
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§237- Additional amounts not taxable for contractors.
5 (a) In addition to the amounts not taxable under section 237-
6 24, this chapter shall not apply to an amount, as certified by
7 the employees' retirement system, up to but not more than
8 per cent of the direct costs of construction and operation
9 incurred by a contractor under a public-private partnership with
10 the employees' retirement system to develop a construction
11 project to implement clean energy technology, as that term is
12 defined in section 269-121(b), or a construction project to
13 improve the State's water supply, including projects defined as
14 a water facility under section 167-2 or section 174-2, a
15 wastewater treatment plant under section 340B-1, or a public
16 water system under section 340E-1; provided that the income



1 shall be excluded from gross income for each year of the
2 anticipated useful life of the construction project.

3 (b) For the purposes of this section, "direct costs of
4 construction and operation" means the costs of materials, labor,
5 equipment, and directly involved efforts or expenses for the
6 completion and operation of a construction project, excluding
7 all general overhead costs."

8 SECTION 2. Section 88-119, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§88-119 Investments. Investments may be made in:

11 (1) Real estate loans and mortgages. Obligations (as
12 defined in section 431:6-101) of any of the following
13 classes:

14 (A) Obligations secured by mortgages of nonprofit
15 corporations desiring to build multirental units
16 (ten units or more) subject to control of the
17 government for occupancy by families displaced as
18 a result of government action;

19 (B) Obligations secured by mortgages insured by the
20 Federal Housing Administration;



1 (C) Obligations for the repayment of home loans made
2 under the Servicemen's Readjustment Act of 1944
3 or under Title II of the National Housing Act;
4 (D) Other obligations secured by first mortgages on
5 unencumbered improved real estate owned in fee
6 simple; provided that the amount of the
7 obligation at the time investment is made therein
8 shall not exceed eighty per cent of the value of
9 the real estate and improvements mortgaged to
10 secure it, and except that the amount of the
11 obligation at the time investment is made therein
12 may exceed eighty per cent but no more than
13 ninety per cent of the value of the real estate
14 and improvements mortgaged to secure it; provided
15 further that the obligation is insured or
16 guaranteed against default or loss under a
17 mortgage insurance policy issued by a casualty
18 insurance company licensed to do business in the
19 State. The coverage provided by the insurer
20 shall be sufficient to reduce the system's
21 exposure to not more than eighty per cent of the



1 value of the real estate and improvements
2 mortgaged to secure it. The insurance coverage
3 shall remain in force until the principal amount
4 of the obligation is reduced to eighty per cent
5 of the market value of the real estate and
6 improvements mortgaged to secure it, at which
7 time the coverage shall be subject to
8 cancellation solely at the option of the board.
9 Real estate shall not be deemed to be encumbered
10 within the meaning of this subparagraph by reason
11 of the existence of any of the restrictions,
12 charges, or claims described in section 431:6-
13 308;

14 (E) Other obligations secured by first mortgages of
15 leasehold interests in improved real estate;
16 provided that:

17 (i) Each leasehold interest at the time shall
18 have a current term extending at least two
19 years beyond the stated maturity of the
20 obligation it secures; and



1 (ii) The amount of the obligation at the time
2 investment is made therein shall not exceed
3 eighty per cent of the value of the
4 respective leasehold interest and
5 improvements, and except that the amount of
6 the obligation at the time investment is
7 made therein may exceed eighty per cent but
8 no more than ninety per cent of the value of
9 the leasehold interest and improvements
10 mortgaged to secure it;
11 provided further that the obligation is insured
12 or guaranteed against default or loss under a
13 mortgage insurance policy issued by a casualty
14 insurance company licensed to do business in the
15 State. The coverage provided by the insurer
16 shall be sufficient to reduce the system's
17 exposure to not more than eighty per cent of the
18 value of the leasehold interest and improvements
19 mortgaged to secure it. The insurance coverage
20 shall remain in force until the principal amount
21 of the obligation is reduced to eighty per cent



1 of the market value of the leasehold interest and
2 improvements mortgaged to secure it, at which
3 time the coverage shall be subject to
4 cancellation solely at the option of the board;

5 (F) Obligations for the repayment of home loans
6 guaranteed by the department of Hawaiian home
7 lands pursuant to section 214(b) of the Hawaiian
8 Homes Commission Act, 1920; and

9 (G) Obligations secured by second mortgages on
10 improved real estate for which the mortgagor
11 procures a second mortgage on the improved real
12 estate for the purpose of acquiring the
13 leaseholder's fee simple interest in the improved
14 real estate; provided that any prior mortgage
15 shall not contain provisions that might
16 jeopardize the security position of the
17 retirement system or the borrower's ability to
18 repay the mortgage loan.

19 The board may retain or dispose of the real estate,
20 including leasehold interests therein, as it may
21 acquire by foreclosure of mortgages or in enforcement



1 of security, or as may be conveyed to it in
2 satisfaction of debts previously contracted in the
3 same manner as other investments in interest in real
4 property authorized by this section;

5 (2) Government obligations, etc. Obligations of any of
6 the following classes:

7 (A) Obligations issued or guaranteed as to principal
8 and interest by the United States or by any state
9 thereof or by any municipal or political
10 subdivision or school district of any of the
11 foregoing; provided that principal of and
12 interest on the obligations are payable in
13 currency of the United States; or sovereign debt
14 instruments issued by agencies of, or guaranteed
15 by foreign governments;

16 (B) Revenue bonds, whether or not permitted by any
17 other provision hereof, of the State or any
18 municipal or political subdivision thereof,
19 including the board of water supply of the city
20 and county of Honolulu, and street or improvement



- 1 district bonds of any district or project in the
2 State; and
- 3 (C) Obligations issued or guaranteed by any federal
4 home loan bank, including consolidated federal
5 home loan bank obligations, the Home Owner's Loan
6 Corporation, the Federal National Mortgage
7 Association, or the Small Business
8 Administration;
- 9 (3) Corporate obligations. Below investment grade or
10 nonrated debt instruments, foreign or domestic, in
11 accordance with investment guidelines adopted by the
12 board;
- 13 (4) Preferred and common stocks. Shares of preferred or
14 common stock of any corporation created or existing
15 under the laws of the United States or of any state or
16 district thereof or of any country;
- 17 (5) Obligations eligible by law for purchase in the open
18 market by federal reserve banks;
- 19 (6) Obligations issued or guaranteed by the International
20 Bank for Reconstruction and Development, the Inter-



- 1 American Development Bank, the Asian Development Bank,
2 or the African Development Bank;
- 3 (7) Obligations secured by collateral consisting of any of
4 the securities or stock listed above and worth at the
5 time the investment is made at least fifteen per cent
6 more than the amount of the respective obligations;
- 7 (8) Insurance company obligations. Contracts and
8 agreements supplemental thereto providing for
9 participation in one or more accounts of a life
10 insurance company authorized to do business in Hawaii,
11 including its separate accounts, and whether the
12 investments allocated thereto are comprised of stocks
13 or other securities or of real or personal property or
14 interests therein;
- 15 (9) Interests in real property. Interests in improved or
16 productive real property in which, in the informed
17 opinion of the board, it is prudent to invest funds of
18 the system. For purposes of this paragraph, "real
19 property" includes any property treated as real
20 property either by local law or for federal income tax
21 purposes. Investments in improved or productive real



1 property may be made directly or through pooled funds,
2 including common or collective trust funds of banks
3 and trust companies, group or unit trusts, limited
4 partnerships, limited liability companies, investment
5 trusts, title-holding corporations recognized under
6 section 501(c) of the Internal Revenue Code of 1986,
7 as amended, similar entities that would protect the
8 system's interest, and other pooled funds invested on
9 behalf of the system by investment managers retained
10 by the system;

11 (10) Other securities and futures contracts. Securities
12 and futures contracts in which in the informed opinion
13 of the board, it is prudent to invest funds of the
14 system, including currency, interest rate, bond, and
15 stock index futures contracts and options on the
16 contracts to hedge against anticipated changes in
17 currencies, interest rates, and bond and stock prices
18 that might otherwise have an adverse effect upon the
19 value of the system's securities portfolios; covered
20 put and call options on securities; and stock; whether
21 or not the securities, stock, futures contracts, or



1 options on futures are expressly authorized by or
2 qualify under the foregoing paragraphs, and
3 notwithstanding any limitation of any of the foregoing
4 paragraphs (including paragraph (4)); ~~and~~

- 5 (11) Private placements. Investments in institutional
6 blind pool limited partnerships, limited liability
7 companies, or direct investments that make private
8 debt and equity investments in privately held
9 companies, including but not limited to investments in
10 Hawaii high technology businesses or venture capital
11 investments that, in the informed opinion of the
12 board, are appropriate to invest funds of the system.
13 In evaluating venture capital investments, the board
14 shall consider, among other things, the impact an
15 investment may have on job creation in Hawaii and on
16 the state economy. The board shall report annually to
17 the legislature on any Hawaii venture capital
18 investments it has made; provided that if the board
19 determines it is not prudent to invest in any Hawaii
20 venture capital investments the board shall report the
21 rationale for the decision. The board, by January 1,



1 2008, shall develop criteria to determine the amount
2 of funds that may be prudently invested in Hawaii
3 private placement investments ~~[]~~; and

4 (12) Public-private partnerships to develop construction
5 projects to implement clean energy technology, as that
6 term is defined in section 269-121(b), or a
7 construction project to improve the State's water
8 supply, including projects defined as a water facility
9 under section 167-2 or section 174-2, a wastewater
10 treatment plant under section 340B-1, or a public
11 water system under section 340E-1."

12 SECTION 3. Section 235-7, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) There shall be excluded from gross income, adjusted
15 gross income, and taxable income:

16 (1) Income not subject to taxation by the State under the
17 Constitution and laws of the United States;

18 (2) Rights, benefits, and other income exempted from
19 taxation by section 88-91, having to do with the state
20 retirement system, and the rights, benefits, and other
21 income, comparable to the rights, benefits, and other



- 1 income exempted by section 88-91, under any other
2 public retirement system;
- 3 (3) Any compensation received in the form of a pension for
4 past services;
- 5 (4) Compensation paid to a patient affected with Hansen's
6 disease employed by the State or the United States in
7 any hospital, settlement, or place for the treatment
8 of Hansen's disease;
- 9 (5) Except as otherwise expressly provided, payments made
10 by the United States or this State, under an act of
11 Congress or a law of this State, which by express
12 provision or administrative regulation or
13 interpretation are exempt from both the normal and
14 surtaxes of the United States, even though not so
15 exempted by the Internal Revenue Code itself;
- 16 (6) Any income expressly exempted or excluded from the
17 measure of the tax imposed by this chapter by any
18 other law of the State, it being the intent of this
19 chapter not to repeal or supersede any express
20 exemption or exclusion;



1 (7) Income received by each member of the reserve
2 components of the Army, Navy, Air Force, Marine Corps,
3 or Coast Guard of the United States of America, and
4 the Hawaii National Guard as compensation for
5 performance of duty, equivalent to pay received for
6 forty-eight drills (equivalent of twelve weekends) and
7 fifteen days of annual duty, at an:
8 (A) E-1 pay grade after eight years of service;
9 provided that this subparagraph shall apply to
10 taxable years beginning after December 31, 2004;
11 (B) E-2 pay grade after eight years of service;
12 provided that this subparagraph shall apply to
13 taxable years beginning after December 31, 2005;
14 (C) E-3 pay grade after eight years of service;
15 provided that this subparagraph shall apply to
16 taxable years beginning after December 31, 2006;
17 (D) E-4 pay grade after eight years of service;
18 provided that this subparagraph shall apply to
19 taxable years beginning after December 31, 2007;
20 and



- 1 (E) E-5 pay grade after eight years of service;
2 provided that this subparagraph shall apply to
3 taxable years beginning after December 31, 2008;
- 4 (8) Income derived from the operation of ships or aircraft
5 if the income is exempt under the Internal Revenue
6 Code pursuant to the provisions of an income tax
7 treaty or agreement entered into by and between the
8 United States and a foreign country; provided that the
9 tax laws of the local governments of that country
10 reciprocally exempt from the application of all of
11 their net income taxes, the income derived from the
12 operation of ships or aircraft that are documented or
13 registered under the laws of the United States;
- 14 (9) The value of legal services provided by a legal
15 service plan to a taxpayer, the taxpayer's spouse, and
16 the taxpayer's dependents;
- 17 (10) Amounts paid, directly or indirectly, by a legal
18 service plan to a taxpayer as payment or reimbursement
19 for the provision of legal services to the taxpayer,
20 the taxpayer's spouse, and the taxpayer's dependents;



- 1 (11) Contributions by an employer to a legal service plan
2 for compensation (through insurance or otherwise) to
3 the employer's employees for the costs of legal
4 services incurred by the employer's employees, their
5 spouses, and their dependents;
- 6 (12) Amounts received in the form of a monthly surcharge by
7 a utility acting on behalf of an affected utility
8 under section 269-16.3; provided that amounts retained
9 by the acting utility for collection or other costs
10 shall not be included in this exemption;
- 11 (13) Amounts received in the form of a cable surcharge by
12 an electric utility company acting on behalf of a
13 certified cable company under section 269-134;
14 provided that any amounts retained by that electric
15 utility company for collection or other costs shall
16 not be included in this exemption; [and]
- 17 (14) One hundred per cent of the gain realized by a fee
18 simple owner from the sale of a leased fee interest in
19 units within a condominium project, cooperative
20 project, or planned unit development to the
21 association of owners under chapter 514A or 514B, or



1 the residential cooperative corporation of the
2 leasehold units.

3 For purposes of this paragraph:

4 "Fee simple owner" shall have the same meaning as
5 provided under section 516-1; provided that it shall
6 include legal and equitable owners;

7 "Legal and equitable owner", and "leased fee
8 interest" shall have the same meanings as provided
9 under section 516-1; and

10 "Condominium project" and "cooperative project"
11 shall have the same meanings as provided under section
12 514C-1 [-]; and

13 (15) Income, in an amount certified by the employees'
14 retirement system, up to but not more than per
15 cent of the direct costs of construction and operation
16 incurred by a person under a public-private
17 partnership with the employees' retirement system to
18 develop a construction project to implement clean
19 energy, as that term is defined in section 269-121(b),
20 or a construction project to improve the State's water
21 supply, including projects defined as a water facility



1 under section 167-2 or section 174-2, a wastewater
2 treatment plant under section 340B-1, or a public
3 water system under section 340E-1; provided that the
4 income shall be excluded from gross income, adjusted
5 income, and taxable income for each year of the
6 anticipated useful life of the construction project."

7 SECTION 4. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2050 and
13 shall apply to taxable years beginning after December 31, 2015;
14 provided that the amendment to section 235-7(a), Hawaii Revised
15 Statutes, made under section 3 of this Act, shall not be
16 repealed when section 235-7(a), Hawaii Revised Statutes, is
17 repealed and reenacted on January 1, 2018, pursuant to section 5
18 of Act 220, Session Laws of Hawaii 2012.



Report Title:

Taxation; Construction Projects; ERS

Description:

Exempts personal income tax income and general excise tax income in an amount up to an unspecified percentage of the costs of construction and operation of projects entered into under a public-private partnership with the ERS to improve water infrastructure or water supply, or to promote clean energy. Authorizes ERS investments in such public-private partnerships.
(HB 2028 HD1)

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