

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES

on House Bill 2518 – RELATING TO LAND CONSERVATION

BEFORE THE HOUSE COMMITTEE
ON
FINANCE

February 20, 2008

House Bill 2518 provides a land conservation incentive tax credit to encourage the preservation and protection of land in the State. While the Department of Land and Natural Resources (Department) acknowledges the intent of this measure to provide incentives for landowners to preserve and protect their important *mauka* lands, the Department nonetheless defers to the Department of Taxation on any tax implications and effects the bill would have on their operations.

Over half of the lands in Hawai'i are privately owned and *mauka* lands, including intact forests, open woodlands, and pasture lands, and provide a significant amount of "ecosystem services," that support all of Hawaii's residents and visitors. These services include the delivery of clean drinking water, carbon sequestration that stabilizes the climate, cultural practices, opportunities for recreation, and many others. These lands also play a critical role in supporting Hawaii's unique native plants and animals. It is essential to provide solid stewardship incentives for private landowners to care for *mauka* lands that are critical in ecosystem service production.

The Department participated in a working group formed in response to House Concurrent Resolution (HCR) 200, 2006 Legislative Session, to conduct an analysis of local, national, and international incentive programs that promote landowner protection of important *mauka* lands and recognize the public benefits of the ecosystem services provided by those lands. The establishment of state tax credits for donated conservation easements and landowner-funded activities that promote conservation on private lands was one of the key recommendations in the working group report (<http://hawaii.gov/dlnr/reports/2008/division-of-forestry-wildlife/FW08-Important-Mauka-Lands-Report.pdf>).

Promoting conservation easements is a valuable conservation tool. Conservation easements are restrictions placed on land to enhance conservation values. They are either voluntarily sold or donated by a landowner. The Legacy Land Conservation Program (LLCP), Chapter 173A, Hawaii Revised Statutes, provides State funding for the acquisition of conservation easements on lands having value as a resource to the State. This measure would provide tax credits for

landowners that donate or make a bargain sale of land or conservation easements or voluntarily invest in conservation management. These credits would be added to Federal tax benefits for these actions. The combination of existing Federal tax benefits and proposed State tax credits will likely provide an immediate stimulation to expanded conservation actions and promote delivery of ecosystem services on *mauka* lands throughout the State with its public benefits.

Below are excerpts from the HCR 200 Report, Exhibit F. - *Overview of Conservation Easements and Related Tax-benefits*, with additional information on the benefits of State Tax Credits.

- **What are the benefits to a landowner of donating or selling a conservation easement over all or part of his or her land?**
 - Landowners may receive a federal income tax deduction for all or a portion of the value of a donated conservation easement
 - In 12 states, landowners may receive a state tax credit for all or a portion of the value of a donated conservation easement
 - Landowners who donate conservation easements can significantly lower their estate taxes
 - Landowners with conservation easements may enjoy reduced property taxes for land under easement

- **State Tax Credit Benefits**
 - In addition to federal income tax deductions, landowners who donate conservation easements may also be eligible for a state tax credit. Twelve states currently offer some form of state tax benefit based on the value of a donated easement, though there is no uniform model.
 - Most of these states adopt the eligibility criteria found in the federal Internal Revenue Code section 170(h).
 - The state tax credit may be for all or a portion of the fair market value of the easement, subject to an annual cap, and may allow any unused value be carried forward for a set period of years.
 - Some states make the credits tradable – meaning the tax credits may be sold to a third party for cash (usually at a reduced rate)
 - Some states also allow landowners to seek credits based on transaction costs from the easement donation (e.g. assessors fees) or for stewardship and other land management costs

LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE
WEDNESDAY, FEBRUARY 20, 2008
3:30 P.M.
Room 308

HOUSE BILL 2518
RELATING TO LAND CONSERVATION

Chairperson Oshiro and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2518 that seeks to establish a tax credit to encourage the preservation and protection of certain donated or "bargain sale" lands in the State at less than fair market value, and in perpetuity. The Department of Agriculture supports the intent of this measure provided that it does not displace or adversely affect the priorities in the Executive Biennium Budget and offers one amendment that could help to protect more agricultural lands. We defer to the Department of Taxation regarding the tax credit and its implications on the State budget.

We recommend an amendment that will help to designate important agricultural lands and offer land owners of these lands access to incentives for important agricultural lands that will be developed and enacted by the legislature, provided they do not conflict with the provisions of this new section. We would like to add the following amendment to be inserted on page 2, after line 3:

"The holder of the interest in agricultural lands protected or preserved pursuant to this section may petition the state land use commission for designation of the affected agricultural lands as important agricultural land, pursuant to section 205-45 and have access to incentives developed and enacted pursuant to Part III of chapter 205 that do not adversely affect the provisions of this section."

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

HOUSE COMMITTEE ON FINANCE
TESTIMONY REGARDING HB 2518
RELATING TO LAND CONSERVATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 20, 2008

TIME: 3:30PM

ROOM: 308

This legislation provides a nonrefundable income tax credit for bargain sales or contributions of land for purposes of preservation.

The House Committee on Water, Land, Ocean Resources & Hawaiian Affairs passed this measure unamended.

The Department of Taxation has concerns with this legislation.

The Department very much recognizes the importance of preserving conservation and culturally relevant lands in order to maintain Hawaii's priceless lands. However, the Department has issues with administering this tax credit.

I. TECHNICAL COMMENTS

The following technical issues are apparent:

USE OF FAIR MARKET VALUE—The Department is always apprehensive when "fair market value" is used as the standard by which a tax credit or other tax incentive is calculated. Fair market value can mean something different to anyone, especially when a tax benefit is involved. The concern for the Department relates more to perceived frauds and abuses of land prices used to calculate the amount of the credit.

Assuming fair market value is the only measure that can be used for this credit, the Department strongly suggests that the bill be amended to require a qualified appraisal of any land deals. For even more fraud protection, the Department suggests incorporating a penalty similar to Internal Revenue Code § 6695A that will penalize an appraiser who is complicit in a fraudulent land

deal for purposes of this credit. An additional penalty similar to that provided under § 6662 of the Internal Revenue Code would prohibit taxpayers from similarly misusing any appraisals.

PROPERTY CLASS STANDARDS—The Department is concerned about certain of the definitions used with the credit. For example, "conservation and preservation purpose" and "cultural property" are both very broad terms and the express definitions only increase the expanse of these definitions. The Department recognizes the rulemaking authority; however settling the issue in statute is the preferred method.

PUBLIC OR PRIVATE CONSERVATION AGENCY—There is concern over who will be running any conservation program. In order to ensure continuity and consistency, the Department suggests amending the bill to ensure some specific government agency be charged with implementing the conservation program before any tax credit is available.

PASS-THROUGH ENTITY PROVISION—Subsection (g) is unnecessary and confusing. Well-settled principles of partnership (pass-through) entity law typically do not allow any tax consequences for the "entity." All tax attributes of a partnership flow through to the partners that realize the tax consequences on individual tax returns. The Department strongly suggests that subsection (g) be eliminated entirely.

DOUBLE TAX BENEFIT—Generally, the taxpayer would receive a charitable contribution deduction for the donation of the property to a government entity or a nonprofit entity. In addition, arguably providing a tax credit in exchange for the donation could be treated as taxable sale of the property.

RULEMAKING—The Department already has broad rulemaking authority. Subsection (i) is unnecessary. There is also a conflict between subsection (i) and (j). Do both agencies get to make concurrent rules? Will one agency's rules trump the other?

CERTIFICATION PROCESS—In light of the Department's concerns, the Department also suggests a certification process whereby, rather than the Board of Land & Natural Resources being authorized to make rules for this credit, the DLNR could be authorized to certify credits, maintain information, and simply send a certificate to the Department to process the credit. Other similar certification processes are currently administered with the Department of Business, Economic Development & Tourism and the Hawaii Film Office. *See e.g.*, HRS § 235-17.

II. REVENUE IMPACT

This legislation will result in a revenue loss of approximately \$3.2 million for FY 2009.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Land conservation incentives tax credit

BILL NUMBER: SB 2198; HB 2518 - Identical

INTRODUCED BY: SB by Hee and Hooser; HB by Ito, Awana, Bertram, Brower, Cabanilla, Caldwell, Carroll, Chang, Chong, Evans, Green, Hanohano, Har, Herkes, Karamatsu, Lee, Luke, Magaoay, Manahan, McKelvey, Mizuno, Morita, Nishimoto, B. Oshiro, M. Oshiro, Say, Sonson, Takai, Tokioka, Tsuji, Wakai, Waters, Yamane, Yamashita & 6 Democrats

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow an eligible taxpayer who is the owner of land to claim a land conservation incentives tax credit if the taxpayer: (1) donates the land in perpetuity or completes a bargain sale in perpetuity to the state or public or private conservation agency that fulfills a conservation or preservation purpose; provided that any donation or sales that represent a less-than-fee interest qualifies as a charitable contribution deduction under IRC section 170(h); or (2) voluntarily invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection, conservation, or management agreement. Donations of land for open space to fulfill density requirements to obtain subdivision or building permits do not qualify for the credit.

The amount of the tax credit shall be 50% of the fair market value of the land that the eligible taxpayer donates in perpetuity on or after January 1, 2008 for a conservation or preservation purpose to the state or public or private conservation agency; or 50% of the amount invested in the management of land. Limits the credit to \$2.5 million per donation regardless of the value or interest in the land. The credit may be claimed only once per tax year. Delineates procedures for the claiming of the credit by a pass-through entity.

Credits in excess of a taxpayer's income tax liability may be applied to subsequent income tax liability. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof to claim the credit.

Defines "bargain sale," "conservation or preservation purpose," "cultural property," "eligible taxpayer," "interest in land or real property," "land" and "public or private conservation agency" for purposes of the measure.

EFFECTIVE DATE: Tax years beginning after December 31, 2007

STAFF COMMENTS: This measure proposes an incentive in the form of an income tax credit to encourage a landowner to donate, complete a bargain sale to the state or a conservation agency, or voluntarily invest in the management of land to protect or enhance a conservation or preservation purpose.

SB 2198; HB 2518 - Continued

While the credit may be intended as an incentive, it lacks accountability. In considering this measure, lawmakers should ask themselves just how much will this program cost the state treasury? If this program required an appropriation, how much would lawmakers be willing to appropriate for this program? The financial impact of the proposed credit is no different from the expenditure of public dollars albeit out the back door and hidden from public scrutiny.

Tax credits generally are designed to mitigate the tax burden of those individuals or businesses that do not have the ability to pay their share of the tax burden. These credits are justified on the basis that low-income taxpayers should be relieved of the burden imposed by taxes which are not based on the income of the taxpayer, such as the general excise tax. The proposed credit contained in this measure bears no relationship to the tax burden of the landowner. Thus, the credit amounts to nothing more than a subsidy by state government. Such subsidies are more accountable if funded with a direct appropriation of state funds.

Digested 2/11/08



Legislative Testimony
HB 2518, RELATING TO LAND CONSERVATION
House Committee on Finance

February 20, 2008
Room: 308

3:30 p.m.

The Office of Hawaiian Affairs (OHA) supports the intent of HB 2518, which would provide an incentive tax credit for conservation and preservation lands.

OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries, the people of this land. The Hawaii Revised Statutes (HRS) mandate that OHA "[s]erve as the principal public agency in the State of Hawaii responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; . . . and [t]o assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians." (HRS § 10-3)

Because of these mandates, we must examine all proposals with a view toward the best possible preservation and perpetuation of constitutionally and judicially protected Native Hawaiian rights and practices. On its face, this bill appears to provide for such interests by promoting preservation and conservation through providing tax incentives for private land donations.

We would prefer, however, if the bill included language that assured preservation of Native Hawaiian access, gathering and religious rights and practices within the donated lands that would qualify for the proposed tax exemption. Arguably, these rights run with undeveloped land, but for clarity purposes OHA would prefer language included in the statutory amendment.

We also have questions about the proposed Section 235 - ____ (c)(2), which states that the tax credit would apply to an eligible State taxpayer who "voluntarily invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection agreement, conservation management agreement, or other legal instrument that is consistent with a conservation or preservation purpose." This subsection needs to be clarified so that

LATE TESTIMONY

people do not profit or get subsidized for fulfilling management responsibilities that they already have and should be completing. What qualifies as investment and appropriate land management? Also, must this management investment be toward a conservation or preservation purpose that will run with the land in perpetuity, as in the case of a conservation easement, or could the management investment be a temporary one that may lead to development of the same parcel?

Thank you for the opportunity to testify and for considering our concerns.



**THE TRUST FOR PUBLIC LAND'S TESTIMONY IN SUPPORT
HB 2518**

**House Committee on Finance
Wednesday, February 20, 2008, 3:30 p.m., Room 308
FINtestimony@capitol.hawaii.gov**

Dear Chairperson Oshiro and Vice Chair Lee:

Hawaii Office
212 Mowbray St.
Suite 320
Honolulu HI
96818
Phone: 808-524-8500
Fax: 808-524-8505
www.tpl.org

The Trust for Public Land (TPL) supports HB 2518 Relating to Land Conservation. I apologize that I will not be available to testify at the hearing. TPL will be holding a celebration for the acquisition and permanent protection of Kamana Nui and Kamana Iki Valleys (collectively known as Moanalua Valley) at that same time and date. We believe tax incentives that encourage conservation will lead to more celebrations like today.

TPL conserves land for people to enjoy as parks, gardens and other natural places, ensuring livable communities for generations to come. Nationwide, TPL has five program initiatives: (1) providing parks for people, (2) protecting working lands (farms, ranches, and forests), (3) conserving natural lands (wilderness, wildlife habitat), (4) safeguarding heritage lands (cultural and historical resources), and (5) preserving land to ensure clean drinking water and the natural beauty of our coasts and waterways. In Hawai'i, TPL has worked with public and private partners to leverage funding for the acquisition and conservation of over 36,000 acres of land in the State including Pūpūkea- Paumalū and Waimea Valley on O'ahu, Wao Kele o Puna on Hawai'i Island, Mū'olea Point on Maui and Lumaha'i beach on Kaua'i.

As gentlemen estates and gated communities pop up along our shorelines, mountain and valley entryways and urban sprawl moves up the mountains our local community has become increasingly concerned about access to our shoreline, beaches, mountains and valleys for sustenance, physical, recreational and cultural activities. Further, the availability of and access to the beauty of our islands are a driving force in our economy.

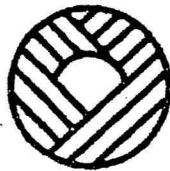
TPL further supports the following recommendations:

- 1) DLNR's request that this committee consider public rights of access to beach and outdoor recreation areas as eligible conservation and preservation purposes, and;
- 2) The Department of Taxation's recommendation to use the county's assessed land value as the standard for determining the tax credit amount.

We urge you to support HB 2518.

Mahalo for the opportunity to testify,


Lea Hong
Hawaiian Islands Program Director



MAUI LAND & PINEAPPLE COMPANY, INC.

February 18, 2008

The Honorable Representative Marcus R. Oshiro, Chair
The Honorable Representative Marilyn B. Lee, Vice Chair
Committee on Finance
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Subject: H.B. 2518 – Relating to Land Conservation

Dear Honorable Chair Oshiro, Honorable Vice Chair Lee and Committee Members:

Maui Land & Pineapple Company, Inc. (“ML&P”) strongly supports H.B. 2518 Relating to Land Conservation.

More than half of ML&P’s land on West Maui is zoned conservation by the State of Hawaii. These lands are part of the West Maui Mountains Watershed Partnership and consist of important watershed lands which provide about 70% of the potable water source for the entire population of the island of Maui. Undeveloped private lands often provide significant benefits and services to the general public such as watersheds, erosion control, carbon sequestration, green space, recreational opportunities, and cultural preservation. However, landowners do not presently receive any remuneration for the ecosystem services their lands provide. While the public depends upon the provision of these services, society often treats them as essentially free.

For many private landowners, there is significant pressure to convert forests, ranch and agricultural lands, open spaces, and lands with historical or cultural features to uses that generate greater income to the landowner. However, such conversions often result in lost opportunity for future generations to enjoy precious land areas in the way that their parents and grandparents enjoyed them. To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that H.B. 2518 helps advance.

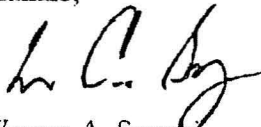
Like the Legacy Lands Act approved by the Legislature in 2005, H.B. 2518 can help provide opportunities and additional choices for land conservation in Hawaii. A mix of existing government and private funding for conservation land purchases, as well as tax incentives like those in H.B. 2518 can enable landowners a variety of options to suit their needs as well as help government to achieve a public benefit.

The Honorable Representative Marcus R. Oshiro, Chair
The Honorable Representative Marilyn B. Lee, Vice Chair
February 18, 2008
Page - 2 -

The tax incentives proposed in H.B. 2518 will be another tool like the Legacy Lands Act for government and private partners to achieve the important public policy goal of protecting and managing some of the islands' treasured natural areas, agricultural lands, open spaces, and historical sites. Indeed, tax incentives that allow landowners to retain ownership while committing to protection can help achieve public conservation priorities without requiring the government to expend many millions more to buy and manage the land itself.

We sincerely appreciate the opportunity to provide our testimony. If you have any questions or wish to discuss our testimony, please do not hesitate to contact me at (808) 877-3882.

Mahalo,

A handwritten signature in black ink, appearing to read "Warren A. Suzuki". The signature is fluid and cursive, with the first name "Warren" being the most prominent.

Warren A. Suzuki
Senior Vice President

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 2518 Relating to Land Conservation
House Committee on Finance
Wednesday, February 20, 2008, 3:30PM, Room 308

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Moloka'i, Lāna'i, Hawai'i and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i supports H.B. 2518 Relating to Land Conservation.

More than half the land in Hawai'i is in private ownership. Undeveloped private lands often provide significant benefits and services to the general public such as watersheds, erosion control, carbon sequestration, green space, recreational opportunities, and cultural preservation. However, landowners do not presently receive any remuneration for the ecosystem services their lands provide. While the public depends upon the provision of these services, society often treats them as essentially free.

For many private landowners, there is significant pressure to convert forests, ranch and agricultural lands, open spaces, and lands with historical or cultural features to uses that generate greater income to the landowner. However, such conversions often result in lost opportunity for future generations to enjoy precious land areas in the way that their parents and grandparents enjoyed them. To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that H.B. 2518 helps advance.

Like the Legacy Lands Act approved by the Legislature in 2005, H.B. 2518 can help provide opportunities and additional choices for land conservation in Hawai'i. A mix of existing government and private funding for conservation land purchases, as well tax incentives like those in H.B. 2518 can enable landowners a variety of options to suit their needs as well as help government to achieve a public benefit.

The tax incentives proposed in H.B. 2518 will be another tool like the Legacy Lands Act for government and private partners to achieve the important public policy goal of protecting and managing some of islands' treasured natural areas, agricultural lands, opens spaces, and historical sites. Indeed, tax incentives that allow landowners to retain ownership while committing to protection can help achieve public conservation priorities without requiring the government to expend many millions more to buy and manage the land itself.

Some background questions and answers about the bill are attached.

Attachment

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho
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Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

Q&A Regarding Proposed Hawai'i State Conservation Tax Credit

Proposal

To enact legislation to provide State tax credits for landowners who donate a conservation easement and/or undertake conservation activities to protect habitat, agricultural lands and cultural resources.

1. What is a conservation easement?

A conservation easement is a legally binding agreement between a landowner and a nonprofit conservation organization or government agency that limits the uses to which the land may be put in order to protect important conservation, agricultural or cultural values.

Under a conservation easement, a landowner conveys some rights in his/her land while retaining other rights.

Conservation easements “run with the land” and bind future landowners to the terms of the easement.

2. Why provide tax benefits to landowners who donate conservation easements or otherwise manage their lands to promote conservation?

Landowners do not presently receive any benefits for the ecosystem services (*e.g.*, watersheds, carbon sequestration, open space) their lands provide, yet the public depends crucially upon the provision of these services.

To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that this proposal helps advance.

3. What federal tax benefits are currently available to landowners who donate conservation easements or take conservation action on their lands?

Landowners may receive a federal income tax deduction for all or a portion of the value of a donated easement. These easements must be perpetual to qualify for tax deductions.

The donor may apply the value of the conservation easement as a deduction up to 34% of their adjusted gross income and can carry the deduction forward up to 5 years.

Under the Pension Protection Act of 2006, the donor may apply the value of the conservation easement as a deduction up to 50% (100% for farmers) of their adjusted gross income and can carry the deduction forward up to 15 years. This Act expires 12/07, but may be extended.

Landowners may also receive federal tax credits for preservation of historic buildings

4. What other benefits are available to landowners who donate conservation easements or take conservation action on their lands?

Landowners who donate conservation easements can significantly lower their federal estate taxes, perhaps preventing their children from having to sell the land to pay the taxes.

Landowners with conservation easements may enjoy reduced property taxes for land under easement because of the reduced fair market value.

Landowners may also apply for a variety of federal and state grant programs to cost share land management and conservation projects on their land.

5. Do other states make tax credits available to landowners who donate conservation easements or take conservation action on their lands?

Twelve (12) states provide tax credits for landowners who donate conservation easements. Six other states are considering measures to establish conservation easement tax credits.

Each state determines how it will treat donations of conservation easements for income tax purposes. Most states limit the deduction to 25-50% of the value of the easement donation and place some sort of limit on the maximum amount of the credit. Several states also have per year and per landowner limits.

Fifteen (15) states provide tax credits for landowners who take action to preserve habitat or agricultural lands.

Twenty-nine (29) states provide tax credits for landowners who take action to protect historic or cultural resources.

6. How do state tax credits affect state budgets?

States have reported minimal reductions to state revenues in the first five years after adopting conservation easement tax credits. States with similar requirements to the

proposed Hawai'i bill issued an average of 10 tax credits per year for the first five years after enactment reducing revenues by less than \$400,000 per year.

The availability of conservation tax credits motivated preservation of an average of 11,000 acres per year at an average cost of three percent of the value of the land protected.

7. Why propose enactment of state tax credit legislation in Hawai'i?

Hawai'i has a very rich natural, cultural, and agricultural heritage. More than 90% of the plants and animals found in Hawai'i are found nowhere else on earth.

This island archipelago is faced with enormous conservation challenges, including feral ungulates, invasive weeds, incompatible land use, and conversion of natural and agricultural areas.

More than half the land in the state is in private ownership. There is tremendous financial pressure to convert native forest, ranch and agricultural lands to uses (*e.g.*, urban development) that generate greater income to the landowner.

Enactment of state tax credit legislation in Hawai'i would provide choices for landowners. A mix of existing federal and proposed state tax credits may enable landowners to conserve their land rather than sell it for development.

State tax credits would be voluntary and reward landowners to contribute to conservation.

8. What are the key provisions of the proposed Hawaii State Tax Credit legislation?

The proposed bill provides a State tax credit for a landowner who donates a conservation easement or completes a bargain sale that fulfills a conservation purpose OR voluntarily invests in management of their land to protect or enhance a conservation purpose.

The landowner would receive a tax credit equal to 50% of the fair market value of the easement or 50% of the amount invested in conservation management of their land.

The amount of the conservation credit a taxpayer claims shall not exceed \$2,500,000 per donation regardless of the value of the land or donated interest in the land.

If the tax credit exceeds the taxpayer's income tax liability, the excess tax credit over liability may be used as a credit against tax liability in subsequent years until exhausted.

9. What are the strengths of the proposed Hawai'i State Tax Credit legislation?

The proposed bill is consistent with federal tax law and state tax law and policy.

The conservation goals of this legislation are to be achieved by cooperation among public entities, non-profit organizations and landowners, consistent with state statute and policy.

The proposed bill adopts federal Treasury Regulations to determine if conservation easement donations qualify for state tax credits, making implementation consistent on the state and federal levels.

10. What makes a successful state tax incentive program for conservation investment?

- Tax credits generous enough to motivate property owners to invest in conservation
- Pre-certification of conservation investment by an appropriate state agency as being significant or important to guard against abuse
- Simplicity of administration achieved by using established forms and criteria for land management agreements
- Inclusive investment requirements favoring both small projects by lower-income taxpayers and large projects by higher income taxpayers

11. What makes unsuccessful state tax incentive programs for conservation investment?

- Insignificant tax credits that do not motivate conservation investment
- Haphazard ad hoc administration of the program inviting abuse, including transferability of credits or retroactive application
- Under-inclusive or over-inclusive requirements for acreage or minimum investment
- Sunset clauses or linking tax credits to state budget surpluses

VIA EMAIL: FINtestimony@capitol.hawaii.gov

To: Representation Marcus Oshiro, Chair
 Representative Marilyn D. Lee, Vice Chair
 Committee on Finance

From: Kiersten Faulkner
 Executive Director, Historic Hawai'i Foundation

Committee Date: Wednesday, February 20, 2008
 3:30 p.m.
 Conference Room 308

Subject: **Support of HB2518 Relating to Land Conservation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of HB2518. Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF works to preserve Hawaii's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life and economic viability of the state.

Historic Hawai'i Foundation supports HB2518, which would provide a credit against state taxes to encourage the preservation and protection of conservation land in the State.

Hawaii's essential character is a combination of its unique flora and fauna, distinct history and culture, and the places where people enjoy the benefits of Hawaii's natural, historic and cultural resources.

Preserving and perpetuating these places for the use and enjoyment of present and future generations will take several efforts in combination, including public-private partnerships and strategic investments.

The use of conservation easements is one such program. Owners of properties with natural, conservation, historic and cultural significance have a special responsibility for conserving those resources. Many have the desire to see the land and its inherent values protected in perpetuity and voluntarily restrict future development that would negatively impact those resources. SB2198, by providing a tax credit for conservation easements, would help make that protection economically feasible and financially viable. The benefits for Hawai'i will be felt for generations at a much lower cost to the State than from fee simple purchase and public ownership.

Therefore, Historic Hawai'i Foundation urges your support for HB2518 to provide a land conservation incentives tax credit.

Very truly yours,

Kiersten Faulkner

FINtestimony

From: Richelle Thomson [richelle.thomson@yahoo.com]
Sent: Tuesday, February 19, 2008 9:25 AM
To: FINtestimony
Subject: HB2518 Agenda #3 - in support

Finance Committee
Hearing Feb. 20, 2008
3:00 p.m.

Dear Chair Oshiro, Vice Chair Lee, and Members of the Committee:

I write in **strong support of HB2518**, providing tax credits for land conservation. In fact, as a student at the University of Hawaii, William S. Richardson School of Law, I authored a paper that examined, in depth, the 12 states that have state tax credits for conservation easements. I would be happy to provide that paper to anyone who wishes to further inform themselves. In fact, I will attach it to another email (not sure if I can send attachments, and I want my testimony to make it through to the committee).

The State of Hawaii needs -- **NOW, this session** -- a broader range of land conservation tools to protect the "crown jewels" of our coastal, agricultural, and rural landscape.

Twelve other states in the country have this kind of tax credit for conservation program -- Hawaii should proudly become the 13th state to join this effort that brilliantly leverages state and private resources for permanent land conservation. It is literally pennies on the dollar, but completely priceless in terms of protecting our most important lands for the future.

Mahalo for your support.

Sincerely,

Richelle Thomson
Kula, Maui, Hawaii

FINtestimony

From: Denise Antolini [antolini@hawaii.rr.com]
Sent: Tuesday, February 19, 2008 9:23 AM
To: FINtestimony
Subject: HB2518 Agenda #3 - in support
Categories: Printed Already

Finance Committee
Hearing Feb. 20, 2008
3:00 p.m.

Dear Chair Oshiro, Vice Chair Lee, and Members of the Committee:

I write in **strong support of HB2518**, providing tax credits for land conservation.

The State of Hawaii needs -- **NOW, this session** -- a broader range of land conservation tools to protect the "crown jewels" of our coastal, agricultural, and rural landscape.

For proposed public-private acquisitions, such as the **Galbraith** agricultural lands in Central O`ahu, the **Turtle Bay** property on the North Shore, and the **many other high priority needs around the state**, this new tool of tax credits for willing landowners is critical to add to the toolbox.

The cost to the state is "pennies on the dollar" compared to the benefits, particularly now when the real estate market has slowed down considerably.

Twelve other states in the country have this kind of tax credit for conservation program -- Hawaii should proudly become the 13th state to join this effort that brilliantly leverages state and private resources for permanent land conservation.

Mahalo for your support.

Sincerely,

Denise Antolini
Pupukea, Oahu

**THE UNIVERSITY OF HAWAII ENVIRONMENTAL CENTER IS
PLEASED TO SUBMIT THIS TESTIMONY IN ACCORDANCE
WITH ACT 132 OF 1970 WHICH CREATED THE CENTER.
AUTHORS ARE MEMBERS OF THE UNIVERSITY COMMUNITY.**

RL: 2168

HB 2518
RELATING TO LAND CONSERVATION

LATE

House Committee on Finance
Public Hearing – February 20, 2008
3:30 p.m., State Capitol, Conference Room 308

By
David Duffy, Botany
Peter Rappa, Environmental Center

HB2518 provides a tax credit to encourage the preservation and protection of conservation land in the State. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

We agree with the intent of this bill. Tax credits have been used in other states very effectively to conserve land. This practice can potentially save the state millions of dollars particularly with the preservation of conservation lands as it will allow the state to choose whether or not to purchase all the land it wishes to preserve. The tax credits will encourage private landowners to preserve important conservation lands. This can work to the state's benefit especially when leveraged with NGO or Legacy Land Conservation Commission funds to preserve contiguous tracts of land.

Thank you for the opportunity to comment on this bill.

Summary of Existing State Conservation Credit Programs

	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	GEORGIA	MARYLAND
LEGISLATION (Date of Enactment) Statutory Citation	Natural Heritage Preservation Tax Credit Act of 2000 (2000) Cal Public Resource Code §37000-37042	Credit Against Tax - Conservation Easements (1999) Colo. Rev. Stat. §39-22-52	Tax Credit for Donation of Open Space (2000) Conn. Gen. Stat. §12-217dd	Delaware Land & Historic Resources Protection Incentives Act of 1999 (1999) Del. Code Ann. Tit. 30, §§1801-1807; tit. 7, §§6901-6902	Credit for Donation of Real Property for Conservation Purposes (2000) Ga. Code Ann. §48-7-29.12	Income Tax Credit for Preservation and Conservation Easements (2001) Md. Code Ann. §10-723
LANDS ELIGIBLE TO EARN CREDITS Fee Title, Conservation Easement, or both	Fee Title & Conservation Easement	Conservation Easement only	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Conservation Easement only
CREDIT VALUE AND LIMITATIONS Value as a % of FMV of donation	55% FMV	50% FMV	50% FMV	40% FMV	25% FMV	100% FMV
Maximum credit	Unlimited	\$375,000	Unlimited	\$50,000	\$250,000 Ind. \$350,000 Corp.	\$80,000
Cap on credit per year		\$375,000				\$5,000
Limit on # of credits that may be claimed		One credit per yr.				
Statewide cap	\$100,000,000/program lifetime			\$1,000,000/yr.		
CARRY FORWARD?	8 yrs.	20 yrs.	15 yrs.	5 yrs.	5 yrs	15 yrs.
TRANSFERABLE?	No	Yes	No	No	No	No
REFUNDABLE?	No	Conditional on state surplus and limited to \$50,000/yr.	No	No	No	No
CERTIFICATION?	Yes - by CA Wildlife Conservation Board. Scope of review: appraisal, conservation value, donor/donee eligibility, public comments, etc.	No	No	Yes - by the DE Division of Revenue, Dept. of Finance. Scope of review: appraisal issues.	Yes - by GA Dept. of Natural Resources. Scope of review: conservation values, legality of CE, and donee's eligibility.	Yes - by MD Board of Public Works. Scope of review: cost benefit analysis.

* Annual credit of 25% of the property tax, up to \$5000, runs with the land and continues in perpetuity

Summary of Existing State Conservation Credit Programs

	MISSISSIPPI	N. CAROLINA	NEW MEXICO	NEW YORK	S. CAROLINA	VIRGINIA
LEGISLATION (Date of Enactment) Statutory Citation	Tax Credit [for] Natural Heritage Priority Conservation of Scenic Streams Land Donations (2003) Miss. Code Ann. §27-7-22.21	North Carolina Conservation Tax Credit Program (1999) NC Gen. Stat. §105-151.12 and §105-1230.34	Land Conservation Incentive Act (2004) NM Stat. §§75-9-1-5, §7-2-18.10; NM Code R. §3.13.20	Conservation Easement Tax Credit (2006) NY Tax §606(kk)	South Carolina Conservation Incentives Act (2001) SC Code Ann. §12-6-3515	Virginia Land Conservation Incentives Act of 1999 (1999) VA Code Ann. §§58.1-510-513
LANDS ELIGIBLE TO EARN CREDITS Fee Title, Conservation Easement, or both	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Conservation Easement only	Fee Title & Conservation Easement	Fee Title & Conservation Easement
CREDIT VALUE AND LIMITATIONS Value as a % of FMV of donation	50% transaction costs	25% FMV	50% FMV	25% Property Tax	Lesser of \$250/acre or 25% of Federal Conservation Easement deduction	40% FMV
Maximum credit	\$10,000	\$250,000 Ind. \$350,000 Corp.	\$250,000	Unlimited	Unlimited	Unlimited
Cap on credit per year			\$250,000	\$5,000	\$52,500	\$100,000 (Note: unlimited amount may be transferred and used by 3rd parties)
Limit on # of credits that may be claimed	Once per lifetime					
Statewide cap						
CARRY FORWARD?	10 yrs.	5 yrs.	20 yrs.	*	Unlimited	10 yrs
TRANSFERABLE?	No	No	No	No	Yes	Yes
REFUNDABLE?	No	No	No	Yes	No	No
CERTIFICATION?	Yes - by MS Scenic Streams Stewardship Program or MS Natural Heritage Program. Scope of review: conservation values and 170(h).	Yes - by NC Dept. of Environment and Natural Resources. Scope of review: conservation values.	Yes - by NM Energy, Minerals and Natural Resources Dept. Scope of review: conservation values.	No	No, unless credits are being transferred. If transfer, certified by SC Dept. of Revenue.	Yes - but only on transactions where credit value is greater than \$1 million. Scope of review: conservation values, appraisal issues.

* Annual credit of 25% of the property tax, up to \$5000, runs with the land and continues in perpetuity

Summary of Pending State Conservation Credit Legislation

	Hawai'i	Idaho	Kentucky	Massachusetts	Minnesota	Nebraska
LEGISLATION	HB2518/SB2198 Relating to Land Conservation	Idaho Ranch, Farm, and Forest Protection Act	HB354/BR 1229 An Act For Tax Credits For Conservation Easements	HB4218 Massachusetts Land Conservation Incentives	H.F. 1884 Minnesota Land Conservation Incentives Act	LB 488 (2007) LB 997 (2006) Act to allow income tax credit for perpetual conservation easement donations
LANDS ELIGIBLE TO EARN CREDITS						
Fee Title, Conservation Easement, or both	Fee Title & Conservation Easement	Conservation Easement	Conservation Easement	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Conservation Easement
CREDIT VALUE AND LIMITATIONS						
Value as a % of FMV of donated land	50% FMV	50% FMV	<ul style="list-style-type: none"> • 25% FMV if CE* plus 15 years public access • 55% FMV if CE plus 30 years public access • 100% FMV if CE plus perpetual public access 	50% FMV	50% FMV	50% FMV
Maximum credit	\$2,500,000	\$500,000 (only one donation/taxpayer)	\$2,500,000	\$500,000	\$100,000 per taxpayer	Unlimited
Cap on credit per year			\$250,000			one as donor; unlimited as transferee
Limit on # of credits that may be claimed	one credit per year				unlimited	one credit per year and, if carried forward, must be used up before another credit granted
Statewide cap, if any		\$3,000,000	\$3,000,000 in 2009 \$5,000,000 in 2010 \$7,000,000 in 2011 \$10,000,000 thereafter	Unlimited	\$2,000,000	\$5,000,000
CARRY FORWARD?	Unlimited	15 yrs.	20 yrs.	10 yrs	20 years	15 yrs
TRANSFERABLE?	No	Yes	Yes	No	No	Yes
REFUNDABLE?	No	No	No	No	No	No
CERTIFICATION?	Approval by Director of Taxation; Director of Taxation and DLNR Chair may adopt rules to effectuate section.	Approval by State Tax Commissioner	Approval by Department of Revenue	Approval by Secretary of Environmental Affairs; Environmental Affairs and Dept. of Revenue to promulgate regulations	Approval by Tax Commissioner	Approval by Dept. of Revenue; Department of Natural Resources or appropriate agency

*CE=Conservation Easement

EST. STATE REVENUE IMPACT FROM LAND DONATION CREDITS

Value of land per acre	Value of 11,000 acres (avg. acres donated/yr in other states w/ tax credits)	Value of donation assuming development rights = 1/3 the land value	Total tax credit =50% of Donation	Tax credits claimed per year. Assumes value of donation equals annual income. Income tax rate =7.5% YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	After five or six years donations often slow. On average taxpayers use 13 years to exhaust credit
500	5,500,000	1,833,333	916,667	68,750	137,500	206,250	275,000	343,750	412,500	
1,000	11,000,000	3,666,667	1,833,333	137,500	275,000	412,500	550,000	687,500	825,000	
2,000	22,000,000	7,333,333	3,666,667	275,000	550,000	825,000	1,100,000	1,375,000	1,650,000	
3,000	33,000,000	11,000,000	5,500,000	412,500	825,000	1,237,500	1,650,000	2,062,500	2,475,000	
4,000	44,000,000	14,666,667	7,333,333	550,000	1,100,000	1,650,000	2,200,000	2,750,000	3,300,000	
5,000	55,000,000	18,333,333	9,166,667	687,500	1,375,000	2,062,500	2,750,000	3,437,500	4,125,000	
6,000	66,000,000	22,000,000	11,000,000	825,000	1,650,000	2,475,000	3,300,000	4,125,000	4,950,000	
7,000	77,000,000	25,666,667	12,833,333	962,500	1,925,000	2,887,500	3,850,000	4,812,500	5,775,000	
8,000	88,000,000	29,333,333	14,666,667	1,100,000	2,200,000	3,300,000	4,400,000	5,500,000	6,600,000	
9,000	99,000,000	33,000,000	16,500,000	1,237,500	2,475,000	3,712,500	4,950,000	6,187,500	7,425,000	
10,000	110,000,000	36,666,667	18,333,333	1,375,000	2,750,000	4,125,000	5,500,000	6,875,000	8,250,000	
20,000	220,000,000	73,333,333	36,666,667	2,750,000	5,500,000	8,250,000	11,000,000	13,750,000	16,500,000	
50,000	550,000,000	183,333,333	91,666,667	6,875,000	13,750,000	20,625,000	27,500,000	34,375,000	41,250,000	

EST. STATE REVENUE IMPACT FROM MANAGEMENT INVESTMENT CREDITS

	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6
Management Investment Credit \$36/ac. 11,000ac./yr.	198,000	396,000	594,000	792,000	990,000	1,188,000
Evaluation & Monitoring Costs to State	75,000	75,000	100,000	100,000	125,000	125,000

VALUE TO STATE FROM AVOIDED PURCHASES AND MANAGEMENT

	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6
Land Acquisition Savings (assuming \$5,000/acre value)	55,000,000	110,000,000	165,000,000	220,000,000	275,000,000	330,000,000
Management Savings (assuming \$36/acre)	396,000	792,000	1,188,000	1,584,000	1,980,000	2,376,000
Total Savings	55,396,000	110,792,000	166,188,000	221,584,000	276,980,000	332,376,000
Net Savings From Conservation Tax Credits	54,435,500	108,946,000	163,431,500	217,942,000	272,427,500	326,938,000

HB 2518 Proposed HD1; amendments in yellow highlight (Long Version)

Report Title:

Tax Credit; Land Conservation

Description:

Provides a tax credit to encourage the preservation and protection of conservation land in the State.

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE,
2008
STATE OF HAWAII

H.B. NO.

2518
HD 1

A BILL FOR AN ACT

RELATING TO LAND CONSERVATION.

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

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

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

"§235- Land conservation incentives tax credit; definitions. (a) As used in this section:

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

"Conservation or preservation purpose" means:

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

HB 2518 Proposed HD1; amendments in yellow highlight (Long Version)

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

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

"Eligible taxpayer":

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

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

"Interest in land or real property" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, partial interest in real property, mineral right, remainder or future interest, or other interest or right in real property that complies with the requirements of 170(h)(2) of the Internal Revenue Code of 1986, as amended.

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

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

(b) There shall be allowed to every eligible taxpayer a land conservation incentives tax credit that shall be deductible from the taxpayer's net income tax liability imposed by this chapter for taxable years beginning on or after January 1, 2008; provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.

(c) The tax credit shall apply to an eligible taxpayer who:

HB 2518 Proposed HD1; amendments in yellow highlight (Long Version)

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

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

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

(e) The amount of the tax credit shall be:

(1) Fifty per cent of the fair market value of the land or interest in land that an eligible taxpayer donates in perpetuity on or after January 1, 2008, for a conservation or preservation purpose to the State, or public or private conservation agency. The fair market value of donations made under this section shall be substantiated by a qualified appraisal prepared by a qualified appraiser, as those terms are defined under applicable federal law and regulations governing charitable contributions; or

(2) Fifty per cent of the amount invested in the management of land pursuant to subsection (c)(2).

(f) The amount of the tax credit shall not exceed \$2,500,000 per donation regardless of the value of the land or interest in land; provided that if the tax credit under this section exceeds the taxpayer's net income tax liability under this chapter, any excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent taxable years until exhausted.

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

(g) The tax credit claimed by a pass-through tax entity may be used either by the pass-through tax entity or a member, manager, partner, shareholder, or beneficiary of the pass-through entity, in proportion to the total interest of the member, manager, partner, shareholder, or beneficiary; provided that:

HB 2518 Proposed HD1; amendments in yellow highlight (Long Version)

- (1) There is in fact a pass-through; and
- (2) The tax credit may be claimed only once by either the pass-through entity or the member, manager, partner, shareholder, or beneficiary, but not both.

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

(i) The director of taxation:

- (1) Shall prepare forms necessary to claim a tax credit under this section;
- (2) May require proof of the claim for the tax credit; and
- (3) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(j) The chairperson of the board of land and natural resources and the chairperson of the board of agriculture may adopt rules pursuant to chapter 91 to effectuate this section."

(k) Except for qualified donations of agricultural land or qualified investments in management of agricultural land, every taxpayer claiming a tax credit under this section shall, no later than ninety days following the end of each taxable year in which a qualified donation of land or qualified investment in the management of land was made, submit a written, sworn statement to the department of land and natural resources detailing:

(1) All qualified donations of land together with a qualified appraisal, or qualified investments in the management of land as provided by subsection (c), if any, incurred in the previous taxable year; and

(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.

(1) For qualified donations of agricultural land or qualified investments in management of agricultural land, every taxpayer claiming a tax credit under this section shall, no later than ninety days following the end of each taxable year in which a qualified

HB 2518 Proposed HD1; amendments in yellow highlight (Long Version)

donation or investment was made, submit a written, sworn statement to the department of agriculture detailing:

(1) All qualified donations of land together with a qualified appraisal, or qualified investments in the management of land as provided by subsection (c), if any, incurred in the previous taxable year; and

(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.

(m) Except for qualified donations of agricultural lands or qualified investments in the management of agricultural land, the department of land and natural resources shall:

(1) Maintain records of the names of the taxpayers and qualified donations and qualified investments thereof claiming the tax credits under subsection (b);

(2) Obtain and total the aggregate amounts of all qualified donations of land and investments in the management of land per taxable year; and

(3) Provide a letter to the director of taxation specifying the amount of the tax credit per qualified donation of land or qualified investment in the management of land for each taxable year that a tax credit is claimed and the cumulative amount of the tax credits for all years claimed.

Upon each determination required under this subsection, the department of land and natural resources shall issue a letter to the taxpayer regarding the qualified donation of land or qualified investment in the management of land and specifying the amount of the qualified tax credit. The taxpayer shall file the letter with the taxpayer's tax return to the department of taxation. Notwithstanding the authority of the department of land and natural resources under this section, the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

(n) For qualified donations of agricultural land or qualified investments in the management of agricultural land, the department of agriculture shall:

(1) Maintain records of the names of the taxpayers and qualified donations and qualified investments thereof claiming the tax credits under subsection (b);

HB 2518 Proposed HD1; amendments in yellow highlight (Long Version)

(2) Obtain and total the aggregate amounts of all qualified donations of land and investments in the management of land per taxable year; and

(3) Provide a letter to the director of taxation specifying the amount of the tax credit per qualified donation of land or qualified investment in the management of land for each taxable year that a tax credit is claimed and the cumulative amount of the tax credits for all years claimed.

Upon each determination required under this subsection, the department of agriculture shall issue a letter to the taxpayer regarding the qualified donation of land or qualified investment in the management of land and specifying the amount of the qualified tax credit. The taxpayer shall file the letter with the taxpayer's tax return to the department of taxation. Notwithstanding the authority of the department of agriculture under this section, the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

(o) Any appraisal prepared pursuant to the requirements of subsection (e)(1) shall be subject to all requirements, including the same level of penalties for valuation misstatements, for appraisals and appraisers under applicable federal law and regulations governing charitable contributions.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2007.

HB 2518 Proposed HD1; amendments in yellow highlight (Short Version)

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Tax Credit; Land Conservation

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HB 2518 Proposed HD1; amendments in yellow highlight (Short Version)

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

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

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

"Interest in land or real property" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, partial interest in real property, mineral right, remainder or future interest, or other interest or right in real property that complies with the requirements of 170(h)(2) of the Internal Revenue Code of 1986, as amended.

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

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

(b) There shall be allowed to every eligible taxpayer a land conservation incentives tax credit that shall be deductible from the taxpayer's net income tax liability imposed by this chapter for taxable years beginning on or after January 1, 2008; provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.

HB 2518 Proposed HD1; amendments in yellow highlight (Short Version)

(c) The tax credit shall apply to an eligible taxpayer who:

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

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

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

(e) The amount of the tax credit shall be:

(1) Fifty per cent of the fair market value of the land or interest in land that an eligible taxpayer donates in perpetuity on or after January 1, 2008, for a conservation or preservation purpose to the State, or public or private conservation agency. The fair market value of donations made under this section shall be substantiated by a qualified appraisal prepared by a qualified appraiser, as those terms are defined under applicable federal law and regulations governing charitable contributions; or

(2) Fifty per cent of the amount invested in the management of land pursuant to subsection (c) (2).

(f) The amount of the tax credit shall not exceed \$2,500,000 per donation regardless of the value of the land or interest in land; provided that if the tax credit under this section exceeds the taxpayer's net income tax liability under this chapter, any excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent taxable years until exhausted.

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

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

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

- (1) There is in fact a pass-through; and
- (2) The tax credit may be claimed only once by either the pass-through entity or the member, manager, partner, shareholder, or beneficiary, but not both.

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

(i) The director of taxation:

- (1) Shall prepare forms necessary to claim a tax credit under this section;
- (2) May require proof of the claim for the tax credit; and
- (3) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(j) The chairperson of the board of land and natural resources and the chairperson of the board of agriculture may adopt rules pursuant to chapter 91 to effectuate this section and to certify that donations or investments claimed for a tax credit under this section fulfill a conservation or preservation purpose pursuant to subsection (c)."

(k) Any appraisal prepared pursuant to the requirements of subsection (e) (1) shall be subject to all requirements, including the same level of penalties for valuation misstatements, for appraisals and appraisers under applicable federal law and regulations governing charitable contributions.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2007.