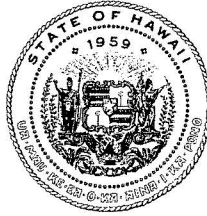
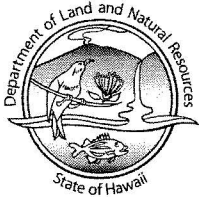


LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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 Senate Bill 2198, Senate Draft 2, House Draft 1 – RELATING TO LAND CONSERVATION

BEFORE THE HOUSE COMMITTEE ON
FINANCE

March 31, 2008

Senate Bill 2198, Senate Draft 2, House Draft 1 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 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.

The Department is aware of the Department of Taxation's concerns with certifying what donations of land or investments in management of land qualify for the tax credit. The Department is the appropriate agency to certify donations or management actions for natural and cultural resources and the Department of Agriculture would be the appropriate agency for agricultural easements or management. The Department is willing to work with the Department of Taxation on how best to implement such a process and identify ways to streamline the process and book-keeping and reporting requirements.

The Department notes that Senate Draft 2 of Senate Bill 2198 amended the measure to require that the state agency work with the taxpayer to identify opportunities for public access if appropriate and reasonable. The Department supports this approach because it allows flexibility in dealing with public access to the lands qualifying for the tax credit. Requiring public access to all potential lands will be a disincentive for some landowners to participate. While appropriate for some lands such as beach or recreational access, open public access may not be appropriate for other lands such as cultural and historic properties, and working farms or ranches that have legitimate concerns about vandalism, resource theft, and liability. The taxpayer should be required to provide access to the public or private conservation agency holding the conservation easement to monitoring the status of the conservation easement or to verify that conservation management actions have been implemented on the property. Public access should be encouraged and required where appropriate to fulfill the purpose of the easement, but not be required in cases where it would jeopardize or degrade resources intended for protection or create an undue hardship or liability for the landowner.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
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Statement of
ABBEY SETH MAYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE
Monday, March 31, 2008
2:00 PM
State Capitol, Conference Room 308

in consideration of
SB 2198, SD 2, HD 1
RELATING TO LAND CONSERVATION.

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance.

The Office of Planning (OP) supports the intent of SB 2198, SD 2, HD 1, but defers to the Department of Taxation on the fiscal implications of this measure. This measure would establish a land conservation incentives tax credit for the donation or bargain sale of conservation lands in perpetuity, or a voluntary investment in support of land management activities of lands under a conservation easement.

OP believes this measure provides an incentive for the long-term use and protection of important agricultural land (IAL), in which the public benefit to be derived is clear and will be sustained into the future. This bill would add another tool to an agricultural incentives package that would satisfy the requirements of Act 183, Session Laws of Hawaii 2005. Passage of a package of incentives is critical to the initiation of efforts to designate important agricultural lands statewide.

We offer the following amendments for your consideration:

1. Page 5, lines 4-7, Substitute “important agricultural lands” (IAL) for “agricultural land” in the definition of “conservation or preservation purpose.” The treatment of agricultural lands does not reference lands designated as “important agricultural lands.” Would this set up a parallel process by which the Department of Agriculture would determine which lands would qualify as important for conservation purposes? If this is not the intent, then the definition should specify lands designated as IAL rather than use a general reference to agricultural lands. OP recommends amending lines 4-7 as follows:

“(3) Preservation of forest land, ~~agricultural land,~~ watersheds, streams, rainfall infiltration areas, outdoor recreation areas, including hiking, biking, and walking trails, ~~and~~ historic or cultural property~~;~~, **or land designated as important agricultural land pursuant to part III of chapter 205;...**”

2. Reinstatement of the provision that the fair market value of donations be substantiated by a qualified appraisal. Reinstatement of this provision ensures a fair value for the credit claimed.

Thank you for the opportunity to testify.

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
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HOUSE COMMITTEE NO FINANCE

TESTIMONY REGARDING SB 2198 SD 2 HD 1 RELATING TO LAND CONSERVATION

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

DATE: MARCH 31, 2008

TIME: 2:00PM

ROOM: 308

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

The House Committees on Water, Land, Ocean Resources & Hawaiian Affairs and Agriculture amended this measure by inserting the contents of HB 2518 HD 1. The Department comments accordingly.

The Department of Taxation defers to the Department of Land & Natural Resources on the policy merits of this legislation; however the Department also has **strong concerns** with this measure and **requests amendments**.

The Department also points out that this measure has not been factored into the Executive Budget and is not one of its tax relief priorities this session.

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—QUALIFIED APPRAISAL IS ABSOLUTELY NECESSARY—The Department strongly opposes that the current draft of this measure eliminated the need for a fair market value determination based upon a qualified appraisal. The Department requests that the qualified appraisal requirement be reinserted in the measure. The Department points out that a charitable donation of land typically requires an appraisal for federal tax purposes.

There is no reason why a qualified appraisal should not be required for a generous state credit, especially if the taxpayer will likely leverage both the state and federal incentives.

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 and use of an appraisal is the preferred method, the Department strongly suggests that the bill be amended to incorporate 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.

"§231-A Accuracy-related penalty on underpayments due to substantial valuation misstatements.

(a) There shall be added to tax an amount of twenty per cent of the portion of an underpayment of tax required to be shown on a return if the portion of underpayment is due to a substantial valuation misstatement.

(b) There is a substantial valuation misstatement if the value of any property (or the adjusted basis of any property) claimed on any return of tax is one hundred and fifty per cent or more of the amount determined to be the correct amount of such valuation or adjusted basis, as the case may be.

(c) No penalty shall be imposed by a person under this section unless that portion of the underpayment for the taxable year attributable to the substantial valuation misstatement exceeds \$1,000.

§231-B Substantial valuation misstatements attributable to incorrect appraisals.

(a) There shall be assessed a penalty upon any person:

- (1) Who prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund; and
- (2) The claimed value on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement under section 231-A.

(b) The penalty assessable under subsection (a) shall be equal to the lesser of:

- (1) The greater of:

- (i) Ten per cent of the amount of the underpayment attributable to the misstatement under subsection (a); or
- (ii) \$1,000; or
- (2) One hundred and twenty-five per cent of the gross income received by the person described in subsection (a) from the preparation of the appraisal.
- (c) No penalty shall be imposed under this section if the person establishes that the value established in the appraisal was more likely than not the proper value."

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 (f) 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. When an election is made by a partnership or limited liability company to be taxed at the entity level as a corporation, the entity is then considered a corporation for tax purposes and no longer a pass-through. The Department strongly suggests that subsection (f) be eliminated entirely. The Department submits that existing conformity to partnership and corporate tax principles is sufficient.

All that is needed is the following language:

"(f) In the case of a partnership, S corporation, estate, or trust, the tax credit allowable shall be determined at the entity level. Distribution and share of credit shall be determined in accordance with section 235-2.45(d)."

POSSIBLE LOSS OF FEDERAL AND STATE CHARITABLE CONTRIBUTION DEDUCTION—In its prior testimony, the Department had concerns with a potential double benefit by receiving the credit under this bill and a state charitable deduction. After further analysis, the loss of a generous federal benefit as a result of this credit is of greater concern. Generally, the taxpayer would receive a charitable contribution deduction for the donation of the property to a government entity or a nonprofit entity. The Internal Revenue Service has indicated that an issue

exists as to whether providing a state tax credit in exchange for a donation of a conservation easement qualifies as a deductible charitable contribution and recommended public guidance be published on this issue. *See CCA 200238041*. The IRS has yet to publish any guidance on this issue. Therefore, it is unclear whether donors would lose their federal and state charitable contribution deduction if the donor utilizes the credit. In addition, any requirement that conditions the credit on qualifying for the Section 170 charitable contribution deduction may be unworkable.

RULEMAKING—The Department already has broad rulemaking authority. Subsection (h) is unnecessary. There is also a conflict between subsection (h) and (i). 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.

TRANSACTIONS SUBJECT TO POTENTIAL ABUSE—The Department mentions that the IRS has highlighted possible abusive transactions relating to donations of conservation easements. In certain cases, the IRS has disallowed deductions and assessed penalties on transactions it has found to be shams. The Committee should be aware that conservation easements have been used in the past in allegedly abusive tax transactions.

II. REVENUE IMPACT

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

The Legacy Land Conservation program under DLNR provides matching funds for non-profits to engage in land purchases for conservation. In many of these cases, a part of the land interest is gifted to the non-profit. It is assumed that most conservation land donation transactions goes through this mechanism.

Gifts through the Legacy Lands project for 2008 are projected to be \$3,238,500. We assume that this covers half of all eligible transactions under the credit (including investments covered in section (c) paragraph (2)). Thus we project the value of eligible transactions to be \$6.5 million, of which a 50% tax credit would cause of revenue loss of \$3.2 million.

Impact for future years is indeterminate, due to the large volatility in gift amounts from year-to-year.



Legislative Testimony
SB 2198, SD 2, HD 1, RELATING TO LAND CONSERVATION
House Committee on Finance

March 31, 2008

2:00 p.m.

Room: 308

The Office of Hawaiian Affairs (OHA) supports the intent of S.B. 2198, S.D. 2, H.D. 1, 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.

OHA notes, however, that language has been removed from bill that had attempted to address the issue of access. OHA notes that Native Hawaiians are guaranteed a separate and additional layer of access from what is afforded to the public at large. Moreover, the state has a responsibility to preserve Native Hawaiian's constitutionally and statutorily protected right to access.

Therefore, we would prefer if the bill included specific 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.

Furthermore, OHA requests that if the language relating to public access that was removed is reinstated, that it be reinstated without the term "appropriate and reasonable": "[...] the state agency work with the taxpayer to identify opportunities for public access if appropriate and reasonable." The phrase "if appropriate and reasonable" is too vague and discretionary.

We also have questions about the proposed Section 235 - ____ (b)(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 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.



Hawaii Agriculture Research Center

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TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

SB2198 SD2 HD1 RELATING TO LAND CONSERVATION

March 31, 2008

Chair Oshiro and Members of your Committee:

My name is Stephanie Whalen. I am Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center, our research and support staff, and our members and clients.

HARC supports the intent SB 2198 SD2 HD1 Relating to Land Conservation.

In order to preserve some of the lands of Hawaii incentives are important. Because of the unique land holding situation in Hawaii many land owners do not qualify for the federal tax credits provided to those helping to preserve lands for the purposes proposed in this measure. Although there has been efforts to make an exception specifically for Hawaii to allow our land owners to receive these federal tax credits, those efforts have not been successful.

It is in the public interest of this state to provide those tax credits to ensure some lands for unique or special use are preserved in perpetuity.

Thank you for this opportunity to provide SUPPORT for SB2198 HD1, preserving land in Hawaii for the public interest.

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, HD-1

INTRODUCED BY: House Committee on Water, Land, Ocean Resources and Hawaiian Affairs and Agriculture

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 sale that represents 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: Upon approval applicable to 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.

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.

As drafted, it appears that the taxpayer donating this property can take the charitable contribution deduction currently available for donations to government or a not-for-profit organization thereby reducing taxable income AND take the proposed credit reducing whatever income tax liability the taxpayer may have. Thus, the taxpayer could possibly get a double benefit. Advocates point to the fact that the federal government recognizes such donations without pointing out that Hawaii law picks up the same recognition of charitable contributions to not-for-profit organizations or to government and allows the valuation of such contributions as a deduction against taxable income. Thus, the credit is a redundant incentive. It should be noted that in those states where the advocates say the credit is available, the land values are very low by comparison and therefore the value of the deduction may not be as attractive. The very opposite is true in Hawaii where land values are very high and thus the deduction would be more meaningful in reducing taxable income. Thus, the tax credit would further reduce state tax revenues.

It is difficult to imagine that given the current dour outlook for the state's economy that lawmakers believe that they can hand out such generous tax incentives while state programs will go begging for the lack of state tax revenues. Such actions are irresponsible and merely commit lawmakers to raising taxes on all other taxpayers to keep the state operating.

Digested 3/31/08

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 2198, SD2 HD 1 Relating to Land Conservation
House Committee on Finance
Monday, March 31, 2008, 2:00PM, 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 S.B. 2198, SD2 HD1 Relating to Land Conservation, and **suggests a few amendments noted below and attached in more detail.**

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. A mix of existing government and private funding for conservation land purchases, as well tax incentives like those in this bill can offer landowners a variety of options to avoid conversion and help government achieve a public benefit. 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.

Suggested amendments:

1. **Qualified Appraisals:** Restore language in subsection (d)(1) requiring qualified appraisals consistent with federal law on charitable contributions, and give penalty authority to the State Dept. of Taxation for appraisal misstatements (new subsection (j)). This ensures consistency with federal IRS law on appraisals and adds a level of assurance that appraisals of donations are valid.
2. **Certification of donations:** Amend subsection (i) to give rulemaking authority to both DLNR and Dept. of Agriculture, particularly to assist Dept. of Taxation in certifying quality and validity of donations.
3. **Public and Native Hawaiian Access:** Restore language in definition subsection that State agencies work with taxpayer donors to allow appropriate public access and not inhibit Native Hawaiian access rights.

Attachment

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zador 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
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Scott Rolles James Romig Eric Yeaman

Report Title:

Tax Credit; Land Conservation

Description:

Provides a tax credit to encourage the preservation and protection of conservation land in the state. (SB2198 HD2)

THE SENATE	S.B. NO.	2198
TWENTY-FOURTH LEGISLATURE,		S.D. 2
2008		H.D. 1
STATE OF HAWAII		H.D. 2

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) 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.

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

Proposed SB 2198 HD2 (edits shaded in grey)

(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.

(c) 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.

(d) 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).

(e) 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.

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

Proposed SB 2198 HD2 (edits shaded in grey)

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:

- (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.

(g) 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.

(h) 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.

(i) 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 (k).

(j) Any appraisal prepared pursuant to the requirements of subsection (d)(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.

(k)~~(j)~~ 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:

Proposed SB 2198 HD2 (edits shaded in grey)

- (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;

provided that the resources or areas protected or preserved are designated as significant or important by a relevant state agency, and that the state agency work with the taxpayer to identify opportunities for public access if appropriate and reasonable, and that nothing herein shall prevent the exercise of any rights of Native Hawaiians for traditional and customary practices as may be required by Hawaii law.

"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.

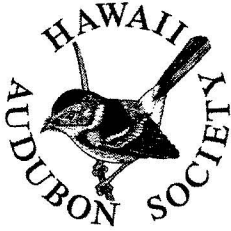
"Interest in land or real property" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, partial interest in real property, mineral right, remainder or future interest, or other interest or right in real property that complies with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

SECTION 3. New statutory material is underscored.

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



For the Protection of Hawaii's Native Wildlife
HAWAII AUDUBON SOCIETY

850 Richards Street, Suite 505, Honolulu, HI 96813-4709
Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com
www.hawaiiudubon.com

Date: March 31, 2008
To: COMMITTEE ON FINANCE
FINtestimony@Capitol.hawaii.gov

Representative Marcus Oshiro, Chair, and Representative Marilyn Lee, Vice Chair

Heating Date: March 31, 2008, Time: 2:00 P.M. Room 308

Bill No. SB2198, SD2 (SSCR2803)

TESTIMONY IN SUPPORT

Chair Oshiro, Vice Chair Lee, and members of the Committee on Finance. My name is George Massengale and I am here in behalf of the Hawaii Audubon Society. Thank you for the opportunity to submit our testimony, **in support of SB2198, SD2, Relating to Land Conservation** that would encourage the preservation & protection of conservation land in the State.

The Hawaii Audubon Society was founded in 1939, and has over 1,500 dedicated members statewide. The Society's primary mission is the protection of Hawaii's wildlife and habitats. The Society supports measures that promote land conservation efforts, especially those that will increase habitat not only for our native birds, but various species of endemic animals and plants as well.

It is well known that our ecosystems are under attack. Hawaii has the highest number of listed threatened and endangered species in the nation. **There are 394 threatened and endangered species in the State of Hawaii, of which 294 are plants.** This measure if passed, and enacted, should increase critical habitats offering endangered flora and fauna new opportunities to survive and thrive.

We believe that the land conservation incentive tax credit incentive offered by this bill can only have a positive impact as annotated in (Sec.235(j)(2) "Protection of natural areas for wildlife habitat, biological diversity, or native forest cover",. Finally this bill offers one of many sensible approaches to protecting and increasing the amount of conservation lands in Hawaii. We strongly encourage the committee to pass SB2198, SD2.

Respectfully,
George Massengale, JD
Legislative Analyst

FINTestimony

From: Jeannine Johnson [jeannine@hawaii.rr.com]
Sent: Sunday, March 30, 2008 2:08 PM
To: FINTestimony
Subject: SB2198 Agenda - Testimony in strong support of SB2198 SD2 (land conservation)

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

Re: SB 2198, SD2 RELATING TO LAND CONSERVATION

Hearing: Monday, March 31, 2008 @ 2 pm in Conference Room 308

Aloha Chair Oshiro, Vice Chair Lee and Honorable Committee Members,

I **strongly support** SB 2198 SD2 which provides a tax credit to encourage the preservation and protection of conservation land in the State. Taxpayers who donate land in perpetuity or completes a bargain sale in perpetuity to the State or public or private conservation agency or invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection agreement with a conservation or preservation purpose should be given this incentive and due consideration for their efforts.

Mahalo,

Jeannine

Jeannine Johnson
5648 Pia Street
Honolulu, Hawai'i 96821
Ph: 373-2874 / 523-503 (w)
Email: jeannine@hawaii.rr.com
"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)

FINTestimony

From: Dale B. Bonar [dale@mauicoastallandtrust.org]
Sent: Sunday, March 30, 2008 2:07 PM
To: FINTestimony
Subject: SB2198 Agenda

TO: House Finance Committee, Rep. Marcus R. Oshiro, Chair

RE: TESTIMONY IN SUPPORT OF SB2198, SD2, HD1

March 30, 2008

Rep. Marcus R. Oshiro, Chair
Committee on Finance

RE: HB 2518,SD2, HD1 :Land Conservation tax credit

Dear Representative Oshiro,

I am testifying in enthusiastic support of the Land Conservation Tax Credit bill before you.

In Hawai'i we face enormous challenges in trying to protect valuable conservation lands when there are such large financial gains to be made by developing those lands to their highest economic gain. The conversion of agricultural lands, shoreline open spaces and culturally significant properties is occurring at breakneck speed and we have only limited regulatory powers to prevent the continued loss of the lands we all cherish.

In my day job as executive director of a nonprofit land conservation organization and in my community service as chairman of the State Natural Areas Reserve System and the Legacy Land Commission I'm blessed to be able to help bring additional tools to bear in working with willing owners to protect the conservation values of many special lands. In some cases these owners have strong conservation ethics and the financial resources to afford the loss of financial value that occurs when lands are permanently placed in protection. In far too many cases however, the owners are unable or unwilling to give up the financial value, whether from a disinterest in conservation as a public benefit or, more commonly, because they are land rich and cash poor. Their land is their wealth, and they're depending on its value for their retirement fund or the source of funds for sending their kids to college. At the state and county levels we have only very limited funding to be able to purchase either fee lands or conservation easements so as to protect conservation values. The Legacy Land Fund has only \$4.7 million a year to allocate. A single shoreline building site in a popular beach area can cost that much.

The ability to offer landowners significant tax credits for placing their lands in permanent conservation is an extremely effective tool in dramatically increasing protection of our important lands. **The cost to the state of utilizing such tax credits are very low in contrast to the costs to purchase the conservation values we wish to protect.**

As Pogo said, "We are surrounded by insurmountable opportunities". This Tax Credit offers an effective, demonstrably successful tool in helping surmount some of those opportunities. It is a win-win for all of us.

Please give this bill your enthusiastic approval.

Sincerely,



Dale B. Bonar

Executive Director

Dale B. Bonar, Ph.D. Make No Small Plans
Maui Coastal Land Trust For they have no Magic
POB 965 To stir men's souls.
Wailuku, Maui, HI 96793 (Daniel Burnham)
808-244-5263
808-357-7740 (cell)
dale@mauicoastallandtrust.org
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Emailed to: testimony@Capitol.hawaii.gov

Mar. 30, 2008

Denise Antolini 59-463 Alapi`o Road Pūpūkea, O`ahu 96712
(808) 638-5594

House Finance Committee
Hearing March 31, 2008
2:00 p.m. Room 308

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

I write in **strong support of HB2198 SD2 HD1**, 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. With appropriate safeguards to ensure proper valuation, this tool can result in considerable long-term savings to taxpayers through avoided costs of development.

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

FINTestimony

From: Blake McElheny [blakemcelheny@hawaii.rr.com]
Sent: Monday, March 31, 2008 11:21 AM
To: FINTestimony
Subject: Support for SB2198 Agenda #1

Aloha Chair Oshiro and members of the Committee

Please consider supporting SB2198.

This is a valuable measure that will provide many benefits.

Thank you very much.

Sincerely,

Blake McElheny
Pupukea
808.479.9818