

JAN 24 2019

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**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 general excise  
2 tax exemption for certified or approved low-income housing  
3 projects pursuant to sections 201H-36 and 237-29, Hawaii Revised  
4 Statutes, is a valuable incentive to the development and  
5 operations of affordable rental housing statewide. The Hawaii  
6 housing finance and development corporation may certify or  
7 approve eligible rental projects for exemption of the costs of  
8 development and construction of affordable rental projects that  
9 meet specific statutory requirements, including income  
10 restriction requirements, for specified terms. Affordable  
11 rental income may also be certified for exemption from general  
12 excise taxes on an annual basis, subject to review of project  
13 rent rolls to ensure that these requirements continue to be met  
14 throughout the life of the rental project.

15           The legislature further finds that the Hawaii housing  
16 finance and development corporation has established strict  
17 compliance procedures to ensure that the general excise tax  
18 exemption serves the purpose for which the exemption was enacted

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1 and can quantify the extent of the benefit resulting from the  
2 exemption.

3         The legislature finds that the counties have been  
4 certifying or approving low-income housing projects for  
5 exemption from the general excise tax under section 46-15.1,  
6 Hawaii Revised Statutes. However, because of taxpayer privacy  
7 laws, the Hawaii housing finance and development corporation  
8 does not have authority to review tax records for county-  
9 certified or county-approved low-income housing projects to  
10 ensure they are compliant with all program requirements.

11         Act 261, Session Laws of Hawaii 2016, as amended, requires  
12 the legislative auditor to periodically review certain tax  
13 exemptions, exclusions, and credits under the general excise and  
14 use taxes to promote tax equity and efficiency, adequacy of  
15 state revenues, public transparency, and confidence in fair  
16 treatment by state government. The review of the general excise  
17 tax exemption for certified or approved low-income housing  
18 projects is scheduled to take place in 2026, and every tenth  
19 year thereafter.

20         The purpose of this Act is to increase State compliance  
21 monitoring over the general excise tax exemption for certified  
22 or approved low-income housing projects under sections 201H-36

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1 and 237-29, Hawaii Revised Statutes, by discontinuing county  
2 authority to certify or approve new projects under section 46-  
3 15.1, Hawaii Revised Statutes, and making other conforming  
4 amendments to ensure that projects comply with affordability  
5 requirements.

6 SECTION 2. Section 46-15.1, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Notwithstanding any law to the contrary, any county  
9 shall have and may exercise the same powers, subject to  
10 applicable limitations, as those granted the Hawaii housing  
11 finance and development corporation pursuant to chapter 201H  
12 insofar as those powers may be reasonably construed to be  
13 exercisable by a county for the purpose of developing,  
14 constructing, and providing low- and moderate-income housing;  
15 provided that no county shall be empowered to cause the State to  
16 issue general obligation bonds to finance a project pursuant to  
17 this section; [~~provided further that county projects shall be~~  
18 ~~granted an exemption from general excise or receipts taxes in~~  
19 ~~the same manner as projects of the Hawaii housing finance and~~  
20 ~~development corporation pursuant to section 201H-36;~~] and  
21 provided further that section 201H-16 shall not apply to this  
22 section unless federal guidelines specifically provide local

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1 governments with that authorization and the authorization does  
2 not conflict with any state laws. The powers shall include the  
3 power, subject to applicable limitations, to:

- 4 (1) Develop and construct dwelling units, alone or in  
5 partnership with developers;
- 6 (2) Acquire necessary land by lease, purchase, exchange,  
7 or eminent domain;
- 8 (3) Provide assistance and aid to a public agency or other  
9 person in developing and constructing new housing and  
10 rehabilitating existing housing for elders of low- and  
11 moderate-income, other persons of low- and moderate-  
12 income, and persons displaced by any governmental  
13 action, by making long-term mortgage or interim  
14 construction loans available;
- 15 (4) Contract with any eligible bidders to provide for  
16 construction of urgently needed housing for persons of  
17 low- and moderate-income;
- 18 (5) Guarantee the top twenty-five per cent of the  
19 principal balance of real property mortgage loans,  
20 plus interest thereon, made to qualified borrowers by  
21 qualified lenders;

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1           (6) Enter into mortgage guarantee agreements with  
2           appropriate officials of any agency or instrumentality  
3           of the United States to induce those officials to  
4           commit to insure or to insure mortgages under the  
5           National Housing Act, as amended;

6           (7) Make a direct loan to any qualified buyer for the  
7           downpayment required by a private lender to be made by  
8           the borrower as a condition of obtaining a loan from  
9           the private lender in the purchase of residential  
10          property;

11          (8) Provide funds for a share, not to exceed fifty per  
12          cent, of the principal amount of a loan made to a  
13          qualified borrower by a private lender who is unable  
14          otherwise to lend the borrower sufficient funds at  
15          reasonable rates in the purchase of residential  
16          property; and

17          (9) Sell or lease completed dwelling units.

18          For purposes of this section, a limitation is applicable to  
19          the extent that it may reasonably be construed to apply to a  
20          county."

21          SECTION 3. Section 237-29, Hawaii Revised Statutes, is  
22          amended to read as follows:

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1           "§237-29 Exemptions for certified or approved housing  
2 projects. (a) All gross income received by any qualified  
3 person or firm for the planning, design, financing,  
4 construction, sale, or lease in the State of a housing project  
5 that has been certified or approved under section 201H-36 shall  
6 be exempt from general excise taxes.

7           (b) Notwithstanding any other exemption that may apply to  
8 rental income under this chapter, a rental housing project  
9 certified or approved for exemption under section 201H-36 shall  
10 be required to apply annually for an exemption of its affordable  
11 rents.

12           ~~[(b)]~~ (c) All gross income received by a nonprofit or a  
13 limited distribution mortgagor for a low- and moderate-income  
14 housing project certified or approved under section 201H-36  
15 shall be exempt from general excise taxes.

16           ~~[(e)]~~ (d) The director of taxation and the Hawaii housing  
17 finance and development corporation shall adopt rules pursuant  
18 to chapter 91 for the purpose of this section, including any  
19 time limitation for the exemptions."

20           SECTION 4. Any existing rental housing project for which a  
21 general excise tax exemption was granted by a county prior to  
22 the effective date of this Act shall not be required to reapply

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1 for an exemption unless there is a change in use or ownership of  
2 the project that results in a change in the target tenant  
3 population. The owner of the rental housing project may receive  
4 an annual exemption for affordable rents under section 237-  
5 29(b); provided that the project remains an eligible housing  
6 project.

7 SECTION 5. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 6. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on June 30, 2019;  
13 provided that the amendments made to section 46-15.1, Hawaii  
14 Revised Statutes, by section 1 of this Act shall not be repealed  
15 when that section is reenacted on July 1, 2019, pursuant to  
16 sections 3 and 4 of Act 102, Session Laws of Hawaii 2015, and  
17 section 50 of Act 55, Session Laws of Hawaii 2016.

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INTRODUCED BY:   
BY REQUEST

# S.B. NO. 1184

**Report Title:**

Taxation; Exemptions from General Excise Tax for Certified or Approved Housing Projects

**Description:**

Repeals county authority to exempt certified or approved housing projects from general excise taxes and requires all rental projects certified or approved under 201H-36, Hawaii Revised Statutes, to undergo annual rent recertifications.

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



## JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO TAXATION.

PURPOSE: To repeal county authority to grant General Excise Tax (GET) exemptions to county housing projects pursuant to section 201H-36, HRS, and to require all rental projects certified or approved under 201H-36, HRS to undergo annual rent recertifications.

MEANS: Amend sections 46-15.1(a) and 237-29, HRS.

JUSTIFICATION: Under sections 201H-36 and 239-29, HRS, Hawaii Housing Finance and Development Corporation (HHFDC) may certify or approve eligible housing projects for GET exemption on eligible construction costs, and affordable rental income. Section 46-15.1, HRS, extends this power to the counties, to the same extent as HHFDC. The Auditor is required to periodically review the GET exemption starting in 2026 pursuant to sections 23-71 and 23-79, HRS.

Giving counties the power to grant exemptions from state taxes is problematic for several reasons. First, since the county government granting the state tax exemption under this provision does not itself feel the impact of the revenue foregone, they have little or no incentive to ensure that the certification or approval for exemption is valid or in the public interest.

Because of statutory protections given to tax return information under Hawaii law, HHFDC has no way to determine the extent to which the counties have exercised their exemption authority under section 46-15.1, HRS, and whether said exemptions follow either the letter or spirit of its administrative rules for the program,

chapter 15-306, Hawaii Administrative Rules, as is required by section 46-15.1, HRS. It also makes it difficult for HHFDC to provide complete program data to the Auditor during the Auditor's periodic reviews exemption unless the county GET exemption is repealed.

HHFDC requires eligible projects with GET exemptions for affordable rents to undergo annual compliance monitoring recertifications to ensure that only affordable rental income, at the income limits specified in the project's regulatory agreement is exempted from GET. Absent language requiring annual rent recertifications, HHFDC cannot ensure compliance with affordability restrictions.

Impact on the public: Increases accountability over GET exemption program to ensure that the program serves its public purpose.

Impact on the department and other agencies: Minimal.

GENERAL FUND: Indeterminate.

OTHER FUNDS: Not applicable.

PPBS PROGRAM DESIGNATION: BED 160.

OTHER AFFECTED AGENCIES: Department of Budget and Finance, Department of Taxation, and Counties.

EFFECTIVE DATE: June 30, 2019, provided that the amendments made to section 46-15.1, HRS, by section 1 of this Act shall not be repealed when that section is reenacted on July 1, 2019, pursuant to sections 3 and 4 of Act 102, Session Laws of Hawaii 2015, and section 50 of Act 55, Session Laws of Hawaii 2016.