



The Senate
Committee on Ways and Means
February 28, 2013
9:35 a.m., Conference Room 211
State Capitol

Testimony in Support of SB 1166

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee,

The Coordinating Group on Alien Pest Species (CGAPS) **supports SB 1166**, *Relating to the Conveyance Tax*, which would provide critical funding for watershed protection and formally specify invasive species control as fundable.

With more people and more industry, demand for fresh water is growing. At the same time, the exponential spread of water-wasting invasive species like strawberry guava and changing climate patterns threaten the ability of forests to deliver fresh water. Funding to increase protection for priority watersheds by fencing, ungulate and invasive plant removal is key. As high a priority is the long-term invasive species control work that is provided by biocontrol, and the early detection/rapid response work done by the Invasive Species Committees and other groups.

We must recognize that the threats to, and demands on our watershed forests are greater than ever, and will continue to increase. Passage of SB 1166 would help provide the funding necessary for the hard work that must be done. Mahalo for your consideration.

Aloha,

Christy Martin
Coordinating Group on Alien Pest Species (CGAPS)
Ph: (808) 722-0995



From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: dan.nellis@dole.com
Subject: Submitted testimony for SB1166 on Feb 28, 2013 09:35AM
Date: Wednesday, February 27, 2013 10:28:33 AM

SB1166

Submitted on: 2/27/2013

Testimony for WAM on Feb 28, 2013 09:35AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Nellis	Dole Food Co. Hawaii	Support	No

Comments: Dole Food Company Hawaii supports this bill. We are a member of the Koolau Mountain Watershed Partnership and an agricultural producer; as such we recognize the need to fund and protect the mountain watersheds to secure a sustainable water supply for a sustainable agriculture industry in Hawaii.

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**Testimony of the Hawaii Green Growth Initiative
In Support of HB 935/SB 1166 Relating to the Conveyance Tax**

Senate Committee on Ways and Means

28 February 2013, 9:35am
Conference Room 211

Audrey Newman
Hawaii Green Growth Initiative
P.O. Box 535
Hoolehua, Hawai'i 96729

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am writing on behalf of the Hawaii Green Growth Initiative (HGG) in support of **HB 935/SB 1166 to provide critical funding for watershed protection and invasive species management through a strategic increase in the real estate conveyance tax**. HGG brings leaders from the energy, food and environmental sectors together to achieve Hawaii's sustainability goals and to be a model for building a green economy. HGG's members include more than 40 leaders from government, private, and non-profit organizations in Hawai'i.

HGG asks you to support HB 935/SB 1166 because it creates an innovative funding source to expand protection of Hawaii's watersheds and water supply, and to address our most pressing invasive pest species.

HGG recognizes the critical importance of Hawaii's watersheds and water supply to the long-term sustainability of our island economy, culture and environment. Watershed protection and restoration paired with invasive species removal significantly increases water availability by ensuring that our forests function to effectively absorb rain, deliver it into streams and aquifers, and decrease erosion and siltation, which also benefits our reefs and fisheries. Healthy watersheds also help to mitigate climate change and assist in the Hawaii Clean Energy Initiative's target by absorbing greenhouse gases.

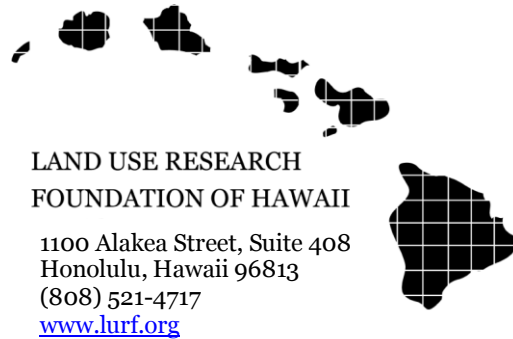
The real estate conveyance tax provides an appropriate source for funding: the development and sale of real estate is driver of Hawaii's economy, but also strains our natural resources, including water supplies. Allocation of conveyance tax revenue to the Natural Areas Reserve Fund would increase much needed support for watershed protection though critical forest management programs, invasive species control, land acquisition, and other conservation programs.

We ask for your strong support of this bill. Protecting Hawaii's watersheds is the most cost-effective way to protect Hawaii's fresh water supply - this water is essential for Hawaii's residents, agriculture, environment, and energy (with the emerging potential for investment in biofuels). Implementation of this bill is an important investment in Hawaii's future.

As a partnership representing Hawaii's leaders in environment, food and energy, HGG asks for your support of HB 935/SB 1166. Mahalo nui for your time and consideration,

A handwritten signature in black ink that reads "Audrey Newman". The signature is written in a cursive style.

Audrey Newman
Senior Advisor, Global Island Partnership (GLISPA)
Promoting action for island conservation and sustainable livelihoods. www.glispa.org



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February 28, 2013

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

Comments, Concerns and Opposition to SB 1166, Relating to the Conveyance Tax. (Increases Conveyance Tax on certain transactions; directs an additional ten per cent of Conveyance Tax proceeds to the Natural Area Reserve Fund for watershed protection and invasive species control.)

Thursday, February 28, 2013, 9:35 p.m., in Senate 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. One of LURF's missions 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.

LURF appreciates the opportunity to provide **comments, concerns and opposition** to the current form of this bill.

SB 1166. This bill proposes to:

- Substantially increase the amount of Conveyance Tax charged on all transfers or conveyances of realty or any interest therein (including sales, leases, subleases, assignments, transfers, conveyances, etc.), and the sale of condominiums and residences (for which the purchaser is ineligible for a county homeowner's exemption on property tax), with a value of over \$2 million;
- Reduce by fifteen percent the percentage of Conveyance Tax to be used and expended for general fund purposes, decreasing its total only twenty five percent;
- Direct an additional five percent to the Rental Housing Trust Fund ("RHTF"), increasing its total thirty percent (which is already provided for in the existing law); and
- Direct an additional fifteen ten per cent of Conveyance Tax proceeds to the Natural Area Reserve Fund ("NARF") for NARF purposes, including additional purposes of watershed protection and invasive species control, increasing the NARF total to thirty-five percent.

The stated purpose of this bill is to increase the amount of Conveyance Tax and portions of the tax's revenues directed toward watershed protection and invasive species control.

LURF's Position. Over the past several decades, LURF's members are the State's leaders in providing affordable housing and are also the foremost partners with the Nature Conservancy and other organizations in setting aside, partnering and serving as stewards of natural lands for conservation and watershed purposes.

LURF supports the increased funding of the RHTF through the Conveyance Tax, because there is a "clear nexus and benefit-user linkage." However, LURF opposes the use of the Conveyance Tax to fund NARF. LURF believes that the **NARF is so important, that it deserves annual 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.

While LURF strongly supports affordable housing, natural area reserves, preserving watersheds and controlling invasive species, LURF is in **strong opposition to SB 1166 and recommends that it be held by this Committee**, based on, among other things, that the Legislature and Administration is on notice that it is illegal to continue the funding of these programs through the conveyance tax, which is paid by sellers of real property and has "no clear nexus or benefit-user linkage."

It appears that the intent of SB 1166 is to find additional sources of funding for NARF by increasing Conveyance Tax revenues for the transfer of "luxury" properties. However, it changes the Conveyance Tax rates for certain transfers or conveyance of realty, without a "clear nexus"; there are other alternatives to increase the funding for NARF; it unfairly targets and imposes substantial unintended negative consequences on local families that own land and other large *Kama`aina* landowners who have significant interests in Hawaii's real estate community; and creates a major disincentive for businesses which wish to expand or relocate their operations in Hawaii.

The proposed increases in the conveyance tax on the transfer of real estate are inappropriate, improper, and illegal, 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. SB 1166 appears to be illegal and in violation of Sections 37-52.3 and 37-52.4, Hawaii Revised Statutes (“HRS”), because it attempts to use the Conveyance Tax to increase the NARS and other similar funds which do not have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program.** The NARF is a special fund which is subject to Sections 37-52.3 and 37-52.4 HRS. Criteria for the establishment and continuance of special and revolving funds were enacted by the 2002 Legislature through Act 178, SLH 2002, Sections 37-52.3 and 37-52.4, HRS. 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, requiring the Auditor to review all legislative bills in each session to establish new special or revolving funds. The 1990 Legislature determined it was fiscally prudent to establish a review for all proposed special and revolving funds and to have the Auditor perform a one-time review of existing funds.

- 3. SB 1166 is inconsistent with the recommendation of the 2012 State Auditor’s report to the Governor and legislature, which recommended the termination of the NARF.** The following information is from a report to the Governor and Legislature, entitled *“Study of the Transfer of Non-General Funds to the General Fund” A Report to the Governor and the Legislature of the State of Hawaii* (“2012 Auditor’s Report”).

The *2012 Auditor’s Report* was prompted by House Concurrent Resolution No. 166, which requests the Auditor to conduct a study regarding the transfer of non-general funds to the general fund in light of the Hawai’i Supreme Court decision, *Hawaii Insurers Council v. Linda Lingle, Governor, State of Hawai’i, et al.* (“*Insurers Council lawsuit*”). In December 2008, the court ruled that the Legislature violated the Separation of Powers doctrine in an unconstitutional raid of an insurance special fund.

In House Concurrent Resolution No. 166, the 2011 Legislature asked the Auditor to look at the appropriateness of transferring non-general funds, including special and revolving funds, to the general fund, determine the source of the moneys, and determine whether the moneys are used for a public purpose. However, for purposes of this study, the Auditor limited its focus to the appropriateness of using special and revolving funds as a means of financing particular programs and directing moneys accumulated in these types of funds to the general fund to address budget shortfalls in a sluggish economy.

In July 2012, the Office of the State Auditor issued its *2012 Auditor's Report* to the Governor and Legislature, which applied the criteria in Sections 37-52.3 and 37-52.4, HRS, 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 2012 Auditor's Report included the Auditor's analysis of the NARF and stated:

“...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.”

The *2012 Auditor's Report* further concluded that the NARF did not meet the criteria for continuance, because 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 a letter dated June 18, 2012 commenting on the draft *2012 Auditor's Report*, the State Director of Finance has stated that “*In general, we agree with your 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 and the unencumbered balance should lapse into the General Fund.

Likewise, in a letter dated June 22, 2012 commenting on the draft 2012 Auditor's Report, the State Attorney General 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 and the unencumbered balance should lapse into the General Fund.

- 4. If SB 1166 is enacted, it could result in a class action lawsuit against the State.** As noted above, the Auditor has concluded that the NARF did not meet the criteria for continuance of a special fund, because was no clear link between the benefits sought and user or beneficiary charges; and that the NARF should be repealed. Also, the State Budget Director and Attorney General, appear to concur with the Auditor's findings and recommendations regarding the NARF. If the Legislature disregards the recommendations of the State Auditor to repeal the NARF, the State could be faced with a class-action lawsuit by all persons who have paid conveyance taxes. The lawsuit would include some of the same reasoning that the Hawaii Supreme Court used against the State in the *Insurer's Council* lawsuit.

- 5. The NARF is so important, that it deserves annual funding through broad taxes on the public and the State General Fund, perhaps supplemented by voluntary contributions by Hawaii’s taxpayers and visitors – rather than through the Conveyance Tax, which targets few, is unreliable and fluctuates with the housing market.** The *2012 Auditor’s Report* included the following explanation:

“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.”

The *2012 Auditor’s 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.”

LURF also agrees with the State Auditor’s finding that the beneficiaries of such conservation and preservation programs are state residents as a whole, and programs such as NARF are so important that they should be supported by funding from a broader tax on all state residents, because of the broad state benefit.

- 6. SB 1166 may have unintended consequences**, especially to our island families who own large properties and may want to transfer property within their family. The measure 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.
- 7. 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, SB 1166 actually creates 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.
- 8. The imposition of increased conveyance taxes as proposed by SB 1166 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.

Understanding the importance of the Conveyance Tax issues raised by SB 1166 and the above-referenced major unintended and overall negative impacts, **LURF respectfully requests that this bill be held in this Committee** to allow stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties to meet and work together to come to a consensus regarding the bill's provisions, consequences and alternatives of funding NARF through the general fund and perhaps supplemental funding by voluntary contributions by Hawaii's taxpayers and visitors

Thank you for the opportunity to provide comments and concerns relating to this proposed measure.



O'AHU INVASIVE SPECIES COMMITTEE

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Committee on Water and Land
Senator Malama Solomon, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Committee on Energy and Environment
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair

Testimony of the Oahu Invasive Species Committee in support of SB 1166 Relating to the Conveyance Tax

Tuesday, February 5, 2013, 1:20 PM, Conference Room 225

The Oahu Invasive Species Committee supports SB 1166 which would provide critical funding to keep Hawaii's forests and watersheds healthy. The Oahu Invasive Species Committee has eradicated and stopped the spread of many high-threat invasive plants by removing them before they move into Hawaii's Natural Area Reserves.

The Natural Area Reserve fund has supported much needed conservation and creates jobs for the green-collar economy. Keeping the watershed health requires hiring staff to go out and remove invasive plants. It has been an important source of funding for OISC, but despite this, OISC has been critically short of funds for the past several years.

Fully protecting Hawaii's watersheds requires more funding than the state has traditionally dedicated to conservation. This bill will correct that. NAR funds are highly leveraged; every dollar from the NAR fund creates another dollar of conservation funding to match it. An investment now by the legislature will ensure the sustainability of Hawaii's fresh water supply for future generations. Thank you for the opportunity to comment.

Mahalo,

Oahu Invasive Species Committee



From: mailinglist@capitol.hawaii.gov
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Cc: mandiah23@hotmail.com
Subject: *Submitted testimony for SB1166 on Feb 28, 2013 09:35AM*
Date: Thursday, February 28, 2013 8:01:23 AM

SB1166

Submitted on: 2/28/2013

Testimony for WAM on Feb 28, 2013 09:35AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Amanda Hardman	Individual	Support	No

Comments:

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Date: Wednesday, February 27, 2013 3:43:49 PM

SB1166

Submitted on: 2/27/2013

Testimony for WAM on Feb 28, 2013 09:35AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Pang	Individual	Support	No

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Date: Thursday, February 28, 2013 8:31:17 AM

SB1166

Submitted on: 2/28/2013

Testimony for WAM on Feb 28, 2013 09:35AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Danielle Frohlich	Individual	Support	No

Comments:

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Springer Kaye
PO BOX 116
Honolulu, HI 96728

Testimony of Springer Kaye

Supporting SB 1166 Relating to the conveyance tax
Senate Committee on Ways and Means
February 28, 2013

Thank you for convening this hearing and considering the importance of increased revenue for the Natural Area Reserve Fund. I strongly support SB 1166, which increases the conveyance tax on high-end real estate transactions and directs an additional ten percent of conveyance tax proceeds to the Natural Area Reserve Fund for watershed protection and invasive species control.

Invasive species are one of the most significant threats to our watersheds, native species, habitats, cultural areas, recreation areas, and agricultural lands, yet they have no reliable source of state funding. Additionally, large properties belonging to investment and absentee landowners serve as increasingly costly source populations of invasive species, including albizia, miconia, and coqui frogs. It is not in the interest of landowners who do not live on or work the land they own to invest in controlling these species. When they sell their land, they pass these costs on to the new owners, and to the invasive species control programs that must control their spread.

Raising the conveyance tax on high-end properties will not interfere with transactions. Buyers do not consider this tax when purchasing property. Most focus on interest rates for loans and mortgages, and the conveyance tax is almost always included in the mortgage over many years anyway. There would be negligible impact to sellers and buyers.

The positive impacts of this bill are significant. Currently, only ten percent of our watersheds in Hawai'i are protected and managed. Invasive species programs are working at 60% funding levels, compared to pre-2008 levels, and conducting far less work as a result. SB 1166 will help increase that amount and secure precious water resources for future generations. At the same time, native species and ecosystems, cultural resources, and the Rental Housing Trust Fund will also benefit from this bill.

Mahalo for your consideration,

Springer Kaye