

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097**

March 14, 2012

**S.B. 2946 S.D.2
RELATING TO TRANSPORTATION**

HOUSE COMMITTEE ON TRANSPORTATION

The Department of Transportation supports the intent of this bill, but requests the following changes:

The bill as written used airport revenues that are subject to certain prohibitive restrictions contained in the Airport Revenue Bond Certificate (which governs the use of such Airport Revenues) and Airline Lease Agreement that could prevent such use without meeting tests and receiving Airline consent.

The bill as written used passenger facility charges, which are specifically dedicated to certain types of projects and the use of those passenger facility charges for nonpermitted projects or payments is not allowed by Federal Aviation Administration Order 5500.1 which provides guidance and procedures for compliance with Title 14 Code of Federal Regulations Part 158.

The Department proposes the bill be amended in three respects: first, to provide that rental motor vehicle surcharge taxes deposited in the rental motor vehicle charge special fund through June 30, 2016, and thereafter rental motor vehicle customer facility charges deposited in the rental motor vehicle customer facility charge special fund be the repayment source for the revenue bonds issued to finance the renovation and construction of new rental motor vehicle customer facilities, second, to continue the collection of rental motor vehicle surcharge taxes of \$3.00 per day and deposit of \$3.00 per day per transaction into the highway special fund and for a limited time to provide for a set amount of collected rental motor vehicle surcharge taxes to be deposited into

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Extend the increase in the rental motor vehicle
3 surcharge tax under section 251-2(a), Hawaii Revised
4 Statutes, to \$7.50 per day until June 30, [~~2015-~~]
5 2016, and extend the deposit of \$4.50 per day of the
6 tax revenue up to a specified amount into the general
7 fund until June 30, [~~2015-~~] 2016, and deposit a
8 specified amount of the tax revenue and any remainder
9 of the tax revenue into the rental motor vehicle
10 customer facility charge special fund;

11 (2) Extend the suspension of rental motor vehicle customer
12 facility charges formerly established under section
13 261-7(h), Hawaii Revised Statutes, until June 30,
14 [~~2015-~~] 2016.

15 SECTION 2. Section 251-2, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) There is levied and shall be assessed and collected
18 each month a rental motor vehicle surcharge tax of \$7.50 a day,

1 except that after June 30, [~~2012~~] 2016, the tax shall be \$3 a
2 day, or any portion of a day that a rental motor vehicle is
3 rented or leased. The rental motor vehicle surcharge tax shall
4 be levied upon the lessor; provided that the tax shall not be
5 levied on the lessor if:

- 6 (1) The lessor is renting the vehicle to replace a vehicle
7 of the lessee that is being repaired; and
8 (2) A record of the repair order for the vehicle is
9 retained either by the lessor for two years for
10 verification purposes or by a motor vehicle repair
11 dealer for two years as provided in section 437B-16."

12 SECTION 3. Act 104, Session Laws of Hawaii 2011, is
13 amended by amending section 8 to read as follows:

14 SECTION 8. This Act shall take effect on June 30, 2011;
15 provided that part II of this Act shall take effect on July 1,
16 2011; provided further that on June 30, [~~2012~~] 2016, sections 4
17 and 5 of this Act shall be repealed and sections 251-5 and
18 261-7, Hawaii Revised Statutes, shall be reenacted in the form
19 in which they read on the day before the effective date of this
20 Act."

21 SECTION 4. §251-5 Remittances. All remittances of
22 surcharge taxes imposed under this chapter shall be made by

1 cash, bank draft, cashier's check, money order, or certificate
2 of deposit to the office of the taxation district to which the
3 return was transmitted. The department shall transmit the
4 rental motor vehicle surcharge taxes assessed and collected
5 pursuant to section 251-2(a) to the director of finance, who
6 shall deposit, in the order set forth below, the money into the
7 state treasury as follows:

8 (1) In each of fiscal years 2012-2013 and 2013-2014, first
9 an amount equal to \$3.00 per day per rental transaction
10 shall be deposited into the highway special fund, then
11 \$10,000,000 shall be deposited into the rental motor
12 vehicle customer facility charge special fund established
13 pursuant to section 261-5.6, then \$50,000,000 shall be
14 deposited into the general fund, and then the remainder
15 shall be deposited into the rental motor vehicle customer
16 facility charge special fund; and

17 (2) In fiscal years 2014-2015 and 2015-2016, first an
18 amount equal to \$3.00 per day per rental transaction shall
19 be deposited into the highway special fund, then
20 \$30,000,000 shall be deposited into the rental motor
21 vehicle customer facility charge special fund, then
22 \$30,000,000 shall be deposited into the general fund, and

1 then the remainder shall be deposited into the rental motor
2 vehicle customer facility charge special fund; and
3 The department of transportation is authorized to issue
4 ~~[airport]~~ rental motor vehicle customer facility revenue bonds in
5 the amount not to exceed \$500,000,000, in one or more series,
6 from time to time, as determined by the director of
7 transportation, for the enhancement and renovation of existing
8 rental motor vehicle customer facilities and the development of
9 new rental motor vehicle customer facilities, and if so
10 determined by the department and approved by the governor, any
11 additional principal amount as may be necessary by the
12 department to pay interest on the revenue bonds during the
13 estimated period of enhancement, renovation or construction of
14 the rental motor vehicle customer facility project for which the
15 revenue bonds are issued, to establish, maintain, or increase
16 reserves for the revenue bonds and to pay the expenses of
17 issuance of the bonds. The principal, interest and premium, if
18 any, on such revenue bonds, to the extent not paid from the
19 proceeds of such revenue bonds, shall be paid solely from and
20 secured solely by rental motor vehicle surcharge taxes and
21 rental motor vehicle customer facility charges deposited in the
22 rental motor vehicle customer facility charge special fund

1 established by Section 261-5.6 Hawaii Revised Statutes and
2 designated for payment thereof, which rental motor vehicle
3 surchage taxes and rental motor vehicle customer facility
4 charges shall be pledged to payment of such revenue bonds. The
5 rental motor vehicle surcharge tax and rental motor vehicle
6 customer facility charge shall both be a charge for the use and
7 services of an undertaking for the purposes and within the
8 meaning of section 39-61(a) (1) and (a) (3). The revenue bonds
9 shall be issued pursuant to the provisions of Part III of
10 Chapter 39 Hawaii Revised Statutes, as the same may be amended
11 from time to time.

12 ~~[for airport capital improvement program projects designated to~~
13 ~~be financed by revenue bond funds or by general obligation bond~~
14 ~~funds with debt service cost to be paid from special funds, in~~
15 ~~such principal amount as shall be required to yield the amounts~~
16 ~~appropriated for such capital improvements program projects,~~
17 ~~and, if so determined by the department and approved by the~~
18 ~~governor, any additional principal amount as may be necessary by~~
19 ~~the department to pay interest on the airport revenue bonds~~
20 ~~during the estimated period of construction of the capital~~
21 ~~improvements program project for which the airport revenue bonds~~
22 ~~are issued, to establish, maintain, or increase reserves for the~~

1 ~~airport revenue bonds and to pay the expenses of issuance of the~~
2 ~~bonds. The airport revenue bonds shall be issued pursuant to~~
3 ~~the provisions of part III of chapter 39, Hawaii Revised~~
4 ~~Statutes, as the same may be amended from time to time. The~~
5 ~~principal of and interest on airport revenue bonds, to the~~
6 ~~extent not paid from the proceeds of such bonds, shall be~~
7 ~~payable solely from and secured solely by the revenues from~~
8 ~~airports and related facilities under the ownership of the State~~
9 ~~or operated and managed by the department and the aviation fuel~~
10 ~~taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8,~~
11 ~~Hawaii Revised Statutes, or such parts of either thereof as the~~
12 ~~department may determine, including rents, landing fees, and~~
13 ~~other fees or charges presently or hereafter derived from or~~
14 ~~arising through the ownership, operation, and management of~~
15 ~~airports and related facilities and the furnishing and supplying~~
16 ~~of the services thereof, and passenger facility charges pursuant~~
17 ~~to section 261-5.5, Hawaii Revised Statutes, as amended, and as~~
18 ~~determined by the department. The expenses of the issuance of~~
19 ~~such airport revenue bonds, to the extent not paid from the~~
20 ~~proceeds of such bonds, shall be paid from the airport revenue~~

1 ~~fund and passenger facility charge special fund as determined by~~
2 ~~the department.~~

3 ~~— The governor, in the governor's discretion, is authorized~~
4 ~~to use the airport revenue fund and passenger facility charge~~
5 ~~special fund to finance those projects where the method of~~
6 ~~financing is designated to be by airport revenue bond funds;~~
7 ~~provided that the governor shall submit a report to the~~
8 ~~legislature of all uses of this authority for the previous~~
9 ~~twelve month period from December 1 to November 30 no later than~~
10 ~~thirty days prior to the convening of the 2014 regular session.]~~

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

13 SECTION 6. This Act shall take effect on June 29, 2012;
14 provided that section 4 shall take effect on July 1, 2012.

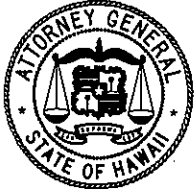
Report Title:

Transportation; Rental Motor Vehicle Surcharge Tax; Rental Motor Vehicle Customer Facility Charges

Description:

Extends until [~~6/30/2015~~] 6/30/2016: the increase in the rental motor vehicle surcharge tax to \$7.50 per day; the deposit of \$4.50 per day of the tax into the general fund; and the suspension of the rental motor vehicle customer facility charges. Authorizes issuance of airport revenue bonds. [~~(SD2)~~]
(HD 1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 2946, S.D. 2, RELATING TO TRANSPORTATION.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: March 19, 2012 **TIME:** 9:00 a.m.
LOCATION: State Capitol, Room 309
TESTIFIER(S): David M. Louie, Attorney General, or
Laura Y. Kim, Deputy Attorney General

Chair Souki and Members of the Committee:

The Department of the Attorney General appreciates the intent of the bill and provides the following comments. Among other things, Senate Draft 2 of this bill:

- (1) Amends section 251-2(a), Hawaii Revised Statutes (HRS), to extend the increase in rental motor vehicle surcharge tax to \$7.50 per day until June 30, 2015;
- (2) Extends the repeal date of part II of Act 104, Session Laws of Hawaii 2011 (the Act), to June 30, 2015; and
- (3) Authorizes the State of Hawaii Department of Transportation (DOT) to issue airport revenue bonds under chapter 39, HRS, in the amount not to exceed \$500,000,000 for airport capital improvement program projects, the principal and interest of which shall be paid by the revenues from airports and related facilities, aviation fuel taxes, and passenger facility charges under section 261-5.5, HRS, as determined by the DOT, provided that if the expenses of the issuance of such airport revenue bonds are not paid from the proceeds of such bonds, the DOT shall use the Airport Revenue Fund and the Passenger Facility Charge Special Fund as determined by the DOT

The Department's prior testimony "flagged" the issue that Federation Aviation Administration approval would be required to use special fund moneys to finance a rental motor vehicle customer facility.¹

After the last hearing, the Department of the Attorney General was provided with a proposed House Draft 1 of this bill that had the input of stakeholders and affected Executive Branch agencies, which attempted to resolve the issue that was "flagged" in the Department of

¹ "To the extent the bill proposes to use the Passenger Facility Charge Special Fund without approval of the Federal Aviation Administration (FAA) and to finance the rental motor vehicle customer facility at state airports, the bill violates the Passenger Facility Charge Program authorized under 49 United States Code (U.S.C.) section 40117(a) – (m). *See* section 261-5.5(d), HRS. "

the Attorney General's testimony. The proposed House Draft 1, among other things authorizes the Director of Transportation to issue rental motor vehicle customer facility revenue bonds.

The Department of the Attorney General has no objections or concerns on the "merits" or substance of the proposed House Draft 1 because it appears that the revisions to the bill resolve the concerns described in the Department of the Attorney General's testimony on Senate Draft 2 of the bill.

GOODSILL ANDERSON QUINN & STIFEL

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TO: Representative Joseph M. Souki
Chair, Committee on Transportation
Hawaii State Capitol, Room 426
Via Email TRNestimony@Capitol.hawaii.gov and Hand Delivery

FROM: Gary M. Slovin

DATE: March 17, 2012

RE: **S.B. No. 2946, SD2 – Relating to Transportation**
Hearing Date: Monday, March 19, 2012 at 9:00 a.m.
Conference Room 309

Dear Chair Souki and Members of the Committee on Transportation:

I am Gary Slovin, submitting comments on behalf of EAN Holdings, LLC, operating Enterprise Rent-A-Car, Alamo Rent-A-Car and National Car Rental in Hawaii (collectively referred to as “Enterprise”).

Enterprise **submits comments in opposition** to S.B. 2946, SD2, which extends 1) the increase in the rental motor vehicle surcharge tax to \$7.50 per day; 2) the deposit of \$4.50 per day of the tax into the general fund; and 3) the suspension of the rental motor vehicle customer facility charges until 6/30/2015. The measure also authorizes the issuance of airport revenue bonds.

The fee that is the subject of this bill was originally imposed to provide funding for the construction of a consolidated rental car facility at Honolulu International Airport and similar facilities at other state airports. Because of the uncertain economic times and the budget deficit in 2011, the Legislature in 2011 suspended the rental car facility surcharge and instead diverted the money to the highway fund and the general fund. That legislation provided that the diversion of these funds would expire on June 30, 2012. The proposed S.B. 2946, SD2 would extend the diversion of the surcharge to the year 2015.

The original surcharge was intended to apply to only those rentals made at the airport. Pursuant to the legislation described above, the full \$7.50 charge, including the additional

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\$4.50 surcharge, was not imposed only upon renters at airport facilities, the original intent, but upon everyone in the state renting a car, including, inevitably, local residents.

Enterprise believes that the imposition of the surcharge has caused, and will continue to cause, a hardship to many local residents. We believe the legislation should be modified to relieve that fiscal impact.

Many local residents rent cars for extended periods of time for a variety of reasons. Some rent cars for business purposes while some rent cars for extended periods because they cannot afford a car or do not have the need to own a car. The economic recession that hit the state in 2008 is continuing and, despite some encouraging news, the everyday citizen in this community is still struggling and may well be struggling for several more years.

While an additional \$4.50 a day may not seem very much, for many people in the community it is a significant amount of money. For those persons who need to rent cars for an extended period, this charge is burdensome. For example, it is not unusual for persons to rent cars for more than two weeks. A local person renting a car for family or business purposes for 30 days is now required to pay an additional \$135.00 in order to rent a car. For many people in this community, an additional \$135.00 of expense that the person did not formerly have to pay is very significant and can make a difference in the quality of their lives.

Accordingly, Enterprise believes that consideration should be given to lessening the impact of the fee on local residents. There is a distinct and specific difference between a person renting a car for pleasure travel and a person using a car for business or personal reasons who is a local resident. Enterprise therefore proposes that there be a limitation of 14 days beyond which the \$4.50 surcharge would no longer apply. Statistics indicate that the average traveler coming to Hawaii rents a car for 6 days.

Therefore, setting a limitation that would assist the local residents who need to rent cars for longer periods treats both that resident and a tourist in an equal manner.

This approach would still enable the Legislature to continue to divert these funds into the general fund and the highway fund for the purposes identified in the law, but provide some relief to local residents who are being burdened by this additional fee.

Enterprise does also have general concerns about the impacts of the surcharge on the

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rental car industry, tourism and local business people and residents. However, if it is the decision of the committee that the surcharge should continue to be diverted, we strongly recommend that the surcharge be continued for no more than one year, and we respectfully ask the committee to consider including a provision relieving payment of the surcharge after 14 days.

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