JOSH GREEN, M.D.
GOVERNOR
KE KIAʻĀINA

GOV. MSG. NO. 1313

EXECUTIVE CHAMBERS
KE KEʻENA O KE KIAʻĀINA

July 8, 2026

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Third State Legislature
State Capitol, Room 409
Honolulu, Hawaiʻi 96813

The Honorable Nadine K. Nakamura
Speaker, and Members of the
House of Representatives
Thirty-Third State Legislature
State Capitol, Room 431
Honolulu, Hawaiʻi 96813

Aloha President Kouchi, Speaker Nakamura, and Members of the Legislature:

This is to inform you that on July 8, 2026, the following bill was signed into law:

H.B. NO. 1741, H.D. 2, S.D. 1, C.D. 1	RELATING TO HOUSING. **ACT 211**

Mahalo,

Josh Green M.D.

Josh Green, M.D.
Governor, State of Hawaiʻi

Approved by the Governor

on JUL 8 2026

HOUSE OF REPRESENTATIVES
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

ACT 211

H.B. NO. 1741 H.D. 2 S.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO HOUSING.

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

SECTION 1. The legislature finds that building homes that local families can afford is essential to keeping Hawaii's communities intact and perpetuating our way of life. Inclusionary requirements, which ask market-rate developments to contribute to the production of income-restricted housing, have been an important county tool for decades and should be strengthened by a clear evidentiary foundation.

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

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

The legislature further finds that inclusionary mandates can, depending on their design, reduce overall housing production, shift it away from the multi-family and attached formats that most efficiently add units in already-urbanized areas, and increase the share of luxury units by making lower-priced and mid-market projects financially infeasible. The required percentage, income targeting, and available compliance options materially affect whether projects are financially feasible and whether the policy delivers income-restricted units at scale. Adequate production also reduces pressure on the existing housing stock and expands options across income levels. A financial feasibility analysis allows counties to set inclusionary requirements at levels that produce affordable units without suppressing the production needed to expand housing access for local residents and families.

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

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

Accordingly, the purpose of this Act is to:

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

(2) Provide parameters for a county's adoption or amendment of an inclusionary mandate for residential or mixed-use development;

(3) Establish additional components for a needs assessment study for a county-imposed inclusionary mandate; and

(4) Condition the adoption or amendment of a county inclusionary mandate above a specified threshold on written findings of essential nexus and rough proportionality and a determination of financial feasibility.

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

"**§46-   Inclusionary mandates; housing affordability impact fee; needs assessment study.** (a) Any county inclusionary mandate shall be deemed a form of development exaction and shall be treated as a housing affordability impact fee pursuant to this part. Beginning July 1, 2029, no county shall adopt or amend an inclusionary mandate applicable to residential or mixed-use development unless the county council has first approved, by ordinance or resolution, a needs assessment study that:

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

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

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

(1) Disclose data sources and methodology;

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

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

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

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

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

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

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

(e) Each county shall provide a clear process by which an applicant may contest the application of an inclusionary mandate or any findings made under this section, including findings made under subsection (c)(2).

(f) This section shall not apply to:

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

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

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

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

<u>housing finance and development corporation under chapter 201H or Hawaii community development authority under chapter 206E;</u>

<u>(5) Minor amendments to county ordinances, including amendments that repeal ordinances, reduce regulatory burdens, or make changes solely for administrative purposes; or</u>

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

<u>(g) For purposes of this section:</u>

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

<u>"Transient accommodations" has the same meaning as in section 237D-1.</u>"

SECTION 3. New statutory material is underscored.

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

APPROVED this 8th day of July , 2026

GOVERNOR OF THE STATE OF HAWAII

HB No. 1741, HD 2, SD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 6, 2026
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Third Legislature of the State of Hawaii, Regular Session of 2026.

Nadine K. Nakamura
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

H.B. No. 1741, H.D. 2, S.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: May 6, 2026
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Third Legislature of the State of Hawai'i, Regular Session of 2026.

President of the Senate

Clerk of the Senate