

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 567, H.D.2, Relating to the Department of Hawaiian Home Lands

BEFORE THE:

House Committee on Finance

DATE: Wednesday, March 1, 2023

TIME: 2:30 p.m.

LOCATION: State Capitol, Room 308

Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 567, H.D. 2, for your consideration.

H.B. 567, H.D. 2, creates a new section in chapter 237, Hawaii Revised Statutes, exempting from general excise tax (GET), all gross income received by any "qualified person or firm," for the planning, design, financing, or construction of certain housing developments where new units are created, for the Department of Hawaiian Home Lands (DHHL). The bill requires all claims for exemption to be filed with and certified by DHHL and forwarded to the Department.

The bill has a defective effective date of July 1, 3000.

The Department defers to DHHL regarding its ability to certify the exemption pursuant to the requirements set forth in the bill, but requests that a third-party certification requirement be maintained, as the Department lacks the subject matter expertise to determine eligibility for the exemption.

The Department also notes that if the defective effective date of the bill is amended, the Department would need time to make the necessary system and form changes, and therefore respectfully requests that the effective date be made no earlier than January 1, 2024.

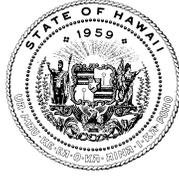
Finally, assuming the measure takes effect on July 1, 2023, the Department estimates a revenue loss to the general fund as follows (\$ millions):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
-6.6	-7.2	-7.2	-7.2	-7.2	-7.2

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

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



IKAIKA ANDERSON
CHAIRMAN DESIGNATE, HHC
Ka Luna Ho'okele

KATIE L. DUCATT
DEPUTY DESIGNATE TO THE
CHAIRMAN
Ka Hope Luna Ho'okele

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

Ka 'Oihana 'Āina Ho'opulapula Hawai'i

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF IKAIKA ANDERSON, CHAIRMAN-DESIGNATE
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE
HEARING ON MARCH 1, 2023 AT 2:30PM IN CR 308**

HB 567, HD2, RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS

March 1, 2023

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

The Department of Hawaiian Home Lands (DHHL) strongly supports this measure that 1) exempts certain projects for DHHL from general excise taxes, 2) makes permanent the exemption of certain housing developed by DHHL from school impact fee requirements, 3) ensures that the \$600 million appropriated to DHHL in Act 279, SLH 2022, is available for expenditure until June 30, 2025; and 4) makes permanent the issuance of county affordable housing credits to DHHL. Similar measures were approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our department.

DHHL supports Part I of the bill which exempts certain projects for DHHL from general excise taxes and requests the language in the bill on page 1, line 11 through page 2, line 2 be replaced with the following language:

"§237- Exemptions for any development of homestead lots or housing for the department of Hawaiian home lands. (a) Any amounts related to the planning, design, financing, or construction activities conducted by a qualified person or firm for the new construction, moderate rehabilitation, or substantial rehabilitation of homestead lots or housing for the department of Hawaiian home lands shall be exempt from the tax imposed by this chapter. The project may also be developed:

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
---------------------------------------	------------------------	-------------------------

HHL Rent with Option to Purchase (La'i'opua) (163 Units)	\$ 5,000,000 (x 4.25%)	\$212,500
Pu'unani Subdivision (160 Lots) (136 turnkey/24 vacant Lots)	\$23,250,013 (x 4.0%)	\$934,000
Former Voice of America Site (253 Units)	\$ 50,000,000 (x 4.5%)	\$2,250,000
820 Isenberg Street (Bowl-O-Drome site) (277 Units)	\$137,000,000 (x4.5%)	\$6,165,000
		TOTAL: \$9,561,500

The GET cost savings from these development projects 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 homestead projects in the pipeline include:

Projects in the Pipeline for Development	Est. Dev. Costs	Est. GET Savings
Ka'uluokaha'i IIC (130 residential lots)	\$20,000,000 (x 4.5%)	\$900,000
Keokea Waiohuli 2B (76 residential lots)	\$18,000,000 (x 4.0%)	\$720,000
Pulehunui offsite infrastructure (100 agricultural lots)	\$50,000,000 (x 4.0%)	\$2,000,000
Villages of Leialii 1B (250 residential lots)	\$130,000,000 (x 4.0%)	\$5,200,000
Honokowai Potable Water Development (1,200 mixed homestead lots)	\$30,000,000 (x 4.0%)	\$1,200,000
Kahikinui Access Improvements (75 pastoral lots)	\$ 5,000,000 (x 4.0%)	\$200,000
Nā'iwa Agricultural Subdivision (58 agricultural lots)	\$30,000,000 (x 4.0%)	\$1,200,000
Hanapēpē Residential Lots Phase 2 (75 lots)	\$20,000,000 (x 4.5%)	\$900,000
Villages of La'i'opua 4 Hema (130 residential lots)	\$14,000,000 (x4.25%)	\$595,000
Total potential DHHL savings from GET exemptions:		\$12,915,000

DHHL supports Part II of the bill which makes permanent Act 197, Session Laws of Hawaii 2021, which excludes certain housing developed by DHHL from school impact fees. DHHL currently leases educational facilities for public schools, public charter schools, early learning facilities, and other similar facilities at minimal to no cost as reflected in the table below. The exemption of housing developed by the DHHL from school impact fees allows for more homes to be developed for beneficiaries.

Type	Island	Location	Use	Name	Term	Dates	Acre	Annual Lease Rent
GL	Hawaii	Waimea	Education	Kamehameha Schools	65 yrs	12/28/2000 – 6/30/2065	2	\$0.00
GL	Maui	Paukukalo	Education	Kamehameha Schools	63.5 yrs	1/1/2002 – 6/30/2065	2	\$0.00
GL	Oahu	Waimanalo	Education	Kamehameha Schools	65 yrs	1/7/2000 – 12/31/2064	1.683	\$0.00
GL	Oahu	Maili	Education	Kamehameha Schools	65 yrs	7/1/2014 – 6/30/2079	40.00	\$73,720
GL	Oahu	Nanakuli	Education	Kamehameha Schools	65 yrs	12/1/2018 – 11/30/2083	2.651	\$41,600
LI	Hawaii	Waimea	Education	Aha Punana Leo	20 yrs	6/1/2001 – 5/31/2021	0.42	\$10,800
LI	Hawaii	Puu Pulehu	Education	Kanu O Ka Aina	10 yrs	12/1/2001 – 11/30/2011	4.62	\$600.00
LI	Hawaii	Keaukaha	Education	Kamehameha Schools	5 yrs + 5	7/1/2011 – 6/30/2021	0.16	\$30,000
LI	Hawaii	Keaukaha	Education	Ke Ana La'ahana PCS	5 yrs	4/1/2018 – 3/31/2023	0.024	\$1,200
LI	Kauai	Anahola	Education	Kanuikapono Charter Sch	30 yrs	4/23/2002 – 4/22/2037	3.0	\$1,560
LI	Kauai	Anahola	Education	Anahola Ancient Culture Exch	25 yrs	2/1/2003 – 1/31/2028	9.222	\$500
LI	Molokai	Kamiloloa	Education	Ka Honua Momona Intl	35 yrs	6/30/2010 – 6/29/2045	56.99	\$0.00
LI	Molokai	Hoolehua	Education	Aha Punana Leo	10 yrs	3/1/2012 – 2/28/2022	0.071	\$10,560
LI	Oahu	Nanakuli	Education	Kamehameha Schools	65 yrs	5/25/1995 – 5/24/2060	1.217	\$0.00
LI	Oahu	Kalaeloa	Education	State of Hawaii DOE	5 yrs	4/1/2004 – 3/31/2009	1.00	\$600
LI	Oahu	Nanakuli	Education	Ka Waihona O Ka Naauao	35 yrs	9/1/2004 – 8/31/2039	0.342	\$0.00
LI	Oahu	Nanakuli	Education	Kamehameha Schools	35 yrs	10/1/2004 – 9/30/2039	0.586	\$27,552
LI	Oahu	Haiku Valley	Education	Kai Loa, Inc.	52 yrs	6/1/2009 – 8/31/2060	20.00	\$0.00
LI	Oahu	Nanakuli	Education	Aha Punana Leo	5 yrs	9/1/2014 – 8/31/2019	0.05	\$4,200
LI	Oahu	Nanakuli	Education	HCAP	5 yrs	9/1/2014 – 8/31/2019		\$3,960

DHHL supports Part III of the bill, which ensures that the \$600 million appropriated to DHHL in Act 279, Session Laws of Hawaii 2022, is available for expenditure until June 30, 2025. The Legislature intended that funds appropriated in Act

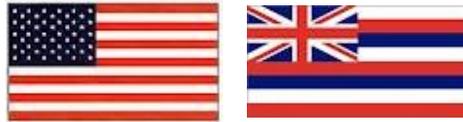
279, Session Laws of Hawaii 2022, be available for expenditure until June 30, 2025. DHHL wishes to confirm this legislative intent which will allow DHHL to expend funds by June 30, 2025, as intended by the Legislature, instead of the year prior or June 30, 2024.

DHHL supports Part IV of the bill, which makes permanent Act 141, Session Laws of Hawaii 2009, requiring the counties issue affordable housing credits to DHHL upon the department's request and makes permanent Act 98, Session Laws of Hawaii 2012, which requires the counties to issue affordable housing credits for each residential unit developed by DHHL. Since Act 141 was enacted in 2009, DHHL has worked with each county to request and acquire affordable housing credits for completed units in homestead communities. This program has resulted in successful private-public partnerships through the exchange of credits creating resources for DHHL to further develop homestead lots. Making permanent the affordable housing credit program on Hawaiian home lands will allow DHHL to continue to provide incentive to private sector developers to build affordable homes on Hawaiian home lands. This will also help to ensure that DHHL will have resources for programs for native Hawaiian lessees and applicants, including the development of homestead lots, loans, and other rehabilitation programs.

Thank you for your consideration of our testimony.

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Kenneth R. Conklin, Ph.D. Executive Director
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Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON FINANCE

For hearing Wednesday, March 1, 2023

Re: HB 567, HD2 (HSCR392)

RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.

Exempts certain projects for the department of Hawaiian home lands from general excise taxes. Makes permanent the exemption of certain housing developed by the department of Hawaiian home lands from school impact fee requirements. Ensures that the \$600,000,000 appropriated to the department of Hawaiian home lands in Act 279, Session Laws of Hawaii 2022, is available for expenditure until June 30, 2025. Makes permanent the issuance of county affordable housing credits to the department of Hawaiian home lands. Effective 7/1/3000. (HD2)

TESTIMONY IN OPPOSITION

Wouldn't it be a wonderful idea to exempt all housing development from general excise tax? That would provide a real incentive to help solve the housing shortage blamed for homelessness and high prices. But this bill singles out one racial group to enjoy such an exemption, while everyone else must pay the tax. That is an example of what is known as "systemic racism" -- setting up an entire system in a way that benefits or harms people because of their race. Whatever happened to diversity, equity, and inclusiveness?

What about exempting DHHL development from school impact fees? Do ethnic Hawaiians not make babies and have children? If DHHL builds its own schools to educate children who live in their own ghettos, then of course they should not have to pay school impact fees to the general public schools that serve non-ethnic-Hawaiians. Read my book "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State."

<http://tinyurl.com/2a9fqa>

The attitude projected in this sort of legislation exemplifies what I wrote about.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/01/2023
Time: 02:30 PM
Location: 308 VIA VIDEOCONFERENCE
Committee: House Finance

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 0567, HD2 RELATING TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.

Purpose of Bill: Exempts certain projects for the department of Hawaiian home lands from general excise taxes. Makes permanent the exemption of certain housing developed by the department of Hawaiian home lands from school impact fee requirements. Ensures that the \$600,000,000 appropriated to the department of Hawaiian home lands in Act 279, Session Laws of Hawaii 2022, is available for expenditure until June 30, 2025. Makes permanent the issuance of county affordable housing credits to the department of Hawaiian home lands. Effective 7/1/3000. (HD2)

Department's Position:

The Hawaii State Department of Education (Department) supports the intent of HB 567, HD2, with comments.

Hawaii's school impact fee law plays a vital role in the development of new school facilities in designated areas where the construction of new housing directly increases student enrollment. Other than direct appropriations from the legislature, school impact fees are the only other source of funding to support the development of new school facilities for the Department.

Section 302A-1603 (a)(3), Hawaii Revised Statutes, specifies that anyone who develops new residences in a school impact fee district must pay impact fees "including all government housing projects." Act 197, Session Laws of Hawaii 2021 provided an exemption until June 30, 2024, for any form of housing developed by the Department of

Hawaiian Home Lands for use by beneficiaries of the Hawaiian Homes Commission Act of 1920.

Although the Department recognizes the importance and need of housing developed by the Department of Hawaiian Home Lands for use by beneficiaries, making this exemption permanent would limit funding resources intended to address the impacts on school facilities generated by these new developments.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, MISCELLANEOUS, GET Exemption and School Impact Fee Exemption for DHHL Housing

BILL NUMBER: HB 567 HD 2

INTRODUCED BY: House Committee on Judiciary & Hawaiian Affairs

EXECUTIVE SUMMARY: Exempts housing development for the Department of Hawaiian Home Lands from general excise tax and school impact fee requirements. Extends the issuance of county affordable housing credits to the Department of Hawaiian Home Lands.

SYNOPSIS:

Part I: GET Exemption for Affordable Housing

Adds a new section to chapter 237, HRS, providing an exemption from the general excise tax all gross income received by any qualified person or firm for the planning, design, financing, or construction of a new construction, moderate rehabilitation, or substantial rehabilitation project for the department of Hawaiian home lands (DHHL).

Allows DHHL to approve and certify for exemption a qualified person or firm involved with a newly constructed, or a moderately or substantially rehabilitated, project that is (1) for DHHL; (2) developed under a government assistance program approved by DHHL; (3) developed under the sponsorship of a private nonprofit organization providing home rehabilitation or new homes for beneficiaries in need of decent, low-cost housing; or (4) developed 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.

The exemption operates similarly to the affordable housing exemption in section 237-29, HRS, with the certification process done here by DHHL rather than HHFDC or county housing agencies.

Allows DHHL to collect a reasonable service fee, the proceeds of which are to be deposited in the Hawaiian home operating fund described in section 213(e) of the Hawaiian Homes Commission Act of 1920.

Amends section 238-3(j), HRS, to exempt from the Use Tax any use of property, services, or contracting exempted by the above GET exemption.

Part II: DOE Impact Fee Exemption

Amends section 302A-1603, HRS, to add an exemption from the department of education's impact fee for any housing development for DHHL where new units are created, which development was certified under part I of the bill.

Amends section 6 of Act 197, SLH 2021, to make the above exemption permanent (it presently has a repeal date of July 1, 2024).

Part III: Extension of Deadline on \$600M 2022 Appropriation

Amends section 6 of Act 279, SLH 2022, to provide that any moneys out of the \$600 million not encumbered for specific purposes lapse to the general fund on June 30, 2025.

Part IV: Extension of County Affordable Housing Credits

Deletes the sunset date of Act 141, SLH 2009, as amended, and Act 98, SLH 2012, as amended. Limits the requirement to development where new housing units are created.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS:

Part I: GET Exemption for Affordable Housing

Section 237-29(a), HRS, states that all gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project that has been certified or approved under section 201H-36 shall be exempt from general excise taxes.

Section 201H-36, HRS, states that the Hawaii housing finance and development corporation ("HHFDC") may approve and certify for exemption from general excise taxes any qualified person or firm involved with an affordable housing project.

Section 46-16.7, HRS, states that any county shall have the same powers as those granted the HHFDC pursuant to chapter 201H, HRS, provided, among other things, that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the HHFDC pursuant to section 201H-36.

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 regulatory agreement is required by this bill.

Because 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://dhhhl.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.

These benefits should be taken into consideration to determine whether affordable housing development on Hawaiian home lands merits extension of the GET exemption to development on those lands as well. It is certainly arguable that the extension is warranted given that Hawaiian beneficiaries often have been waiting years or decades on the wait list for Hawaiian home lands.

Part II: DOE Impact Fee Exemption

STAFF COMMENTS: The Hawaii Revised Statutes contains twelve sections relating to “school impact fees,” starting with section 302A-1601. The law states, in part, “New residential developments within identified school impact districts create additional demand for public school facilities. As such, once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities.”

Builders of large projects within school impact districts are required to provide land for school facilities depending on the numbers of students expected in their projects and the amount of available classroom space in existing area schools. Smaller developers and individual home owner-builders are required to pay a fee instead of land, when their project is too small to entertain a school site. All home builders or buyers must pay a construction cost fee.

Once an impact fee district is established, the DOE is authorized to collect 10% of estimated school construction costs and 100% of estimated land acquisition costs from each residential development planned within the district.

The Board of Education (BOE) used this authority to establish impact fee districts in Central Maui and West Maui in 2010, and in Leeward Oahu in 2012. It approved another district in West Hawaii in 2009, but apparently the Big Island county government didn’t want to cooperate and that district remains an open issue.

The theory behind this law is that high growth will mean more children, and more schools are required to educate them. The formulas in sections 302A-1606 and -1607 for calculating the fee come up with a land value and dollar value for each new single-family unit and each multi-family unit. It makes sense to exempt construction where no new unit is being created, for it would be rational to presume that no additional living unit means that there would not be additional children to educate. By the same token, exempting additional living units even though they can house families and children does not seem to be in line with the philosophy of the tax and will, at a minimum, cause others to pay for the schools needed for the additional children in those units.

Part III: Extension of Deadline on \$600M 2022 Appropriation

Act 279, SLH 2022, provided an appropriation to DHHL of \$600 million but specified that the moneys would lapse on June 30, 2025, if not spent or encumbered by then.

As drafted, the appropriation does not meet the requirements of Article VII, section 11 of the Hawaii Constitution limiting appropriations to three years duration. This part of the bill contains the technical correction necessary to comply with this constitutional provision.

Part IV: Extension of County Affordable Housing Credits

Act 141, SLH 2009, required each county to issue affordable housing credits to DHHL with respect to existing and future projects on Hawaiian home lands. This law originally was to sunset on June 30, 3015, but was extended to June 30, 2024. This bill would make the law permanent.

The Foundation declines to comment on this part.

Digested: 2/28/2023

HB-567-HD-2

Submitted on: 3/1/2023 11:08:44 AM

Testimony for FIN on 3/1/2023 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
David Z. Arakawa	Land Use Research Foundation of Hawaii	Comments	Written Testimony Only

Comments:

The Land Use Research Foundation of Hawaii (LURF) appreciates the intent of HB 567, HD2, and respectfully **proposes an amendment, to provide that if DHHL is exempted from school impact fees, that the State would otherwise be required to pay DHHL’s fair share of school impact fees.**

LURF’s Position. The current version of HB 567, HD2 would be unfair and inequitable to other families who purchase homes in new developments in the same area – This bill would exempt DHHL from paying its **proportionate fair share** based on the number of public school students the DHHL projects will generate. Thus, there is a danger that the other residents of other new housing projects in the area would be forced to pay DHHL’s fair share for the building of new school facilities.

HB 567, HD2 is also **inconsistent and contrary to the longstanding state policy** followed by the State Strategic Plan for Transit-Oriented Development (TOD Strategic Plan), that was prepared by the Hawaii Interagency Council for Transit-Oriented Development. **The state’s TOD Strategic Plan requires all state agencies to pay their proportionate fair share of infrastructure improvements for the TOD areas.**

For the above reasons, LURF **respectfully requests that HB 567, HD2 be amended to provide that the State would otherwise be required to pay DHHL’s fair share of school impact fees.**

We urge your favorable consideration of the above proposed amendment.