

# S.B. NO. 2383

JAN 25 2006

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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The purpose of this Act is to amend Act 247  
2 (2005) to authorize a county electing to exercise the authority  
3 to adopt a county surcharge on state tax to collect the county  
4 surcharge on state tax, and to make other clarifying amendments  
5 to the Hawaii Revised Statutes.

6           SECTION 2. Section 46-16.8, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "**§46-16.8 County surcharge on state tax.** (a) Each county  
9 may establish a surcharge on state tax at the rates enumerated in  
10 sections 237-8.6 and 238-2.6. A county electing to establish  
11 this surcharge shall do so by ordinance; provided that:

12           (1) No ordinance shall be adopted until the county has  
13 conducted a public hearing on the proposed ordinance;

14           (2) The ordinance shall be adopted prior to December 31,  
15 2005; and

16           (3) No county surcharge on state tax that may be authorized  
17 under this section shall be levied prior to January 1,  
18 2007.

19 Notice of the public hearing required under paragraph (1) shall  
20 be published in a newspaper of general circulation within the

1 county at least twice within a period of thirty days immediately  
2 preceding the date of the hearing.

3 (b) A county electing to exercise the authority granted  
4 under this section shall notify the director of taxation within  
5 ten days after the county has adopted a surcharge on state tax  
6 ordinance and, beginning no earlier than January 1, 2007, the  
7 [~~director of taxation~~] county shall levy, assess, collect, and  
8 otherwise administer the county surcharge on state tax.

9 (c) Each county with a population greater than five hundred  
10 thousand that adopts a county surcharge on state tax ordinance  
11 pursuant to subsection (a) shall use the surcharges [~~received~~  
12 ~~from the State~~] for:

- 13 (1) Operating or capital costs of a locally preferred  
14 alternative for a mass transit project; and  
15 (2) Expenses in complying with the Americans with  
16 Disabilities Act of 1990 with respect to paragraph (1).

17 The county surcharge on state tax shall not be used to build or  
18 repair public roads or highways, bicycle paths, or support public  
19 transportation systems already in existence prior to the  
20 effective date of this Act.

21 (d) Each county with a population equal to or less than  
22 five hundred thousand that adopts a county surcharge on state tax  
23 ordinance pursuant to subsection (a) shall use the surcharges  
24 received [~~from the State~~] for:

1 (1) Operating or capital costs of public transportation  
2 within each county for public transportation systems,  
3 including public roadways or highways, public buses,  
4 trains, ferries, pedestrian paths or sidewalks, or  
5 bicycle paths; and

6 (2) Expenses in complying with the Americans with  
7 Disabilities Act of 1990 with respect to paragraph (1).

8 (e) As used in this section, "capital costs" means  
9 nonrecurring costs required to construct a transit facility or  
10 system, including debt service, costs of land acquisition and  
11 development, acquiring of rights-of-way, planning, design, and  
12 construction, and including equipping and furnishing the facility  
13 or system."

14 SECTION 3. Section 237-8.6, Hawaii Revised Statutes, is  
15 amended by to read as follows:

16 **"§237-8.6 County surcharge on state tax; administration.**

17 (a) The county surcharge on state tax, upon the adoption of  
18 county ordinances and in accordance with the requirements of  
19 section 46-16.8, shall be levied, assessed, and collected as  
20 provided in this section on all gross proceeds and gross income  
21 taxable under this chapter. No county shall set the surcharge  
22 on state tax at a rate greater than one-half per cent of all  
23 gross proceeds and gross income taxable under this chapter. All  
24 provisions of this chapter shall apply to the county surcharge

1 on state tax. With respect to the surcharge, the director of  
2 taxation shall have all the rights and powers provided under  
3 this chapter. In addition, the director of taxation shall have  
4 the exclusive rights and power to determine the county or  
5 counties in which a person is engaged in business and, in the  
6 case of a person engaged in business in more than one county,  
7 the director shall determine, through apportionment or other  
8 means, that portion of the surcharge on state tax attributable  
9 to business conducted in each county.

10 (b) Each county surcharge on state tax that may be adopted  
11 pursuant to section 46-16.8(a) shall be levied beginning in the  
12 taxable year after the adoption of the relevant county  
13 ordinance; provided that no surcharge on state tax may be levied  
14 prior to January 1, 2007.

15 (c) The county surcharge on state tax, if adopted, shall  
16 be imposed on the gross proceeds or gross income of all written  
17 contracts [~~that require the passing on of the taxes imposed~~  
18 ~~under this chapter; provided that if the gross proceeds or gross~~  
19 ~~income are received as payments beginning in the taxable year in~~  
20 ~~which the taxes become effective, on contracts entered into~~  
21 ~~before June 30 of the year prior to the taxable year in which~~  
22 ~~the taxes become effective, and the written contracts do not~~

1 ~~provide for the passing on of increased rates of taxes, the~~  
2 ~~county surcharge on state tax shall not be imposed on the gross~~  
3 ~~proceeds or gross income covered under the written contracts.~~  
4 ~~The county surcharge on state tax shall be imposed on the gross~~  
5 ~~proceeds or gross income from all contracts entered into on or~~  
6 ~~after June 30 of the year prior to the taxable year in which the~~  
7 ~~taxes become effective,] including written contracts in effect~~  
8 ~~at the time the county surcharge on state tax becomes effective,~~  
9 regardless of whether the contract allows for the passing on of  
10 any tax or any tax increases.

11 (d) No county surcharge on state tax shall be established  
12 on any:

13 (1) Gross income or gross proceeds taxable under this  
14 chapter at the one-half per cent tax rate;

15 (2) Gross income or gross proceeds taxable under this  
16 chapter at the 0.15 per cent tax rate; or

17 (3) Transactions, amounts, persons, gross income, or gross  
18 proceeds exempt from tax under this chapter.

19 (e) The director of taxation shall revise the general  
20 excise tax forms to provide for the clear and separate  
21 designation of the imposition and payment of the county  
22 surcharge on state tax.

1 (f) The taxpayer shall designate the taxation district to  
2 which the county surcharge on state tax is assigned in  
3 accordance with rules adopted by the director of taxation under  
4 chapter 91. The taxpayer shall file a schedule with the  
5 taxpayer's periodic and annual general excise tax returns  
6 summarizing the amount of taxes assigned to each taxation  
7 district.

8 (g) The penalties provided by section 231-39 for failure  
9 to file a tax return shall be imposed on the amount of surcharge  
10 due on the return being filed for the failure to file the  
11 schedule required to accompany the return. In addition, there  
12 shall be added to the tax an amount equal to [~~ten~~] five per cent  
13 of the amount of the surcharge and tax due on the return being  
14 filed for the failure to file the schedule or the failure to  
15 correctly report the assignment of the general excise tax by  
16 taxation district on the schedule required under this  
17 subsection.

18 (h) All taxpayers who file on a fiscal year basis whose  
19 fiscal year ends after December 31 of the year prior to the  
20 taxable year in which the taxes become effective, shall file a  
21 short period annual return for the period preceding January 1 of  
22 the taxable year in which the taxes become effective. Each

1 fiscal year taxpayer shall also file a short period annual  
2 return for the period starting on January 1 of the taxable year  
3 in which the taxes become effective, and ending before January 1  
4 of the following year."

5 SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) The county surcharge on state tax, upon the adoption  
8 of a county ordinance and in accordance with the requirements of  
9 section 46-16.8, shall be levied, assessed, and collected as  
10 provided in this section on the value of property, ~~and~~  
11 services, and contracting taxable under this chapter. No county  
12 shall set the surcharge on state tax at a rate greater than one-  
13 half per cent of the value of property taxable under this  
14 chapter. All provisions of this chapter shall apply to the  
15 county surcharge on state tax. With respect to the surcharge,  
16 the director shall have all the rights and powers provided under  
17 this chapter. In addition, the director of taxation shall have  
18 the exclusive rights and power to determine the county or  
19 counties in which a person imports or purchases tangible  
20 personal property and, in the case of a person importing or  
21 purchasing tangible property in more than one county, the  
22 director shall determine, through apportionment or other means,

1 that portion of the surcharge on state tax attributable to the  
2 importation or purchase in each county."

3 SECTION 5. Section 248-2.6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§248-2.6 County Surcharge on state tax; disposition of**  
6 **proceeds.** (a) If adopted by county ordinance, all county  
7 surcharges on state tax [~~collected by the director of taxation~~  
8 ~~shall be paid into the state treasury quarterly, within ten~~  
9 ~~working days after collection, and shall be placed by the~~  
10 ~~director of finance in special accounts. Out of the revenues~~  
11 ~~generated by county surcharges on state tax paid into each~~  
12 ~~respective state treasury special account, the director of~~  
13 ~~finance shall deduct ten per cent of the gross proceeds of a~~  
14 ~~respective county's surcharge on state tax to reimburse the~~  
15 ~~State for the costs of assessment, collection, and disposition~~  
16 ~~of the county surcharge on state tax incurred by the State.~~  
17 ~~Amounts retained shall be general fund realizations of the~~  
18 ~~State.~~

19 ~~(b) The amounts deducted for costs of assessment,~~  
20 ~~collection, and disposition of county surcharges on state tax~~  
21 ~~shall be withheld from payment to the counties by the State out~~



1 ~~of the county surcharges on state tax collected for the current~~  
2 ~~calendar year.~~

3 ~~(c) For the purpose of this section, the costs of~~  
4 ~~assessment, collection, and disposition of the county surcharges~~  
5 ~~on state tax shall include any and all costs, direct or~~  
6 ~~indirect, that are deemed necessary and proper to effectively~~  
7 ~~administer this section and sections 237-8.6 and 238-2.6.~~

8 ~~(d) After the deduction and withholding of the costs under~~  
9 ~~subsections (a) and (b), the director of finance shall pay the~~  
10 ~~remaining balance on quarterly basis to the director of finance~~  
11 ~~of each county that has adopted a county surcharge on state tax~~  
12 ~~under section 46-16.8. The quarterly payments shall be made~~  
13 ~~after the county surcharges on state tax have been paid into the~~  
14 ~~state treasury special accounts or after the disposition of any~~  
15 ~~tax appeal, as the case may be. All county surcharges on state~~  
16 ~~tax collected shall be distributed by the director of finance to~~  
17 ~~the county in which the county surcharge on state tax is~~  
18 ~~generated and shall be a general fund realization of the county,~~  
19 ~~to be used for the purposes specified in section 46-16.8 by each~~  
20 ~~of the counties.]~~shall be collected by the department of finance  
21 of the county electing to exercise the authority to adopt a  
22 county surcharge on state tax. Out of the revenues generated by

1 county surcharges on state tax paid, a county that has imposed a  
2 county surcharge on state tax may use up to ten per cent of the  
3 gross proceeds of a respective county's surcharge on state tax  
4 to pay for the costs of assessment, collection, and disposition  
5 of the county surcharge on state tax.

6 (b) For the purpose of this section, the costs of  
7 assessment, collection, and disposition of the county surcharges  
8 on state tax shall include any and all costs, direct or  
9 indirect, that are deemed necessary and proper to effectively  
10 administer this section and sections 237-8.6 and 238-2.6.

11 (c) After the deduction of the costs under subsection (a),  
12 the county surcharges on state tax collected shall be a general  
13 fund realization of the county, to be used for the purposes  
14 specified in section 46-16.8 by each of the counties.

15 (d) A county imposing a county surcharge on state tax  
16 pursuant to sections 237-8.6 and 238-2.6 may contract with a  
17 private entity for the collection of such surcharges."

18 SECTION 6. Section 235-116, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§235-116 Disclosure of returns unlawful; penalty.** All  
21 tax returns and return information required to be filed under  
22 this chapter shall be confidential, including any copy of any

1 portion of a federal return which may be attached to a state tax  
2 return, or any information reflected in the copy of such federal  
3 return. It shall be unlawful for any person, or any officer or  
4 employee of the State or county to make known intentionally  
5 information imparted by any income tax return or estimate made  
6 under sections 235-92, 235-94, 235-95, and 235-97 or wilfully to  
7 permit any income tax return or estimate so made or copy thereof  
8 to be seen or examined by any person other than the taxpayer or  
9 the taxpayer's authorized agent, persons duly authorized by the  
10 State in connection with their official duties, persons duly  
11 authorized by a county in connection with their official duties  
12 relating to a county surcharge on state tax pursuant to section  
13 46-16.8, Hawaii Revised Statutes, the Multistate Tax Commission  
14 or the authorized representative thereof, except as provided by  
15 law, and any offense against the foregoing provisions shall be  
16 punished by a fine not exceeding \$500 or by imprisonment not  
17 exceeding one year, or both."

18 SECTION 7. Section 237-34, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§237-34 Filing of returns; disclosure of returns unlawful,**  
21 **penalty; destruction of returns.** (a) All monthly and annual  
22 returns shall be transmitted to the office of the taxation

1 district or in the case of a county surcharge on state tax, to  
2 the county department of finance in the county or the director's  
3 designee in which the privilege upon which the tax accrued is  
4 exercised. Where the privilege is exercised in more than one  
5 taxation district the returns shall be transmitted to the office  
6 of the first district.

7 (b) All tax returns and return information required to be  
8 filed under this chapter, and the report of any investigation of  
9 the return or of the subject matter of the return, shall be  
10 confidential. It shall be unlawful for any person, or any  
11 officer or employee of the State or county to intentionally make  
12 known information imparted by any tax return or return  
13 information filed pursuant to this chapter, or any report of any  
14 investigation of the return or of the subject matter of the  
15 return, or to wilfully permit any such return, return  
16 information, or report so made, or any copy thereof, to be seen  
17 or examined by any person; provided that for tax purposes only  
18 the taxpayer, the taxpayer's authorized agent, or persons with a  
19 material interest in the return, return information, or report  
20 may examine them. Unless otherwise provided by law, persons  
21 with a material interest in the return, return information, or  
22 report shall include:

- 1 (1) Trustees;
- 2 (2) Partners;
- 3 (3) Persons named in a board resolution or a one per cent
- 4 shareholder in case of a corporate return;
- 5 (4) The person authorized to act for a corporation in
- 6 dissolution;
- 7 (5) The shareholder of an S corporation;
- 8 (6) The personal representative, trustee, heir, or
- 9 beneficiary of an estate or trust in case of the
- 10 estate's or decedent's return;
- 11 (7) The committee, trustee, or guardian of any person in
- 12 paragraphs (1) to (6) who is incompetent;
- 13 (8) The trustee in bankruptcy or receiver, and the
- 14 attorney-in-fact of any person in paragraphs (1) to
- 15 (7);
- 16 (9) Persons duly authorized by the State in connection
- 17 with their official duties;
- 18 (10) Any duly accredited tax official of the United States
- 19 or of any state or territory or of a county that has
- 20 elected to exercise the authority to adopt a county
- 21 surcharge on state tax pursuant to section 46-16.8,
- 22 Hawaii Revised Statutes;

- 1 (11) The Multistate Tax Commission or its authorized  
2 representative;
- 3 (12) Members of a limited liability company; and
- 4 (13) A person contractually obligated to pay the taxes  
5 assessed against another when the latter person is  
6 under audit by the department.

7 Any violation of this subsection shall be a misdemeanor.

8 (c) The department may destroy the monthly returns filed  
9 pursuant to section 237-30, or any of them, upon the expiration  
10 of three years after the end of the calendar year in which the  
11 taxes so returned accrued."

12 SECTION 8. Section 237-1, Hawaii Revised Statutes, is  
13 amended by adding two new definitions to be appropriately  
14 inserted and to read as follows:

15 "Department of taxation" or "department" means the  
16 department of taxation or a county department of finance of a  
17 county electing to exercise the authority to adopt a county  
18 surcharge on state tax, unless otherwise indicated. A county  
19 department of finance may only exercise the powers in this  
20 chapter with respect to a county surcharge on state tax."

21 "Director of taxation" or "director" means the director of  
22 the department of taxation or the director of a county  
23 department of finance of a county electing to exercise the

1 authority to adopt a county surcharge on state tax, unless  
2 otherwise indicated. A director of a county department of  
3 finance may only exercise the powers in this chapter with  
4 respect to a county surcharge on state tax."

5 SECTION 9. Section 238-1, Hawaii Revised Statutes, is  
6 amended by adding two new definitions to be appropriately  
7 inserted and to read as follows:

8 "Department of taxation" or "department" means the  
9 department of taxation or a county department of finance of a  
10 county electing to exercise the authority to adopt a county  
11 surcharge on state tax, unless otherwise indicated. A county  
12 department of finance may only exercise the powers in this  
13 chapter with respect to a county surcharge on state tax."

14 "Director of taxation" or "director" means the director of  
15 the department of taxation or the director of a county  
16 department of finance of a county electing to exercise the  
17 authority to adopt a county surcharge on state tax, unless  
18 otherwise indicated. A director of a county department of  
19 finance may only exercise the powers in this chapter with  
20 respect to a county surcharge on state tax."

21 SECTION 10. Section 237-31, Hawaii Revised Statutes, is  
22 amended to read as follows:

1       "§237-31 **Remittances.** All remittances of taxes imposed by  
2 this chapter shall be made by money, bank draft, check,  
3 cashier's check, money order, or certificate of deposit to the  
4 office of the department of taxation, or in the case of a county  
5 surcharge on state tax, to the county department of finance or  
6 the department's designee to which the return was transmitted.  
7 The department shall issue its receipts therefor to the taxpayer  
8 and shall pay the moneys into the state treasury as a state  
9 realization, or in the case of a county department of finance,  
10 into the county treasury as a county realization, to be kept and  
11 accounted for as provided by law; provided that:

12       (1) The sum from all general excise tax revenues realized  
13 by the State that represents the difference between  
14 \$45,000,000 and the proceeds from the sale of any  
15 general obligation bonds authorized for that fiscal  
16 year for the purposes of the state educational  
17 facilities improvement special fund shall be deposited  
18 in the state treasury in each fiscal year to the  
19 credit of the state educational facilities improvement  
20 special fund;

21       (2) A sum, not to exceed \$5,000,000, from all general  
22 excise tax revenues realized by the State shall be



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1 deposited in the state treasury in each fiscal year to  
2 the credit of the compound interest bond reserve fund;  
3 and

4 (3) A sum, not to exceed the amount necessary to meet the  
5 obligations of the integrated tax information  
6 management systems performance-based contract may be  
7 retained and deposited in the state treasury to the  
8 credit of the integrated tax information management  
9 systems special fund. The sum retained by the  
10 director of taxation for deposit to the integrated tax  
11 information management systems special fund for each  
12 fiscal year shall be limited to amounts appropriated  
13 by the legislature. This paragraph shall be repealed  
14 on July 1, 2005."

15 SECTION 11. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 12. This Act shall take effect upon its approval.

18  
19 INTRODUCED BY: 

20 By Request

JUSTIFICATION SHEET

**SB. NO. 2383**

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TAXATION.

PURPOSE: To ensure that counties that levy a county surcharge on state tax by ordinance to fund public transportation systems shall be responsible for administration of the surcharge.

MEANS: Amend sections 46-16.8, 235-116, 237-1, 237-8.6, 237-31, 237-34, 238-1, 238-2.6(a), and 248-2.6, Hawaii Revised Statutes.

JUSTIFICATION: Pursuant to the agreement reached between the Legislative leadership, the City and County of Honolulu and the Administration, it was agreed that the county surcharge imposed in Act 247, Session Laws of Hawaii 2005, would be amended to provide for county administration of the surcharge to fund county public transportation systems. The amendments made in this measure transfer authority for collection of the surcharge to the finance director of the county imposing a surcharge, eliminates the 10 per cent set aside to the general fund for costs of State collection of the surcharge, and reduces the amount of the statutory penalty for non-filing the county surcharge to equal the State statutory penalty of 5 per cent, so that delinquent taxpayers will not favor repayment of the county over the State.

In order to carry out and effectuate county collection of the one-half per cent general excise tax (GET) surcharge, it is also necessary to amend HRS provisions relating to penalties for unauthorized disclosures of confidential tax information to expressly apply to county tax officials, employees,

and contractors to protect the privacy interests of taxpayers.

Impact on the public: None.

Impact on the department and other agencies:  
Will promote coordination of enforcement efforts between DOTAX and the county.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: TAX 102.

OTHER AFFECTED  
AGENCIES: City and County Department of Budget and Fiscal Services.  
State of Hawaii, Department of Budget and Finance.

EFFECTIVE DATE: Upon approval.