THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

JAN 28 2009

S.B. NO. 1230

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The largest source of state revenues is from the payment of various taxes by residents and nonresidents. During these tough economic times it is especially important for the State to protect and improve upon the collection of its various taxes in order to provide widespread financial support to social programs, infrastructure projects, and public education. One area that the State can improve upon is collecting tax revenues in areas where there are complex transactions developed and implemented to avoid paying state taxes under the State's current tax laws.

The legislature finds that there are numerous complex transactions occurring in Hawaii that involve the purchase, transfer, or exchange of real property located in Hawaii through the sale or exchange of ownership interests in legal entities. Under the State's current tax laws, many of these complex transactions involving the transfer of real property located in Hawaii are taking place without any tax consequences. Many of these transactions are even escaping the payment of conveyance taxes.

The purpose of this Act is to impose a new tax on sale transactions by an entity that holds real property located in Hawaii and then sells any interest in their ownership to another entity that thereby acquires title, or a partial interest, in the real property. This Act will enable the State to levy, assess, and collect a tax on those transactions that meet the threshold value levels provided for in this Act.

The new tax to be implemented is a real property asset acquisition tax that is primarily modeled after the rates and threshold of taxes payable under the conveyance tax in chapter 247, Hawaii Revised Statutes and is in addition to, not in lieu of the conveyance tax. Specifically, the real property asset acquisition tax is imposed based upon the value of the real property transferred with the tax imposed being similar to the rates and thresholds applicable to the conveyance tax in chapter 247, Hawaii Revised Statutes. The conveyance tax rates and thresholds applicable to real property transfers are as follows:

(1) Fifteen cents per $100 for properties with a value of less than $600,000;

(2) Twenty-five cents per $100 for properties with a value of at least $600,000, but less than $1,000,000; and

(3) Thirty-five cents per $100 for properties with a value of $1,000,000 or greater.

SECTION 2. Chapter 247, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . REAL PROPERTY ASSET ACQUISITION TAX

§247-A Short title. This part may be cited as the "Real Property Asset Acquisition Tax Law."

§247-B Definitions. For purposes of this part, the following terms shall have the following meaning:

"Applicable transfer" means all transfers of real property located in Hawaii or any interest therein that is effected by a sale transaction.

"Entity" means a taxpayer subject to the tax laws of Hawaii and is an individual, corporation, limited liability company, single member limited liability company, partnership, limited liability partnership, or S corporation, excluding any trust or nonprofit taxpayer.

"Fair market value" means the greater of the following:

(1) The cost, contract, sales price, or other consideration transferred, purchased, or exchange for the stock;

(2) The value carried on the seller's audited financial statements at the date of the stock transaction; or

(3) The value obtained by a certified appraiser taking into consideration the highest and best use of the real property.

"Sale transaction" means a purchase, transfer, or exchange of any interest in the ownership of a legal entity; provided that the entity selling or transferring the ownership interest holds real property located in Hawaii that has a fair market value exceeding $ on the date of the purchase, transfer, or exchange of the ownership interest of the transferor.

§247-C Imposition of tax. There is hereby imposed and shall be levied, collected, and paid, a real property asset acquisition tax as hereinafter provided, on all applicable transfers; provided that the tax imposed under this part is in addition to any conveyance tax that may be assessed under part I of this chapter.

§247-D Basis and rate of tax. The tax imposed by section 247-C shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit), paid or to be paid for all applicable transfers of real property located in Hawaii or any interest therein, that shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the following rates:

(1) cents per $ for properties with a value of less than $;

(2) cents per $ for properties with a value of at least $, but less than $; and

(3) cents per $ for properties with a value of $ or greater.

depending upon the fair market value of the real property on the date of the stock transaction; provided that in the case of a lease or sublease, this part shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax in this part shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, that shall include on-site as well as off-site improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than $1.

§247-E Exemptions. The tax imposed by this part shall not apply to:

(1) Any applicable transfer that is executed before January 1, 2010;

(2) Any existing mortgages on single family homes, apartments, or condominiums;

(3) Any applicable transfer executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;

(4) Any applicable transfer conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or

governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;

(5) Any applicable transfer that results in conveying real property from a testamentary trust to a beneficiary under the trust;

(6) Any applicable transfer that results in conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;

(7) Any applicable transfer that results in 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 per cent interest in the dissolving limited partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the Internal Revenue Code, to the constructive ownership of interests in the partnership; and

(8) Any applicable transfer that results in conveying real property to any nonprofit or for-profit organization that has been certified by the Hawaii housing finance

and development corporation for low-income housing development.

§247-F Payment and liability of the tax; penalties. (a) The tax imposed by this part shall be paid by the grantor, lessor, sublessor, assignor, transferor, seller, conveyor, or any other person conveying realty, or any interest therein; except, however, in the case where the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, lessor, sublessor, assignor, transferor, seller, or conveyor, in which case the tax shall be paid by the grantee, lessee, sublessee, assignee, transferee, purchaser, or conveyee, as the case may be.

(b) The tax imposed by this part shall be paid at the place or places as the director of taxation may direct and shall be due and payable no later than ninety days after the taxable transaction.

(c) Penalties and interest shall be added to and become a part of the taxes, when and as provided by section 231-39.

§247-G Appeals. Any person aggrieved by any assessment of the tax imposed by this part may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. The hearing and disposition of the appeal, including the distribution of costs shall be as provided in chapter 232.

§247-H Disposition of taxes. All taxes collected under this part shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

(1) per cent shall be paid to the credit of the rental housing trust fund established by section 201H-202;

(2) per cent shall be paid to the credit of the land conservation fund established pursuant to section 173A-5;

(3) per cent shall be paid to the credit of the dwelling unit revolving fund established by pursuant to section 201H-191; and

(4) The remaining balance shall be paid to the credit of the general fund.

§247-I Refunds. The director of taxation may order the refund in whole or in part of any tax that has been erroneously or unjustly paid under this part. The order shall be made in accordance with section 231-23. As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive.

§247-J Enforcement and administration. (a) The director of taxation, with the support of the department of commerce and consumer affairs, shall administer and enforce the taxes imposed by this part. The director of taxation or director of commerce and consumer affairs may prescribe rules and regulations not inconsistent with the provisions herein for their detailed and efficient administration. At any time after the making of an applicable transfer subject to the tax imposed by this part, the director of taxation may investigate and ascertain whether the tax, in the proper amount, was paid. For this purpose, the director of taxation or director of commerce and consumer affairs may invoke all statutory powers vested in them, including but not limited to section 231-7.

(b) The director of taxation shall prepare forms as may be necessary to satisfy the requirements of this paragraph. The director may also require the nonresident person that is a transferee under this section to furnish information to ascertain that person's compliance with the requirements of this paragraph and may adopt rules necessary to effectuate the purposes of this part pursuant to chapter 91."

SECTION 3. Chapter 247, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"CHAPTER 247

CONVEYANCE [~~TAX~~] TAXES"

SECTION 4. Chapter 247, Hawaii Revised Statutes, is amended by designating sections 247-1 through 247-13, Hawaii Revised Statutes, and inserting a title to read as follows:

"PART I. CONVEYANCE TAX"

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2010.

INTRODUCED BY: Russell S. Kokubun

Gary L. Hooser

Fr[illegible]

Report Title:
Real Property Asset Acquisition Tax; Stock Ownership Transfer

Description:
Authorizes a tax on the transfer in ownership of a legal entity when the selling entity owns real property in Hawaii that is acquired by another individual or entity through the purchasing of an interest in the selling entity.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

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DEPUTY DIRECTOR

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SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
TESTIMONY REGARDING SB 1230
RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 11, 2009
TIME: 8:30AM
ROOM: 229

This measure proposes a new real property asset conveyance tax to capture the tax on the sale of stock in entities that own Hawaii real property.

The Department of Taxation (Department) **supports the intent of capturing the tax lost due to complex tax advantaged deal structuring and provides comments**.

SUPPORT FOR MINIMIZING THE TAX LOSS FROM STRUCTURING—The intent of this legislation appears to close the "loophole" that is perceived in the taxation of real property transfers where the stock in the entity that owns the property is sold and not the property itself. Though there is nothing inherently wrong with this structuring, it can result in the loss of tax revenue, specifically conveyance tax. The Department supports legislation to capture the proper amount of tax that, in reality and looking through structuring, should be paid for the sale of real property.

CONCERN OVER DOUBLE TAX—The Department is concerned that the tax proposed by this chapter could be "double tax" in addition to the conveyance tax. The Department does not support a double tax.

SIMPLY MODIFY CURRENT CONVEYANCE TAX—The Department suggests that, rather than an entirely new tax chapter, simply make an amendment to the conveyance tax chapter to "look through" structuring of real property sales through entity equity transactions.

Another alternative could be to assess a personal property tax on the stock transfer of entities that own real property equal to the foregone real property tax. There are several ways to close this gap, which the Department suggests be focused in the conveyance tax law rather than a new chapter.

By modifying the current conveyance tax, the entire tax regime will be applied to the stock sales wholesale, including procedural matters, exemptions, and enforcement.

CONCERN OVER JOINT ENFORCEMENT—The Department is concerned with the Department of Commerce & Consumer Affairs being given enforcement authority. The Department has sufficient enforcement abilities currently with enforcement of the conveyance tax through its current resources. The Department is prohibited from sharing tax information with other agencies, therefore DCCA's involvement would be rather minimal.

FOCUS ON OUT-OF-STATE PROPERTY SALES AS ENFORCEMENT AS WELL— This legislation raises a very important issue with perceived tax loss from structuring. There is currently an enforcement loophole in Hawaii's income tax withholding for nonresident real property transfers, known as HARPTA. This withholding tax is similar to the federal withholding tax on the sale of property owned by nonresidents. Currently, HARPTA does not apply to entities that have permission to do business in Hawaii by obtaining a "Certificate of Foreign Authority" with DCCA. The Department suggests that this provision be eliminated because any out-of-state entity can simply file with DCCA and escape the withholding tax. There is a perception that out-of-state entities capitalize on this exemption from HARPTA to avoid Hawaii income tax responsibilities.

Also, HARPTA does not apply to stock sales, which is the target of this measure. The Department suggests that the HARPTA law be modified to capture stock sales, which are subject to the withholding tax at the federal level. By modifying HARPTA to include stock sales of property from out-of-state entities, this would be conforming to federal law.

REVENUE IMPACT—This legislation will result in an indeterminate revenue impact.

IOLANI PALACE

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TESTIMONY OF KIPPEN DE ALBA CHU

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

Thursday, February 12, 2009

SB 1230

Chair Baker, Vice Chair Ige, and members of the Committee, thank you for this opportunity to testify in support of Senate Bill 1230, with amendments.

Currently by statute, 10% of the total conveyance tax revenue is paid into the Land Conservation Fund. One of this fund's stated public purposes is the acquisition of interests or rights in lands containing sites of cultural or historic value. However, once the State has acquired such sites, there is no source of dedicated funding to ensure their proper maintenance and upkeep.

These sites are costly to repair and maintain due to historic preservation best practices and requirements. We therefore support this measure and urge the Committee to consider amending Chapter 173A to allow the Land Conservation Fund monies to be used for ongoing operational expenses associated with historic sites.

In these times of economic hardship, we need to think creatively in trying to preserve our State's most important cultural treasures.

Thank you again for allowing us to testify in support of this measure.

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February 10, 2009

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1230 Relating to Taxation

HEARING DATE: Thursday, February 12, 2009 at 8:30 am

Aloha Chair Baker and members of the Committee on Commerce and Consumer Protection.

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance of the Government Affairs Committee of the Hawai‘i Association of REALTORS® (“HAR”), here to testify on behalf of the HAR and its 9,600 members in Hawai‘i. HAR **strongly opposes S.B. 1230, Relating to Taxation,** which authorizes a tax on the transfer in ownership of a legal entity when the selling entity owns real property in Hawaii that is acquired by another individual or entity through the purchasing of an interest in the selling entity.

While the HAR understands the State’s need for new sources of revenue in these tough economic times, HAR believes that S.B. 1230 is technically flawed and is essentially unworkable.

Proposed new HRS §247-C imposes the new Real Property Asset Acquisition Tax on all “applicable transfers” in addition to any Conveyance Tax that may be assessed on such transfer. As an initial matter, this overlap appears somewhat contradictory and confusing because the Conveyance Tax applies to real property transfers and the new Real Property Asset Acquisition Tax presumably applies only to personal property transfers, i.e. the transfer of ownership interests in legal entities.

Proposed HRS §247-B defines "applicable transfer" to mean all transfers of real property located in Hawaii or any interest therein that is effected by a “sale transaction.”

A "sale transaction" is defined as a purchase, transfer, or exchange of any interest in the ownership of a legal “entity;” provided that the “entity” selling or transferring the ownership interest holds real property located in Hawaii with a certain fair market value on the date of the purchase, transfer, or exchange of the ownership interest of the transferor.

Under this definition, every sale or gift of shares in a publicly traded corporation that owns real property in Hawaii would potentially be subject to this tax.

Furthermore, proposed HRS §247-B defines "entity" as a taxpayer subject to the tax laws of Hawaii and who is an individual, corporation, limited liability company, single member

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limited liability company, partnership, limited liability partnership, or S corporation, excluding, however, any trust or nonprofit taxpayer.

If an "entity" is an individual, it is hard to imagine what an ownership interest in an individual might be, and how such an interest might be purchased, transferred, or exchanged.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Commerce and Consumer Protection

Hearing: Thursday, February 12, 2009

8:30 am

Room 229

Support for SB 1230 Relating to Taxation

Aloha. My name is Marjorie Ziegler, and I am testifying on behalf of the Conservation Council for Hawai'i and its 6,000 members.

We support SB 1230, which authorizes a tax on the transfer in ownership of a legal entity when the selling entity owns real property in Hawai'i that is acquired by another individual or entity through the purchasing of an interest in the selling entity.

Working Today for the Nature of Tomorrow!

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www@conservehi.org

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Hawai'i Affiliate of the National Wildlife Federation

We recommend that the Natural Area Reserve Fund be included with the other mentioned in this bill. The NAR Fund currently receives 25% of the conveyance. Therefore, it makes sense to include the NAR Fund in this bill.

The NAR Fund supports our Natural Area Reserves on ceded land, essential watersheds, endangered species and habitat, public-private conservation partnerships, and the Youth Conservation Corps. The NAR Fund leverages private and federal funding, stretching limited state funds. However, the NAR Fund is low because conveyance tax revenues have decreased in the last year. Please include the NAR Fund in this bill and help maintain the critical programs it supports.

Mahalo for the opportunity to testify.

Housing Hawaii

Advocating Creating Maintaining Affordable Housing

February 12, 2009

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 231
Honolulu, HI 96813

Dear Chair Baker and Members:

(WRITTEN ONLY) RE: SB 1230, RELATING TO TAXATION

I am Nani Medeiros, Executive Director of Housing Hawaii, testifying on Senate Bill 1230, Relating to Taxation. As a non-profit agency, Housing Hawaii's mission is to provide education on affordable housing policy, and advocate for an improved housing policy in the state. To that extent, Housing Hawaii takes no position on this bill but offers the following information to members.

This bill establishes a dedicated source of funding for the state Rental Housing Trust Fund and Dwelling Unit Revolving Fund.

Funding, development, and preservation of existing and future stock are the key elements to developing a plan that successfully addresses government subsidized affordable housing. Although funding is the starting point for an increase in government subsidized affordable housing supply, other actions must occur simultaneously to provide systemic change that will produce homes our people can afford.

In 2006, the Hawaii State Legislature increased the amount of conveyance tax proceeds deposited into the Rental Housing Trust Fund to 50 per cent of revenues collected. In July 2008, the law reverted back to the original language which sets aside only 30 per cent of revenues for deposit into the trust fund. The allocation of conveyance tax proceeds to the RHTF provides predictability for the State and developers when it comes to planned affordable housing projects. However revenues to the RHTF have declined and may continue to do so. Dedicated funding sources for government subsidized affordable housing is a serious policy consideration. Other jurisdictions and states have used a number of dedicated funding sources including: GET revenue collections on residential rents, real estate and property taxes, or surcharges on investor and speculative purchases.

The cost of infrastructure financing is a significant challenge in any development. Roads, sewage lines, water lines, electrical, gas, storm water drains, curbs, gutters, and sidewalks are some of the infrastructure needs that must be provided in residential developments. The limited amount of

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infrastructure financing options available in Hawaii for government subsidized affordable housing makes this challenge even more daunting, and provides a disincentive to developers who are contemplating residential projects where a considerable amount of infrastructure and offsite infrastructure work may be needed or required. The dwelling unit revolving fund is the only State fund that is designated as a source of funding for affordable housing infrastructure construction. Creating a dedicated source of funding for the dwelling unit revolving fund is a helpful, creative step toward devloping successful affordable housing policy in the state.

To strengthen the intent of this measure transactions that convey affordable housing projects that will remain "affordable" could also be exempt.

Thank you for the opportunity to provide comments.

Nani Medeiros
Executive Director

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SUBJECT: CONVEYANCE, Real property asset acquisition tax

BILL NUMBER: SB 1230

INTRODUCED BY: Kokubun and 2 Democrats

BRIEF SUMMARY: Adds a new part to HRS chapter 247 to establish a real property asset acquisition tax on all transfers of real property. The tax shall be based on the actual and full consideration paid at the following rates:

(1) _____ cents per $_______for properties with a value of less than $_______ ;
(2)______cents per $_______for properties with a value of at least $________, but less than $_______; and
(3)______cents per $_______for properties with a value of $__________or greater.

depending upon the fair market value of the real property; provided that in the case of a lease or sublease, this part shall apply only to a lease or sublease of five years or more. If a lease has been extended or amended, the tax shall be based on the cash value of the lease rental discounted to present day value and capitalized at the rate of six percent, plus the actual and full consideration paid or to be paid for any and all improvements.

The tax shall be paid by the grantor, lessor, sublessor, assignor, transferor, seller, conveyor, or any other person conveying realty, or any interest therein; unless the United States or any agency or instrumentality of the state or any agency, instrumentality, or governmental or political subdivision is the grantor, lessor, sublessor, assignor, transferor, seller, or conveyor, in which case the tax shall be paid by the grantee, lessee, sublessee, assignee, transferee, purchaser, or conveyee.

The tax shall not be applicable to any: (1) transfer executed before January 1, 2010; (2) existing mortgages on single family homes, apartments, or condominiums; (3) transfer executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the state or any agency, instrumentality, or governmental or political subdivision for delinquent taxes or assessments; (4) applicable transfer conveying real property due to the power of eminent domain; (5) applicable transfer that results in conveying real property from a testamentary trust to a beneficiary under the trust; (6) applicable transfer that results in conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust; (7) transfer that results in conveying real property from a dissolving limited partnership to its corporate general partner that owns at least a ninety per cent interest in the dissolving limited partnership; and (8) transfer that conveys real property to any organization certified by the Hawaii housing finance and development corporation for low-income housing development.

All taxes collected under this part shall be paid into the state treasury to the credit of the general fund, provided that of the taxes collected each fiscal year: (1)_____ per cent shall be paid to the credit of the rental housing trust fund established by section 201H-202; (2)_____ per cent shall be paid to the credit of the land conservation fund established pursuant to section 173A-5; (3) _____per cent shall be paid to the credit of the dwelling unit revolving fund established pursuant to section 201H-191; and (4) the remaining balance shall be paid to the credit of the general fund.

Defines "applicable transfer," "entity" and "fair market value" for purposes of the measure. Defines "sale transaction" as a purchase, transfer, or exchange of any interest in the ownership of a legal entity; provided that the entity selling or transferring the ownership interest holds real property located in Hawaii that has a fair market value exceeding $ _____on the date of the purchase, transfer, or exchange of the ownership interest of the transferor.

EFFECTIVE DATE: January 1, 2010

STAFF COMMENTS: It appears that this measure is proposed to generate additional revenue by the imposition of a real property asset acquisition tax on all transfers and conveyances in the state, similar to the conveyance tax. Like the conveyance tax, revenues derived from this tax are also diverted to the rental housing trust fund, the land conservation fund and the dwelling unit revolving fund.

While the intent of this measure is to provide an additional stable source of revenue, then care should be exercised as a tax based on a volatile real estate market may produce sharp swings in the amount of revenues collected. As with any tax it is an additional imposition and the increase will be passed on to taxpayers and consumers. For example, residential properties will be increased by the additional tax borne by the property and commercial or industrial property owners will, no doubt, pass on the added costs of the tax to their consumers in the form of higher prices.

Until a few years ago, the conveyance tax was long recognized as not being a source for raising revenue. Rather it was implemented as a means by which to gather data for real property tax assessors and assist them in the valuation of property. Not only did lawmakers double the conveyance tax in 1993, but they earmarked the increase for specific programs, thereby ignoring the state auditor's concern about the creation of special funds and proliferation of earmarked sources of revenues. In 2005, lawmakers again increased the conveyance tax and structured it to increase the rate as the value of the property rose and took specific aim at transactions that involved residential property that would not be owner occupied. This latter action demonstrated how inexperienced lawmakers are when it comes to real life situations. While on one hand trying to encourage affordable rentals with all sorts of housing programs including the rental housing trust fund to which part of the conveyance tax accrues, on the other hand they made the acquisition of residential rental property more expensive, be it single-family or multi-family structures. In the case of the latter, such a transaction would probably involve a seven-figure valued property.

This measure would also have the same effect on such residential rental housing as well as on commercial and industrial real estate. This is just one more reason why investors shy away from setting up businesses in Hawaii. This is just not a way to balance the state's budget especially at a time when the economy is in the doldrums.

It is becoming increasingly obvious that despite all the political rhetoric that Hawaii's people are over taxed, policy makers continue to search for more and more ways to heap another tax on a people that already find it difficult to make ends meet.

Digested 2/10/09

The Nature Conservancy
Protecting nature. Preserving life.™

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Testimony of The Nature Conservancy of Hawai‘i
Commenting on S.B. 1230 Relating to Taxation
Senate Committee on Commerce and Consumer Protection
February 12, 2009, 8:30AM, Room 229

The Nature Conservancy submits a suggested amendment and comments on S.B. 1230.

Suggested amendment. Should this Committee approve the passage of S.B. 1230, we request that the DLNR's Natural Area Reserve Fund be added as a recipient of a portion of the real property asset acquisition tax under §247-H:

> "(__)______ per cent shall be paid to the natural area reserve fund established by section 195-9 and shall be distributed consistent with the provisions of section 247-7(3);"

Comments. Under HRS §247-7, a portion of existing conveyance tax revenue has been appropriately used for land preservation, affordable housing, and forested watershed conservation via the Land Conservation Fund, the Rental Housing Trust Fund, and the Natural Area Reserve Fund, respectively. While the development and sale or other transfers of real estate can have very positive effects on the state's economy, it also poses some significant challenges. Even in a down market, home ownership or affordable rentals remain out of reach for many low and moderate income families. Important areas, such as open coastlines and prime agricultural lands, are often lost to development along with the opportunity for future generations to enjoy them. Further, fresh water is not a limitless resource that can forever be tapped to support developed real estate.

The source of fresh water is not the faucet, pipe, or even the well or stream it's drawn from. The real source is a system of healthy forested watersheds that capture rain and cloud moisture and deliver it efficiently to aquifers and surface sources for subsequent consumption in our daily lives. We now know from the Waiahole contested case that the demand for fresh water on O‘ahu will exceed supply by 2020. In recent years, enormous amounts have been invested in the development and sale of real estate, and there are plans for continued investment in development and construction to help lift our economy out of the current recession. Yet, we make a comparatively tiny investment in protecting the forested watersheds that provide the most basic resource to support that development—clean fresh water.

Unfortunately, it is expected that the slumping real estate market and dramatically reduced conveyance tax collections, which support the forest conservation programs of the Natural Area Reserve Fund, will suffer 60% reductions in FY2010. The partnerships that receive these funds and manage our natural resources have already stopped filling open positions, are planning to cut staff in the coming months, and have pulled back on protection efforts (see attached). If further cuts by the Legislature to the Natural Area Reserve Fund are required in the Legislature's budgeting process, the resulting loss of experienced staff will render many natural resource protection programs either inoperable or severely diminished, leaving our watersheds vulnerable to threats which do not recognize recessions. It is not only these programs and our forests that will lose, but ultimately everyone in Hawai‘i whose daily lives rely on what the forests provide.

Attachments

PROGRAM	OBJECTIVE	TOTAL # OF STAFF	STAFF SUPPORTED BY STATE FUNDS	RESULTS OF ANTICIPATED 60% REDUCTION IN STATE FUNDS IN FY10
WATERSHED PARTNERSHIPS	The Hawaii Association of Watershed Partnerships (HAWP) is comprised of nine Watershed Partnerships on six islands. Watershed Partnerships are voluntary alliances of landowners and other partners working collaboratively to protect more than 1 million acres of forested watersheds for water recharge, conservation, and other ecosystem services.	67	43	• **Layoff 27 Staff** • Reduced weed/ungulate control activity • Only maintain current fences • Gains of prior years severly eroded • Loss of species, habitat and water recharge capacity • Increased exposure to fire • Decreased outreach • Increased cost to repair environmental degradation downstream and on reefs
NATURAL AREA PARTNERSHIP PROGRAM	The Natural Area Partnership Program was established in 1991 to provide state funds on a two-for-one basis with private funds for the management of private lands that are dedicated to conservation. With over 30,000 acres enrolled, this innovative program complements the protection efforts on state lands - a partnership essential for the success of conservation in Hawai`i.	28	19	• **Layoff 13 staff** • Reduce forest mangement activity by 60% • Lose investment in staff training and expertise • Increased future costs to control identified invasive species • Feral pig damage will increase significantly causing degredation to native ecosystems, rare plants and watershed • Invasive weeds will significantly displace native ecosystems • Lose ground gained by removing ungulates from newly fenced area
NATURAL AREA RESERVES SYSTEM	The Natural Area Reserves System (NARS) was established in 1970 to preserve in perpetuity Hawaii's most unique ecosystems. There are currently 19 reserves on five islands, encompassing more than 109,000 acres. The diverse areas found in the NARS range from marine and coastal environments to lava flows, tropical rainforests, and an alpine desert. The reserves also protect major watershed areas, which are vital sources of fresh water.	39	39	• **Layoff 8-13 staff** • No ability to conduct necessary archaeological/cultural surveys or design services necessary for effective management of resources within the NARS • Reduced ability to maintain existing fences and special mgmt units, control priority weeds/ungulates, or outplant rare plants • Significantly reduced ability to coordinate volunteers and outreach • Reduced support/funding for educational/outreach programs • No ability to provide consistent presence and reduced ability to accomplish management priorities at ORMP areas: Kaena Point NAR and Ahihi Kinau NAR • Reduced ability to maintain and repair infrastructure such as fences, trails, roads, boardwalks, helipads, and management shelters.
YOUTH CONSERVATION CORPS	The Youth Conservation Corps (YCC) is a hands-on summer learning experience aimed at educating Hawaii's youth on the many conservation issues that threaten Hawaii's unique environment. Students are mentored by and work alongside some of Hawaii's premiere conservation leaders. Nearly 170 local youth participated in the 2008 summer program.	8	4	• **Layoff 2 staff** • Summer program will be reduced from 120 students to 58 • Summer program leaders will remain at 24 as they are funded by federal dollars, but for half of the managers, duties will change from mentoring youth to working as an intern for 7 weeks • Natural resources will suffer from less human assistance to mitigate for ungulates, invasives and other impacts

PROGRAM	OBJECTIVE	TOTAL # OF STAFF	STAFF SUPPORTED BY STATE FUNDS	RESULTS OF ANTICIPATED 60% REDUCTION IN STATE FUNDS IN FY10
FORESTRY/ FOREST STEWARDSHIP PROGRAM	The Forest Stewardship Program (FSP), administered by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR-DOFAW), provides technical and financial assistance to owners of nonindustrial private forest land that are interested in conservation, restoration, and/or timber production. The Forestry Program manages 55 forest reserves comprising more than 640,000 acres, or 16% of Hawaii's land area. The program also provides financial incentives to agricultural landowners to covert fallow or open land to trees, shrubs, and forest habitat, conducts control and monitoring efforts in each county for existing and incipient invasive species, and coordinates T&E species management.	17	12	• **Layoff 4-6 staff** • Limited ability to maintain existing fences and special management units, control priority weeds, or control ungulates • Decreased ability to mitigate known threats to federally endangered species, interruption of restoration and data collection projects • No new FSP projects. Two projects in development to be placed on hold • Limited ability to continue multi-year fence construction projects • Unmitigated degredation of existing road, trail and fencing infrastructure • Possible loss of federal funds due to lack of matching, including loss of up to 2.5 FTE state funded staff supporting these projects; more positions may be lost if federal grants are lost due to lack of funding • Erosion of existing rare plant restoration/ research projects, further loss of Hawaii's natural heritage due to extinction
INVASIVE SPECIES COMMITTEES	The Invasive Species Committees (ISCs) are island-based partnerships of government agencies, NGOs, and private businesses working to protect each island from the most threatening invasive pests. The ISCs address the need for rapid response and control work on new invasive pests that have the ability to severely impact our economy, ecosystem, watersheds, human health, and quality of life. A driving objective of the ISCs is to control the most threatening pests while populations are still relatively small and it is economically feasible to control or eliminate them.	64	29	• **Layoff 19 staff** • Increased future costs to control identified invasive species (*e.g*., estimated cost impacts from delaying miconia work on Maui range from $22M-$34M) • Inability to respond to new coqui reports resulting in island-wide infestations • Inability to assist with HDOA nursery surveys to prevent spread of Little Fire Ant, nettle caterpillars, and coqui frogs
HAWAII INVASIVE SPECIES COUNCIL	The Hawaii Invasive Species Council (HISC) was established to provide policy level direction, coordination, and planning among state departments, federal agencies, and international and local initiatives for the control and eradication of harmful invasive species infestations throughout the State, and to prevent the introduction of other invasive species that may be potentially harmful.	33	33	• **Layoff 13 staff** • Cease operation of SuperSucker, and lose 5-year investment in technology/research • Reduced capacity to conduct risk assessments for new plants • Lose ballast water management data collection • Reduced ability to conduct vessel hull inspections • Reduced capacity to respond to new pest incursions • Reduced community outreach • 50% reduction in West Nile Virus sample collection (mosquito traps, dead birds, bird sera), testing and detection

CONVEYANCE TAX COLLECTIONS & TRANSFERS FOR FY 2009

Month	Total Monthly Conveyance Tax Collections to General Fund - 100%	**DLNR** S-09-342-C NARS Trf In - 25%	**DLNR** S-09-317-C Land Conservation Trf In - 10%	**HCDCH** T-09-930-B Rental Housing Trust Trf In - 30%	**TAXATION** G-00-000-C General Fund Balance Remaining - 35%
July	$2,192,465.87	$548,116.47	$219,246.59	$657,739.76	$767,363.05
August	$1,774,945.34	$443,736.34	$177,494.53	$532,483.60	$621,230.87
September	$2,514,102.90	$628,525.73	$251,410.29	$754,230.87	$879,936.01
October	$1,825,468.79	$456,367.20	$182,546.88	$547,640.64	$638,914.07
November	$1,233,090.89	$308,272.72	$123,309.09	$369,927.27	$431,581.81
December					$0.00
January					$0.00
February					$0.00
March					$0.00
April					$0.00
May					$0.00
June					$0.00
Grand Totals	$9,540,073.79	$2,385,018.46	$954,007.38	$2,862,022.14	$3,339,025.81

TOTAL CONVEYANCE TAX COLLECTIONS		
FY08	$	38,408,022
FY07	$	48,328,508
FY06	$	56,646,115
FY05	$	24,318,038
FY04	$	18,432,214

CONVEYANCE TAX COLLECTIONS & TRANSFERS FOR FY 2008

Month	Total Monthly Conveyance Tax Collections to General Fund - 100%	**DLNR** S-08-342-C NARS Trf In - 25%	**DLNR** S-08-317-C Land Conservation Trf In - 10%	**HCDCH** T-08-930-B Rental Housing Trust Trf In - 50%	**TAXATION** G-00-000-C General Fund Balance Remaining - 15%
July	$2,213,212.44	$553,303.11	$221,321.25	$1,106,606.22	$331,981.86
August	$3,025,234.70	$756,308.68	$302,523.47	$1,512,617.35	$453,785.20
September	$4,492,022.48	$1,123,005.62	$449,202.25	$2,246,011.24	$673,803.37
October	$3,573,776.52	$893,444.13	$357,377.65	$1,786,888.26	$536,066.48
November	$2,959,259.75	$739,814.94	$295,925.98	$1,479,629.88	$443,888.95
December	$3,079,131.57	$769,782.89	$307,913.16	$1,539,565.79	$461,869.73
January	$3,478,274.45	$869,568.61	$347,827.45	$1,739,137.23	$521,741.16
February	$1,871,282.33	$467,820.58	$187,128.23	$935,641.17	$280,692.35
March	$2,952,992.29	$738,248.07	$295,299.23	$1,476,496.15	$442,948.84
April	$4,051,020.17	$1,012,755.04	$405,102.02	$2,025,510.09	$607,653.02
May	$2,860,587.29	$715,146.82	$286,058.73	$1,430,293.65	$429,088.09
June	$3,851,227.53	$962,806.88	$385,122.75	$1,925,613.77	$577,684.13
Grand Totals	$38,408,021.52	$9,602,005.38	$3,840,802.17	$19,204,010.79	$5,761,203.18

TOTAL CONVEYANCE TAX COLLECTIONS	
FY07	$48,328,508
FY06	$56,646,115
FY05	$24,318,038
FY04	$18,432,214