



GOV. MSG NO 873

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2198 SD2 HD2 CD2, without my approval, and with the statement of objections relating to the measure.

SB2198 SD2 HD2 CD2

A BILL FOR AN ACT RELATING TO LAND
CONSERVATION.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2198

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval Senate Bill No. 2198 entitled "A Bill for an Act Relating to Land Conservation."

The purpose of this bill is to encourage the protection and preservation of land suitable for conservation by establishing a tax credit of \$1 million for the sale, donation, or management of land for conservation purposes.

While the intent to preserve conservation lands is commendable, the bill poses both operational and fiscal problems.

The bill places a cap of \$1 million on the amount of credit any one taxpayer can receive. The bill also places a \$1 million aggregate tax credit on the total amount that may be paid to all qualified taxpayers during the five years that the program is in effect. The amount is both outside the budget and unrealistic.

First, any single donation of \$2 million would qualify to use the entire amount of the credits available for the entire program through the year 2013. More troubling is the fact that the bill does not indicate how competing and equally qualified submissions for the credit should be awarded, opening the program to potential litigation or challenge.

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SENATE BILL NO. 2198
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Second, unlike conservation tax credits enacted in other states, this bill permits the credit to be taken for voluntary investments in the management of land, an activity that is fraught with interpretation and possible abuse. Further, this bill does not prohibit a taxpayer from claiming both a credit and a State deduction, thus double-dipping into the State tax coffers. Additionally, the bill incorrectly references pass-through entities, in violation of well-settled tax principles for the treatment of partnerships, limited liability corporations, and corporations.

It should be noted that State and federal programs, including the legacy lands program, currently exist to encourage landowners to engage in good stewardship, consider charitable donations of their property, or allow for the State to purchase and preserve conservation properties. These programs will continue to have my support and do not result in the types of fiscal or operational problems this measure poses.

For the foregoing reasons, I am returning Senate Bill No. 2198 without my approval.

Respectfully,


LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO LAND CONSERVATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to provide a land
2 conservation incentives tax credit to encourage the preservation
3 and protection of land in the State.

4 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§235- Land conservation incentives tax credit;
8 definitions. (a) There shall be allowed to every eligible
9 taxpayer a land conservation incentives tax credit that shall be
10 deductible from the taxpayer's net income tax liability imposed
11 by this chapter for taxable years after December 31, 2007;
12 provided that a husband and wife filing separate returns for a
13 taxable year for which a joint return could have been filed by
14 them shall claim only the tax credit to which they would have
15 been entitled had a joint return been filed.

16 (b) The tax credit shall apply to an eligible taxpayer
17 who:



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1 (1) Donates land in perpetuity or completes a bargain sale
2 in perpetuity to the State or public or private
3 conservation agency that fulfills a conservation or
4 preservation purpose; provided that any donation or
5 sale that represents a less-than-fee interest
6 qualifies as a charitable contribution deduction under
7 Section 170(h) of the Internal Revenue Code of 1986,
8 as amended; or

9 (2) Voluntarily invests in the management of land to
10 protect or enhance a conservation or preservation
11 purpose under a land protection agreement,
12 conservation management agreement, or other legal
13 instrument that is consistent with a conservation or
14 preservation purpose.

15 (c) Donations of land for open space for the purpose of
16 fulfilling density requirements to obtain subdivision or
17 building permits do not qualify for the land conservation
18 incentives tax credit.

19 (d) The amount of the tax credit shall be:

20 (1) Fifty per cent of the fair market value of the land or
21 interest in land that an eligible taxpayer donates in
22 perpetuity after December 31, 2007, for a conservation



1 or preservation purpose to the State, or public or
2 private conservation agency. The fair market value of
3 donations made under this section shall be
4 substantiated by a qualified appraisal prepared by a
5 qualified appraiser, as those terms are defined under
6 applicable federal law and regulations governing
7 charitable contributions; or

8 (2) Fifty per cent of the amount invested in the
9 management of land pursuant to subsection (b)(2),

10 up to a maximum of \$1,000,000 in the aggregate for all qualified
11 taxpayers for all years.

12 (e) The amount of the tax credit shall not exceed
13 \$1,000,000 per donation regardless of the value of the land or
14 interest in land; provided that if the tax credit under this
15 section exceeds the taxpayer's net income tax liability under
16 this chapter, any excess of the tax credit over liability may be
17 used as a credit against the taxpayer's income tax liability in
18 subsequent taxable years until exhausted.

19 An eligible taxpayer may claim the land conservation
20 incentives tax credit only once per taxable year.

21 (f) The tax credit claimed by a pass-through tax entity
22 may be used either by the pass-through tax entity or a member,



1 manager, partner, shareholder, or beneficiary of the pass-
2 through entity, in proportion to the total interest of the
3 member, manager, partner, shareholder, or beneficiary; provided
4 that:

5 (1) There is in fact a pass-through; and

6 (2) The tax credit may be claimed only once by either the
7 pass-through entity or the member, manager, partner,
8 shareholder, or beneficiary, but not both.

9 (g) Every claim, including amended claims, for the tax
10 credit under this section shall be filed on or before the end of
11 the twelfth month following the close of the taxable year for
12 which the tax credit may be claimed. Failure to meet the filing
13 requirements of this subsection shall constitute a waiver of the
14 right to claim the tax credit.

15 (h) The director of taxation:

16 (1) Shall prepare forms necessary to claim a tax credit
17 under this section;

18 (2) May require proof of the claim for the tax credit; and

19 (3) May adopt rules pursuant to chapter 91 to effectuate
20 the purposes of this section.

21 (i) The chairperson of the board of land and natural
22 resources and the chairperson of the board of agriculture may



1 adopt rules pursuant to chapter 91 to effectuate this section
2 and to certify that a donation or investment claimed for a tax
3 credit under this section fulfills a conservation or
4 preservation purpose pursuant to subsection (k).

5 (j) Any appraisals prepared pursuant to subsection (d) (1)
6 shall be subject to all requirements, including penalties for
7 valuation misstatements, for appraisals and appraisers under
8 applicable federal law and regulations governing charitable
9 contributions.

10 (k) As used in this section:

11 "Bargain sale" means a sale where a taxpayer is paid less
12 than the fair market value for land or an interest in land.

13 "Conservation or preservation purpose" means:

- 14 (1) Protection of open space for scenic values;
15 (2) Protection of natural areas for wildlife habitat,
16 biological diversity, or native forest cover; or
17 (3) Preservation of forest land; agricultural land;
18 watersheds; streams; rainfall infiltration areas;
19 outdoor recreation, including hiking, biking, and
20 walking trails; and historic or cultural property;

21 provided that the resources or areas protected or preserved are
22 designated as significant or important by a relevant state



1 agency, and that the state agency work with the taxpayer to
2 identify opportunities for public access if appropriate and
3 reasonable, and that nothing herein shall prevent the exercise
4 of any rights of Native Hawaiians for traditional and customary
5 practices as may be required by law.

6 "Cultural property" means a structure, place, site, or
7 object having historic, archaeological, scientific,
8 architectural, or cultural significance.

9 "Eligible taxpayer":

10 (1) Means a Hawaii taxpayer who is not claimed or is not
11 otherwise eligible to be claimed as a dependent by
12 another taxpayer for federal or Hawaii state
13 individual income tax purposes; and

14 (2) Includes individuals, corporations, or pass-through
15 tax entities such as trusts, estates, partnerships,
16 limited liability companies or partnerships, S
17 corporations, or other fiduciaries.

18 "Interest in land" means a right in real property,
19 including access, improvement, water right, fee simple interest,
20 easement, land use easement, partial interest in real property,
21 mineral right, remainder or future interest, or other interest
22 or right in real property that complies with the requirements of



1 Section 170(h)(2) of the Internal Revenue Code of 1986, as
2 amended.

3 "Land" means real property, including rights of way,
4 easements, privileges, water rights, and all other rights or
5 interests related to real property.

6 "Public or private conservation agency" means a
7 governmental body or a private nonprofit charitable corporation
8 or trust authorized to do business in the state that is
9 organized and operated for natural resources, land, or historic
10 conservation purposes and that has tax-exempt status as a public
11 charity under Section 501(c)(3) of the Internal Revenue Code of
12 1986, as amended, and has the power to acquire, hold, or
13 maintain land or interests in land."

14 SECTION 3. Section 205-45, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) A farmer or landowner with lands qualifying under
17 section 205-44 may file a petition for declaratory ruling with
18 the commission at any time in the designation process. The
19 holder of an interest in agricultural lands that qualifies for
20 the land conservation incentives tax credit under section 235-
21 may petition the commission for designation of the agricultural



1 lands as important agricultural lands, and enjoy the incentives
2 for important agricultural lands provided under section 205-46."

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect on July 1, 2008,
5 shall be repealed on December 31, 2013, and shall apply to
6 taxable years beginning after December 31, 2007.

