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# 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 building homes that  
2 local families can afford is essential to keeping Hawaii's  
3 communities intact and perpetuating our way of life.  
4 Inclusionary requirements, which ask market-rate developments to  
5 contribute to the production of income-restricted housing, have  
6 been an important county tool for decades and should be  
7 strengthened by a clear evidentiary foundation.

8           Since 1992, Hawaii law has required counties to conduct a  
9 needs assessment study before imposing development impact fees.  
10 No comparable study has been required for affordable housing  
11 requirements based on a percentage of units. Yet just as fees  
12 for sewers and roads are reflected in the cost of homes  
13 purchased by local working professionals, including  
14 firefighters, teachers, and nurses, the cost of inclusionary  
15 requirements is reflected in those prices. Buyers and renters  
16 of market-rate homes are entitled to know how much of their home  
17 cost is contributing to the county's affordability policy.



1        In Sheetz v. County of El Dorado, 144 S. Ct. 893 (2024),  
2 the United States Supreme Court held that legislatively imposed  
3 land-use permit conditions, including impact fees, must satisfy  
4 a two-part test of essential nexus and rough proportionality.  
5 Because inclusionary mandates operate as permit-linked  
6 exactions, they are subject to the same constitutional  
7 standards. A clear evidentiary record protects county  
8 affordability policies from legal challenge.

9        The legislature further finds that inclusionary mandates  
10 can, depending on their design, reduce overall housing  
11 production, shift it away from the multi-family and attached  
12 formats that most efficiently add units in already-urbanized  
13 areas, and increase the share of luxury units by making lower-  
14 priced and mid-market projects financially infeasible. The  
15 required percentage, income targeting, and available compliance  
16 options materially affect whether projects are financially  
17 feasible and whether the policy delivers income-restricted units  
18 at scale. Adequate production also reduces pressure on the  
19 existing housing stock and expands options across income levels.  
20 A financial feasibility analysis allows counties to set  
21 inclusionary requirements at levels that produce affordable



1 units without suppressing the production needed to expand  
2 housing access for local residents and families.

3 The legislature additionally finds that an inclusionary  
4 requirement of ten per cent or less is consistent with widely  
5 adopted practice, including in high-cost housing markets. This  
6 Act establishes that benchmark as a threshold below which no  
7 additional study is required and asks counties seeking to impose  
8 a higher requirement to support that decision with a data-based  
9 assessment of housing needs and project feasibility.

10 This Act is intended to support, not displace, county  
11 housing policy. Counties retain full authority to design and  
12 implement inclusionary requirements. This Act also ensures only  
13 that requirements above the threshold rest on a foundation of  
14 disclosed data, financial feasibility analysis, and  
15 constitutional findings.

16 Accordingly, the purpose of this Act is to:

- 17 (1) Deem a county inclusionary mandate as a form of  
18 development exaction and treat the mandate as a  
19 housing affordability impact fee, with certain  
20 exemptions;



- 1 (2) Provide parameters for a county's adoption or
- 2 amendment of an inclusionary mandate for residential
- 3 or mixed-use development;
- 4 (3) Establish additional components for a needs assessment
- 5 study for a county-imposed inclusionary mandate; and
- 6 (4) Condition the adoption or amendment of a county
- 7 inclusionary mandate above a specified threshold on
- 8 written findings of essential nexus and rough
- 9 proportionality and a determination of financial
- 10 feasibility.

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

14 **"§46- Inclusionary mandates; housing affordability**  
 15 **impact fee; needs assessment study.** (a) Any county  
 16 inclusionary mandate shall be deemed a form of development  
 17 exaction and shall be treated as a housing affordability impact  
 18 fee pursuant to this part. Beginning July 1, 2029, no county  
 19 shall adopt or amend an inclusionary mandate applicable to  
 20 residential or mixed-use development unless the county council



1 has first approved, by ordinance or resolution, a needs  
2 assessment study that:

3 (1) Complies with this section and section 46-143; and

4 (2) Includes the analyses described in subsection (b).

5 (b) In addition to the requirements of section 46-143, the  
6 needs assessment study required by this section shall evaluate  
7 the financial feasibility and general economic impacts of the  
8 proposed inclusionary mandate to ensure it supports, and does  
9 not suppress, overall housing production. The needs assessment  
10 study may also:

11 (1) Disclose data sources and methodology;

12 (2) Analyze various representative market-rate prototypes  
13 commonly produced in the county, which may include  
14 single-family, duplex, townhome, condominium, and  
15 apartment formats;

16 (3) Evaluate various compliance options, which may include  
17 on-site units, off-site units, in-lieu fees, or land  
18 dedication; and

19 (4) Publish a residential nexus and affordability-gap  
20 analysis and summary tables of results.



1        (c) Beginning July 1, 2029, a county may adopt or amend an  
2 inclusionary mandate on a residential or mixed-use residential  
3 project only if:

4        (1) The county makes written findings demonstrating  
5 compliance with essential nexus and rough  
6 proportionality; and

7        (2) A needs assessment study approved by the county  
8 pursuant to this section finds that the applicable  
9 prototypes are financially feasible under the  
10 inclusionary mandate.

11        (d) Notwithstanding any other law to the contrary, any  
12 inclusionary mandate enacted before July 1, 2029, shall be  
13 unenforceable with respect to applications deemed complete on or  
14 after July 1, 2029, until a needs assessment study is conducted  
15 pursuant to this section and section 46-143. Once a needs  
16 assessment study demonstrates compliance with subsection (c),  
17 enforcement of an inclusionary mandate may resume prospectively  
18 for applications deemed complete thereafter.

19        (e) Each county shall provide a clear process by which an  
20 applicant may contest the application of an inclusionary mandate



1 or any findings made under this section, including findings made  
2 under subsection (c)(2).

3 (f) This section shall not apply to:

4 (1) Projects located on lands classified within the  
5 agricultural district or conservation district  
6 pursuant to chapter 205;

7 (2) Resort or vacation-rental construction, including any  
8 dwelling unit or building that is used, intended,  
9 designed, or marketed, or that may be used for  
10 transient accommodation purposes, including hotels,  
11 time shares, resort condominiums, transient vacation  
12 units, or other transient accommodations as defined by  
13 county ordinance or chapter 237D;

14 (3) Conditions required by federal or state funding or  
15 financing programs; voluntary commitments not required  
16 by county law, including codified voluntary opt-in  
17 incentives programs established by county ordinance;  
18 or generally applicable impact fees unrelated to  
19 inclusionary obligations;

20 (4) Projects undertaken by, or subject to approvals,  
21 permits, exemptions, rules, or actions of, the Hawaii



1           housing finance and development corporation under  
2           chapter 201H or Hawaii community development authority  
3           under chapter 206E;

4           (5) Minor amendments to county ordinances, including  
5           amendments that repeal ordinances, reduce regulatory  
6           burdens, or make changes solely for administrative  
7           purposes; or

8           (6) Any county inclusionary mandate that requires ten per  
9           cent or less of the total dwelling units in a  
10           residential or mixed-use development to be provided or  
11           funded as below-market-rate dwelling units.

12           (g) For purposes of this section:

13           "Inclusionary mandate" means any county requirement that a  
14           development provide or fund below-market-rate dwelling units on  
15           site or off site, pay an in-lieu fee, dedicate land, or comply  
16           with equivalent exactions tied to permits, approvals, or  
17           development agreements.

18           "Transient accommodations" has the same meaning as in  
19           section 237D-1."

20           SECTION 3. New statutory material is underscored.



**1** SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Inclusionary Mandate; Housing Affordability Impact Fee; Needs Assessment Study; Essential Nexus; Rough Proportionality; Financial Feasibility

**Description:**

Deems a county inclusionary mandate as a form of development exaction and treats the mandate as a housing affordability impact fee. Provides parameters for a county's adoption or amendment of an inclusionary mandate for residential or mixed-use development. Establishes additional components for a needs assessment study for a county-imposed inclusionary mandate. Conditions the adoption or amendment of a county inclusionary mandate for residential or mixed-use development on written findings of essential nexus and rough proportionality and a determination of financial feasibility. (CD1)

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