

SB2373

SD1



The Nature Conservancy
Hawai'i Program
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Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2373, SD1 Relating to Private Transfer Fees
Senate Committee on Judiciary and Government Operations
Friday, February 19, 2010, 11:00AM, Room 016

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i'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, Hawai'i, Moloka'i, Lāna'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 supports the intent of S.B. 2373, SD1 to protect against inappropriate or unscrupulous transfer fees that are attached as covenants and triggered upon future land sales.

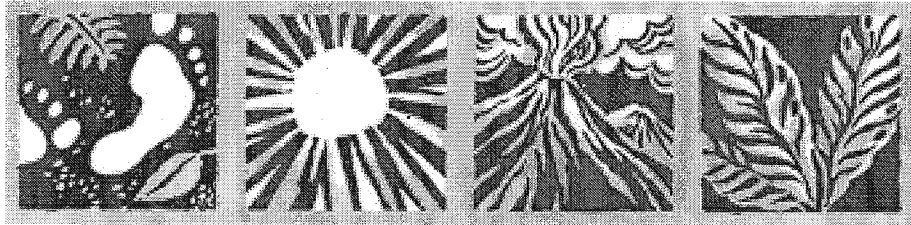
However, **we request an additional legitimate exemption be added to §501- (b) and §502- (b) in the bill, as follows:**

"(7) Any fee, charge or assessment payable to a nonprofit land trust or land conservation organization, which has been accredited by the Land Trust Alliance or has formally adopted Land Trust Alliance standards and practices, utilizing conservation easements to permanently protect the conservation values of private lands."

Nonprofit conservation organizations often work with willing private landowners to place conservation easements on lands. These conservation easements run with the land and limit development and other uses of that land in order to protect the land's conservation, open space, agricultural, historic, and/or cultural values. Under federal law, nonprofit organizations that hold permanent conservation easements are required to annually monitor and, if necessary, enforce the easement to ensure that the landowner continues to abide by the easement terms. Oftentimes, conservation easements will include provisions for a transfer fee when portions of a property are transferred to a third party. Such transfers increase the nonprofits' monitoring and enforcement responsibilities and costs; thus, the transfer fee to cover those increased costs.

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Hawaii
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P. O. Box 976 ■ Kealahou, HI 96750 ■ (808) 324-4458

Hawai'i Island Land Trust
Testimony SB2373

To the Committee:

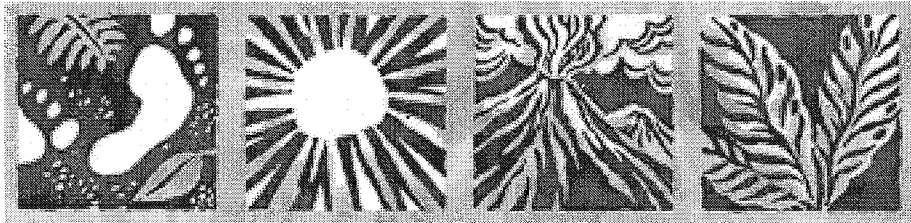
Hawai'i Island Land Trust is a 501(c)(3) non-profit organization organized to serve the voluntary conservation needs of landowners on the Big Island of Hawai'i. We are enabled by statute to receive donations of conservation easements and are also able to own land in fee. Conservation easements serve the public by protecting sources of clean air and water, open space and working lands that contribute to the local economy.

Conservation easements generally protect land permanently. As part of their protection, the statutes governing our activities require that the lands under easement be monitored and stewarded permanently by the Land Trust or its successor. If it is meaningful, such stewardship is a continuing financial burden on the Land Trust.

Various strategies exist to pay for this continuing obligation. One is to seek a donation of money at the time of the donation of the easement to endow stewardship forever. Some landowners, especially ranchers and farmers, may be unable to donate sufficient money for this purpose, but still wish to benefit the public by conserving their land. Such donations may also be argued to be an unfair burden on the donor landowner, because subsequent buyers of the protected property under this scenario benefit from the conservation easement but don't have to pay for the continuing stewardship costs.

A more equitable arrangement includes a modest transfer fee that is paid to the Land Trust each time the property is sold. Hawai'i Island Land Trust proposes this fee in all of its conservation easement transactions. We also utilize the transfer fee in situations where a landowner seeks to benefit conservation in the community but does not own a property that is appropriate for a conservation easement.

In this instance a landowner places the transfer fee in the chain of title and it is paid to the Land Trust each time the land is sold. The owner voluntarily accepts the remote possibility that a buyer may not wish to buy the land with such an obligation attached, and the land is theoretically discounted by the small percentage (usually 1% or less). In actual practice, such issues have not been a concern and the fee has worked very well. In some cases such as new developments, the fee is advertised as part of the marketing effort.



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Hawai'i Island Land Trust
Testimony SB2373
P. 2

Hawai'i Island Land Trust is mindful of the potential for abuse of this or any other aspect of land ownership and transfer. We believe strongly that such abuse can be effectively prevented by the limitations on the entities able to establish voluntary transfer fees and their qualifications. These qualifications may include accreditation by the national Land Trust Alliance or certification by the Land Trust that it has adopted the Land Trust Alliance Standards and Practices.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Douglas C. Sensenig".

Douglas C. Sensenig
Executive Director
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February 19, 2010

Senator Brian T. Taniguchi, Chair,
and members of the Senate Committee on Judiciary and Government Operations
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2373, Senate Draft 1 (Private Transfer Fees)**
Hearing Date/Time: Friday, February 19, 2010, 11:00 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies, which are regulated by the Hawaii Commissioner of Financial Institutions. Financial services loan companies make mortgage loans and other loans.

The HFSA **supports** this Bill.

The purpose of the Bill is to prohibit the imposition of fees for a future transfer of real property. There are specified exceptions.

A private transfer fee is created by a private party through a deed restriction or covenant ("restriction") on a real property. This restriction requires every transferee (buyer) of the real property to pay a transfer fee to the private party which created that restriction.

Because this private transfer fee is paid every time that property is transferred, the private party imposing this restriction is retaining a part of the fee simple interest in the real property that is being transferred. Except for limited exemptions, this restriction is an inappropriate restraint on the transfer of real property.

As a trade association comprised of mortgage lenders, the HFSA is concerned about the restriction a private transfer fee imposes because of the negative impact it can have on the value of and on the title to real property. Value is impacted because the restriction could make the property more difficult to sell. Title issues exist when title companies consider the property to be uninsurable.

Over the past few weeks, the Hawaii Association of Realtors, which is the major proponent of this Bill, has been in communication with the HFSA and others regarding revisions to the original version of this Bill. The current Senate Draft 1 version has appropriate specified exemptions and ensures that future restrictions are unenforceable.

Accordingly we ask that your Committee pass this Bill.

Thank you for considering our testimony.

Summer Okada

for: MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

**SB 2373 SD1
RELATING TO PRIVATE TRANSFER FEES**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 19, 2010

Chair Taniguchi and Members of the Senate Committee on Judiciary & Government Operations:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 2373 SD1 "A BILL FOR AN ACT RELATING TO PRIVATE TRANSFER FEES." We support this bill.

The purpose of this bill is to prohibit deed restrictions or covenants that require a transferee of real property to pay transfer fees to the person imposing the deed restriction or covenant in connection with a transfer of real property. The bill also provides an exemption for certain usual and customary fees, assessments, or charges encompassed in various real property transactions. We concur with the intent and purpose of this bill and believe that the exemptions contained in this bill will enable the assessment of legitimate charges that arise from the transfer of real property.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 17, 2010 8:39 AM
To: JGO Testimony
Cc: plahne@alf-hawaii.com
Subject: Testimony for SB2373 on 2/19/2010 11:00:00 AM

Testimony for JGO 2/19/2010 11:00:00 AM SB2373

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Philip L. Lahne
Organization: Community Associations Institute - Hawaii Chapter
Address: P.O. Box 976 Honolulu, Hawaii 96808
Phone: 536-8177
E-mail: plahne@alf-hawaii.com
Submitted on: 2/17/2010

Comments:



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 19, 2010

The Honorable Brian Taniguchi, Chair and
Members of the Senate Committee on
Judiciary and Government Operations
State Capitol, Room 16
Honolulu, Hawaii 96813

Re: Senate Bill 2373, SD 1 Relating to Private Transfer Fees

Dear Chair Taniguchi and members of the Senate Committee on Judiciary and
Government Operations:

I am Rick Tsujimura representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

MBAH supports Senate Bill 2373, SD 1 Relating to Private Transfer Fees. Senate Bill 2373, SD 1 prohibits the imposition of transfer fees for the transfer of real property. The MBAH supports this measure.

The MBAH believes that deed restrictions which impose fees for the transfer of real property will negatively impact the marketability and lendability of real property. This will discourage buyers which in turn will depress values. In time, these types of property will become unlendable.

For this reason we ask your favorable consideration of this measure. Thank you for the opportunity to present this testimony.