

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

November 2, 2007

Committee
Report No.

07-124

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Budget and Finance Committee, having met on August 13, 2007, and October 15, 2007, makes reference to County Communication No. 07-229, from Councilmember Joseph Pontanilla, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 3.48.425 AND 3.48.450, MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY TAX EXEMPTIONS".

The purpose of the proposed bill is to establish criteria to ascertain a taxpayer's intent to reside in the County for purposes of the real property tax homeowner exemption. The proposed bill also allows the Director of Finance to request proof of residency and increases the penalty for homeowners who fail to timely report a change in their status that affects their exemption.

At its meeting of August 13, 2007, your Committee met with the Director of Finance; the Acting County Real Property Tax Administrator, Real Property Tax Division, Department of Finance; and the First Deputy Corporation Counsel.

Your Committee received oral testimony from one person who supported the need to clarify the requirements for the homeowner exemption, and extend the homeowner exemption to part-time residents.

The Director of Finance stated that there have been significant increases in the tax benefits for homeowners due to recent increases in the amount of the homeowner exemption and decreases in the homeowner tax rate. This increase in tax benefits heightens the need for enforcement of the homeowner classification.

The Director of Finance further stated that the proposed bill provides the opportunity for the Real Property Tax Division to verify whether a property owner meets the requirements for the homeowner exemption. The proposed bill authorizes the Director to "demand documentary evidence of intent to reside in the County from a property owner applying for an exemption or from an owner as evidence of continued qualification for an exemption".

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Your Committee questioned why eligibility for the homeowner exemption should be based on a property owner's intent to reside rather than actual residency.

The Director of Finance stated that the Department would consider revising the proposed bill by replacing "intent to reside" with "demonstrated residency". The Director further stated that such a requirement would exclude property owners that have recently moved into the County with the intent to reside in the County.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence received on August 21, 2007, a constituent commended your Committee's efforts to improve enforcement of the homeowner exemption.

By correspondence dated August 28, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel respond to questions regarding the Council's authority to require durational residency and/or the filing of an income tax return as a resident of the State of Hawaii for the homeowner classification and exemption.

By correspondence dated October 11, 2007, the Chair of your Committee reminded Committee Members of the December 31, 2007 homeowner exemption application deadline for Fiscal Year 2009, and the urgency of taking action to assist the Department in their efforts to enforce the homeowner classification and exemption.

By correspondence dated October 12, 2007, the Department of the Corporation Counsel responded to your Committee's August 28, 2007 request. The Department opined that "there is a material risk that, if challenged, a durational residency requirement for the homeowner classification and exemption would be invalidated as a violation of equal protection" and "The Council may by ordinance require an individual or individuals to provide proof of the filing of an income tax return as a resident of the State of Hawaii with a reported address in the County for Homeowner classification and exemption purposes."

At its meeting of October 15, 2007, your Committee met with the Director of Finance; the Acting County Real Property Tax Administrator, Real Property Tax Division, Department of Finance; the Corporation Counsel; and a Deputy Corporation Counsel.

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Your Committee received oral testimony from one person, supporting the enforcement of the homeowner exemption by requiring property owners to confirm they are homeowners when they receive their tax bill.

The Corporation Counsel stated that there is a material risk that a durational residency requirement for the homeowner classification and exemption would be invalidated as a violation of the equal protection clauses of the Hawaii and the United States Constitutions. He further stated that the Hawaii Supreme Court has not had an occasion to decide the constitutionality of a durational residency requirement for a real property tax home exemption because none of the counties in Hawaii have adopted such a requirement.

The Corporation Counsel further stated that the Council may, by ordinance, require an individual or individuals to provide proof of the filing of an income tax return as a resident of the State of Hawaii with a reported address in the County for the purpose of the homeowner classification and exemption. Moreover, he stated that the County of Kauai, County of Hawaii, and City and County of Honolulu have already enacted ordinances authorizing their respective directors of finance to require submission of a resident income tax return as a condition for a home exemption.

Your Committee questioned whether the provision in the proposed bill where a property owner's "intent to reside" be evidenced by "occupancy of a home in the County for more than two hundred seventy calendar days of a calendar year" violated the equal protection clause.

The Corporation Counsel responded that there would be no violation of the equal protection clause because there would be more than one standard that the Director of Finance may use to determine a property owner's intent to reside. If an applicant failed a particular standard, the applicant could qualify for the homeowner exemption by providing other documentary evidence to the Director of Finance, such as being a registered voter in the County, or being stationed in the County under military orders of the United States.

Your Committee was concerned that the standard of having a mailing address in the County could be easily circumvented by nonresident property owners who use a County post office box as their mailing address.

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Your Committee voted to recommend that Section 3.48.450(C)(4) be revised to replace the conjunction “and” with “or”.

Your Committee voted to recommend that Section 3.48.450(C)(5) be revised to read as follows: “A mailing address consistent with the subject property”.

Your Committee voted to recommend passage of the revised proposed bill and filing of the communication.

Your Committee is in receipt of a revised proposed bill, incorporating your Committee’s recommended revisions.

Your Budget and Finance Committee **RECOMMENDS** the following:

1. That Bill No. _____ (2007), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING SECTIONS 3.48.425 AND 3.48.450, MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY TAX EXEMPTIONS”, be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 07-229 be FILED.

Adoption of this report is respectfully requested.

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JOSEPH PONTANILLA **Chair**

DANNY A. MATEO **Member**

G. RIKI HOKAMA **Vice-Chair**

BILL KAUAKEA MEDEIROS **Member**

MICHELLE ANDERSON **Member**

MICHAEL J. MOLINA **Member**

GLADYS C. BAISA **Member**

MICHAEL P. VICTORINO **Member**

JO ANNE JOHNSON **Member**