DAVID Y. IGE
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JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: February 16, 2021
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 1121 S.D. 1, Relating to Housing

The Department of Taxation (Department) supports S.B. 1121, S.D. 1, an Administration measure, and provides the following comments for your consideration.

With respect to taxation, S.B. 1121, S.D. 1, 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). The measure is effective upon approval.

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.

Finally, the Department requests that the general excise tax exemption be made applicable no earlier than January 1, 2021 to allow the Department sufficient time to make the necessary form, instruction, and computer system changes.

Thank you for the opportunity to provide 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 SENATE COMMITTEE ON WAYS AND MEANS
DECISION MAKING ON FEBRUARY 16, 2021 AT 10:00AM VIA VIDEOCONFERENCE

SB 1121, SD1, RELATING TO HOUSING

February 16, 2021

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill that exempts any housing development for DHL 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 currently has four (4) large-scale development projects underway for consideration by HHFDC for GET exemptions as follows:

Projects Pending GET Exemption	Est. Dev. Costs	Est. GET Savings
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) 822 Isenberg Street (Bowl-O-Drome site) (270 Units)	$ 137,000,000 (x 4.5) =	$6,165,000
	TOTAL:	$9,561,500

The cost savings for these development projects could be used to develop more lots.

Thank you for your consideration of our testimony.

OFFICE OF HAWAIIAN AFFAIRS

ʻŌlelo Hōʻike ʻAha Kau Kānāwai

SB1121 SD1

RELATING TO HOUSING

Ke Kōmike ʻAha Kenekoa o ke Kiʻina Hana a me nā Kumuwaiwai

Pepeluali 16, 2021 10:00 a.m. Lumi 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1121 SD1, which would exempt housing projects developed by the Department of Hawaiian Home Lands (DHHL) from general excise taxes. This measure would ensure that state funds set aside to DHHL can be more fully applied to the development of housing necessary to address its waitlist backlog, rather than be recaptured by general excise tax exactions.

Although it is the only department that the state is constitutionally mandated to sufficently fund,[1] DHHL has historically struggled to obtain enough funds from the state to cover its administrative and operating costs.[2] As such, DHHL has historically been forced to rely on revenue generated from its trust lands or from other sources to cover its operations, which has directly inhibited its ability to develop provide homesteading opportunities for its beneficiaries. **OHA itself has made a $3,000,000 per year, 30-year commitment to assist DHHL with paying down its debt service, accrued in the development of infrastructure necessary to provide homesteading opportunities for its beneficiaries.** While DHHL's funding has increased in recent years, its lengthy waitlist continues to warrant creative approaches and additional conversations about how the State can more fully and sufficiently support the department and its mission.

SB1121 SD1 is a creative proposal that would provide DHHL with much needed savings that can help to address the considerable waitlist backlog that continues to exist, due in part to years of insuffient funding. **Notably, the GET savings that accrue from this measure would be applied to the development of additional housing and associated infrastructure, allowing DHHL to more fully commit the funding it receives towards fulfilling its mission.**

Accordingly, OHA urges the Committee to **PASS** SB1121 SD1. Mahalo nui for the opportunity to testify.

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[1] HAW. CONST. ART. XII SEC. 1.

[2] *See, e.g., Nelson v. Hawaiian Homes Comm'n*, 127 Hawaiʻi 185, 277 P.3d 279 (2012).

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for development for DHHL

BILL NUMBER: SB 1121, SD-1

INTRODUCED BY: Senate Committee on 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: Upon approval.

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

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.

We suggest the same or stricter, not looser, standards to qualify for an exemption that is layered on top of these existing benefits.

Digested 2/11/2021

LATE

SB-1121-SD-1
Submitted on: 2/15/2021 1:12:16 PM
Testimony for WAM on 2/16/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Juanita Mahienaena Brown Kawamoto, Luna Ho'omalu, Hawaiian Affairs Caucus of DPH	Testifying for Hawaiian Affairs Caucus of Democratic Party of Hawai'i	Support	No

Comments:

We support this bill.