
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
4 already-urbanized areas. In Sheetz v. County of El Dorado,
5 144 S. Ct. 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 test requiring (1)
8 essential nexus and (2) rough proportionality. These
9 constitutional limits require a publicly available record that
10 identifies the specific, project-related impact being mitigated
11 and caps any exaction at an amount proportionate to that impact.
12 Yet many jurisdictions adopt inclusionary or other development
13 exactions based on generalized affordability goals or regional
14 "housing need" tallies rather than a quantified, project-caused
15 impact and proportional remedy, an approach that misstates
16 causation and is legally vulnerable under Sheetz v. County of El



1 Dorado unless the county's record identifies a project-caused
2 impact and a 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 the government rather than
15 by loading undisclosed costs onto new homebuyers through
16 mandates 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 development.
22 Experience from other jurisdictions likewise shows that when not



1 narrowly tailored, inclusionary mandates reduce overall supply
2 and increase the share of luxury units. Exceptions may be
3 appropriate where new development is low-density and requires
4 extensive infrastructure or where development is visitor-serving
5 and increases local workforce demand tied to tourism.

6 Accordingly, the purpose of this Act is to:

- 7 (1) Treat county inclusionary mandates as housing
8 affordability impact fees; and
9 (2) Require a straightforward, professional study showing
10 feasibility and market prices or rents with and
11 without any inclusionary mandate across common
12 prototypes.

13 This Act does not apply to resort or vacation-rental
14 construction and does not limit actions of the Hawaii housing
15 finance and development corporation or Hawaii community
16 development authority.

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

20 **"§46- Inclusionary mandates; housing affordability**
21 **impact fee; needs assessment study.** (a) Any county
22 inclusionary mandate shall be deemed a form of development



1 exaction and shall be treated as a housing affordability impact
2 fee pursuant to this part. Beginning July 1, 2028, no county
3 shall adopt, amend, or enforce an inclusionary mandate
4 applicable to residential or mixed-use development unless the
5 county council has first approved, by ordinance or resolution, a
6 needs assessment study that:

7 (1) Complies with this section and section 46-143; and
8 (2) Includes the analyses described in subsection (b).
9 (b) In addition to the requirements of section 46-143, the
10 needs assessment study required by this section shall:

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;
19 (4) Evaluate the financial feasibility and general
20 economic impacts of the proposed inclusionary mandate
21 to ensure it supports, and does not suppress, overall
22 housing production; and



1 (5) Publish a residential nexus and affordability-gap
2 analysis and summary tables of results.

3 (c) Beginning July 1, 2028, no county shall adopt, amend,
4 or enforce an inclusionary mandate on a residential or mixed-use
5 residential project unless the county makes written findings
6 demonstrating compliance with essential nexus and rough
7 proportionality.

8 (d) Notwithstanding any other law to the contrary, any
9 inclusionary mandate enacted before July 1, 2028, shall be
10 unenforceable with respect to applications deemed complete on or
11 after July 1, 2028, until a needs assessment study is conducted
12 pursuant to this section and section 46-143. Once a needs
13 assessment study demonstrates compliance with subsection (c),
14 enforcement of an inclusionary mandate may resume prospectively
15 for applications deemed complete thereafter.

16 (e) Each county shall provide a clear process by which an
17 applicant may contest the application of an inclusionary mandate
18 or any findings made under this section, including a
19 determination under subsection (c)(1).

20 (f) This section shall not apply to:



- 1 (1) Projects located on lands classified within the
2 agricultural district or conservation district
3 pursuant to chapter 205;
- 4 (2) Resort or vacation-rental construction, including any
5 dwelling unit or building that is used, intended,
6 designed, or marketed, or that may be used for
7 transient accommodation purposes, including hotels,
8 timeshares, resort condominiums, transient vacation
9 units, or other transient accommodations as defined by
10 county ordinance or chapter 237D;
- 11 (3) Conditions required by federal or state funding or
12 financing programs; voluntary commitments not required
13 by county law, including codified voluntary opt-in
14 incentives programs established by county ordinance;
15 or generally applicable impact fees unrelated to
16 inclusionary obligations;
- 17 (4) Projects undertaken by, or subject to approvals,
18 permits, exemptions, rules, or actions of, the Hawaii
19 housing finance and development corporation under
20 chapter 201H or Hawaii community development authority
21 under chapter 206E; or



1 (5) Minor amendments to county ordinances, including
2 amendments that repeal ordinances, reduce regulatory
3 burdens, or make changes solely for administrative
4 purposes.

5 (g) For purposes of this section:

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

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

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

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Inclusionary Mandate; Housing Affordability Impact Fee; Needs Assessment Study

Description:

Deems a county inclusionary 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 inclusionary mandate or inclusionary mandates for residential or mixed-use development, under certain circumstances. Establishes additional requirements for a needs assessment study for a county-imposed inclusionary mandate. Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

