

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 House Committees on
AGRICULTURE
and
WATER, LAND AND OCEAN RESOURCES**

**Friday, March 18, 2011
10:30 AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1393, SENATE DRAFT 2
RELATING TO AGRICULTURE**

Senate Bill 1393, Senate Draft 2 proposes to: Grant priority to aquacultural activities at non-commercial harbors (SECTION 1); authorize the inclusion of dams and reservoirs designated as important agricultural lands shall be included in the total acreage calculation for important agricultural lands (SECTION 2); and provides tax credits and exemptions for dam and reservoir remediation and aquacultural activities (SECTION 3). The Department of Land and Natural Resources (Department) opposes SECTION 1, as it is counter to the purpose of small boat harbors for recreational use, and supports SECTIONs 2 and 3, as they appear 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.

Pursuant to Chapter 200, Hawaii Revised Statutes, the purpose of small boat harbors is for recreational use. SECTION 1 of this measure would reverse this by giving priority to aquacultural enterprises over that of recreational harbor users. It would also supersede the authority of the Board of Land and Natural Resources (Board) and its Division of Boating and Ocean Recreation (Division), and provide preference to aquacultural enterprises without a public hearing or action of the Board. It is also unclear how aquacultural enterprises will compensate the Division for the loss of income from the displaced leisure crafts and houseboats.

Thank you for the opportunity to comment.

WILLIAM J. AILA, JR.
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

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

**HOUSE COMMITTEES ON AGRICULTURE AND WATER, LAND, & OCEAN
RESOURCES**

**TESTIMONY OF THE DEPARTMENT OF TAXATION
REGARDING SB 1393, SD 2
RELATING TO AGRICULTURE**

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: AGR/WLO
DATE: MARCH 18, 2011
TIME: 10:30AM
POSITION: OPPOSED

This measure provides tax credits for dam remediation, agricultural facilities, certain agricultural processing facilities, and certain agricultural housing.

The Department of Taxation (Department) supports the concept of incentives for Hawaii's agricultural industries.

However, the Department opposes this bill because it is duplicative of the existing important agricultural lands qualified agricultural costs credit, HRS § 235-110.93 (IAL credit). The IAL credit is the product of a taskforce comprised of Department personnel working in conjunction with representatives of the Department of Agriculture and other stakeholders. The Department suggests amending existing incentives before adding additional incentives.



**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
**HOUSE COMMITTEE ON AGRICULTURE
AND
HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES**
Friday, March 18, 2011
10:30 AM
State Capitol, Conference Room 325

in consideration of
**SB 1393, SD2
RELATING TO AGRICULTURE.**

Chairs Tsuji and Chang, Vice Chairs Hashem and Har, and Members of the House
Committees on Agriculture and Water, Land, and Ocean Resources.

The Office of Planning (OP) supports the concept of providing incentives for investments that promote agricultural development, but does not support Section 2 of SB 1393, SD2. Among other things, SB 1393, SD2 proposes to amend Chapter 205, Hawai'i Revised Statutes (HRS), to allow the acreage of dams and reservoirs' designated as important agricultural lands (IAL) be included in the total acreage calculation of IAL lands and qualify for incentives pursuant to Section 205-46, provided the dams and reservoirs acreage shall not be included in the total acreage calculation for the 85%-15% combination petition.

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 oppose Section 2 of the bill, which adds Section 205 for the following reasons.

Under Part III of Chapter 205, HRS, the purpose of IAL is to identify and protect agricultural land of productive value. While components of water 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. Furthermore, OP objects to the designation of dams and reservoirs as IAL when the dam or reservoir does not serve lands that are proposed for designation as IAL, which has been seen in two petitions for IAL filed with the Land Use Commission.

OP defers to the Departments of Taxation and Agriculture as to whether the proposed tax credits would be duplicative of existing important agricultural land tax incentives contained in Section 235-110.93, HRS—which provides tax credits to landowners for costs related to dams and reservoirs of agricultural water systems serving IAL—and whether it is prudent to duplicate existing tax credits under current fiscal conditions.

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.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, GENERAL EXCISE, Dam or reservoir remediation tax credit;
aquacultural facility tax credit

BILL NUMBER: SB 1393, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to establish an income tax credit of ___% 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 ___% 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.

EFFECTIVE DATE: July 1, 2050

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. This is a point that was underscored by the representative from the national Conference of State Legislatures recently before the House Finance Committee when she noted that "the tax system is the mechanism by which governments raise the revenues to provide government services." 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 used as incentives 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.

It should be remembered that the tax system is not an efficient method to accomplish such goals. In addition, 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, and, therefore, 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 ten-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.

More importantly in the aftermath of the disaster in Japan, lawmakers have a lot more to worry about as the prospects for economic recovery sink with the demise of the eastbound visitor traffic. While the mitigation of the state's dam and reservoir system may be a high priority, consideration of the proposed tax credits should be measured against all other priorities for the state at this time and be viewed as an appropriation of state funds as opposed to "fantasy" funding.

Digested 3/16/11

**SB 1393 SD2
RELATING TO AGRICULTURE**

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

MARCH 18, 2011

Chair Tsuji, Chair Chang, and Members of the House Committees on Agriculture and Water, Land & Ocean Resources:

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 SD2, "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.