



**STATE OF HAWAII**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
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IN REPLY REFER TO:

**WRITTEN ONLY**

Statement of  
**Karen Seddon**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON WAYS AND MEANS**

January 29, 2013 at 9:00 a.m.  
State Capitol, Room 211

In consideration of  
**S.B. 97**  
**RELATING TO TAXATION.**

The HHFDC **supports the intent** of S.B. 97, as it would generate additional revenues for the Rental Housing Trust Fund. However, we defer to the Department of Taxation on the overall merits of this proposal.

The Rental Housing Trust Fund is leveraged with other funding sources to develop critically needed rental housing through public-private partnerships. As of December 31, 2012, 4,567 affordable rental units have been produced or are in development in 58 projects statewide.

Currently, the sole dedicated source of funding for the Rental Housing Trust Fund is 30% of conveyance tax proceeds. Based on the first five months receipts, the projected yield is about \$12 million for Fiscal Year 2013.

In Fiscal Year 2012, the Trust Fund received \$37 million in requests but was only able to commit \$20.7 million to eligible projects due to limited resources. This was sufficient to fund the development of only 317 of 547 potential affordable rental units, therefore 230 potential units were not developed.

Thank you for the opportunity to provide written comments on this bill.

# 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: SB 97; HB 386; HB 680 (Identical)

INTRODUCED BY: SB by Chun Oakland, Ruderman and 2 Democrats; HB 386 by Mizuno; HB 680 by Nishimoto

**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; or (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.

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; (3) any document or instrument conveying real property, or any interest therein, to or from a wholly-owned corporation or limited liability company.

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

EFFECTIVE DATE: July 1, 2014

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?

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. 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 transfer ownership of an entity or company. As such, the conveyance 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 1/28/13

**Testimony to the Senate Committee on Ways and Means  
Tuesday, January 29, 2013  
9:00 a.m.  
State Capitol - Conference Room 211**

**RE: SENATE BILL NO. 97, RELATING TO TAXATION**

Chair Ige, Vice Chair Kidani, and members of the committee:

The Chamber of Commerce of Hawaii opposes S.B. No. 97 which is similar to S.B. No. 22. Both bills propose to amend Chapter 247 HRS 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.

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.



## CATHOLIC CHARITIES HAWAII

### TESTIMONY IN SUPPORT OF SB 97: RELATING TO TAXATION

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

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

**Hearing: Tuesday, 1/29/18; 9:00 am; CR 211**

Chair Ige, Vice Chair Kidani, and Members, Committee on Ways and Means:

Thank you for the opportunity to testify on SB 97, which deems transfers of controlling interest in entities holding interest in real property within the State subject to the conveyance tax. I am Betty Lou Larson, Legislative Liaison for Catholic Charities Hawaii. Catholic Charities Hawaii supports this bill. We are also a member of Partners in Care, Oahu's coalition of homeless providers which also supports this bill.

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 projects due to limited resources.**

Catholic Charities Hawaii supports the language in SB 97 (vs. a similar bill, SB 22) since it provides for exemptions for real estate transfers between subsidiaries of the same parent entity, and between partners engaged in qualified affordable rental housing developments. We note that this bill includes various options for valuing the real property. Another option would be to base the real estate valuation on the lesser of a recent qualified appraisal (if available) or the most current county real property tax assessed value. 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 your consideration of SB 97 and its impact on housing and land protection



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Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
 Supporting SB 97 Relating to the Conveyance Tax  
 Senate Committee on Ways and Means  
 Tuesday, January 29, 2013, 9:00 AM, Room 211

Thank you for an opportunity to testify on SB 97, 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 stock transfers involving 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 transfers of stock to avoid paying the conveyance tax.

The conveyance tax funds both affordable housing through the Rental Housing Trust Fund, as well as important state initiatives that preserve critical natural resources. 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. Allocations for the Fund have seriously declined in the last six years. In 2006, the Fund received 50 percent of conveyance tax revenues, but from 2009-2012, this amount dropped by half to 25 percent and will be at thirty percent this year. Augmenting conveyance tax revenues by fairly taxing all real property transfers will enable our state to address its affordable housing crisis and protect our environment.

Hawai'i faces a severe shortage of affordable housing, so much so that more than 75 percent of households living in poverty are paying more than half their income in housing costs. In the next four years, Hawai'i will need 13,000 more rental units to meet the need for affordable rents. As a result of this shortfall, families struggle to keep themselves housed, and many find themselves homeless. Among the states, Hawai'i has the third highest rate of homelessness, and creating more affordable housing is essential to ending this crisis. The Rental Housing Trust Fund has helped create over 4,250 units, significant progress in addressing our need for funding.

We also wish to emphasize that calculating the appropriate amount of conveyance tax will not be 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. The bill provides two clear methods of assessment should it not be possible to determine the value of the realty based on the value of the stock transferred: either the "most recent assessed appraised value" or the "amount of consideration paid for the stock transfer," whichever is greater.

The committee may wish to consider another option, basing the value of the realty on the lesser of a recent qualified appraisal, if available, or the current county real property tax assessed value. The 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.

Again, thank you for providing us with an opportunity to testify on SB 97.



# THE TRUST *for* PUBLIC LAND

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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 AN AMENDMENT OF SB 97 RELATING TO THE  
CONVEYANCE TAX**

Senate Committee on Ways and Means  
Tuesday, January 29, 2013, 9:00AM, Room 211

The Trust for Public Land supports SB 97, with some suggested included in The Nature Conservancy's testimony. We believe this bill appropriately closes a major loophole with respect to the conveyance tax on transfers of real estate – real estate transferred via a majority stock transfer.

The real estate conveyance tax does not apply to the value of stock or the value of a business. The real estate conveyance tax applies only to value of the real estate being bought/sold. 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 transfer ownership of the real estate. For example, although hundreds of millions of dollars of real estate 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 (and the Affordable Housing Rental Trust Fund). Since the development and sale of real estate puts pressure on our natural resources like fresh water resource, 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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