

# **HB 1306, HD2**

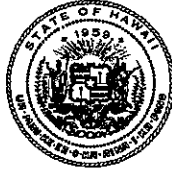
## **RELATING TO HOUSING**

Deletes language allowing county affordable housing projects to have the same general excise tax and receipt tax exemptions as the Hawaii Housing Finance and Development Corporation (HHFDC); requires all general excise tax exemption claims to be filed with HHFDC and reviewed by HHFDC and the Department of Taxation prior to certification; requires renewal certification every four years and an audit of each certification, and annual report to legislature.

Effective July 2, 2030. (HB 1306 HD2)

**NEIL ABERCROMBIE**  
GOVERNOR

**BRIAN SCHATZ**  
LT. GOVERNOR



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**SENATE COMMITTEES ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND  
MILITARY AFFAIRS & WATER, LAND, AND HOUSING**

**TESTIMONY OF THE DEPARTMENT OF TAXATION  
REGARDING HB 1306, HD 2  
RELATING TO HOUSING**

**TESTIFIER:** **FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR  
DESIGNEE)**  
**COMMITTEE:** **PGM/WLH**  
**DATE:** **MARCH 22, 2011**  
**TIME:** **2:45PM**  
**POSITION:** **DEFER TO HHFDC**

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This measure, among other things, amends a general excise tax exemption for qualified persons who construct or rehabilitate low-cost rental housing.

The Department of Taxation defers to the Hawaii Housing Finance and Development Corporation on the merits of this legislation. However, the Department also has the following technical concern.

The deletion of the phrase "and certified by" and insertion of language requiring merely "review" of claims for exemption may inadvertently eliminate authority to certify the claims for exemption entirely. In addition, HHFDC, as the agency with the expertise regarding low-income housing, should be solely responsible for certifying the exemption. The Department of Taxation's role should be to audit the claim of the exemption when the tax return is filed.

NEIL ABERCROMBIE  
GOVERNOR



KAREN SEDDON  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**

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HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
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IN REPLY REFER TO:

Statement of  
**Karen Seddon**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS  
& MILITARY AFFAIRS**

**SENATE COMMITTEE ON WATER, LAND, AND HOUSING**

March 22, 2011 at 2:45 p.m.  
Room 224, State Capitol

In consideration of  
**H.B. 1306, H.D. 2**  
**RELATING TO HOUSING.**

HHFDC *offers the following comments* to H.B. 1306, H.D. 2. We defer to the Department of Taxation with respect to provisions in this bill affecting that department.

We do not believe this bill is necessary. During the interim, HHFDC, in conjunction with the Department of Taxation (DoTAX), adopted amendments to program administrative rules for GET exemptions for certified housing projects pursuant to sections 201H-36 and 237-29, Hawaii Revised Statutes. These amendments:

1. Ensure that only appropriate development, construction, and financing costs relating to residential portions of projects receive the exemption;
2. Limit the housing projects eligible for the exemption to only those that actually need the GET exemption in order to make the project make economic sense;
3. Require developers to report more project data to HHFDC, including
  - a. Annual progress reports on projects under construction for compliance monitoring purposes;
  - b. How they will use the cost savings generated by the GET exemption in their projects; and
  - c. Allowing HHFDC to conduct on-site inspections of rental projects receiving the GET exemption on affordable rental income only; and
4. The rule amendments also require developers to reapply for certification if there are substantial changes, i.e. changes exceeding 20 percent, or \$200,000, to contracts for work covered by the exemption.

A link to the text of the rules follows: <http://hawaii.gov/dbedt/hhfdc/about/15-306.pdf> .

However, if the Joint Committees intend to move this bill forward, HHFDC has specific concerns with the effects of language added to Section 201H-36(b), Hawaii Revised Statutes in Section 2 of the H.D. 2 as follows:

- On page 5, lines 7 through 8 of the H.D. 1, we are concerned that the language added in the H.D. 1 requiring that recertifications be done every four years could adversely affect HHFDC's annual certifications of rental projects and request that it be deleted.. Annual certifications allow HHFDC to ensure that rental projects are in compliance with program eligibility criteria and that the exemption from GET is only on rental income derived from affordable rental units;
- On page 5, line, "corporation" should be replaced with "department" to appropriately reflect the agency maintaining annual and cumulative records.

Thank you for the opportunity to testify.

# TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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**SUBJECT:** MISCELLANEOUS, Periodic review of certified housing projects

**BILL NUMBER:** HB 1306, HD-2

**INTRODUCED BY:** House Committee on Finance

**BRIEF SUMMARY:** Amends HRS section 201H-36 to provide that claims for the general excise tax exemption shall be filed with the Hawaii housing finance and development corporation (HHFDC) and reviewed by the HHFDC and the department of taxation prior to any initial or renewal certification; provided that the certification shall be obtained every four years and may be audited by the auditor as directed by the legislature. All funds collected by the claims that do not meet the requirements for the exemption shall be deposited into the rental housing trust fund.

Requires the department of taxation to maintain an annual and cumulative record of all tax exemptions claimed. Also requires HHFDC to submit its annual record to the legislature beginning with the 2012 session. A taxpayer claiming the exemption shall consent to the public disclosure of the taxpayer's name and status as a claimant under this section and HRS section 237-29.

Amends HRS section 46-15.1 to repeal the provision granting a general excise tax exemption for county housing projects.

The amendments made to HRS section 46-15.1 of this act, shall not be repealed when that section is reenacted on June 30, 2015, pursuant to Act 141, SLH 2009.

**EFFECTIVE DATE:** July 1, 2030, applicable to tax years beginning after December 31, 2011

**STAFF COMMENTS:** HRS section 237-29 provides a general excise tax exemption for the planning, design, financing, construction, sale, or lease of a certified housing project. The proposed measure would require all claims for the exemption to be filed with the HHFDC and reviewed by the HHFDC and the department of taxation prior to any initial or renewal certification of the exemption.

Since any tax exemption results in a reduction of tax revenues by the amount of the exemption, periodic review of any tax exemption should be done on a timely basis. In the case of an affordable housing project, HHFDC should also require the owners or managers of such projects to re-certify all families claiming to meet the income requirements on an **annual** basis. Many projects that claim to be affordable housing projects have had families living in the project for a number of years without re-qualification as to the need of the subsidized unit. This is blatantly unfair to families who may be on the waiting list for that subsidized unit. Not doing so brings into question the validity of the general excise tax exemption.

This issue is carried over from last year when questions were raised about low- and affordable-income housing projects which qualified under HRS 201H-36 to be exempt from the general excise tax on not only the planning, engineering, design and construction of such projects but also on the gross income

received from activities directly related to the operation of the qualified project. Some dispute arose over the fact that not all of the units were occupied by those who may have had the amount of qualifying income be it 50%, 80% or 120% of area median income.

While it is understandable that policymakers may not see the need for the general excise tax exemption if some of the units in an affordable housing project are not being let to qualifying income families, but it should be noted that in some cases, in order to allow a developer/owner to provide below-market rental rates for those families who need the subsidized units some of the units have to be let at market rental rates or even above market rates. These are mixed-income affordable housing projects and are probably how affordable housing will have to be developed in the future as the cost of purely affordable housing projects is no longer feasible.

Thus, it is also curious that this measure also repeals the general excise tax exemption for county designated affordable housing projects. Just because it is a county authorized or sponsored housing projects should not disqualify it be being afforded the same subsidies as a state-sponsored project.

Finally, instead of requiring certification for tax exemptions for affordable housing projects every four years, each unit built as a qualifying affordable unit should be required to be re-certified each year, that is the tenant upon renewing the lease for another one-year term be asked to resubmit proof of income in order to remain in a subsidized unit. Too often tenants will qualify initially and then remain for very long periods of time without being asked to re-certify to determine whether or not they still have low enough incomes to qualify. Projects not agreeing to an ongoing program to re-certify their tenants on an annual basis should no longer qualify for the general excise tax exemption.

Digested 3/18/11