

HB2101

[HB2101 HD1](#) [\(?\)](#)

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Measure Title: RELATING TO THE KAHO'OLAWA ISLAND RESERVE.

Report Title: Kaho'olawe Rehabilitation Trust Fund; Conveyance Tax; Annual Payments

Description: Deposits a percentage of conveyance tax revenue annually into the Kaho'olawe rehabilitation trust fund, with a maximum amount. Repealed on June 26, 2026, or upon the recognition of a sovereign native Hawaiian governing entity, whichever occurs sooner. Effective July 1, 2030. (HB2101 HD1)

Companion:

Package: None

Current Referral: WTL/HWN, WAM

Introducer(s): CARROLL

Sort by Date		Status Text
3/6/2014	S	Received from House (Hse. Com. No. 299).
3/6/2014	S	Passed First Reading.
3/6/2014	S	Referred to WTL/HWN, WAM.
3/11/2014	S	The committee(s) on WTL/HWN has scheduled a public hearing on 03-19-14 1:00PM in conference room 225.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committees on
WATER AND LAND
and
HAWAIIAN AFFAIRS

Wednesday, March 19, 2014
1:00 PM
State Capitol, Conference Room 225

In consideration of
HOUSE BILL 2101, HOUSE DRAFT 1
RELATING TO THE KAHO'OLAWE ISLAND RESERVE

House Bill 2101, House Draft 1 proposes to deposit a percentage of conveyance tax revenue annually into the Kaho'olawe rehabilitation trust fund, with a maximum amount, repealed on June 26, 2026, or upon the recognition of a sovereign native Hawaiian governing entity, whichever occurs sooner. **The Department of Land and Natural Resources (Department) offers the following comments.**

Currently, beneficiaries of the Conveyance Tax include the Department's Natural Area Reserve Fund and Land Conservation Fund. To protect Hawaii's invaluable ecosystems and water supplies, the Natural Area Reserve Fund was created for the Natural Area Partnership Program, the Natural Area Reserves, projects undertaken in accordance with watershed management plans, and the Youth Conservation Corps. 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.

The Legislature has determined that there is a clear nexus between the source of the conveyance tax and providing funding for watershed protection and other natural resource preservation programs. The development, sale, and improvement of real estate in Hawaii adds additional pressure on natural areas, coastal access, agricultural production, and Hawaii's water resources and watershed recharge areas (Act 156, Session Laws of Hawaii 2005).

These programs support active land management and acquisition, including defending important conservation areas against threats from development and invasive species and also by restoring

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

these areas by planting native species and monitoring recovery, which increases property values and provides a direct nexus to real estate. Dedicated funding for these programs is critical for the protection of these public trust resources.

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON WATER AND LAND
AND HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 2101, H.D. 1

March 19, 2014

RELATING TO THE KAHO'OLAWA ISLAND RESERVE

House Bill No. 2101, H.D. 1, authorizes a portion of the conveyance tax revenues to be paid into the Kaho'olawe rehabilitation trust fund for the long-term rehabilitation and maintenance of the Kaho'olawe island reserve, and repeals the measure on June 30, 2026 or upon the recognition of the sovereign Native Hawaiian entity by the State and the United States, whichever occurs sooner.

The Department of Budget and Finance would like to point out that the taxes from the conveyance fund are currently distributed as follows: 10 percent to the land conservation fund; 25 percent to the natural area reserve fund; 30 percent to the rental housing trust fund; and the remaining 35 percent to the general fund.

This measure would allocate an undetermined amount of the conveyance tax to the Kaho'olawe rehabilitation trust fund. The general fund revenue decline that would result from this legislation is currently not accounted for in the State's six-year general fund financial plan.



KŪKULU KE EA A KANALOA

KAHO‘OLAWE ISLAND RESERVE COMMISSION

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Michael K. Nāho‘opi‘i
Executive Director

Testimony of MICHAEL K. NAHO‘OPTI Executive Director

Before the Senate Committee on

WATER & LAND and HAWAIIAN AFFAIRS

Wednesday, March 19, 2014

1:00 PM

State Capitol, Conference Room 225

In consideration of HOUSE BILL 2101 HD1 RELATING TO THE KAHO‘OLAWE ISLAND RESERVE

House Bill 2101 HD1 authorizes a portion of the conveyance tax revenues to be used to replenish the Kaho‘olawe Rehabilitation Trust Fund for the long-term restoration of Kaho‘olawe. The Kaho‘olawe Island Reserve Commission (KIRC) supports this measure that would provide permanent state statutory funding for the restoration of Kaho‘olawe.

When the State of Hawai‘i accepted the return of the island of Kaho‘olawe in 1994, it accepted the responsibility “to preserve and protect a corner of their island state so that future generations can become familiar with their island’s past human and natural heritage. For many Native Hawaiians and others, Kaho‘olawe is a special place that has been sanctified by the loss of life in a struggle between traditional values and Western concepts of land use and management” (Kaho‘olawe Island: Restoring a Cultural Treasure, Kaho‘olawe Island Conveyance Commission). It is our conviction that accountability must be assumed by the State; it has a responsibility to the people of Hawaii and their future to preserve and protect Kaho‘olawe.

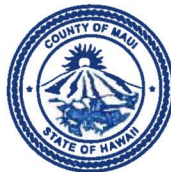
In addition to the KIRC’s previously submitted testimony of January 27, 2014 before the House Committees on Ocean, Marine Resources & Hawaiian Affairs and Water & Land, and February 26, 2014 before the House Committee on Finance, the KIRC would like to submit the following amendment regarding this measure:

The KIRC requests that the effective date of this act be changed to July 1, 2014 and the percentage of the conveyance tax fund paid into the Kaho‘olawe Rehabilitation Trust Fund be reinstated to 10 per cent.

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

March 12, 2014

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair
and Members of the Senate Committee on Water and Land
Senator Maile S.L. Shimabukuro, Chair
Senator Clayton Hee, Vice Chair
and Members of the Senate Committee on Hawaiian Affairs
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Aloha Chairs Solomon and Shimabukuro, Vice Chairs Galuteria and Hee, and Committee Members,

SUBJECT: SUPPORT FOR HB2101 HD1

Please accept this testimony in support House Bill 2101, House Draft 1, which would establish a secure funding source for the long-term restoration and management of the Kaho`olawe Island Reserve (Reserve), which includes the island of Kaho`olawe and its surrounding waters.

As the Chair and Maui County representative for the Kaho`olawe Island Reserve Commission, I can attest to the urgency and importance of providing this secure, short-term source of funding. Those of you who have recently been to Kaho`olawe would hopefully agree!

Under this proposal, a portion of state conveyance tax revenue would be used to replenish the Kaho`olawe Rehabilitation Trust Fund with an annual cap and a sunset date in 2026. I would ask for your consideration of the bill's original proposed language that provided the Trust Fund with **ten percent** of conveyance tax revenue, with a cap of **\$3.5 million**, each year.

This is a reasonable funding source for two reasons: first, the funding responsibility for Kaho`olawe rests with the State and, second, there is a rational basis for conveyance tax revenue to fund Kaho`olawe's programs and operations.

When the State accepted the return of Kaho`olawe from the United States in 1994, it clearly accepted the responsibility to preserve and manage the Reserve. The terms of this acceptance were also stated in the federally-mandated Kaho`olawe Island Conveyance Commission final report to Congress in 1993: "in the short term, federal funds will provide the bulk of the program support for specific soil conservation projects and related activities. **In the longer term, however, state revenues will be needed to continue and enhance those activities initiated with federal funds**" (emphasis added). This funding responsibility, therefore, belongs to the State.

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair
and Members of the Senate Committee on Water and Land
Senator Maile S.L. Shimabukuro, Chair
Senator Clayton Hee, Vice Chair
and Members of the Senate Committee on Hawaiian Affairs
March 12, 2014
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Two current recipients of conveyance tax revenue have similar purposes as the Kaho'olawe Rehabilitation Trust Fund: the Land Conservation Fund and the Natural Area Reserve Fund. The Land Conservation Fund is used to acquire and manage certain special lands and can be used for land management techniques such as erosion control, reforestation and invasive species control, while the Natural Area Reserve System preserves, protects and manages unique natural resources. Both mirror the mission of the Kaho'olawe Rehabilitation Trust Fund to support management of the Reserve.

It makes sense to fund these programs through conveyance tax revenue. Our population increases each year, due both to natural growth of local families and to new people moving to Hawai'i. As our population increases, it becomes even more important to protect our natural, cultural and marine resources for the benefit of all of Hawaii's people. Conveyance tax revenue is, therefore, a logical method to fund resources protection.

Without a secure funding source, Kaho'olawe's programs could continue for perhaps two more years. With 25 percent of the island remaining uncleared of unexploded ordnance, a continued round-the-clock 24/7 presence on Kaho'olawe is needed to ensure the protection of the general public. HB2101 HD1 can provide secure funding, with a reasonable annual cap that will allow ongoing operations and programs to continue, and sunset date that coincides with the current strategic planning cycle.

Passage of HB2101 HD1 can fulfill the State's commitment to restore and protect the Reserve; your support of the original proposed language providing the KIRC with ten percent of state conveyance tax revenue, capped at \$3.5 million annually, will be sincerely appreciated.

Mahalo for your consideration!

Sincerely,



MICHELE MCLEAN
Deputy Planning Director, County of Maui
Chair, Kaho'olawe Island Reserve Commission



HB2101 HD1
RELATING TO THE KAHO‘OLAWE ISLAND RESERVE

Senate Committee on Water and Land and
Senate Committee on Hawaiian Affairs

March 19, 2014

1:00 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2101 HD1, which authorizes a portion of State conveyance tax revenue to be deposited into the Kaho‘olawe rehabilitation trust fund for the long-term rehabilitation and maintenance of the Kaho‘olawe Island Reserve.

Kaho‘olawe, a kinolau of Kanaloa, remains a piko of Hawaiian culture, yet still retains visible scars from decades of previous mismanagement. Kaho‘olawe was critical to the Hawaiian cultural renaissance and continues to serve as an integral educational center for traditional navigation, hula, natural resource management and other cultural traditions and disciplines.

Since Kaho‘olawe’s return to the State of Hawai‘i in 1994, the Kaho‘olawe Island Reserve Commission (KIRC) has been tasked by the Legislature to manage Kaho‘olawe while it is held in trust for a future Native Hawaiian sovereign entity. With an initial \$44 million in federal funding to assist in restoration work, KIRC has begun the long road towards rehabilitation and maintenance of the island reserve. Marine and terrestrial components of the Kaho‘olawe Island Reserve are finally beginning to heal from decades of extreme damage.

While the federal funds were a noteworthy investment, they were never meant to establish a significant endowment for the long-term rehabilitation and maintenance of the Kaho‘olawe island reserve. As stated in the federally-mandated Kaho‘olawe Island Conveyance Commission (KICC) final report to Congress in 1993, “in the short term, federal funds will provide the bulk of the program support for specific soil conservation projects and related activities. In the longer term, however, state revenues will be needed to continue and enhance those activities initiated with federal funds.”

Accordingly, this bill seeks to allocate a portion of state conveyance tax revenue to replenish the Kaho‘olawe rehabilitation trust fund. OHA supports efforts to protect, preserve and restore Kaho‘olawe as a valuable natural and cultural resource for the benefit of Hawai‘i’s current and future generations.

Therefore, OHA urges the Committees to **PASS** HB2101 HD1. Mahalo for this opportunity to provide this testimony.



LAND USE RESEARCH
FOUNDATION OF HAWAII

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March 18, 2014

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair
Senate Committee on Water and Land

Senator Maile S.L. Shimabukuro, Chair
Senator Clayton Hee, Vice Chair
Senate Committee on Hawaiian Affairs

Comments and Concerns Regarding HB 2101, HD1 Relating to Kaho‘olawe Island Reserve (Deposits a percentage of conveyance tax revenue annually into the Kaho‘olawe rehabilitation trust fund, with a maximum amount. Repealed on June 26, 2026, or upon the recognition of a sovereign native Hawaiian governing entity, whichever occurs sooner. Effective July 1, 2030).

Wednesday, March 19, 2014, 1:00 p.m., in Conference Room 225

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 2101, HD1. This bill proposes to deposit a percentage of conveyance tax revenue annually into the Kaho‘olawe Rehabilitation Trust Fund (“KRTF”), with a maximum amount; to be repealed on June 26, 2026, or upon the recognition of a sovereign native Hawaiian governing entity, whichever occurs sooner. Effective July 1, 2030.

LURF supports the intent of this measure, and supports the state funding to replenish the KRTF for the long-term rehabilitation and maintenance of the Kaho‘olawe island reserve.

However, LURF believes that, similar to the 2013 funding of the Natural Area Reserve Fund (“NARF”), the KRTF deserves to be fully funded through broad taxes on the public and the State General Fund, and not through the conveyance tax which targets only sellers of property, is unreliable, and fluctuates with the housing market (In 2013, the State Legislature funded the NARF from the General Fund, not conveyance taxes).

Based on the following reasons and considerations, LURF **opposes** HB 2101, HD1, because it would be an illegal use of conveyance tax funds, and respectfully requests that this bill be **held in Committee**.

1. It is unnecessary to use of the conveyance tax to replenish special funds such as the KRTF (which does not have any “nexus” to the conveyance tax). Recognizing the importance of the long-term rehabilitation and maintenance of the Kaho‘olawe island reserve, the 2014 Legislature should replenish funding for the KRTF through a State General Fund appropriation, just like it did for NARF in 2013.
2. Based on the 2012 State Auditor’s Report, the application of the Conveyance Tax revenue collected pursuant to HB 2101, HD1 to replenish the KRTF is arguably illegal and in violation of HRS Sections 37-52.3 and 37-52.4.
3. According to the 2012 State Auditor’s Report, special funds created for worthy purposes, 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. The KRTF is such a special fund with a worthy purpose, so it deserved funding through broad taxes on the public – rather than a tax on only a few who sell their property.
4. HB 2101, HD1 would violate Act 130, (SLH 2013), which sets the legal criteria for establishing and continuing to fund a special fund such as the KRTF
5. HB 2101, HD1 is also flawed, because it does not indicate any attempts to comply with HRS Section 6K-9.5(a), which lists existing, alternative and more legally appropriate sources of funding for the KRTF.
6. If HB 2101, HD1 is passed, it should exempt landowners who have provided substantial support for the preservation and protection of Hawaii’s great treasures of historical and cultural significance.

Background. **The Hawaii Conveyance Tax was never intended as a revenue-generating tax to provide funding for non-conveyance tax-related funds.** 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.

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 NARF) 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, or need identified in the Act.

This measure, which proposes to fund the KRTF through conveyance taxes, without a sufficient nexus, and without demonstrating any effort to seek legal sources of funding, raises issues that are identical to the 2013 proposed funding of NARF through conveyance taxes.

LURF's Position.

1. **It is unnecessary to use of the conveyance tax to replenish special funds such as the KRTF (which are non-related to the conveyance tax).** Recognizing the importance of the long-term rehabilitation and maintenance of the Kaho'olawe island reserve, the 2014 Legislature should replenish funding for the KRTF through a State General Fund appropriation, just like it did for NARF in 2013.

As explained above, last year, during the 2013 Regular Session, sufficient general funding for the NARF was successfully earmarked by this Legislature. Standing Committee Report No. 928, dated March 11, 2013, and relating to HB 200, HD1 (the State Budget for FY2014-2015), confirms that the Committee on Finance, recognizing the importance of projects that preserve the State's natural resources, appropriated \$8.5 million to the NARF.

Instead of funding the KRTF through conveyance taxes, LURF supports funding for KRTF in 2014, through an appropriation from the State General Fund.

2. **Based on the 2012 State Auditor's Report, the application of the Conveyance Tax revenue collected pursuant to this bill, to replenish the KRTF is arguably illegal and in violation of HRS Sections 37-52.3 and 37-52.4.** LURF believes that the legal analysis of SB 2743, SD2 and the proposed conveyance tax funding of the KRTF would be identical to the legal analysis and State Auditor's 2012 findings relating to the conveyance tax funding of the NARF.

Legal criteria for special funds. The legal criteria for the establishment and continuance of special and revolving funds (including special funds such as KRTF and 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.

2012 State Auditor's Report findings. 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 (which LURF believes would also be applicable to the KRTF), 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 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.** LURF believes that this legal analysis of NARF funding through the conveyance tax, would be identical to the legal analysis of SB 2743, or any similar attempt to fund the KRTF through conveyance taxes.

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, HB 2101, HD1 is being proposed to replenish the KRTF, using conveyance tax revenues, even though the KRTF does **not** to have a clear link or nexus between the benefits sought and charges made only upon the sellers of real property, or the beneficiaries of the program – which is every Hawaii resident and visitor. Thus, this measure is subject to legal challenge, and the State could be subject to a possible class-action lawsuit by all parties who paid Conveyance Taxes to finance the KRTF.

3. **According to the 2012 State Auditor's Report, worthy programs (such as the KRTF) 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 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.” (See 2012 Auditor's Report, p. 28)

LURF believes that a legal review of HB 2101, HD1 would similarly find that the use of the conveyance tax to fund the KRTF is a “revenue earmark,” with “no clear benefit-user charge;” and that this measure is being “used solely as a political shield to protect a program by providing it with an automatic means of support.”

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 such as the KRTF.

4. **HB 2101, HD1 would violate Act 130, (SLH 2013).** During the 2013 legislative session, HB 504 (now Act 130 (SLH 2013)) also directly addressed the issue relating to use of special funds and reinforced the requirement that special and revolving funds must reflect a clear link between the program funded and the source of revenue. The principles underlying Act 130 are clear, and the Act settles

without question, the fact that special, revolving, and trust funds must, amongst other things:

- a. **serve a need** as demonstrated by the purpose of the program to be supported by the fund; the scope of the program; and an **explanation of why the program cannot be implemented successfully under the general fund appropriation process**; and
- b. **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 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.**

As applied to this case, Act 130 thus makes it unequivocally clear that it is improper to channel conveyance tax revenue obtained through assessments targeted solely at sellers of real estate to special, revolving, or trust funds/programs with no nexus or clear link to the sources of revenue.

Moreover, emphasis is put on the requirement that special funds be supported when and if at all possible, through the general fund appropriation process rather than through a means removed from the normal budget and appropriation process.

As stated above, in 2013, the conveyance tax was **not** increased and NARF was **not** provided with a larger percentage of the conveyance tax. Instead, \$8.5 million from the General Fund was appropriated for NARF during the 2013 legislative session through HB 200, HD1 (the State Budget for FY2014-2015).

Based on the above, it would be more appropriate to support a General Fund appropriation for the KRTF in 2014 and in the future.

5. **HB 2101, HD1 is fatally flawed, because it does not indicate any attempts to comply with HRS Section 6K-9.5(a), which lists existing, alternative and more legally appropriate sources of funding for the KRTF.** HRS Section 6K-9.5(a) specifically identifies several sources of funding for the KRTF and the rehabilitation and environmental restoration of the island of Kaho'olawe, or purposes consistent with this chapter. Under this section of the law, the possible sources of KRTF funding, are as follows:

“(1) All moneys received from the federal government for the rehabilitation and environmental restoration of the island of Kaho'olawe or other purposes consistent with this chapter;

- (2) Any moneys appropriated by the legislature to the trust fund;
- (3) Any moneys received from grants, donations, or the proceeds from contributions; and
- (4) The interest or return on investments earned from the moneys in the trust fund.”

However, HB 2101, HD1 does **not** indicate any attempts to comply with HRS Section 6K-9.5(a), by seeking alternative sources of funding for the KRTF, and it does **not** include any audit or evaluation of the interest or return on investments earned from the moneys in the KRTF.

Given the “lack of a clear nexus” and what appears to be the lack of effort to fund the KRTF in compliance with HRS Section 6K-9.5(a), it seems clear that this measure is illegal, because it serves “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,” in violation of Act 130 (SLH 2013).

In lieu of improperly funding the KRTF through conveyance taxes that only target sellers of property, other possible legitimate means to fund the KRTF should be explored, including the following:

- a. Consistent with HRS Section 6K-9.5(a)(1), funding support could be available through other federal programs or grants from private foundations which support soil conservation projects and related activities;
- b. Consistent with HRS Section 6K-9.5(a)(1), funding support could be available through other federal programs or grants which support innovative programs that emphasize ancestral and traditional knowledge or utilize a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques;
- c. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions from private organizations or foundations which support soil conservation projects and related activities;
- d. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions from private organizations or foundations which support and innovative programs that emphasize ancestral and traditional knowledge or utilize a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques;

- e. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions, such as voluntary donations by rental car lessors or hotel room guests (e.g., HB 760, HD1, SD1, carried over from the 2013 Regular Session and which proposes to require 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
- f. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions, such as an income tax refund check-off box (which was proposed in 2013 by HB 571 and carried over from the 2013 Regular Session, 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 failure to comply with the "clear nexus" and "clear link" requirements for special and revolving funds, and also given that sufficient general funding and alternative methods to secure revenues for these funds exist, 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, appears to unlawfully target only the sellers of real property in the State, it could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

6. **If HB 2101, HD1 is passed, it should exempt landowners who have provided substantial support for the preservation and protection of Hawaii's great treasures of historical and cultural significance.** It is ironic and unfair that the entities which will be hardest hit by this bill are Hawaii's large Kamaaina and Kamaaina-at-heart landowners that are stewards of the land, and are the leading partners in, and contributors to programs which are similar to the conservation and cultural preservation purposes intended to be funded by this bill and those who build and sell affordable housing for Hawaii's people.

At the very least, this measure should be amended to exempt those landowners who have provided substantial support for the preservation and protection of Hawaii's great treasures of historical and cultural significance, those that support and participate in conservation and watershed programs, or those that provide innovative programs that emphasize Hawaiian ancestral and traditional knowledge or utilize a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques.

For the reasons stated above, LURF supports the continued funding of the KRTF through General Fund appropriations, but must respectfully ask that this Committee consider **holding HB 2101, HD1 in this Committee.**

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

TAXBILLSERVICE

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SUBJECT: CONVEYANCE, Disposition for Kaho'olawe rehabilitation trust fund

BILL NUMBER: HB 2101, HD-1

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Adds a provision to earmark ___% of conveyance tax revenues into the Kaho'olawe rehabilitation trust fund; provided the amount shall not exceed \$___ million annually. The legislature should maintain accountability for these funds by appropriating the funds as it does with other programs and repeal all earmarks.

BRIEF SUMMARY: Amends HRS section 247-7 to provide that ___% of conveyance tax revenues shall be paid into the Kaho'olawe rehabilitation trust fund; provided the amount shall not exceed \$___ million annually.

This act shall be repealed on June 30, 2026 or upon the recognition of the sovereign Native Hawaiian entity by the State of Hawaii and the United States, whichever occurs sooner.

EFFECTIVE DATE: July 1, 2030

STAFF COMMENTS: The conveyance tax was 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 (which at that time also administered the real property tax) 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.

Prior to 1993, the conveyance tax was imposed at the rate of 5 cents per \$100 of actual and full consideration paid for a transfer of property. At the time all revenues from the tax went to the general fund. The legislature by Act 195, SLH 1993, increased the conveyance tax to 10 cents per \$100 and earmarked 25% of the tax to the rental housing trust fund and another 25% to the natural area reserve fund. As a result of legislation in 2005 and in 2009, the conveyance tax rates were substantially increased and bifurcated between nonowner-occupied residential properties and all other properties. Tax brackets were based on the amount of the value transferred. Until 2005, 50% of the receipts went into the general fund and the other half was split with the affordable rental housing program and the natural area reserve program. Beginning in 2005, another 10% was taken for the land conservation fund. When the state general fund began to hemorrhage, the allocation was reshuffled after rates were again increased and the portion that went to the state general fund rose from 35% of collections in 2007 to 45% beginning in 2009. Currently, 10% of conveyance tax revenues is earmarked for the land conservation fund, 30% for the rental housing trust fund and 25% for the natural area reserve fund with the remainder

deposited into the general fund. The proposed measure would earmark another ___% and deposit it into the Kaho'olawe trust fund - so each time a transfer or conveyance of realty by way of deeds, leases, subleases, assignments of lease, agreements of sale, assignments of agreement of sale, instruments, writings, or any other document occurs, a portion of the conveyance tax would be used for the long-term restoration of Kaho'olawe.

The proposed measure would earmark conveyance tax revenues for another program. If the legislature deems any of the programs for which conveyance tax revenues are earmarked to be such a high priority, then it should maintain the accountability for these funds by appropriating the funds as it does with other programs. Earmarking revenues is not desirable for a number of reasons. First, it absolves elected officials from setting priorities. Second, the beneficiaries of such earmarked sources look upon the receipts as "their" money and refuse to be held accountable for the use of those funds while all other programs not so favored like education, public safety, and health and human services, are cut when general fund tax revenues either shrink or do not increase in line with expectations.

Instead of further clouding the financial picture of the state, all of these earmarked funds and the programs they underwrite, should be brought back to the general fund table so that they can be measured against all the other pressing needs of the state. Only then will lawmakers and taxpayers be able to set priorities for what little tax resources taxpayers have to share especially in these difficult economic times. Earmarking resources, especially those that bear little relationship to the program being funded, represents poor public finance policy.

Digested 3/12/14

I, Terri Gavagan, support KIRC bill HB2101 specifying that 10% of conveyance tax revenue be paid each year into the Kaho'olawe Rehabilitation Trust Fund.

...

Please support this important measure to provide financial support and stability of the restoration and protection of the Kaho'olawe Island Reserve, which will benefit all of Hawai'i's people for generations to come.

...

As the only Island Reserve set up entirely in trust for a Native Hawaiian Sovereign Entity, the KIRC is well poised to change the economic landscape and life quality of Native Hawaiians and the communities in which they reside by means of a truly unique experience on the island of Kaho'olawe. The State must maintain the responsibility of supporting the Kaho'olawe Rehabilitation Trust Fund.

...

As the only island listed on the National Register of Historic Places in its entirety, containing nearly 3,000 archaeological sites and features, it is imperative that the State preserves this important resource for current and future generations through this financial support system.

...

Without the KIRC's ongoing protection of Kaho'olawe's coastal ecosystem, including the adjacent nearshore environment and coral reefs that can be covered with, and choked by, derelict fishing gear, nets, a huge variety of plastics and other debris items, species including the endangered Hawaiian monk seal, threatened green sea turtle, endangered hawksbill sea turtle, endangered humpback whale, endangered Hawaiian dark-rumped petrel, and endangered Newell's shearwater will be put at risk. It is imperative that a trust fund be stabilized to continue this work.

...

Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. The KIRC's massive restoration program designed to revitalize the ecology and cultural history of the island will benefit all of Hawai'i's people for generations to come. Please support bill SB2743.