

Honolulu, Hawaii

MAR 19 2010

RE: H.B. No. 2595  
H.D. 1  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred H.B. No. 2595, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX,"

begs leave to report as follows:

The purpose of this measure is to strengthen the general excise tax by:

- (1) Precluding a taxpayer from using a general excise tax benefit, including exemptions, deductions, lower rates, or income splitting, unless the taxpayer follows all administrative requirements;
- (2) Creating trust fund liability for revenues collected by a business as a tax recovery, whether such amount is separately stated or not; and
- (3) Making a person who is an officer, member, manager, or other person having control, supervision, responsibility, or a duty to act for the taxpayer regarding general excise tax return filing or payment, personally liable for the unpaid amount of such taxes, plus interest and penalties.

Testimony in support of the measure, with suggested amendments, was submitted by the Department of Taxation. Testimony in opposition to the measure was submitted by three



private organizations and four individuals. Comments with suggested amendments were submitted by the Hawaii Association of Realtors. Comments were also submitted by three other private organizations. Written testimony presented to your Committee may be reviewed on the Legislature's website.

Your Committee finds that there are many general excise tax benefits, including exemptions, reduced rates, and income splitting. A majority of these benefits allow businesses that are otherwise very profitable to avoid paying general excise tax altogether. Because these businesses do not pay this tax, they often do not register to do business in Hawaii or file tax returns. This makes it difficult for the Department of Taxation to gather information regarding which businesses are claiming these tax benefits and to ensure that businesses are properly allowed such benefits. Additionally, by imposing a constructive trust for businesses that collect an additional amount from consumers to cover these general excise taxes and then never file returns or pay these taxes to the State, this measure is intended to protect consumers from prices that are increased on the pretext that the additional amount will be remitted to the State.

Your Committee notes that the Department of Taxation suggested amendments to the measure to limit the impact of the measure on unintended taxpayers, including small nonprofit organizations, wage earners, and others that are not exposed to the general excise tax as a regular matter. Additionally, the Hawaii Association of Realtors suggested amendments to address existing general excise and use tax exemptions for certified or approved housing projects in order to assure that these tax exemptions are effectively accounted for and enforced.

Your Committee has amended this measure by:

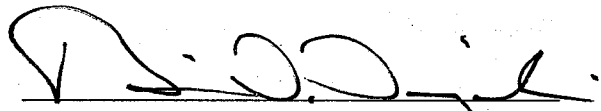
- (1) Revising the provision that would preclude a taxpayer from using a general excise tax benefit unless the taxpayer follows all administrative requirements to exempts certain unintended taxpayers from the provision, as suggested by the Department of Taxation;
- (2) Amending section 46-15.1, Hawaii Revised Statutes, relating to county housing projects, to be consistent with sections 237-29 and 238-3(j), Hawaii Revised Statutes, relating to exemptions for housing projects, as suggested by the Hawaii Association of Realtors;



- (3) Amending section 237-29, Hawaii Revised Statutes, to require the Department of Taxation to conduct periodic reviews of all housing projects for which a claimant has received a general excise tax exemption, as suggested by the Hawaii Association of Realtors;
- (4) Inserting an effective date of September 14, 2047 to ensure further discussion of this measure; and
- (5) Making technical, nonsubstantive amendments for purposes of style.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2595, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2595, H.D. 1, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Government Operations,

  
BRIAN T. TANIGUCHI, Chair

The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Judiciary and Government Operations**  
**JGO**

|   |  |                         |     |         |
|---|--|-------------------------|-----|---------|
| Bill / Resolution No.:*<br><b>HB 2595, HD1</b>  | Committee Referral:<br><b>JGO, WAM</b> | Date:<br><b>3/12/10</b> |     |         |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____   |  |                         |     |         |
| The Recommendation is:<br><div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended<br/>2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments<br/>2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold<br/>2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit<br/>2313</div> </div> |  |                         |     |         |
| Members   | Aye                                    | Aye (WR)                | Nay | Excused |
| TANIGUCHI, Brian T. (C)   | ✓                                      |                         |     |         |
| TAKAMINE, Dwight Y. (VC)  | ✓                                      |                         |     |         |
| BUNDA, Robert   |  | ✓                       |     |         |
| GABBARD, Mike   |  |                         |     | ✓       |
| NISHIHARA, Clarence K.  |  | ✓                       |     |         |
| SLOM, Sam   |  |                         | ✓   |         |
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| TOTAL   | 2                                      | 2                       | 1   | 1       |
| Recommendation: <input checked="" type="checkbox"/> Adopted <span style="margin-left: 100px;"><input type="checkbox"/> Not Adopted</span>   |  |                         |     |         |
| Chair's or Designee's Signature:<br>  |  |                         |     |         |
| <b>Distribution:</b> <div style="display: flex; justify-content: space-between; font-size: small;"> <div>Original<br/>File with Committee Report</div> <div>Yellow<br/>Clerk's Office</div> <div>Pink<br/>Drafting Agency</div> <div>Goldenrod<br/>Committee File Copy</div> </div>   |  |                         |     |         |

**\*Only one measure per Record of Votes**