



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF HB 680: 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 680, 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 the language to 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 680 and its impact on housing and land protection.



Testimony of The Nature Conservancy of Hawai'i
Supporting with an Amendment H.B. 680 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. 680, 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.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 8:54 PM
To: CPCtestimony
Cc: darakawa@lurf.org
Subject: *Submitted testimony for HB680 on Jan 30, 2013 14:00PM*

HB680

Submitted on: 1/28/2013

Testimony for CPC on Jan 30, 2013 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| David Arakawa | Land Use Research Foundation of Hawaii | Oppose | Yes |

Comments:

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.

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Testimony of Hawai'i Appleseed Center for Law and Economic Justice
 Supporting HB 680 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 680, 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.

BIA-HAWAII

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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.

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 680 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 680. 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 -



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Testimony of Housing Hawaii
Supporting HB 680 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 680, which would subject to the conveyance tax any real property included in transfers of controlling interests in an entity. HB 680 and HB 386 appear almost identical with the same intent of applying the conveyance tax to transfers of entity ownership. Housing Hawaii's testimony in support of both measures is the same.

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

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