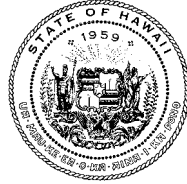


NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable David Y. Ige, Chair
The Honorable Michelle Kidani, Vice-Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, March 20, 2013
Time: 10:00 A.M.
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 680 H.D. 2, Relating to Taxation

The Department **appreciates the intent** of H.B. 680 H.D. 2 and offers the following information and comments for your consideration.

H.B. 680 H.D. 2 makes significant changes to the conveyance tax, particularly making transfers of controlling interest in entities holding title to real property in the State to be subject to the conveyance tax. With respect to certain transactions that may be exempt under the conveyance tax, it would instead impose the conveyance tax at the lowest tax rate.

The Department suggests the following amendments be made to Section 2 of this bill:

- The look-back period for a series of transfers should be extended from a minimum of 12 months to 24 months, to prevent entities from structuring sales transactions in order to avoid the imposition of the conveyance tax.
- The exemption in proposed section 247-A(a)(1) requires clarification or deletion. The Department notes that the transactions described in this exemption are currently subject to the conveyance tax; leaving this exemption in the bill will result in an inconsistent application of the conveyance tax for similar transactions.

In the alternative, transactions of this type could also be uniformly exempted from the conveyance tax. The Department notes, however, that this exemption seems to directly contradict proposed section 247-B(3), which imposes the tax at the lowest rate on any document or instrument conveying real property, or any interest therein, to or from a wholly-owned corporation or limited liability company. If the intent of this measure is to impose the tax at the lowest rate on these types conveyances uniformly, the Department suggests the deletion of section 247-A(a)(1).

- If the intent of Section 247-A(a)(3) is to exempt a transfer of controlling interest if the transferee has any ownership interest for a minimum period of three years preceding the transfer, the Department suggests inserting the word "any" before "ownership interests" on page 3, line 1.

The Department estimates that H.B. 680 H.D. 2 would result in a revenue loss of \$1 million annually to the general fund and \$2 million annually to special funds funded by the conveyance tax.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE, Transfer of a controlling interest

BILL NUMBER: HB 680, HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Add a new section to HRS chapter 247 to provide that the conveyance tax shall be applicable to the transfer or conveyance of an interest in realty located in the state as a result of the transfer or acquisition, or a series of transfers or acquisitions, including those combined with otherwise exempt transfers, by any person or entity, within any 12-month period, that results in the transfer of a controlling interest in an entity with an interest in real property located in this state for valuable consideration and which alters the controlling interest or ownership of the realty.

This section shall not apply to: (1) any transfer or acquisition that consists of the change in identity or form of ownership of an entity where there is no change in the beneficial ownership, including transfers to an entity wholly owned, directly or indirectly, by the same common ownership as the transferor; (2) any transfer from a limited partner to a general partner of a limited partnership that owns an affordable rental housing project for which low-income housing tax credits have been issued under HRS sections 235-110.8 or 241-4.7 or IRC section 42; or (3) any transfer that consists solely of a change in controlling interest in an entity holding an interest in realty between persons with ownership interests in such entity for a minimum of three years immediately preceding the transfer.

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.

In determining whether a controlling interest was transferred or acquired within a 12-month period, the date that the option agreement was executed shall be the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

Stipulates that for the purposes of this section with regard to persons acting in concert: (1) all acquisitions of persons acting in concert shall be aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place; (2) persons shall be considered as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; (3) persons shall be considered to be acting in concert only when the unity with which the purchasers negotiate and consummate the transfer of ownership interests supports a finding that the persons are acting as a single entity; and (4) if acquisitions are completely independent and each purchaser purchases without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

“Controlling interest” shall mean: (1) in the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or 50% or more of the capital, profits, or beneficial interest in the voting stock of the corporation; and (2) in the case of a partnership, association, trust, or other entity, 50% or more of the capital, profits, or beneficial interest in the partnership, trust, or other entity.

Directs the director of taxation to adopt rules pursuant to HRS chapter 91 to implement this section, including rules for determining whether persons are acting in concert for the purpose of transferring or acquiring a controlling interest.

Adds a new section to HRS chapter 247 to provide that the conveyance tax imposed by HRS section 247-1 shall apply to the following at the lowest rate regardless of the value of the real property: (1) any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under HRS chapters 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity; (2) any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety percent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; and (3) any document or instrument conveying real property, or any interest therein, to or from a wholly-owned corporation or limited liability company.

Amends HRS section 247-6 to provide that the value of the property transferred by way of a controlling interest be included in the certificate for conveyance.

Makes conforming amendments to HRS sections 247-1, 247-2 and 247-3.

EFFECTIVE DATE: January 1, 2030

STAFF COMMENTS: The proposed measure would subject to the conveyance tax rates “complex transactions” involving the transfer of real property to ensure that the transactions are taxed, even though they are not currently taxable under the conveyance tax as the real property is owned by a legal entity like a corporation or partnership. While it is the intent of the measure to close this loophole as the measure argues that these transfers attempt to evade taxation, it should be noted that the current conveyance tax was never established to be a source of revenue. Only in recent years as lawmakers sought to fund their favorite programs did the conveyance tax come under fire as a way to raise new sources of revenue to fund favored programs. With rates as high as \$1.25 per hundred dollars of value transferred, lawmakers now believe that transfers of real property, albeit as part of the acquisition of a company or partnership, are an intentional evasion of the tax. Thus, it is not hard to believe that while the measure proposes that the conveyance tax at the lowest rate shall be imposed on these transfers, there is no doubt that this policy may be amended and the rate will mushroom in a few years as the legislature may target these transfers as another way to raise additional revenue.

Unfortunately, the imposition of the conveyance tax on these transfers may add another nail in the economic coffin of Hawaii as it is just one more cost that an investor must weigh in deciding whether or not the return on an investment in Hawaii is attractive or reasonable.

It should be remembered that the conveyance tax was initially enacted by the 1966 legislature after the repeal of the federal law requiring stamps for transfers of real property. It was enacted for the sole purpose of providing the department of taxation with additional data for the determination of market value of properties transferred. This information was also to assist the department in establishing real property assessed values and at that time the department stated that the conveyance tax was not intended to be a revenue raising device. The conveyance tax is imposed each time property changes title or ownership. However, over the years the tax has been increased and conveyance tax revenues have been tapped to provide revenue for the land conservation fund, rental housing trust fund, and the natural area reserve fund.

While this proposal tries to address what looks like a sale of an entity or organization that has as part of its portfolio real property in Hawaii, there are other ways of transferring a company and the controlling interest of such an entity without the appearance that the organization or entity is being sold or transferred. The measure attempts to carve or exempt transactions between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Whether or not this would cover instances where partnerships are dissolved should be questioned. If a partnership dissolves and each of the parties takes some or all of the portfolio of real estate, will that meet the “related entity” transfer that this clause of the bill attempts to address?

This measure is ill-conceived, submitted as a Pavlovian response to recent acquisitions of entities which happened to own substantial holdings of local realty. But have lawmakers truly thought this one through to understand the potential impact and ramifications of other types of acquisitions? For example, two major office supply firms entered into negotiations to merge their operations of maximizing efficiencies of scale and reduce overhead costs. Each has a number of retail outlets as well as warehousing facilities. Since one company is merging with the other where one of the companies will have controlling interests, will that merger be subject to this proposal? Or take the example of credit unions which in recent years the number of which has dwindled due to mergers and acquisitions that enable the smaller entities to survive because the overhead expenses are absorbed by the larger entity. Would that acquisition or merger be subject to this proposal if each entity owns substantial realty?

The bottom line is that the drive to “punish” speculators in Hawaii real estate by imposing such confiscatory conveyance tax rates has resulted in these clever transfers of entities that happen to own real property in Hawaii. As a result, valuable information has been lost because there is no indicator of how much value was transferred and, therefore, benchmarks in helping to set values of other real property of similar shape and size have been lost. Obviously, previous legislatures took aim at speculators by establishing the highest conveyance tax rates on nonowner occupied residential property, property that might also include the sale of an affordable rental facility. The current structure of rates also ignores the transfer of commercial property that can be worth millions of dollars which now has resulted in this approach that circumvents the conveyance of real property but transfers ownership of an entity or company. As such, the conveyance tax as now structured sends a very loud message that Hawaii is not a place in which anyone should invest or attempt to do business.

Digested 3/15/13

**Board of Directors**

David Derauf, M.D.
Naomi C. Fujimoto, Esq.
Patrick Gardner, Esq.
John H. Johnson
David J. Reber, Esq.

Executive Director

Victor Geminiani, Esq.

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 680 Relating to Taxation
House Committee on Finance
Scheduled for Hearing Wednesday, March 20, 2013, 10:00 AM, Room 211

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.

Thank you for an opportunity to testify in **support** of House Bill 680, which would subject to the conveyance tax any real property included in transfers of a controlling interest in an entity. We also respectfully propose **amendments** to add certain exemptions, including one for affordable housing properties. We also respectfully encourage an amendment to increase the allocation of conveyance tax revenues to the Rental Housing Trust Fund.

Ensuring that all transfers of real property are subject to the conveyance tax is a matter of fairness. Our 'aina is especially 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, which is 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 some 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 fairly taxing all real property transfers will increase the availability of funds to this program.

Affordable housing and environmental protection both have a clear nexus with the conveyance tax. Development and sales of real estate help strengthen our economy, but these sales, including transfers of controlling interest, put great pressure on our housing markets and environment. Using the conveyance tax to fund affordable housing and environmental initiatives is a practical and fair way to compensate for this impact.

Proposed Amendments

Increase the allocation to the Rental Housing Trust Fund: We also respectfully urge the committee to include the following amendment to promote creation of affordable housing by increasing the percentage of conveyance tax revenues going to the Rental Housing Trust Fund from 30 percent to 50 percent, or to leave a blank figure for the Rental Housing Trust Fund allocation to encourage further discussion.

Additional amendments: In addition, we propose the following amendments to provide for fair exemptions to the conveyance tax that preserve the intent of taxing real property involved in controlling interest transfers:

- ◆ At p. 9, §247-C, insert the following amendment:

“(3) Any document or instrument conveying real property, or any interest therein, to or from a wholly owned corporation or wholly owned limited liability company of the grantor or grantee, respectively.”

This is intended to ensure that transfers involving a company wholly owned by the grantor or grantee would be exempt from the tax, while transfers to a company wholly owned by an unrelated entity or person would be liable.

- ◆ At p. 20, §247-3, insert the following amendment:

“(16) Any conveyance from a limited partner to a general partner of a limited partnership that owns an affordable rental housing project for which low-income housing tax credits have been issued under section 235-110.8 or 241-4.7 or section 42 of the Internal Revenue Code of 1986, as amended; and

“(17) Any conveyance that consists solely of a change in controlling interest in an entity holding an interest in realty between persons with ownership interests in such entity for a minimum of three years immediately preceding the transfer ~~Any conveyance to effectuate a mere change of identity of form of ownership or organization where there is no change in beneficial ownership, other than a conveyance to a cooperative housing corporation as defined in section 421I-1 or limited equity housing cooperative defined in section 421H 1, of the real property comprising the cooperative dwelling or dwellings.~~”

This amendment is of particular importance because many tax-credit financed affordable housing developments involve transactions between partnerships. Penalizing these developers and investors would make it more costly to build affordable housing and discourage its creation.

- ◆ At p. 27, §247-6, amend by inserting the following amendment:

“(11) For any conveyance exempted under section 247-6(16), the grantor and the grantee shall file a certificate declaring that the conveyance is from a limited partner to a general partner of a limited partnership that owns an affordable rental housing project for which low-income housing tax credits have been issued under section 235-110.8 or 241-4.7 or section 42 of the Internal Revenue Code of 1986, as amended ~~effectuates a mere change of identity or form of ownership or organization where there is no change in beneficial ownership.~~”

“(12) For any conveyance exempted under section 247-6 (17), the grantor and the grantee shall file a certificate declaring that the conveyance consists solely of a change in controlling interest in an entity holding an interest in realty between persons with ownership interests in such entity for a minimum of three years immediately preceding the transfer.”



March 18, 2013

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means

Testimony in Strong Opposition to HB 680, HD2, Relating to Conveyance Tax (Controlling Interest Transfer).

Wednesday, March 20, 2013, 10:00 a.m., in Conference Room 211

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 680, HD2. This bill proposes to impose conveyance tax on the transfer or conveyance of a controlling interest of an entity with an interest in realty in the State.

LURF's Position. LURF acknowledges the stated intent of this bill, 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 680, HD2, and must request that this bill 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. As such, the conveyance tax should not be utilized as a vehicle to generate revenue, especially for non-conveyance tax-related funds and programs.

2. Special, revolving, and trust funds should be used only for their specified purpose, and may not be applied to other programs.

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.

a. Pending legislation. HB 504, HD1 and SB 190, SD1, currently pending before this Legislature, directly address this very issue and reinforce the requirement that special and revolving funds must reflect a clear link between the program funded and the source of revenue. The principles underlying HB 504, HD1 and SB 190, SD1 are clear, and the measures, whether or not ultimately approved, nevertheless settle without question, the fact that special, revolving, and trust funds must serve the purpose for which they are established; must reflect a clear nexus between the benefits sought and charges made upon the program users or beneficiaries; or a clear link between the program and the sources of revenue. As applied to this case, HB 504, HD1 and SB 190, SD1, thus make it unequivocally clear that it is improper to channel conveyance tax revenue obtained through assessments targeted solely at landowning entities to special, revolving, or trust funds/programs with no nexus or clear link to the sources of revenue.

b. Alternative methods exist to secure revenues for special, revolving, and trust funds. In lieu of improperly imposing the conveyance tax to transfers of entity ownership involving the sale of an interest in land, proponents of this bill seeking to increase revenue for certain special funds or programs should look to other possible legitimate means to do so, including the following:

- i. Current and proposed funding support through county board of water supply charges;
- ii. Funding through voluntary donations by rental car lessors or hotel room guests (*See* HB 760, HD1, SD1 (which requires lessors of rental motor vehicles to include an option to the lessee in the motor vehicle agreement to contribute a sum to the Department of Land and Natural Resources for the preservation of the environment);and
- iii. Voluntary contribution programs such as an income tax refund check-off box (*See* HB 571 (which proposed to permit all Hawaii taxpayers to voluntarily designate a specified amount of the taxpayer's income tax refund to be deposited into the State's Early Learning Trust Fund)).

Given the "clear nexus" and "clear link" requirements for special and revolving funds, and also given that there exist alternative methods to secure revenues for these funds, expansions and deviations of HRS Chapter 247 which go beyond the scope of the original intent of the conveyance tax law are concerning since this proposed bill, 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.

- c. **HB 680, HD2 is arguably illegal and in violation of HRS Sections 37-52.3 and 37-52.4, as the Conveyance Tax revenue collected pursuant to this bill will be used to increase the Natural Area Reserve Fund (“NARF”) and other similar funds which the State Auditor has determined do not have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program.**

Criteria for the establishment and continuance of special and revolving funds including the NARF, was enacted by the 2002 Legislature through Act 178, SLH 2002; HRS Sections 37-52.3 and 37-52.4. According to the law, in order to be approved for continuance, a special fund must:

- serve the purpose for which it was originally established;
- reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program (as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process);
- provide an appropriate means of financing for the program or activity; and
- demonstrate the capacity to be financially self-sustaining.

The first and second criteria are nearly identical to those in Act 240, SLH 1990, codified in Section 23-11, HRS, which requires the State Auditor to review, each session, all legislative bills which propose to establish new special or revolving funds.

The 2012 Auditor’s Report was issued in July, 2012, and applied the criteria in HRS Sections 37-52.3 and 37-52.4 to forty-seven (47) funds and accounts that were the subject of general fund transfer authorizations during FY2009, FY2010, and FY2011, including the NARF. The Report includes an analysis of the NARF, and states:

“...the Natural Area Reserve Fund has minimal linkage between the benefits and the fund revenue, which comes from conveyance taxes paid on real estate transactions. The fund supports programs such as the Natural Area Partnership and Forest Stewardship programs, projects undertaken in accordance with watershed management plans, and the Youth Conservation Corps. Individuals that pay this tax may benefit from the Natural Area Reserves program, but so do other Hawai‘i residents and visitors to the state.” (2012 Auditor’s Report, p. 30)

The 2012 Auditor’s Report further concluded that the NARF **did not meet the criteria for continuance, because there was no clear link between the benefits sought and user or beneficiary charges.** The Auditor further concluded that the NARF fund earmarked by the Legislature should be repealed and that the unencumbered balance should lapse to the General Fund.

In letters dated June 18, 2012 and June 22, 2012 commenting on the draft 2012 Auditor’s Report, the State Director of Finance and the State Attorney General, respectively, stated that in general, they agreed with the Auditor’s recommendations,

and did not dispute or object to the Auditor's conclusion that the NARF did not meet the criteria for continuance as a special fund, and that the NARF should be repealed.

Despite the State Auditor's findings, Conveyance Tax revenue collected pursuant to this bill are nevertheless being proposed for use to increase the NARF and other similar funds which have been determined **not** to have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, thereby subjecting this measure to legal challenge, and the State to a possible class-action lawsuit by all parties who paid Conveyance Taxes to finance such fund.

Programs such as the NARF deserve funding through broad taxes on the public and the State General Fund, rather than through the Conveyance Tax which targets few, is unreliable, and fluctuates with the housing market.

In its 2012 Report, the State Auditor also found that the beneficiaries of such special funds and conservation/ preservation programs are state residents as a whole, and such programs are so important that they should be supported by funding from **a broader tax on all state residents**, because of the broad state benefit.

As explained in the 2012 Auditor's Report:

"Designating revenue for specific purposes flows from the "benefit theory" of public finance, which postulates that those who benefit from a program should pay for it. Revenue earmarking is more defensible when there is a clear benefit-user charge as opposed to when there is no such linkage and earmarking is used solely as a political shield to protect a program by providing it with an automatic means of support." (2012 Auditor's Report, p. 28)

The Report also found that the NARF fell into the category of a "revenue earmark" with "no clear benefit-user charge" and that the NARF "is used solely as a political shield to protect a program by providing it with an automatic means of support." (See 2012 Auditor's Report, p. 28)

Moreover, because the Conveyance Tax is dependent on activity in the real estate market, it is considered an undependable source and should not be relied upon to fund important programs. An issue will always exist as to whether the conveyance tax rates need to be adjusted to generate more revenue in periods when the real estate market is not performing optimally.

- 3. Transfers of stock are not "conveyances" of real property, and rightfully should not be made subject to the conveyance tax law.** HB 680, HD2 would inappropriately subject sales of controlling interests in an entity to the conveyance tax 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.

- 4. Landowners that build affordable housing and that otherwise provide substantial support for the programs which benefit from conveyance tax revenues should be exempted from this bill.** It is ironic and unfair that the entities which will be hardest hit by this bill are Hawaii's large landowners that build affordable housing, are stewards of the land, and are the leading partners in, and contributors to the purposes funded by conveyance tax revenues. At the very least, those landowners that build affordable housing or that support and participate in conservation and watershed programs should be exempted from this bill.
- 5. The proposed bill may have unintended negative consequences** for many of Hawaii's large *kama`aina* landowners. The proposed tax will also cause hardships for local 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.
- 6. The proposed measure creates 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 680, HD2 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.
- 7. The imposition of conveyance tax as proposed by this bill 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.
- 8. Proper and effective implementation of the proposed bill would involve complex, time-consuming, and subjective determinations.** As a practical matter, in order that the proposed measure be properly and effectively administered and enforced, determinations as identified in the bill must be made pursuant to rules adopted by the director. These determinations necessarily include "whether or not a controlling interest is transferred or acquired," and "whether persons are acting in concert for the purpose of effectuating the transfer..." which may involve assessments of subjective issues which entail significant time and expense.

For the reasons stated above, LURF respectfully recommends that **HB 680, HD2 be held in this Committee.**

Thank you for the opportunity to provide testimony regarding this proposed measure.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

March 17, 2013

The Hon. David Y. Ige, Chair, and
Members of the Senate Committee on
Ways and Means

Re: Testimony in **Opposition** to H.B. No 680, HD2, and Proposed SD1, Relating to
Taxation
Hearing Date and Time: 10:00 a.m., March 20, 2013
Conference Room 211, Hawaii State Capitol

Dear Chair Ige and Members of the Committee:

I am submitting this testimony on behalf of NAIOP Hawaii in **opposition** to H.B. No 680, HD2 and Proposed SD1, 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 dramatic increases in rates of the tax and diversion of tax revenues into areas unrelated to the conveyance tax.

The purpose of the conveyance tax was to cover the costs of running the Bureau of Conveyances. 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. While these causes might be worthy, they were never intended to be supported by the conveyance tax. There is no nexus between the tax and the uses for which the tax will be used.

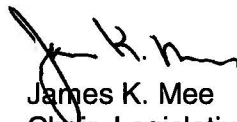
The rates of the tax have also been increased dramatically in the past several years. At this point it has become a punitive surtax on many real estate transactions. It is no longer a conveyance tax but a type of capital gains tax surcharge. However, it is more onerous than a true capital gains tax,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

We believe the continuing misuse of this tax is harmful to the economy and reinforces the perception of Hawaii as a high-tax jurisdiction which is to be avoided for investment and business purposes.

The David Y. Ige, Chair, and Members of the Senate Committee on
Ways and Means
March 17, 2013
Page 2

Thank you for the opportunity to testify on this measure.

Respectfully,

A handwritten signature in black ink, appearing to read "J. K. Mee", is written over the printed name.

James K. Mee
Chair, Legislative Affairs Committee

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: bgraham@awlaw.com
Subject: Submitted testimony for HB680 on Mar 20, 2013 10:00AM
Date: Monday, March 18, 2013 10:03:16 AM

HB680

Submitted on: 3/18/2013

Testimony for WAM on Mar 20, 2013 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Bruce Graham	Individual	Oppose	No

Comments: Convey tax calculations have become Byzantine and an obstacle to basic real property transactions. They punish the homeowner who couldn't sell and is obliged to rent for a year or two before selling. They punish the seller who isn't savvy enough to require that his buyer be eligible for the lower rate. They reward fracturing property into multiple sales of separate lots. They hurt older people whose primary asset is a high-value family home. I have seen elderly Hawaii-born residents blanch when I tell them what the convey tax on the sale of the family home will be. Convey tax was initiated years ago to generate information for tax assessments. It has become another hidden and substantial tax. Don't let the "Lanai" example drive you to making a bad law worse. That horse is already out of the barn. Bruce Graham -- practicing Hawaii attorney since 1973; born and raised here, stuck with a former condo residence that runs a monthly negative and when sold -- hopefully this year in a rising market -- will be "zapped" for penalty convey rates.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Wednesday, March 20, 2013
10:00 AM
State Capitol, Conference Room 211

In consideration of
HOUSE BILL 680, HOUSE DRAFT 2
RELATING TO TAXATION

House Bill 680, House Draft 2, proposes to impose a conveyance tax on the transfer or conveyance of a controlling interest of an entity with an interest in realty in the State. **The Department of Land and Natural Resources (Department) supports this bill.**

This bill benefits the recipients of the conveyance tax, including the Department's Natural Area Reserve Fund and Land Conservation Fund.

The Natural Area Reserve Fund supports the Natural Area Partnership Program, the Natural Area Reserves, the Watershed Partnerships Program, and the Youth Conservation Corps. These programs protect Hawaii's invaluable ecosystems and forested watersheds.

The Land Conservation Fund supports the Legacy Land Conservation Program (LLCP). The LLCP protects rare and unique cultural, natural, agricultural, and recreational resources from destruction by funding the acquisition of fee title or conservation easements by nonprofits, counties, and state agencies.

This bill also supports the Rental Housing Trust Fund and the General Fund which also receive a portion of conveyance tax revenues.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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

