

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Credit for permeable surfaces; deduction for net water infiltration certification

BILL NUMBER: SB 1305; HB 1394 (Identical)

INTRODUCED BY: SB by Dela Cruz; HB by Har, Aquino, Cullen, Ichiyama, Oshiro, Say, Tsuji, Yamashita

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer to claim a permeable surfaces tax credit equal to 10% of the value of the volume of water permitted to percolate into the groundwater aquifer, as determined by a geologist, hydrologist, soil agronomist, or related professional, based on: (1) the net water infiltration; (2) the area of permeable surface available for groundwater recharge; and (3) an average water utility rate determined by the public utilities commission. This rate shall be doubled for: (1) operations actively irrigating with reclaimed wastewater, gray water, or brackish water; (2) business or agricultural operations operating in an area found to be under drought conditions; or (3) organic agricultural operations as certified by the U.S. Department of Agriculture.

Defines “permeable surface” as a ground surface that permits water to infiltrate at a rate in excess of 0.1 feet per day and “net water infiltration” as the amount of water that penetrates the ground surface, in excess of evaporation and plant consumption, per unit of time as determined by a geologist, hydrologist, soil agronomist, or related professional. Also defines “organic agricultural operation” and “qualifying property” for purposes of the measure.

Requires the taxpayer to provide information to the chairperson of the board of land and natural resources on the net water infiltration of the qualifying property for each calendar year that the tax credit is claimed. This information shall be verified by a geologist, hydrologist, soil agronomist, or related professional.

Upon verification of the information provided by the taxpayer, the department of land and natural resources shall issue a certificate to the taxpayer verifying the credit amount certified for each tax year. The taxpayer shall file the certificate with the department of taxation.

Credits in excess of a taxpayer’s income tax liability may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted. Requires all claims for the credit, including amended claims, to be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Requires the director of taxation to prepare forms that may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

Adds a new section to HRS chapter 235 to establish an income tax deduction for the amount paid during the taxable year by a taxpayer to obtain: (1) certification of an organic agricultural operation; or (2) a determination of the net water infiltration of a qualifying property’s net water infiltration by a geologist, hydrologist, soil agronomist, or related professional; provided that these amounts were paid for the purpose of claiming the permeable surfaces tax credit.

Requires the director of taxation to prepare any forms that may be necessary to claim the deduction and may also require the taxpayer to furnish reasonable information to ascertain the validity of such claim.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

STAFF COMMENTS: This measure proposes an income tax credit to encourage taxpayers to maintain a permeable surface that lets water pass through and reach the groundwater aquifer. It also proposes an income tax deduction to allow the taxpayer to deduct to the cost of the certification necessary to claim the permeable surface income tax credit. It should be remembered that the tax system is not an efficient method to accomplish such goals. In addition, since the proposed measure would grant preferential treatment to a select group of taxpayers at the expense of other taxpayers who are ineligible for the credit, its enactment cannot be justified.

It should be remembered that tax credits generally are designed to alleviate an undue burden on those who are unable to carry that burden, largely the poor and low income. The adoption of this measure would result in nothing more than a subsidy by the state to certain taxpayers with permeable surfaces and would not in any way address the taxpayer's need for tax relief. While this measure also proposes an income tax deduction for the cost of certification to qualify for the credit, it is an indirect subsidy by the state for the cost and results in an equal amount of revenue which will not be available for essential services and programs provided by the state.

If the intent of this measure is to have government pay for some of the cost of this activity, then a direct appropriation of general funds would be far more transparent and accountable than an unbridled tax credit or exemption. What this and many of the tax incentive proposals recognize is that it is costly to do business in the state as entrepreneurs have to navigate the treacherous waters of state and county permitting and regulations. It is costly because to comply with these rules and regulations and securing of permits takes time which, in turn, erodes the financial investment of investing in Hawaii. Lawmakers don't seem to understand that with each passing day attempting to comply with a rule or ordinance, that day costs the investor money as the finance charges mount with no compensating cash flow to offset those hidden costs. In this case the proposal attempts to provide an incentive to help recharge the aquifer or net water infiltration. Again, the taxpayer has to comply with the regulatory requirements to secure the appropriate certification. Instead of trying to subsidize the taxpayer with a tax credit or exemption, government should determine how it can make the process easier and more efficient as a way to minimize the cost of undertaking such projects.

Lawmakers need to take a good look and see that, on one hand they are scrounging for money attempting to raise new funds with everything from user fees to taxes on specific groups of people and, on the other hand, introduce measures like this one. If all of the tax give-aways that have no rational basis were adopted, they would probably bankrupt the treasury. It should be repeated over and over again that the tax system is not designed to provide some sort of lure to attract the taxpayer into doing or acting in some sort of unusual way, but that the tax system exists to raise the funds necessary to operate government. Lawmakers may want to propose various tax breaks for their constituents while continuing to squander the tax resources on more public programs and personnel. However, doing so raises the question of whether or not elected officials have any clue about what their fiduciary responsibility is. This is indeed sad as the voting public has entrusted these elected officials with their hard-earned tax dollars.

Digested 1/30/13



LANDSCAPE INDUSTRY COUNCIL OF HAWAII

February 7, 2013

TESTIMONY FOR HOUSE BILL N.O. 1394

HOUSE COMMITTEE ON WATER & LAND
AND
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

The Landscape Industry Council of Hawaii supports House Bill 1394 Relating to income tax credit for taxpayers who maintain permeable surfaces on their property.

Permeable paving surfaces have been demonstrated as effective in managing runoff from paved surfaces. Large volumes of urban runoff causes serious erosion and siltation of our ocean reefs.

Permeable paving surfaces keep the pollutants in place on the roadway, and allow water seepage to groundwater recharge while preventing the stream erosion problems. Permeable paving surfaces capture heavy metals from vehicle, preventing them from washing downstream and accumulating inadvertently in the environment. In the permeable paving void spaces, naturally occurring micro-organisms digest car oils, leaving little but carbon dioxide and water.

Establishing a tax credit for permeable paving surfaces is an excellent measure to reduce the impacts of stormwater erosion and silting our reefs.

If you have questions, please contact me at me at 799-3101 or email address chris.dacus@gmail.com.

Chris Dacus
President
Landscape Industry Council of Hawaii
P. O. Box 22938, Honolulu, Hawaii 96823-2938

Landscape Industry Council of Hawaii

Hawaii's landscape industry has an economic impact of over \$520 million annually and full time employment of over 11,000 landscape professionals. Formed in 1986, LICH is a statewide alliance representing Hawaii's landscape trade associations. LICH can be found online at www.landscapenhawaii.org



HB1394
RELATING TO GROUNDWATER RECHARGE
House Committee on Water and Land

February 8, 2013

8:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment respectfully **OPPOSES** HB1394, which may provide significant tax subsidies to large landowners based upon hydrologic flow estimates that would be difficult or impossible to ascertain and verify.

The intent behind this measure, to promote the recharge of our groundwater aquifers through the maintenance of permeable land surfaces by large landowners, is laudable. However, the tax credit mechanism contained in this measure may be based on erroneous assumptions regarding the ability of the independent experts and the state to evaluate and verify hydrologic water flow, which may create impractical burdens for the state Commission on Water Resource Management, and which may lead to inconsistent, erroneous, or potentially biased certifications of any given applicant's tax credit application.

The state water commission may not have the resources or capacity to verify tax credit applicants' estimates of the actual rate of aquifer recharge or "net water infiltration" from maintaining permeable surfaces on their property. While groundwater aquifer recharge may to some extent generally benefit from permeable land surfaces, the specific rates of aquifer recharge may vary substantially based upon soil characteristics, vegetation types, actual rainfall and sunlight exposure, the existence of adjacent drainage channels, and other site-specific variables. As the Department of Land & Natural Resources' Commission on Water Resource Management (CWRM) has testified previously, recharge models are therefore "complex and require considerable technical expertise to run." Accordingly, it appears that state agencies, including both CWRM and the Department of Taxation, may not have the equipment, expertise, staff capacity, and infrastructure (such as working and widely distributed rain gauges) required to accurately verify or measure the estimated "net water infiltration" upon which this measure's tax credits are based. Requiring CWRM to engage in piecemeal verification of potentially erroneous and highly variable methodologies estimating "net water infiltration" would likely be beyond CWRM's operational capacity, and would diminish its ability to carry out its primary functions, including the protection of cultural and environmental interests in public trust water under the state water code.

This bill relies upon private contractors' estimates of "net water infiltration" that may not be accurate, or that may be potentially biased. In a similar vein, the "experts" authorized to verify "net water infiltration" rates on specific properties, while recognized professionals in their particular field, may not have the expertise or training to accurately or consistently estimate the "net water infiltration" upon which this bill's tax credits would be based. Geologists, for example, may not have specific knowledge in evaluating the impact of vegetation types on hydrologic flow. Similarly, soil agronomists may not have the necessary expertise to accurately determine the impacts of adjacent non-hardened drainage channels into which subsurface water may flow. Both types of experts may also use different water infiltration or aquifer recharge models based upon different underlying assumptions. By authorizing such professionals to evaluate the "net water infiltration" on any particular property, this bill may result in tax credits that are inconsistent, erroneously based, or even biased, particularly given the fact that such professionals would be paid by landowners seeking as large a tax credit as possible.

Therefore, the OHA Committee on Beneficiary Advocacy and Empowerment urges this Committee to **HOLD** HB1394. Mahalo for the opportunity to testify on this measure.

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 07, 2013 8:26 AM
To: waltestimony
Cc: linda.hijirida@doh.hawaii.gov
Subject: Submitted testimony for HB1394 on Feb 8, 2013 08:30AM

HB1394

Submitted on: 2/7/2013

Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Hijirida	State Department of Health	Comments Only	No

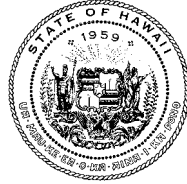
Comments: The Department of Health appreciates the overall concept of this bill as it includes initiatives supportive of our environmental health goals and objectives, but DEFERS to the Department of Taxation on the fiscal implications and to the Department of Land and Natural Resources as to subject-matter.

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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NEIL ABERCROMBIE
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SHAN TSUTSUI
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Cindy Evans, Chair
and Members of the House Committee on Water and Land

The Honorable Chris Lee
and Members of the House Committee on Environmental Protection

Date: Friday, February 8, 2013
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 1394, Relating to Groundwater Recharge

The Department of Taxation (Department) appreciates the intent of H.B. 1394 and provides the following information and comments for your consideration.

H.B. 1394 establishes an income tax credit for maintaining permeable surfaces on a property to allow for groundwater recharge, as well as an income tax deduction for the costs of certifying an organic agricultural operation, as well as the costs of determining a property's net water infiltration for purposes of claiming the aforementioned credit.

The Department notes that, while this income tax credit is to be certified by the Department of Agriculture, the Department of Taxation retains its compliance and audit authority. The proposed tax credit will be extremely difficult for the Department to administer, because the accuracy of any amounts claimed under the credit can only be determined by a "geologist, hydrologist, soil agronomist, or related professional," and it would be necessary to retain such an expert to determine if the credit were properly claimed by any given taxpayer. The Department does not have subject matter experts to verify these claims.

The Department additionally notes that the value of the tax credit is not explicitly stated—the value is "ten per cent of the value of the volume of water permitted to percolate into the groundwater aquifer" but no explanation of what rate per unit volume is given. To clarify, the bill does not indicate how the volume of water should be measured, e.g. in gallons or liters, or what value should be ascribed to any particular unit of volume. If the intent is to use an industry standard for measurement of this value, the bill should so indicate. The bill should also indicate the relationship between dollar amount of the credit and volume of water that is allowed to percolate into the aquifer.

Thank you for the opportunity to provide comments.

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GOVERNOR OF HAWAII



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

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WILLIAM J. AILA, JR.
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COMMISSION ON WATER RESOURCE MANAGEMENT

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WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

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

**Before the House Committee on
WATER & LAND**

**Friday, February 8, 2013
8:30 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1394
RELATING TO GROUNDWATER RECHARGE**

House Bill 1394 proposes to increase aquifer recharge by establishing an income tax credit for businesses and agricultural operations that maintain permeable surfaces on their property.

While the Department of Land and Natural Resources (Department) appreciates the intent of this bill, the Department respectfully opposes this measure for the following reasons.

First, it would be difficult to calculate the volume of water that percolates to recharge groundwater aquifers. At present, the Department's Commission on Water Resource Management (Commission) uses complex recharge models developed by the United States Geological Survey to estimate recharge on an aquifer-wide scale based on long-term average climatic conditions. Computing annual recharge rates for specific parcels as small as five-acres would require a new numerical model that runs on real-time climatic data. Recharge models are complex and require considerable technical expertise to run.

While simpler equations may be used, these could not provide a true or accurate accounting of net water infiltration because they would not take into account: 1) Soil characteristics, such as soil moisture and storage capacity, which determine the amount of water that can infiltrate; 2) Actual evapotranspiration, which is a function of vegetation type and coverage and soil moisture, or which would need to be measured using lysimeters; or 3) Actual rainfall on the property.

Second, in rural areas, recharge may actually be enhanced by allowing water to collect and concentrate on impermeable surfaces, which would then drain to adjacent permeable surfaces prior to infiltration. However, this would not be the case in more urban areas where storm drains exist. Therefore, a comparison of the property with and without impermeable surfaces is required in order to more accurately determine whether impermeable land surfaces enhance or diminish net water infiltration for a specific parcel of land.

Third, there is a lack of a robust network of rainfall stations in Hawaii with which to estimate rainfall amounts and spatial variability. With the closure of the sugarcane plantations in the 1990's, many rain gage stations were discontinued. Hawaii experiences dramatic differences in rainfall over very short distances due to varied microclimates across the State. There are significant gaps in areal coverage. While rainfall may be estimated based on data extrapolated from the closest stations, there could be significant inaccuracies in the estimated versus actual rainfall on any given area.

Fourth, the bill does not identify the source of the recharge water. Is it only rainfall inputs or would return irrigation water also qualify? The Commission requires efficient water use in general, and over-irrigation for the purposes of aquifer recharge is not currently recognized as a beneficial use of diverted waters as a general policy.

Fifth, agricultural lands are by nature permeable land surfaces. Unless the agricultural operations are covered nurseries or hydroponic systems, impermeable surfaces are not conducive to the planting, growing, and harvesting of crops.

Sixth, the definition of "qualifying property" is too broad. As defined, almost any parcel of land greater than five acres that isn't paved over may be claimed as recreational land. Similarly, such parcels could claim to be an agricultural operation if there are any edible plants being grown. The Commission does not have expertise or authority to determine "qualifying property." The appropriate land use authorities would have to take that up.

The Commission also does not have any expertise or jurisdiction regarding organic agricultural operation certifications. That is a matter for the Department of Agriculture. While increasing groundwater recharge is in the interests of the State, this goal may be better achieved through the 1) Natural Resources Conservation Service's soil and water conservation plans and programs; 2) Development of agricultural land management plans; or 3) By promoting low impact development best management practices

Thank you for the opportunity to testify on this measure.

Brian J. Stuhr

February 7, 2013

Testimony for House Bill No. 1394
House Committee on Water & Land
and
House Committee on Energy & Environmental Protection

As a landscape designer, I feel it is my responsibility to the land and ocean as well as to future generations, to speak out in regards to House Bill No. 1394.

The proposed income tax credit could be an important mechanism for the battle to restore the natural systems of our islands. Groundwater recharge is critical to the health of our ecosystem.

However, as currently written, House Bill No. 1394 is restricted to agricultural and recreational properties greater than five acres in size. Large parks, golf courses and farms are not the primary source of our storm water management problem; parking lots are.

This bill should be modified by widening the scope to include government and commercial properties of any size. The effectiveness of this bill would be greatly increased if it were to incentivize the deployment of permeable surfaces for parking lots, roadways, sidewalks and plazas, especially in urban and suburban contexts.

Again, I support the goal of ground water recharge. This bill should be modified in order to be more effective.

Please contact me if you have any questions. I can be reached at brians@kilandarch.com

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