
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 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.



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;
- 11 (2) Require a straightforward, professional study showing
12 feasibility and market prices or rents with and
13 without any inclusionary mandate across common
14 prototypes; and
- 15 (3) Adopt a dual compliance framework under which non-
16 luxury, by-right housing is protected by a no-price-
17 increase or full-offset standard, while luxury housing
18 and projects that receive discretionary increases in
19 entitlements may be subject to proportionate
20 inclusionary mandates supported by a needs assessment
21 study.



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

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

8 "§46- Inclusionary mandates; housing affordability
9 impact fee; needs assessment study. (a) Any county
10 inclusionary mandate shall be deemed a form of development
11 exaction and shall be treated as a housing affordability impact
12 fee pursuant to this part. No county shall adopt, amend, or
13 enforce an inclusionary mandate applicable to residential or
14 mixed-use development unless the county council has first
15 approved, by ordinance or resolution, a needs assessment study
16 that:

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

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

- 21 (1) Disclose data sources and methodology;



- 1 (2) Analyze various representative market-rate prototypes
2 commonly produced in the county, including
3 single-family, duplex, townhome, condominium, and
4 apartment formats;
- 5 (3) Evaluate each compliance option, such as on-site
6 units, off-site units, in-lieu fees, or land
7 dedication;
- 8 (4) For each representative market-rate prototype, state
9 principal assumptions for prices or rents, costs,
10 financing, and target returns, and show feasibility
11 and market-rate prices or rents with and without the
12 inclusionary mandate; and
- 13 (5) Publish a residential nexus and affordability-gap
14 analysis and summary tables of results.
- 15 (c) No county shall adopt, amend, or enforce an
16 inclusionary mandate on a residential or mixed-use residential
17 project that does not receive a discretionary increase in
18 density, floor area ratio, or height and is not a luxury
19 residential project, unless the county makes written findings
20 demonstrating compliance with essential nexus and rough
21 proportionality and satisfies at least one of the following:



1 (1) A needs assessment study approved by the county finds
2 that the requirement will not increase the price of
3 market-rate dwelling units nor suppress feasible
4 production for the applicable prototypes; or

5 (2) The county concurrently adopts incentives, including
6 off-site infrastructure and property tax and fee
7 waivers, that fully offset all compliance costs,
8 including the fair market value of any required land
9 or units and any quantifiable lost revenue or density,
10 such that there is no net price increase or
11 feasibility suppression.

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

16 (1) A needs assessment study approved by the county
17 establishes essential nexus and rough proportionality
18 between the requirement and the development's impacts;
19 and

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

20 For any inclusionary mandate adopted or enforced pursuant
21 to subsection (d), the requirement to establish an essential



1 nexus and rough proportionality shall be presumed satisfied if
2 the inclusionary mandate is based on a county-commissioned
3 financial feasibility study or nexus analysis that is no more
4 than five years old at the time the mandate is adopted or
5 enforced. This presumption shall be rebuttable only by clear
6 and convincing evidence demonstrating that the existing study's
7 methodology is flawed or the resulting inclusionary mandate
8 exceeds the actual cost of providing the required housing.

9 (f) Each county shall provide a clear process by which an
10 applicant may contest the application of an inclusionary mandate
11 or any findings made under this section, including a
12 determination under subsection (c) (1).

13 (g) This section shall not apply to:

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

17 (2) Resort or vacation-rental construction, including any
18 dwelling unit or building that is used, intended,
19 designed, or marketed, or that may be used for
20 transient accommodation purposes, including hotels,
21 timeshares, resort condominiums, transient vacation



1 units, or other transient accommodations as defined by
2 county ordinance or chapter 237D;

3 (3) Conditions required by federal or state funding or
4 financing programs, voluntary commitments not required
5 by county law, or generally applicable impact fees
6 unrelated to inclusionary obligations; or

7 (4) Projects undertaken by, or subject to approvals,
8 permits, exemptions, rules, or actions of, the Hawaii
9 housing finance and development corporation under
10 chapter 201H or Hawaii community development authority
11 under chapter 206E.

12 (h) For purposes of this section:

13 "Federal Housing Finance Agency conforming-loan limit"

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

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



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

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

8 "Luxury residential project" means a residential or
9 mixed-use residential project in which, at initial sale or
10 initial lease, any of the following apply:

11 (1) Ownership units: a majority of the dwelling units
12 have a published initial sales price that exceeds one
13 hundred twenty-five per cent of the Federal Housing
14 Finance Agency conforming-loan limit for a one-unit
15 property in the county on the date of building-permit
16 application;

17 (2) Rental units: a majority of the units for rent have a
18 published initial monthly contract rent that exceeds
19 two hundred per cent of the United States Department
20 of Housing and Urban Development fair market rent for



1 a unit of the same bedroom count in the county for the
2 applicable fiscal year;

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

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

7 "Net land-value increment" means the increase in residual
8 land value attributable to a discretionary approval, calculated
9 using the same pro-forma assumptions (costs, prices or rents,
10 and target returns) used in the study conducted pursuant to
11 section 46-143, and equal to residual land value with the
12 discretionary approval minus residual land value under base
13 zoning.

14 "Net residential density" means dwelling units per acre
15 measured on the net residential site area as defined by county
16 ordinance; provided that if "net residential site area" is not
17 defined by ordinance, "net residential site area" excludes
18 public rights-of-way dedicated with the project and areas
19 required to be reserved as public open space or protected
20 natural-resource buffers.



1 "Single-family detached" means a dwelling unit in a
2 freestanding building designed for occupancy by one household,
3 not attached to any other dwelling unit by a common wall or
4 floor or ceiling.

5 "Transient accommodations" has the same meaning as in
6 section 237D-1.

7 "United States Department of Housing and Urban Development
8 fair market rent" means the value published by the United States
9 Department of Housing and Urban Development pursuant to title 24
10 Code of Federal Regulations part 888 for the county and bedroom
11 count."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Inclusionary Mandate; Housing Affordability Impact Fee; Luxury Residential Projects; 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. Establishes a criterion that allows luxury residential projects or projects that receive certain discretionary value increases to be subject to inclusionary mandates. Effective 7/1/3000. (HD2)

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