

JAN 23 2009

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 **TRANSIT CAPITAL DEVELOPMENT FUND**

6 § -1 **Purpose.** The purpose of this chapter is to
7 establish a transit capital development fund to assist the
8 counties with the capital costs involved in developing mass
9 transportation.

10 § -2 **Definitions.** As used in this chapter unless the
11 context otherwise requires:

12 "Mass transportation" means transportation by bus, rail, or
13 other conveyance either publicly or privately owned, which
14 provides general or special service to the public on a regular
15 and continuing basis, excluding school buses, charter, or
16 sightseeing service.



1 "Private source revenues" means all funds, concessions,
2 development rights, or other assets of value contractually
3 agreed upon with the county from sources other than state,
4 county, or federal government as a result of, or for the
5 purposes of, developing mass transportation.

6 "Transit fund" means the transit capital development fund
7 created in section -3.

8 **§ -3 Transit capital development fund; establishment.**

9 (a) There is created in the treasury of the State a special
10 fund to be known as the transit capital development fund, into
11 which shall be deposited each year and from time to time, moneys
12 as shall be appropriated by the legislature. All interest
13 earned or accrued on moneys deposited in the transit fund shall
14 become part of the transit fund. The director of finance shall
15 administer the transit fund and shall direct the comptroller to
16 expend available moneys from the transit fund as provided by a
17 development agreement between the executive branch of a county
18 and the governor, subject to the disapproval of the legislature
19 pursuant to section -5.

20 (b) The transit fund shall be used solely to provide
21 financial assistance to the counties for capital and
22 construction costs, including costs related to acquiring land,



1 reconstructing, improving, extending, equipping, or furnishing
2 mass transportation. Moneys in the transit fund shall not be
3 used for operational costs for mass transportation.

4 (c) Expenditures from the transit fund shall be limited to
5 projects authorized by a development agreement between the
6 executive branch of a county and the governor, subject to the
7 disapproval of the legislature pursuant to section -5, and
8 shall be subject to section 37-31.

9 § -4 **Matching requirements by the county.** Moneys from
10 the transit fund shall be made available under this chapter
11 provided that the county obligates itself to match the amount of
12 requested moneys dollar for dollar over the term of the project
13 for the purpose for which the county is making the request. For
14 the matching requirements under this section, the county may use
15 private source revenues, county revenues, or both, but shall not
16 use any federal government funds.

17 § -5 **Projects; authorization.** (a) Any county by
18 ordinance may authorize the executive branch of the county to
19 enter into a development agreement with the governor, subject to
20 the disapproval of the legislature, for a mass transportation
21 project; provided that the development agreement shall:



- 1 (1) Describe the type of mass transportation project, the
2 areas to be served, and anticipated ridership;
- 3 (2) Provide a breakdown of costs and identify the
4 anticipated funding sources including the amount being
5 requested from the transit fund and the source of
6 county matching funds, together with a phasing
7 schedule of both costs and funding sources, and a
8 breakdown of actions taken or required to be taken in
9 order to provide for such matching funds;
- 10 (3) Provide a schedule of disbursements from the transit
11 fund which shall be allowed;
- 12 (4) Provide a timetable for the development of the mass
13 transportation project; and
- 14 (5) Provide for amendment at any subsequent time by mutual
15 consent of the parties subject to legislative
16 disapproval as provided in this section.
- 17 (b) Any development agreement shall provide that the
18 obligation to disburse moneys from the transit fund shall
19 constitute a limited obligation payable solely from moneys on
20 deposit in the transit fund and not otherwise. The obligation
21 to disburse moneys from the transit funds shall be subject to
22 the availability of moneys in the transit fund from time to time



1 and evidence, satisfactory to the director of finance, that the
2 county has complied with the matching funds requirement of
3 section -4. Such obligation shall not constitute a general
4 obligation of the State or any agency or department thereof.

5 (c) The governor and the county shall submit the
6 development agreement to the legislature. The legislature shall
7 approve or disapprove the development agreement within sixty
8 days of its first regular legislative session convened after
9 receipt of the development agreement from the governor and the
10 county. If the development agreement is not disapproved after
11 the sixtieth day, it shall be deemed approved by the
12 legislature.

13 **§ -6 Transit capital development fund; appropriation.**

14 Each year beginning with fiscal year 2009-2010 through fiscal
15 year 2011-2012, the legislature shall appropriate to the transit
16 capital development fund created by section -3 the sum of
17 \$53,000,000 or so much as may be deemed necessary for the
18 purpose of financially assisting counties for capital costs in
19 developing mass transportation.

20 **§ -7 Private source adequacy; lapsing of funds.** If the
21 director of finance determines that the private source revenues
22 relating to any development agreement are inadequate, the



1 director shall submit a report of such findings to the
2 legislature. Upon legislative acceptance of the findings within
3 sixty days of the first regular legislative session convened
4 following the submittal of such findings, no additional moneys
5 may be expended pursuant to such development agreements from the
6 transit fund; except that such limitation on the expenditure of
7 moneys from the transit fund shall not occur prior to
8 December 31, 2009. Any unencumbered moneys remaining in the
9 transit fund at that time shall lapse to the general fund. The
10 remaining terms and conditions of the development agreement
11 shall remain in effect.

12 § -8 **Reports.** The director of finance shall prepare and
13 submit an annual report on the transit fund to the legislature
14 forty-five days prior to the convening of each regular
15 legislative session."

16 SECTION 2. Act 247, Session Laws of Hawaii 2005, is
17 amended by amending section 9 to read as follows:

18 "SECTION 9. This Act shall take effect upon its approval;
19 provided that:

20 (1) If none of the counties of the State adopt an
21 ordinance to levy a county surcharge on state tax by
22 December 31, 2005, this Act shall be repealed and



1 section 437D-8.4, Hawaii Revised Statutes, shall be
2 reenacted in the form in which it read on the day
3 prior to the effective date of this Act;

4 (2) If any county does not adopt an ordinance to levy a
5 county surcharge on state tax by December 31, 2005, it
6 shall be prohibited from adopting such an ordinance
7 pursuant to this Act, unless otherwise authorized by
8 the legislature through a separate legislative act;

9 (3) If an ordinance to levy a county surcharge on state
10 tax is adopted by December 31, 2005:

11 (A) The ordinance shall be repealed on [~~December 31,~~
12 ~~2022;~~] July 1, 2009;

13 (B) This Act shall be repealed on [~~December 31, 2022;~~]
14 July 1, 2009; and

15 (C) [~~Section~~] On July 1, 2009, section 437D-8.4,
16 Hawaii Revised Statutes, shall be reenacted in
17 the form in which it read on the day prior to the
18 effective date of this Act."

19 SECTION 3. Section 264-18, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Out of the state highway fund amounts, whether state
22 funds or federal funds, shall be expended as necessary by the



1 State for the establishment of bikeways; provided that bikeways
2 shall be established, whenever practicable, wherever a new or
3 existing highway, road, or street is being designed, planned,
4 constructed, reconstructed, relocated, or rehabilitated. At
5 least two per cent of eligible federal funds, and in addition,
6 other state highway fund moneys as available, shall be expended
7 to:

8 (1) Establish multi-use paths, bicycle paths, and bicycle
9 lanes; and

10 (2) Install signage and safety devices along bikeways;
11 provided that the department of transportation shall include the
12 bicycling community in a public involvement process to determine
13 the location of multi-use paths, bicycle paths, bicycle lanes,
14 and installation of signage and safety devices along bikeways.

15 Planning for any mass transit system shall include
16 appropriate accommodation for bicycle lanes, bikeways, and
17 bicycle routes, including bicycle racks on mass transit
18 vehicles, to enable mass transit users to connect conveniently
19 by bicycle to transit stations and bus stops.

20 ~~[This subsection shall not be construed as requiring the~~
21 ~~expenditure of a county surcharge on state tax under section~~



1 ~~46-16.8, on bicycle paths if the application of this subsection~~
2 ~~conflicts with section 46-16.8.]"~~

3 SECTION 3. Section 46-16.8, Hawaii Revised Statutes, is
4 repealed.

5 ~~"[~~§46-16.8~~] ~~County surcharge on state tax.~~ (a) Each~~
6 ~~county may establish a surcharge on state tax at the rates~~
7 ~~enumerated in sections 237-8.6 and 238-2.6. A county electing~~
8 ~~to establish this surcharge shall do so by ordinance; provided~~
9 ~~that:~~

10 ~~(1) No ordinance shall be adopted until the county has~~
11 ~~conducted a public hearing on the proposed ordinance;~~

12 ~~(2) The ordinance shall be adopted prior to December 31,~~
13 ~~2005; and~~

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

17 ~~Notice of the public hearing required under paragraph (1) shall~~
18 ~~be published in a newspaper of general circulation within the~~
19 ~~county at least twice within a period of thirty days immediately~~
20 ~~preceding the date of the hearing.~~

21 ~~(b) A county electing to exercise the authority granted~~
22 ~~under this section shall notify the director of taxation within~~



1 ~~ten days after the county has adopted a surcharge on state tax~~
2 ~~ordinance and, beginning no earlier than January 1, 2007, the~~
3 ~~director of taxation shall levy, assess, collect, and otherwise~~
4 ~~administer the county surcharge on state tax.~~

5 ~~(c) Each county with a population greater than five~~
6 ~~hundred thousand that adopts a county surcharge on state tax~~
7 ~~ordinance pursuant to subsection (a) shall use the surcharges~~
8 ~~received from the State for:~~

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

14 ~~The county surcharge on state tax shall not be used to build or~~
15 ~~repair public roads or highways, bicycle paths, or support~~
16 ~~public transportation systems already in existence prior to July~~
17 ~~12, 2005.~~

18 ~~(d) Each county with a population equal to or less than~~
19 ~~five hundred thousand that adopts a county surcharge on state~~
20 ~~tax ordinance pursuant to subsection (a) shall use the~~
21 ~~surcharges 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~~
- 8 ~~(1).~~

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

15 SECTION 5. Section 237-8.6, Hawaii Revised Statutes, is
16 repealed.

17 ~~["~~§237-8.6~~ County surcharge on state tax;~~
18 ~~administration.~~ (a) ~~The county surcharge on state tax, upon~~
19 ~~the adoption of county ordinances and in accordance with the~~
20 ~~requirements of section 46-16.8, shall be levied, assessed, and~~
21 ~~collected as provided in this section on all gross proceeds and~~
22 ~~gross income taxable under this chapter. No county shall set~~



1 ~~the surcharge on state tax at a rate greater than one-half per~~
2 ~~cent of all gross proceeds and gross income taxable under this~~
3 ~~chapter. All provisions of this chapter shall apply to the~~
4 ~~county surcharge on state tax. With respect to the surcharge,~~
5 ~~the director of taxation shall have all the rights and powers~~
6 ~~provided under this chapter. In addition, the director of~~
7 ~~taxation shall have the exclusive rights and power to determine~~
8 ~~the county or counties in which a person is engaged in business~~
9 ~~and, in the case of a person engaged in business in more than~~
10 ~~one county, the director shall determine, through apportionment~~
11 ~~or other means, that portion of the surcharge on state tax~~
12 ~~attributable to business conducted in each county.~~

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

18 ~~(c) The county surcharge on state tax, if adopted, shall~~
19 ~~be imposed on the gross proceeds or gross income of all written~~
20 ~~contracts that require the passing on of the taxes imposed under~~
21 ~~this chapter; provided that if the gross proceeds or gross~~
22 ~~income are received as payments beginning in the taxable year in~~



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

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

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

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

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

20 ~~(e) The director of taxation shall revise the general~~
21 ~~excise tax forms to provide for the clear and separate~~



1 ~~designation of the imposition and payment of the county~~
2 ~~surcharge on state tax.~~

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

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

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



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

6 SECTION 6. Section 238-2.6, Hawaii Revised Statutes, is
7 repealed.

8 ~~["~~§238-2.6~~ **County surcharge on state tax;**~~
9 ~~**administration.** (a) The county surcharge on state tax, upon~~
10 ~~the adoption of a county ordinance and in accordance with the~~
11 ~~requirements of section 46-16.8, shall be levied, assessed, and~~
12 ~~collected as provided in this section on the value of property~~
13 ~~and services taxable under this chapter. No county shall set~~
14 ~~the surcharge on state tax at a rate greater than one-half per~~
15 ~~cent of the value of property taxable under this chapter. All~~
16 ~~provisions of this chapter shall apply to the county surcharge~~
17 ~~on state tax. With respect to the surcharge, the director shall~~
18 ~~have all the rights and powers provided under this chapter. In~~
19 ~~addition, the director of taxation shall have the exclusive~~
20 ~~rights and power to determine the county or counties in which a~~
21 ~~person imports or purchases tangible personal property and, in~~
22 ~~the case of a person importing or purchasing tangible property~~



1 ~~in more than one county, the director shall determine, through~~
2 ~~apportionment or other means, that portion of the surcharge on~~
3 ~~state tax attributable to the importation or purchase in each~~
4 ~~county.~~

5 ~~(b) Each county surcharge on state tax that may be adopted~~
6 ~~shall be levied beginning in the taxable year after the adoption~~
7 ~~of the relevant county ordinance; provided that no surcharge on~~
8 ~~state tax may be levied prior to January 1, 2007.~~

9 ~~(c) No county surcharge on state tax shall be established~~
10 ~~upon any use taxable under this chapter at the one-half per cent~~
11 ~~tax rate or upon any use that is not subject to taxation or that~~
12 ~~is exempt from taxation under this chapter.~~

13 ~~(d) The director of taxation shall revise the use tax~~
14 ~~forms to provide for the clear and separate designation of the~~
15 ~~imposition and payment of the county surcharge on state tax.~~

16 ~~(e) The taxpayer shall designate the taxation district to~~
17 ~~which the county surcharge on state tax is assigned in~~
18 ~~accordance with rules adopted by the director of taxation under~~
19 ~~chapter 91. The taxpayer shall file a schedule with the~~
20 ~~taxpayer's periodic and annual use tax returns summarizing the~~
21 ~~amount of taxes assigned to each taxation district.~~



1 ~~(f) The penalties provided by section 231-39 for failure~~
2 ~~to file a tax return shall be imposed on the amount of surcharge~~
3 ~~due on the return being filed for the failure to file the~~
4 ~~schedule required to accompany the return. In addition, there~~
5 ~~shall be added to the tax an amount equal to ten per cent of the~~
6 ~~amount of the surcharge and tax due on the return being filed~~
7 ~~for the failure to file the schedule or the failure to correctly~~
8 ~~report the assignment of the use tax by taxation district on the~~
9 ~~schedule required under this subsection.~~

10 ~~(g) All taxpayers who file on a fiscal year basis whose~~
11 ~~fiscal year ends after December 31 of the year prior to the~~
12 ~~taxable year in which the taxes become effective, shall file a~~
13 ~~short period annual return for the period preceding January 1 of~~
14 ~~the taxable year in which the taxes become effective. Each~~
15 ~~fiscal year taxpayer shall also file a short period annual~~
16 ~~return for the period starting on January 1 of the taxable year~~
17 ~~in which the taxes become effective, and ending before January 1~~
18 ~~of the following year."]~~

19 SECTION 7. Section 248-2.6, Hawaii Revised Statutes, is
20 repealed.

21 ~~["~~§248-2.6~~ County surcharge on state tax; disposition of~~
22 ~~proceeds.~~ (a) ~~If adopted by county ordinance, all county~~



1 ~~surcharges on state tax collected by the director of taxation~~
2 ~~shall be paid into the state treasury quarterly, within ten~~
3 ~~working days after collection, and shall be placed by the~~
4 ~~director of finance in special accounts. Out of the revenues~~
5 ~~generated by county surcharges on state tax paid into each~~
6 ~~respective state treasury special account, the director of~~
7 ~~finance shall deduct ten per cent of the gross proceeds of a~~
8 ~~respective county's surcharge on state tax to reimburse the~~
9 ~~State for the costs of assessment, collection, and disposition~~
10 ~~of the county surcharge on state tax incurred by the State.~~
11 ~~Amounts retained shall be general fund realizations of the~~
12 ~~State.~~

13 ~~(b) The amounts deducted for costs of assessment,~~
14 ~~collection, and disposition of county surcharges on state tax~~
15 ~~shall be withheld from payment to the counties by the State out~~
16 ~~of the county surcharges on state tax collected for the current~~
17 ~~calendar year.~~

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



1 ~~(d) After the deduction and withholding of the costs under~~
2 ~~subsections (a) and (b), the director of finance shall pay the~~
3 ~~remaining balance on [a] quarterly basis to the director of~~
4 ~~finance of each county that has adopted a county surcharge on~~
5 ~~state tax under section 46-16.8. The quarterly payments shall~~
6 ~~be made after the county surcharges on state tax have been paid~~
7 ~~into the state treasury special accounts or after the~~
8 ~~disposition of any tax appeal, as the case may be. All county~~
9 ~~surcharges on state tax collected shall be distributed by the~~
10 ~~director of finance to the county in which the county surcharge~~
11 ~~on state tax is generated and shall be a general fund~~
12 ~~realization of the county, to be used for the purposes specified~~
13 ~~in section 46-16.8 by each of the counties."]~~

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect upon its approval.

17

INTRODUCED BY:

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Report Title:

Public Transit; Repeal County Surcharge on State Tax

Description:

Repeals one-half percent county surcharge on state tax established to fund public transportation systems. Creates new chapter establishing a transit capital development fund to assist counties in developing mass transportation.

