

JAN 21 2011

---

---

# 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 the proposed  
2 Honolulu rail transit to be developed by the city and county of  
3 Honolulu will have an impact reaching far beyond transportation  
4 issues alone. Development of a new transportation system  
5 provides the State and the city and county of Honolulu with the  
6 opportunity to maximize affordable housing facilities and add to  
7 and improve the care of the elderly and related public functions  
8 as mass transit development is planned between west Oahu and the  
9 University of 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.

17           In areas with limited recreational spaces and facilities  
18 for young people, public, private, and nonprofit partnerships



1 can stimulate development of additional services, programs, and  
2 facilities to serve at-risk youth, families with special needs,  
3 and others, in a school, park, or church setting.

4 The purpose of this Act is to allow the State and the  
5 counties to meet the need for affordable housing, care for the  
6 elderly, and services for Hawaii's disadvantaged by providing  
7 general excise tax exemptions that will encourage and enable  
8 mixed-use transit-oriented joint development projects that  
9 include health care facilities and affordable housing.

10 SECTION 2. Part II of chapter 201H, Hawaii Revised  
11 Statutes, is amended by adding a new section to be appropriately  
12 designated and to read as follows:

13 "§201H- Exemption from general excise taxes for  
14 mixed-use transit-oriented joint development projects. (a) In  
15 accordance with section 237- , the corporation may approve and  
16 certify for exemption from general excise taxes any qualified  
17 person or firm involved with a newly constructed, or moderately  
18 or substantially rehabilitated project developed by a qualified  
19 person or firm to provide affordable rental housing units within  
20 a mixed-use transit-oriented joint development project approved  
21 by the corporation.



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

6        (c) For the purposes of this section:

7        "Mixed-use transit-oriented joint development project"

8 means a mass transit oriented joint development project that:

9        (1) Combines residential development with any combination  
10 of commercial and industrial development, including  
11 the development of community health care facilities;

12        (2) Is approved by the county in which the project is  
13 located; and

14        (3) The construction of which is by law or contract  
15 subject to chapter 104, or Title 40 United States Code  
16 Sections 3141, 3142, 3143, 3144, 3146, and 3147, or a  
17 project labor agreement.

18        "Moderate rehabilitation" means rehabilitation to upgrade a  
19 dwelling unit to a decent, safe, and sanitary condition, or to  
20 repair or replace major building systems or components in danger  
21 of failure.

22        "Substantial rehabilitation":



1       (1) Means the improvement of a property to a decent, safe,  
2       and sanitary condition that requires more than routine  
3       or minor repairs or improvements. It may include but  
4       is not limited to gutting and extensive reconstruction  
5       of a dwelling unit, or cosmetic improvements coupled  
6       with the curing of a substantial accumulation of  
7       deferred maintenance; and

8       (2) Includes renovation, alteration, or remodeling to  
9       convert or adapt structurally sound property to the  
10       design and condition required for a specific use, such  
11       as conversion of a hotel to housing for elders.

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

16       SECTION 3. Chapter 237, Hawaii Revised Statutes, is  
17       amended by adding a new section to be appropriately designated  
18       and to read as follows:

19       "§237- Exemptions for certified or approved rental  
20       housing or community health care facility projects. (a) All  
21       gross income received by any qualified person or firm for the  
22       planning, design, financing, construction, sale, or lease in the



1 State of a rental housing or community health care facility  
2 project that has been certified or approved under section  
3 201H- or 321- shall be exempt from general excise taxes.

4 (b) An exemption granted to a mixed-use transit-oriented  
5 joint development project pursuant to this section shall not  
6 impair or diminish any exemption granted to or used by the  
7 project under section 237-29, 201H-9(b), 201H-36, or 356D-8(b).  
8 No county surcharge on state tax shall be established on any  
9 transactions, amounts, persons, gross income, or gross proceeds  
10 exempted under section 237-29, 201H-9(b), 201H-36, or 356D-8(b);  
11 and no county surcharge on state tax shall be levied on the use  
12 of property, services, or contracting that is not subject to  
13 taxation under section 238-3, as a result of an exemption under  
14 section 237-29, 201H-9(b), 201H-36, or 356D-8(b).

15 (c) The director of taxation, the director of health, and  
16 the Hawaii housing finance and development corporation shall  
17 adopt rules pursuant to chapter 91 for the purpose of this  
18 section, including any time limitations for the exemptions."

19 SECTION 4. Chapter 321, Hawaii Revised Statutes, is  
20 amended by adding a new section to be appropriately designated  
21 and to read as follows:



1        "§321- Exemption from general excise taxes. (a) In  
2 accordance with section 237- , the department of health may  
3 approve and certify for exemption from general excise taxes any  
4 qualified person or firm involved with a newly constructed, or  
5 moderately or substantially rehabilitated project developed by a  
6 qualified person or firm to provide a community health care  
7 facility within a mixed-use transit-oriented joint development  
8 project approved by the department.

9        (b) All claims for an exemption under this section shall  
10 be filed with and certified by the department of health and  
11 forwarded to the department of taxation. Any claim for an  
12 exemption that is filed and approved shall not be considered a  
13 subsidy for the purpose of part II of chapter 201H.

14        (c) For the purposes of this section:

15        "Community health care facility" means a health care  
16 facility as defined in section 323D-2, or otherwise approved by  
17 the department, which is leased or sold to a person who is  
18 controlled by:

19        (1) A person who has received recognition of tax-exempt  
20 status or who is a subordinate person of a person who  
21 has received a group exemption letter under Section



1           501(c) (3) of the Internal Revenue Code of 1986, as  
2           amended;

3           (2) The State;

4           (3) Any political subdivision of the State;

5           (4) A county;

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

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

8           "Mixed-use transit-oriented joint development project"

9           means a transit-oriented joint development project that:

10           (1) Combines residential development with any combination  
11           of commercial and industrial development, including  
12           the development of community health care facilities;

13           (2) Is approved by the county in which the project is  
14           located; and

15           (3) The construction of which is by law or contract  
16           subject to chapter 104, or Title 40 United States Code  
17           Sections 3141, 3142, 3143, 3144, 3146, and 3147, or a  
18           project labor agreement.

19           "Moderate rehabilitation" means rehabilitation to upgrade a  
20           facility to a decent, safe, and sanitary condition, or to repair  
21           or replace major building systems or components in danger of  
22           failure.



1       "Substantial rehabilitation":

2       (1) Means the improvement of a facility to a decent, safe,  
3       and sanitary condition that requires more than routine  
4       or minor repairs or improvements. It may include  
5       gutting and extensive reconstruction or cosmetic  
6       improvements coupled with the curing of a substantial  
7       accumulation of deferred maintenance; and

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

11       (d) The department of health may establish, revise,  
12       charge, and collect a reasonable service fee, as necessary, in  
13       connection with its approvals and certifications under this  
14       section. The fees shall be deposited into the state health  
15       planning and development special fund."

16       SECTION 5. Section 46-15.1, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18       "(a) Any law to the contrary notwithstanding, any county  
19 shall have and may exercise the same powers, subject to  
20 applicable limitations, as those granted the Hawaii housing  
21 finance and development corporation pursuant to chapter 201H  
22 insofar as those powers may be reasonably construed to be





1 exercisable by a county for the purpose of developing,  
2 constructing, and providing low- and moderate-income housing;  
3 provided that no county shall be empowered to cause the State to  
4 issue general obligation bonds to finance a project pursuant to  
5 this section; provided further that county projects shall be  
6 granted an exemption from general excise or receipts taxes in  
7 the same manner as projects of the Hawaii housing finance and  
8 development corporation pursuant to section 201H-36; except that  
9 no county shall be empowered to grant an exemption from general  
10 excise taxes for a mixed-use transit-oriented joint development  
11 project as defined in sections 201H- and 321- ; and provided  
12 further that section 201H-16 shall not apply to this section  
13 unless federal guidelines specifically provide local governments  
14 with that authorization and the authorization does not conflict  
15 with any state laws. The powers shall include the power,  
16 subject to applicable limitations, to:

- 17 (1) Develop and construct dwelling units, alone or in  
18 partnership with developers;
- 19 (2) Acquire necessary land by lease, purchase, exchange,  
20 or eminent domain;
- 21 (3) Provide assistance and aid to a public agency or other  
22 person in developing and constructing new housing and



1           rehabilitating existing housing for elders of low- and  
2           moderate-income, other persons of low- and moderate-  
3           income, and persons displaced by any governmental  
4           action, by making long-term mortgage or interim  
5           construction loans available;

6           (4) Contract with any eligible bidders to provide for  
7           construction of urgently needed housing for persons of  
8           low- and moderate-income;

9           (5) Guarantee the top twenty-five per cent of the  
10           principal balance of real property mortgage loans,  
11           plus interest thereon, made to qualified borrowers by  
12           qualified lenders;

13           (6) Enter into mortgage guarantee agreements with  
14           appropriate officials of any agency or instrumentality  
15           of the United States to induce those officials to  
16           commit to insure or to insure mortgages under the  
17           National Housing Act, as amended;

18           (7) Make a direct loan to any qualified buyer for the  
19           downpayment required by a private lender to be made by  
20           the borrower as a condition of obtaining a loan from  
21           the private lender in the purchase of residential  
22           property;



1 (8) Provide funds for a share, not to exceed fifty per  
2 cent, of the principal amount of a loan made to a  
3 qualified borrower by a private lender who is unable  
4 otherwise to lend the borrower sufficient funds at  
5 reasonable rates in the purchase of residential  
6 property; and

7 (9) Sell or lease completed dwelling units.

8 For purposes of this section, a limitation is applicable to  
9 the extent that it may reasonably be construed to apply to a  
10 county."

11 SECTION 6. Section 237-8.6, Hawaii Revised Statutes, is  
12 amended by amending subsection (d) to read as follows:

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

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

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

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

21 provided that the surcharge on state tax shall be  
22 assessed, levied, and collected on transactions,



1           amounts, persons, gross income, or gross proceeds  
2           exempted under section 237- ."

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

5           "(c) No county surcharge on state tax shall be established  
6 upon any use taxable under this chapter at the one-half per cent  
7 tax rate or upon any use that is not subject to taxation or that  
8 is exempt from taxation under this chapter[-]; provided that the  
9 surcharge on state tax shall be levied by the director of  
10 taxation on the use of property, services, or contracting that  
11 is not subject to taxation under section 238-3(j) as a result of  
12 an exemption under section 237- ."

13           SECTION 8. Section 238-3, Hawaii Revised Statutes, is  
14 amended by amending subsection (j) to read as follows:

15           "(j) The tax imposed by this chapter shall not apply to  
16 any use of property, services, or contracting exempted by  
17 section 237-26 [~~ex~~], section 237-29[-], or section 237- ."

18           SECTION 9. Section 323D-12.6, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20           "(a) There is established within the state treasury, to be  
21 administered by the state health planning and development  
22 agency, the state health planning and development special fund



1 into which shall be deposited all moneys collected under chapter  
2 323D[-] and section 321- ."

3 SECTION 10. It is the intent of the legislature that in  
4 adopting rules pursuant to section 237- (c), Hawaii Revised  
5 Statutes:

- 6 (1) The cost savings from any exemptions granted to a  
7 mixed-use transit-oriented joint development project  
8 pursuant to section 237- , Hawaii Revised Statutes,  
9 be used exclusively to provide affordable rental  
10 housing units and community health care facilities  
11 within the project;
- 12 (2) The affordable rental housing units and community  
13 health care facilities provided under this Act serve  
14 as many lower income households as possible;
- 15 (3) Each interested county designate a department or  
16 agency as a point of contact for the purposes of this  
17 Act;
- 18 (4) The director of taxation and the Hawaii housing  
19 finance and development corporation oversee  
20 certifications of community health care facilities by  
21 the director of health to the extent they deem  
22 necessary; and



1           (5) The director of taxation, the director of health, and  
2           the Hawaii housing finance and development corporation  
3           consult with representatives of any interested county  
4           in an effort to streamline the approval process for  
5           mixed-use transit-oriented joint development projects  
6           and maximize the coordination among federal, state,  
7           and county governments with respect to the projects.

8           SECTION 11. Statutory material to be repealed is bracketed  
9           and stricken. New statutory material is underscored.

10          SECTION 12. This Act shall take effect on July 1, 2011;  
11          provided that in order to provide the director of taxation and  
12          the Hawaii housing finance and development corporation with time  
13          to adopt separate rules for general excise tax exemptions for  
14          mixed-use transit-oriented joint development projects under  
15          section 237- , Hawaii Revised Statutes, this Act shall apply to  
16          taxable years beginning after December 31, 2012.

17

INTRODUCED BY: *Franne Chun Ahland*

*Card Fukunaga*



**Report Title:**

Mixed-Use Transit-Oriented Joint Development Project; GET Exemption

**Description:**

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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

