NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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INTERIM DIRECTOR OF TAXATION

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HOUSE COMMITTEE ON TRANSPORTATION

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 833 RELATING TO TAXATION

WRITTEN TESTIMONY ONLY

TESTIFIER:	**FREDERICK D. PABLO, INTERIM DIRECTOR OF TAXATION (OR DESIGNEE)**
COMMITTEE:	**TRN**
DATE:	**JANUARY 31, 2011**
TIME:	**8:30AM**
POSITION:	**OPPOSED**

This legislation, among other things, exempts from Hawaii general excise tax (GET), amounts received for developing an affordable housing project or community healthcare facility within a mixed-use transit-oriented joint development project.

The Department of Taxation (Department) **opposes** this legislation.

I. GEOGRAPHIC AREAS AROUND MASS TRANSIT ARE ECONOMICALLY PROSPEROUS BY VIRTUE OF THEIR LOCATION ALONE.

The Department questions the need for the tax benefit provided in this legislation. The Department understands that basic economic theory (if not history) suggests that businesses will locate around mass transit stops notwithstanding any government economic assistance. Simply, the Department does not see the need for tax incentives when logic suggests that businesses will flock to mass transit stops without any stimulus.

II. CONCERN BECAUSE GET EXEMPTIONS ALREADY EXIST

The Department is concerned with the necessity of this legislation because very similar general excise tax exemptions already exist.

For example, the general excise tax exemption for development of affordable housing is currently being administered. Though this legislation extends the current exemption to specifically apply to those projects that are within a mixed-use transit oriented joint development project, there is nothing to suggest that the current exemption could not be extended to such projects if it were determined acceptable by the housing agencies. The Department defers to the housing agencies on the viability of encouraging development of affordable housing near mixed-use mass transit oriented projects.

Also, any healthcare facility (i.e., hospital) that is a nonprofit organization more likely than not already is exempt from the general excise tax. As such, this provision is likewise unnecessary.

III. CONCERN OVER WHAT COULD BE CONSIDERABLE REVENUE LOSS.

The Department is also very much concerned with the potential revenue loss for this legislation. These costs have not been factored into the Executive Budget or its fiscal priorities. Given the current economic climate, a measure such as this could erode any forward progress in solving the budget crisis.

Due to no hard data on the planned affordable rental housing projects or community health care facility projects, revenue impact is indeterminate. However, if it is assumed the gross income exempted from GET amounted to $180 million annually, then the annual revenue loss would be $7.2 million per year.

NEIL ABERCROMBIE
GOVERNOR

KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

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

HOUSE COMMITTEE ON TRANSPORTATION
January 31, 2011 at 8:30 a.m.
Room 309, State Capitol

In consideration of
H.B. 833
RELATING TO TAXATION.

The HHFDC ***supports the intent*** of H.B. 833 to the extent that it promotes the development of affordable rental housing within transit-oriented development districts. We defer to the Department of Health with respect to the bill's impact on community health care facilities. We also defer to the Department of Taxation with respect to the fiscal impact of the new tax exemptions proposed in this bill.

Next to housing, transportation is the second highest cost for most households. Affordable housing located near transit allows low-income persons and families to live an affordable lifestyle with access to schools, jobs, health care, and social services, among other things. In particular, seniors living near transit are better able to live independently and in less restrictive residential settings for as long as possible. Accordingly, promoting and preserving affordable housing in transit-oriented development districts is an important priority.

Thank you for the opportunity to provide written comments on this bill.

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PETER B. CARLISLE
MAYOR

DAVID K. TANOUE
DIRECTOR

ROBERT M. SUMITOMO
DEPUTY DIRECTOR

January 31, 2011

The Honorable Joseph M. Souki, Chair
Committee on Transportation
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Souki and Members:

**Subject: House Bill 833
Relating to Taxation**

The Department of Planning and Permitting (DPP) **supports** House Bill 833 which provides exemptions from the state general excise tax, for certain development projects near Honolulu's High-Capacity Transit system. Specifically, affordable rental housing and community health care facilities which are part of "mixed–use transit-oriented joint development projects" would be eligible.

The ability to provide a multitude of flexible policies, programs and financial support has been shown to be of significant benefit in creating sustainable communities incorporating transportation and lifestyle choices. Given the need and demand for affordable housing, the targeted use of tax policies has been shown to be a particularly effective policy/program available to communities.

We suggest that the bill be modified to require eligible projects to be within transit-oriented development (TOD) areas, as defined and adopted by the counties. Typically, the area of proximity has been defined as lands within one-half mile of a transit station and/or corridor, but our TOD planning has shown great variations in the boundaries based on geographic, land ownership, zoning patterns, and other considerations unique to each neighborhood.

We believe that this is a proactive, positive step the legislature is taking and support your efforts. Please forward House Bill 833 with our requested modification. Thank you for this opportunity to comment.

Very truly yours,

David K. Tanoue, Director
Department of Planning and Permitting

DKT:bic

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January 27, 2011

The Honorable Joseph M. Souki, Chair
House Committee on Transportation
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: H.B. 833 Relating to Taxation

HEARING: Monday, January 31, 2011 at 8:30 a.m.

Aloha Chair Souki, Vice Chair Ichiyama and members of the Committee:

I am Craig Hirai, Chair of the Subcommittee on Affordable Housing, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** H.B. 833 which exempts from the General Excise Tax ("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 January 2008 Final Report of the Hawaii State Legislature House of Representatives Interim Task Force on Smart Growth sets forth the following ten principles of smart growth:

(1) Create a range of housing opportunities and choices;
(2) Create walkable neighborhoods;
(3) Encourage community and stakeholder collaboration;
(4) Foster distinctive, attractive communities with a strong sense of place;
(5) Make development decisions predictable, fair, and cost effective;
(6) Mix land uses;
(7) Preserve open space, farmland, natural beauty, and critical environmental areas;
(8) Provide a variety of transportation choices;
(9) Strengthen and direct development toward existing communities; and
(10) Take advantage of compact building design.

HAR believes that Smart Growth is our road map to sustaining and enhancing the quality of life in our communities and that this bill can be consistent with all of these principles.

The introduction letter to an April 2007 Executive Summary (the "Executive Summary") of a report prepared by Reconnecting America's Center for Transit-Oriented Development entitled <u>Realizing the Potential: Expanding Housing Opportunities Near Transit,</u> which was funded by the U.S. Department of Transportation Federal Transit Administration ("FTA") and the U.S. Department of Housing and Urban Development ("HUD").the Executive Summary states in part that:

> The average American family spends more than half of their income on housing and transportation. There is increasing awareness that while a growing number of families are moving further out to suburban or even exurban location to find affordable housing, the rising cost of transportation

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reduces much of their cost savings. As a result, demand for housing near transit, so that transportation costs are contained, is expected to grow significantly over the next 20 years.

. . .

The report suggests that to better respond to this challenge we need to:

- Coordinate housing plans with local transportation plans, so that affordable housing is served by high quality public transportation.
- Housing investments must take place in the context of other development, such as retail and commercial [which in the case of H.B. 833 includes "community health care facilities"], so that more daily trips can be made on foot and by transit; and
- The private development market must become a partner in achieving the goal of better connections between housing – including affordable housing – and public transportation.

The Executive Summary states that one of the strategies that can be used to create and preserve mixed-income housing near transit is to provide incentives that help catalyze the market for mixed-income transit oriented development (or TOD). The Executive Summary then goes on to state that obstacles to building mixed-income TOD housing include:

- Land prices around stations are high or increase because of speculation once a new transit line is announced.
- Affordable housing developers don't have the capital to acquire land before the prices go us and then hold it until it's ready to develop.
- Funding for building affordable housing is limited.
- Mixed-income and mixed–use projects require complex financing structures.
- Sites for TOD projects often require land assembly and rezoning, which can lead to lengthy acquisition and permitting processes, which increase development costs.
- Parking requirements for TOD are unnecessarily high, which also drives up costs.
- Community opposition to density and affordable housing is hard to overcome.

The GET exemption contained in H.B. 833 directly addresses the third and forth obstacles listed above by providing a form of funding for affordable housing which has previously been used in mixed-income for sale and rental housing projects in Hawaii.

H.B. 833 also helps address the first, second and fifth obstacles listed above by essentially adopting the following two recommendations from the Executive Summary:

> Utilize FTA's joint development policy to emphasize construction of housing in transit zones; Real estate that's been acquired for rights of way, stations, parking lots and staging areas, and even air rights, can provide significant development opportunity. FTA's new joint development policy provides

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unprecedented flexibility for leasing and even selling this property for transit-supportive purposes.

Encourage public-private partnerships: Engaging the community as a full partner makes it possible to build trust and achieve community goals. Partnering with developers, realtors and businesses may also leverage private dollars.

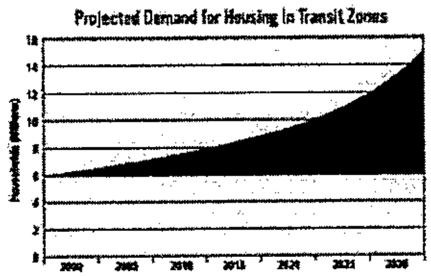
The Executive Summary followed in September 2009 by a best practices guidebook from The Center for Transit-Oriented Development, which was also sponsored by the FTA, and titled "Mixed Income Housing: Increasing Affordability with Transit". We have attached copies of pages 7 and 10 of the guidebook for your reference.

Mahalo for the opportunity to testify.

Attachments

Demand For Housing Near Transit Is Growing, But Supply Isn't Keeping Up, Causing Prices to Escalate

TRANSPORTATION HAS ALWAYS been a factor in shaping development. Today, volatile gas prices, traffic congestion, and the changing demographics of the U.S. population are increasing the demand for housing near transit. While married couples with children made up the vast majority of households after WWII — boosting interest in single-family housing in the suburbs — single adults now comprise 43 percent of all U.S. residents aged 15 and over, according to U.S. Census, and they are interested in a more urban and more convenient lifestyle. All the demographic groups that are increasing in size - older, smaller households, including singles, and nonwhite households - have historically preferred urban living and used transit. As a result, the Center for Transit-Oriented Development estimates that overall demand for housing near transit will grow from 6 million to 15 million households by 2030 - roughly 25 percent of all renters and buyers. However, these demand estimates were prepared before the run-up in gas prices in 2008. Now that people are concerned about the volatility of gas prices and the cost of driving the demand for TOD will likely be much higher. Moreover, this demand has remained relatively strong despite the recent downturn in the real estate market downturn. Despite the demand, only a small percentage of new housing is being built in these locations, for reasons discussed on page 10.



The demand for housing near transit is expected to grow to 15 million renters and buyers in 2030.

The fact that these neighborhoods are already more racially and economically diverse than other neighborhoods means that families who already live there may fall victim to gentrification and be pushed out by rising rents and housing prices - even though they are the households that need and use transit the most. More than 40 percent of the demand for housing near transit is expected to come from low-income households (with incomes below 80 percent of area median income) and very-low-income households (with incomes below 50 percent of area median income). The CTOD also finds that:

- *People want shorter commutes but the areas growing most quickly are 20 miles from central business districts.*
- *Single-family homes are 78 percent of new construction while the married couples with children who are most likely to want to live in single-family homes compose just 24 percent of the housing market and this percentage is quickly shrinking.*
- *There's an increasing need for rental units for immigrants, seniors, low-income households and Echo Boomers (the children of Baby Boomers) who are starting out on their own, but construction of rental units is falling far short of demand.*

These factors underscore the importance of targeting resources to walkable, mixed-use, transit-oriented neighborhoods, and for preserving existing affordable housing in these locations.

Early developers built streetcar lines to open up land outside the city for development by connecting it to jobs and services in the city.

The automobile reshaped development, making the connectivity of streets, neighborhoods and development less important. Driving became a necessity.

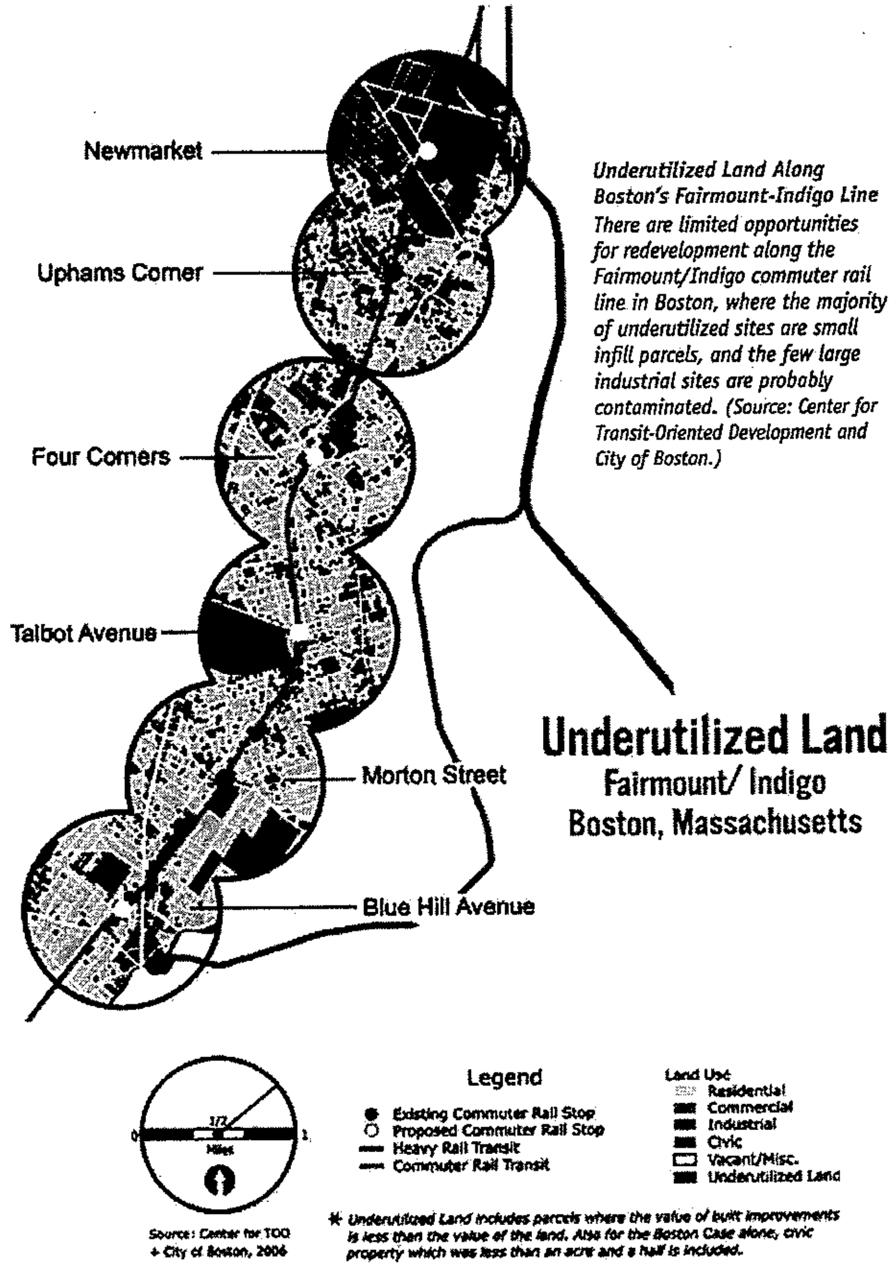
There Are Many Obstacles to Building Mixed-Income Housing Near Transit

TRANSIT-ORIENTED DEVELOPMENT is often difficult, time-consuming and therefore expensive, which is why so much of the new housing going up near transit is being built for the high end of the market. Some of the obstacles to building mixed-income housing near transit include the following:

- *Land prices around stations are high, or increase because of speculation when a new transit line is planned.*
- *Affordable housing developers don't have the capital to acquire land before the prices go up and hold it until it's ready to be developed.*
- *Funding for affordable housing is limited.*
- *Mixed-income and mixed-use projects require complex financing structures.*
- *Sites often require land assembly and rezoning, leading to lengthy acquisition and permitting processes that increase costs.*
- *Community opposition to density and affordable housing can be challenging. Community outreach and education up front can be very helpful, but also time-consuming and costly.*
- *Affordable development at these sites requires collaboration among the public, private and nonprofit sectors, which can be difficult to coordinate given the different needs, constraints and schedules of each partner.*

Moreover, cities and transit agencies may not understand the importance of ensuring that some of the housing near transit is affordable, and they may lack the tools and experience to direct affordable housing resources to these locations. Existing single-use zoning and suburban style parking minimums can reduce the development potential and make construction of affordable units financially infeasible. Often there aren't many development sites to begin with because neighborhoods around stations are already built up. Available parcels may be small and fragmented and require assemblage, as shown in the map to the right.

In strong housing markets affordable housing developers have an especially hard time getting their projects financed. Some jurisdictions have inclusionary zoning ordinances requiring a percentage of affordable units in all development. But these ordinances often allow the affordable units to be built offsite – and not near transit.



Underutilized Land Along Boston's Fairmount-Indigo Line
There are limited opportunities for redevelopment along the Fairmount/Indigo commuter rail line in Boston, where the majority of underutilized sites are small infill parcels, and the few large industrial sites are probably contaminated. (Source: Center for Transit-Oriented Development and City of Boston.)

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt affordable rental housing or community health care facility

BILL NUMBER: SB 913; HB 833 (Identical)

INTRODUCED BY: SB by Chun Oakland and Fukunaga; HB by Rhoads

BRIEF SUMMARY: Adds a new section to HRS chapter 237 to exempt from the general excise tax, the gross income received for the planning, design, financing, construction, sale, or lease of a rental housing or community health care facility project certified or approved under HRS section 201H___ or HRS section 321-____.

Requires the director of taxation, the director of health, and the Hawaii housing finance and development corporation to adopt rules pursuant to HRS chapter 91 of the purpose of this section including any time limitations for the exemptions.

Adds a new section to HRS chapter 201H to allow the Hawaii housing finance and development corporation (HHFDC) to approve and certify a general excise tax exemption for a project developed by a qualified person or firm to provide affordable rental housing units within a mixed-use transit-oriented joint development project. Allows the HHFDC to establish, revise, charge, and collect a reasonable service fee in connection with its approvals and certifications; provides that the fee shall be deposited into the dwelling unit revolving fund.

Adds a new section to HRS chapter 321 to allow the department of health to approve and certify a general excise tax exemption for a project developed by a qualified person or firm to provide a community health care facility within a mixed-use transit-oriented joint development project. Allows the department of health to establish, revise, charge, and collect a reasonable service fee in connection with its approvals and certifications; provides that the fee shall be deposited into the state health planning and development special fund.

Defines "community health care facility," "mixed-use transit-oriented joint development project," "moderate rehabilitation" and "substantial rehabilitation" for purposes of the measure.

Amends HRS section 46-15.1(a) to provide that no county shall be empowered to grant a general excise tax exemption for a mixed-use transient-oriented joint development project.

Amends HRS section 237-8.6(d) to provide that the county surcharge on the state tax shall be imposed on transactions, amounts, persons, gross income, or gross proceeds on an affordable rental housing project or community health care facility project.

Amends HRS section 238-2.6(c) to provide that the county surcharge on state tax shall be imposed on the use of property, services, or contracting that is not subject to taxation under HRS section 238(j) as a result of the general excise tax exemption proposed in this measure.

It is the intent of the legislature that in adopting rules for the general excise tax exemption that: (1) the cost savings for any general excise tax exemption shall be used exclusively to provide affordable rental housing and community health care facilities; (2) the facilities developed under this act shall be used to serve as many lower income households as possible; (3) each interested county shall designate a department or agency as a point of contact for the purposes of this act; (4) the director of taxation and director of the HHFDC oversee certifications of community health care facilities by the director of heath as necessary; and (5) the director or taxation, the director of health and the HHFDC shall consult with representatives of any interested county in an effort to streamline the approval process for mixed-use transit-oriented joint development projects and maximize the coordination among federal, state, and county governments.

In order to provide the director of taxation and the HHFDC with time to adopt separate rules for the general excise tax exemptions, this act shall apply to taxable years beginning after December 31, 2012.

EFFECTIVE DATE: July 1, 2011

STAFF COMMENTS: This measure proposes a general excise tax exemption for projects developed within a mixed-use transit-oriented development project that provide: (1) affordable rental housing units; or (2) a community health care facility.

While the proposed measure would authorize the HHFDC or the department of health to certify whether an affordable rental housing unit or community health care facility project, respectively, shall be eligible for the general excise tax exemption, and the projects must be developed within a mixed-use transit-oriented development project, it appears to be premature to adopt a general excise tax exemption until further details of the transit route and system have been finalized.

Given that affordable rental housing projects certified under HRS 201G-116 are already exempt from the general excise tax under HRS 237-29 as long as it is certified, one has to ponder why this particular exemption is being proposed. If the affordable rental housing meets the criteria of HRS 201G-116, then this exemption would be redundant. On the other hand, is this proposal attempting to exempt housing developments that may not meet the criteria of section 116 but because it is located in a transit district could escape the general excise tax without meeting the standards set by section 116?

In both cases, it should be noted that if this proposed exemption tracks the application of HRS 237-29 for affordable rental housing certified by HHFDC, not only the income of the health care facility and the affordable housing project would be exempt from the general excise tax, but the sale, lease, planning and design of such facilities would be exempt from the tax. Thus, some for profit businesses would enjoy the exemption as well.

Digested 1/28/11