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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that whatever form of  
2 mass transit that is adopted by the city and county of Honolulu,  
3 it will have an impact reaching far beyond transportation issues  
4 alone. Development of a new transportation system provides the  
5 State and the city and county of Honolulu the opportunity to  
6 maximize affordable housing facilities, and add to and improve  
7 eldercare and related public functions as mass transit  
8 development is planned between west Oahu and the University of  
9 Hawaii at Manoa.

10           The legislature further finds that in areas with a  
11 higher-than-average senior citizen population, which also lack  
12 adequate long-term care facilities, there is an opportunity to  
13 meet the objective of "aging-in-place" through creative  
14 distribution of services; for example, aggregating services  
15 among condominium building residents in close proximity to one  
16 another, etc.



1           In areas with limited recreational spaces and facilities  
2 for young people, public, private, and non-profit partnerships  
3 can stimulate development of additional services, programs, and  
4 facilities to serve at-risk youth, families with special needs,  
5 and others, in a school, park, or church setting.

6           The purpose of this Act is to provide the means for the  
7 State and the city and county of Honolulu to meet the needs for  
8 affordable housing, eldercare, and services to Hawaii's  
9 disadvantaged, which will be available as a result of mixed use  
10 transit oriented joint development project opportunities.

11           SECTION 2. Section 46-15.1, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13           "(a) Any law to the contrary notwithstanding, any county  
14 shall have and may exercise the same powers, subject to  
15 applicable limitations, as those granted the Hawaii housing  
16 finance and development corporation pursuant to chapter 201H  
17 insofar as those powers may be reasonably construed to be  
18 exercisable by a county for the purpose of developing,  
19 constructing, and providing low- and moderate-income housing;  
20 provided that no county shall be empowered to cause the State to  
21 issue general obligation bonds to finance a project pursuant to  
22 this section; provided further that county projects shall be



1 granted an exemption from general excise or receipts taxes in  
2 the same manner as projects of the Hawaii housing finance and  
3 development corporation pursuant to section 201H-36[+], except  
4 that no county shall be empowered to grant an exemption for a  
5 mixed use transit oriented joint development project as defined  
6 in section 201H-36(c); and provided further that section 201H-16  
7 shall not apply to this section unless federal guidelines  
8 specifically provide local governments with that authorization  
9 and the authorization does not conflict with any state laws.

10 The powers shall include the power, subject to applicable  
11 limitations, to:

- 12 (1) Develop and construct dwelling units, alone or in  
13 partnership with developers;
- 14 (2) Acquire necessary land by lease, purchase, exchange,  
15 or eminent domain;
- 16 (3) Provide assistance and aid to a public agency or other  
17 person in developing and constructing new housing and  
18 rehabilitating existing housing for elders of low- and  
19 moderate-income, other persons of low- and moderate-  
20 income, and persons displaced by any governmental  
21 action, by making long-term mortgage or interim  
22 construction loans available;



- 1           (4) Contract with any eligible bidders to provide for  
2           construction of urgently needed housing for persons of  
3           low- and moderate-income;
- 4           (5) Guarantee the top twenty-five per cent of the  
5           principal balance of real property mortgage loans,  
6           plus interest thereon, made to qualified borrowers by  
7           qualified lenders;
- 8           (6) Enter into mortgage guarantee agreements with  
9           appropriate officials of any agency or instrumentality  
10          of the United States to induce those officials to  
11          commit to insure or to insure mortgages under the  
12          National Housing Act, as amended;
- 13          (7) Make a direct loan to any qualified buyer for the  
14          downpayment required by a private lender to be made by  
15          the borrower as a condition of obtaining a loan from  
16          the private lender in the purchase of residential  
17          property;
- 18          (8) Provide funds for a share, not to exceed fifty per  
19          cent, of the principal amount of a loan made to a  
20          qualified borrower by a private lender who is unable  
21          otherwise to lend the borrower sufficient funds at



1 reasonable rates in the purchase of residential  
2 property; and

3 (9) Sell or lease completed dwelling units.

4 For purposes of this section, a limitation is applicable to  
5 the extent that it may reasonably be construed to apply to a  
6 county."

7 SECTION 3. Section 201H-36, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"[+]§201H-36[+] Exemption from general excise taxes. (a)**

10 In accordance with section 237-29, the corporation may approve  
11 and certify for exemption from general excise taxes any  
12 qualified person or firm involved with a newly constructed, or  
13 moderately or substantially rehabilitated project:

14 (1) Developed under this part;  
15 (2) Developed under a government assistance program  
16 approved by the corporation, including but not limited  
17 to the United States Department of Agriculture 502  
18 program and Federal Housing Administration 235  
19 program;

20 (3) Developed under the sponsorship of a private nonprofit  
21 organization providing home rehabilitation or new



1 homes for qualified families in need of decent, low-  
2 cost housing; [~~or~~]

3 (4) Developed by a qualified person or firm to provide  
4 affordable rental housing where at least fifty per  
5 cent of the available units are for households with  
6 incomes at or below eighty per cent of the area median  
7 family income as determined by the United States  
8 Department of Housing and Urban Development, of which  
9 at least twenty per cent of the available units are  
10 for households with incomes at or below sixty per cent  
11 of the area median family income as determined by the  
12 United States Department of Housing and Urban  
13 Development[~~or~~];

14 (5) Developed by a qualified person or firm to provide  
15 affordable rental housing units within a mixed use  
16 transit oriented joint development project approved by  
17 the corporation; or

18 (6) Developed by a qualified person or firm to provide a  
19 community health care facility within a mixed use  
20 transit oriented joint development project approved by  
21 the corporation.



1 (b) All claims for exemption under this section shall be  
2 filed with and certified by the corporation and forwarded to the  
3 department of taxation. Any claim for exemption that is filed  
4 and approved, shall not be considered a subsidy for the purpose  
5 of this part.

6 (c) For the purposes of this section:

7 "Community health care facility" means a health care  
8 facility as defined in section 323D-2, which is leased or sold  
9 to a person who is controlled or controlled by:

10 (1) A person who has received recognition of tax exempt  
11 status or who is a subordinate person of a person who  
12 has received a group exemption letter under section  
13 501(c)(3) of the Internal Revenue Code of 1986, as  
14 amended;

15 (2) The State;

16 (3) Any political subdivision of the State;

17 (4) A county;

18 (5) A state agency or any instrumentality of the State; or

19 (6) A county agency or any instrumentality of a county.

20 "Eligible development costs" means amounts incurred by a  
21 developer or a contractor for contracting, services, and  
22 materials that are used for the planning, development, and



1 construction of a project approved and certified by the  
2 corporation.

3 "Mixed use transit oriented joint development project"  
4 means a transit oriented joint development project that:

5 (1) Combines residential development with any combination  
6 of commercial and industrial development, including  
7 the development of community health care facilities;  
8 and

9 (2) Is approved as a whole or in part as a transit  
10 oriented joint development project by the United  
11 States Department of Transportation Federal Transit  
12 Administration and by the county in which the project  
13 is located.

14 "Moderate rehabilitation" means rehabilitation to upgrade a  
15 dwelling unit to a decent, safe, and sanitary condition, or to  
16 repair or replace major building systems or components in danger  
17 of failure.

18 "Substantial rehabilitation":

19 (1) Means the improvement of a property to a decent, safe,  
20 and sanitary condition that requires more than routine  
21 or minor repairs or improvements. It may include but  
22 is not limited to the gutting and extensive





1 reconstruction of a dwelling unit, or cosmetic  
2 improvements coupled with the curing of a substantial  
3 accumulation of deferred maintenance; and  
4 (2) Includes renovation, alteration, or remodeling to  
5 convert or adapt structurally sound property to the  
6 design and condition required for a specific use, such  
7 as conversion of a hotel to housing for elders.

8 (d) The corporation may establish, revise, charge, and  
9 collect a reasonable service fee, as necessary, in connection  
10 with its approvals and certifications under this section. The  
11 fees shall be deposited into the dwelling unit revolving fund."

12 SECTION 4. Section 237-8.6, Hawaii Revised Statutes, is  
13 amended by amending subsection (d) to read as follows:

14 "(d) No county surcharge on state tax shall be established  
15 on any:

16 (1) Gross income or gross proceeds taxable under this  
17 chapter at the one-half per cent tax rate;

18 (2) Gross income or gross proceeds taxable under this  
19 chapter at the 0.15 per cent tax rate; or

20 (3) Transactions, amounts, persons, gross income, or gross  
21 proceeds exempt from tax under this chapter~~[-]~~, except  
22 for transactions, amounts, persons, gross income, or



1           gross proceeds exempted under section 237-29 pursuant  
2           to subsections 201H-36(a)(5) and (6)."

3           SECTION 5. Section 237-24.7, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "**§237-24.7 Additional amounts not taxable.** In addition to  
6 the amounts not taxable under section 237-24, this chapter shall  
7 not apply to:

8           (1) Amounts received by the operator of a hotel from the  
9 owner of the hotel or from a time share association,  
10 and amounts received by the suboperator of a hotel  
11 from the owner of the hotel, from a time share  
12 association, or from the operator of the hotel, in  
13 amounts equal to and which are disbursed by the  
14 operator or suboperator for employee wages, salaries,  
15 payroll taxes, insurance premiums, and benefits,  
16 including retirement, vacation, sick pay, and health  
17 benefits. As used in this paragraph:

18                   "Employee" means employees directly engaged in  
19 the day-to-day operation of the hotel and employed by  
20 the operator or suboperator.



1 "Hotel" means an operation as defined in section  
2 445-90 or a time share plan as defined in section  
3 514E-1.

4 "Operator" means any person who, pursuant to a  
5 written contract with the owner of a hotel or time  
6 share association, operates or manages the hotel for  
7 the owner or time share association.

8 "Owner" means the fee owner or lessee under a  
9 recorded lease of a hotel.

10 "Suboperator" means any person who, pursuant to a  
11 written contract with the operator, operates or  
12 manages the hotel as a subcontractor of the operator.

13 "Time share association" means an "association"  
14 as that term is defined in section 514E-1;

15 (2) Amounts received by the operator of a county bus  
16 transportation system operated under an operating  
17 contract with a political subdivision, where the  
18 political subdivision is the owner of the county bus  
19 transportation system. As used in this paragraph:

20 "County bus transportation system" means a mass  
21 transit system of motorized buses providing regularly  
22 scheduled transportation within a county.



1 "Operating contract" or "contract" means a  
2 contract to operate and manage a political  
3 subdivision's county bus transportation system, which  
4 provides that:

5 (A) The political subdivision shall exercise  
6 substantial control over all aspects of the  
7 operator's operation;

8 (B) The political subdivision controls the  
9 development of transit policy, service  
10 planning, routes, and fares; and

11 (C) The operator develops in advance a draft  
12 budget in the same format as prescribed for  
13 agencies of the political subdivision. The  
14 budget must be subject to the same  
15 constraints and controls regarding the  
16 lawful expenditure of public funds as any  
17 public sector agency, and deviations from  
18 the budget must be subject to approval by  
19 the appropriate political subdivision  
20 officials involved in the budgetary process.

21 "Operator" means any person who, pursuant to an  
22 operating contract with a political subdivision,



1 operates or manages a county bus transportation  
2 system.

3 "Owner" means a political subdivision that owns  
4 or is the lessee of all the properties and facilities  
5 of the county bus transportation system (including  
6 buses, real estate, parking garages, fuel pumps,  
7 maintenance equipment, office supplies, etc.), and  
8 that owns all revenues derived therefrom;

9 (3) Surcharge taxes on rental motor vehicles imposed by  
10 chapter 251 and passed on and collected by persons  
11 holding certificates of registration under that  
12 chapter;

13 (4) Amounts received by the operator of orchard properties  
14 from the owner of the orchard property in amounts  
15 equal to and which are disbursed by the operator for  
16 employee wages, salaries, payroll taxes, insurance  
17 premiums, and benefits, including retirement,  
18 vacation, sick pay, and health benefits. As used in  
19 this paragraph:

20 "Employee" means an employee directly engaged in  
21 the day-to-day operations of the orchard properties  
22 and employed by the operator.



1 "Operator" means a producer who, pursuant to a  
2 written contract with the owner of the orchard  
3 property, operates or manages the orchard property for  
4 the owner where the property contains an area  
5 sufficient to make the undertaking economically  
6 feasible.

7 "Orchard property" means any real property that  
8 is used to raise trees with a production life cycle of  
9 fifteen years or more producing fruits or nuts having  
10 a normal period of development from the initial  
11 planting to the first commercially saleable harvest of  
12 not less than three years.

13 "Owner" means a fee owner or lessee under a  
14 recorded lease of orchard property;

15 (5) Taxes on nursing facility income imposed by chapter  
16 346E and passed on and collected by operators of  
17 nursing facilities;

18 (6) Amounts received under property and casualty insurance  
19 policies for damage or loss of inventory used in the  
20 conduct of a trade or business located within the  
21 State or a portion thereof that is declared a natural



1 disaster area by the governor pursuant to section  
2 209-2;

3 (7) Amounts received as compensation by community  
4 organizations, school booster clubs, and nonprofit  
5 organizations under a contract with the chief election  
6 officer for the provision and compensation of precinct  
7 officials and other election-related personnel,  
8 services, and activities, pursuant to section 11-5;

9 (8) Interest received by a person domiciled outside the  
10 State from a trust company (as defined in section  
11 412:8-101) acting as payment agent or trustee on  
12 behalf of the issuer or payees of an interest bearing  
13 instrument or obligation, if the interest would not  
14 have been subject to tax under this chapter if paid  
15 directly to the person domiciled outside the State  
16 without the use of a paying agent or trustee; provided  
17 that if the interest would otherwise be taxable under  
18 this chapter if paid directly to the person domiciled  
19 outside the State, it shall not be exempt solely  
20 because of the use of a Hawaii trust company as a  
21 paying agent or trustee;



1           (9) Amounts received by a management company from related  
2           entities engaged in the business of selling interstate  
3           or foreign common carrier telecommunications services  
4           in amounts equal to and which are disbursed by the  
5           management company for employee wages, salaries,  
6           payroll taxes, insurance premiums, and benefits,  
7           including retirement, vacation, sick pay, and health  
8           benefits. As used in this paragraph:

9                   "Employee" means employees directly engaged in  
10           the day-to-day operation of related entities engaged  
11           in the business of selling interstate or foreign  
12           common carrier telecommunications services and  
13           employed by the management company.

14                   "Management company" means any person who,  
15           pursuant to a written contract with a related entity  
16           engaged in the business of selling interstate or  
17           foreign common carrier telecommunications services,  
18           provides managerial or operational services to that  
19           entity.

20                   "Related entities" means:

21                   (A) An affiliated group of corporations within  
22                   the meaning of section 1504 (with respect to





- 1 affiliated group defined) of the federal  
2 Internal Revenue Code of 1986, as amended;
- 3 (B) A controlled group of corporations within  
4 the meaning of section 1563 (with respect to  
5 definitions and special rules) of the  
6 federal Internal Revenue Code of 1986, as  
7 amended;
- 8 (C) Those entities connected through ownership  
9 of at least eighty per cent of the total  
10 value and at least eighty per cent of the  
11 total voting power of each such entity (or  
12 combination thereof), including  
13 partnerships, associations, trusts, S  
14 corporations, nonprofit corporations,  
15 limited liability partnerships, or limited  
16 liability companies; and
- 17 (D) Any group or combination of the entities  
18 described in paragraph (C) constituting a  
19 unitary business for income tax purposes;  
20 whether or not the entity is located within or without  
21 the State or licensed under this chapter; and
- 22 (10) Amounts received as grants under section 206M-15."



1 SECTION 6. Section 237-24.75, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§237-24.75 Additional exemptions.** In addition to the  
4 amounts exempt under section 237-24, this chapter shall not  
5 apply to:

- 6 (1) Amounts received as a beverage container deposit  
7 collected under chapter 342G, part VIII;
- 8 (2) Amounts received by the operator of the Hawaii  
9 convention center for reimbursement of costs or  
10 advances made pursuant to a contract with the Hawaii  
11 tourism authority under section 201B-7[+]; [~~and~~  
12 +](3) Amounts received[+] by a professional employment  
13 organization from a client company equal to amounts  
14 that are disbursed by the professional employment  
15 organization for employee wages, salaries, payroll  
16 taxes, insurance premiums, and benefits, including  
17 retirement, vacation, sick leave, health benefits, and  
18 similar employment benefits with respect to assigned  
19 employees at a client company; provided that this  
20 exemption shall not apply to a professional employment  
21 organization upon failure of the professional  
22 employment organization to collect, account for, and



1 pay over any income tax withholding for assigned  
2 employees or any federal or state taxes for which the  
3 professional employment organization is responsible.  
4 As used in this paragraph, "professional employment  
5 organization", "client company", and "assigned  
6 employee" shall have the meanings provided in section  
7 373K-1[-]; and

8 (4) Amounts received by the operator of a county fixed  
9 guideway transportation system operated under an  
10 operating contract with a county or political  
11 subdivision, where the county or the political  
12 subdivision is the owner of the county fixed guideway  
13 transportation system. As used in this paragraph:

14 "County fixed guideway transportation system"  
15 means a fixed guideway mass transit system providing  
16 regularly scheduled transportation within a county.

17 "Operating contract" or "contract" means a  
18 contract to operate and manage a county or political  
19 subdivision's county fixed guideway transportation  
20 system, which provides that:



1           (A) The county or political subdivision shall  
2           exercise substantial control over all aspects of  
3           the operator's operation;

4           (B) The county or political subdivision controls the  
5           development of transit policy, service planning,  
6           routes, and fares; and

7           (C) The operator develops in advance a draft budget  
8           in the same format as prescribed for agencies of  
9           the county or political subdivision. The budget  
10           shall be subject to the same constraints and  
11           controls regarding the lawful expenditure of  
12           public funds as any public sector agency, and  
13           deviations from the budget shall be subject to  
14           approval by the appropriate county or political  
15           subdivision officials involved in the budgetary  
16           process.

17           "Operator" means any person who, pursuant to an  
18           operating contract with a county or political  
19           subdivision, operates or manages a county fixed  
20           guideway transportation system.

21           "Owner" means a county or a political subdivision  
22           that owns or is the lessor of all the properties and



1 facilities of the county fixed guideway transportation  
2 system (including transportation equipment, real  
3 estate, maintenance facilities and equipment, office  
4 supplies, etc.), and that owns all revenues derived  
5 therefrom."

6 SECTION 7. Section 237-29, Hawaii Revised Statutes, is  
7 amended by amending its title and subsection (a) to read as  
8 follows:

9 **"§237-29 Exemptions for certified or approved housing or**  
10 **community health care facility projects.** (a) All gross income  
11 received by any qualified person or firm for the planning,  
12 design, financing, construction, sale, or lease in the State of  
13 a housing or community health care facility project that has  
14 been certified or approved under section 201H-36 shall be exempt  
15 from general excise taxes."

16 SECTION 8. Section 238-2.6, Hawaii Revised Statutes, is  
17 amended by amending subsection (c) to read as follows:

18 "(c) No county surcharge on state tax shall be established  
19 upon any use taxable under this chapter at the one-half per cent  
20 tax rate or upon any use that is not subject to taxation or that  
21 is exempt from taxation under this chapter[-]; provided that the  
22 surcharge on state tax shall be levied on the use of property,



1 services, or contracting that is not subject to taxation under  
2 section 238-3(j) as a result of an exemption under section  
3 237-29 pursuant to section 201H-36(a)(5)."

4 SECTION 9. It is the intent of the legislature that in  
5 adopting rules pursuant to section 237-29(c), Hawaii Revised  
6 Statutes, for the purpose of this Act, the director of taxation  
7 and the Hawaii housing finance and development corporation shall  
8 consult with representatives of any interested county and the  
9 United States Department of Transportation Federal Transit  
10 Administration in an effort to streamline the approval process  
11 for mixed use transit oriented joint development projects and  
12 maximize the coordination among federal, state, and county  
13 governments with respect to the projects.

14 SECTION 10. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 11. This Act, upon its approval, shall apply to  
17 taxable years beginning after December 31, 2007; provided that  
18 when section 237-24.7, Hawaii Revised Statutes, is repealed and  
19 reenacted pursuant to Act 239, Session Laws of Hawaii 2007, the  
20 amendments made to that section by this Act shall not be  
21 repealed.



**Report Title:**

Taxation; County Authority; GET Exemptions; Fixed Guideway  
Transportation System; Affordable Rental Housing; Community  
Health Care Facility

**Description:**

Specifies that a county shall not grant an exemption from GET or receipt taxes for a mixed use transit oriented joint development project; exempts from GET a project developed to provide affordable rental housing or a community health care facility within a mixed use transit oriented joint development project; exempts from GET amounts received by the operator of a county fixed guideway transportation system operated under an operating contract with a county or political subdivision. (SD1)

