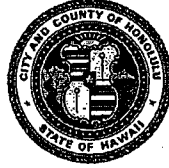


SB 1426

OFFICE OF THE MAYOR
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PETER B. CARLISLE
MAYOR

DOUGLAS S. CHIN
MANAGING DIRECTOR

February 24, 2011

The Honorable David Ige, Chair
Senate Ways and Means Committee
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ige and Committee Members,

RE: S.B. 1426, S.D. 1; Relating to Public Funds

The City and County of Honolulu submits this testimony in opposition to S.B. 1426, S.D. 1 which proposes the State "borrow" \$200 million collected by the City from its surcharge on the State general excise tax and repays the City by issuing \$300 million in State general obligation ("GO") bonds. In addition S.B. 1426, S.D. 1 allows the State to access the county surcharge revenues by substituting county surcharge revenues with other State funds and extends the life of the surcharge for two additional years.

Although we fully appreciate the intent of this proposal which is to assist the state in closing its budget gap and potentially providing the City with more funds in the future for the City's rail project, we must oppose this bill at this time.

First, we would like to correct the misimpression that the surcharge funds are unencumbered and not needed in the immediately foreseeable future. As of January 31, 2011, the City has received approximately \$621 million (this is after the State has taken its 10 percent of the gross surcharge receipts) in county surcharge and interest. Of this amount, the City has spent or has committed approximately \$342 million and will be committing an additional \$155 million by June 30, 2011. This leaves approximately \$124 million which the City needs to carry forth as working cash for the Honolulu Authority for Rapid Transportation's FY 2012 operating and capital improvement budgets. In addition to the carryover balance, City GO bond proceeds are currently anticipated in FY 2012 for capital commitments.

Second, S.B. 1426, S.D. 1 requires the affirmative advice from the State's bond counsel on the suitability of using the proceeds from the issuance of the State GO bonds for the purpose of replacing the tax revenues "borrowed" from the City. We have not, as of yet, received a copy

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February 24, 2011
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of the State's bond counsel's advice and therefore a fundamental question regarding the viability of this proposal has not been answered. The City would appreciate knowing whether bond counsel's advice has been requested and when the advice can be expected.

Third, the State does not have the authority to unilaterally require the City to turn over the existing GET surcharge monies to the State, so another fundamental question is whether and how the City can agree to turning over said monies. The GET surcharge funds were collected pursuant to Section 6-60.1, Revised Ordinances of Honolulu 1990 ("ROH"). Both Hawaii Revised Statutes ("HRS") Section 46-16.8(c) (Supp. 2010) (which authorized the counties' GET surcharge) and ROH Sections 6-60.2 and 6-61.4 currently provide that the surcharge can only be used for operating or capital costs of a locally preferred alternative (LPA) for a mass transit project and expenses in complying with the Americans with Disabilities Act (ADA). Currently, no other use of the surcharge is permitted. Not only do Act 247 (2005) and HRS Section 46-16.8(c) have to be amended, but the Honolulu City Council would also have to act by amending the ROH to provide the \$200 million loan to the State. This matter has not been put before the City Council, and we cannot confirm that the City Council would be willing to amend ROH Sections 6-60.1, 6-60.2, and 6-61.4, especially given the issues raised above.

Fourth, the language of the new HRS Section 248-2.6(e) should be revised to clarify the reference therein to "deductions for costs of assessment and collection." There is only one deduction from the collection of county surcharge revenue and that is the ten per cent provided for in HRS Section 248-2.6(a). To the extent the new HRS Section 248-2.6(e) may be interpreted to allow another or other deductions for costs of assessment and collection when substituted State funds are applied, the language of HRS Section 248-2.6(e) must be revised.

Lastly and most importantly, the City has concerns that federal entities, including the U.S. Congress, may view this proposal as tampering with the GET surcharge, and this may risk endangering future federal funding. One of the most important components of the rail project's financial plan is a stable and dedicated local revenue source. If the Federal Transit Administration (FTA) and Congress do not consider the dedicated transit fund to be secure and reliable, the City's commitment to the rail project may be questioned and federal support for the project may be put in jeopardy. Given the need for reliable and stable sources of financing, Part II of S.B. 1426, S.D. 1 is particularly concerning as it establishes no dollar amount or time limitation for the authority of the State Director of Finance to substitute other available State revenue sources, including State general obligation bond proceeds for payments due the City in lieu of the revenue collected by the State as the county surcharge on the GET.

The City would be remiss if it did not require the State to provide a legal opinion to the City for each separate State revenue source the State intends to use for the substituted payment, which confirms that the State may legally apply the revenue source in substitution for the county

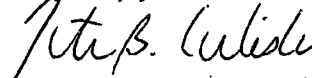
The Honorable David Ige, Chair
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surcharge and that the substituted funds can be applied to the City's rail project. We understand the State's financial situation, but especially given the state of our economy and the magnitude of the economic stimulus that only rail at this point has the potential to provide, we firmly believe that this is not the time to cast doubts on the City's commitment to provide its share of funds for the rail project.

In closing, we would like to reiterate that the Honolulu City Council, the Mayor and the citizens of Honolulu have all affirmed their desire to construct an elevated rail system that would begin to relieve Honolulu's traffic congestion and improve future mobility for Oahu. The rail project is the largest stimulus available for our recovering economy and it is ready now. The legislature's own construction industry task force has recently made Honolulu's rail project its top priority, stating "No other project on the horizon has the same potential for generating jobs, assisting local businesses and contributing to Hawaii's overall economy." We believe that we must continue to demonstrate resolve and commitment to this worthwhile and critical public works project and for this reason, we must respectfully oppose this bill and ask that you hold it in committee.

Thank you for this opportunity to comment on this bill.

Very truly yours,



PETER B. CARLISLE
Mayor

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Extend county surcharge on state tax

BILL NUMBER: SB 1426, SD-1

INTRODUCED BY: Senate Committee on Public Safety, Government Operations, and Military Affairs

BRIEF SUMMARY: Provides that the city and county shall return to the state \$200 million derived from the county surcharge on state tax when the proceeds from the issuance of general obligation bonds are placed in escrow for transfer to the city and county of Honolulu.

Authorizes the state director of finance to issue and appropriate general obligation bonds of \$300 million for fiscal 2011 for the purpose of replacing surcharge revenues that are returned from the city and county of Honolulu to the state general fund.

Amends Act 247, SLH 2005, to extend the imposition of the county surcharge on state tax from December 31, 2022 to December 31, 2024.

Amends HRS section 248-2.6 to provide that the director of finance may make payments required under this section from available sources other than the remaining balance after deducting costs of assessment and collection; provided that payments made from sources other than the state treasury special accounts shall cause an equivalent amount to be deducted from the state treasury special account and become a general fund realization of the state.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: Due to the state's financial crisis, this measure proposes to "borrow" \$200 million in county surcharge funds which are designated to build a mass transit system on Oahu. While the state will issue \$300 million in general obligation bonds and use the proceeds of the issuance to repay the city and county of Honolulu, the measure also proposes to extend the imposition of the county surcharge on state taxes for an additional two-year period from 2022 to 2024. While this will allow the city and county of Honolulu to receive an additional two years of surcharge tax revenue, this will come out of the pockets of the taxpayers of the city and county of Honolulu. This extension of the imposition of the county surcharge tax is totally unacceptable.

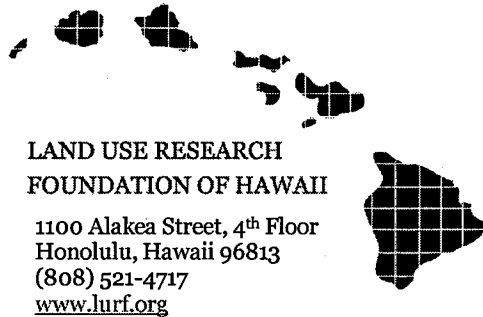
This slight of hand in taking and giving is an outright insult to taxpayers. The measure proposes to issue \$300 million in debt for which the principal and interest will be an obligation of all taxpayers across the state and, in addition, the surcharge is imposed for an additional two years on the residents of the city & county Honolulu. Thus, Neighbor Island taxpayers are being asked to pay for Honolulu's mass transit project because debt service must be paid out of the general revenues of the state paid by all taxpayers. Second, the people in the city & county of Honolulu are being asked to pay not only the debt service on the bonds but also for two additional years of the surcharge. Thus, Honolulu residents are being asked to pay twice for mass transit, once in the debt service on the bonds and a second time with two additional

years of the surcharge. In addition, even more is being asked for of taxpayers as there is the additional \$100 million being given to the city & county of Honolulu and all of the interest costs associated with the debt.

The scheme proposed in this bill also raises questions about the propriety of the debt issue. As outlined, it appears that this bill does nothing more than “launder” borrowed funds so that they can be used for operations. Generally good public finance policy dictates that borrowed funds never be used for operations, that is goods or services that are consumed in the present will be paid for by future taxpayers who won’t benefit from those goods or services. While proponents of the shell game may argue that the \$300 million in borrowed funds will be used to pay for the mass transit - a capital project - the fact of the matter is that it is a “payback” of the cash taken by the state that was to have paid for the mass transit project that will now be used to pay for everything from salaries to the electric bill. This “juggling” of the state’s finances should be totally unacceptable to taxpayers.

Finally, if this measure is adopted, there is no doubt that this “borrowing scheme” may open the door and be used again to address other financial shortfalls. If spending is not reined in, the state will remain in “hock” to the loan shark with the loan paid back by taxpayers.

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LAND USE RESEARCH
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February 24, 2011

Senator David Ige, Chair, Senator Michelle N. Kidani, Vice Chair, and Members of the Senate Committee on Ways and Means

Testimony in Opposition to SB 1426, SD 1, Relating to Public Funds (Raid on Rail Tax Surcharge Fund)

Thursday, February 24, 2011 at 9:00 a.m. in CR 211

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources, and public health and safety.

LURF respectfully **opposes SB 1426, SD 1**, which proposes to: borrow for inclusion in the State general fund, \$200,000,000 generated through a surcharge on state general excise tax revenues and transferred to the City and County of Honolulu (City) specifically to finance the Honolulu rail project; authorize the issuance of \$300,000,000 in general obligation (GO) bonds to reimburse the City; extend the county surcharge for two years; require a memorandum of understanding between the State and City regarding the transfer of revenues to the State and the GO bond proceeds to the City; and provide the director of finance with the discretion to use general obligation bond proceeds to make county surcharge tax payments.

Background of Honolulu Rail Project. The Honolulu City Council and City Administration have initiated a major mass transit project that has the potential to fundamentally reshape the form and character of Honolulu. A one-half percent tax surcharge for Oahu has been created by the State legislature to specifically finance the rail project. The Council has selected a fixed guide way system and a Locally Preferred Alternative alignment route for the project. In November 2008, Oahu voters approved the rail project, evidencing the public's support to build the rail project. An environmental impact statement has been prepared, and appropriate transit-oriented development (TOD) land use regulations are being developed for areas along the alignment and around the rapid transit stations. Rapid transit on Oahu will stimulate more compact development around transit stations, thereby reducing urban sprawl. The more intense use of land will produce community benefits, such as affordable housing, open plazas, and parks. The rail project will also contribute to the protection of the environment by reducing the use of fossil fuels and emissions by automobiles, and by promoting clean energy to provide transportation.

LURF's Position. While LURF recognizes and understands the difficult economic situation faced by the State, it must oppose this bill for the following reasons:

➤ **Revenue Derived from Taxes Levied for a Specific Project May Not be Diverted and Used for Other Purposes.**

When the State government passes a law to impose taxes for a specifically identified purpose (in this case, rail transit), and the beneficiary of such legislation (in this case, the City) has relied upon, and is prepared to imminently utilize the anticipated tax revenues for that specifically identified purpose (in this case, the rail transit project), the State may not be allowed to later divert and use such tax revenues for other purposes (e.g., to balance the State's budget), particularly when there may be other alternatives available to the State to address funding issues relating to that other, unanticipated purpose.

In this case, the authorization for, and collection of surcharge funds were effectuated through City ordinance (Sections 6-60 and 61, Revised Ordinances of Honolulu 1990) and State statute (Section 46-16, Hawaii Revised Statutes [HRS]) which both provide that the surcharge is limited for use toward a mass transit project; no other use is currently permitted. In addition to the statutory amendments proposed by this bill, approval to amend the City ordinance to authorize the State's use of the surcharge funds must thus be obtained from the Honolulu City Council.

➤ **Prior Attempts to Introduce Same Legislation Have Failed.**

Over the past few years, similar attempts to introduce legislation virtually identical to the subject bill have been made unsuccessfully. SB 1426, SD 1 is conceptually identical to SB 2653 introduced in 2009 and 2010, and differs only by the addition of the requirement that the State and City enter into a memorandum of understanding (MOU) regarding the transfer of revenues and GO bond proceeds between them, and by amendments to HRS Section 248-2.6 (relating to the County surcharge) necessary to accommodate the proposed process through which repayment of the funds will be made to the City. These noted differences, however, do not at all alter or affect the basis for LURF's opposition to this bill.

SB 1426, SD 1 essentially proposes to raid monies from a fund which was specifically designated and created to pay for the transit project. This proposed diversion of the transit tax funds to the State's general fund via SB 1426, SD 1 could cause a delay of Honolulu's rail transit project, which in turn, would not only increase costs, but potentially cause the State to miss the opportunity to receive and utilize millions of federal funding dollars allocated toward the project.

Moreover, LURF understands that a component of the transit project's financial plan which is considered key by federal entities is a dedicated local revenue source. The "borrowing" plan proposed by SB 1426, SD 1 may thus be considered as tampering with the transit tax funds and as a result, the project may be killed altogether.

➤ **LURF's opposition to SB 1426, SD 1 is furthered by the following concerns and considerations:**

- **Delays in funding could derail the transit project.** As mentioned above, any delay in the project will likely lead to the project being "derailed." Hawaii's congressional delegation has forewarned State officials that any delay in the rail project, or any effort to tamper with the dedicated funding source, will send a negative message to Congress that could put federal funding in jeopardy.

- **The transit project will help stimulate the economy and increase State tax revenues.** Due to current economic hard times, the local construction industry is experiencing a slowdown; the transit project is expected to generate an estimated 11,000 jobs over the next eight years. SB 1426, SD 1 could jeopardize the largest and one of the most important public works projects in Hawaii's history, and could endanger federal funding, as well as the investment of private money in the transit-oriented development projects envisioned to be constructed around each of the train stations. Passage of SB 1426, SD 1 may therefore result in the loss of thousands of jobs and much-needed State and City revenue.
- **SB 1426, SD 1 could postpone TOD and affordable housing.** It is important to note that the rail project will not only create jobs, stimulate the economy and decrease traffic from West Oahu; it will also generate investment of private money into transit-oriented development (TOD) projects around each of the transit stations. TOD will also result in the building of more affordable housing, which can be constructed around transit stations to ease commutes and encourage a walking community.
- **The rail project protects our environment.** The rail project provides a "sustainable" and "clean energy" transportation alternative to traffic congestion on Oahu, and will, in the long run, protect the environment by reducing auto emissions and the use of fossil fuels.
- **The legislature should seek other alternatives to balance the State budget.** LURF understands that the legislature is facing a very difficult challenge in balancing the State's budget, however, it believes that the rail project deserves strong support, as it is one of the very few initiatives which will actually generate more State and County revenue in the coming years. LURF encourages and supports the legislature's efforts to seek other, more viable alternatives to secure revenues or reduce costs rather than attempting to raid the rail fund.

Based on the above, LURF respectfully requests that **SB 1426, SD 1 be held** in this Committee.

Thank you for the opportunity to present testimony regarding this matter.

The Senate
The Twenty-Sixth Legislature
Committee on Ways and Means
February 24, 2011
9:00 a.m., Room 211

Statement of the Hawaii Carpenters Union on SB 1426, SD1

Chair David Ige, Vice Chair Michelle Kidani and members of the committee, our union is in strong opposition to SB 1426, and urges your committee to hold the Bill.

Our position is reinforced by testimony before the subject matter committee. Numerous legal and technical problems were raised, in addition to the clearly cited risks to the mass transit project as a whole.

In fact, we do not understand the committee report stating that there was any testimony in favor of the Bill by a department. We see the testimony of the Department of Finance as noting problems, rather than making any statement of support. There was no other testimony in support of the Bill.

Instead, testimony pointed out:

- The funds are needed now. Rail system contracts have been awarded, but cannot be finalized if the funds are not there. The City stated that the funds are not unencumbered, and instead are committed.
- Federal support will be jeopardized, after having progressed heavily on the basis of local Honolulu financial commitments.
- Legislation enabling the tax is specific as to its purpose and use.
- Issues of bonding and the proper use of proceeds, the lack of authority to unilaterally transfer the funds from the City to the State, were all raised in testimony before the subject matter committee.

In addition to the ongoing risk of a perceived reduction in local commitment at the Federal level, we are now at the point of expending the funds, and find numerous problems with implementing the Bill. The risk of losing of this historic opportunity is not worth taking this problematic approach.

Thank you for your consideration of the testimony of the Hawaii Carpenters Union.