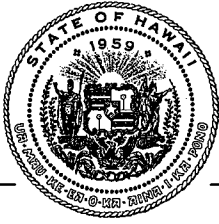


SB 1393

SD 1



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE
GOVERNOR
RICHARD C. LIM
INTERIM DIRECTOR
JESSE K. SOUKI
INTERIM DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Statement of
JESSE K. SOUKI
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS
Tuesday, March 1, 2011
9:20 AM
State Capitol, Conference Room 211

in consideration of
SB 1393, SD1
RELATING TO AGRICULTURE.

Chair Ige, Vice Chair Kidani, and Members of the Senate Committee on Ways and Means.

The Office of Planning (OP) supports the concept of providing incentives for investments that promote agricultural development, but opposes SB 1393, SD1. Among other things, SB 1393, SD1 would amend Chapter 205, Hawai'i Revised Statutes (HRS), to allow dams and reservoirs to be designated as important agricultural lands (IAL) and that their acreage shall be included in the total acreage of land designated as IAL.

The Office generally supports tax credits and other incentives for investments made to increase agricultural production on lands designated as IAL, which incentivize the long-term protection of agricultural use of the State's best agricultural lands. However, we continue to oppose provisions of the bill for the following reasons.

1. **Adverse impact on designation of IAL.**

As currently written in SD1, the proposed tax credits in Section 2 of the bill do not necessarily encourage farming of designated IAL or agricultural lands. SD1 does not require that the dams and reservoirs for which remediation tax credits are sought, serve agricultural users

on designated IAL or agricultural lands of any kind. OP believes this would adversely impact the purpose for designating IAL, which is to promote agricultural activity on IAL.

2. **Designation of agricultural infrastructure as IAL undermines the intent and purpose of IAL.**

OP does not support Section 1 of SD 1. Under Part III of Chapter 205, HRS, the purpose of IAL is to identify and protect agricultural land of productive value. While these systems are important to successful agriculture, the lands underlying these systems cannot be cultivated and have no productive value, and their inclusion overstates the amount of agricultural resource land that is capable of cultivation or production. It is not critical that these systems themselves be designated as IAL since IAL tax credits and other incentives for agricultural infrastructure costs can still be claimed provided the claimant demonstrates that the infrastructure serves productive lands that have been designated as IAL.

3. **Definition of ‘agricultural food processing facility’ needed for proposed general excise tax (GET) exemption.**

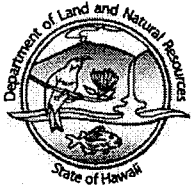
SD1, Section 5 does not define what a qualifying “agricultural food processing facility” is. SB 1393 originally included the following definition for agricultural food processing facility on page 7, line 18, which OP believes is necessary to promote both the designation of IAL and agricultural activity on IAL:

“‘Qualified agricultural food processing facility’ means a facility that produces products for human consumption from raw agricultural commodities, including a facility that prepares agricultural commodities for sale to consumers; provided that at least fifty per cent by volume of the agricultural commodities processed at the facility are derived from important agricultural lands.”

OP defers to the Departments of Taxation and Agriculture as to the fiscal impacts of the bill, and whether the proposed tax credits would be duplicative of existing important agricultural land tax incentives contained in Section 235-110.93, HRS

OP respectfully recommends that this bill be held or amended to address the concerns raised above. Thank you for the opportunity to provide these comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Tuesday, March 1, 2011
9:20 A.M.
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1393, SENATE DRAFT 1
RELATING TO AGRICULTURE**

Senate Bill 1393, Senate Draft 1 proposes to authorize the inclusion of dams and reservoirs designated as important agricultural lands shall be included in the total acreage calculation for important agricultural lands, provides tax credits and exemptions for dam and reservoir remediation and aquacultural activities. The Department of Land and Natural Resources (Department) supports the intent of this measure, as it appears to assist certain landowners in bringing their dams and reservoirs into compliance with current safety standards. The Department defers to the Department of Taxation regarding the cost implications of this measure. The Senate Draft 1 has addressed the concerns the Department had on specific provisions of the original measure.

Thank you for the opportunity to comment.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
TUESDAY, MARCH 1, 2011
9:20 A.M.
CONFERENCE ROOM 211

SENATE BILL NO. 1393, SENATE DRAFT 1
RELATING TO AGRICULTURE

Chair Ige and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1393, Senate Draft 1. The Department of Agriculture offers comments and one proposed amendment.

Section 1 creates a new section in Chapter 205 to allow the land area of dams and reservoirs designated as Important Agricultural Lands (IAL) to be "...eligible for inclusion in the total acreage calculation for important agricultural land..." and qualify for applicable IAL incentives. This presumes that dams and reservoirs, without any relationship to designated IAL for agricultural production, can be designated IAL. Notwithstanding IAL designations by the Land Use Commission to date, the IAL identification criteria do not include dams and reservoirs as potential and eligible for IAL designation if they have no relationship to designated IAL lands.

The Department offers the following amendment to Section 1, "Dams and Reservoirs" (page1, lines 4-13). The purpose of our amendment is to ensure that dams and reservoirs sought to be identified and designated as Important Agricultural Lands (IAL) are physically part of and provide irrigation water to identified and designated IAL agricultural lands. Without our proposed amendment, we believe Section 1 of this



measure would be inconsistent with the eight IAL identification criteria (Section 205-44) that are limited to agricultural land quality and agricultural production and do not include dams and reservoirs as potential IAL. The amending language is double-underscored.

"§205- Dams and reservoirs. All dams and related reservoir areas designated as important agricultural lands shall be eligible for inclusion in the total acreage calculation for important agricultural lands and shall qualify for incentives pursuant to section 205-46; provided that the dams and reservoirs are located within property designated as important agricultural lands and provide irrigation water to agricultural lands the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and provided that dams and reservoirs classified as important agricultural lands shall not be included in the total acreage calculation for a petition for declaratory order to designate important agricultural lands in combination with the reclassification of agricultural lands to the rural, urban or conservation district."

Section 5 (page 7-8, lines 4 to 14) exempts wholesale or retail businesses conducted by qualified agricultural food processing facilities from the general excise tax. The Department notes that there does not appear to be a definition of "qualified agricultural food processing facility" in the Hawaii Revised Statutes. Furthermore, the Department defers to the Department of Taxation regarding the economics of such a provision.

Thank you, again, for the opportunity to testify on this measure.

SB1393SD1_AGR_03-01-11_WLH-WAM

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, GENERAL EXCISE, Dam or remediation tax credit; aquacultural facility tax credit; exempt food processing facility

BILL NUMBER: SB 1393, SD-1

INTRODUCED BY: Senate Committee on Water, Land and Housing

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to establish an income tax credit of 75% of the cost of all remediation measures for remediation of dams or reservoirs as directed by the department of land and natural resources (DLNR). The following costs and expenses are ineligible to be claimed for this credit: (1) costs recoverable by DLNR for emergency measures taken by the department to protect life or property; (2) attorney's fees recoverable by DLNR; and (3) costs incurred in complying with an order of DLNR issued pursuant to HRS subsection 179D-24(f), regardless of whether the taxpayer is ultimately successful in any challenge to that order. Stipulates that a successor landowner of a remediated dam or reservoir subject to this section shall not be eligible to claim the tax credit allowed by this section.

Defines "dam," "remediation" and "reservoir" for purposes of the measure.

The credit shall be nonrefundable with any excess credit applied to subsequent tax liability until exhausted. Requires all claims for credits under this section, including any amended claims, to be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit. Allows the director of taxation to adopt any rules under HRS chapter 91 to carry out this section.

Adds a new section to HS chapter 235 to allow taxpayers to claim a credit for the cost of capital investments in aquacultural facilities equal to 25% of the amount of capital investments in aquacultural facilities. Defines "aquacultural facilities" as infrastructure used in the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for commercial purposes or authorized stock enhancement purposes including hatcheries; on-shore and off-shore farms including ponds and off-shore cages or nets; harvesting facilities; and processing facilities.

A successor owner of aquacultural facilities subject to this section shall not be eligible to claim the tax credit allowed by this section.

The credit shall be nonrefundable with any excess credit applied to subsequent tax liability until exhausted. Requires all claims for credits under this section, including any amended claims, to be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit. Allows the director of taxation to adopt any rules under HRS chapter 91 to carry out this section.

Amends HRS section 237-24.75 to exempt amounts received for the wholesale or retail business conducted by a qualified agricultural food processing facility, during the first five years of its operation.

EFFECTIVE DATE: July 1, 2011

STAFF COMMENTS: If the proposed measure is enacted, it would merely grant preferential tax treatment to a select group of taxpayers and do so without regard to the taxpayer's need for tax relief - in this case the remediation costs for dams or reservoirs and capital investments in aquacultural activities. Lawmakers need to remember two things. First, the tax system is the device that raises the money that they, lawmakers, like to spend. Using the tax system to shape social policy merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount. The second point to remember about tax credits is that they are nothing more than the expenditure of public dollars albeit out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as kind about the expenditure of these funds when schools go wanting for books and repairs, or when there isn't enough money for social service programs. Utilizing tax credits other than to alleviate an excessive tax burden cannot be justified and is of a questionable benefit relative to the cost for all taxpayers.

The measure also proposes a general excise tax exemption for the amounts received from the wholesale or retail business of a qualified agricultural food processing facility during its first five years of operation. While there is no definition of "qualified agricultural food processing facility" in the measure, it is unclear what items will be eligible for the proposed general excise tax exemption.

It should be remembered that the tax system is not an efficient method to accomplish such goals. In addition, while the proposed measure would grant preferential treatment to a select group of taxpayers at the expense of other taxpayers who are ineligible for the exemption, its enactment cannot be justified.

Finally, it is amazing that a measure like this would have progressed so far in a session where lawmakers are faced with a budget shortfall in the hundreds of millions of dollars. Perhaps the advocates of this measure do not believe that tax credits represent real money, that they only become a liability if someone undertakes the specified activity. Unfortunately, there is no way of predicting how many will come forth to invest in dam remediation or aquacultural facilities until it is too late. This is the case with the Act 221 credits that got out of hand draining over a billion dollars from the general fund over its 10 year run. If policymakers want to assist owners of dams in remediation of those structures, a direct appropriation would be far more accountable and transparent.

Digested 2/28/11

**SB 1393 SD1
RELATING TO AGRICULTURE**

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

MARCH 1, 2011

Chair Ige and Members of the Senate Committee on Ways & Means:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B), Hawaiian Commercial & Sugar Company (a division of A&B) and Kauai Coffee Company (a subsidiary of A&B), on SB 1393 SD1, "A BILL FOR AN ACT RELATING TO AGRICULTURE." We support this bill.

Alexander & Baldwin and its agricultural companies Hawaiian Commercial & Sugar Company (HC&S) and Kauai Coffee Company, have 18 regulated reservoirs on Kauai and 30 on Maui, the majority of which are in active use by HC&S and Kauai Coffee Company. Because these dams and reservoirs are a vital part of our agricultural operations, they are operated, monitored, and maintained on an on-going basis. These facilities enable the storage of water so that HC&S and Kauai Coffee can better weather periods of drought. These facilities also enable us to make optimum use of water resources—by capturing waters during heavy rainfall periods, less has to be used from surface water sources and wells during other times. They are absolutely integral to our ability to continue to keep tens of thousands of acres in agriculture in this state.

We understand that DLNR has overseen the implementation of Phase I investigative studies and inspections for all regulated dams and reservoirs in the State

of Hawaii. As a result of these Phase I investigative studies and inspections, several additional dam and reservoir safety action items are being recommended, many with significant cost implications to the owners of dams and reservoirs. These additional action items include various geotechnical/stability studies, hydraulic/hydrology studies, upstream control valve studies, spillway improvements, and other miscellaneous construction items.

The additional costs required to meet dam and reservoir safety regulatory requirements may create an undue financial burden for dam and reservoir owners, the majority of whom are farmers or agricultural operations that rely on these facilities for their livelihood. Smaller farmers and agricultural operations who utilize water from dams owned by others may be negatively impacted should the dam owner decide to permanently breach their facilities because of the undue increase in operating and capital expenses prompted by regulatory expenses and requirements of DLNR's dam and reservoir safety program. Owners of multiple dams, will be particularly hard hit.

This bill will provide tax credits for the remediation of dams as directed by DLNR. We believe that this bill will greatly assist dam and reservoir owners as they grapple with financing the significant additional costs to upgrade their dams and reservoirs so that they can meet regulatory requirements. This bill is a cooperative approach to what is really a broader community issue. By providing dam owners with a financial incentive to improve their facilities, the likelihood that more of these facilities will be kept in continued operation, and fewer decommissioned due to the cost of complying with the new regulations, will be increased. We believe that with the assistance of this tax credit,

dams and reservoirs can continue to serve as a valuable water resource for Hawaii's agricultural industry and its communities.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.



Hawaii Farm Bureau

F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

February 24, 2011

TESTIMONY

Re: SB1393SD1 RELATING TO AGRICULTURE

Chair Ige and Members of the Committee:

Hawaii Farm Bureau Federation on behalf of commercial farm and ranch families and organizations in the State **strongly supports with comment SB1393.**

Todate, I have listened to people in hearings in both House and Senate advocating for the importance of agriculture to provide for Hawaii's increased self sufficiency. Hawaii Farm Bureau Federation has always believed this to be one of the missions of our organization – to grow and raise agricultural products so everyone can pursue careers of their choice without worry. The Important Agricultural Lands initiatives passed, Act 183 and Act 233 sought to grow farmers and ranchers so we could have viable farms and ranches and in so doing, preserve agricultural lands for future generations.

We respectfully request your support of this measure including the amendments above. We appreciate this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe at 2819718. Thank you.