



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF HB 386: RELATING TO TAXATION

TO: Representative Angus L. K. McKelvey, Chair, Representative Derek K. Kawakami, Vice Chair, and Members, Committee on Consumer Protection and Commerce

FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawaii

Hearing: Wednesday, January 30, 2013; 2:00 PM; CR 325

Chair McKelvey, Vice Chair Kawakami, and Members, Committee on Consumer Protection and Commerce:

Thank you for the opportunity to testify on HB 386, regarding applying the conveyance tax to the sale, transfer or exchange of stock, whose assets include realty located in Hawaii. I am Betty Lou Larson, Legislative Liaison for Catholic Charities Hawaii. Catholic Charities Hawaii supports this bill. We also support language which provide exemptions for real estate transfers between subsidiaries of the same parent entity, and between partners engaged in qualified affordable rental housing developments. This will avoid any negative impacts on affordable rental housing development.

When the island of Lanai was sold, no conveyance tax was paid. Yet if a house or a business is sold, the conveyance tax is paid. This bill would close a loophole in the conveyance tax law and provide additional needed funds for critical state needs, such as affordable housing, land preservation and watershed protection which receive appropriations from the conveyance tax proceeds.

Catholic Charities Hawaii receives hundreds of calls each month from families that need affordable housing. The Hawaii Housing Planning Study of 2011 found that an estimated 13,000 rental units need to be built by 2016. To build these 13,000 affordable units, additional resources are required for the Rental Housing Trust Fund, which receives conveyance tax proceeds. The Trust Fund has created **4,250 rental units**. **In FY 12, it received \$37 million in project requests, yet was only able to commit funds to 4 out of the 9 project applications due to limited resources.**

We note that this bill includes various options for valuing the real property. Another option would be to base the real estate valuation on a recent qualified appraisal (if available) or the most current county real property tax assessed value, whichever is less. In this way, the valuation (1) focuses on the subject of the tax—the realty itself—not on the overall value of the stock or the business; (2) provides the seller the option of getting an appraisal on the realty or relying on the county tax assessed value; and (3) offers the tax department an external means of determining valuation.

We urge your support to close this tax loophole and tax the value of the real estate. Thank you for considering HB 386 and its impact on housing and land protection.



Testimony of The Nature Conservancy of Hawai'i
Supporting with an Amendment H.B. 386 Relating to Taxation
House Committee on Consumer Protection and Commerce
Wednesday, January 30, 2013, 2:00PM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life in these islands depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on 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 H.B. 386, with an amendment noted below. We think it is reasonable that, like direct transfers of real estate via purchase and sale agreements, transfers of real estate via majority stock transfers should also be subject to the State's real estate conveyance tax.

We also think it is important to be clear in this measure that it is neither the value of stock nor the value of the business that is being assessed the conveyance tax, but the value of the realty that is a component of the stock transfer. Therefore, **rather than leaving the realty valuation to subsequent departmental rulemaking, we suggest including in the statute that the real estate valuation shall be the lesser of the county tax assessed value or a recent qualified appraisal, e.g.:**

"The conveyance tax shall be based upon the lesser of the most recent county real property tax assessed value of the realty or, if available, a current qualified appraisal by a licensed real estate appraiser in the State of Hawaii."

In this way, the valuation (1) focuses on the subject of the tax—the realty itself—not on the overall value of the stock or the business; (2) provides the seller the option of getting an appraisal on the realty or relying on the county tax assessed value; and (3) offers the tax department an appropriate external means of determining valuation.

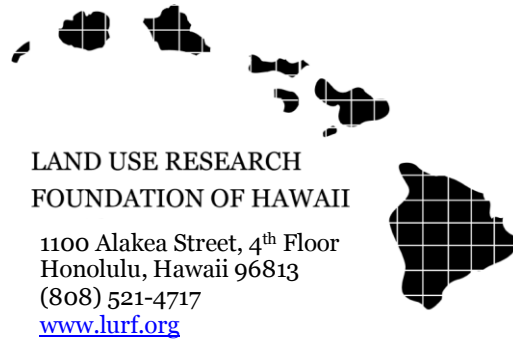
Also, **we believe it may be helpful to specifically note a reporting requirement for stock transfers that affect realty**, and we recommend an amendment to HRS §247-6 like the following:

"§247-6 Certificate of conveyance required. (a) Any party, with the exception of governmental bodies, agencies, or officers, to a document or instrument subject to this chapter, or the party's authorized representative, shall file, in the manner and place which the director of taxation shall prescribe, a certificate of conveyance setting forth the actual and full consideration of the property transferred, or the value of the property transferred by way of the transfer of a controlling interest as that term is used in section 247-A, including any lien or encumbrance on the property, and any other facts as the director may by rules prescribe. The certificate of conveyance shall be verified by a written declaration thereon that the statements made therein are subject to the penalties in section 231-36. The certificate shall be appended to the document or instrument made subject to this chapter and shall be filed with the director simultaneously with the aforementioned document or instrument for the imprinting of the required seal or seals.

Under HRS §247-7, a portion of conveyance tax revenue has been appropriately used for land preservation and forested watershed conservation via the Land Conservation Fund and the Natural Area Reserve Fund, respectively. The development and sale of real estate helps drive Hawaii's economy and is helping lift us out of the recent recession, but it also puts pressure on our natural resources like fresh water resources. It makes sense to spend a portion of conveyance tax revenue on protecting those natural resources.

BOARD OF TRUSTEES

S. Haunani Apoliona Alan H. Arizumi Christopher J. Benjamin Anne S. Carter Richard A. Cooke III Peter H. Ehrman Kenton T. Eldridge
Thomas M. Gottlieb James J.C. Haynes III Mark L. Johnson Dr. Kenneth Y. Kaneshiro Eiichiro Kuwana Duncan MacNaughton
Bonnie P. McCloskey Wayne K. Minami James C. Polk H. Monty Richards Chet A. Richardson Jean E. Rolles Scott C. Rolles
Crystal K. Rose Dustin E. Sellers Dustin M. Shindo Nathan E. Smith James Wei Eric K. Yeaman



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

January 28, 2013

Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair
House Committee on Consumer Protection and Commerce

Testimony in Strong Opposition to HB 386 Relating to Conveyance Tax (Transfers of Controlling Interest in Real Property Holding Entities); and HB 680 Relating to Conveyance Tax (Controlling Interest Transfer).

Wednesday, January 30, 2013, 2:00 p.m., in House Conference Room 325

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

HB 386 and HB 680. These bills propose to impose conveyance tax on the transfer or conveyance of a controlling interest of an entity with an interest in realty in Hawaii.

LURF's Position. LURF recognizes the stated purpose of these bills, which is to apply the conveyance tax to transfers of entity ownership when such transfer is essentially equivalent to the sale of an interest in real property. However, based on the following reasons and considerations, LURF opposes HB 386 and HB 680, and must request that these bills be held in Committee.

The proposed imposition of the conveyance tax on transfers of controlling interests in entities is inappropriate and improper given that:

- 1. The Hawaii Conveyance Tax was never intended as a revenue-generating tax.**

Hawaii Revised Statutes ("HRS"), Chapter 247 (Conveyance Tax), was purposefully enacted in 1966 to provide the State Department of Taxation ("DoTax") with informational data for the determination of market value of properties transferred, and to assist the DoTax in establishing real property assessed values. In short, the sole intent of the conveyance tax was originally to cover the administrative costs of collecting and assessing said informational data, which necessarily entails the recording of real estate transactions, as performed by the Bureau of Conveyances.

Since the enactment of HRS Chapter 247, however, the State Legislature has proposed, and has successfully implemented changes to the law 1) to allow application of conveyance tax revenue to a number of non-conveyance type uses (land conservation fund; rental housing trust fund; and natural area reserve fund) to the point where there is no longer any clear nexus between the benefits sought by the original Act and the charges now proposed to be levied upon property-holding entities transferring ownership; and 2) also to increase the tax rates to the point where said revenues now appear to far exceed the initially stated purpose of the Act.

These expansions and deviations which go beyond the scope of the original intent of the conveyance tax law are concerning since the proposed bills, particularly if unlawfully targeting recent transactions involving the sale of interests in private entities which own real property in the State, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

2. **Transfers of stock are not “conveyances” of real property, and rightfully should not be made subject to the conveyance tax law.** The proposed bills would inappropriately subject sales of controlling interests in an entity regardless of whether real estate may be the primary or largest asset owned by the entity. Given that transfers of stock are not conveyances of real property, and given the clear intent underlying HRS Chapter 247, the methods sought to be used to impose a tax on transfers of stock (i.e., amendment or expansion of the existing conveyance tax law) is improper.
3. **These bills may have unintended consequences,** especially to our island families who own large properties and may want to transfer property within their family. The measures will also have major negative consequences for many of Hawaii’s large *kama`aina* landowners who may be transferring large properties for agricultural farms, housing developments, environmental programs, or other developments which would serve the community and create needed employment.
4. **The proposed measures create a significant disincentive for business in Hawaii.** At a time where Hawaii is attempting to encourage business expansion in, and attract business operations to Hawaii, HB 386 and HB 680 actually create a disincentive, and will have a substantial negative impact on persuading new and existing businesses to open or expand in Hawaii, or to relocate their operations to this State. The proposed additional cost of doing business in Hawaii as a result of these bills would certainly appear to negatively outweigh any positive revenue impact resulting from the imposition of conveyance taxes pursuant to the measures.
5. **The imposition of conveyance tax as proposed by these bills will drive up the cost of lands for agricultural production, affordable and market homes, and commercial development.**
 - The proposed imposition of the conveyance tax on transfers which affect **agricultural lands** will be passed on to farmers and other agricultural operators, making it even harder for agriculture to survive in Hawaii.
 - The proposed imposition of the conveyance tax on transfers which affect **land intended for housing developments** will be passed on to home buyers, will

increase the price of homes, and will exacerbate the affordable housing problem in Hawaii.

- The proposed imposition of the conveyance tax onto transfers which affect **commercial properties** will also be passed on to small businesses, creating yet another substantial financial burden on them.

6. Proper and effective implementation of the proposed bills would involve complex, time-consuming, and subjective determinations. As a practical matter, in order that the proposed measures be properly and effectively administered and enforced, determinations as identified in the bills must be made pursuant to rules adopted by the director. These determinations necessarily include “the value of the realty being transferred as a result of the transfer” (which would be difficult to ascertain in the case of a stock transfer as other assets in addition to real estate may be conveyed as part of the sale), and “whether persons are acting in concert for the purpose of effectuating the transfer...,” which may involve complex inquiries, involving assessments of subjective issues which entail significant time and expense.

For the reasons stated above, LURF respectfully recommends that **HB 386 and HB 680 be held in this Committee.**

Thank you for the opportunity to provide testimony regarding these proposed measures.



Testimony to the House Committee on Consumer Protection and Commerce
Wednesday, January 30, 2013
2:00 p.m.
State Capitol - Conference Room 325

RE: HOUSE BILL NO'S. 386 AND 680, RELATING TO TAXATION

Chair McKelvey and Vice Chair Kawakami, and members of the committee:

The Chamber of Commerce of Hawaii **opposes H.B. No. 386 and H.B. 680**. The bills propose amendments to Chapter 247 HRS that would clarify that the selling, transfer, or exchange of a legal entity's stock, whose assets include realty located in Hawaii, shall be deemed to be a transfer or conveyance of realty that is subject to the conveyance tax when the sale, transfer, or exchange of the stock is executed with an unrelated entity or individual.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This bill would amend HRS § 247-1 to specify that the sale or transfer of stock by a legal entity or individual that owns or leases realty in the State or has a controlling interest in the realty to an unrelated entity or individual, to the extent that the sale or transfer of stock reflects changes in ownership or control of the realty, shall be deemed a transfer or conveyance of an interest in the realty for purposes of subsection (a) and taxed accordingly.

We are deeply concerned by the manner in which the Conveyance Tax has been and is being applied. There is no rational nexus between the real estate transactions that are being taxed at conveyance, and the uses identified in HRS 247 as the beneficiaries of the tax. It appears that the legislation is targeting transactions involving the sale of interests in entities that have ownership over real property in the state due to the recent sales or changes of ownership of private holdings.

The Conveyance Tax was created to cover the administrative costs of recording the real estate transactions, such as those performed by the Bureau of Conveyance. With the recent amendments to the statutes, the conveyance tax is deposited into the general fund with the following allocations:

1. Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;

2. Twenty-five per cent from July 1, 2009, until June 30, 2012, and thirty per cent in each fiscal year thereafter shall be paid into the rental housing trust fund established by section 201H-202; and
3. Twenty per cent from July 1, 2009, until June 30, 2012, and twenty-five per cent in each fiscal year thereafter shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources in the following priority:
 - a. To natural area partnership and forest stewardship programs after joint consultation with the forest stewardship committee and the natural area reserves system commission;
 - b. Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners, and management of the natural area reserves system pursuant to section 195-3; and
 - c. The youth conservation corps established under chapter 193.

We do not believe that the conveyance tax is being used in an appropriate manner. The proposed bill only exacerbates the current problem. . We suggest that these beneficiaries be funded from other means more closely related to their purposes

Thank you for the opportunity to express our views on this matter.



David Derauf, M.D.
 Marc Fleischaker, Esq.
 Naomi C. Fujimoto, Esq.
 Patrick Gardner, Esq.
 Francis T. O'Brien, Esq.
 David J. Reber, Esq.

Victor Geminiani, Esq.

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
 Supporting HB 386 Relating to Taxation
 Senate Committee on Consumer Protection and Commerce
 Wednesday, January 30, 2013, 2:00 PM, Room 325

Thank you for an opportunity to testify in strong support of HB 386, which would subject to the conveyance tax any real property included in transfers of controlling interests in an entity.

Hawai'i Appleseed Center for Law and Economic Justice is a nonprofit, 501(c)(3) law firm created to advocate on behalf of low income individuals and families in Hawai'i on civil legal issues of statewide importance. Our core mission is to help our clients gain access to the resources, services, and fair treatment that they need to realize their opportunities for self-achievement and economic security.

Ensuring that any transfers of controlling interests in commercial entities which involve real property are subject to the conveyance tax like any other sale of property is a matter of fairness. Our land is particularly precious in Hawai'i, and all transfers of real property should be recognized as such. We lost six million dollars in conveyance tax revenue when Lanai was sold because of what is essentially a loophole in the conveyance tax. In addition, it is possible that some transfers of real estate are structured as the transfer of commercial entities to avoid paying the conveyance tax.

The conveyance tax funds both affordable housing through the Rental Housing Trust Fund and important state environmental protection initiatives. Conveyance tax revenues are the only dedicated source of funding for the Rental Housing Trust Fund, a critical tool in the creation of affordable housing. In the next four years, Hawai'i will need 13,000 more units to meet the need for affordable rentals. As a result of this shortfall, families struggle to keep themselves housed, and may even find themselves homeless. The Rental Housing Trust Fund has helped to create over 4,250 units, significant progress in addressing our need for housing. Increasing conveyance tax revenues by taxing all real property transfers fairly will help increase the availability of funds to this program.

We also wish to emphasize that calculating the appropriate amount of conveyance tax for realty included in commercial entities' transfers will not be unduly burdensome. Neither the stock transfer nor the value of the business is being assessed, but simply the value of the property that is being transferred within the larger sale.

To streamline the valuation, we suggest that the statute itself set out the options for the valuation of realty, rather than leaving it to be determined later departmental rulemaking. We suggest that the bill set the valuation of the realty on the lesser of either a recent qualified appraisal, if available, or the current county real property tax assessed value. Setting these as the options for valuation has three main advantages: 1) it focuses on the realty itself, which is the subject of the tax, not on the overall value of the stock or the business; 2) it gives the seller the option of having the realty appraised or relying on the county's assessed value; and 3) it offers the Department of Taxation a clear and fair external means of determining the property's value. In addition, we believe it would be helpful to amend HRS § 247-6(s) to specifically note a reporting requirement for stock transfers that affect realty.

Subjecting realty included in transfers of controlling interests is a fair and equitable application of the conveyance tax that helps support critical affordable housing and environmental initiatives. We also note favorably that this bill excludes affordable housing transfers so that we continue to encourage the creation of new affordable housing.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

January 28, 2012

The Hon. Angus McKelvey, Chair, and
Members of the House Committee on
Consumer Protection and Commerce

Re: Testimony in **Opposition** to H.B. Bill Nos. 386 and 680, Relating to Taxation
Hearing Date and Time: 2:00 p.m., January 30, 2013
Conference Room 325, Hawaii State Capitol

Dear Chair McKelvey and Members of the Committee:

I am submitting this testimony on behalf of NAIOP Hawaii in **strong opposition** to H.B. Nos. 386 and 680, both relating to taxation. We are the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which is the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate. The local chapter comprises property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii.

NAIOP Hawaii has submitted testimony to the Legislature since the 1990s, voicing its concerns regarding the potential misuse of the conveyance tax. Unfortunately, the concerns voiced by NAIOP over the years have largely come to fruition, through radical increases in rates of the tax, diversion of tax revenues into areas totally unrelated to the conveyance tax, and now, attempts to expand the tax beyond real estate transfers.

The purpose of the conveyance tax was to cover the costs of running the Bureau of Conveyances. (Long-timers in the Legislature may remember that, years ago, the debate every year was whether there should be an increase in the tax to cover a "new computer system" and "automation" for the Bureau.) It was never intended to be a revenue-generating tax. However, over time various non-conveyance uses for the conveyance tax revenue have been proposed and implemented by the Legislature. All of these causes might be worthy, such as protection of the NARS system or facilitating affordable housing, but as NAIOP consistently testified, were never intended to be supported by the conveyance tax.

The rates of the tax have also been increased dramatically. At this point it has become a punitive surtax on many real estate transactions. It is no longer a conveyance tax but a type of capital gains tax surcharge. However, it is more onerous than a true capital gains tax, because not just the gain on the transfer is taxed, but instead the entire face value of the transaction. And it is a hidden tax, because it only shows up as a expense line item on a closing statement.

Now, H.B. Nos. 386 and 680 and a number of similar bills introduced into the Legislature would tax not only transfers of real estate, but also the transfers of stock of entities that own real

The Hon. Angus McKelvey and Members of the House Committee on Consumer Protection and
Commerce
January 28, 2013
Page 2

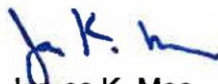
estate in Hawaii. This is clearly beyond the scope of what the conveyance tax was ever intended to cover. And since an income tax is likely already being imposed on the stock sale, there is now double-taxation being levied by the State on the same money.

If the Legislature wants to impose a new surcharge tax on transfers of stock, it should do so by enacting a new tax. But it is not honest to claim it is just taxing a "conveyance," because a stock transfer is not a conveyance and was never intended to be covered by this tax.

If these measures become law, they will reinforce the negative image Hawaii has as a place to do business.

Thank you for the opportunity to testify on this measure. We would urge that it be held in committee.

Respectfully,



James K. Mee
Chair, Legislative Affairs Committee

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

2013 Officers

President

Greg Thielen
Complete Construction Services Corp.

President-Elect

Brian Adachi
BKA Builders, Inc.

Vice President

Sunny Walsh
Hunt Building Company, Ltd.

Treasurer

Guy J. Shindo
First Hawaiian Bank

Secretary

Richard Hobson, Jr.
Gentry Homes, Ltd.

Special Appointee-Builder

Paul D. Silen
Hawaiian Dredging Construction Co., Inc.

Special Appointee-Associate

Craig Washofsky
Servco Home & Appliance Distribution

Immediate Past President

Dean I. Asahina
Universal Construction, Inc.

Chief Executive Officer

Karen T. Nakamura
BIA-Hawaii

2013 Directors

Anthony Borge

RMA Sales

Clifton Crawford

C&J Contracting, Inc.

David S. Chang

Chang Holding Company

Dean Uchida

SSFM International, Inc.

Evan Fujimoto

Graham Builders, Inc.

Gary T. Okimoto

Honolulu Wood Treating

Mark Kennedy

HASEKO Construction Kamakana, LLC

Marshall Hickox

Homeworks Construction, Inc.

Michael Watanabe

JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Scotty Anderson

Pacific Rim Partners

W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Consumer Protection and Commerce

Wednesday, January 30, 2013

2:00 p.m.

State Capitol - Conference Room 325

RE: HOUSE BILLS 386 AND 680, RELATING TO TAXATION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the committee:

My name is Gladys Marrone, Director of Government Relations for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. BIA-Hawaii promotes its members through advocacy and education, and provides community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization, chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is **opposed** to H.B. 386 and H.B. 680, Relating to Taxation. The bills propose to clarify that the selling, transfer, or exchange of a legal entity's stock, whose assets include realty located in Hawaii, shall be deemed to be a transfer, or conveyance of realty, that is subject to the conveyance tax when the sale, transfer, or exchange of the stock is executed with an unrelated entity or individual.

This bill would amend HRS §247-1 to specify that the sale or transfer of stock by a legal entity or individual that owns or leases realty in the State or has a controlling interest in the realty to an unrelated entity or individual, to the extent that the sale or transfer of stock reflects changes in ownership or control of the realty, shall be deemed a transfer or conveyance of an interest in the realty for purposes of subsection (a) and taxed accordingly.

We are deeply troubled by the manner in which the conveyance tax has been, and is, being applied. There is no rational nexus between the real estate transactions that are being taxed at conveyance, and the uses identified in HRS §247 as the beneficiaries of the tax.

The conveyance tax was created to cover the administrative costs of recording real estate transactions, such as those performed by the Bureau of Conveyance. With the recent amendments to the statutes, the conveyance tax is deposited into the general fund with the following allocations:

1. Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;

1. Twenty-five per cent from July 1, 2009, until June 30, 2012, and thirty per cent in each fiscal year thereafter shall be paid into the rental housing trust fund established by section 201H-202; and
2. Twenty per cent from July 1, 2009, until June 30, 2012, and twenty-five per cent in each fiscal year thereafter shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources in the following priority:
 - a. To natural area partnership and forest stewardship programs after joint consultation with the forest stewardship committee and the natural area reserves system commission;
 - b. Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners, and management of the natural area reserves system pursuant to section 195-3; and
 - c. The youth conservation corps established under chapter 193.

We do not believe that H.B. 386 and H.B. 680 proposes to utilize the conveyance tax in an appropriate manner. The proposed bill only exacerbates the current problem. BIA-Hawaii is **opposed** to this measure.

Thank you for the opportunity to express our views on this matter.



99-134 Waiua Way • Aiea, Hawaii 96701
Phone: 808-487-9041 • Fax: 808-488-6481
Island Toll Free: 1-800-644-2882
E-mail: sales@rmasalesco.com
Website: www.rmasalesco.com

January 28, 2013

Testimony to the House Committee Consumer Protection and Commerce

Wednesday, January 28, 2013

2:00 p.m.

State Capitol, Conference Room 325

RE: H.B. 386 and H.B 680, Relating to Taxation

Dear Chair McKelvey and Vice Chair Kawakami, Members of the Committee:

My name is Anthony Borge, General Manager of RMA Sales. We are a small, locally owned and operated company that's been in business since 1961. We manufacture and distribute vinyl, aluminum window and door products as well as other related building materials throughout the State. RMA Sales is also a member of the Building Industry Association of Hawaii.

We are **opposed** to **H.B. 386 and H.B 680** that which proposes to clarify/define the selling, transfer, or exchange of a legal entity's stock to an unrelated entity or individual, that includes real estate in Hawaii to be a conveyance of realty and thus subject to the Conveyance Tax.

The Conveyance Tax was created to cover the administrative cost of recordation of real estate transactions by the Bureau of Conveyance within the State of Hawaii. The proposed amendments to the statutes would have the Conveyance Tax deposited into the general fund and earmarking various percentages from the Conveyance Tax to fund programs that have nothing to do with the conveyance of real property. This is neither the purpose nor the intent of the Conveyance Tax.

It is for this reason we are opposed to H.B 386 and H.B 680.

Thank you.

Respectfully submitted by:



Anthony B. Borge

THE TRUST *for* PUBLIC LAND

C O N S E R V I N G L A N D F O R P E O P L E

**THE TRUST FOR PUBLIC LAND'S TESTIMONY
IN SUPPORT OF HB 386 RELATING TO TAXATION**

House Committee on Consumer Protection & Commerce
Wednesday, January 30, 2013, 2:00 PM, Room 325

The Trust for Public Land supports HB 386. We believe this bill appropriately closes a major loophole to the conveyance tax on transfers of real estate – real estate transferred via a majority stock transfer.

Only sophisticated and wealthy individuals can afford to take advantage of the current loophole by forming corporations or limited liability companies that “own” real estate, and then transferring the stock ownership of the company to effectively transfer ownership of the real estate. For example, although real estate worth hundreds of millions of dollars on Lana‘i was sold last year to billionaire Larry Ellison, no real estate conveyance taxes were collected because of this stock transfer loophole.

Under HRS §247-7, a portion of conveyance tax revenue has been appropriately used for land preservation and forested watershed conservation via the Land Conservation Fund and the Natural Area Reserve Fund (another portion is directed to the Affordable Housing Rental Trust Fund). Since the development and sale of real estate puts pressure on our natural resources like fresh water and our watersheds, it makes sense to spend a portion of conveyance tax revenue on protecting those natural resources.

Although the Trust for Public Land supports this bill, I will not be able to appear in person to testify due to a scheduling conflict.

Mahalo for this opportunity to testify -



Lea Hong
Hawaiian Islands State Director
1136 Union Mall, Suite 202
524-8563 (office), 783-3653 (cell)



Housing Hawaii

Advocating Creating Maintaining Affordable Housing

Board of Directors

January 29, 2013

President

Kevin Carney, EAH
Housing

Vice-President

Rene Berthiaume,
Network Enterprises,
Inc.

Secretary – Denise

Boswell, Rural
Community
Assistance
Corporation

Treasurer – Brian

Takahashi, Architects
Hawaii

Director – Sherrilee

K. Dodson, Habitat
for Humanity, Maui

Director – Jenny

Lee, Hawaii
Appleseed Center for
Law & Economics

Director – Delene

Osorio, Big Island
Housing Foundation

Director – Laree

Purdy, H.H.W.C.

Director – Gregg

Robertson, Robertson
& Company, LLC

Testimony of Housing Hawaii
Supporting HB 386 Relating to Taxation
House Committee on Consumer Protection and Commerce
Wednesday, January 30, 2013, 2:00 PM, Room 325

Chair McKelvey, Vice Chair Kawakami and Members of the House Committee on Consumer Protection and Commerce, thank you for this opportunity to testify in strong support of HB 386, which would subject to the conveyance tax any real property included in transfers of controlling interests in an entity.

The conveyance tax funds both affordable housing through the Rental Housing Trust Fund and important state environmental protection initiatives. Conveyance tax revenues are the only dedicated source of funding for the Rental Housing Trust Fund, a critical tool in the creation of affordable housing. In the next four years, Hawai'i will need 13,000 more units to meet the need for affordable rentals. As a result of this shortfall, families struggle to keep themselves housed, and may even find themselves homeless. The Rental Housing Trust Fund has helped to create over 4,250 units, significant progress in addressing our need for housing. Increasing conveyance tax revenues by taxing all real property transfers fairly will help increase the availability of funds to this program.

Housing Hawaii believes that subjecting realty included in transfers of controlling interests is a fair and equitable application of the conveyance tax that helps support critical affordable housing and environmental initiatives. We are pleased to note that this bill excludes affordable housing transfers so that we continue to encourage the creation and preservation of affordable housing.

Sincerely,

Kevin R. Carney, NAHP-e
President