WRITTEN TESTIMONY OF

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NAREIT
IN OPPOSITION TO SB 301 SD 1

BEFORE THE HAWAII HOUSE
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

THE HONORABLE ROY M. TAKUMI, CHAIR
THE HONORABLE LINDA ICHIYAMA, VICE CHAIR

HEARING ON SB 301 SD 1

MARCH 19, 2019
2:00 P.M.

Thank you for the opportunity to submit this testimony on behalf of the Hawaiʻi members of Nareit. Nareit is the worldwide representative voice for real estate investment trusts—REITs—and publicly traded real estate companies with an interest in U.S. real estate and capital markets.

For the reasons discussed in more detail below, these REITs, which have substantial long-term investments in Hawaiʻi, strongly oppose, and ask you to hold, SB 301 SD 1, legislation that would eliminate the REIT "dividends paid deduction" (DPD).

- **SB 301 SD 1 Would Produce Less Revenue Than Current Law**

  - **Department of Taxation's (DoTax) public testimony estimates at best an incremental increase in revenue:** Enactment would raise, at best, approximately $2.5 million the first year and $10 million annually thereafter according to DoTax's public testimony. [1]

  - **DoTax says actual revenue could be lower – even zero:** But actual revenue raised could be lower, a DoTax representative cautioned in public testimony.[2]

  - **Loss of GET would more than offset any increase:** And, as described further below, the largest source of state revenue, the general excise tax (GET) 's reduction, particularly as the GET affects hotel REITs, could more than offset any revenue gains.

  - **What about the larger amounts asserted by proponents?** DoTax testimony suggests proponents are relying on "incorrect" numbers in an earlier DBEDT study.[3]

The remainder of this testimony provides additional detail and information.

SB 301 SD 1 Would Produce Less Revenue Than Current Law

According to the Department of Taxation, enactment would only raise an incremental amount of revenue; however, enactment could result in a potential $6 million loss when factoring in lost General Excise Tax (GET) revenue. During deliberations following the Senate Ways and Means Committee Feb. 6, 2019 hearing on SB 301, Senate Ways and Means Committee Chair Dela Cruz noted that the Department of Taxation (DoTax) has estimated that, at best, SB 301 would raise about $2.2 million the first year and $10 million annually thereafter.[4]. In addition, during the Feb. 12, 2019 House Committee on Consumer Protection & Commerce hearing on the companion bill, to SB 301, HB 475, HD1, the DoTax representative confirmed the above estimate. However, he cautioned that the actual revenue could be lower due to taxpayers' claiming additional deductions to which they were

[1] Note comments around 3:40:23 to 3:40:38 of the Feb. 12, 2019 video of the House Consumer Protection & Commerce hearing on the companion bill to SB 301 SD 1, HB 475 HD 1, available at this link.
[2] Note comments around 3:41:02 to 3:41:41 of the Feb. 12, 2019 video of the House Consumer Protection & Commerce hearing on HB 475 HD 1 available at this link.
[3] Note comments around 3:40:40 to 3:40:56 of the Feb. 12, 2019 video of the House Consumer Protection & Commerce Committee hearing on HB 475 HD 1, available at this link.
[4] Note comments at 1:17:55 to 1:18:10 of the Feb. 6, 2019 video of the Senate Ways and Means Committee hearing on SB 301, available at this link.

otherwise entitled.[5] He also noted that the numbers in the 2016 Department of Business, Economic Development & Tourism study concerning REITs were similarly “incorrect.”[6]

Because of unique requirements applicable to REITs, essentially resulting in an additional level of GET, the State received more than $16 million in annual GET in 2018 alone just from hotel REITs in Hawaiʻi that non-REIT hotel owners wouldn’t owe. Federal law requires that REITs must earn most of their income from “rent” and similar real estate income. For this purpose, hotel room charges and other operating/service-related income are not “rent”. Unlike other owner-operators, REITs with operating properties like hotels, hospitals, parking garages, and theme parks must either lease those properties to a third party operator (like Marriott or Hilton) or with hotels and certain health care properties, to a fully taxable subsidiary in exchange for market-based rent. If leased to a taxable subsidiary, federal law requires the subsidiary to hire an independent operator. In Hawaiʻi, the operator/subsidiary lease results in one level of REIT-specific GET revenue to the State, and the management fee results in yet another level of REIT-specific GET revenue to the State. (See attached diagram).

For example, Park Hotels & Resorts, Inc. leases its Hawaiʻi hotels to a taxable subsidiary, and, in Hawaiʻi, the taxable subsidiary hires Hilton to operate its hotels. Both the subsidiary rents and the operator fees have resulted in an **additional annual GET of approximately $9.5 million** to Hawaii for each of 2017 and 2018 that the prior owner, Hilton, as a non-REIT hotel owner-operator, wasn’t paying before. When aggregated with other REIT hotel owners in Hawaiʻi, this additional GET is estimated to **exceed $16 million in 2018**.

And as a tax on gross receipts rather than a tax on net income, the GET makes up the majority of the State’s revenue, constituting a much larger percentage of the State’s budget (around 50%) than the corporate income tax (around 1-3%) and a much more stable source of State revenues than corporate income tax, which goes up and down according to the economy. (For example, see data from Council on State Revenues for FY 2019 To FY 2025). **SB 301 SD 1’s enactment would seriously endanger this extremely valuable source of GET revenues to the State.** Not only that, enactment also would put at risk the revenues and jobs created by non-hotel REITs that invest in the State.

This additional GET does not even consider the tens of millions of dollars of GET revenues generated from construction, repairs, and tenant businesses, as well as personal income tax and transient accommodation taxes directly attributable to the billions of dollars invested by REITs over the past few years in the State to build, among other investments, student housing at UH Manoa or affordable rental housing, including Moanalua Hillside Apartments in Aiea. REITs also provide office space for small businesses that employ thousands of local residents. Medical facilities made possible by REITs, like Hale Pawaʻa, also ensure Hawaiʻi physicians can deliver the highest quality care in state-of-the-art facilities.

Given the risk of losing up to $16 million in GET annually, and the risk of lost jobs, it would not be prudent to enact SB 301 SD 1.

[5] *See* footnotes 1 and 2 above.
[6] *See* footnote 3 above.

Unlike non-REIT property investors, REITs can't retain their earnings. Like other corporations, REITs are subject to the corporate income tax rules. However, if REITs meet specific requirements to ensure that they are widely-held, long-term investors in real estate, and they distribute at least 90% of their taxable income to shareholders, REITs can claim a dividends paid deduction (DPD). REITs can retain up to 10% of taxable income (for example, during a recession) but must pay corporate tax on what they retain. While REITs are subject to requirements that other businesses are not, SB 301 SD 1 would enact a drastic policy change that would put Hawaii at odds with virtually all other states regarding the taxation of REIT income at the shareholder level only based on the state of shareholder residence.

Unlike other real estate businesses, REITs cannot be in the business of "flipping" properties. Any gain from a REIT's doing so is subject to a 100% tax. REITs are long-term neighbors in this community. The conflation of REITs with the activities in Kakaako suggests that the nature of REITs is not fully understood. REITs hold their investments for a very long time. These entities are not making a quick profit and leaving town; they are making long-term real investments back into the community and improving the State's retail, office, hotel, affordable rentals, and medical facilities.

Hawai'i taxes REIT shareholders on dividends from out-of-state sources. Many Hawai'i residents may not even realize that they benefit from REITs either through mutual funds or their pension or retirement accounts. Nareit analysis of data from 2016 Federal Reserve Board Survey of Consumer Finances (SCF), the Employment Benefit Research Institute data on 401(k) equity allocations (EBRI), Census population and household counts, and Morningstar Direct data, indicate that about 44% of Hawaii households own REIT stock directly and/or through mutual funds or certain retirement accounts (See attached chart comparing REIT ownership by Hawai'i households to that in other states.). There are more than 200 publicly traded REITs, and only about 30 REITs with Hawai'i properties. As a result, a significant portion of REIT ownership most likely relates to REITs with properties outside of Hawai'i.

For example, securities law filings show that Hawaii-based institutional investment managers own tens of millions of dollars' worth of REIT stock. The chilling effect of this measure --which would result in Hawai'i's REIT investment's being taxed differently from REIT investment virtually anywhere else-- would cause such local investors to consider avoiding investment in REITs with Hawai'i interests, resulting in less revenue for the state.

SB 301 SD 1's Enactment Would Lose Jobs for Hawai'i Residents

SB 301 SD 1 risks significant job loss. Enactment of SB 301 SD 1 would potentially result in a reduction of millions of dollars of new REIT investment, a shift in property ownership to tax-exempt owners like pensions and endowments, and loss of revenue and the stability of hundreds of the jobs generated by REITs to the State. These existing and potential jobs belong to real people. Is it fair to risk significant job loss by enacting this proposal?

Enacting this proposal would signal Hawai'i's discouragement of long-term capital investment in the State. REITs provide sorely needed investment capital to Hawai'i. If this measure is passed it is very likely that potential REIT and non-REIT investors, fearing unexpected law changes postinvestment, would choose to deploy their capital elsewhere, Hawai‘i would be on the outside looking in.

Hawai‘i’s significant economic growth over the past several years is, and we hope into the future, will be, a direct result of REIT investment. The popular new addition to Ala Moana Center was made possible by REIT funding. That project alone was estimated to have brought in more than $146 million in state revenue in 2016. Since completion, the additional retail sales produced some estimated $33 million in GET revenue for the state, along with 3,000 new jobs.

Hawai‘i residents have benefitted from REIT investment, which made possible dining at the Cheesecake Factory at Ka Makana Ali’i or taking their family to Wet'n'Wild or going shopping at Pearlridge, more eating choices and better Waikiki parking opportunities with the re-development of the International Market Place, not to mention the financial benefits to the Queens Health System, which is the landowner.

These jobs and tax revenue would not be here without REIT funding. REIT investment continued during the recession we recently experienced. While regular investors shied away from re-development, REITs continued to build and improve their properties, providing a boost to the State’s local economy through needed construction jobs and later retail jobs for the completed projects.

While REITs in Hawai‘i have been good for the local economy, they have also supported a wide variety of non-profit organizations providing much-needed services throughout the state. For example, Washington Prime Group’s Pearlridge Center has partnered with the Honolulu Chapter of the American Institute of Architects to support the “Canstruction” project. Over the past 13 years, more than 377,042 pounds of food has been raised through this event to help feed the hungry in Hawai‘i – providing more than 296,884 meals.

SB 301 SD 1 Would Violate Core State Comity Principles

SB 301 SD 1 would be contrary to federal income tax rules and the existing laws of virtually every other state with an income-based corporate tax system. Virtually every state with an income-based tax system, including Hawaii currently, allows REITs a deduction for dividends paid. (New Hampshire is the only state with income-based corporate tax that does not permit a DPD. New Hampshire has much less REIT investment than Hawai‘i; see attached chart.) Additionally, Hawai‘i currently taxes all REIT dividend income received by Hawaii resident shareholders, regardless of where the REIT’s real estate is located or the REIT does business.

All other states that impose income taxes also tax the REIT income based on the location of the resident that receives the REIT dividends and not based on the location of the real estate. SB 301 SD 1 would eliminate this comity of state taxation principles by unilaterally double taxing REITs (and their shareholders) that do business in Hawai‘i. In past years, a number of states such as Idaho, Louisiana, New Jersey, North Carolina, and Rhode Island have examined, and then rejected, the disallowance of a widely-held REIT’s DPD.

SB 301 SD 1 Would Not Create Parity Between Partnerships/LLCs and REITs

If the legislature wanted to enact true tax conformity between REITs and partnerships, SB 301 SD 1 should be broadened to impose on partnerships the same burdens that would apply to REITs, namely that partnerships/LLCs would be required to annually distribute all their earnings to investors and still be subject to an entity-level tax applied on those. Of course, any such effort presumably would be met with fierce resistance from the investment community.

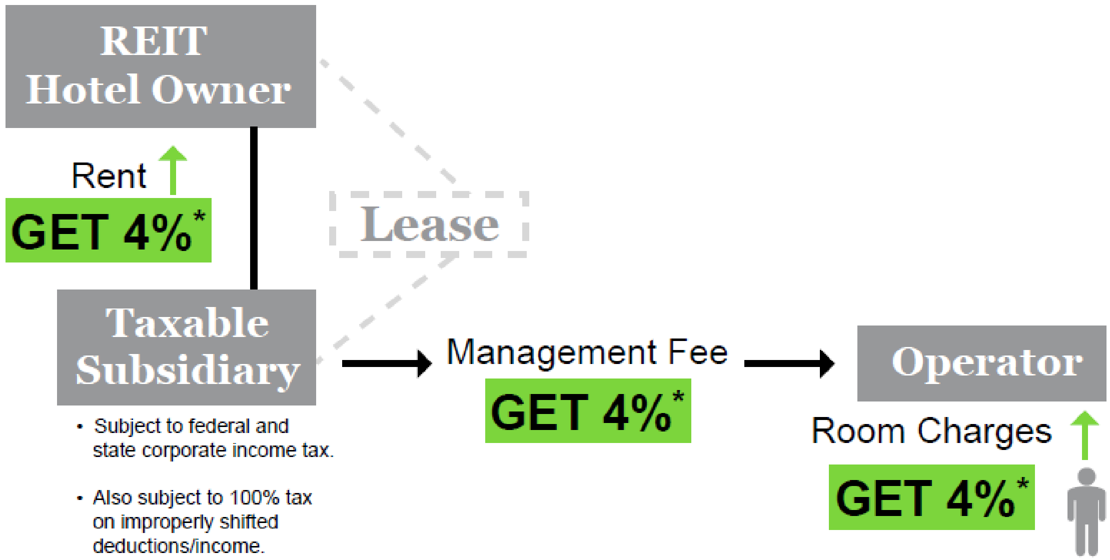
Please Do Not Enact SB 301 SD 1

Considering the many problems with the provisions of this measure and the likelihood for real economic harm that could result if it were to pass, the Hawai‘i members of Nareit respectfully ask that you hold this bill.

Attachments

REIT-Owned Hotels: Triple General Excise Tax (GET) to Hawai'i

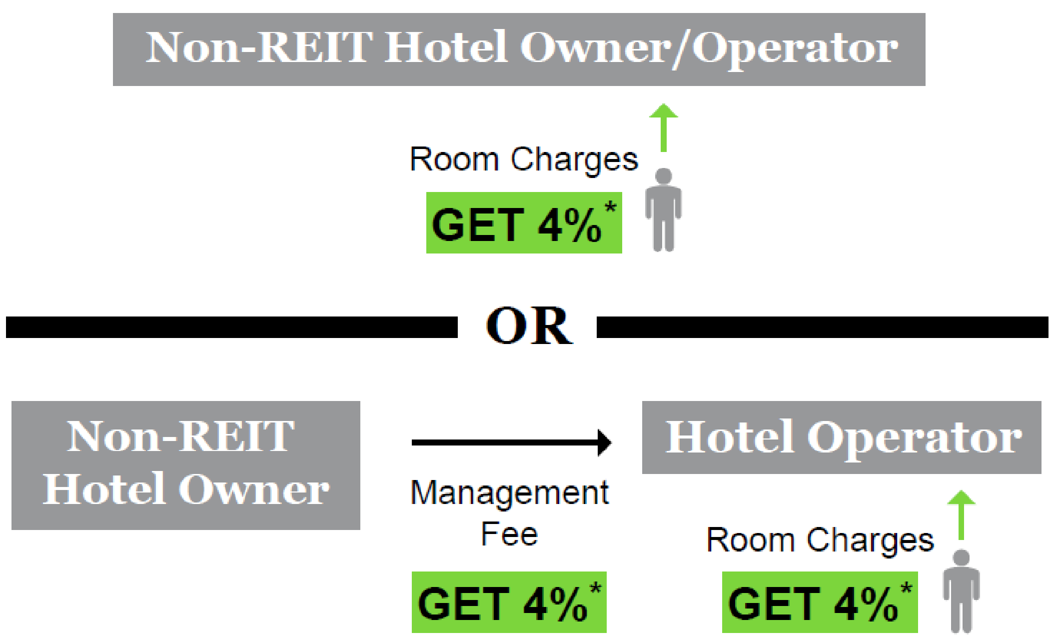
As a REIT, most income must come from "rents," or other passive real estate-related income.
Hotel operating income does not qualify; thus hotel REITs must lease their hotels to a taxable company.



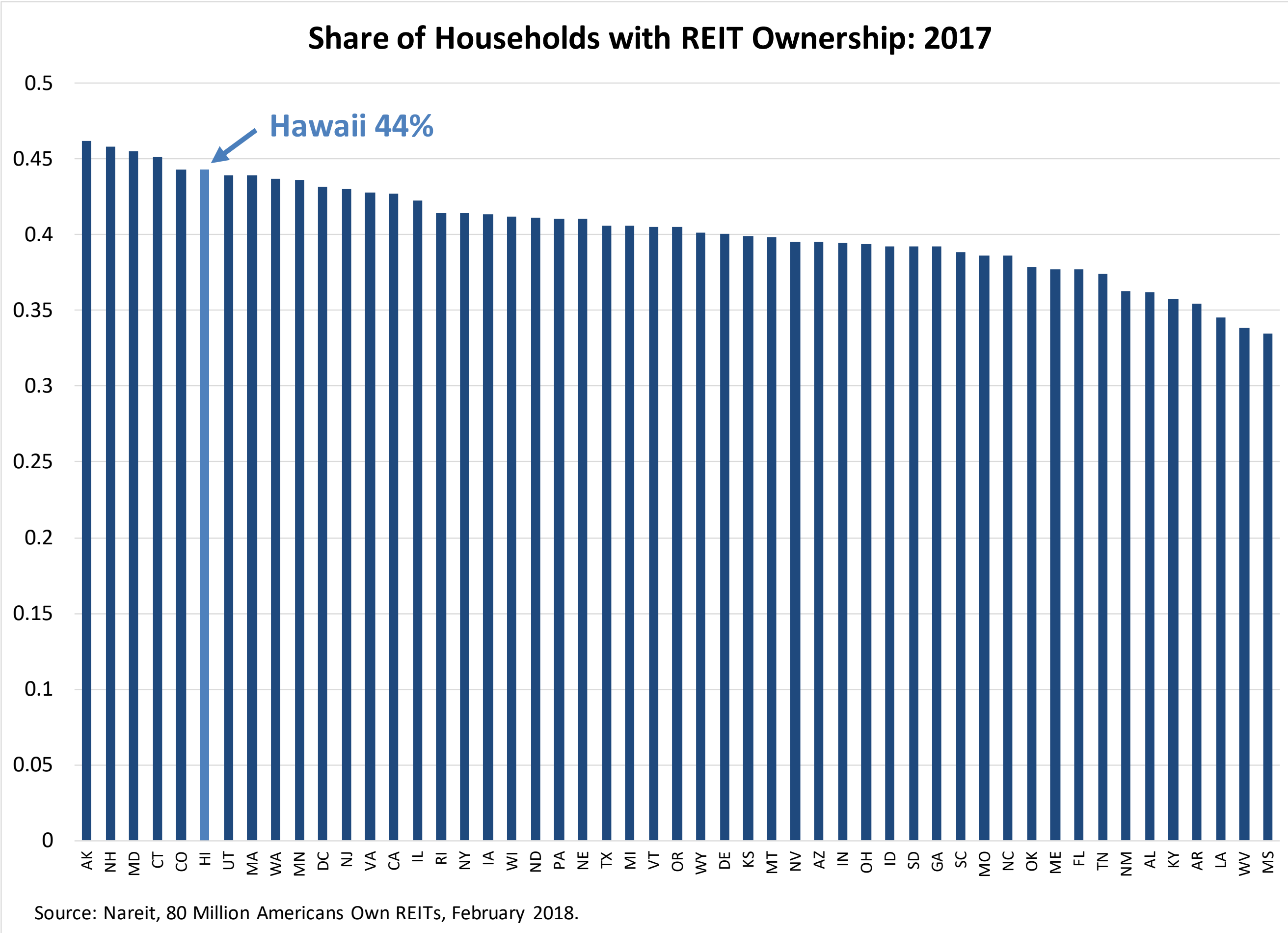
- If hotel REIT leases to a taxable subsidiary, the taxable subsidiary must hire an independent operator to manage the hotel.
- REIT-owned hotels pay GET to Hawai'i **three** times.
- Non-REIT owned hotels pay GET to Hawai'i only **one** or **two** times as seen in the following chart.

Non-REIT Owned Hotels: Single or Double GET to Hawai'i

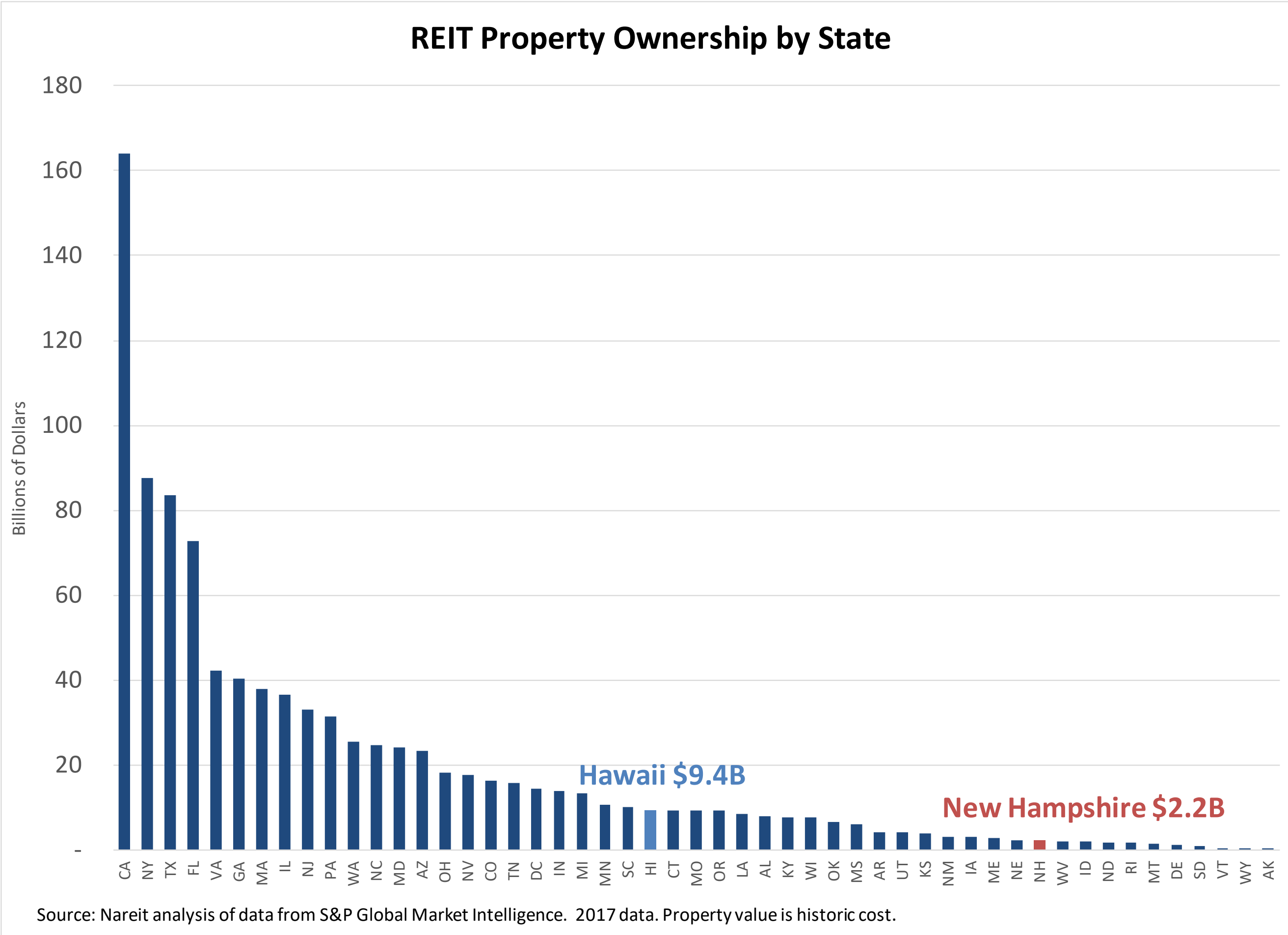
Non-REIT hotel owners either can 1) own and operate hotels, or 2) own their hotels and hire an operator (e.g., Hilton, Marriott, or Hyatt, etc.) to manage their hotels.



* Minimum



As shown in the above chart, Nareit analysis of data from 2016 Federal Reserve Board Survey of Consumer Finances (SCF), the Employment Benefit Research Institute data on 401(k) equity allocations (EBRI), Census population and household counts, and Morningstar Direct data, indicate that about 44% of Hawaii households own REIT stock directly and/or through mutual funds or certain retirement accounts.


REIT Property Ownership by State
Billions of Dollars
180
160
140
120
100
80
60
40
20
-
Hawaii $9.4B
New Hampshire $2.2B
CA NY TX FL VA GA MA IL NJ PA WA NC MD AZ OH NV CO TN DC IN MI MN SC HI CT MO OR LA AL KY WI OK MS AR UT KS NM IA ME NE NH WV ID ND RI MT DE SD VT WY AK
Source: Nareit analysis of data from S&P Global Market Intelligence. 2017 data. Property value is historic cost.