

Testimony to the House Committee on Water and Land

Monday, February 11, 2013

8:30 AM

Conference Room 325

RE: HOUSE BILL NO. 1117, RELATING TO THE GENERAL EXCISE TAX

Chair Evans and Vice Chair Lowen, and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's opposition to House Bill No. 1117, Relating to The General Excise Tax as it relates to that portion of the measure that proposes to repeal the GET exemption for government assisted low income housing built on federal lands.

The measure proposes to repeal the general excise tax exemption for housing projects built on federal lands, and use the tax revenues gained from repealing this exemption for deposit into the rental housing trust fund for the purpose of building affordable rental housing for homeless families with children.

In accordance with HRS 201H-36, GET exemptions are currently authorized for any qualified person or firm involved with a newly constructed or moderately or substantially rehabilitated project developed under a government assistance program approved by the corporation. There appears to be no basis for the proposed repeal as there is no specific reference to government assisted housing projects on federal lands.

To the extent that HB 1117 proposes to repeal the GET exemption for approved government assisted housing projects built on federal lands but not those built on state and county lands, we believe that HB 1117 constitutes a prima facie violation of the United States Constitution under Supreme Court cases such as *Moses Lake Homes v. Grant County*, 365 U.S. 744 (1961) because HB 1117 clearly discriminates against the United States and its lessees by only excluding

federal lessees from a state tax exemption which remains available to state and county lessees with approved government assisted housing projects.

We would like to add that approval of this measure could also result in unintended consequences that would have negative impacts on Hawaii's economy and workforce.

For example, the GET exemption for government assisted military housing projects in Hawaii is under the Military Housing Privatization Initiative (MHPI). The approval by the Hawaii Communities Development Corporation was based on the basis that the funds from the exemption were to be deposited in a special lock box account administered jointly by the military and the developer. These funds are to be used only to improve the residential communities, to include demolition, construction, renovation, and similar work. Therefore, the loss of these funds would result in eliminating contract opportunities for small businesses and jobs for the workforce.

It should be noted that the MHPI remains a primary source of small business contract opportunities in Hawaii's economy and good jobs for the workforce.

Another example is that the repeal of the exemption would raise the cost of managing the residential communities and encourage military families to use their housing allowances to seek rental housing or purchase affordable housing in nearby civilian communities such as Wahiawa, Mililani, Pearl City, Aiea, Halawa, Kaneohe, and Kailua. This would seriously impact Hawaii's shortage of affordable housing for residents.

In light of the above, we recommend the measure be held.

Thank you for the opportunity to testify.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Repeal exemption, disposition of revenue

BILL NUMBER: HB 1117

INTRODUCED BY: Cabanilla

BRIEF SUMMARY: Amends HRS section 201H-36 to provide that housing projects built on federal lands shall not be eligible for the general excise tax exemption.

Amends HRS section 237-31 to provide that all general excise tax revenues realized as a result of the termination of the general excise tax exemption for such housing projects shall be deposited into the rental housing trust fund.

Makes a conforming amendment to HRS section 201H-202.

EFFECTIVE DATE: July 1, 2013

STAFF COMMENTS: Currently, housing projects developed on federal lands are exempt from general excise taxation. This measure proposes to eliminate the exemption and deposit the revenues from the general excise tax that would then be realized into the housing trust fund. While it appears that the intent of the measure is to generate additional revenue for the housing trust fund, it is curious that lawmakers believe that affordable housing on federal properties is any different from affordable housing, built under HRS chapter 201H, built on non-federal property. Affordable housing is affordable housing.

To the degree that there is a lack of affordable housing for the military and other federal dependents merely shifts that demand to the private market, driving the cost of rents higher as federal personnel end up competing with civilians for that affordable housing. If the general excise tax exemption increases the supply of affordable housing overall, then the benefit accrues to the entire community.

On the other hand, the earmarking of revenues such as the conveyance tax for the rental housing trust fund has merely excused the legislature from dealing head on with the dilemma of the lack of affordable housing in Hawaii. The result is a proposal like this, a continued “mining” of sources who can’t vote, represents an abdication by lawmakers of truly dealing with the affordable housing dilemma in Hawaii. Obviously affordable housing is not of a critical priority for lawmakers that it is deserving of an appropriation from the general fund. It is an indication that lawmakers see state government as being all things to all people, refusing to set priorities for those tax resources already available.

Digested 2/1/13

Testimony submitted to the House Committee on Water and Land

RE: House Bill 1117, Relating to General Excise Tax

Chair Cindy Evans, Vice Chair Justin Woodson and Committee Members:

My name is Mark Frey and I am the Project Director for Island Palm Communities LLC, a public private partnership under the Military Housing Privatization Initiative (MHPI).

We are the largest MHPI project on Oahu, and manage more than 7,500 housing units for military families located in seven distinct locations across the island. Over 50% of our housing services enlisted soldiers of more junior ranks.

We submit the following comments in opposition to the above referenced bill, which seeks to deny GET exemptions for housing projects build on federal lands.

GET exemptions are currently authorized under HRS 201H-36 for any qualified person or firm involved with a newly constructed or moderately or substantially rehabilitated project developed under a government assistance program approved by the corporation. It does not differentiate between state, county or federal lands. To exclude approved government assisted housing projects on federal land from exemptions available to state and county lessees with approved government assisted housing projects, appears to be unconstitutional.

Denying GET exemptions for housing projects built on federal lands will have a significant negative impact on federal housing programs as well as the greater community; savings derived from GET exemptions directly finance construction, renovation, and management of family housing. None of the GET exemptions accrue to the federal housing developer. Loss of the GET exemption means a reduction in scope resulting in:

- Less contractual work available to the state's local businesses
- Fewer jobs to union construction workers
- Less revenues for suppliers and vendors

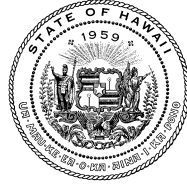
Providing affordable housing on federal lands removes military personnel and their families from an already limited private rental market off post, which increases availability of homes and helps housing prices for local families.

Should HB1117 come into effect, negative consequences will be experienced by our businesses, families, and community.

Thank you for the opportunity to submit comments on these bills.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Cindy Evans, Chair
and Members of the House Committee on Water and Land

Date: Monday, February 11, 2013
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 1117, Relating to the General Excise Tax

The Department of Taxation (Department) appreciates the intent of H.B. 1117 to help create affordable rental housing for families in need.

This measure repeals the general excise tax exemption under section 237-29 for persons or firms involved with construction projects developed under government assistance programs where those projects are developed on federal land. The revenue from such projects would be remitted to the rental housing trust fund.

The Department defers to the Hawaii Housing Finance and Development Corporation on the merits of repealing this exemption, and to the Department of Budget and Finance on the merits of remitting the funds to the rental housing trust fund.

Thank you for the opportunity to provide comments.



Testimony of Cindy McMillan
The Pacific Resource Partnership

House Committee on Water and Land
Representative Cindy Evans, Chair
Representative Nicole E. Lowen, Vice Chair

House Committee on Ocean, Marine Resources, & Hawaiian Affairs
Representative Faye P. Hanohano, Chair
Representative Ty J.K. Cullen, Vice Chair

HB 1117– Relating to General Excise Tax
Monday, February 11, 2013
8:30 am
Conference Room 325

Aloha Chairs Evans and Hanohano, Vice Chairs Lowen and Cullen, and Members of the Committees:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP **opposes** HB 1117, Relating to the General Excise Tax, which repeals the general excise tax exemption for housing projects build on federal lands. This measure repeals the general excise tax exemption for housing projects built on federal lands and provides that tax revenues gained from repealing this exemption shall be deposited into the rental housing trust fund for the purpose of building affordable rental housing for homeless families with children.

PRP fully understands the urgent need for affordable rental housing, and more specifically, affordable rental housing for homeless families with children. In addition to the inherent moral and social imperative for providing much-needed housing, the construction of affordable rental units would provide jobs for our contractors and union members.

Despite this, we cannot support the proposed measure for the following reasons:

- There is an equal need for affordable military housing, especially in light of the shortage of affordable housing in the private sector. The Military Housing Privatization Initiative (MHPI) has dramatically improved military installations' housing conditions for service members and their families, and consequently, an increase in their quality of life, readiness, morale and retention.
- The initial phase of the MHPI here in Hawaii replaced and renovated more than 16,000 military housing units. This work provided badly needed housing for military families, and it has provided good jobs for general- and sub-contractors and our union members. The GET exemption was a central part in enabling MHPI to succeed in Hawaii and will continue to provide business opportunities for small businesses and jobs for our workforce over the next 40 years or so.
- The proposed measure is at odds with case law regarding discrimination against the federal government.

For these reasons, we respectfully ask for this bill to be held. Thank you for the opportunity to share our views on this matter with you.



HOUSE COMMITTEE ON WATER & LAND
Monday, February 11, 2013 —8:30 a.m. — Room 325

**HB 1117 Relating to the General Excise Tax
Testimony in Opposition**

Chair Evans, Vice Chair Lowen, and Members of the Committee:

My name is Jon Wallenstrom and I am the President of Forest City Hawaii. Forest City Hawaii is principally engaged in the ownership, development, management and acquisition of commercial and residential real estate and land in Hawaii. It is currently involved in a partnership with the Hawaii Housing Finance and Development Corporation (HHFDC) to develop Kamakana Villages, a mixed-use community of 2,206 homes on the Big Island, of which more than 50% will be affordably priced. It recently completed construction of the largest utility-scale solar photovoltaic farm on Oahu to date. Forest City is one of the largest residential community and renewable energy developers in the state. At Forest City we leverage our real estate experience to create renewable energy projects. These developments help offset the high cost of energy in Hawaii for both our community as a whole, while also decreasing the state's dependence on fossil fuels.

HB 1117 proposes to repeal the general excise tax exemption for housing projects built on federal lands. It provides that tax revenues gained from repealing this exemption shall be deposited into the rental housing trust fund for the purpose of building affordable rental housing for homeless families with children.

In accordance with HRS 201H-36, GET exemptions are currently authorized for any qualified person or firm involved with a newly constructed or moderately or substantially rehabilitated project developed under a government assistance program approved by the corporation. There appears to be no basis for the repeal as there is no reference to government assistance programs on federal lands.

To the extent that HB 1117 proposes to repeal the GET exemption for approved government assisted housing projects built on federal lands but not those built on state and county lands, we believe that HB 1117 constitutes a prima facie violation of the United States Constitution under Supreme Court cases such as *Phillips Chemical Company v. Dumas Independent School District*, 361 U.S. 376 (1960), *Moses Lake Homes v. Grant County*, 365 U.S. 744 (1961), and *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989), because HB 1117 clearly discriminates against the United States and its lessees by only excluding federal lessees from a state tax exemption which remains available to state and county lessees with approved government assisted housing projects.

In light of the above, we recommend the measure be held.

Thank you for the opportunity to provide this testimony.

Testimony submitted to the House Committee on Water and Land

RE: House Bill 1117, Relating to General Excise Tax

Chair Cindy Evans, Vice Chair Justin Woodson and Committee Members:

My name is Jerry Schmitz and I am the Project Director for Hickam Communities LLC, a public private partnership under the Military Housing Privatization Initiative.

We manage more than 2,500 housing units for military families located on Joint Base Pearl Harbor-Hickam.

We submit the following comments in opposition to the above referenced bill, which seeks to deny GET exemptions for housing projects built on federal lands.

GET exemptions are currently authorized under HRS 201H-36 for any qualified person or firm involved with a newly constructed or moderately or substantially rehabilitated project developed under a government assistance program approved by the corporation. It does not differentiate between state, county or federal lands. To exclude approved government assisted housing projects on federal land from exemptions available to state and county lessees with approved government assisted housing projects, appears to be unconstitutional.

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Should HB1117 come into effect, negative consequences will be experienced by our businesses, families, and community.

Thank you for the opportunity to submit comments on these bills.