

JAN 28 2009

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# A BILL FOR AN ACT

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RELATING TO COMMUNITY DEVELOPMENT.

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

1       SECTION 1. The legislature finds that whatever form of  
2 mass transit that is adopted by the city and county of Honolulu,  
3 it will have an impact reaching far beyond transportation issues  
4 alone. Development of a new transportation system provides the  
5 State and the city and county of Honolulu the opportunity to  
6 maximize affordable housing facilities and add to and improve  
7 care of the elderly and related public functions as mass transit  
8 development is planned between west Oahu and the University of  
9 Hawaii at Manoa.

10       The legislature further finds that in areas with a  
11 higher-than-average senior citizen population that also lack  
12 adequate long-term care facilities, there is an opportunity to  
13 meet the objective of "aging-in-place" through creative  
14 distribution of services, such as aggregating services for  
15 condominium-building residents in close proximity to one  
16 another.



1 In areas with limited recreational spaces and facilities  
2 for young people, public, private, and non-profit partnerships  
3 can stimulate development of additional services, programs, and  
4 facilities to serve at-risk youth, families with special needs,  
5 and others, in a school, park, or church setting.

6 The purpose of this Act is to allow the State and the city  
7 and county of Honolulu to meet the need for affordable housing,  
8 care for the elderly, and services for Hawaii's disadvantaged by  
9 providing general excise tax exemptions that will encourage and  
10 enable mixed-use transit-oriented joint development projects  
11 that include health care facilities and affordable housing.

12 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15 **"§321- Exemption from general excise taxes. (a) In**  
16 **accordance with section 237-29, the department of health may**  
17 **approve and certify for exemption from general excise taxes any**  
18 **qualified person or firm involved with a newly constructed, or**  
19 **moderately or substantially rehabilitated project developed by a**  
20 **qualified person or firm to provide a community health care**  
21 **facility within a mixed-use transit-oriented joint development**  
22 **project approved by the department.**



1        (b) All claims for an exemption under this section shall  
2 be filed with and certified by the department of health and  
3 forwarded to the department of taxation. Any claim for an  
4 exemption that is filed and approved shall not be considered a  
5 subsidy for the purpose of this section.

6        (c) For the purposes of this section:

7        "Community health care facility" means a health care  
8 facility as defined in section 323D-2, which is leased or sold  
9 to a person who is controlled by:

10       (1) A person who has received recognition of tax-exempt  
11 status or who is a subordinate person of a person who  
12 has received a group exemption letter under Section  
13 501(c)(3) (with respect to exemption from tax on  
14 corporations, certain trusts, etc.) of the Internal  
15 Revenue Code;

16       (2) The State;

17       (3) Any political subdivision of the State;

18       (4) A county;

19       (5) A state agency or any instrumentality of the State; or

20       (6) A county agency or any instrumentality of a county.

21       "Mixed-use transit-oriented joint development project"

22 means a transit-oriented joint development project:



1       (1) That combines residential development with any  
2       combination of commercial and industrial development,  
3       including the development of community health care  
4       facilities;

5       (2) That is approved by the county in which the project is  
6       located; and

7       (3) To which chapter 104, or 40 United States Code  
8       sections 3141, 3142, 3143, 3144, 3146, and 3147, or a  
9       project labor agreement applies by law or contract in  
10      the construction of the project.

11      "Moderate rehabilitation" means rehabilitation to upgrade a  
12      facility to a decent, safe, and sanitary condition, or to repair  
13      or replace major building systems or components in danger of  
14      failure.

15      "Substantial rehabilitation":

16      (1) Means the improvement of a facility to a decent, safe,  
17      and sanitary condition that requires more than routine  
18      or minor repairs or improvements. It may include  
19      gutting and extensive reconstruction or cosmetic  
20      improvements coupled with the curing of a substantial  
21      accumulation of deferred maintenance; and



1        (2) Includes renovation, alteration, or remodeling to  
2        convert or adapt structurally sound property to the  
3        design and condition required for a specific use.

4        (d) The department may establish, revise, charge, and  
5        collect a reasonable service fee, as necessary, in connection  
6        with its approvals and certifications under this section. The  
7        fees shall be deposited into the state health planning and  
8        development special fund."

9        SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is  
10       amended by amending subsection (a) to read as follows:

11       "(a) Any law to the contrary notwithstanding, any county  
12       shall have and may exercise the same powers, subject to  
13       applicable limitations, as those granted to the Hawaii housing  
14       finance and development corporation pursuant to chapter 201H  
15       insofar as those powers may be reasonably construed to be  
16       exercisable by a county for the purpose of developing,  
17       constructing, and providing low- and moderate-income housing;  
18       provided that no county shall be empowered to cause the State to  
19       issue general obligation bonds to finance a project pursuant to  
20       this section; provided further that county projects shall be  
21       granted an exemption from general excise or receipts taxes in  
22       the same manner as projects of the Hawaii housing finance and



1 development corporation pursuant to section 201H-36; except that  
2 no county shall be empowered to grant an exemption from general  
3 excise taxes for a mixed-use transit-oriented joint development  
4 project as defined in sections 201H-36(c) and 321- ; and  
5 provided further that section 201H-16 shall not apply to this  
6 section unless federal guidelines specifically provide local  
7 governments with that authorization and the authorization does  
8 not conflict with any state laws. The powers shall include the  
9 power, subject to applicable limitations, to:

- 10 (1) Develop and construct dwelling units, alone or in  
11 partnership with developers;
- 12 (2) Acquire necessary land by lease, purchase, exchange,  
13 or eminent domain;
- 14 (3) Provide assistance and aid to a public agency or other  
15 person in developing and constructing new housing and  
16 rehabilitating existing housing for elders of low- and  
17 moderate-income, other persons of low- and moderate-  
18 income, and persons displaced by any governmental  
19 action, by making long-term mortgage or interim  
20 construction loans available;



- 1           (4)   Contract with any eligible bidders to provide for  
2                   construction of urgently needed housing for persons of  
3                   low- and moderate-income;
- 4           (5)   Guarantee the top twenty-five per cent of the  
5                   principal balance of real property mortgage loans,  
6                   plus interest thereon, made to qualified borrowers by  
7                   qualified lenders;
- 8           (6)   Enter into mortgage guarantee agreements with  
9                   appropriate officials of any agency or instrumentality  
10                  of the United States to induce those officials to  
11                  commit to insure or to insure mortgages under the  
12                  National Housing Act, as amended;
- 13          (7)   Make a direct loan to any qualified buyer for the  
14                  downpayment required by a private lender to be made by  
15                  the borrower as a condition of obtaining a loan from  
16                  the private lender in the purchase of residential  
17                  property;
- 18          (8)   Provide funds for a share, not to exceed fifty per  
19                  cent, of the principal amount of a loan made to a  
20                  qualified borrower by a private lender who is unable  
21                  otherwise to lend the borrower sufficient funds at



1 reasonable rates in the purchase of residential  
2 property; and

3 (9) Sell or lease completed dwelling units.

4 For purposes of this section, a limitation is applicable to  
5 the extent that it may reasonably be construed to apply to a  
6 county."

7 SECTION 4. Section 201H-36, Hawaii Revised Statutes, is  
8 amended by amending subsections (a), (b), and (c) to read as  
9 follows:

10 "(a) In accordance with section 237-29, the corporation  
11 may approve and certify for exemption from general excise taxes  
12 any qualified person or firm involved with a newly constructed,  
13 or moderately or substantially rehabilitated project:

14 (1) Developed under this part;

15 (2) Developed under a government assistance program  
16 approved by the corporation, including ~~but not~~  
17 ~~limited to~~ the United States Department of  
18 Agriculture 502 program and Federal Housing  
19 Administration 235 program;

20 (3) Developed under the sponsorship of a private nonprofit  
21 organization providing home rehabilitation or new





1 homes for qualified families in need of decent, low-  
2 cost housing; [~~or~~]

3 (4) Developed by a qualified person or firm to provide  
4 affordable rental housing where at least fifty per  
5 cent of the available units are for households with  
6 incomes at or below eighty per cent of the area median  
7 family income as determined by the United States  
8 Department of Housing and Urban Development, of which  
9 at least twenty per cent of the available units are  
10 for households with incomes at or below sixty per cent  
11 of the area median family income as determined by the  
12 United States Department of Housing and Urban  
13 Development[~~or~~]; or

14 (5) Developed by a qualified person or firm to provide  
15 affordable rental housing units within a mixed-use  
16 transit-oriented joint development project approved by  
17 the corporation.

18 (b) All claims for exemption under this section shall be  
19 filed with and certified by the corporation and forwarded to the  
20 department of taxation. Any claim for exemption that is filed  
21 and approved[~~or~~] shall not be considered a subsidy for the  
22 purpose of this part.



(c) For the purposes of this section:

"Mixed-use transit-oriented joint development project"

means a transit-oriented joint development project:

(1) That combines residential development with any combination of commercial and industrial development, including the development of community health care facilities;

(2) That is approved by the county in which the project is located; and

(3) To which chapter 104, or 40 United States Code sections 3141, 3142, 3143, 3144, 3146, and 3147, or a project labor agreement applies by law or contract in the construction of the project.

"Moderate rehabilitation" means 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.

"Substantial rehabilitation":

(1) Means 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."

SECTION 5. Section 237-8.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) No county surcharge on state tax shall be established on any:

- (1) Gross income or gross proceeds taxable under this chapter at the one-half per cent tax rate;
- (2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; or
- (3) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter~~[-]~~; provided that the surcharge on state tax shall be assessed, levied, and collected on transactions, amounts, persons, gross income, or gross proceeds exempted under section 237-29 pursuant to sections 201H-36(a)(5) and 321- ."



1       SECTION 6.   Section 237-29, Hawaii Revised Statutes, is  
2   amended by amending the title and subsection (a) to read as  
3   follows:

4       "§237-29   Exemptions for certified or approved housing or  
5   community health care facility projects.   (a)   All gross income  
6   received by any qualified person or firm for the planning,  
7   design, financing, construction, sale, or lease in the [State]  
8   state of a housing or community health care facility project  
9   that has been certified or approved under [~~section~~] sections  
10   201H-36 and 321-   shall be exempt from general excise taxes."

11       SECTION 7.   Section 238-2.6, Hawaii Revised Statutes, is  
12   amended by amending subsection (c) to read as follows:

13       "(c)   No county surcharge on state tax shall be established  
14   upon any use taxable under this chapter at the one-half per cent  
15   tax rate or upon any use that is not subject to taxation or that  
16   is exempt from taxation under this chapter[~~-~~]; provided that the  
17   surcharge on state tax shall be levied on the use of property,  
18   services, or contracting that is not subject to taxation under  
19   section 238-3(j) as a result of an exemption under section  
20   237-29 pursuant to sections 201H-36(a) (5) and 321-   ."

21       SECTION 8.   Section 323D-12.6, Hawaii Revised Statutes, is  
22   amended by amending subsection (a) to read as follows:



1        "(a) There is established within the state treasury, to be  
2 administered by the state health planning and development  
3 agency, the state health planning and development special fund  
4 into which shall be deposited all moneys collected under chapter  
5 323D[-] and section 321- ."

6        SECTION 9. It is the intent of the legislature that the  
7 department of taxation and the Hawaii housing finance and  
8 development corporation, in adopting rules pursuant to section  
9 237-29(c), Hawaii Revised Statutes, for the purposes of this  
10 Act, shall carry out the following:

11        (1) The director of taxation and the Hawaii housing  
12 finance and development corporation shall adopt rules  
13 for general excise tax exemptions for mixed-use  
14 transit-oriented joint development projects separate  
15 from the existing rules for eligible housing projects  
16 under section 237-29(c), Hawaii Revised Statutes;

17        (2) The cost savings from any exemptions granted to a  
18 mixed-use transit-oriented joint development project  
19 pursuant to sections 201H-36(a)(5) and 321- , Hawaii  
20 Revised Statutes, shall be used exclusively to provide  
21 affordable rental housing units and community health  
22 care facilities within the project;



(3) The affordable rental housing units and community

health care facilities provided under this Act shall

serve as many lower income households as possible;

(4) Each interested county shall designate a department or

agency as a point of contact for the purposes of this

Act;

(5) The director of taxation and the Hawaii housing

finance and development corporation shall oversee

certifications of community health care facilities by

the director of health to the extent they deem

necessary; and

(6) The director of taxation and the Hawaii housing

finance and development corporation shall consult with

the director of health and representatives of any

interested county in an effort to streamline the

approval process for mixed-use transit-oriented joint

development projects and maximize the coordination

among federal, state, and county governments with

respect to the projects.

SECTION 10. An exemption granted to a mixed-use transit-

oriented joint development project pursuant to sections

201H-36(a)(5) and 321- , Hawaii Revised Statutes, shall not



1 impair or diminish any exemption granted to the project under  
2 any other provision of sections 237-29 and 201H-36, Hawaii  
3 Revised Statutes, or used by the project under section 201H-9(b)  
4 or 356D-8(b), Hawaii Revised Statutes. No county surcharge on  
5 state tax shall be established on any transactions, amounts,  
6 persons, gross income, or gross proceeds exempted under any  
7 other provision of sections 237-29, 201H-36, 201H-9(b), or  
8 356D-8(b), Hawaii Revised Statutes; and no county surcharge on  
9 state tax shall be levied on the use of property, services, or  
10 contracting that is not subject to taxation under section  
11 238-3(j), Hawaii Revised Statutes, as a result of any other  
12 exemption under section 237-29, 201H-36, 201H-9(b), or  
13 356D-8(b), Hawaii Revised Statutes.

14 SECTION 11. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 12. This Act shall take effect on July 1, 2009;  
17 provided that in order to provide the director of taxation and  
18 the Hawaii housing finance and development corporation with time  
19 to adopt separate rules for general excise tax exemptions for  
20 mixed-use transit-oriented joint development projects under  
21



1 section 237-29(c), Hawaii Revised Statutes, this Act shall apply  
2 to taxable years beginning after December 31, 2009.

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**Report Title:**

Mixed-Use Transit-Oriented Joint Development Project; GET  
Exemption

**Description:**

Specifies that a county shall not grant an exemption from the general excise tax (GET) or receipt taxes for a mixed-use transit-oriented joint development project. Exempts from GET a project developed to provide affordable rental housing or a community health care facility within a mixed-use transit-oriented joint development project.

