

ACT 279

H.B. NO. 2193-80

A Bill for an Act Relating to the Transfer of all Functions, Powers and Duties
Involving the Taxation of Real Property to the Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The legislature finds that section 3 of Article VIII of the Constitution of the State of Hawaii has been amended to provide that all functions, powers, and duties relating to the taxation of real property heretofore reserved to the

State shall be exercised exclusively by the counties with the exception of the County of Kalawao. It is the purpose of this Act to provide for the orderly transfer of these functions, powers, and duties, including the transfer of personnel, records, and equipment to the counties.

SECTION 2. Transfer of functions. Effective July 1, 1981, the functions, powers, duties, and authority heretofore exercised by the department of taxation relating to the taxation of real property shall be exercised by the respective counties, except the County of Kalawao as provided by Article VIII, Section 3, of the State Constitution.

- (1) For a period of eleven years commencing November 7, 1978, the counties shall by majority agreement of the counties, provide for uniform policies and methods of assessment for the taxation of all real property throughout the State. Such policies and methods shall include but not be limited to the assessment, levy, and collection of real property taxes. Upon agreement of the uniform policies and methods to be used for the taxation of all real property each county shall thereafter adopt by ordinance such uniform policy and method of assessment as the real property tax law of the county. In the event the counties cannot agree as to what shall be the uniform policy and method of assessment or should any or all of the counties fail to enact such ordinance the legislature shall by general law provide for a uniform method of assessment of real property taxes throughout the State. Amendments to such uniform policies and methods adopted by the counties may be made by majority agreement of the counties and subsequent enactment thereof by ordinance.
- (2) Each county shall enact by ordinance and adopt as law for the county all of the real property tax exemptions and the provisions for the dedication of lands for specific use and the assessment of such lands at its value in such use as now provided by law. These exemptions and dedications shall continue undiminished for a period of eleven years commencing November 7, 1978. The counties may by majority agreement of the counties and subsequent enactment by ordinance enlarge, add to, increase, or provide for new exemptions or dedications of lands. The enlargement, addition to, or creation of new exemptions or dedications may be amended by majority agreement of all the counties and subsequent enactment thereof by ordinance; provided any such amendment shall not in any way diminish the exemption or dedication that was in force on November 7, 1978.
- (3) Each of the counties, with the exception of the County of Kalawao, shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred by the department of taxation in the exercise of the functions, powers, duties, and authority transferred, whether such functions, powers, duties, and authority are mentioned in or granted by any law, contract, or other document. The powers included herein shall include the authority to place liens on property with delinquent taxes, provide for the issuance of subpoenas to enforce the real property tax law, and pursue the enforcement of the real property tax law through the tax appeal court or any court of competent jurisdiction. Each county shall have the power to

determine real property tax rates by resolution under procedures defined in the real property tax ordinance of the county. All references in any such law, contract, or document to the department of taxation such as dedication agreements, collection and payment agreements, or exemptions, shall apply to the respective counties, as if each of the respective counties, with the exception of the County of Kalawao, were specifically named in such law, contract, or document in place of the department of taxation.

SECTION 3. Transfer of personnel. Effective July 1, 1981, all personnel employed by the department of taxation whose functions, duties, responsibilities, and activities involve the assessment, levy, and collection of real property taxes, and those personnel whose functions, duties, and responsibilities directly relate to the taxation of real property, such as but not limited to those personnel in the tax maps branch, real property program office, data processing, administrative services, and the like, shall be transferred to the counties pursuant to a plan approved by the State and the counties. The transfer shall be effected so that affected personnel assigned to the First Taxation District shall be transferred to the City and County of Honolulu; affected employees assigned to the Second Taxation District shall be transferred to the County of Maui; affected employees assigned to the Third Taxation District shall be transferred to the County of Hawaii; and affected employees assigned to the Fourth Taxation District shall be transferred to the County of Kauai.

The transfer of personnel whose functions, duties, powers, and authority are performed on a statewide basis and not at the district level, such as but not limited to the tax maps branch, real property program office, data processing, administrative services, and the like, shall be made pursuant to a plan to be developed between the governor and the mayors of the respective counties.

All such personnel transferred shall acquire county civil service status without loss of salary, seniority, prior service credits, vacation, sick leave, or other employee benefits or privileges as a consequence of such transfer; provided that subsequent changes in status may be made pursuant to personnel laws of the respective counties.

In the event that an office or position held by any employee having tenure is affected by workload changes or is abolished, such employee shall not thereby be separated from public employment but shall remain in the employment of the State in accordance with the civil service law, the applicable bargaining unit contract, or the state personnel rules and regulations, whichever is applicable.

SECTION 4. Transfer of records, equipment, appropriations, and other property. All records, equipment, files, supplies, contracts, books, papers, documents, maps, appropriations, and other property theretofore made, used, acquired, or held by the department of taxation in the exercise of the functions to be transferred by this Act shall be transferred under the direction of the governor to the respective counties.

SECTION 5. Pending proceedings. No suit or prosecution pending at the time this Act takes effect shall be affected by this Act. The right of the director of taxation to institute proceedings for prosecution for an offense or an action to recover a penalty or forfeiture shall henceforth be vested in such person or persons as may be directed by ordinance to be adopted by each of the respective counties.

SECTION 6. Appeals. The right of appeal from administrative actions or determinations as now provided by law shall not be impaired by this Act.

Each of the counties shall by ordinance provide for appeals from assessments, denial of an exemption, or the denial of a dedication to the same extent and in accordance with the procedures prescribed in chapter 232, Hawaii Revised Statutes.

SECTION 7. Amendment of conflicting laws. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith.

SECTION 8. Construction; separability. This Act shall be liberally construed in order to accomplish the purposes set forth in section 1. Any portion of this Act judicially declared to be invalid shall not affect the remaining portions.

SECTION 9. Costs. The costs associated with the transfer of personnel, records, equipment, appropriations, and other property and all other costs involved to effectuate the purposes of this Act shall be borne by each of the several counties as the total assessed valuation for that county proportionately bears to the total assessed valuation for the entire State for the tax year 1980-81. The director of taxation shall, no later than December 31, 1981, furnish each county council with a calculation, certified by the director as being as nearly accurate as may be, of the pro rata share of the costs of the transfer to be borne by each of the several counties.

The director of finance shall withhold from payment to the several counties out of the real property taxes collected for the second installment of the 1980-81 tax year due on February 20, 1981, an amount estimated by the director to be sufficient to reimburse the State for the costs associated with the transfer. Should the amount so withheld from any county be insufficient to reimburse the State for the cost of the transfer, each such county shall first pay to the State the amount of the deficiency from the amount of real property taxes collected for the second installment of the 1981-82 tax year due on February 20, 1982. Any excess of the amounts withheld shall be paid to the respective counties.

SECTION 10. Effective date. This Act shall take effect upon its approval.

(Approved June 16, 1980.)