

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair;
and Members of the House Committee on Judiciary & Hawaiian Affairs

From: Isaac W. Choy, Director
Department of Taxation

Date: February 23, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 1121 S.D. 2, Relating to Housing

The Department of Taxation (Department) supports S.B. 1121, S.D. 2, an Administration measure, and provides the following comments for your consideration.

With respect to taxation, S.B. 1121, S.D. 2, exempts from the general excise tax (GET) all gross proceeds arising from the planning, design, financing, or construction of any housing development done by the Department of Hawaiian Home Lands (DHHL). S.D. 2 has a defective effective date of July 1, 2050.

The Department notes that subsection (a) implies that any housing development done by DHHL is exempt from the general excise tax while subsection (b) limits the exemption only to newly constructed or a moderately or substantially rehabilitated project. The Department suggests that the exemption be clarified to avoid any conflict or confusion.

The Department requests that the general excise tax exemption be made applicable no earlier than January 1, 2022 to allow the Department sufficient time to make the necessary form, instruction, and computer system changes.

Finally, the Department notes that P.L. 117-2, commonly known as the American Rescue Plan Act of 2021 (ARPA), provides State Coronavirus Fiscal Recovery Funds with certain limitations. Specifically, Section 9901 of the ARPA prohibits these funds from being used to, "either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase." The "covered period" is defined as beginning on March 3, 2021 and ending on the last day of the state's fiscal year in which the State's stimulus funds are completely expended.

If the State fails to comply with this restriction on use of funds, it is required to repay an amount equal to the lesser of: (1) the amount of the applicable reduction to net tax revenue attributable to such violation; and (2) the amount of funds received by such state under Section 9901 of the ARPA.

The Department cautions that the enactment of any tax measure resulting in a revenue loss during the covered period may result in the State having to repay an amount equal to the projected revenue loss from the State Coronavirus Fiscal Recovery Funds that Hawaii receives.

Thank you for the opportunity to provide testimony on this measure.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON MARCH 23, 2021 AT 2:00PM VIA VIDEOCONFERENCE

SB 1121, SD2, RELATING TO HOUSING

March 23, 2021

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill that exempts housing developed by DHHL from general excise taxes. This bill was approved by the Hawaiian Homes Commission and included in the Governor's administrative package by request of our department.

DHHL currently has four (4) large-scale development projects underway for consideration by HHFDC for GET exemptions as follows:

<u>Projects Pending GET Exemption</u>	<u>Est. Dev. Costs</u>	<u>Est. GET Savings</u>
1) HHL Rent with Option to Purchase (Laiopua) (163 Units)	\$ 5,000,000 (x 4.25%) =	\$ 212,500
2) Pu'unani Subdivision (160 Lots) (136 turnkey/24 vacant Lots)	\$ 23,350,013 (x 4.0%) =	\$ 934,000
3) Former Voice of America Site (253 Units)	\$ 50,000,000 (x 4.5%) =	\$2,250,000
4) 822 Isenberg Street (Bowl-O-Drome site) (270 Units)	\$ 137,000,000 (x 4.5) =	<u>\$6,165,000</u>
	TOTAL:	\$9,561,500

The cost savings for these development projects could be used to develop more lots.

Thank you for your consideration of our testimony.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
ON
SENATE BILL NO. 1121, S.D. 2

March 23, 2021
2:00 p.m.
Via Videoconference

RELATING TO HOUSING

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 1121, S.D. 2.

S.B. No. 1121, S.D. 2, exempts from the general excise tax all gross proceeds arising from the planning, design, financing, or construction of any housing development done by the Department of Hawaiian Home Lands (DHHL).

B&F is concerned that the proposed measure would decrease revenues to the State general fund and impact the State's share of direct federal aid from the American Rescue Plan Act of 2021 (ARPA). Provisions of the ARPA specifically state:

"A state or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such state or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase."

B&F notes that any reduction in State tax revenues could result in reduced ARPA funding. Hawai'i's estimated allocation of ARPA funds is in excess of \$1.6 billion and is critical to mitigating the negative financial impacts the COVID-19 pandemic has had on the State budget.

B&F defers to the Department of Taxation and DHHL regarding the implementation of this bill.

Thank you for your consideration of our comments.


OFFICE OF HAWAIIAN AFFAIRS
‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai
Legislative Testimony

SB1121 SD2
RELATING TO HOUSING
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 23, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1121 SD2, which would exempt housing projects developed by the Department of Hawaiian Home Lands (DHHL) from general excise taxes. This measure would ensure that state funds set aside to DHHL can be more fully applied to the development of housing necessary to address its waitlist backlog, rather than be recaptured by general excise tax exactions.

Although it is the only department that the State is constitutionally mandated to sufficiently fund,¹ DHHL has historically struggled to obtain enough funds from the State to cover its administrative and operating costs.² As such, DHHL has historically been forced to rely on revenue generated from its trust lands or from other sources to cover its operations, which has directly inhibited its ability to develop provide homesteading opportunities for its beneficiaries. **OHA itself has made a \$3,000,000 per year, 30-year commitment to assist DHHL with paying down its debt service, accrued in the development of infrastructure necessary to provide homesteading opportunities for its beneficiaries.** While DHHL’s funding has increased in recent years, its lengthy waitlist continues to warrant creative approaches and additional conversations about how the State can more fully and sufficiently support the department and its mission.

SB1121 SD2 is a creative proposal that would provide DHHL with much needed savings that can help to address the considerable waitlist backlog that continues to exist, due in part to years of insufficient funding. **Notably, the GET savings that accrue from this measure would be applied to the development of additional housing and associated infrastructure, allowing DHHL to more fully commit the funding it receives towards fulfilling its mission.**

Accordingly, OHA urges the Committee to **PASS** SB1121 SD2. Mahalo nui for the opportunity to testify.

¹ HAW. CONST. ART. XII SEC. 1.

² See, e.g., *Nelson v. Hawaiian Homes Comm’n*, 127 Hawai‘i 185, 277 P.3d 279 (2012).

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for development for DHHL

BILL NUMBER: SB 1121, SD2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Exempts housing developed by the Department of Hawaiian Home Lands from general excise taxes.

SYNOPSIS: Adds a new section to chapter 237, HRS, that exempts all gross income received by any qualified person or firm for the planning, design, financing, or construction of any housing development for the Department of Hawaiian Home Lands.

Allows DHHL to certify for exemption a newly constructed, or a moderately or substantially rehabilitated, project that is: (1) Developed under a government assistance program approved by DHHL; (2) Developed under the sponsorship of a private nonprofit organization providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing; (3) Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development; or (4) Developed by contract or project developer agreement to provide affordable housing through new construction or substantial rehabilitation; provided that: (A) The allowable general excise tax and use tax costs shall apply to contracting only and shall not exceed \$30,000,000 per year in the aggregate for all projects approved and certified by the department; and (B) At least twenty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.

Requires that a developer wishing to claim the credit enter into a regulatory agreement with DHHL to ensure the project's continued compliance with the applicable eligibility requirements, unless exempted by DHHL.

Defines "moderately rehabilitated" as rehabilitation to upgrade a dwelling unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

Defines "substantially rehabilitated" as: (1) the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements. It may include but is not limited to the gutting and extensive reconstruction of a dwelling unit, or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance; and (2) includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use, such as conversion of a hotel to housing for elders.

Allows DHHL to establish a user fee for approvals and certification.

EFFECTIVE DATE: 7/1/2050.

STAFF COMMENTS: This bill is an Administration measure sponsored by the Department of Hawaiian Home Lands and identified as HHL-06 (21).

It seems that the proposed exemption has many similarities to the affordable housing exemption now in sections 46-15.1 and 201H-36, HRS. The proposed exemption appears to be looser, however:

- The existing low-income housing exemption requires a regulatory agreement of at least five years for moderate rehabilitation projects, ten years for substantial rehabilitation projects, and thirty years for new projects. No duration is specified for the regulatory agreement here.
- DHHL can exempt any developer from the compliance agreement requirement, and there are no standards around when the exemption may be exercised. This is an invitation to arbitrariness.

If the housing development is on Hawaiian homestead land, the beneficiaries to reside in the developed homes would be receiving several benefits unique to Hawaiian homesteads, as detailed in <https://dhhl.hawaii.gov/applications/applying-for-hawaiian-home-lands/>:

- Annual lease rent of \$1.00 per year;
- 99-year lease;
- Lease term which can be extended for an additional 100 years, allowing passage of the homestead from generation to generation;
- Seven-year exemption from real property tax;
- Complete exemption of tax on land;
- Minimal real property tax after the first seven years (applies only to County of Kauai and City and County of Honolulu, Oahu);
- And other benefits.

The American Rescue Plan Act of 2021, signed into law by President Biden on March 11, 2021, contains provisions disqualifying or restricting federal aid that otherwise could be available to the State if new or extended tax incentives are enacted after March 3, 2021. Section 9901 of the Act enacts a new section 602(c)(2)(A) in Title VI of the Social Security Act which states:

A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

Re: SB 1121, SD2
Page 3

Section 602(g)(1) defines the “covered period” as beginning on March 3, 2021 and ending on the last day of the State’s fiscal year in which all federal aid dollars are either spent, returned, or recovered against the State by the Treasury.

Because this federal provision generally prohibits new state tax exemptions, this bill may run afoul of ARPA’s prohibition.

Digested 3/20/2021



March 23, 2021

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative Mark M. Nakashima, Chair

Representative Scot Z. Matayoshi, Vice Chair

Testimony SUPPORTING SB 1121, SD 2

Aloha, Chair Nakashima, Vice Chair Matayoshi, and members of the Committee:

The Hawaiian Affairs Caucus of the Democratic Party of Hawai'i SUPPORTS SB 1121, SD 2, that exempts housing developed by the Department of Hawaiian Home Lands (DHHL) from general excise taxes.

Since DHHL is a State agency, it would seem appropriate to exempt DHHL from general excise taxes.

Moreover, with its four upcoming projects, DHHL would expend as much as \$9.5 million on general excise taxes. These funds could be used to develop more housing lots for DHHL beneficiaries thereby improving the availability of affordable housing and reducing homelessness, which includes a disproportionate rate of Native Hawaiians.

We encourage your Committee to pass this bill.

Mahalo nui loa for the opportunity to testify.

Me ka mahalo nui,

JUANITA MAHIENAENA BROWN KAWAMOTO, Chair

Hawaiian Affairs Caucus of the Democratic Party of Hawai'i

PARTNERS IN CARE

Oahu's Continuum of Care

Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.

March 23, 2021

TO: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
Members of the House Committee on Judiciary & Hawaiian Affairs

FROM: Partners In Care (PIC)

SUBJECT: Testimony: Relating to Housing

Hearing: March 23, 2021 at 2:00 pm
Via videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee on Judiciary & Hawaiian Affairs,

Thank you for the opportunity to provide testimony **in strong support** of SB1121, SD2.

Partners In Care (PIC), a coalition of more than 60 nonprofit homelessness providers and concerned organizations, is focused on creating more affordable housing for low-income individuals and families. PIC understands that this is the answer to ending homelessness.

This bill would exempt housing developed by the Department of Hawaiian Home Lands from general excise taxes and therefore allow for more money to be used to build even more affordable housing. This is a very good idea and a step towards reaching our goal of every person in Hawai'i having a decent and safe place to live in dignity.

Thank you again for the opportunity to testify in support of SB1121, SD2.



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF SB 1121, SD2: RELATING TO HOUSING

TO: House Committee on Judiciary & Hawaiian Affairs

FROM: Rob Van Tassell, President and CEO, Catholic Charities Hawai'i

Hearing: **Tuesday, 3/23/21; 2:00 PM; via Videoconference**

Chair Nakashima, Vice Chair Matayoshi, and Members, Committee on Judiciary & Hawaiian Affairs:

Thank you for the opportunity to provide written testimony in support of SB 1121, SD2, which exempts housing developed by the Department of Hawaiian Homelands from general excise tax. I am Rob Van Tassell from Catholic Charities Hawai'i.

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai'i for over 70 years. CCH has programs serving elders, children, families, homeless and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawai'i. We are also a strong advocate for social justice.

The Department of Hawaiian Homelands (DHHL) has a large backlog of housing demand but has lacked resources to provide housing for its beneficiaries. Currently, DHHL has four large projects underway which would provide 822 units of housing. With the proposed exemption from the General Excise Tax, DHHL would save \$9,561,500. This savings from GET can then be used to develop more affordable housing for its Native Hawaiian beneficiaries.

This bill is a creative proposal which would enable DHHL to create more critically needed housing.

Catholic Charities Hawaii urges you to pass SB 1121, SD1.

For questions, please contact our Legislative Liaison, Betty Lou Larson, at (808) 373-0356 or bettylou.larson@catholiccharitieshawaii.org

SB-1121-SD-2

Submitted on: 3/23/2021 12:48:45 PM

Testimony for JHA on 3/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaikea K. Blakemore	Community Alliance Partners	Support	No

Comments:

We support any legislation that further empowers DHHL to execute its mission and house benefactors who are experiencing disproportionate homelessness.

Kaikea Kaleikini Blakemore

Awareness Chair

Community Alliance Partners