
A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. The legislature finds that Hawaii cannot close
2 its housing shortage without a large increase in homebuilding,
3 especially in formats that add meaningful unit count in already-
4 urbanized areas. In *Sheetz v. County of El Dorado* (144 S. Ct.
5 893 (2024)), the United States Supreme Court held that
6 legislatively imposed land-use permit conditions—including
7 impact fees—must satisfy the two-part tests of essential nexus
8 and rough proportionality. These constitutional limits require
9 a publicly available record that identifies the specific,
10 project-related impact being mitigated and caps any exaction at
11 an amount proportionate to that impact. Yet many jurisdictions
12 adopt inclusionary or other development exactions based on
13 generalized affordability goals or regional "housing need"
14 tallies rather than a quantified, project-caused impact and
15 proportional remedy, an approach that misstates causation and is
16 legally vulnerable under *Sheetz v. County of El Dorado* unless



1 the county's record identifies a project-caused impact and a
2 proportionate remedy.

3 The legislature further finds that because inclusionary
4 mandates operate as permit-linked exactions, they must satisfy
5 constitutional essential nexus and rough proportionality. The
6 assumption that new market-rate housing causes unaffordability
7 and therefore must be offset by a surcharge on that same housing
8 is contradicted by the preponderance of evidence. In most
9 cases, adding homes lowers rents and prices through filtering
10 and moving chains, so imposing a surcharge on by-right,
11 non-luxury projects rests on a flawed methodology and risks
12 suppressing production and increasing prices. Income-restricted
13 housing is an important component of overall affordability, but
14 it should be funded transparently by government rather than by
15 loading undisclosed costs onto new homebuyers through mandates
16 embedded in private development.

17 The legislature also finds that workforce mandates have
18 repeatedly failed to deliver housing at scale in Hawaii and, in
19 practice, have deterred feasible projects, particularly
20 multifamily apartments and condominiums, while shifting
21 production toward higher-price, lower-density product.



1 Experience from other jurisdictions likewise shows that when not
2 narrowly tailored, inclusionary mandates reduce overall supply
3 and increase the share of luxury units. Exceptions may be
4 appropriate where new development is low-density and requires
5 extensive infrastructure, where development is visitor-serving
6 and increases local workforce demand tied to tourism, or where
7 the product is luxury and does less to relieve price pressures.

8 Accordingly, the purpose of this Act is to:

- 9 (1) Treat county inclusionary mandates as housing
10 affordability impact fees under section 46-143, Hawaii
11 Revised Statutes;
- 12 (2) Require a straightforward, professional study showing
13 feasibility and market prices or rents with and
14 without any inclusionary requirement across common
15 prototypes; and
- 16 (3) Adopt a dual compliance framework under which non-
17 luxury, by-right housing is protected by a no-price-
18 increase or full-offset standard, while luxury housing
19 and projects that receive discretionary increases in
20 entitlements may be subject to proportionate



1 inclusionary requirements supported by a needs
2 assessment study.

3 This Act does not apply to resort or vacation-rental
4 construction and does not limit actions of the Hawaii housing
5 finance and development corporation or Hawaii community
6 development authority.

7 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
8 by adding a new section to part VIII to be appropriately
9 designated and to read as follows:

10 "S46- Affordable housing mandates; housing
11 affordability impact fee; needs assessment study. (a) Any
12 county affordable housing mandate shall be deemed a form of
13 development exaction and shall be treated as a housing
14 affordability impact fee pursuant to this part and conform to
15 subsection (c). No county shall adopt, amend, or enforce an
16 affordable housing mandate applicable to residential or mixed-
17 use development unless the county council has first approved, by
18 ordinance or resolution, a needs assessment study that:

19 (1) Complies with this section and section 46-143; and
20 (2) Includes the analyses described in subsection (b).



1 (b) In addition to the requirements of section 46-143, the
2 needs assessment study required by this section shall:

3 (1) Disclose data sources and methodology;
4 (2) Analyze various representative market-rate prototypes
5 commonly produced in the county, including
6 single-family, duplex, townhome, condominium, and
7 apartment formats;
8 (3) Evaluate each compliance option, such as on-site
9 units, off-site units, in-lieu fees, or land
10 dedication;
11 (4) For each representative market-rate prototype, state
12 principal assumptions for prices or rents, costs,
13 financing, and target returns, and show feasibility
14 and market-rate prices or rents with and without the
15 affordable housing mandate; and
16 (5) Publish a residential nexus and affordability-gap
17 analysis and summary tables of results.

18 (c) No county shall adopt, amend, or enforce an
19 inclusionary requirement on a residential or mixed-use
20 residential project that does not receive a discretionary
21 increase in density, floor area ratio, or height and is not a



1 luxury residential project, unless the county makes written
2 findings demonstrating compliance with essential nexus and rough
3 proportionality and satisfies at least one of the following:

4 (1) A needs assessment study approved by the county finds
5 that the requirement will not increase the price of
6 market-rate dwelling units nor suppress feasible
7 production for the applicable prototypes; or
8 (2) The county concurrently adopts incentives that fully
9 offset all compliance costs, including the fair market
10 value of any required land or units and any
11 quantifiable lost revenue or density, such that there
12 is no net price increase or feasibility suppression.

13 (d) For a luxury residential project, or for any
14 residential project that receives a discretionary increase in
15 maximum allowable density, floor area ratio, or height, a county
16 may adopt or enforce an inclusionary requirement only if:

17 (1) A needs assessment study approved by the county
18 establishes essential nexus and rough proportionality
19 between the requirement and the development's impacts;
20 and
21 (2) The requirement does not exceed the lesser of:



1 (A) The full mitigation cost for attributable
2 workforce-housing demand; or
3 (B) One hundred per cent of the net land-value
4 increment conferred by the discretionary
5 approval; provided that this subparagraph shall
6 not apply to luxury residential projects that do
7 not receive a discretionary increase.

8 Enforcement under this subsection shall apply prospectively to
9 applications determined complete after approval of the study.

10 (e) For mixed-use residential projects, determination of
11 whether the project is a luxury residential project under:

12 (1) Paragraphs (1) and (2) of that definition shall be
13 determined on a unit-by-unit basis, and a county may
14 apply any monetary exaction only to units that meet
15 paragraph (1) or (2) of that definition; and

16 (2) Paragraphs (3) and (4) of that definition shall be
17 determined at the project level, and a county may
18 apply any monetary exaction to a project that meets
19 paragraph (3) or (4) of that definition.

20 Contiguous or commonly controlled parcels permitted within
21 twenty-four months shall be evaluated in the aggregate.



1 (f) Notwithstanding any other law to the contrary, any
2 affordable housing mandate enacted before the effective date of
3 this Act shall be unenforceable with respect to applications
4 deemed complete on or after the effective date of this Act until
5 a needs assessment study is conducted pursuant to this section
6 and section 46-143. Once a needs assessment study demonstrates
7 compliance with subsection (c), enforcement may resume
8 prospectively for applications deemed complete thereafter,
9 including enforcement pursuant to subsection (d) upon the
10 findings required therein.

11 For any inclusionary requirement adopted or enforced
12 pursuant to subsection (d), the requirement to establish an
13 essential nexus and rough proportionality shall be presumed
14 satisfied if the inclusionary requirement is based on a
15 county-commissioned financial feasibility study or nexus
16 analysis that is no more than five years old at the time the
17 mandate is adopted or enforced. This presumption shall be
18 rebuttable only by clear and convincing evidence demonstrating
19 that the existing study's methodology is flawed or the resulting
20 inclusionary requirement exceeds the actual cost of providing
21 the required housing.



1 (g) Each county shall provide a clear process by which an
2 applicant may contest the application of an affordable housing
3 mandate or any findings made under this section, including a
4 determination under subsection (c) (1).

5 (h) This section shall not apply to:

6 (1) Projects located on lands classified within the
7 agricultural district pursuant to chapter 205;
8 (2) Projects located on lands classified within the
9 conservation district pursuant to chapter 205;
10 (3) Resort or vacation-rental construction, including any
11 dwelling unit or building that is used, intended,
12 designed, or marketed, or that may be used for
13 transient accommodation purposes, including hotels,
14 timeshares, resort condominiums, transient vacation
15 units, or other transient accommodations as defined by
16 county ordinance or chapter 237D;
17 (4) Conditions required by federal or state funding or
18 financing programs, voluntary commitments not required
19 by county law, or generally applicable impact fees
20 unrelated to inclusionary obligations; or



1 (5) Projects undertaken by, or subject to approvals,
2 permits, exemptions, rules, or actions of, the Hawaii
3 housing finance and development corporation under
4 chapter 201H or Hawaii community development authority
5 under chapter 206E.

6 (i) For purposes of this section:

7 "Affordable housing mandate" means any county requirement
8 that a development provide or fund below-market-rate dwelling
9 units on site or off site, pay an in-lieu fee, dedicate land, or
10 comply with equivalent exactions tied to permits, approvals, or
11 development agreements.

12 "Federal Housing Finance Agency conforming-loan limit"

13 means the one-unit conforming-loan limit published annually by
14 the Federal Housing Finance Agency for the county.

15 "Initial monthly contract rent" means the first base rent
16 stated in the lease at initial occupancy, excluding promotional
17 concessions and separately metered utilities.

18 "Initial sales price" means the first bona fide
19 arm's-length sale price recorded against the unit or lot, net of
20 seller credits and excluding optional upgrades not required for
21 certificate of occupancy.



1 "Luxury residential project" means a residential or
2 mixed-use residential project in which, at initial sale or
3 initial lease, any of the following apply:

4 (1) Ownership units: the published initial sales price
5 per dwelling unit exceeds one hundred twenty-five per
6 cent of the Federal Housing Finance Agency
7 conforming-loan limit for a one-unit property in the
8 county on the date of building-permit application;

9 (2) Rental units: the published initial monthly contract
10 rent for the unit exceeds two hundred per cent of the
11 United States Department of Housing and Urban
12 Development fair market rent for a unit of the same
13 bedroom count in the county for the applicable fiscal
14 year;

15 (3) Density: the project's net residential density is
16 less than ten dwelling units per acre; or

17 (4) Building type: a majority of the project's dwelling
18 units are single-family detached dwellings.

19 "Net land-value increment" means the increase in residual
20 land value attributable to a discretionary approval, calculated
21 using the same pro-forma assumptions (costs, prices or rents,



1 and target returns) used in the study conducted pursuant to
2 section 46-143, and equal to residual land value with the
3 discretionary approval minus residual land value under base
4 zoning.

5 "Net residential density" means dwelling units per acre
6 measured on the net residential site area as defined by county
7 ordinance; provided that if "net residential site area" is not
8 defined by ordinance, "net residential site area" excludes
9 public rights-of-way dedicated with the project and areas
10 required to be reserved as public open space or protected
11 natural-resource buffers.

12 "Single-family detached" means a dwelling unit in a
13 freestanding building designed for occupancy by one household,
14 not attached to any other dwelling unit by a common wall or
15 floor or ceiling.

16 "Transient accommodations" has the same meaning as in
17 section 237D-1.

18 "United States Department of Housing and Urban Development
19 fair market rent" means the value published by the United States
20 Department of Housing and Urban Development pursuant to title 24



1 Code of Federal Regulations part 888 for the county and bedroom
2 count."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 2026.

5

INTRODUCED BY:

ZNC

JAN 20 2026



H.B. NO. 1741

Report Title:

Affordable Housing Mandate; Housing Affordability Impact Fee; Luxury Residential Projects; Needs Assessment Study

Description:

Deems a county affordable housing mandate as a form of development exaction and treats the mandate as a housing affordability impact fee, with certain exemptions. Prohibits a county from adopting, amending, or enforcing an affordable housing mandate or inclusionary requirements for residential or mixed-use development, under certain circumstances. Establishes additional requirements for a needs assessment study for a county-imposed affordable housing mandate. Establishes a criterion that allows luxury residential projects or projects that receive discretionary value-add approvals to be subject to inclusionary requirements.

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