

DAVID Y. IGE
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ISAAC W. CHOY
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STATE OF HAWAII
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To: The Honorable Sylvia Luke, Chair;
The Honorable Kyle T. Yamashita, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: Monday, April 4, 2022
Time: 2:30 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 1121, S.D. 2, Relating to Housing

The Department of Taxation (Department) supports S.B. 1121, S.D. 2, an Administration measure and provides the following comments for your consideration.

With respect to taxation, S.B. 1121, S.D. 2, exempts from the general excise tax (GET) all gross proceeds arising from the planning, design, financing, or construction of any housing development done by the Department of Hawaiian Home Lands (DHHL). S.D. 2 has a defective effective date of July 1, 2050.

The Department notes that subsection (a) implies that any housing development done by DHHL is exempt from the general excise tax while subsection (b) limits the exemption only to newly constructed or a moderately or substantially rehabilitated project. The Department suggests that the exemption be clarified to avoid any conflict or confusion. One way to resolve this technical issue would be to replace the word "all" with "the" on line 12, page 1 of the measure.

The Department requests that the general excise tax exemption be made applicable on January 1, 2023 to allow the Department sufficient time to make the necessary form, instruction, and computer system changes.

Thank you for the opportunity to provide testimony on this measure.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 1121, S.D. 2

April 4, 2022
2:30 p.m.
Room 308 and Videoconference

RELATING TO HOUSING

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 1121, S.D. 2, adds a new section to Chapter 237, HRS, to exempt from the general excise tax, all gross proceeds arising from the planning, design, financing, or construction of any housing development by the Department of Hawaiian Home Lands (DHHL).

B&F suggests adding the following clarifying amendments to this bill. On page 1, line 16, to page 3, line 7, the new subsection (b) should be amended to read as follows:

“(b) The exemption shall be approved by the department of Hawaiian home lands and shall apply to the gross income derived by any qualified person from a newly constructed or a moderately or substantially rehabilitated ~~project~~ homestead development that is developed:

- (1) Under a government assistance program approved by the department of Hawaiian home lands;

- (2) Under the sponsorship of a nonprofit organization providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing on Hawaiian home lands;
- (3) To provide affordable rental housing on Hawaiian home lands where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development; or
- (4) By contract or project developer agreement to provide affordable housing through new construction or substantial rehabilitation of a homestead development; provided that:
 - A) The allowable general excise tax and use tax costs shall apply to contracting only and shall not exceed \$30,000,000 per year in the aggregate for all projects approved and certified by the department of Hawaiian home lands; and
 - B) At least twenty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.”

Additionally, any general excise tax exemption requires a commensurate use tax exemption in Section 238-3, HRS. Rulemaking authority for the joint promulgation of administrative rules by DHHL and the Department of Taxation to implement the exemption should also be added to this bill.

B&F also notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with this ARP restriction.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE
HEARING ON APRIL 4, 2022 AT 2:30PM VIA VIDEOCONFERENCE

SB 1121, SD2, RELATING TO HOUSING

April 4, 2022

Aloha Chair Luke, Vice Chair Yamashita, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill that exempts housing developed for DHHL from general excise taxes. This bill was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our department.

DHHL asks that the bill be amended to incorporate the attached clarifying amendments and commensurate use tax exemption in section 238-3, HRS. These changes would give the broadest flexibility for housing, which includes lots developed for DHHL. The amendments proposed by the Department of Taxation are acceptable to DHHL. However, DHHL does not support the amendments proposed by the Department of Budget and Finance since the proposed amendments would unnecessarily limit the housing developed for DHHL.

DHHL currently has four (4) large-scale development projects underway for consideration by HHFDC for GET exemptions as follows:

<u>Projects Pending GET Exemption</u>	<u>Est. Dev. Costs</u>	<u>Est. GET Savings</u>
1) HHL Rent with Option to Purchase (Laiopua) (163 Units)	\$ 5,000,000 (x 4.25%) =	\$ 212,500
2) Pu'unani Subdivision (160 Lots) (136 turnkey/24 vacant Lots)	\$ 23,350,013 (x 4.0%) =	\$ 934,000
3) Former Voice of America Site (253 Units)	\$ 50,000,000 (x 4.5%) =	\$2,250,000
4) 820 Isenberg Street (Bowl-O-Drome site) (277 Units)	\$ 137,000,000 (x 4.5%) =	<u>\$6,165,000</u>
	TOTAL:	\$9,561,500

The GET cost savings from this housing developed for DHHL could be used to develop more homestead lots. DHHL defines homestead lots as residential, agricultural and pastoral 99-year homestead leases. DHHL includes all acquisition, planning, design, post design, and construction of offsite and onsite development costs in its quantification of eligible costs for GET exemption purposes.

Other projects in the pipeline include:

<u>Projects in the Pipeline for development</u>	<u>Est. Dev. Costs</u>	<u>Est.GET Savings</u>
1) Kauluokahai IIC (130 res Lots)	\$20,000,000 (x 4.5%)	\$ 900,000
2) Keokea Waiohuli 2B (76 res lots)	\$18,000,000 (x 4.0%)	\$ 720,000
3) Pulehunui offsite infrastructure (100 ag lots)	\$50,000,000 (x 4.0%)	\$2,000,000
4) Villages of Leialii 1B (250 res lots)	\$130,000,000 (x 4.0%)	\$5,200,000
5) Honokowai Potable Water Dev (1,200 mixed homestead lots)	\$30,000,000 (x 4.0%)	\$1,200,000
6) Kahikinui Access Improvements (75 pastoral lots)	\$ 5,000,000 (x 4.0%)	\$ 200,000
7) Naiwa Agricultural Subdivision (58 agricultural lots)	\$30,000,000 (x 4.0%)	\$1,200,000
8) Hanapepe Residential Lots Phase 2 (75 lots)	\$20,000,000 (x 4.5%)	\$ 900,000
9) Villages of Laiopua 4 Hema (130 res Lots)	\$14,000,000 (x 4.25%)	<u>\$ 595,000</u>
Total potential DHHL savings from GET exemption		\$12,915,000

DHHL is aware that this bill could impact the State's share of direct federal aid from the American Rescue Plan Act of 2021 and requests that options be explored to allow for the tax exemption while shielding any reduction in federal aid. Thank you for your consideration of our testimony.

S.B. NO. 1121

A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. The legislature finds that lands utilized by
2 the department of Hawaiian home lands to provide housing for
3 native Hawaiians are offered at affordable rates when compared
4 to similar housing available in Hawaii. The purpose of this Act
5 is to exempt any housing developed [~~by~~] for the department of
6 Hawaiian home lands from general excise taxes.

7 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§237- Exemptions for any housing development for the
11 department of Hawaiian home lands. (a) There shall be exempted
12 from, and excluded from the measure of, the taxes imposed by
13 this chapter, all of the gross proceeds or income arising from
14 the planning, design, financing, or construction of any housing
15 development including on and off-site infrastructure and
16 appurtenances [~~by~~] for the department of Hawaiian home lands, as
17 provided in this section.

S.B. NO. 1121

1 (b) The exemption **eligibility** shall be approved by the
2 department of Hawaiian home lands and shall apply to the gross
3 proceeds or income derived by any qualified person or firm from
4 a newly constructed or a moderately or substantially
5 rehabilitated project that is developed:

6 (1) For the department of Hawaiian home lands;

7 (2) Under a government assistance program approved by the
8 department of Hawaiian home lands;

9 (3) Under the sponsorship of a nonprofit organization
10 providing home rehabilitation or new homes for
11 qualified families in need of decent, low-cost
12 housing; or

13 (4) To provide affordable rental housing where at least
14 fifty per cent of the available units are for
15 households with incomes at or below eighty per cent of
16 the area median family income as determined by the
17 United States Department of Housing and Urban
18 Development.

19 ~~(5) By contract or project developer agreement to provide~~
20 ~~affordable housing through new construction or~~
21 ~~substantial rehabilitation; provided that:~~

S.B. NO. 1121

1 ~~(A) The allowable general excise tax and use tax~~
2 ~~costs shall apply to contracting only and shall~~
3 ~~not exceed \$30,000,000 per year in the aggregate~~
4 ~~for all projects approved and certified by the~~
5 ~~department of Hawaiian home lands; and~~

6 ~~(B) At least twenty per cent of the available units~~
7 ~~are for households with incomes at or below~~
8 ~~eighty per cent of the area median family income~~
9 ~~as determined by the United States Department of~~
10 ~~Housing and Urban Development.~~

11 ~~(c) The exemption shall apply to housing projects that are~~
12 ~~covered by a regulatory agreement with the department of~~
13 ~~Hawaiian home lands to ensure the project's continued compliance~~
14 ~~with the applicable eligibility requirements in subsection (b),~~
15 ~~unless exempted by the department of Hawaiian home lands.]~~

16 (c) All claims for exemption under this section shall be
17 filed with and certified by the department of Hawaiian home
18 lands and forwarded to the department of taxation by the
19 claimant. Any claim for exemption that is filed and approved,
20 shall not be considered a subsidy.

21 (d) For purposes of this section:

S.B. NO. 1121

1 "Moderately rehabilitated" means rehabilitation to upgrade
2 a dwelling unit to a decent, safe, and sanitary condition, or
3 to repair or replace major building systems or components in
4 danger of failure.

5 "Substantially rehabilitated":

6 (1) Means the improvement of a property to a decent, safe,
7 and sanitary condition that requires more than routine
8 or minor repairs or improvements. It may include but
9 is not limited to the gutting and extensive
10 reconstruction of a dwelling unit, or cosmetic
11 improvements coupled with the curing of a substantial
12 accumulation of deferred maintenance; and

13 (2) Includes renovation, alteration, or remodeling to
14 convert or adapt structurally sound property to the
15 design and condition required for a specific use, such
16 as conversion of a hotel to housing for elders.

17 (e) The department of Hawaiian home lands may establish,
18 revise, charge, and collect a reasonable service fee, as
19 necessary, in connection with its approvals and certifications
20 of the exemption under this section. The fees shall be
21 deposited into the [~~department of Hawaiian home lands~~
22 administration account] **Hawaiian home operating fund.**"

S.B. NO. 1121

1 SECTION 3. Section 28-3, 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 that cannot legally be so taxed under the
6 Constitution or laws of the United States, but only so long as,
7 and only to the extent to which the State is without power to
8 impose the tax.

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

12 (1) Exempt or exclude from the tax under this chapter,
13 property, services, or contracting or the use of
14 property, services, or contracting exempted under
15 chapter 237; or

16 (2) Apportion the gross value of services or contracting
17 sold to customers within the State by persons engaged
18 in business both within and without the State to
19 determine the value of that portion of the services or
20 contracting that is subject to taxation under chapter
21 237 for the purposes of section 237-21.

S.B. NO. 1121

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

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

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

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1 other laws shall be given full effect with respect to the
2 property, services, or contracting, or use.

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

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

16 (h) The tax imposed by this chapter shall not apply to any
17 use of vessels constructed under section 189-25 prior to July 1,
18 1969.

19 (i) Each taxpayer liable for the tax imposed by this
20 chapter on property, services, or contracting shall be entitled
21 to full credit for the combined amount or amounts of legally
22 imposed sales or use taxes paid by the taxpayer with respect to

S.B. NO. 1121

1 the same transaction and property, services, or contracting to
 2 another state and any subdivision thereof, but the credit shall
 3 not exceed the amount of the use tax imposed under this chapter
 4 on account of the transaction and property, services, or
 5 contracting. The director of taxation may require the taxpayer
 6 to produce the necessary receipts or vouchers indicating the
 7 payment of the sales or use tax to another state or subdivision
 8 as a condition for the allowance of the credit.

9 (j) The tax imposed by this chapter shall not apply to any
 10 use of property, services, or contracting exempted by section
 11 237-26 or section 237-29.

12 (k) The tax imposed by this chapter shall not apply to any
 13 use of air pollution control facility exempted by section
 14 237-27.5.

15 (l) The tax imposed by this chapter shall not apply to any
 16 housing development for the department of Hawaiian home lands
 17 exempted by section 237- ."

18 SECTION 4. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

20

21 INTRODUCED BY: _____

22 BY REQUEST

S.B. NO. 1121

Report Title:

Housing; General Excise Tax Exemption

Description:

Exempts housing developed [by] for the Department of Hawaiian Home Lands from general excise taxes.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for development for DHHL

BILL NUMBER: SB 1121, SD2

INTRODUCED BY: House Committee on Judiciary & Hawaiian Affairs.

EXECUTIVE SUMMARY: Exempts housing developed by the Department of Hawaiian Home Lands from general excise taxes.

SYNOPSIS: Adds a new section to chapter 237, HRS, that exempts all gross income received by any qualified person or firm for the planning, design, financing, or construction of any housing development for the Department of Hawaiian Home Lands.

Allows DHHL to certify for exemption a newly constructed, or a moderately or substantially rehabilitated, project that is: (1) Developed under a government assistance program approved by DHHL; (2) Developed under the sponsorship of a private nonprofit organization providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing; (3) Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development; or (4) Developed by contract or project developer agreement to provide affordable housing through new construction or substantial rehabilitation; provided that: (A) The allowable general excise tax and use tax costs shall apply to contracting only and shall not exceed \$30,000,000 per year in the aggregate for all projects approved and certified by the department; and (B) At least twenty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.

Requires that a developer wishing to claim the credit enter into a regulatory agreement with DHHL to ensure the project's continued compliance with the applicable eligibility requirements, unless exempted by DHHL.

Defines "moderately rehabilitated" as rehabilitation to upgrade a dwelling unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

Defines "substantially rehabilitated" as: (1) the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements. It may include but is not limited to the gutting and extensive reconstruction of a dwelling unit, or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance; and (2) includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use, such as conversion of a hotel to housing for elders.

Allows DHHL to establish a user fee for approvals and certification.

EFFECTIVE DATE: 7/1/2050.

STAFF COMMENTS: This bill is an Administration measure sponsored by the Department of Hawaiian Home Lands and identified as HHL-06 (21). It carried over to the 2022 session.

It seems that the proposed exemption has many similarities to the affordable housing exemption now in sections 46-15.1 and 201H-36, HRS. The proposed exemption appears to be looser, however:

- The existing low-income housing exemption requires a regulatory agreement of at least five years for moderate rehabilitation projects, ten years for substantial rehabilitation projects, and thirty years for new projects. No duration is specified for the regulatory agreement here.
- DHHL can exempt any developer from the compliance agreement requirement, and there are no standards around when the exemption may be exercised. This is an invitation to arbitrariness.

If the housing development is on Hawaiian homestead land, the beneficiaries to reside in the developed homes would be receiving several benefits unique to Hawaiian homesteads, as detailed in <https://dhhl.hawaii.gov/applications/applying-for-hawaiian-home-lands/>:

- Annual lease rent of \$1.00 per year;
- 99-year lease;
- Lease term which can be extended for an additional 100 years, allowing passage of the homestead from generation to generation;
- Seven-year exemption from real property tax;
- Complete exemption of tax on land;
- Minimal real property tax after the first seven years (applies only to County of Kauai and City and County of Honolulu, Oahu);
- And other benefits.

Digested 4/1/2022

SB-1121-SD-2

Submitted on: 4/2/2022 10:04:14 PM

Testimony for FIN on 4/4/2022 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Reyn Kahaapea	Individual	Support	Written Testimony Only

Comments:

I support this bill as we as Hawaiians need housing immediately as affordability to purchase a house now days is basically impossible with rising cost of homes and cost of living.I believe that this bill will help the Hawaiians get in housing that we need and also to help the up and coming generations , kekei and Kapuna .

mahalo ke akua,

Keali'i Kahaapea

SB-1121-SD-2

Submitted on: 4/3/2022 10:11:39 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Kaylina	Individual	Support	Written Testimony Only

Comments:

With every military individual residing within Hawaii we have a family of Hawaiians having to move from home in order to afford a sustainable living. We have more and more of our own people having to move away from home because the costs of living in Hawaii is too expensive. It is wrong to have to force Hawaiians move away from their own homes because it is too expensive. And it is wrong to continue raising prices.