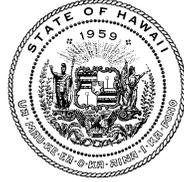


NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

LATE

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

Date: Monday, April 1, 2013
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 1166, S.D. 1, H.D. 1 Relating to the Conveyance Tax

The Department of Taxation (Department) **strongly supports** S.B. 1166, S.D. 1, H.D. 1 and provides the following information and comments for your consideration.

S.B. 1166, S.D. 1, H.D. 1 increases the Conveyance Tax by an unspecified amount on transfers of real property with values of at least \$2 million. The measure also increases amounts deposited in the rental housing trust fund and the natural area reserve fund.

Thank you for the opportunity to provide comments

LATE



**Testimony to the House Committees on Finance
Monday, April 1, 2013
2:00 p.m.
State Capitol - Conference Room 308**

RE: SENATE BILL NO. 1166 SD 1 HD 1, RELATING TO CONVEYANCE TAX

Chair Luke and Vice Chairs Nishimoto and Johanson, and members of the committee:

The Chamber of Commerce of Hawaii **opposes S.B. No. 1166 SD 1 HD 1**. We are deeply troubled by the manner in which the Conveyance Tax has been used to generate reviews **for unrelated purposes**.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Conveyance Tax was created to cover the administrative costs of recording the real estate transactions, such as those performed by the Bureau of Conveyance. With the recent amendments to the statutes, the conveyance tax is deposited into the general fund with allocations to the Land Conservation Fund, Rental Housing Trust Fund, Natural Area Reserve Fund, and other environmental programs.

There is **no rational nexus** between the real estate transactions that are being taxed at conveyance, and the uses identified in HRS 247 as the beneficiaries of the tax. We do not believe that the conveyance tax is being used in an appropriate manner. **We believe the Auditor of the State of Hawaii had similar findings.**

In July 2012 the Auditor of the State of Hawaii prepared a report entitled, "Study of the Transfer of Non-general Funds to the General Fund," Report No. 12-04. On page 26 of the report, the Auditor found:

"In 2002, the Legislature set the criteria for determining whether special or revolving funds should be established or continued through Act 178, SLH 2002 and codified in Sections 37-52.3 and 37-52.4, HRS. To justify the creation and continuance, the Legislature must ensure that a special or revolving fund:

- Serves the purpose for which it was originally established;
- Reflects 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; . . .”

The Report also contains the following findings on two of the funds receiving funding through the Conveyance Tax (pages 29 and 30):

“Another example of a fund that has no benefit-user charge linkage is the Department of Land and Natural Resources’ Land Conservation Fund. Under Section 247-7(1), HRS, the Legislature authorized funding from 10 percent of the state real property conveyance tax receipts. However, the purpose of the fund is to conserve and protect lands having value as a resource to the state through either acquisition of property or through permanent conservation easements to protect resource values. Hence, beneficiaries of the conservation and preservation programs are state residents as a whole, and as such the programs should be supported by funding from a broader tax because of the broad public benefit. Although the Legislature determined the conveyance tax an appropriate means of funding conservation of natural resources, the Land Conservation Fund established under Section 247-7(1), HRS, the program should draw support from the general fund rather than a tax charged on individuals and companies involved in real estate transactions.”

“Likewise, 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.”

While we strongly support the various programs receiving funding from the revenues generated by the Conveyance Tax, we do not believe that the conveyance tax is the appropriate means to fund these programs. Finally, we question whether this specific type of legislation would even be introduced if the Conveyance tax were limited to its original purpose of recording real estate transactions.

Thank you for the opportunity to express our views on this matter.



STATEMENT IN SUPPORT OF Watershed Protection and Invasive Species Control

LATE

The Hawai'i Conservation Alliance (HCA) is a cooperative collaboration of conservation leaders representing 24 state and federal agencies, educational institutions, and nonprofit organizations. HCA's mission is to provide unified leadership and advocacy on conservation issues critical to Hawai'i. Collectively, we are responsible for managing the biodiversity of Hawai'i's lands and waters with more than 1,600 square miles of land and 140,000 square miles of marine area designated for biodiversity protection. HCA strives to manage these resources in a manner that integrates Native Hawaiian approaches and knowledge systems with conventional conservation efforts to care for Hawai'i's 'āina and people.

The HCA strongly supports watershed protection and invasive species control as outlined in the watershed protection plan, "The Rain Follows the Forest," released by the Department of Land and Natural Resources (DLNR). This proposal advances broad goals of community sustainability, ecosystem integrity, and biodiversity conservation by: 1) controlling key threats to priority watersheds, including invasive plant and animal species, fire, and plant diseases; 2) restoring the integrity and water retention capacity of these watersheds through protection and replanting of native species; and 3) educating Hawai'i's public as to the value of ecologically intact watersheds. By providing effective forest management, this initiative helps to replenish streams and aquifers diminished by decades of ecological neglect.

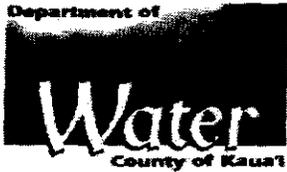
The HCA further supports watershed protection and invasive species control as key objectives within the broader goals and management efforts of the Alliance, including:

- 1) Reversing ecosystem degradation;
- 2) Enhancing ecosystem functioning and resulting goods and services;
- 3) Preservation of native ecosystems;
- 4) Increasing the diversity of native species;
- 5) Maintaining native biodiversity for future generations; and
- 6) Ensuring a sustainable management of Hawai'i's natural resources for island communities.

The HCA will support and contribute to Hawai'i's watershed restoration and invasive species control efforts through:

- 1) Collaboration between state, federal, non-profit, and community partners;
- 2) Management of adjacent land parcels by members such as Kamehameha Schools, National Park Service, and The Nature Conservancy;
- 3) Enhancing biosecurity efforts to prevent emergence of new threats;
- 4) Facilitation of funding opportunities through agencies such as the National Oceanic and Atmospheric Administration, Natural Resource Conservation Service, and U.S. Forest Service; and
- 5) Increasing community, cultural, and technical capacity for state efforts in support of sustainable land to sea watershed management.

Effective watershed protection, including the control of damaging invasive species, must become a top priority for Hawai'i in order to protect native biodiversity, agriculture, human health, and quality of life.



Water has no substitute..... Conserve it

LATE TESTIMONY

Testimony of
David R. Craddick, P.E., C.E.M.
Manager and Chief Engineer

Before the House Committee on Finance
Monday, April 1, 2013
2:00 p.m.
State Capitol, Conference Room 308

Honorable Representative Luke and Members of the Committee on Finance,

I am writing to you in support of Senate Bill 1166 Relating to the Conveyance Tax, particularly its proposal to use revenue to support watershed protection programs.

The Kauai Watershed Alliance (KWA) has been actively managing portions of the mauka watershed on Kauai since 2003. We as members make up a diverse group of public and private entities including the Kauai Water Department, who own land within the mountainous watershed and understand the importance of protecting and preserving the forests that capture the water - our most precious resource.

Our company is a member of the Kauai Watershed Alliance and we recognize the necessity of natural resource stewardship even during challenging financial times. We understand that the source of our pure water is a system of healthy forested watersheds which capture rain and cloud moisture and deliver it efficiently to aquifers and surface sources for subsequent consumption in our daily lives and for the benefit of our island economy.

This bill proposes to provide additional funding for the protection of our native forests, which are the source of nearly all the islands' supply of fresh water. The watershed protection and invasive species programs supported with state funds and leveraged several times over with matching funds from county, federal and private sources help to ensure healthy, managed natural resources that are critical for isolated island chains such as Hawaii.

Hawaii's Natural Resources are unique and provide value for our people and our economy; and thus would make them a reasonable beneficiary to a portion of the funds generated by the Conveyance Tax.

Your favorable consideration and support of SB 1166 would be appreciated. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "DR Craddick".

David. R. Craddick, P.E., C.E.M.
Manager and Chief Engineer



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org



HOUSE COMMITTEE ON FINANCE

April 1, 2013, 2:00 P.M.
(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 1166 SD1 HD1

Aloha Chair Luke and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, **supports** SB 1166 SD1 HD1. This bill would provide funding for the protection of priority watershed forests and protection of Hawai'i's environmental heritage, as well as funding for affordable housing.

The forests that provide our drinking water are just one example of "free services" that are provided by nature and consumed by the human economy--services that have immense economic value, but that go largely unrecognized and uncounted until they have been lost. Many of those services are indispensable to the people who exploit them, yet are not counted as real benefits, or as part of GNP.

Janet Abramovitz writes in WorldWatch's State of the World 1997, "A forest's watershed protection values alone can exceed the value of its timber. Forests also act as effective water pumping and recycling machinery, helping to stabilize the local climate. And through photosynthesis, plants generate life-giving oxygen and hold vast amounts of carbon in storage, which stabilizes the global climate." Unfortunately, these services aren't "free." Without proper management and protection, they will fail to provide the products we require: clean water, topsoil, and scenic areas, fresh air, and habitat.

Hawaii's watersheds also contain some of the best native Hawaiian ecosystems on state-managed land. While programs to protect these areas struggle for budget appropriations annually, resource experts estimate that at least \$11 million is needed annually to maintain the integrity of the watersheds for our children and future generations.

Our natural resource areas protect unique Hawaiian plants, animals, and ecosystems on 109,000 acres of public-trust lands. These areas include habitat for threatened and endangered species, and portions of essential watersheds that support our economy and way of life. Protection for these areas is seriously underfunded and understaffed. The result is increasing encroachment by invasive species, decrease in healthy habitat for native plants and animals, and the loss of the native essence of Hawai'i.

We appreciate that this bill proposes a source of permanent funding and would provide support in future years. Please move this measure forward.

Mahalo for the opportunity to testify.



LATE

March 31, 2013

Committee Chairs & Members of Finance Comm. (FIN)

RE: Strong Support for SB 1166 – Relating to the Conveyance Tax

Hearing on Mon., April 1, State Capitol, Conf. Rm. 308, 2:00 pm.

Dear Chair Luke, Vice Chair Nishimoto and Committee Members,

My name is Stuart Coleman, and I am the Hawaii Coordinator of the Surfrider Foundation. With more than 5000 activists and members across the state, Surfrider's Hawaii Chapters strongly support passage of SB 1166, a bill designed to fund the protection of our vital watersheds.

More than half of Hawaii's forests have already been lost. The longer we wait to take significant action, the higher the cost will be to reverse the damage, thereby threatening water supplies for future generations. Healthy forests will become even more critical as we experience the likely effects of climate change, including more severe storms but overall less rainfall. Forests also help mitigate erosion and runoff into our precious streams and coastlines.

The Administration's goal of doubling the number of acres of watershed forest protected over the next decade requires approximately \$11 million per year, supporting an estimated 150 direct local jobs. The conveyance tax bill would support watershed protection through essential forest management programs and invasive species control. Polls have shown widespread support for watershed protection, and this bill provides the necessary funding to allow DLNR to do its job. The people of Hawaii have been waiting for this kind of popular, common sense legislation. Mahalo for your time and support of this bill.

Sincerely,

Stuart H. Coleman
Hawaii Coordinator



PARTNERS IN CARE

Oahu's Coalition of Homeless Providers

LATE

SUPPORT, with suggested amendment, FOR SB 1166, SD1, HD1: RELATING TO THE CONVEYANCE TAX

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

FROM: Gladys Peraro, Co-Chair Advocacy Committee, Partners In Care (PIC)

Hearing: Monday, 4/1/13; 2:00 pm; CR 308

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

Thank you for the opportunity for Partners In Care (PIC) to **support SB1166**, which increases the allocation from the conveyance tax to the Rental Trust Housing Fund for affordable housing as well as to the Natural Area Reserve Fund (NARF) for watershed protection and invasive species control. I am Gladys Peraro, Advocacy Committee Co-Chair for Partners In Care (PIC), a coalition of care providers focusing on the needs of homeless persons and strategies to end homelessness. Partners In Care strongly supports this funding for affordable housing and land protection which is critical to Hawaii's future.

Hawaii's long term needs for clean water as well as housing needs to be addressed now- each year without adequate funding, both issues fall farther behind. Of urgent concern is the issue of homelessness and its impact to the citizens of Hawaii as well as the impact to our tourist industry, daily life in urban and suburban neighborhoods, and to businesses. Hawaii has the third highest rate for homelessness among the states, which is evident to Partners In Care service providers who respond to calls on a daily basis from individuals and families who are in dire need of affordable housing opportunities, with the need exceeding available inventory. The Rental Housing Trust Fund has a proven record of creating affordable rental units- in FY 2012, the Trust Fund received \$37 million in project requests but was only able to commit \$20.7 million for 4 out of the 9 projects due to limited resources- a full 312 units in five (5) projects could not be funded.

Partners In Care is very appreciative of SB1166, HD1's proposed increase to the Trust Fund of 40% of the conveyance tax, however, due to the dire need, PIC urges that that the current version be amended (**page 7, line 9**) **"to restore the percentage of the conveyance allocated to the Rental Housing Trust Fund (RHTF) to 50%."** In 2006, the Legislature recognized the need for more affordable housing, and increased the percentage of the conveyance tax allocated to the Trust Fund to 50% of the tax proceeds. Due to the recent economic crisis, the percentage was dropped to 30 percent in 2008, with the amount set at 25 percent from 2009-2012. As of July 1, 2012, the allocation was reset to 30% of the conveyance tax. The conveyance tax is the only dedicated source of funding to the RHTF. **At the current rate, this is projected to yield only \$10 million for FY 13.** This will not achieve the production of the 13,000 affordable rental units that are needed in the state.

Partners In Care respectfully urges your support to restore 50% of this tax to the Rental Housing Trust Fund (RHTF), and for increased funding to NARF. Thank you for helping individuals and families in need.

Partners In Care, c/o Aloha United Way, 200 N. Vineyard Blvd. Suite 700
Honolulu, Hawaii 96817



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

LATE

March 31, 2013

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

Comments, Concerns and Opposition to SB 1166, SD1, HD1, Relating to the Conveyance Tax. (Increases the Conveyance Tax on certain transactions; and increases portions of conveyance tax revenues allocated to the Natural Area Reserve Fund and Rental Housing Trust Fund.)

Monday, April 1, 2013, 2:00 p.m., in 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. One of LURF's missions 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.

LURF appreciates the opportunity to provide **comments, concerns and opposition** to the current form of this bill. LURF supports the increased funding for the Rental housing Trust Fund ("RHTF") and the Natural Area Reserve Fund ("NARF"), however, it believes that such increases should be done in a legal and financially responsible manner, which complies with the recommendations made by the State Auditor in her 2012 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, Report No. 12-04, dated July 2012* ("2012 Auditor's Report").

Thus, LURF respectfully requests that this Committee **defer SB 1166, SD1, HD1, because this bill is unnecessary, based on HB 200, HD1, passed by this Committee, which proposes additional funding to the Department of Land and Natural Resources for eleven personnel and appropriated \$8,500,000 to the Natural Area Reserve Special Funds.**

LURF also respectfully requests the **deferral of this bill**, because the proposers of the bill have never discussed or engaged in a collaborative process with the parties who would be most affected by this bill. A **deferral** would have the following advantages:

- Provide the opportunity for important discussions among stakeholders affected by this legislation and other stakeholders affected by taxes and the general fund, regarding the conclusions and recommendations in the *2012 Auditor's Report*.

- Allow the proposers of this measure to provide information regarding the current status of the NARF, how much the increase is expected to generate, and explain why they are asking for increases in taxes for NARF. The *2012 Auditor's Report*, which recommended that NARF be repealed, also confirmed that as of the end of Fiscal Year 2011-2012, NARF had a total unspent balance of \$5,213,000 funds in its account; including an unencumbered balance of \$2,213,000.
- Recent, July 1, 2012 increases in funding will still apply and other funds will maintain status quo. Deferral will allow the Rental Housing Trust Fund ("RHTF") to retain its current increased percentage, as of July 1, 2012, from twenty-five per cent to thirty per cent; the NARF's twenty per cent share will remain status quo; and the rates of the Conveyance Tax will remain status quo.
- Provide for transparent, collaborative and meaningful opportunities for the proposers to discuss the impact of and alternatives to, this proposed measure with the Stakeholders who are most affected on each island.
- Review and discussion regarding other legal and voluntary alternatives are available to increase funding and support for the NARF, watersheds, and invasive species, including, but not limited to the following:
 - LURF understands that HB 200, HD1, relating to the State Budget already includes the necessary funding for NARF from the general fund. House Standing Committee Report No. 928 provides as follows:

*"Hawaii's natural land and water resources are the lifeblood of our community. For the biennium, the Department of Land and Natural Resources requests project funding for the Watershed Initiative to maintain and preserve statewide forests, wildlife, beaches, and water resources and also to detect and remove invasive species. **Your Committee recognizes the importance of projects that preserve our natural resources and provided funding for 11 personnel and appropriated \$8,500,000 to the Natural Area Reserve Special Funds.**"*
 - Current and proposed funding support through county board of water supply charges.
 - Funding through voluntary donations by rental car lessors or hotel room guests. (Compare, HB 760, HD1, SD1, which requires lessors of rental motor vehicles to include an option to the lessee in the motor vehicle agreement to contribute a sum to the department of land and natural resources for the preservation and protection of the environment, fifty percent to the NARF and fifty percent to the Land Conservation Fund ("LCF"), beginning July 1, 2015.)
 - Voluntary income tax refund check-off box for NARF, watersheds and invasive species. (Compare, HB 571, which proposed to permit all Hawaii taxpayers to voluntarily designate a specified amount of the taxpayer's income tax refund to be deposited into the State's Early Learning Trust Fund.)

- Review and discussion regarding conveyance tax exemptions for landowners who already provide affordable housing, or otherwise support or partner with NARF, watershed and invasive species programs.

SB 1166, SD1, HD1. The stated purpose of this bill is to increase the amount of Conveyance Tax and portions of the tax's revenues directed toward watershed protection and invasive species control, however, the SD1 version deleted all of the per cent increases for NARF and left the amounts of the increases unspecified and undisclosed. The HD1 version amended this measure by: (1) Increasing the portion of Conveyance Tax proceeds allocated to the RHTF to forty percent; and (2) Increasing the portion of conveyance tax proceeds allocated to the Natural Area Reserve Fund to thirty-five percent.

This HD1 version of this bill proposes to:

- Increase by an unspecified amount of Conveyance Tax charged on all transfers or conveyances of realty or any interest therein (including sales, leases, subleases, assignments, transfers, conveyances, etc.), and the sale of condominiums and residences (for which the purchaser is ineligible for a county homeowner's exemption on property tax), with a value of over \$2 million. (The prior version of this bill included substantial and specific percentage increases in the Conveyance Tax, however the SD1 amended the bill to leave the increases unspecified and undisclosed);
- Change the percentage of the Conveyance Tax to be used and expended for general fund purposes by an unspecified and undisclosed amount. (The prior version of this bill included specific provisions to reduce by fifteen percent the percentage of Conveyance Tax to be used and expended for general fund purposes, decreasing its total only twenty five percent, however the SD1 amended the bill to leave the increases undisclosed);
- Direct an additional ten percent to the RHTF, increasing its total percentage of the Conveyance Tax to a total of forty percent. (The existing law provides the RHTF with a thirty percent portion of the Conveyance Tax proceeds); and
- Direct an additional fifteen percent to the NARF, increasing its total percentage of the Conveyance Tax to a total of thirty-five percent. (The existing law provides NARF with a twenty percent portion of the Conveyance Tax proceeds.).

LURF's Position. Over the past several decades, LURF's members are the State's leaders in providing affordable housing and are also the foremost partners with the Nature Conservancy and other organizations in setting aside, partnering and serving as stewards of natural lands for conservation and watershed purposes.

LURF supports the increased funding of the RHTF through the Conveyance Tax, because there is a "clear nexus and benefit-user linkage." However, LURF opposes the use of the Conveyance Tax to fund NARF, because it targets only sellers in real estate transactions and is an unreliable source of income, because it fluctuates with the economy and housing market. LURF also believes that the NARF is so important, that it deserves annual funding through broad taxes on the public and the State General Fund.

While LURF strongly supports funding for affordable housing, natural area reserves programs, preserving watersheds and controlling invasive species, LURF is in **strong opposition to SB 1166, SD1, HD1 and recommends that it be held by this Committee**, based on, among other things, that the Legislature and Administration is on notice that it violates Hawaii law, and is therefore illegal to continue the funding of these programs through the conveyance tax, which is paid by sellers of real property and has “no clear nexus or benefit-user linkage.”

It appears that the intent of SB 1166, SD1, HD1 is to find additional sources of funding for NARF by increasing Conveyance Tax revenues for the transfer of “luxury” properties. However, that Auditor has concluded that the NARF *does not have a clear link* with its funding source (individuals and companies involved in real estate transactions) and that it should be repealed; there are other alternatives to increase the funding for NARF; it unfairly targets and imposes substantial unintended negative consequences on local families that own land and other large *Kama`aina* landowners who have significant interests in Hawaii’s real estate community; and creates a major disincentive for businesses which wish to expand or relocate their operations in Hawaii.

The proposed increases in the conveyance tax on the transfer of real estate are inappropriate, improper, and illegal, 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; and natural area reserve fund) 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.

2. SB 1166, SD1, HD1, appears to be illegal and in violation of Sections 37-52.3 and 37-52.4, Hawaii Revised Statutes (“HRS”), because it attempts to use the Conveyance Tax to increase the NARS 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 Sections 37-52.3 and 37-52.4 HRS. 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:

- a. serve the purpose for which it was originally established;
- b. 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;
- c. provide an appropriate means of financing for the program or activity; and
- d. 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, requiring the Auditor to review all legislative bills in each session to establish new special or revolving funds. The 1990 Legislature determined it was fiscally prudent to establish a review for all proposed special and revolving funds and to have the Auditor perform a one-time review of existing funds.

3. SB 1166, SD1, HD1, is inconsistent with the recommendation of the 2012 State Auditor's report to the Governor and legislature, which recommended the termination of the NARF. The following information is from the *2012 Auditor's Report*.

The *2012 Auditor's Report* was prompted by House Concurrent Resolution No. 166, which requests the Auditor to conduct a study regarding the transfer of non-general funds to the general fund in light of the Hawai'i Supreme Court decision, *Hawai'i Insurers Council v. Linda Lingle, Governor, State of Hawai'i, et al.* ("*Insurers Council lawsuit*"). In December 2008, the court ruled that the Legislature violated the Separation of Powers doctrine in an unconstitutional raid of an insurance special fund.

In House Concurrent Resolution No. 166, the 2011 Legislature asked the Auditor to look at the appropriateness of transferring non-general funds, including special and revolving funds, to the general fund, determine the source of the moneys, and determine whether the moneys are used for a public purpose. However, for purposes of this 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.

In July 2012, the Office of the State Auditor issued its *2012 Auditor's Report* to the Governor and Legislature, which applied the criteria in Sections 37-52.3 and 37-52.4, HRS, 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 *2012 Auditor's Report* included the Auditor's analysis of the NARF and concluded:

“...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.”

The *2012 Auditor's Report* further concluded that the NARF did not meet the criteria for continuance, because was no clear linkage between the benefits sought and the source of funding. The State Auditor concluded that and that the NARF and similar programs, which benefit Hawai'i's residents and visitors as a whole, should be supported by funding from a broader tax base because of the broad public benefit; and that such programs should be supported from the State general fund, rather than from the Conveyance Tax charged only individuals and companies. 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 a letter dated June 18, 2012 commenting on the draft *2012 Auditor's Report*, the State Director of Finance has stated that “*In general, we agree with your 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 and the unencumbered balance should lapse into the General Fund.

Likewise, in a letter dated June 22, 2012 commenting on the draft *2012 Auditor's Report*, the State Attorney General 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 and the unencumbered balance should lapse into the General Fund.

4. **If SB 1166, SD1, HD1, is enacted, it could result in a class action lawsuit against the State.** As noted above, the Auditor has concluded that the NARF did not meet the criteria for continuance of a special fund, because was no clear link between the benefits sought and user or beneficiary charges; and that the NARF should be repealed. Also, the State Budget Director and Attorney General, appear to concur with the Auditor's findings and recommendations regarding the NARF. If the Legislature disregards the recommendations of the State Auditor to repeal the NARF, the State could be faced with a class-action lawsuit by all persons who have paid conveyance taxes. The lawsuit would include some of the same reasoning that the Hawaii Supreme Court used against the State in the *Insurer's Council* lawsuit.
5. **The NARF is so important, that it deserves annual funding through broad taxes on the public and the State General Fund, perhaps supplemented by voluntary contributions by Hawaii's taxpayers and visitors – rather than through the Conveyance Tax, which targets few, is unreliable and fluctuates with the housing market.** The *2012 Auditor's Report* included the following explanation:

“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.”

The *2012 Auditor's 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.”

LURF also agrees with the State Auditor's finding that the beneficiaries of such conservation and preservation programs are state residents as a whole, and programs such as NARF are so important that they should be supported by funding from a broader tax on all state residents, because of the broad state benefit.

6. **SB 1166, SD1, HD1, may have unintended consequences**, especially to our island families who own large properties and may want to transfer property within their family. The measure will also have major 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.

7. **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, SB 1166, SD1, HD1, actually creates 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.
8. **The imposition of increased conveyance taxes as proposed by SB 1166, SD1, HD1 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.
9. **Other legal and voluntary alternatives are available to increase funding, or incentivize support for the NARF, watersheds, and invasive species.**
 - Funding through county board of water supply charges. We understand that some counties are providing watershed funding through a portion of their water fee charges, which are a broad-based fee that paid by all users, residents and visitors alike.
 - Funding through voluntary donations by rental car lessors or hotel room guests. HB 760, HD1, SD1, which requires lessors of rental motor vehicles to include an option to the lessee in the motor vehicle agreement to contribute a sum to the department of land and natural resources for the preservation and protection of the environment beginning July 1, 2015.
 - Voluntary income tax refund check-off box for NARF, watersheds and invasive species. This would be a broad-based voluntary program for all residents and companies that pay Hawaii State income tax, similar to HB 571, which proposed to permit all Hawaii taxpayers to designate a specified amount of the taxpayer's income tax refund to be deposited into the State's Early Learning Trust Fund.
 - Exemption for landowners who already provide affordable housing, or support watershed and invasive species programs. Most of Hawaii's large landowners already partner with DLNR, Nature Conservancy and other environmental partners to steward and support Hawaii's watersheds and to address invasive

species problems. These landowners should be provided exemptions from the Conveyance Tax.

Understanding the importance of the Conveyance Tax issues raised by SB 1166, SD1, HD1, and the above-referenced major unintended and overall negative impacts, **LURF respectfully requests that this bill be held in this Committee** to allow stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties to meet and work together to come to a consensus regarding the bill's provisions, consequences and alternatives of funding NARF through the general fund and perhaps supplemental funding by voluntary contributions by Hawaii's taxpayers and visitors.

Thank you for the opportunity to provide comments and concerns relating to this proposed measure.

LATE

SB1166

Submitted on: 3/31/2013

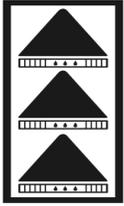
Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Teya Penniman	Maui Invasive Species Committee	Support	No

Comments: Please support this important measure, which will help provide much-needed resources for conservation work across the islands. Mahalo nui. Teya Penniman

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April 1, 2013

Testimony of the Three Mountain Alliance
House Committee on Finance

Aloha Madame Chair and members of the committee,

The Three Mountain Alliance (TMA) strongly supports the increase in allocation of conveyance tax proceeds for watershed and invasive species management.

The TMA is a voluntary alliance of federal and state agencies and private landowners who collectively own and manage over 1 million acres across the three volcanoes of Kilauea, Mauna Loa, and Hualālai on Hawai'i Island. Members of the TMA work together to conserve and protect forested watersheds and native ecosystems across the landscape. We strongly support the Governor's initiative in the *Rain Follows the Forest* plan to conserve and protect Hawai'i's watershed forests, not only for capturing fresh water for the people of Hawai'i, but also for providing a place of refuge for native plants, birds, insects, and other animals, who are disappearing at an alarming rate from their historic ranges. Healthy diverse native forests, those not overrun by exotic weeds and introduced animals, efficiently capture and deliver fresh water into streams and aquifers for our use. By pulling moisture from passing clouds, forests can actually increase water capture up to 50% more than through rainfall alone. When forests are lost or degraded, Hawai'i loses its source of fresh water as well as habitat for our native species. Sadly, more than half of Hawai'i's forests have been lost. Historically, the threat was overharvesting and development -- today's threat is invasive plants and animals.

The longer we wait to take significant action, the higher the cost will be to reverse the damage, thereby threatening water supplies for future generations. Forests also help mitigate erosion and runoff into our precious streams and coastlines. Healthy forests will become even more critical as we experience the likely effects of climate change, including more severe storms but overall less rainfall, and temperature changes that may benefit invasive pests.

TMA and other watershed partnerships across the state work hard to protect these forests. Members of watershed partnerships leverage their resources, collaborate on project implementation, and come together as a group, despite agency ties or background,

maximizing efforts to preserve important watersheds for fresh water as well as biological and cultural resources. The watershed partnerships of Hawai'i are novel collaborations, unlike anywhere else in the country. TMA members have been called to action to address the critical state of our forests and we urge you to do the same. Please support the increase in allocation of conveyance tax proceeds for watershed and invasive species management to ensure the future of Hawai'i's watersheds.

LATE

SB1166

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Kathryn Cassel	Individual	Support	No

Comments: This is a very important bill for Hawaiian native forest conservation, and thus very significant for preservation of Hawaiian Culture.

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SB1166

Submitted on: 4/1/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Chipper Wichman	Kauai Watershed Alliance	Support	No

Comments: Dear Committee Members, As the Chair of the Kaua'i Watershed Alliance (KWA) and the Director and CEO of the National Tropical Botanical Garden (NTBG), I am writing to you to express my **STRONG** support for SB 1166 Relating To The Conveyance Tax, particularly its proposal to use revenue to support watershed protection programs. The Kauai Watershed Alliance (KWA) has been actively managing portions of the mauka watershed on Kauai since 2003. Our members make up a diverse group of public and private entities including the Kauai Water Department, who own land within the mountainous watershed and understand the importance of protecting and preserving the forests that capture the water - our most precious resource. Healthy and diverse Hawaiian forests that are not degraded by invasive pests act like a sponge, collecting rain and moisture from passing clouds, slowly delivering fresh water into streams and aquifers, absorbing greenhouse gases, and reducing runoff and siltation into streams and onto coral reefs during storm events. Hawaii's Natural Resources are unique and provide value for our people and our economy; and thus would make them a reasonable beneficiary to a portion of the funds generated by such a measure. Mahalo for your support. Chipper Wichman - KWA Chair & NTBG Director and CEO

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LATE

SB1166

Submitted on: 4/1/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Amanda Hardman	Individual	Support	No

Comments:

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SB1166

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Shishido	Individual	Support	No

Comments: Dear Rep. Luke and Members of the Committee: I write in strong support of this measure. Healthy forests in Hawai`i require ongoing invasive species management to efficiently capture and deliver fresh water into streams and aquifers for our use; to help mitigate erosion and runoff into our streams and coastlines; and to help address likely effects of climate change. The longer we wait to take significant action, the higher the cost will be to reverse damage to our watersheds, thereby threatening water supplies for future generations. Furthermore, the Administration's goal is to double the acres of watershed forest protected in the next decade, requiring approximately \$11M/year and supporting an estimated 150 local jobs. The conveyance tax bill would support essential watershed protection through proven programs in forest management, invasive species control, land acquisition, and conservation. Hawai`i continues to invest significant resources in real estate development, sales and construction, helping to lift our economy out of recession. Yet, we make a comparatively tiny investment in protecting the natural resources that are the foundation for our economy and quality of life on our islands. It makes sense to use a modest increase in conveyance tax revenue to protect the sources of our fresh water. Thank you for the opportunity to submit testimony. Sincerely, Karen S. Shishido Makiki

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SB1166

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Noelie Rodriguez	Individual	Support	No

Comments: Please support SB1166. This will make an important investment in the long-term future of Hawaii. Nothing could be more crucial than ensuring the health of our forests, the source of our supplies of fresh water.

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SB1166

Submitted on: 4/1/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Gray	Individual	Support	No

Comments: I support the use of the bag fee to preserve our forests, streams, climate, oceans, air and soil as these things are essential to human life. Plastic bags, on the other hand are NOT needed!

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