revenue (almost \$11 million in FY 2024)—as initially prescribed by Act 156, Session Laws of Hawai'i 2005—then the cash balance of the LCF would receive an immediate \$5.9 million boost.

This additional funding would drive a faster recovery from COVID-driven downturns in LCF revenue for the Legacy Land Conservation Program, which continues to suffer from a \$15 million transfer to the general fund (the largest amount transferred from a special fund at that time) and an ongoing, annual \$1.7 million reduction created by tightening down the dollar amount revenue cap. Otherwise, without an increased revenue stream, we estimate that (1) available LCF cash at the end of FY 2025 would be only \$2.1 million, and (2) available LCF cash for the FY 2026-2027 biennium would total \$12.3 million, leaving just \$8 million of that available for two cycles of competitive grant awards that enable land acquisition and land management for resource protection purposes. The Department also notes that—unlike the Rental Housing Revolving Fund and the Dwelling Unit Revolving Fund, which collectively received about \$950 million in general fund appropriations and bond-funded cash to date—the LCF does not receive general fund appropriations or bond-funded cash and relies solely on conveyance tax revenue for nearly all of its operating budget.

Therefore, the Department requests that the Committee consider amending Sections 7 and 9 of this measure to read as follows:

SECTION 7. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

**"§247-7 Disposition of taxes.** All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

(1) Ten per cent [~~or \$5,100,000, whichever is less,~~] shall be paid into the land conservation fund established pursuant to section 173A-5; [~~and~~]

(2) Fifty per cent or \$38,000,000, whichever is less, shall be paid into the rental housing revolving fund established by section 201H-202[~~-."~~]; and

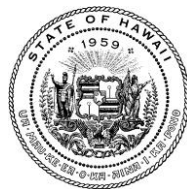
(3) \_\_\_\_\_ per cent or \$ \_\_\_\_\_, whichever is less, shall be paid into the dwelling unit revolving fund established by section 201H-191."

SECTION 9. This Act, upon its approval, shall take effect retroactively on July 1, 2023[2025].

Thank you for the opportunity to testify in support of this measure.

JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

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

**TESTIMONY ON THE FOLLOWING MEASURE:**

S.B. No. 2044, S.D. 2, Relating to the Controlling Interest Transfer Tax.

**BEFORE THE:**

House Committee on Housing

**DATE:** Wednesday, March 13, 2024

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 312

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

The Department of Taxation ("Department") offers the following comments regarding S.B. 2044, S.D. 2 for your consideration.

**Summary of Bill Provisions**

S.B. 2044, S.D. 2 makes several changes to chapter 247, Hawaii Revised Statutes (HRS), which governs the conveyance tax. The bill takes effect on January 1, 2025. The bill adds a new section to chapter 247 designating the transfer of a controlling interest in an entity as a taxable transaction for purposes of the conveyance tax, provided that:

- (1) The transfer or acquisition of the controlling interest occurs within any thirty-six-month period;
- (2) The controlling interest was transferred in a single transaction or a series of transactions by a single person or acquired by a single person or a group of persons acting in concert;

- (3) The entity has an interest in real property located in this State;
- (4) The transfer is not otherwise exempt under section 247-3; and
- (5) The transfer was made for valuable consideration.

A “controlling interest” is defined, for a for profit corporation, as “either fifty per cent or more of the total combined voting power of all classes of stock of the profit corporation entitled to vote, or fifty per cent of the capital, profits, or beneficial interest in the voting stock of the profit corporation” and for any other corporation or partnership, association, trust, or entity as “fifty per cent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity.”

This new section also specifies that “all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place” and requires the Department to adopt administrative rules to make such a determination. The new section also gives the Department the option to enforce certain obligations of the seller, directs all taxes collected pursuant to the new subsection to be “deposited into the dwelling unit revolving fund established by section 201H-191.”

S.B. 2044, S.D.2 expands the definition of “transfers or conveyances” in HRS section 247-1 to include “the transfer or acquisition within any thirty-six-month period of a controlling interest in any entity with an interest in real property located in this State for valuable consideration.” The bill also removes the conveyance tax exemption in HRS section 247-3 for conveyances from an entity that is party to a merger or consolidation to the surviving or new entity.

S.B. 2044, S.D.2 specifies the basis of conveyance tax on transfers of controlling interest is the “fair market value of the real property owned by the entity at the time the controlling interest is transferred or acquired.” Section 247-2, as amended, would define fair market value for purposes of transfers of acquisitions of a controlling interest in property as “the value of real property, as stated on the most recent real property assessment issued by the county in which the real property is located.”

### **Department Comments**

The Department again notes that it will be difficult for the Department to identify and verify when transfers of controlling interests occur. Real estate sales are publicly reported and available in the Bureau of Conveyances, which accepts conveyance tax forms and remittances. However, records from entity transfers are not publicly available or reported to the Bureau of Conveyances. Additionally, the Business Registration

Division of the Department of Commerce and Consumer Affairs, the primary agency monitoring business ownership, does not publish information on entity interest transfers.

While some entity ownership information is reported on income tax returns to the Department, these returns do not indicate whether the entity holds real estate. Effective enforcement of the conveyance tax on controlling interest transfers may require an amendment to Title 14 of HRS imposing annual reporting requirements on entities for their Hawaii real estate holdings, though implementation of a new reporting requirement would likely be costly.

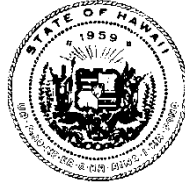
This absence of information also makes it difficult to perform an effective cost-benefit analysis on the bill. With no information on the number of real property transactions for sales of controlling interests, the Department lacks the data to produce a credible estimate of revenue impacts.

The Department defers to the Bureau of Conveyances, who accepts conveyance tax forms and remittances, regarding the revenue allocation provisions in sections 2 and 7 of the bill.

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

JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



DEAN MINAKAMI  
EXECUTIVE DIRECTOR

## STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813  
FAX: (808) 587-0600

### Statement of **DEAN MINAKAMI**

Hawaii Housing Finance and Development Corporation  
Before the

### **HOUSE COMMITTEE ON HOUSING**

Wednesday, March 13, 2024 at 10:00 a.m.  
State Capitol, Room 312

In consideration of  
**S.B. 2044 SD2**

### **RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.**

Chair Evslin, Vice Chair Aiu, and members of the Committee.

HHFDC **supports** SB 2044 SD2, which establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax, with an unspecified percentage or dollar amount collected to be deposited into HHFDC's Dwelling Unit Revolving Fund (DURF).

This bill closes a loophole that enables parties (usually large investors) to avoid paying conveyance tax by transferring real property through entity-level transactions. That is, rather than conveying the real property, one party acquires the entity that owns the real property from another party.

HHFDC supports depositing the conveyance tax collected on the transfer of the controlling interests into DURF, which is primarily used to carry out the purposes of our housing development programs and regional state infrastructure programs.

Thank you for the opportunity to testify on this bill.

# PARTNERS IN CARE

*Oahu's Continuum of Care*

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*Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.*

## TESTIMONY IN SUPPORT OF SB 2044 SD2: RELATING TO THE CONTROLLING INTEREST TRANSFER TAX

TO: House Committee on Housing  
FROM: Partners In Care (PIC)  
Hearing: **Wednesday, 3/13/24; 10:00 am; CR 312 or via videoconference**

Chair Evslin, Vice Chair Aiu, and Members, Committee on Housing:

Thank you for the opportunity to provide testimony **in support of SB 2044 SD2** which establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax. Requires that an unspecified percentage or amount (whichever is less) of the tax revenues collected to be deposited into the Dwelling Unit Revolving Fund (DURF). Partners In Care (PIC) is a coalition of more than 60 non-profit homelessness providers and concerned organizations.

We urge your continued prioritization of funding needed to create affordable rental housing. Infrastructure costs are a large component of the cost to develop housing. This bill would support the creation of affordable housing which is needed to prevent homelessness and give hope to the people of Hawai'i.

This bill would close a loophole in the law which has been used to avoid paying the conveyance tax upon "selling" some properties. If a homeowner sells a house, they pay the conveyance tax. However, the conveyance tax law currently allows entities to transfer the controlling interest in a company, without paying any tax. The State needs to close this loophole and use the tax revenues generated to build more critically needed affordable housing. However, you cannot build housing if the infrastructure is inadequate.

Infrastructure is needed across the Hawaiian Islands to remove barriers to creating affordable housing. Dedicating these new tax revenues to the Dwelling Unit Revolving Fund (DURF) would expand the State's ability to overcome this huge barrier. DURF could not only promote housing development but also address overall infrastructure through regional state infrastructure programs. This would help to reduce the per unit cost to construct units.

With the tough budget decisions now and in the future, the State would benefit from any additional revenue to build infrastructure. The key to ending homelessness is building affordable rentals. This will create resiliency for the future, as well as bringing hope to Hawaii's families. Partners In Care urges your support to close this loophole in the law.





LAND USE RESEARCH  
FOUNDATION OF HAWAII

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March 11, 2024

Representative Cedric Asuega Gates, Chair  
Representative Kirstin Kahaloa, Vice Chair  
House Committee on Agriculture & Food Systems

**Support of SB 2419, S.D. 1, Relating to Agricultural Biosecurity (Appropriates moneys for the biosecurity program of the Department of Agriculture [DOA] to develop and implement projects for clean plant material, agricultural treatments, diagnostics, and pest management. Declares that the appropriation exceeds the general fund expenditure ceiling for 2024-2025. Effective 7/1/2050.)**

**Wednesday, March 13, 2024, at 8:30 a.m.; State Capitol, Conference Room 325 & Videoconference.**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its **support of SB 2419, S.D. 1**, and of the various agricultural stakeholder groups who defend the goals of viable agricultural operations and the conservation and protection of agriculture, including important agricultural lands in Hawaii

**SB 2419, S.D. 1.** This bill proposes to appropriate funds for the biosecurity program of the DOA to develop and implement projects to increase local agricultural production and to lessen the entry of pests and prohibited or restricted organisms without a permit brought into the State on imported agricultural goods.

**LURF's Position.** Invasive species such as insects, disease-bearing organisms, reptiles, weeds, and other pests pose the greatest threat to Hawaii's economy, tourism, agriculture, the natural environment, native species and the health and lifestyle of Hawaii's people. In Hawaii, invasive species already cause millions of dollars in crop losses, the extinction of native species, the destruction of native wet, moist, and dry land forests, the spread of disease, and the quarantine of exported agricultural crops.

The DOA has established a biosecurity program to combat invasive species and prohibited or restricted organisms without a permit and has also supported the growth of agriculture in Hawaii by attempting to reduce the State's dependency on imported agricultural products that may contain these invasive pests. The public's health and welfare would benefit by continued and further funding of these biosecurity programs.

This bill is also consistent with the underlying intent and objectives of the IAL laws (Hawaii Revised Statutes [HRS], Sections 205-41 to 52), which were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." As noted in HRS Section 205-41, the intent of Act 183 (2005) was to develop agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use.

Passage of the long-awaited IAL legislation would be pointless without funding for implementation of programs and efforts like the DOA's biosecurity program which involve the collaboration and support of agricultural and business organizations, as well as government agencies.

By recognizing the significance of and need to improve and protect the local agriculture industry and establish programs which help to support the growth and maintenance of agriculture in the State, this bill significantly helps to promote economically viable agriculture and food self-sufficiency in Hawaii.

For the above reasons, LURF **supports SB 2419, S.D. 1** and respectfully urges your favorable consideration.

Thank you for the opportunity to present testimony regarding this matter.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE TAX, Extend Tax to Controlling Interest Transfers

BILL NUMBER: SB 2044 SD 2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax established in chapter 247, HRS. Requires an unspecified amount of the conveyance tax collected to be deposited into the Dwelling Unit Revolving Fund. Requires the Department of Taxation to adopt rules.

SYNOPSIS: Adds a new section to chapter 247, HRS, providing that the transfer of a controlling interest in an entity shall be considered a taxable transaction of the entity's real property if (1) The transfer or acquisition of the controlling interest occurs within any thirty-six-month period; (2) The controlling interest was transferred in a single transaction or a series of transactions by a single person or acquired by a single person or a group of persons acting in concert; (3) The entity has an interest in real property located in this State; (4) The transfer is not otherwise exempt under section 247-3; and (5) The transfer was made for valuable consideration.

Provides that for the sole purpose of determining whether a transfer or acquisition pursuant to the exercise of an option occurred within the thirty-six-month taxable transfer period, the date that the option agreement was executed shall be the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this section, the date the option is exercised shall be the date of the transfer or acquisition of the controlling interest.

Provides that for purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department of taxation shall adopt rules to determine when persons are acting in concert, which shall consider the following: (1) Persons shall be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and (2) When persons are not commonly owned or controlled, they shall be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity; provided that, if the acquisitions are completely independent and each purchaser buys without regard to the identity of the other purchasers, the acquisitions shall be considered separate acquisitions.

Provides that the Department of Taxation may, at the director's option, enforce the obligation of the seller (to pay tax) against (1) In the transfer or acquisition of a controlling interest of a profit corporation, the director may enforce the obligation against: (A) The corporation in which a controlling interest is transferred or acquired; (B) The person or persons who acquired the

controlling interest in the corporation; or (C) When the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and (2) In the transfer or acquisition of a controlling interest of any other corporation, partnership, association, trust, or other entity, the director may enforce the obligation against either: (A) The entity in which a controlling interest is transferred or acquired; or (B) The person or persons who transferred or acquired the controlling interest in the entity.

Defines "Controlling Interest" as (1) For a profit corporation, either fifty per cent or more of the total combined voting power of all classes of stock of the profit corporation entitled to vote, or fifty per cent of the capital, profits, or beneficial interest in the voting stock of the profit corporation; and (2) For any other corporation or a partnership, association, trust, or entity, fifty per cent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity."

Amends section 247-1, HRS, to state that "transfers or conveyances" shall include the transfer or acquisition within any thirty-six-month period of a controlling interest in any entity with an interest in real property located in this State for valuable consideration.

Amends section 247-2, HRS, to provide that the basis of the tax in the case of a transfer or acquisition of a controlling interest pursuant to section 247- , the fair market value of the real property owned by the entity at the time the controlling interest is transferred or acquired. Defines "fair market value" as for purposes of transfers or acquisitions of a controlling interest pursuant to section 247- , the value of real property, as stated on the most recent real property assessment issued by the county in which the real property is located.

Amends section 247-3, HRS, to repeal the exemption for conveyances by entities that are parties to a merger or consolidation.

Amends section 247-7, HRS, to add a third earmark of \_\_% or \$\_\_\_\_\_, whichever is less, to be paid to the Dwelling Unit Revolving Fund (HRS section 201H-91).

Makes other conforming amendments.

EFFECTIVE DATE: January 1, 2025.

STAFF COMMENTS: The conveyance tax was enacted by the 1966 legislature after the repeal of the federal law requiring stamps for transfers of real property. It was enacted for the sole purpose of providing the department of taxation (which at the time also administered the real property tax) with additional data for the determination of market value of properties transferred. This information was also to assist the department in establishing real property assessed values and at that time the department stated that the conveyance tax was not intended to be a revenue raising device.

Prior to 1993, the conveyance tax was imposed at the rate of 5 cents per \$100 of actual and full consideration paid for a transfer of property. At the time all revenues from the tax went to the general fund. The legislature by Act 195, SLH 1993, increased the conveyance tax to 10 cents

per \$100 and earmarked 25% of the tax to the rental housing trust fund and another 25% to the natural area reserve fund. Because of legislation in 2005 and in 2009, the conveyance tax rates were substantially increased and bifurcated between nonowner-occupied residential properties and all other properties. Tax brackets were based on the amount of value transferred.

The proposed measure attempts to make the conveyance tax into a comprehensive revenue generating tax by imposing the conveyance tax rates on “complex transactions” resulting in the indirect transfer of real property. Just as the federal tax code imposes withholding tax on transfers of “U.S. real property holding corporations” as well as U.S. real property, this bill is trying to ensure that transfers of entities holding Hawaii real property are taxed under the conveyance tax just like the transfers of the real property itself.

We see two major policy concerns with this measure.

First, this additional taxable transaction increases the cost of restructuring ownership of entities by eliminating the exemption for conveyances of real property by an entity upon merger or consolidation. Upon a transfer of a controlling interest of an entity, the entity generally continues operations with either additional capital and/or new management, without specific values or consideration attributed to the entity’s underlying real estate or other properties.

This tax increase will have a negative impact on entities looking for ways of staying in business. As costs and overhead increase, employers must find ways to stay in business by either increasing prices to their customers or cutting back on costs. This measure will increase the cost for the alternative of raising capital through restructuring.

Second, the agency set up to capture the tax is the Hawaii bureau of conveyances. It records deeds and other conveyance instruments that are presented to it. There is no problem having the bureau review documents for certain exemptions based on the tenor of the document or having the department of taxation brought in to review more complex exemptions or documents. But with this bill, someone will need to look out for transactions (purchases and sales of interests in entities) that aren’t normally required to be reported to anyone. Certainly, the bureau is not institutionally equipped to do that, it would be a stretch for the department of taxation which has had only limited involvement with this tax before, and the bill itself doesn’t appear to give taxpayers or the agencies guidance as to how taxpayers are supposed to be reporting, or how agencies are supposed to be collecting the tax on the more complex transactions. Suppose, for example, company A holding real property merges into company B, with company B surviving. At present, the transaction is evidenced by a certificate of merger filed with the department of commerce and consumer affairs and nothing needs to be filed at the bureau of conveyances. If the intent is now to require the certificate of merger to be filed at the bureau which would make the transaction subject to the conveyance tax, it is not delineated in the measure.

The Senate Committee on Housing in its report stated that the Department of Taxation testified that this measure imposes a voluntary reporting requirement and stated that the voluntary reporting was sufficient to address concerns about the institutional inability of the Bureau as described above. We take issue with that conclusion. The law as it is now drafted does not impose a requirement to report any transactions that may be considered pieces of controlling

interest transactions that are potentially taxable under this bill. We question how the Department of Taxation, or anyone else, would be apprised of the necessary information to enforce the law. And if the only way that the information would come to the Department is by voluntary compliance, it would seem that a large advantage could be gained by bad actors or even taxpayers ignorant of the law's requirements over the law-abiding chumps who know about the law and comply.

The Senate Ways & Means Committee stated in its report that "current taxation law inadvertently allows parties, usually large investors, to avoid paying conveyance taxes by transferring real property through entity-level transactions," and concludes that it is appropriate to close the loophole thus presented. We take issue with this characterization as well. The conveyance tax, some of the history of which we recounted in this testimony, is basically a documentary stamp tax. It was never designed to be a comprehensive tax on the transfer of property, real or otherwise. If the latter is what is now intended, serious thought should be given to repealing the conveyance tax as it now exists and enacting a comprehensive tax on the direct or indirect transfer of interests in real property, with attendant reporting obligations and with enforcement responsibility given to an agency designed to enforce the tax.

If this bill is to move forward, more serious thought should be given to reporting and compliance issues, as well as delineating responsibilities for its enforcement.

Digested: 3/11/2024

March 13, 2024

**The Honorable Luke A. Evslin, Chair**

House Committee on Housing

State Capitol, Conference Room 312 & Videoconference

**RE: Senate Bill 2044, SD2, Relating to the Controlling Interest Transfer Tax  
HEARING: Wednesday, March 13, 2024, at 10:00 a.m.**

Aloha Chair Evslin, 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 Hawaii and its over 11,000 members. HAR **opposes** Senate Bill 2044, SD2, which establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax established in Chapter 247, HRS. Requires an unspecified amount of the taxes established under Chapter 247, HRS, to be deposited into the Dwelling Unit Revolving Fund. Requires the Department of Taxation to adopt rules.

Unlike real property transactions, controlling interest transfers are not required to be filed with the Bureau of Conveyances. Charging conveyance taxes does not seem to be appropriate considering that these transfers are not true real property transactions and often include more assets and liabilities than just real property. This would also make it difficult for businesses to calculate how much tax is owed and potentially lead to unintended consequences of stifling a wide range of business activity. We also echo the points raised by other stakeholders on the difficulties that would surround collection and enforcement.

HAR believes that creating a more business-friendly environment is needed to diversify our economy, create jobs, and attract investment to our State to increase tax revenues. Based on the Department of Business, Economic Development, and Tourism 2024 Statistical and Economic Report, "Hawaii is one of three states in the nation that have not fully recovered from the 2020 recession caused by the COVID-19 pandemic."<sup>1</sup> Additionally, the report notes that the Maui wildfires has also slowed Hawaii's economic recovery and the impact will last for years. We should be encouraging businesses to thrive in order to help our economy to rebound. Imposing a conveyance tax on controlling interest transfers might dissuade businesses from providing much needed investment within our State and is ultimately counterproductive to creating a more business-friendly environment in Hawaii.

Mahalo for the opportunity to testify on this measure.

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<sup>1</sup> Department of Business, Economic Development, and Tourism. (March 6, 2024). New Forecast Continues to Show Low Economic Growth in Hawaii in 2024. <https://dbedt.hawaii.gov/blog/24-14/>  
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# HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law and Economic Justice  
Support for SB2044 SD2 - Related to the Controlling Interest Transfer Tax  
House Committee on Housing  
Wednesday, March 13, 2024, at 10:00AM, Conf. Rm. 312 and via Videoconference

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Dear Chair Evslin, Vice Chair Aiu, and fellow committee members:

Thank you for the opportunity to express our support for **SUPPORT for SB2044 SD2**, which will close the controlled interest loophole as it concerns significant property transfers. We commend the efforts to ensure fair taxation practices and promote responsible real estate transactions within Hawai'i and request an amendment.

Controlling interests typically refers to a significant ownership stake or level of control that an individual or entity holds in a property-owning corporation. As written currently, Hawai'i has no way of capturing benefits of large land transfers by powerful entities. The most famous example of this loss was in 2012 when Larry Ellison purchased 90% of Lana'i in Maui County by purchasing a controlling interest in Castle & Cooke Inc. from then CEO David Murdock and effectively evaded Hawaii's transfer tax. **Ellison spent \$300,000,000 to purchase Lana'i and paid \$0 in conveyance tax, if the controlled interest loophole had been closed Hawai'i would have collected \$3,750,000 in conveyance tax revenue from that one transfer.**

We offer a suggested amendment to equitably distribute the transfers across the special funds as it relates to Section 247-7, and an addition of a dedicated source of revenue for DURF:

"§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

(1) Ten per cent ~~or \$5,100,000, whichever is less,~~ shall be paid into the land conservation fund established pursuant to section 173A-5;[ and]

(2) Fifty per cent ~~or \$38,000,000, whichever is less,~~ shall be paid into the rental housing revolving fund established by section 201H-202["]; and

(3) Ten per cent shall be paid into the dwelling unit revolving fund established by section 201H-191."

We appreciate the opportunity to testify on this measure and urge the committee to pass SB2004 SD2 through with suggested amendments.





March 12, 2024

Representative Luke Evslin, Chair  
Representative Micah Aiu, Vice Chair  
Members of the House Housing Committee

RE: **SB 2044 SD2– RELATING TO CONTROLLING INTEREST TRANSFER  
TAX**  
**Hearing date – March 13, 2024 at 10:00 AM**

Aloha Chair Evslin, Vice Chair Aiu, and members of the committee,

Thank you for allowing NAIOP Hawaii to submit testimony in **OPPOSITION to SB 2044 SD2– RELATING TO CONTROLLING INTEREST TRANSFER TAX**. NAIOP Hawaii is the Hawaii chapter of the nation’s leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders, and other professionals.

SB2044 SD2 establishes a conveyance tax for the transfer of a controlling interest in an entity that owns real property in the State. Hawaii already has one of the worst conveyance taxes in the country. Additionally, the measure seeks to deposit funding into the Dwelling Unit Revolving Fund (DURF).

NAIOP Hawaii opposes this measure which proposes to consider the transfer of a controlling interest in an entity as a taxable transaction for real property purposes. We are concerned that this approach may lead to an increase in taxes for businesses engaging in legitimate transactions such as mergers, acquisitions, or changes in ownership structure. Passage of this bill will discourage investment, hinder economic growth, and burden business owners when attempting to restructure entity holdings.

Furthermore, this measure creates ambiguity for large corporate entities conducting business in Hawaii. Specifically, the definition of "controlling interest" and the conditions triggering taxation, introduces complexity and ambiguity as to when the new tax will apply. Additionally, small businesses will face challenges in the navigation of new tax obligations and compliance requirements introduced by this bill. The additional financial and administrative burden will result in disproportionate, negative

Representative Luke Evslin, Chair  
Representative Micah Aiu, Vice Chair  
March 12, 2024  
Page 2

effect on small businesses. SB 2044 SD1 is anticipated to result in legal disputes, administrative challenges, and increased compliance costs for all affected entities.

Moreover, imposing a conveyance on the transfer of a controlling interest in a Special Purpose Entity (SPE) poses an issue for landowners who are simply looking to finance smaller holdings. Typically, in financing a single asset, lenders prefer a new SPE to provide additional financial certainty for a particular project.

Ultimately, this measure may result in: 1) fewer transactions triggering payment of conveyance tax; and 2) a meaningful reduction in economic activity due to additional costs in setting up a required SPE. NAIOP Hawaii is concerned that this increase in conveyance taxes may reduce the private sectors investment into long term projects which stimulate economic activity. Hawaii is already rated as one of the least business friendly States in the nation and increasing this tax rate will further discourage much needed investment here locally. Rather, additional efforts to encourage investment in Hawaii and incentivize the creation of new projects and businesses in Hawaii would stimulate our economy by creating jobs and tax revenue.

Accordingly, NAIOP Hawaii respectfully recommends that SB 2044 SD2 be deferred.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read 'Reyn Tanaka', with a long horizontal flourish extending to the right.

Reyn Tanaka, President  
NAIOP Hawaii

March 13, 2024, 10 a.m.  
Hawaii State Capitol  
Conference Room 312 and Videoconference

**To: House Committee on Housing**  
**Rep. Luke A. Evslin, Chair**  
**Rep. Micah P.K. Aiu, Vice-Chair**

**From: Grassroot Institute of Hawaii**  
**Ted Kefalas, Director of Strategic Campaigns**

RE: TESTIMONY OPPOSING SB2044 SD2 — RELATING TO THE CONTROLLING INTEREST TRANSFER TAX

Aloha Chair Evslin and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments **opposing** [SB2044 SD2](#), which would extend the conveyance tax to include the transfer of a controlling interest of an entity with real property located in the state.

Put simply, this is a complex bill that seeks to expand the scope of the conveyance tax to include business transactions, presumably in the hopes of generating sizable tax revenues.

Assuming that the headaches associated with administration and collection of this tax are not enough to give the Committee pause, there is reason to be concerned about the effect it could have on Hawaii business and real estate.

Even when applied directly, transfer taxes can have a negative impact on the economy. A report by the Sage Policy Group noted that high transfer taxes can “lead to decreases in population, real incomes, real estate transactions, investment in structures, and quality of the built environment.”<sup>1</sup>

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<sup>1</sup> [“The Unintended Consequences of Excessive Transfer Taxes,”](#) Sage Policy Group, Inc. on behalf of the Community Coalition for Jobs and Housing, June 2022, p. 3.

The same report added that transfer taxes are not a reliable source of tax revenues, and are particularly volatile in areas with especially high tax rates.<sup>2</sup>

In the case of this bill, those negative features of the conveyance tax are compounded by the fact that this bill would create complications and disincentives for the transfer or restructuring of local businesses. Thus it would act as yet another burden on Hawaii businesses, discourage investment and hinder economic growth.

Looking at the broader picture, one must consider that tax increases in general are not a good idea for Hawaii's economy — especially not now when it already has one of the highest tax burdens in the nation.<sup>3</sup> Consider these points:

>> Hawaii's population has been declining for the past six years.<sup>4</sup> Tens of thousands of Hawaii residents have moved to the mainland over the past six years — and mainly to states without income taxes, such as Washington, Nevada, Texas and Florida.<sup>5</sup> Their departure from the islands is not only emotionally distressing, but economically depressing as well.

>> Fewer people remaining means fewer people to work at our private businesses, or even staff our government agencies. It also means fewer people to pay for Hawaii's ever-increasing tax burden.

>> Higher taxes for those who remain is more fuel for the exodus of our friends, neighbors and family to places that are more affordable. It's a downward spiral economically fostered by the relentless upward spiral of more and more taxes.

>> Hawaii taxes high-income earners at 11%, second only to California at 13.3%.<sup>6</sup> Hawaii's top 1.5% of taxpayers already pay 34.9% of all income taxes in the state.<sup>7</sup>

>> Hawaii is suffering from a stagnant economy, and both the Economic Research Organization at the University of Hawai'i<sup>8</sup> and the state Department of Business, Economic Development and Tourism<sup>9</sup> have predicted continued slow economic growth in 2024. Tax hikes could exacerbate this slowdown, since

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<sup>2</sup> ["The Unintended Consequences of Excessive Transfer Taxes,"](#) p. 2.

<sup>3</sup> Jared Walczak and Erica York, ["State and Local Tax Burdens, Calendar Year 2022,"](#) Tax Foundation, April 7, 2022.

<sup>4</sup> Maria Wood, ["Where People from Hawaii Are Moving to the Most,"](#) 24/7 Wall Street, Jan. 23, 2022.

<sup>5</sup> Katherine Loughhead, ["How Do Taxes Affect Interstate Migration?"](#) Tax Foundation, Oct. 11, 2022.

<sup>6</sup> Timothy Vermeer, ["State Individual Income Tax Rates and Brackets for 2023,"](#) Tax Foundation, Feb. 21, 2023.

<sup>7</sup> ["Hawaii Individual Income Tax Statistics,"](#) Hawaii Department of Taxation report for Tax Year 2021, August 2023, Table 12A.

<sup>8</sup> Carl Bonham, Byron Gagnes, Steven Bond-Smith, et al., ["State Facing Headwinds as Maui Recovery Begins,"](#) Economic Research Organization at the University of Hawai'i, Dec. 15, 2023.

<sup>9</sup> Hawaii Department of Business, Economic Development, and Tourism, ["Hawaii Economic Growth Remains Low for 2024 as Recovery Continues,"](#) Dec. 11, 2023.

entrepreneurs will be less likely to want to invest their capital — or “wealth assets,” as the case may be<sup>10</sup> — in Hawaii’s economy.

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

Thank you for the opportunity to testify.

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii

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<sup>10</sup> 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.

**SB-2044-SD-2**

Submitted on: 3/11/2024 3:34:58 PM

Testimony for HSG on 3/13/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support closing this insane loophole. How did the state let a billionaire buy basically an entire island and pay no conveyance tax on the purchase? That is a truly gross example of the state government's failure to prevent the wealthy from buying up Hawai'i, pricing out local families and destroying what makes Hawai'i special. If there's a way to retroactively tax the purchase of Lana'i, you should do that too.

**SB-2044-SD-2**

Submitted on: 3/12/2024 7:37:51 AM

Testimony for HSG on 3/13/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Glen Kagamida	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE. WILL ADD TO HIGHER PRICES.

MAHALO!