



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
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**TESTIMONY OF ALFREDO LEE
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION**

**BEFORE THE HOUSE
COMMITTEE ON AGRICULTURE**

Wednesday, February 3, 2010
8:30 am
Room 312

**HOUSE BILL NO. 2913
RELATING TO TAXATION**

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2913. The Agribusiness Development Corporation (ADC) cannot support this bill as written.

While the intent of the bill is unstated, it is assumed that the bill is meant to limit farmer's lease costs. The actual effect of the bill might be to further reduce the availability of agricultural land for lease since landowners may conclude that it is better to leave the land fallow rather than pay the surcharge. It is also possible that the lessor would impose a series of "fees" to make up for the surcharge, thus adding to the costs of the farmer.

We are also concerned about the broad impact this bill will have on agricultural landowners. The assessed values set by the counties' real property assessment division rarely reflect the actual value of the property if it were sold

on the market. Agricultural land rates are typically set at the lowest rate among all property assessment rates to encourage farming and to reflect the minimal infrastructure investment incurred by the counties in the agricultural district. Using an already artificially low base rate and then assessing the surcharge if the actual lease rent exceeds 10% of the base rate means that it is highly likely that all non-exempted lessors would have to pay the surcharge.

In addition, we have concerns about the lack of specificity in describing the exempted lands which include "land producing local food crops, bioenergy crops, and parcels of lands less than fifty acres, including large tracts of land parceled out to several lessees." The lessor could avoid the surcharge by requiring the lessee to grow food or energy crops, in an amount not specified or could restrict land leases to less than 50 acres and just sign multiple leases.

It also appears that any surcharge collected would go to the general fund and agricultural lessees would not benefit.

We defer to the Department of Taxation on the tax implications of this bill.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
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**HOUSE COMMITTEE ON AGRICULTURE
TESTIMONY REGARDING HB 2913
RELATING TO TAXATION**

*****WRITTEN TESTIMONY ONLY*****

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 3, 2010
TIME: 8:30AM
ROOM: 312

This measure, among other things, proposes an agricultural rent windfall income tax surcharge on lessors who charge excessive rent for agricultural land.

The Department of Taxation (Department) **opposes** this measure as an unwarranted tax increase.

GENERAL OPPOSITION TO TAX INCREASES; ESPECIALLY TAXES THAT WILL DRIVE UP COSTS TO FARMERS—The Department opposes tax increases, especially during times when the economy is slowing and cannot handle the added financial burden. This measure seeks to increase the income tax on lessors of agricultural land, who will simply pass on the added cost of the surcharge to the lessees. The intent of this measure is ostensibly to punish lessors; however it will have the direct economic effect of driving up costs to the lessees—the parties this bill is trying to help.

OPPOSITION TO INTERFERING WITH THE MARKETPLACE—The Department also opposes this measure because it injects regulation into the free marketplace of land leases. Lessors rightfully should be entitled to charge the appropriate rent that the market should bear. Land should be put to its highest and best use.

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SUBJECT: INCOME, Agricultural rent windfall income tax surcharge

BILL NUMBER: SB 2935; HB 2913 (Identical)

INTRODUCED BY: SB by English; HB by Morita and 1 Democrat

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to establish an agricultural rent windfall income tax surcharge on every applicable agricultural lessor in the state. The surcharge shall be \$500 per acre for any agricultural land that is leased for an amount in excess of 10% a year of the derated agricultural property tax value of the land subject to the surcharge. Requires the surcharge to be paid by the lessor of the land. The surcharge shall apply to land that is taxed as agricultural land by the real property assessment division of the county where the land is situated; but shall not be applicable to land producing local food crops, bioenergy crops, and parcels of land less than fifty acres, including large tracts of land parceled out to several lessees.

The director of taxation shall have all the rights and powers provided under this chapter to administer the surcharge with penalties provided by HRS section 231-39 for failure to file a tax return and shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return along with a 10% penalty of the amount of the surcharge and tax due.

Requires fiscal year taxpayers whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective to file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective and ending before January 1 of the following year.

EFFECTIVE DATE: Tax years beginning after December 31, 2010

STAFF COMMENTS: It appears that this measure is proposed to impose an agricultural rent windfall income tax surcharge on lessors of real property who are charging an excessive amount of rent for land assessed for agricultural use and such land is not used to grow local food crops or bioenergy crops. While the measure imposes a tax of \$500 per acre and is payable by the lessor, the proposed measure is aimed to penalize the lessor for charging an excessive amount of rent for the leased real property. The use of the tax system to alter a behavior, in this case to adjust the amount of rent charged, is a poor and inappropriate use of the tax system. If this measure were enacted, it may send a signal that it's perfectly acceptable to impose such penalties through the tax system and other "penalties" may be proposed.

This proposal represents a lack of understanding of the marketplace and is nothing more than a vehicle to punish persons who don't adhere to certain values determined by lawmakers. The question here is what is "excessive" in terms of how much is being charged as rent? As anyone who understands economics knows, one can charge only what the market is willing to bear. The other question is what is the "inappropriate" use of such agricultural land if exempt uses are the growing of local food crops and bioenergy crops. Is there a crop that is not acceptable for which this cannon of punishment is aimed? This is an inappropriate use of tax law.

Digested 2/2/10



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February 2, 2010

The Honorable Clift Tsuji, Chair
House Committee on Agriculture
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.B. 2913 Relating to Taxation

HEARING: Wednesday, February 3, 2010 at 8:30 a.m.

Aloha Chair Tsuji, Vice Chair Wooley and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. HAR **opposes** H.B. 2913, which imposes an agricultural rent income tax surcharge on lessors who charge rent in excess of ten per cent a year of the property tax value for agricultural land.

While the purpose of the bill may be to prevent windfalls in agricultural rent, HAR is opposed to this bill because it **unduly interferes** with the rights of lessors and lessees to freely enter into lease agreements. HAR also believes that the measure may have direct impact on existing lease agreements, because agricultural lessors who qualify under the measure will certainly pass on the cost increases to their lessees.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

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