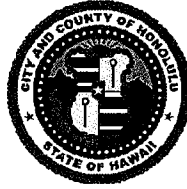


DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

RICK BLANGIARDI  
MAYOR



DAWN TAKEUCHI APUNA  
DIRECTOR DESIGNATE

JIRO SUMADA  
DEPUTY DIRECTOR

February 24, 2023

The Honorable Karl Rhoads, Chair  
and Members of the Committee on Judiciary  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Committee Members:

**Subject: Senate Bill No. 875  
Relating to the Counties**

The Department of Planning and Permitting (DPP) **supports** Senate Bill No. 875, which would allow the counties to collect liens on properties for civil fines through a non-judicial foreclosure process.

This Bill would empower the DPP to better enforce against repeat and egregious offenders, which generally rack up the largest accruals of fines. Specifically, this Bill would authorize the City to bring closure to pending civil fines imposed on landowners who are in violation of the City's land use ordinances and building codes, through a non-judicial or administrative process. The counties currently have and exercise the authority to use the non-judicial foreclosure process for collection of real property tax liens, which this Bill would extend to collection of liens on properties for civil fines.

Currently, the DPP issues a Notice of Violation (NOV) to notify the violator of the violation and to provide a reasonable amount of time to cure the violation, either by removing the violation or obtaining the proper approvals. If the landowner fails to comply with the NOV, a Notice of Order is issued to impose daily civil fines until the violation is corrected. Once the fines accrue to a certain amount based on the type of violation, a lien is placed on the property. If the violator continues to be noncompliant and/or does not pay the fines, the City moves forward with the judicial foreclosure process. However, the current judicial foreclosure process is a much lengthier and costlier process subject to a legal process mostly beyond of the City's control. The City has lacked the legal manpower and funding to pursue judicial foreclosures, and believes that the non-judicial foreclosure process as currently employed by the real property tax collections, is a viable, more efficient and effective method for the City to collect liens on properties for civil fines.

The Honorable Karl Rhoads, Chair  
and Members of the Committee on Judiciary  
Hawaii State Senate  
Senate Bill No. 875  
February 24, 2023  
Page 2

Concern has been raised that the City will abuse this authority and use it to “take” private property from our citizens. This could not be further from the truth. We assure you that this method of foreclosure provides abundant notice and opportunity to contest the foreclosure.

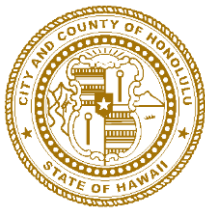
We respectfully request that you approve this Bill to allow the counties to implement non-judicial foreclosures to efficiently and effectively collect civil fines.

Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a long, horizontal flourish.

Dawn Takeuchi Apuna  
Director Designate



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
530 SOUTH KING STREET, ROOM 202  
HONOLULU, HAWAII 96813-3065  
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

**Councilmember District 5**  
**Telephone: (808) 768-5005**  
**Email: ckysay@honolulu.gov**

February 21, 2023

**TO:** CHAIR KARL RHOADS, COMMITTEE ON JUDICIARY  
VICE CHAIR MIKE GABBARD, COMMITTEE ON JUDICIARY

**FROM:** COUNCILMEMBER CALVIN SAY  
HONOLULU CITY COUNCIL, DISTRICT V

**SUBJECT: TESTIMONY IN SUPPORT OF SENATE BILL 875**

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee on Judiciary:

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 875, 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 875 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 875. Thank you for your time and consideration



February 24, 2023

9:30 a.m.

Conference Room 430 and via videoconference

**To: Senate Committee on Judiciary**

**Senator Karl Rhoads, Chair**

**Senator Mike Gabbard, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

RE: SB875 — RELATING TO THE COUNTIES

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer comments on [SB875](#), which would allow counties to sell private property in order to pay unpaid civil fines related to that property after all notices, orders and appeals have been exhausted, provided that counties adopt an ordinance governing the process of such sales.

The issue of uncollected civil fines has been front and center on Oahu. The Honolulu Department of Planning and Permitting estimates that the city is owed more than \$130 million in unpaid fines related to building violations, zoning violations, overgrown weeds and vacant, unkept property.<sup>1</sup>

In effect, SB875 would allow counties to sell such problem properties without going through the normal legal process.

We are concerned that the counties might abuse the power that this measure would grant them. Numerous corruption scandals have been uncovered in county departments across the state, with several Honolulu county permitting officials pleading guilty to bribery charges in the

---

<sup>1</sup> Ashley Mizuno, "[Oahu problem properties owe \\$130 million in building fines to city](#)," Honolulu Star-Advertiser, Nov. 13, 2022.

past year<sup>2</sup> and a Maui wastewater official being sentenced just this month to 10 years in prison for accepting bribes.<sup>3</sup>

With favoritism and corruption so commonplace, what safeguards would exist to prevent counties from selectively using nonjudicial foreclosure against certain property owners, while allowing others to keep their properties?

This measure's effects might also fall most heavily on older individuals living on fixed incomes who do not have the resources to pay their fines, hire an attorney or otherwise navigate complicated legal and financial matters. According to the AARP, "tax authorities' seizure of all of their home equity is nothing short of catastrophic" for older individuals.<sup>4</sup>

Further, we suggest the committee consider the effect that a pending U.S. Supreme Court case, *Tyler v. Hennepin County, Minnesota*, might have on the constitutionality of this measure.

In that case, Hennepin County sold Geraldine Tyler's condominium for \$40,000 to settle unpaid property tax debts. After settling the \$15,000 debt, the county refused to pay the difference back to Tyler.

She filed a lawsuit against the county alleging violations of the Fifth and Eighth amendments. The case is currently slated to be heard by the court this session, likely sometime this spring.<sup>5</sup>

At the very least, SB875 should be amended to require that the counties must refund profits from the sale of the properties to the property owners. We recommend the following language be added to the bill:

After all notices, orders, and appeal proceedings are exhausted, a county may satisfy all unpaid civil fines through the power of sale on the real property subject to a recorded lien. A power of sale shall become fully effective within a county upon the enactment or adoption by the county of appropriate and particular laws, ordinances,

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<sup>2</sup> Christina Jedra, "[Honolulu's Former Top Permit Inspector Pleads Guilty To Bribery](#)," Honolulu Civil Beat, Oct. 17, 2022.

<sup>3</sup> "[Former Maui official sentenced for 'outrageous' role in state's largest-ever bribery scheme](#)," Hawaii News Now, Feb. 8, 2022.

<sup>4</sup> [Brief of Amici Curiae AARP and AARP Foundation Supporting Petition for Writ of Certiorari](#), Tyler v. Hennepin County, Minnesota, Sept. 22, 2022, p. 4.

<sup>5</sup> Christina Martin, "[Government-sponsored home equity theft robs the elderly and poor of millions of dollars](#)," The Hill, Dec. 5, 2022; "[Tyler v. Hennepin County, Minnesota](#)," Oyez, accessed Feb. 22, 2023.

or rules establishing the power of sale; ***provided that the county sell the property at no less than the market value of similarly situated properties and that all revenues received from the sale that exceed the amount of the unpaid civil fines be refunded to the property owner.***

This amendment would at least ensure that property owners are not unduly punished for their failure to pay county fines — especially since lands, buildings and homes are many property owners’ most valuable personal assets.

Hawaii is currently one of a large number of states that wisely prohibit “home equity theft.”<sup>6</sup> Should this bill pass as currently written, Hawaii would join a handful of outlier states that do not adequately protect private property, and the most vulnerable would feel its effects the hardest.

Thank you for the opportunity to testify.

Sincerely,

Joe Kent  
Executive vice president  
Grassroot Institute of Hawaii

---

<sup>6</sup> [“End Home Equity Theft,”](#) Pacific Legal Foundation, accessed Feb. 22, 2023.

TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa  
808-395-3233

HEARING: 9:30 a.m. Friday, February 24, 2023

SUBJECT: SB 875, County Authorization for Power of Sale - **OPPOSED**

Aloha Chair Rhoads and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB 875, which would authorize counties to sell private properties under certain circumstances.

The Honolulu Department of Planning and Permitting (DPP) **must get its act together before any additional powers are given to them.** For years they allowed offenders to pay only 5% of fines that were levied, even when hundreds of thousands of dollars were assessed due to lack of following the law for years.

In 2022 it was reported a fourth DPP employee pled guilty in a bribery scandal.<sup>1</sup>

A few weeks ago, there was a report of a DPP inspector approving his own projects.<sup>2</sup>

How far does the unethical and illegal activity go?

**If DPP is allowed to have the power of sale, how do we know it would be a fair process?**

The city should not be allowed to “hurry it up” by bypassing the current foreclosure process.

**Please vote “no” on SB 875.**

<sup>1</sup> “Another DPP Employee Pleads Guilty Taking Bribes,” *Civil Beat*, February 15, 2022; <https://www.civilbeat.org/beat/another-dpp-employee-pleads-guilty-to-taking-bribes/>

<sup>2</sup> “Honolulu Permitting Inspector OK’d His Own Company’s Projects,” *Civil Beat*, January 18, 2023; <https://www.civilbeat.org/2023/01/honolulu-permitting-inspector-okd-his-own-companys-projects/>

# OPPOSE SB 875

HB 498

CLONE BILLS SB 216 HB 106

## Don't turn Hawaii into China!

### ALOHA SENATORS & REPRESENTATIVES OF THE HAWAII STATE LEGISLATURE:

SB 875 is a clone bill to SB 216 as well as HB 106 and HB498

As if the legislative session is not confusing enough for the general public, we just now know about these clone bills. The public has 2 days to submit testimony. There is NO Oral testimony allowed.

Already the general public is in the dark about this very far-reaching proposed legislation. This is a best-kept secret that all of Hawaii counties and residents should know about. Who is supposed to disclose to the public about these bills? Do legislators share this even with the neighborhood boards or their constituents before-hand and not after-the-fact?

We're very concerned about these parallel bills want the same unconstitutional POWER of SALE – to seize private property **without** going through the court.

In a nutshell, Honolulu Mayor Rick Blangiardi (HB106) is saying that its existing judicial foreclosure power on delinquent property taxes and eminent domain powers ARE TOO SLOW. They want a quicker and easier way to seize Private Properties without Due Process. Who can depend and trust the Honolulu Department of Planning and Permitting (DPP)?



Are all the other county Mayors in bed with this? Have the Mayors disclose this to their constituents and respective city councils?

## **These proposed Bills are so ALARMING and SPOOKY. We are not living in China or Russia.**

There is no somber vetting of constitutional private property rights.

These bills inevitably create overreaching consequences on property owners. Public Policies cannot be based on knee-jerk sentiments however good it feels.

The city can already have judicial foreclosure on delinquent taxes and eminent domain for public purposes.

<https://www.youtube.com/watch?v=SmM4ZBoppNQ>

Asking for **non-judicial to seize private property without going to court** based on DPP fines is overkill and unconstitutional.

Please protect your constituents' basic civil rights.

We're depending on you to do the right thing.

Mahalo,

Choon James

[ChoonJamesHawaii@gmail.com](mailto:ChoonJamesHawaii@gmail.com)

808293 9111

**Here are some references AGAINST these POWER OF SALE Bills:**



<https://www.npr.org/2019/02/20/696360090/supreme-court-limits-civil-asset-forfeiture-rules-excessive-fines-apply-to-state>

[https://www.supremecourt.gov/opinions/18pdf/17-1091\\_5536.pdf](https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf)

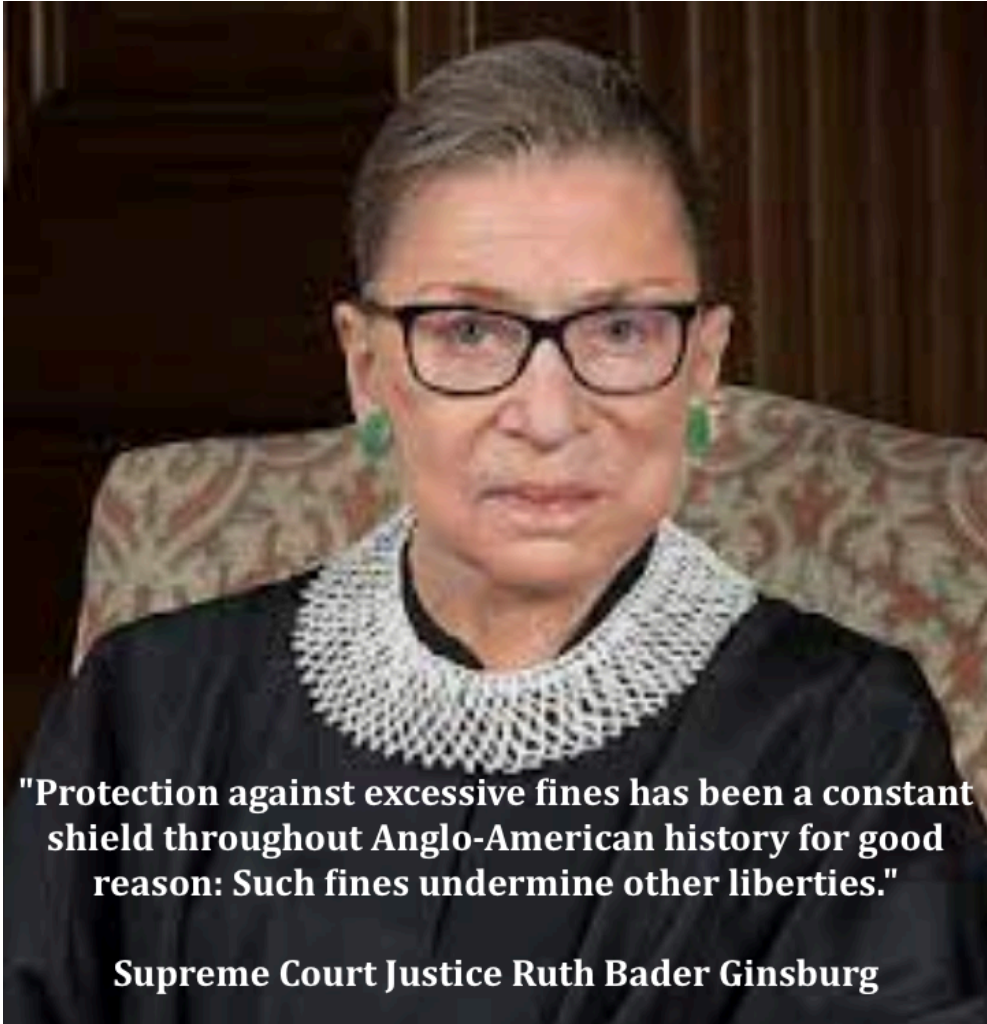
*In short, the historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is overwhelming. Protection against excessive punitive economic sanctions secured by the Clause is, to repeat, both “fundamental to our scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition.” McDonald, 561 U. S., at 767 (internal quotation marks omitted; emphasis deleted).*

<https://www.npr.org/2019/02/20/696360090/supreme-court-limits-civil-asset-forfeiture-rules-excessive-fines-apply-to-state>

**Ruth Bader Ginsburg**

*"She also noted that the ban on excessive fines was added to the Bill of Rights for the purpose of protecting individual liberty.*

*"Protection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties."*



**"Protection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties."**

**Supreme Court Justice Ruth Bader Ginsburg**

*She noted that those fines could be used to retaliate against **political enemies** and have been **used as a source of revenue.**"*

<https://www.scotusblog.com/case-files/cases/timbs-v-indiana/>

*"Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies. . . .*

*Even absent a political motive, fines may be employed in a measure out of accord with the penal goals of retribution and deterrence."*



**"Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies. . . . Even absent a political motive, fines may be employed in a measure out of accord with the penal goals of retribution and deterrence."**

**Supreme Court Justice Ruth Bader Ginsburg**

# Who can trust and depend on DPP?

Just a little bit of the systemic corruption at the Honolulu Department of *Planning & Permitting*:

<https://www.civilbeat.org/2023/01/honolulu-permitting-inspector-okd-his-own-companys-projects/>

<https://www.civilbeat.org/2022/08/the-public-may-never-know-who-did-the-bribing-in-the-honolulu-permitting-scandal/>

<https://www.justice.gov/usao-hi/pr/six-charged-bribery-schemes-official-acts-department-planning-and-permitting-city-and-0>

<https://www.civilbeat.org/2021/09/years-before-indictments-honolulu-permitting-department-was-warned-about-corrupt-culture/>

<https://www.civilbeat.org/2022/04/dpp-director-steps-away-from-short-term-rental-bill-amid-ethics-concerns/>

[https://www.kitv.com/news/building-permit-delays-cost-oahu-homeowners-big-money/article\\_6451d7b0-b7b7-11ec-8226-430a162ea69a.html](https://www.kitv.com/news/building-permit-delays-cost-oahu-homeowners-big-money/article_6451d7b0-b7b7-11ec-8226-430a162ea69a.html)

<https://ownerbuiltdesign.com/the-challenges-of-working-with-the-honolulu-department-of-planning-and-permitting/>

<https://www.ilind.net/2020/10/04/a-tale-of-our-city/>

<https://www.hawaiinewsnow.com/2021/04/01/kahala-homeowner-says-former-dpp-employee-arrested-by-fbi-delayed-his-permits-back/>

**SB 875, SB 216, HB 106, HB CANNOT BE APPROVED. HAWAII deserves better treatment from the State Legislature.**



# ISLAND VOICES

## Bill threatens private property owners

By Choon James and Natalie Iwasa

As part of the 2022 county package to state legislators, Honolulu Mayor Rick Blangiardi requested “nonjudicial foreclosure” powers, i.e., the power to seize private property without going to court. Fortunately, House Bill 1434 did not pass last year.

This year’s package includes another request for “nonjudicial foreclosure,” aka “power of sale.” It represents an alarming threat to property owners and is prevalent in totalitarian regimes.

This year’s HB 106 offers weak assurance that “a county may, after all notices, orders, and appeal proceedings are exhausted, satisfy all unpaid civil fines through the power of sale on the real property subject to a recorded lien.”

Unfortunately, our years of civic participation at Honolulu Hale show that due process has not always been fair and equitable to ordinary residents.

Furthermore, recent federal indictments and guilty pleas continue to show the troubled Honolulu Department of Planning and Permitting (DPP) has no consistent record of fair play or efficient management. Written testimonies reveal alarming threats toward private property rights.

Dawn Takeuchi Apana, DPP director designate, stated: “Specifically, this bill would authorize the city to bring closure to pending civil fines imposed on landowners who are in violation of the

### ISLAND VOICES



Natalie Iwasa, left, is a CPA and certified fraud examiner; Choon James is a residential Realtor and farmer.

city’s land use ordinances and building codes, through a nonjudicial or administrative process.”

Honolulu City Councilman Calvin Say also submitted testimony for a quicker seizure: “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.”

In other words, give us the authorization to hurry it up by bypassing the regular court method of foreclosure.

The House Committee on Judiciary & Hawaiian Affairs, whose members include Chairman David Tarnas and Vice Chair Gregg Takayama, approved HB 106 on Jan. 31. Its report states in part:

“Your committee finds that authorizing the counties to collect on liens filed on properties through a nonjudicial foreclosure process provides some leverage over property owners to com-

ply or lose their property. If a property owner fails to comply and the property is foreclosed upon, this measure would enable the property to be put to productive use, allow liens attached to the property to be satisfied, and stop the accrual of additional debt or taxes on the property.”

Hawaii’s state legislators should recognize that most ordinary residents sacrifice and work their tails off to achieve real property ownership. Each county’s goal should be to help property owners comply with the law and correct their violations, *not* summarily seize their properties.

HB 106 invites corruption and exposes residents, especially those who have fewer financial resources available to them, as easy casualties of this potential power of sale. All Hawaii counties would be affected.

It should be noted the U.S. Supreme Court ruled unanimously on Feb. 20, 2019 (Timbs vs Indiana), that the Constitution’s ban on excessive fines — civil asset forfeitures are a type of fine — applies to state and local governments, thus limiting their ability to use fines to raise revenue.

The late Justice Ruth Bader Ginsburg also astutely argued fines could be used to retaliate against political enemies and had been used as a source to raise revenue.

Hawaii has a few egregious property owners, but this tyrannical bill is not the solution. We urge our legislators to vote “no” on HB 106.

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**SB-875**

Submitted on: 2/23/2023 2:33:47 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marcia Kimura	Individual	Oppose	Written Testimony Only

Comments:

I am vehemently opposed to this tyrannical, expedient proposal that is a grave threat to home owners.



**SB-875**

Submitted on: 2/23/2023 9:11:36 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeff Sadino	Individual	Oppose	Written Testimony Only

## Comments:

This is a massively huge power that would be given to the government and has the potential to cause a tremendous amount of harm. At its previous Hearing, it received only one testimony in total. Before this much power is given to the government, it deserves to have more public input. The previous testimony basically said that it is too much trouble to go through a regular foreclosure process. When we are talking about the government seizing somebody's home, it seems like we should want that to be a difficult process.

**SB-875**

Submitted on: 2/23/2023 10:12:30 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kamalani Keliikuli	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill