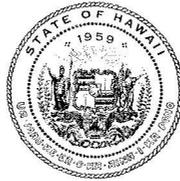


LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

SANDRA L. YAHIRO  
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DEPARTMENT OF TAXATION  
P.O. BOX 259  
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**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS & MILITARY  
AFFAIRS  
TESTIMONY REGARDING HB 1601  
RELATING TO LEASEHOLD CONVERSION**

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: FEBRUARY 5, 2009**

**TIME: 8:00AM**

**ROOM: 312**

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This bill would exempt from gross income 100 percent of the gain realized by an owner of commercial or industrial leasehold property from certain sales of the leasehold interest. This bill takes effect on July 1, 2009 and shall apply to taxable years beginning after December 31, 2009.

The Department of Taxation ("Department") **opposes this bill because of its fiscal implications.**

**OPPOSED DUE TO BUDGET IMPACT** - The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue projections, this measure would add to the budget shortfall.

**REVENUE LOSS**—This bill will result in a revenue loss of approximately \$16.2 million starting in Fiscal Year 2011

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME, Exclusion for sale of commercial or industrial property

**BILL NUMBER:** SB 770; HB 1601 (Identical)

**INTRODUCED BY:** SB by Chun Oakland and 2 Democrats; HB by Say

**BRIEF SUMMARY:** Amends HRS section 235-7 to provide an income tax exclusion of 100% of the gain realized by a lessor, where the lessor is the owner of 50,000 square feet or more of commercial or industrial leasehold property in the state, when the sale of the leasehold interest and all improvements on the leasehold property, including any improvements, is sold to the lessee in the year of the sale.

**EFFECTIVE DATE:** July 1, 2009; applicable to tax years beginning after December 31, 2009

**STAFF COMMENTS:** This measure proposes an incentive in the form of an income tax exclusion to encourage the fee owner of commercial or industrial property to sell the leasehold interest to the lessee. It should also be remembered that the tax system is an inefficient means to accomplish this goal as the proposed measure would merely provide tax benefit without a taxpayer's need for tax relief.

Further, it should be remembered that it has been the intent of the legislature for more than 20 years to maintain close conformity with the federal income tax Code in order to minimize differences and, therefore, compliance and administrative costs. Adopting this measure would run counter to that intent.

More importantly, lawmakers should remember that the capital gains realized from the sale of the fee interest in such property will still be taxed at the federal level where the rates are substantially higher. Thus, one has to question the validity of this proposal in providing the incentive to sell merely because there will be no state income tax imposed or is this merely pandering for political appeal?

Digested 2/4/09

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**From:** ManyaVogrg@aol.com  
**Sent:** Wednesday, February 04, 2009 1:57 PM  
**To:** EBMtestimony@Capitolhawaii.gov; Rep. Angus McKelvey; Rep. Isaac W. Choy; Rep. Lyla B. Berg; Rep. Cindy Evans; Rep. Joey Manahan; Rep. K. Mark Takai; Rep. James Tokioka; Rep. Clifton K. Tsuji; Rep. Glenn Wakai; Rep. Jessica Wooley; Rep. Gene Ward  
**Cc:** TPZerbe@aol.com  
**Subject:** Testimony in Opposition to HB 1601

**COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS**  
**Rep. Angus L.K. McKelvey, Chair**  
**Rep. Isaac W. Choy, Vice Chair**

**Feb. 5, 2009 8AM Conf. Rm. 312**

**Dear Chairman McKelvey, Vice Chair Choy  
and Committee Members:**

**Re: HB 1601 Relating to Real Property**

**Our names are Manya Vogrig and Phyllis Zerbe. We are in the Small Landowners Association and speak as part of a group of small landowner families. We placed our family lands (where our homes once stood) into long term leases to developers, who said we would be benefiting the people of Hawaii. Since then we have been threatened by the Legislature ... who had encouraged us to do this so many years ago when Statehood suddenly brought an influx of people to Hawaii.**

**We are testifying against this type of legislation which makes subjective judgments about our various agreements which were voluntary by both sides. Our leases have a variety of forms and agreements which were made according to a balancing of the contract. To make a law, which interferes with our contracts and comes midway to change the balance of the scale, is unfair and discriminatory.**

**Not only will this affect Commercial & Industrial property, but it will affect properties with partial commercial uses and could spread like a disease to all types of property and contracts.**

**Therefore, we repeat that we are strongly opposed to this type of legislation that sneaks through the back door claiming to help us ... when it is really being used as a vehicle to unconstitutionally take our private property.**

**Thank you for the opportunity to testify.**

**Sincerely,**

**Manya Vogrig  
Phyllis Zerbe  
Small Landowners Association**

**HB 1601  
RELATING TO REAL PROPERTY**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 5, 2009**

Chair McKelvey and Members of the House Committee on Economic  
Revitalization, Business & Military Affairs:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 1601, "A BILL FOR AN ACT RELATING TO REAL PROPERTY." We respectfully oppose this bill.

This bill establishes various conditions on long term leases for commercial and industrial properties. As leases for commercial and industrial properties reflect contractual business decisions between a lessor and a lessee, we have concerns with the impact that this bill may have upon the scope within which leases may be negotiated and executed. This bill will limit the ability to freely negotiate leases in a manner that best suits the business requirements of both the lessor and the lessee. Agreements to provide lower lease rents at the beginning of a long term lease to allow the lessee to grow their business in exchange for a long term commitment by the lessee to maintain and improve the property may no longer be feasible under the provisions of this bill. By prohibiting the enforcement of higher standards for the repair, maintenance, and surrender, the overall maintenance of properties may decline, impacting both subject property and the surrounding community.

As presently drafted, the bill appears to also apply to current leases in effect prior to the effective date of this bill. We understand that changing contractual obligations in existing leases may give rise to questions of constitutionality.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify.