

JAN 23 2009

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 care of the elderly 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 that 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, such as aggregating services for
15 condominium-building residents in close proximity to one
16 another.



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 allow the State and the city
7 and county of Honolulu to meet the need for affordable housing,
8 care for the elderly, and services for Hawaii's disadvantaged by
9 providing general excise tax exemptions that will encourage and
10 enable mixed-use transit oriented joint development projects
11 that include health care facilities and affordable housing.

12 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§321- Exemption from general excise taxes. (a) In
16 accordance with section 237-29, the department of health may
17 approve and certify for exemption from general excise taxes any
18 qualified person or firm involved with a newly constructed, or
19 moderately or substantially rehabilitated project developed by a
20 qualified person or firm to provide a community health care
21 facility within a mixed-use transit oriented joint development
22 project approved by the department.



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

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 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 "Mixed-use transit oriented joint development project"

21 means a transit oriented joint development project:



- 1 (1) That combines residential development with any
2 combination of commercial and industrial development,
3 including the development of community health care
4 facilities;
- 5 (2) That is approved by the county in which the project is
6 located; and
- 7 (3) To which chapter 104, or title 40 United States Code
8 sections 3141, 3142, 3143, 3144, 3146, and 3147, or a
9 project labor agreement applies by law or contract in
10 the construction of the project.

11 "Moderate rehabilitation" means rehabilitation to upgrade a
12 facility to a decent, safe, and sanitary condition, or to repair
13 or replace major building systems or components in danger of
14 failure.

15 "Substantial rehabilitation":

- 16 (1) Means the improvement of a facility to a decent, safe,
17 and sanitary condition that requires more than routine
18 or minor repairs or improvements. It may include
19 gutting and extensive reconstruction or cosmetic
20 improvements coupled with the curing of a substantial
21 accumulation of deferred maintenance; and



1 (2) Includes renovation, alteration, or remodeling to
 2 convert or adapt structurally sound property to the
 3 design and condition required for a specific use.

4 (d) The department may establish, revise, charge, and
 5 collect a reasonable service fee, as necessary, in connection
 6 with its approvals and certifications under this section. The
 7 fees shall be deposited into the state health planning and
 8 development special fund."

9 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is
 10 amended by amending subsection (a) to read as follows:

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



1 development corporation pursuant to section 201H-36; except that
2 no county shall be empowered to grant an exemption from general
3 excise taxes for a mixed-use transit oriented joint development
4 project as defined in sections 201H-36(c) and 321- ; and
5 provided further that section 201H-16 shall not apply to this
6 section unless federal guidelines specifically provide local
7 governments with that authorization and the authorization does
8 not conflict with any state laws. The powers shall include the
9 power, subject to applicable limitations, to:

- 10 (1) Develop and construct dwelling units, alone or in
11 partnership with developers;
- 12 (2) Acquire necessary land by lease, purchase, exchange,
13 or eminent domain;
- 14 (3) Provide assistance and aid to a public agency or other
15 person in developing and constructing new housing and
16 rehabilitating existing housing for elders of low- and
17 moderate-income, other persons of low- and moderate-
18 income, and persons displaced by any governmental
19 action, by making long-term mortgage or interim
20 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 4. Section 201H-36, Hawaii Revised Statutes, is
8 amended by amending subsections (a), (b), and (c) to read as
9 follows:

10 "(a) In accordance with section 237-29, the corporation
11 may approve and certify for exemption from general excise taxes
12 any qualified person or firm involved with a newly constructed,
13 or 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~~
17 ~~limited to~~] the United States Department of
18 Agriculture 502 program and Federal Housing
19 Administration 235 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.

18 (b) All claims for exemption under this section shall be
19 filed with and certified by the corporation and forwarded to the
20 department of taxation. Any claim for exemption that is filed
21 and approved [~~-~~] shall not be considered a subsidy for the
22 purpose of this part.



1 (c) For the purposes of this section:

2 "Mixed-use transit oriented joint development project"

3 means a transit oriented joint development project:

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

8 (2) That is approved by the county in which the project is
9 located; and

10 (3) To which chapter 104, or title 40 United States Code
11 sections 3141, 3142, 3143, 3144, 3146, and 3147, or a
12 project labor agreement applies by law or contract in
13 the construction of the project.

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 SECTION 5. Section 237-8.6, Hawaii Revised Statutes, is
9 amended by amending subsection (d) to read as follows:

10 "(d) No county surcharge on state tax shall be established
11 on any:

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

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

16 (3) Transactions, amounts, persons, gross income, or gross
17 proceeds exempt from tax under this chapter[-];

18 provided that the surcharge on state tax shall be
19 assessed, levied, and collected on transactions,

20 amounts, persons, gross income, or gross proceeds
21 exempted under section 237-29 pursuant to sections

22 201H-36(a)(5) and 321- ."



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

4 "§237-29 Exemptions for certified or approved housing or
5 community health care facility projects. (a) All gross income
6 received by any qualified person or firm for the planning,
7 design, financing, construction, sale, or lease in the State of
8 a housing or community health care facility project that has
9 been certified or approved under [~~section~~] sections 201H-36 and
10 321- shall be exempt from general excise taxes."

11 SECTION 7. Section 238-2.6, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) No county surcharge on state tax shall be established
14 upon any use taxable under this chapter at the one-half per cent
15 tax rate or upon any use that is not subject to taxation or that
16 is exempt from taxation under this chapter~~[-]~~; provided that the
17 surcharge on state tax shall be levied on the use of property,
18 services, or contracting that is not subject to taxation under
19 section 238-3(j) as a result of an exemption under section
20 237-29 pursuant to sections 201H-36(a)(5) and 321- ."

21 SECTION 8. Section 323D-12.6, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) There is established within the state treasury, to be
2 administered by the state health planning and development
3 agency, the state health planning and development special fund
4 into which shall be deposited all moneys collected under chapter
5 323D[+] and section 321- ."

6 SECTION 9. It is the intent of the legislature that the
7 department of taxation and the Hawaii housing finance and
8 development corporation, in adopting rules pursuant to section
9 237-29(c), Hawaii Revised Statutes, for the purposes of this
10 Act, shall carry out the following:

11 (1) The director of taxation and the Hawaii housing
12 finance and development corporation shall adopt rules
13 for general excise tax exemptions for mixed-use
14 transit oriented joint development projects separate
15 from the existing rules for eligible housing projects
16 under section 237-29(c), Hawaii Revised Statutes;

17 (2) The cost savings from any exemptions granted to a
18 mixed-use transit oriented joint development project
19 pursuant to sections 201H-36(a)(5) and 321- , Hawaii
20 Revised Statutes, shall be used exclusively to provide
21 affordable rental housing units and community health
22 care facilities within the project;



- 1 (3) The affordable rental housing units and community
2 health care facilities provided under this Act shall
3 serve as many lower income households as possible;
- 4 (4) Each interested county shall designate a department or
5 agency as a point of contact for the purposes of this
6 Act;
- 7 (5) The director of taxation and the Hawaii housing
8 finance and development corporation shall oversee
9 certifications of community health care facilities by
10 the director of health to the extent they deem
11 necessary; and
- 12 (6) The director of taxation and the Hawaii housing
13 finance and development corporation shall consult with
14 the director of health and representatives of any
15 interested county in an effort to streamline the
16 approval process for mixed-use transit oriented joint
17 development projects and maximize the coordination
18 among federal, state, and county governments with
19 respect to the projects.

20 SECTION 10. An exemption granted to a mixed-use transit
21 oriented joint development project pursuant to sections
22 201H-36(a)(5) and 321- , Hawaii Revised Statutes, shall not



1 impair or diminish any exemption granted to the project under
2 any other provision of sections 201H-36 and 237-29, Hawaii
3 Revised Statutes, or used by the project under section 201H-9(b)
4 or 356D-8(b), Hawaii Revised Statutes. No county surcharge on
5 state tax shall be established on any transactions, amounts,
6 persons, gross income, or gross proceeds exempted under any
7 other provision of sections 201H-9(b), 201H-36, 237-29, or
8 356D-8(b), Hawaii Revised Statutes; and no county surcharge on
9 state tax shall be levied on the use of property, services, or
10 contracting that is not subject to taxation under section
11 238-3(j), Hawaii Revised Statutes, as a result of any other
12 exemption under section 201H-9(b), 201H-36, 237-29, or
13 356D-8(b), Hawaii Revised Statutes.

14 SECTION 11. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 12. This Act shall take effect on July 1, 2009;
17 provided that in order to provide the director of taxation and
18 the Hawaii housing finance and development corporation with time
19 to adopt separate rules for general excise tax exemptions for
20 mixed-use transit oriented joint development projects under
21



1 section 237-29(c), Hawaii Revised Statutes, this Act shall apply
2 to taxable years beginning after December 31, 2010.

3

INTRODUCED BY:

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Report Title:

Mixed-Use Transit Oriented Joint Development Project; GET Exemption

Description:

Specifies that a county shall not grant an exemption from the general excise tax (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.

