

JAN 22 2016

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§237- Additional amounts not taxable for contractors.
5 In addition to the amounts not taxable under section 237-24,
6 this chapter shall not apply to an amount received by a
7 contractor that is not more than per cent of the direct
8 costs of construction and operation incurred by a contractor
9 under a public-private partnership with the employees'
10 retirement system to develop a construction project to implement
11 clean energy technology, as that term is defined in section 269-
12 121(b), or a construction project to improve the State's water
13 supply, including projects defined as a water facility under
14 section 167-2 or section 174-2, a wastewater treatment plant
15 under section 340B-1, or a public water system under section
16 340E-1; provided that the income shall be excluded from gross



1 income for each year of the anticipated useful life of the
2 construction project."

3 SECTION 2. Section 88-119, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§88-119 Investments. Investments may be made in:

6 (1) Real estate loans and mortgages. Obligations (as
7 defined in section 431:6-101) of any of the following
8 classes:

9 (A) Obligations secured by mortgages of nonprofit
10 corporations desiring to build multirental units
11 (ten units or more) subject to control of the
12 government for occupancy by families displaced as
13 a result of government action;

14 (B) Obligations secured by mortgages insured by the
15 Federal Housing Administration;

16 (C) Obligations for the repayment of home loans made
17 under the Servicemen's Readjustment Act of 1944
18 or under Title II of the National Housing Act;

19 (D) Other obligations secured by first mortgages on
20 unencumbered improved real estate owned in fee
21 simple; provided that the amount of the



1 obligation at the time investment is made therein
2 shall not exceed eighty per cent of the value of
3 the real estate and improvements mortgaged to
4 secure it, and except that the amount of the
5 obligation at the time investment is made therein
6 may exceed eighty per cent but no more than
7 ninety per cent of the value of the real estate
8 and improvements mortgaged to secure it; provided
9 further that the obligation is insured or
10 guaranteed against default or loss under a
11 mortgage insurance policy issued by a casualty
12 insurance company licensed to do business in the
13 State. The coverage provided by the insurer
14 shall be sufficient to reduce the system's
15 exposure to not more than eighty per cent of the
16 value of the real estate and improvements
17 mortgaged to secure it. The insurance coverage
18 shall remain in force until the principal amount
19 of the obligation is reduced to eighty per cent
20 of the market value of the real estate and
21 improvements mortgaged to secure it, at which



1 time the coverage shall be subject to
2 cancellation solely at the option of the board.
3 Real estate shall not be deemed to be encumbered
4 within the meaning of this subparagraph by reason
5 of the existence of any of the restrictions,
6 charges, or claims described in section 431:6-
7 308;

8 (E) Other obligations secured by first mortgages of
9 leasehold interests in improved real estate;
10 provided that:

11 (i) Each leasehold interest at the time shall
12 have a current term extending at least two
13 years beyond the stated maturity of the
14 obligation it secures; and

15 (ii) The amount of the obligation at the time
16 investment is made therein shall not exceed
17 eighty per cent of the value of the
18 respective leasehold interest and
19 improvements, and except that the amount of
20 the obligation at the time investment is
21 made therein may exceed eighty per cent but



1 no more than ninety per cent of the value of
2 the leasehold interest and improvements
3 mortgaged to secure it;

4 provided further that the obligation is insured
5 or guaranteed against default or loss under a
6 mortgage insurance policy issued by a casualty
7 insurance company licensed to do business in the
8 State. The coverage provided by the insurer
9 shall be sufficient to reduce the system's
10 exposure to not more than eighty per cent of the
11 value of the leasehold interest and improvements
12 mortgaged to secure it. The insurance coverage
13 shall remain in force until the principal amount
14 of the obligation is reduced to eighty per cent
15 of the market value of the leasehold interest and
16 improvements mortgaged to secure it, at which
17 time the coverage shall be subject to
18 cancellation solely at the option of the board;

19 (F) Obligations for the repayment of home loans
20 guaranteed by the department of Hawaiian home



1 lands pursuant to section 214(b) of the Hawaiian
2 Homes Commission Act, 1920; and
3 (G) Obligations secured by second mortgages on
4 improved real estate for which the mortgagor
5 procures a second mortgage on the improved real
6 estate for the purpose of acquiring the
7 leaseholder's fee simple interest in the improved
8 real estate; provided that any prior mortgage
9 shall not contain provisions that might
10 jeopardize the security position of the
11 retirement system or the borrower's ability to
12 repay the mortgage loan.

13 The board may retain or dispose of the real estate,
14 including leasehold interests therein, as it may
15 acquire by foreclosure of mortgages or in enforcement
16 of security, or as may be conveyed to it in
17 satisfaction of debts previously contracted in the
18 same manner as other investments in interest in real
19 property authorized by this section;

20 (2) Government obligations, etc. Obligations of any of
21 the following classes:



- 1 (A) Obligations issued or guaranteed as to principal
2 and interest by the United States or by any state
3 thereof or by any municipal or political
4 subdivision or school district of any of the
5 foregoing; provided that principal of and
6 interest on the obligations are payable in
7 currency of the United States; or sovereign debt
8 instruments issued by agencies of, or guaranteed
9 by foreign governments;
- 10 (B) Revenue bonds, whether or not permitted by any
11 other provision hereof, of the State or any
12 municipal or political subdivision thereof,
13 including the board of water supply of the city
14 and county of Honolulu, and street or improvement
15 district bonds of any district or project in the
16 State; and
- 17 (C) Obligations issued or guaranteed by any federal
18 home loan bank, including consolidated federal
19 home loan bank obligations, the Home Owner's Loan
20 Corporation, the Federal National Mortgage



- 1 Association, or the Small Business
2 Administration;
- 3 (3) Corporate obligations. Below investment grade or
4 nonrated debt instruments, foreign or domestic, in
5 accordance with investment guidelines adopted by the
6 board;
- 7 (4) Preferred and common stocks. Shares of preferred or
8 common stock of any corporation created or existing
9 under the laws of the United States or of any state or
10 district thereof or of any country;
- 11 (5) Obligations eligible by law for purchase in the open
12 market by federal reserve banks;
- 13 (6) Obligations issued or guaranteed by the International
14 Bank for Reconstruction and Development, the Inter-
15 American Development Bank, the Asian Development Bank,
16 or the African Development Bank;
- 17 (7) Obligations secured by collateral consisting of any of
18 the securities or stock listed above and worth at the
19 time the investment is made at least fifteen per cent
20 more than the amount of the respective obligations;



- 1 (8) Insurance company obligations. Contracts and
2 agreements supplemental thereto providing for
3 participation in one or more accounts of a life
4 insurance company authorized to do business in Hawaii,
5 including its separate accounts, and whether the
6 investments allocated thereto are comprised of stocks
7 or other securities or of real or personal property or
8 interests therein;
- 9 (9) Interests in real property. Interests in improved or
10 productive real property in which, in the informed
11 opinion of the board, it is prudent to invest funds of
12 the system. For purposes of this paragraph, "real
13 property" includes any property treated as real
14 property either by local law or for federal income tax
15 purposes. Investments in improved or productive real
16 property may be made directly or through pooled funds,
17 including common or collective trust funds of banks
18 and trust companies, group or unit trusts, limited
19 partnerships, limited liability companies, investment
20 trusts, title-holding corporations recognized under
21 section 501(c) of the Internal Revenue Code of 1986,



1 as amended, similar entities that would protect the
2 system's interest, and other pooled funds invested on
3 behalf of the system by investment managers retained
4 by the system;

5 (10) Other securities and futures contracts. Securities
6 and futures contracts in which in the informed opinion
7 of the board, it is prudent to invest funds of the
8 system, including currency, interest rate, bond, and
9 stock index futures contracts and options on the
10 contracts to hedge against anticipated changes in
11 currencies, interest rates, and bond and stock prices
12 that might otherwise have an adverse effect upon the
13 value of the system's securities portfolios; covered
14 put and call options on securities; and stock; whether
15 or not the securities, stock, futures contracts, or
16 options on futures are expressly authorized by or
17 qualify under the foregoing paragraphs, and
18 notwithstanding any limitation of any of the foregoing
19 paragraphs (including paragraph (4)); ~~and~~

20 (11) Private placements. Investments in institutional
21 blind pool limited partnerships, limited liability



1 companies, or direct investments that make private
2 debt and equity investments in privately held
3 companies, including but not limited to investments in
4 Hawaii high technology businesses or venture capital
5 investments that, in the informed opinion of the
6 board, are appropriate to invest funds of the system.
7 In evaluating venture capital investments, the board
8 shall consider, among other things, the impact an
9 investment may have on job creation in Hawaii and on
10 the state economy. The board shall report annually to
11 the legislature on any Hawaii venture capital
12 investments it has made; provided that if the board
13 determines it is not prudent to invest in any Hawaii
14 venture capital investments the board shall report the
15 rationale for the decision. The board, by January 1,
16 2008, shall develop criteria to determine the amount
17 of funds that may be prudently invested in Hawaii
18 private placement investments [-]; and

- 19 (12) Public-private partnerships to develop construction
20 projects to implement clean energy technology, as that
21 term is defined in section 269-121(b), or a



1 construction project to improve the State's water
2 supply, including projects defined as a water facility
3 under section 167-2 or section 174-2, a wastewater
4 treatment plant under section 340B-1, or a public
5 water system under section 340E-1.

6 SECTION 3. Section 235-7, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) There shall be excluded from gross income, adjusted
9 gross income, and taxable income:

10 (1) Income not subject to taxation by the State under the
11 Constitution and laws of the United States;

12 (2) Rights, benefits, and other income exempted from
13 taxation by section 88-91, having to do with the state
14 retirement system, and the rights, benefits, and other
15 income, comparable to the rights, benefits, and other
16 income exempted by section 88-91, under any other
17 public retirement system;

18 (3) Any compensation received in the form of a pension for
19 past services;

20 (4) Compensation paid to a patient affected with Hansen's
21 disease employed by the State or the United States in



1 any hospital, settlement, or place for the treatment
2 of Hansen's disease;

3 (5) Except as otherwise expressly provided, payments made
4 by the United States or this State, under an act of
5 Congress or a law of this State, which by express
6 provision or administrative regulation or
7 interpretation are exempt from both the normal and
8 surtaxes of the United States, even though not so
9 exempted by the Internal Revenue Code itself;

10 (6) Any income expressly exempted or excluded from the
11 measure of the tax imposed by this chapter by any
12 other law of the State, it being the intent of this
13 chapter not to repeal or supersede any express
14 exemption or exclusion;

15 (7) Income received by each member of the reserve
16 components of the Army, Navy, Air Force, Marine Corps,
17 or Coast Guard of the United States of America, and
18 the Hawaii National Guard as compensation for
19 performance of duty, equivalent to pay received for
20 forty-eight drills (equivalent of twelve weekends) and
21 fifteen days of annual duty, at an:



- 1 (A) E-1 pay grade after eight years of service;
2 provided that this subparagraph shall apply to
3 taxable years beginning after December 31, 2004;
- 4 (B) E-2 pay grade after eight years of service;
5 provided that this subparagraph shall apply to
6 taxable years beginning after December 31, 2005;
- 7 (C) E-3 pay grade after eight years of service;
8 provided that this subparagraph shall apply to
9 taxable years beginning after December 31, 2006;
- 10 (D) E-4 pay grade after eight years of service;
11 provided that this subparagraph shall apply to
12 taxable years beginning after December 31, 2007;
13 and
- 14 (E) E-5 pay grade after eight years of service;
15 provided that this subparagraph shall apply to
16 taxable years beginning after December 31, 2008;
- 17 (8) Income derived from the operation of ships or aircraft
18 if the income is exempt under the Internal Revenue
19 Code pursuant to the provisions of an income tax
20 treaty or agreement entered into by and between the
21 United States and a foreign country; provided that the



1 tax laws of the local governments of that country
2 reciprocally exempt from the application of all of
3 their net income taxes, the income derived from the
4 operation of ships or aircraft that are documented or
5 registered under the laws of the United States;

6 (9) The value of legal services provided by a legal
7 service plan to a taxpayer, the taxpayer's spouse, and
8 the taxpayer's dependents;

9 (10) Amounts paid, directly or indirectly, by a legal
10 service plan to a taxpayer as payment or reimbursement
11 for the provision of legal services to the taxpayer,
12 the taxpayer's spouse, and the taxpayer's dependents;

13 (11) Contributions by an employer to a legal service plan
14 for compensation (through insurance or otherwise) to
15 the employer's employees for the costs of legal
16 services incurred by the employer's employees, their
17 spouses, and their dependents;

18 (12) Amounts received in the form of a monthly surcharge by
19 a utility acting on behalf of an affected utility
20 under section 269-16.3; provided that amounts retained



1 by the acting utility for collection or other costs
2 shall not be included in this exemption;

3 (13) Amounts received in the form of a cable surcharge by
4 an electric utility company acting on behalf of a
5 certified cable company under section 269-134;
6 provided that any amounts retained by that electric
7 utility company for collection or other costs shall
8 not be included in this exemption; [~~and~~]

9 (14) One hundred per cent of the gain realized by a fee
10 simple owner from the sale of a leased fee interest in
11 units within a condominium project, cooperative
12 project, or planned unit development to the
13 association of owners under chapter 514A or 514B, or
14 the residential cooperative corporation of the
15 leasehold units.

16 For purposes of this paragraph:

17 "Fee simple owner" shall have the same meaning as
18 provided under section 516-1; provided that it shall
19 include legal and equitable owners;



1 "Legal and equitable owner", and "leased fee
2 interest" shall have the same meanings as provided
3 under section 516-1; and

4 "Condominium project" and "cooperative project"
5 shall have the same meanings as provided under section
6 514C-1[-]; and

7 (15) Income in an amount not more than per cent of the
8 direct costs of construction and operation incurred by
9 a person under a public-private partnership with the
10 employees' retirement system to develop a construction
11 project to implement clean energy, as that term is
12 defined in section 269-121(b), or a construction
13 project to improve the State's water supply, including
14 projects defined as a water facility under section
15 167-2 or section 174-2, a wastewater treatment plant
16 under section 340B-1, or a public water system under
17 section 340E-1; provided that the income shall be
18 excluded from gross income, adjusted income, and
19 taxable income for each year of the anticipated useful
20 life of the construction project."



1 SECTION 4. Section 238-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§238-3 Application of tax, etc. (a) The tax imposed by
4 this chapter shall not apply to any property, services, or
5 contracting or to any use of the property, services, or
6 contracting that cannot legally be so taxed under the
7 Constitution or laws of the United States, but only so long as,
8 and only to the extent to which the State is without power to
9 impose the tax.

10 To the extent that any exemption, exclusion, or
11 apportionment is necessary to comply with the preceding
12 sentence, the director of taxation shall:

- 13 (1) Exempt or exclude from the tax under this chapter,
14 property, services, or contracting or the use of
15 property, services, or contracting exempted under
16 chapter 237; or
- 17 (2) Apportion the gross value of services or contracting
18 sold to customers within the State by persons engaged
19 in business both within and without the State to
20 determine the value of that portion of the services or



1 contracting that is subject to taxation under chapter
2 237 for the purposes of section 237-21.

3 (b) The tax imposed by this chapter shall not apply to any
4 use of property, services, or contracting the transfer of which
5 property, services, or contracting to, or the acquisition of
6 which by, the person so using the same, has actually been or
7 actually is taxed under chapter 237.

8 (c) The tax imposed by this chapter shall be paid only
9 once upon or in respect of the same property, services, or
10 contracting; provided that nothing in this chapter contained
11 shall be construed to exempt any property, services, or
12 contracting, or the use thereof from taxation under any other
13 law of the State.

14 (d) The tax imposed by this chapter shall be in addition
15 to any other taxes imposed by any other laws of the State,
16 except as otherwise specifically provided herein; provided that
17 if it be finally held by any court of competent jurisdiction,
18 that the tax imposed by this chapter may not legally be imposed
19 in addition to any other tax or taxes imposed by any other law
20 or laws with respect to the same property, services, or
21 contracting, or the use thereof, then this chapter shall be



1 deemed not to apply to the property, services, or contracting,
2 or the use thereof under such specific circumstances, but such
3 other laws shall be given full effect with respect to the
4 property, services, or contracting, or use.

5 (e) The tax imposed by this chapter shall not apply to any
6 use of property exempted by section 238-4.

7 (f) The tax imposed by this chapter shall not apply to any
8 use or consumption of aircraft and vessels, the transfer of
9 which aircraft or vessel to, or the acquisition of which by, the
10 person so using or consuming the same, or the rental for the use
11 of the aircraft or vessel, has actually been or actually is
12 taxed under chapter 237.

13 (g) The tax imposed by this chapter shall not apply to any
14 intoxicating liquor as defined in chapter 244D and cigarettes
15 and tobacco products as defined in chapter 245, imported into
16 the State and sold to any person or common carrier in interstate
17 commerce, whether ocean-going or air, for consumption out-of-
18 state by the person, crew, or passengers on the shipper's
19 vessels or airplanes.



1 (h) The tax imposed by this chapter shall not apply to any
2 use of vessels constructed under section 189-25 prior to July 1,
3 1969.

4 (i) Each taxpayer liable for the tax imposed by this
5 chapter on tangible personal property, services, or contracting
6 shall be entitled to full credit for the combined amount or
7 amounts of legally imposed sales or use taxes paid by the
8 taxpayer with respect to the same transaction and property,
9 services, or contracting to another state and any subdivision
10 thereof, but such credit shall not exceed the amount of the use
11 tax imposed under this chapter on account of the transaction and
12 property, services, or contracting. The director of taxation
13 may require the taxpayer to produce the necessary receipts or
14 vouchers indicating the payment of the sales or use tax to
15 another state or subdivision as a condition for the allowance of
16 the credit.

17 (j) The tax imposed by this chapter shall not apply to any
18 use of property, services, or contracting exempted by section
19 237-26 or section 237-29.



1 (k) The tax imposed by this chapter shall not apply to any
2 use of air pollution control facility exempted by section 237-
3 27.5.

4 (l) The tax imposed by this chapter shall not apply to
5 income in an amount not more than per cent of the direct
6 costs of construction and operation incurred by a person
7 described in section 238-2(2)(C) or 238-2.3(2)(C) under a
8 public-private partnership with the employees' retirement system
9 to develop a construction project that is intended to implement
10 clean energy, as that term is defined in section 269-121(b), or
11 a construction project to improve the State's water supply,
12 including projects defined as a water facility under section
13 167-2 or section 174-2, a wastewater treatment plant under
14 section 340B-1, or a public water system under section 340E-1;
15 provided that the income shall be excluded from gross income for
16 each year of the anticipated useful life of the construction
17 project."

18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act, upon its approval, shall apply to
4 taxable years beginning after December 31, 2015; provided that
5 the amendment to section 235-7(a), Hawaii Revised Statutes, made
6 under section 3 of this Act, shall not be repealed when section
7 235-7(a), Hawaii Revised Statutes, is repealed and reenacted on
8 January 1, 2018, pursuant to section 5 of Act 220, Session Laws
9 of Hawaii 2012.

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INTRODUCED BY: _____

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S.B. NO. 2502

Report Title:

Taxation; construction projects; ERS

Description:

Exempts personal income tax income, general excise tax income, and use tax income in an amount up to an unspecified percentage of the costs of construction and operation of projects entered into under a public-private partnership with the ERS to improve water infrastructure or water supply, or to promote clean energy. Authorizes ERS investments in such public-private partnerships.

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