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WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON HOUSING
ON
SENATE BILL NO. 1131

February 4, 2025
1:00 p.m.
Room 225 and Videoconference

RELATING TO TAXATION

The Department of Budget and Finance offers comments on this bill.

Senate Bill (S.B.) No. 1131 establishes a new excise tax on hedge funds and other large investment entities that fail to dispose of their excess single-family residences over a ten-year period and/or acquire new single-family residences; establishes the Housing Downpayment Trust Fund (HDTF) to be administered by the Hawaiʻi Housing Finance and Development Corporation for the purpose of providing grants to establish new or supplement existing programs that provide downpayment assistance to families purchasing homes within the State; and provides that all revenues collected from the new tax shall be deposited into the HDTF.

Pursuant to Section 37-62, HRS, a trust fund is defined as a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes. As proposed, the HDTF appears to function more similarly to a special fund which provides a nexus between its sources of revenue and program beneficiaries. Regardless of the type of fund, it is difficult to determine whether the proposed HDTF would be self-sustaining and thus feasible.

Thank you for your consideration of our comments.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
S.B. No. 1131, Relating to Taxation.

BEFORE THE:
Senate Committee on Housing

DATE:	Tuesday, February 4, 2025
TIME:	1:00 p.m.
LOCATION:	State Capitol, Room 225

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

The Department of Taxation (DOTAX) offers the following comments regarding S.B. 1131 for your consideration.

S.B. 1131 adds a new chapter to the Hawaii Revised Statutes, (HRS), establishing an “Excess Single-Family Residence Tax.” The proposed excise tax would be imposed on “covered taxpayers” for owning and acquiring single-family residences (SFR). The funds collected from this new tax will be allocated to a newly established Housing Down Payment Trust Fund to be administered by the Hawaii Housing Finance and Development Corporation.

S.B. 1131 defines several key terms as follows:

- “Covered taxpayer” refers to any covered entity that manages funds pooled from investors.
- “Covered entity” means any partnership, corporation, or real estate investment trust, but not including nonprofit organizations or organizations primarily engaged in the construction or rehabilitation of SFRs.
- “Disqualified sale” refers to “any sale or transfer” to a business or an individual who owns any other SFR at the time of transfer.

- "Hedge fund taxpayer" refers to an entity that has $50 million or more under management in net asset value on any day during the taxable year.
- "Single-family residence" refers to residential property with one to four dwelling units, excluding properties acquired through foreclosure, used as a principal residence and not rented, or constructed or acquired with federal funds.

This measure imposes a 50% excise tax on any single-family residences acquired by covered taxpayers.

In addition, this measure imposes a tax of $50,000 per SFR owned by a covered taxpayer at the end of a taxable year above a specified limit. For covered taxpayers the specified limit starts at 50 plus 90% of units owned on January 1, 2026, decreasing each year until reaching 0% in 2034. For hedge fund taxpayers, the maximum permissible units starts at 90% of the number of applicable SFRs owned on January 1, 2026 and will gradually decrease to 0% by 2034.

Covered and hedge fund taxpayers will be required to report certain information regarding real property, with a $20,000 penalty for non-compliance. Furthermore, buyers of single-family residences from covered taxpayers must certify that the sale is not a disqualified sale.

This bill is set to apply to taxable years beginning after December 31, 2025.

This measure creates a new tax type, distinct from existing income, general excise, property, and conveyance taxes. DOTAX is required to prescribe forms, procedures and rules necessary to implement the proposed excise tax.

DOTAX faces significant challenges in verifying key components of this new tax. First, identifying covered taxpayers with available existing data and filings is not possible. Current income and conveyance tax filings do not require taxpayers to disclose whether they are hedge funds and/or managing SFRs. As the bill appears to acknowledge, DOTAX would need to impose new information reporting requirements for all entities and make extensive changes to its systems to administer the proposed tax.

Second, the measure would necessitate new reporting requirements for every SFR real estate transaction in the state. As written, all SFR buyers would need to provide multiple certifications or representations, which presumably would be submitted and processed by DOTAX. To ensure compliance, DOTAX would essentially need to track sales and ownership of SFRs to specific taxpayers. This would be a significant departure from DOTAX's current data priorities, which focus on the reporting of income and gross receipts, not ownership of property.

Third, the measure would also require DOTAX to track hedge funds' net asset values throughout the year since hedge fund taxpayers are defined as those who have more than $50,000,000 or more in net value or assets under management on any day during the taxable year.

The complexities above would require significant new processes and data system changes. Thus, if passed, DOTAX requests the bill be amended to apply to taxable years beginning after December 31, 2026, to provide sufficient time to develop necessary systems, forms, and processes to implement the measure.

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

735 Bishop Street, Suite 417 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS; Excise Tax on Excess Single-Family Residences; Housing Down Payment Trust Fund

BILL NUMBER: SB 1131

INTRODUCED BY: MCKELVEY, CHANG, San Buenaventura

EXECUTIVE SUMMARY: Imposes an excise tax on certain hedge funds failing to dispose of excess single-family residences, escalating over a ten-year period. Imposes a tax on any newly acquired single-family residences by a hedge fund. Makes certain exemptions. Requires the Department of Taxation to establish a certification process to ensure buyers of homes sold by hedge funds are not major investors in residential real estate. Establishes the Housing Down Payment Trust Fund to be administered by the Hawaiʻi Housing Finance and Development Corporation to provide grants to establish new or supplement existing programs that provide down payment assistance to families purchasing homes within the State. Allocates collected tax revenue and penalties paid by hedge funds to the Housing Down Payment Trust Fund.

SYNOPSIS: Adds a new HRS chapter, cited as the End Hedge Fund Control of Hawaii Homes Act, imposing an excise tax on taxpayers failing to sell excess single-family residences.

Section ____-2, HRS, adds definitions for:

"Covered entity" means any partnership, corporation or real estate investment trust. Does not include an IRC section 501(c)(3) organization or an organization primarily engaged in the construction or rehabilitation of single-family residences.

"Covered taxpayer" means any covered entity that manages, as a fiduciary, funds pooled from investors.

"Disqualified sale" means any sale or transfer to 1) a corporation or other entity engaged in a trade or business, or 2) an individual who owns any other single-family residence at the time of the sale or transfer.

"Hedge fund taxpayer" means any covered taxpayer that has $50,000,000 or more in net value or assets under management on any day during the taxable year.

"Single-family residence" means any residential property consisting of one to four dwelling units, but does not include: 1) any unoccupied single-family residence acquired through foreclosure, 2) any single-family residence that is not rented or leased and used as the principal residence, as defined by IRC section 121, of any person who has an ownership interest in the covered taxpayer or 3) any single-family residence constructed, acquired, or operated with federal appropriated funding.

Adds section___-3, HRS, in the case of a covered taxpayer, a tax is imposed on the acquisition of any "newly acquired single-family residence" equal to fifty percent of the fair market value of the single-family residence.

A "newly acquired single-family residence" means any single-family residence that was acquired by the taxpayer in any taxable year beginning after December 31, 2025.

Adds section___-4(a), HRS, if a covered taxpayer fails to meet the requirements of section ____-4(b), a tax is imposed equal to the product of 1) $50,000 and 2) the excess of:
(A) the number of applicable single-family residences owned by the taxpayer on the last day of the taxable year over:
(B) the sum of (i) fifty (zero in the case of any hedge fund taxpayer), plus (ii) the maximum permissible units for the taxable year.

The section ___-4(a) tax, does not apply if the number of applicable single-family residences owned by the taxpayer as of the last day of the taxable year is equal to or less than the "maximum permissible units". Residences sold or transferred in a disqualified sale shall be treated as owned.

Section ___-4(c), HRS, provides the Maximum Permissible Units to be:

Taxable years beginning after:	Hedge Fund Taxpayer	Other Covered Taxpayer
12/31/2025	90% of the number of applicable residences	50 plus 90% of applicable residences owned
12/31/2026	80% of the number of applicable residences	50 plus 80% of the number of applicable residences
12/31/2027	70% of the number of applicable residences	50 plus 70% of the number of applicable residences
12/31/2028	60% of the number of applicable residences	50 plus 60% of the number of applicable residences
12/31/2029	50% of the number of applicable residences	50 plus 50% of the number of applicable residences
12/31/2030	40% of the number of applicable residences	50 plus 40% of the number of applicable residences
12/31/2031	30% of the number of applicable residences	50 plus 30% of the number of applicable residences
12/31/2032	20% of the number of applicable residences	50 plus 20% of the number of applicable residences
12/31/2033	10% of the number of applicable residences	50 plus 10% of the number of applicable residences
12/31/2034	0% of the number of applicable residences	50 plus 0% of the number of applicable residences

Section ___-4(d), HRS, defines an "Applicable single-family residence" as any single-family residence that is acquired on or before January 1, 2026.

Section ___-5, HRS, provides that a covered taxpayer be treated as 1) "acquiring" a single-family residence if a majority ownership interest is acquired, regardless of the percentage of that ownership interest, and 2) "owning" a single-family residence if a majority ownership interest is owned, regardless of the percentage of that ownership interest.

Section ___-6 and -7, HRS, tasks the Director of Taxation ("Director") with administering, reporting and prescribing forms and procedures and adopting rules to implement the excise tax.

A $20,000 penalty applies if required information is not provided or if correct information is not reported.

The Director shall require a certification from individuals to whom a single-family residence is sold or transferred from a covered taxpayer. The certification shall state the following:

1) Name and address of the purchaser or transferee;
2) That the sale is not a disqualified sale; and
3) An acknowledgment that the purchaser or transferee shall be subject to penalties for any false certification.

Section ___-8, HRS, establishes a Housing Down Payment Trust Fund ("Trust Fund") in the State Treasury into which revenues collected from the section ____-3 and -4, HRS, excise taxes and penalties collected pursuant to section ____-6, HRS, will be deposited.

The Trust Fund will be administered by the Hawaii Housing Finance and Development Corporation.

EFFECTIVE DATE: Upon approval, shall apply to taxable years beginning after December 31, 2025.

STAFF COMMENTS: Essentially, this bill, after being phased in, bans an applicable taxpayer from buying or retaining single-family residences upon pain of paying a punitive excise tax. We question whether it is consistent with Article I, section 2 of the Hawaii Constitution which states, "All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property."

Although the bill by its terms applies to entities and not necessarily individuals, it should be borne in mind that individuals, as owners, managers, employees, or investors, are behind each entity.

We also note that the new trust fund proposed to be established by this bill does not appear to be a trust fund. Section 37-62, HRS, defines a trust fund as a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes. The beneficiaries identified, "families purchasing homes within the State," have no indicated vested beneficial or ownership interest in the fund assets. Rather, it is tax money set aside for a specific government program or department.

The new fund, therefore, appears to be a special fund. Special funds are subject to criteria in section 37-52.3, HRS, one of which is that the fund must be self-sustaining. The fund here is funded by a punitive tax that is expected to disappear over time once the targets of the fund feel the inhospitality of this measure. Thus, the fund fails to meet the criteria and is inappropriate.

Digested: 2/2/2025

SB-1131
Submitted on: 1/31/2025 5:12:33 PM
Testimony for HOU on 2/4/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sidney Lynch	Individual	Support	Written Testimony Only

Comments:

Please pass this bill. Property in Hawaiʻi and on the mainland is becoming out of the reach of these hedge funds becuase of their buying power.

LATE

SB-1131
Submitted on: 2/3/2025 2:23:28 PM
Testimony for HOU on 2/4/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bronson Teixeira	Individual	Support	Written Testimony Only

Comments:

Aloha, I strongly support this measure, mahalo.