

GOV. MSG NO 873

#### EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President and Members of the Senate Twenty-Fourth State Legislature State Capitol, Room 409 Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2198 SD2 HD2 CD2, without my approval, and with the statement of objections relating to the measure.

SB2198 SD2 HD2 CD2

A BILL FOR AN ACT RELATING TO LAND CONSERVATION.

Sincerely,

Zu LINDA LINGLE

## EXECUTIVE CHAMBERS HONOLULU July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2198

Honorable Members Twenty-Fourth Legislature State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval Senate Bill No. 2198 entitled "A Bill for an Act Relating to Land Conservation."

The purpose of this bill is to encourage the protection and preservation of land suitable for conservation by establishing a tax credit of \$1 million for the sale, donation, or management of land for conservation purposes.

While the intent to preserve conservation lands is commendable, the bill poses both operational and fiscal problems.

The bill places a cap of \$1 million on the amount of credit any one taxpayer can receive. The bill also places a \$1 million aggregate tax credit on the total amount that may be paid to all qualified taxpayers during the five years that the program is in effect. The amount is both outside the budget and unrealistic.

First, any single donation of \$2 million would qualify to use the entire amount of the credits available for the entire program through the year 2013. More troubling is the fact that the bill does not indicate how competing and equally qualified submissions for the credit should be awarded, opening the program to potential litigation or challenge. STATEMENT OF OBJECTIONS SENATE BILL NO. 2198 Page 2

Second, unlike conservation tax credits enacted in other states, this bill permits the credit to be taken for voluntary investments in the management of land, an activity that is fraught with interpretation and possible abuse. Further, this bill does not prohibit a taxpayer from claiming both a credit and a State deduction, thus double-dipping into the State tax coffers. Additionally, the bill incorrectly references pass-through entities, in violation of well-settled tax principles for the treatment of partnerships, limited liability corporations, and corporations.

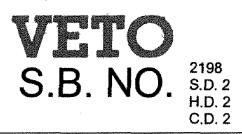
It should be noted that State and federal programs, including the legacy lands program, currently exist to encourage landowners to engage in good stewardship, consider charitable donations of their property, or allow for the State to purchase and preserve conservation properties. These programs will continue to have my support and do not result in the types of fiscal or operational problems this measure poses.

For the foregoing reasons, I am returning Senate Bill No. 2198 without my approval.

Respectfully,

LINGLE

Governor of Hawaii



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## A BILL FOR AN ACT

RELATING TO LAND CONSERVATION.

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

1	SECTION 1. The purpose of this Act is to provide a land
2	conservation incentives tax credit to encourage the preservation
3	and protection of land in the State.
4	SECTION 2. Chapter 235, Hawaii Revised Statutes, is
5	amended by adding a new section to be appropriately designated
6	and to read as follows:
7	" <u>§235-</u> Land conservation incentives tax credit;
8	definitions. (a) There shall be allowed to every eligible
9	taxpayer a land conservation incentives tax credit that shall be
10	deductible from the taxpayer's net income tax liability imposed
11	by this chapter for taxable years after December 31, 2007;
12	provided that a husband and wife filing separate returns for a
13	taxable year for which a joint return could have been filed by
14	them shall claim only the tax credit to which they would have
15	been entitled had a joint return been filed.
16	(b) The tax credit shall apply to an eligible taxpayer

17 who:



Page 2

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S.B. NO. 2198 S.D. 2 H.D. 2

C.D. 2

1	(1)	Donates land in perpetuity or completes a bargain sale
2		in perpetuity to the State or public or private
3		conservation agency that fulfills a conservation or
4		preservation purpose; provided that any donation or
5		sale that represents a less-than-fee interest
6		qualifies as a charitable contribution deduction under
7		Section 170(h) of the Internal Revenue Code of 1986,
8		as amended; or
9	(2)	Voluntarily invests in the management of land to
10		protect or enhance a conservation or preservation
11		purpose under a land protection agreement,
12		conservation management agreement, or other legal
13		instrument that is consistent with a conservation or
14		preservation purpose.
15	(c)	Donations of land for open space for the purpose of
16	fulfilling	g density requirements to obtain subdivision or
17	building p	permits do not qualify for the land conservation
18	incentives tax credit.	
19	<u>(d)</u>	The amount of the tax credit shall be:
20	(1)	Fifty per cent of the fair market value of the land or
21		interest in land that an eligible taxpayer donates in
22		perpetuity after December 31, 2007, for a conservation
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Page 3

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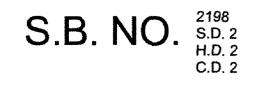
### S.B. NO. 2198 S.D. 2 H.D. 2 C.D. 2

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1	or preservation purpose to the State, or public or		
2	private conservation agency. The fair market value o		
3	donations made under this section shall be		
4	substantiated by a qualified appraisal prepared by a		
5	qualified appraiser, as those terms are defined under		
6	applicable federal law and regulations governing		
7		charitable contributions; or	
8	(2)	Fifty per cent of the amount invested in the	
9		management of land pursuant to subsection (b)(2),	
10	up to a maximum of \$1,000,000 in the aggregate for all qualified		
11	taxpayers for all years.		
12	(e) The amount of the tax credit shall not exceed		
13	\$1,000,000 per donation regardless of the value of the land or		
14	interest in land; provided that if the tax credit under this		
15	section exceeds the taxpayer's net income tax liability under		
16	this chapter, any excess of the tax credit over liability may be		
17	used as a credit against the taxpayer's income tax liability in		
18	subsequent taxable years until exhausted.		
19	<u>An el</u>	igible taxpayer may claim the land conservation	
20	incentives tax credit only once per taxable year.		
21	(f) The tax credit claimed by a pass-through tax entity		
22	may be used	d either by the pass-through tax entity or a member,	

2008-2640 SB2198 CD2 SMA.doc

Page 4

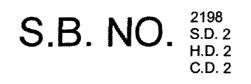


1	manager, partner, shareholder, or beneficiary of the pass-		
2	through entity, in proportion to the total interest of the		
3	member, manager, partner, shareholder, or beneficiary; provided		
4	that:		
5	(1) There is in fact a pass-through; and		
6	(2) The tax credit may be claimed only once by either the		
7	pass-through entity or the member, manager, partner,		
8	shareholder, or beneficiary, but not both.		
9	(g) Every claim, including amended claims, for the tax		
10	credit under this section shall be filed on or before the end of		
11	the twelfth month following the close of the taxable year for		
12	which the tax credit may be claimed. Failure to meet the filing		
13	requirements of this subsection shall constitute a waiver of the		
14	right to claim the tax credit.		
15	(h) The director of taxation:		
16	(1) Shall prepare forms necessary to claim a tax credit		
17	under this section;		
18	(2) May require proof of the claim for the tax credit; and		
19	(3) May adopt rules pursuant to chapter 91 to effectuate		
20	the purposes of this section.		
21	(i) The chairperson of the board of land and natural		
22	resources and the chairperson of the board of agriculture may		

2008-2640 SB2198 CD2 SMA.doc 

Page 5

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1	adopt rules pursuant to chapter 91 to effectuate this section		
2	and to certify that a donation or investment claimed for a tax		
3	credit under this section fulfills a conservation or		
4	preservation purpose pursuant to subsection (k).		
5	(j) Any appraisals prepared pursuant to subsection (d)(1)		
6	shall be subject to all requirements, including penalties for		
7	valuation misstatements, for appraisals and appraisers under		
8	applicable federal law and regulations governing charitable		
9	contributions.		
10	(k) As used in this section:		
11	"Bargain sale" means a sale where a taxpayer is paid less		
12	than the fair market value for land or an interest in land.		
13	"Conservation or preservation purpose" means:		
14	(1) Protection of open space for scenic values;		
15	(2) Protection of natural areas for wildlife habitat,		
16	biological diversity, or native forest cover; or		
17	(3) Preservation of forest land; agricultural land;		
18	watersheds; streams; rainfall infiltration areas;		
19	outdoor recreation, including hiking, biking, and		
20	walking trails; and historic or cultural property;		
21	provided that the resources or areas protected or preserved are		
22	designated as significant or important by a relevant state		

2008-2640 SB2198 CD2 SMA.doc



Page 6

S.B. NO. 2198 S.D. 2 H.D. 2 C.D. 2 e.

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1	agency,	and that the state agency work with the taxpayer to	
2	<u>identify</u>	opportunities for public access if appropriate and	
3	reasonab.	reasonable, and that nothing herein shall prevent the exercise	
4	of any r	of any rights of Native Hawaiians for traditional and customary	
5	practices as may be required by law.		
6	"Cultural property" means a structure, place, site, or		
7	object having historic, archaeological, scientific,		
8	architectural, or cultural significance.		
9	"Eligible taxpayer":		
10	(1)	Means a Hawaii taxpayer who is not claimed or is not	
11		otherwise eligible to be claimed as a dependent by	
12		another taxpayer for federal or Hawaii state	
13		individual income tax purposes; and	
14	(2)	Includes individuals, corporations, or pass-through	
15		tax entities such as trusts, estates, partnerships,	
16		limited liability companies or partnerships, S	
17		corporations, or other fiduciaries.	
18	"Int	erest in land" means a right in real property,	
19	including	access, improvement, water right, fee simple interest,	
20	easement,	land use easement, partial interest in real property,	
21	<u>mineral r</u>	ight, remainder or future interest, or other interest	
22	or right	in real property that complies with the requirements of	
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1	Section 170(h)(2) of the Internal Revenue Code of 1986, as
2	amended.
3	"Land" means real property, including rights of way,
4	easements, privileges, water rights, and all other rights or
5	interests related to real property.
6	"Public or private conservation agency" means a
7	governmental body or a private nonprofit charitable corporation
8	or trust authorized to do business in the state that is
9	organized and operated for natural resources, land, or historic
10	conservation purposes and that has tax-exempt status as a public
	charity under Section 501(c)(3) of the Internal Revenue Code of
12	1986, as amended, and has the power to acquire, hold, or
13	maintain land or interests in land."
14	SECTION 3. Section 205-45, Hawaii Revised Statutes, is
15	amended by amending subsection (a) to read as follows:
10	"(a) A farmer or landowner with lands qualifying under
17	section 205-44 may file a petition for declaratory ruling with
18	the commission at any time in the designation process. The
19	holder of an interest in agricultural lands that qualifies for
20	the land conservation incentives tax credit under section 235-
21	may petition the commission for designation of the agricultural

2198 S.D. 2 H.D. 2 C.D. 2

S.B. NO.

# 2008-2640 SB2198 CD2 SMA.doc

Page 8

	NO.	2198
<b>S.B.</b>		S.D. 2
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1	lands as important agricultural lands, and enjoy the incentives
2	for important agricultural lands provided under section 205-46.
3	SECTION 4. New statutory material is underscored.
4	SECTION 5. This Act shall take effect on July 1, 2008,
5	shall be repealed on December 31, 2013, and shall apply to
6	taxable years beginning after December 31, 2007.

