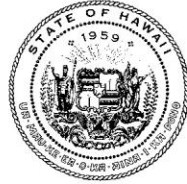


NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, February 20, 2013
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B.680, H.D. 1 Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 680, H.D.1 and provides the following information and comments for the committee's consideration.

H.B. 680, H.D.1 deems transfers of controlling interest in entities holding interests in real property within the State to be subject to the conveyance tax. This bill also removes an exemption for certain transactions and imposes conveyance tax on those transactions at the lowest rate.

The Department suggests the following amendments be made to Section 2 of this bill:

- The look-back period for a series of transfers should be changed to 24 months instead of 12 months to prevent entities from structuring sales transaction in order to avoid the imposition of the conveyance tax.
- The exemption in section 247-A(a)(1) should be deleted because that transaction is currently subject to conveyance tax. In the alternative, this transaction should also be exempted from the conveyance tax generally.
- If the intent in section 247A-(a)(3) is to exempt the transfer of controlling interest if the transferee has any ownership interest for a minimum period of three years preceding the transfer, the Department suggests inserting the word "any" before "ownership interests" on page 3, line 1.

- For the purposes of consistency and clarity, the Department suggests the following provision regarding the determination of the tax base:

"If the actual or full consideration paid or to be paid, as defined in section 247-2, cannot be determined from the value of the transfer of controlling interest, then the conveyance tax shall be based upon the fair market value of the realty on the date of the transfer or acquisition."

Thank you for the opportunity to provide comments.

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TAX FOUNDATION OF HAWAII

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SUBJECT: CONVEYANCE, Transfer of a controlling interest

BILL NUMBER: HB 680, HD-1

INTRODUCED BY: House Committee on Consumer Protection and Commerce

BRIEF SUMMARY: Add a new section to HRS chapter 247 to provide that the conveyance tax shall be applicable to the transfer or conveyance of an interest in realty located in the state as a result of the transfer or acquisition, or a series of transfers or acquisitions, including those combined with otherwise exempt transfers, by any person or entity, within any 12-month period, that results in the transfer of a controlling interest in an entity with an interest in real property located in this state for valuable consideration and which alters the controlling interest or ownership of the realty.

This section shall not apply to: (1) any transfer or acquisition that consists of the change in identity or form of ownership of an entity where there is no change in the beneficial ownership, including transfers to an entity wholly owned, directly or indirectly, by the same common ownership as the transferor; (2) any transfer from a limited partner to a general partner of a limited partnership that owns an affordable rental housing project for which low-income housing tax credits have been issued under HRS sections 235-110.8 or 241-4.7 or IRC section 42; or (3) any transfer that consists solely of a change in controlling interest in an entity holding an interest in realty between persons with ownership interests in such entity for a minimum of three years immediately preceding the transfer.

The conveyance tax shall be based upon the lesser of the most recent county real property tax assessed value of the realty or, if available, a current qualified appraisal by a licensed real estate appraiser in the state.

In determining whether a controlling interest was transferred or acquired within a 12-month period, the date that the option agreement was executed shall be the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

Stipulates that for the purposes of this section with regard to persons acting in concert: (1) all acquisitions of persons acting in concert shall be aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place; (2) persons shall be considered as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; (3) persons shall be considered to be acting in concert only when the unity with which the purchasers negotiate and consummate the transfer of ownership interests supports a finding that the persons are acting as a single entity; and (4) if acquisitions are completely independent and each purchaser purchases without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

“Controlling interest” shall mean: (1) in the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or 50% or more of the capital, profits, or beneficial interest in the voting stock of the corporation; and (2) in the case of a partnership, association, trust, or other entity, 50% or more of the capital, profits, or beneficial interest in the partnership, trust, or other entity.

Directs the director of taxation to adopt rules pursuant to HRS chapter 91 to implement this section, including rules for determining whether persons are acting in concert for the purpose of transferring or acquiring a controlling interest.

Adds a new section to HRS chapter 247 to provide that the conveyance tax imposed by HRS section 247-1 shall apply to the following at the lowest rate regardless of the value of the real property: (1) any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under HRS chapters 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity; (2) any document or instrument 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 percent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; and (3) any document or instrument conveying real property, or any interest therein, to or from a wholly-owned corporation or limited liability company.

Amends HRS section 247-6 to provide that the value of the property transferred by way of a controlling interest be included in the certificate for conveyance.

Makes conforming amendments to HRS sections 247-1, 247-2 and 247-3.

EFFECTIVE DATE: January 1, 2014

STAFF COMMENTS: The proposed measure would subject to the conveyance tax rates “complex transactions” involving the transfer of real property to ensure that the transactions are taxed, even though they are not currently taxable under the conveyance tax as the real property is owned by a legal entity like a corporation or partnership. While it is the intent of the measure to close this loophole as the measure argues that these transfers attempt to evade taxation, it should be noted that the current conveyance tax was never established to be a source of revenue. Only in recent years as lawmakers sought to fund their favorite programs did the conveyance tax come under fire as a way to raise new sources of revenue to fund favored programs. With rates as high as \$1.25 per hundred dollars of value transferred, lawmakers now believe that transfers of real property, albeit as part of the acquisition of a company or partnership, are an intentional evasion of the tax. Thus, it is not hard to believe that while the measure proposes that the conveyance tax at the lowest rate shall be imposed on these transfers, there is no doubt that this policy may be amended and the rate will mushroom in a few years as the legislature may target these transfers as another way to raise additional revenue.

Unfortunately, the imposition of the conveyance tax on these transfers may add another nail in the economic coffin of Hawaii as it is just one more cost that an investor must weigh in deciding whether or not the return on an investment in Hawaii is attractive or reasonable.

It should be remembered that the conveyance tax was initially 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 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. However, over the years the tax has been increased and conveyance tax revenues have been tapped to provide revenue for the land conservation fund, rental housing trust fund, and the natural area reserve fund.

While this proposal tries to address what looks like a sale of an entity or organization that has as part of its portfolio real property in Hawaii, there are other ways of transferring a company and the controlling interest of such an entity without the appearance that the organization or entity is being sold or transferred. The measure attempts to carve or exempt transactions between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Whether or not this would cover instances where partnerships are dissolved should be questioned. If a partnership dissolves and each of the parties takes some or all of the portfolio of real estate, will that meet the “related entity” transfer that this clause of the bill attempts to address?

This measure is ill-conceived, submitted as a Pavlovian response to recent acquisitions of entities which happened to own substantial holdings of local realty. But have lawmakers truly thought this one through to understand the potential impact and ramifications of other types of acquisitions? For example, two major office supply firms entered into negotiations to merge their operations of maximizing efficiencies of scale and reduce overhead costs. Each has a number of retail outlets as well as warehousing facilities. Since one company is merging with the other where one of the companies will have controlling interests, will that merger be subject to this proposal? Or take the example of credit unions which in recent years the number of which has dwindled due to mergers and acquisitions that enable the smaller entities to survive because the overhead expenses are absorbed by the larger entity. Would that acquisition or merger be subject to this proposal if each entity owns substantial realty?

The bottom line is that the drive to “punish” speculators in Hawaii real estate by imposing such confiscatory conveyance tax rates has resulted in these clever transfers of entities that happen to own real property in Hawaii. As a result, valuable information has been lost because there is no indicator of how much value was transferred and, therefore, benchmarks in helping to set values of other real property of similar shape and size have been lost. Obviously, previous legislatures took aim at speculators by establishing the highest conveyance tax rates on nonowner occupied residential property, property that might also include the sale of an affordable rental facility. The current structure of rates also ignores the transfer of commercial property that can be worth millions of dollars which now has resulted in this approach that circumvents the conveyance of real property but transfers ownership of an entity or company. As such, the conveyance tax as now structured sends a very loud message that Hawaii is not a place in which anyone should invest or attempt to do business.

Digested 2/19/13



February 19, 2013

Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair
House Committee on Finance

Testimony in Strong Opposition to HB 680, HD1, Relating to Conveyance Tax (Controlling Interest Transfer).

Wednesday, February 20, 2013, 2:00 p.m., in House Conference Room 308

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 680, HD1. This bill proposes to impose conveyance tax on the transfer or conveyance of a controlling interest of an entity with an interest in realty in Hawaii.

LURF's Position. LURF acknowledges the stated intent of this bill, which is to apply the conveyance tax to transfers of entity ownership when such transfer is essentially equivalent to the sale of an interest in real property. However, based on the following reasons and considerations, LURF opposes HB 680, HD1, and must request that this bill be held in Committee.

The proposed imposition of the conveyance tax on transfers of controlling interests in entities is inappropriate and improper given that:

- 1. The Hawaii Conveyance Tax was never intended as a revenue-generating tax.**

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.

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 ["RHTF"]; and natural area reserve fund ["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 the Act.

These expansions and deviations which go beyond the scope of the original intent of the conveyance tax law are concerning since the proposed bills, particularly if unlawfully targeting recent transactions involving the sale of interests in private entities which own real property in the State, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

a. HB 680, HD1 is arguably illegal and in violation of HRS Sections 37-52.3 and 37-52.4, as it proposes to use the Conveyance Tax to increase the NARF and other similar funds which do not have a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program.

The NARF is a special fund which is subject to HRS Sections 37-52.3 and 37-52.4. Criteria for the establishment and continuance of special and revolving funds were enacted by the 2002 Legislature through Act 178, SLH 2002; Sections 37-52.3 and 37-52.4, HRS. To be approved for continuance, a special fund must:

- i. serve the purpose for which it was originally established;
- ii. 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;
- iii. provide an appropriate means of financing for the program or activity; and
- iv. 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.

b. HB 680, HD1 is inconsistent with the recommendation of the State Auditor to the Governor and Legislature, to terminate the NARF.

In 2012, a report entitled "*Study of the Transfer of Non-General Funds to the General Fund*" - A Report to the Governor and the Legislature of the State of Hawaii ("2012 Auditor's Report") was prompted by House Concurrent Resolution No. 166 (2011), which requested that the Auditor conduct a study regarding the transfer of non-general funds to the general fund in light of the 2008 Hawai'i Supreme Court decision, *Hawaii Insurers Council v. Linda Lingle, Governor*,

State of Hawai'i, et al. (“Insurers Council lawsuit”), in which the court ruled that the Legislature violated the Separation of Powers doctrine in an **unconstitutional raid** of an insurance special fund.

While House Concurrent Resolution No. 166 had asked the Auditor to look at the appropriateness of transferring non-general funds, including special and revolving funds, to the general fund, to determine the source of the moneys, and to determine whether the funds are used for a public purpose, for purposes of the study, the Auditor limited its focus to the appropriateness of using special and revolving funds as a means of financing particular programs and directing moneys accumulated in these types of funds to the general fund to address budget shortfalls in a sluggish economy.

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, 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 further 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.

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.

c. If HB 680, HD1 is enacted, it could result in a class action lawsuit against the State.

Given that the Auditor has concluded that the NARF did not meet the criteria for continuance of a special fund because there is no clear link between the benefits sought and user or beneficiary charges; and that the NARF should be repealed, and also, given that the State Director of Finance and the State Attorney General apparently concur with the Auditor’s findings and recommendations regarding the NARF, should those recommendations be disregarded by the Legislature through the passage of this measure, the State could be faced with a class-action lawsuit by all parties who have paid conveyance taxes to finance such funds.

- d. Due to their importance, programs such as the NARF and RHTF deserve annual 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 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)

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. An issue always exists as to whether the conveyance tax rates will need to be adjusted to generate more revenue in periods when the real estate market is not performing optimally.

- 2. Transfers of stock are not “conveyances” of real property, and rightfully should not be made subject to the conveyance tax law.** HB 680, HD1 would inappropriately subject sales of controlling interests in an entity to the conveyance tax regardless of whether real estate may be the primary or largest asset owned by the entity. Given that transfers of stock are not conveyances of real property, and given the clear intent underlying HRS Chapter 247, the methods sought to be used to impose a tax on transfers of stock (i.e., amendment or expansion of the existing conveyance tax law) is improper.
- 3. The proposed bill may have unintended negative consequences** for many of Hawaii's large *kama`aina* landowners who may be transferring large properties for agricultural farms, housing developments, environmental programs, or other developments which would serve the community and create needed employment.
- 4. The proposed measure creates a significant disincentive for business in Hawaii.** At a time where Hawaii is attempting to encourage business expansion in, and attract business operations to Hawaii, HB 680, HD1 actually create a disincentive, and will have a substantial negative impact on persuading new and existing businesses to open or expand in Hawaii, or to relocate their operations to this State. The proposed

additional cost of doing business in Hawaii as a result of these bills would certainly appear to negatively outweigh any positive revenue impact resulting from the imposition of conveyance taxes pursuant to the measures.

5. The imposition of conveyance tax as proposed by this bill will drive up the cost of lands for agricultural production, affordable and market homes, and commercial development.

- The proposed imposition of the conveyance tax on transfers which affect **agricultural lands** will be passed on to farmers and other agricultural operators, making it even harder for agriculture to survive in Hawaii.
- The proposed imposition of the conveyance tax on transfers which affect **land intended for housing developments** will be passed on to home buyers, will increase the price of homes, and will exacerbate the affordable housing problem in Hawaii.
- The proposed imposition of the conveyance tax onto transfers which affect **commercial properties** will also be passed on to small businesses, creating yet another substantial financial burden on them.

6. Proper and effective implementation of the proposed bill would involve complex, time-consuming, and subjective determinations. As a practical matter, in order that the proposed measure be properly and effectively administered and enforced, determinations as identified in the bill must be made pursuant to rules adopted by the director. These determinations necessarily include “whether persons are acting in concert for the purpose of effectuating the transfer...,” which may involve assessments of subjective issues which entail significant time and expense.

For the reasons stated above, LURF respectfully recommends that **HB 680, HD1 be held in this Committee.**

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

**Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 680 HD 1 Relating to Taxation
House Committee on Finance
Wednesday, February 20, 2013, 2:00PM, Room 308**

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life in these islands depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports H.B. 680 HD1. We think it is reasonable that, like direct transfers of real estate via purchase and sale agreements, transfers of real estate via majority stock transfers should also be subject to the State's real estate conveyance tax.

As for the issue of nexus, under HRS §247-7 a portion of conveyance tax revenue has been appropriately used for land preservation and forested watershed conservation via the Land Conservation Fund and the Natural Area Reserve Fund, respectively. The development and sale of real estate helps drive Hawaii's economy and is helping lift us out of the recent recession, but it also puts pressure on our natural resources like fresh water. Fresh water is clearly a limiting factor here in the middle of the Pacific. Several locations in the state are experiencing ongoing drought, water management areas being declared, climate change is likely to produce more severe storms but overall less rainfall, and the UH's 2011 Rainfall Atlas catalogues a century of declining rainfall that is worse in recent decades. Fresh water is not a limitless resource that can forever be tapped to support our developed real estate. It makes sense to spend a portion of conveyance tax revenue on protecting those natural resources.

The Legislature recognized this clear nexus in Act 156 (HB 1308 CD1, 2005), stating:

The legislature has also 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.

We also support the exemptions in this bill at §247-A(a) for any transfer between (1) subsidiaries or related entities where there is no change in beneficial ownership, (2) between partners in affordable rental projects, and (3) between persons holding ownership interests in the same entity for a minimum of three years. These are reasonable exemptions for stock transfers between related partners, family members, subsidiaries, or affordable housing projects that support true business partnerships while preventing the formation of a partnership just to avoid the conveyance tax.

Lastly, we support the provision included by the prior committee that the "conveyance tax shall be based upon the lesser of the most recent county real property tax assessed value of the realty or, if available, a current qualified appraisal...." In this way, the valuation (1) focuses on the subject of the tax—the realty itself—not on the overall value of the stock or the business; (2) provides the seller the option of getting an appraisal on the realty or relying on the county tax assessed value; and (3) offers the tax department an appropriate external means of determining valuation.

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Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 680 Relating to Taxation
House Committee on Finance
Scheduled for Hearing Wednesday, February 20, 2013, 2:00 PM, Room 308

Thank you for an opportunity to testify in strong support of HB 680, which would subject to the conveyance tax any real property included in transfers of controlling interests in an entity.

Hawai'i Appleseed Center for Law and Economic Justice is a nonprofit, 501(c)(3) law firm created to advocate on behalf of low income individuals and families in Hawai'i on civil legal issues of statewide importance. Our core mission is to help our clients gain access to the resources, services, and fair treatment that they need to realize their opportunities for self-achievement and economic security.

Ensuring that any transfers of controlling interests in commercial entities which involve real property are subject to the conveyance tax like any other sale of property is a matter of fairness. Our land is particularly precious in Hawai'i, and all transfers of real property should be recognized as such. We lost six million dollars in conveyance tax revenue when Lanai was sold because of what is essentially a loophole in the conveyance tax. In addition, it is possible that some transfers of real estate are structured as the transfer of commercial entities to avoid paying the conveyance tax.

The conveyance tax funds both affordable housing through the Rental Housing Trust Fund and important state environmental protection initiatives. Conveyance tax revenues are the only dedicated source of funding for the Rental Housing Trust Fund, a critical tool in the creation of affordable housing. In the next four years, Hawai'i will need 13,000 more units to meet the need for affordable rentals. As a result of this shortfall, families struggle to keep themselves housed, and may even find themselves homeless. The Rental Housing Trust Fund has helped to create over 4,250 units, significant progress in addressing our need for housing. Increasing conveyance tax revenues by taxing all real property transfers fairly will help increase the availability of funds to this program.

We also wish to emphasize that calculating the appropriate amount of conveyance tax for realty included in commercial entities' transfers will not be unduly burdensome. Neither the stock transfer nor the value of the business is being assessed, but simply the value of the property that is being transferred within the larger sale.

To streamline the valuation, we suggest that the statute itself set out the options for the valuation of realty, rather than leaving it to be determined later departmental rulemaking. We suggest that the bill set the valuation of the realty on the lesser of either a recent qualified appraisal, if available, or the current county real property tax assessed value. Setting these as the options for valuation has three main advantages: 1) it focuses on the realty itself, which is the subject of the tax, not on the overall value of the stock or the business; 2) it gives the seller the option of having the realty appraised or relying on the county's assessed value; and 3) it offers the Department of Taxation a clear and fair external means of determining the property's value. In addition, we believe it would be helpful to amend HRS § 247-6(s) to specifically note a reporting requirement for stock transfers that affect realty.

Subjecting realty included in transfers of controlling interests is a fair and equitable application of the conveyance tax that helps support critical affordable housing and environmental initiatives.



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF HB 680 HD1: RELATING TO TAXATION

TO: Representative Sylvia Luke, Chair; Representative Scott Y. Nishimoto, Vice Chair; Representative Aaron Ling Johanson, Vice Chair; and Members, Committee on Finance

FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawaii

Hearing: Wednesday, 2/20/13; 2:00 PM; CR 308

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and Members, Committee on Finance:

Thank you for the opportunity to provide written testimony **in strong support** of HB 680 HD1, regarding applying the conveyance tax to the sale, transfer or exchange of stock, whose assets include realty located in Hawaii. I am Betty Lou Larson, Legislative Liaison for Catholic Charities Hawaii.

We support the language in HD 1 which provides for simple and objective ways to report the value of the real estate, as well as the language for appropriate exemptions for real estate transfers, including between partners engaged in qualified affordable rental housing developments. This will avoid any negative impacts on affordable rental housing development.

When the island of Lanai was sold, no conveyance tax was paid. Yet if a house or a business is sold, the conveyance tax is paid. This bill would close a loophole in the conveyance tax law and provide additional needed funds for critical state needs, such as affordable housing, land preservation and watershed protection which receive appropriations from the conveyance tax proceeds.

Catholic Charities Hawaii receives hundreds of calls each month from families that need affordable housing. Hawaii ranks 3rd among the states for the rate of homelessness. The Hawaii Housing Planning Study of 2011 found that an estimated 13,000 rental units need to be built by 2016. To build these 13,000 affordable units, additional resources are required for the Rental Housing Trust Fund, which receives conveyance tax proceeds. The Trust Fund has created **4,250 rental units. In FY 12, it received \$37 million in project requests, yet was only able to commit funds to 4 out of the 9 project applications due to limited resources.** Additional resources would result in projects being immediately funded to move ahead in construction of these much needed units for families, the elderly, and residents of Hawaii who need affordable rentals.

We urge your support to close this tax loophole and tax the value of the real estate. Thank you for considering HB 680 HD1 and its impact on housing and land protection.



Catholic
Charities
USA



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Testimony of Housing Hawaii
Supporting HB 680 HD1 Relating to Taxation
House Committee on Finance
Wednesday, February 20, 2013, 2:00 PM, Room 308

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and Members of the House Committee on Finance, thank you for this opportunity to testify in strong support of HB 680 HD1, which would subject to the conveyance tax any real property included in transfers of controlling interests in an entity.

Housing Hawaii is in support of this bill because of its potential to provide more funding to the State's Rental Housing Trust Fund. The conveyance tax funds both affordable housing through the Rental Housing Trust Fund and important state environmental protection initiatives. Conveyance tax revenues are the only dedicated source of funding for the Rental Housing Trust Fund, a critical tool in the creation of affordable housing. In the next four years, Hawai'i will need 13,000 more units to meet the need for affordable rentals. As a result of this shortfall, families struggle to keep themselves housed, and may even find themselves homeless. The Rental Housing Trust Fund has helped to create over 4,250 units, significant progress in addressing our need for affordable housing. Increasing conveyance tax revenues by taxing all real property transfers fairly will help increase the availability of funds to this program.

Housing Hawaii believes that subjecting realty included in transfers of controlling interests is a fair and equitable application of the conveyance tax that helps support critical affordable housing and environmental initiatives. We are pleased to note that this bill excludes affordable housing transfers so that the State continues to encourage the creation and preservation of affordable housing.

Sincerely,

Kevin R. Carney, NAHP-e
President

finance1-Christie

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 19, 2013 1:35 PM
To: FINTestimony
Cc: ferentinos@hawaii.rr.com
Subject: Submitted testimony for HB680 on Feb 20, 2013 14:00PM

HB680

Submitted on: 2/19/2013

Testimony for FIN on Feb 20, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Ferentinos	Individual	Support	No

Comments: Hawaii should follow the example of other states and close this loophole. The conveyance tax should be applied fairly to all properties changing hands in Hawaii, regardless of the way in which the transfer happens. The conveyance tax funds important programs important to the future of Hawaii's land and people. Please pass this bill. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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