

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

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

March 10, 2014
9:30 a.m.
State Capitol, Room 309

S.B. 2761, S.D. 2
RELATING TO TRANSPORTATION

House Committee on Transportation

The Department of Transportation (DOT) **supports** the intent of this bill to continue the efforts that Act 288, Session Laws of 1993 started in addressing the 1989 Legislative Reference Bureau Report, "Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute." Pursuant to Senate Concurrent Resolution 49 of the 2012 Session, the current "Roads in Limbo" Working Group discussed the Roads in Limbo issue and made findings and recommendations in its report to the Legislature, which included the recommendation that the Legislature pass legislation to protect government agencies maintaining disputed roads pending resolution of the dispute.

Government agencies have been reluctant to assume maintenance of "Roads in Limbo" because the agency's maintenance activities may be characterized as evidencing ownership or jurisdiction of a disputed road, subjecting the agency to liability.

This bill provides that while ownership of a road remains in dispute, between the State and the counties, no action by a government agency to maintain or repair a road shall be used to establish the agency's ownership of or jurisdiction over the road and the agency shall not be deemed to have assumed ownership of or jurisdiction over the road solely because of action to repair or maintain the road.

Thank you for the opportunity to provide testimony.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

LATE

To: The Honorable Ryan Yamane, Chair
and Members of the House Committee on Transportation

Date: Monday, March 10, 2014
Time: 9:30 A.M.
Place: Conference Room 309, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 2761, S.D. 2, Relating to Transportation

The Department of Taxation (Department) takes no position on the issues related to the maintenance and repairs of disputed roads, but provides the following comments and concerns regarding the surcharge set forth in S.B. 2761, S.D. 2 for your consideration.

S.B. 2761, S.D. 2 specifies that a government agency does not assume ownership or jurisdiction over disputed roads solely through maintenance or repair activities, authorizes the State to quitclaim ownership of roads in favor of counties, and allows the counties that had not previously adopted a surcharge pursuant to section 46-16.8, Hawaii Revised Statutes (HRS), to do so at a rate of one-half per cent. The bill also includes an unspecified appropriation for the Department to administer a surcharge for the additional counties.

The Department appreciates the amendments proposed by the Senate Committees to address the Department's concerns regarding its ability to administer and enforce an additional county surcharge. As noted in our testimony to the Senate Committee on Ways and Means, the Department will need to allocate a substantial amount of resources to implement this additional surcharge, particularly due to the fact that many of the Department's most experienced staff are currently dedicated to the Tax System Modernization project full-time.

Due to the substantial effort and cost necessary to implement a surcharge for the remaining counties, and based on the Department's experience in implementing the surcharge collected for the City and County of Honolulu, the Department suggests that section 2 of the bill be amended to clarify that the Department has a minimum of three years, after the date by which all counties have met the requirements of the bill to adopt the surcharge, to develop and implement the required computer system and administrative processes necessary to implement the surcharge. Previously, the Department had insufficient time between the adoption of the Resolution by the City and County of

Honolulu and the effective date of the surcharge. Further, to avoid confusion and simplify filing for taxpayers, the Department recommends that the implementation date be January 1 of the calendar year following the three-year period needed to implement the computer system and administrative processes.

Lastly, the Department will need sufficient resources to implement the additional surcharge, as well as funding for the ongoing administration and enforcement of the surcharge. Previously, aside from an emergency appropriation for the development of the computer system modifications, the Department was not given any additional funding for the ongoing administration and enforcement of the current surcharge. Implementation of a surcharge on a State-wide basis will require, at a minimum, additional permanent staff at each of our Hawaii, Kauai and Maui District Offices, as well as a substantial educational effort both before and after implementation of the surcharge for the rest of the counties.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
TRANSPORTATION

Monday March 10, 2014
9:30 AM
State Capitol, Conference Room 309

In consideration of
SENATE BILL 2761, SENATE DRAFT 2
RELATING TO TRANSPORTATION

Senate Bill 2761, Senate Draft 2 proposes to specify that a government agency does not assume ownership or jurisdiction over a disputed road solely through maintenance or repair activities, authorizes the State to quitclaim ownership of roads in favor of the counties and establishes necessary funding for the maintenance and repair of disputed roads through the authorization of an additional county surcharge on state tax. **The Department of Land and Natural Resources (Department) offers the following comments and amendments below.**

In the bill's present form, state and county agencies, through repair and maintenance actions, may be liable for a person's injury or damage sustained when using such disputed road. If the intent of this measure is to provide an incentive to state and county agencies to undertake repair and maintenance of disputed roads, then the bill should contain language that relieves state and county agencies of any accompanying liability. Therefore, the Department respectfully requests that SECTIONS 3 and 4 of the bill proposing to amend Chapter 662 and Section 46-15.9, Hawaii Revised Statutes, be amended to adopt the language contained in a similar measure, House Bill 1610, as stated below:

"§662- No liability for maintenance or repair of disputed roads. A state agency maintaining or repairing a road whose ownership is in dispute between the State and a county shall not be liable to any person for injury or damage sustained when using that road and shall not be deemed to have assumed ownership or jurisdiction over the disputed road."

"§46-15.9 Traffic regulation; repair and maintenance; public right to use public streets, roads, or highways whose ownership is in dispute[-]; county liability."

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

"(b) [~~Any provision of the law to the contrary notwithstanding, any county and its authorized personnel may repair or maintain, in whole or in part, public streets, roads, or highways whose ownership is in dispute between the State and the county.~~] A county agency maintaining or repairing a road whose ownership is in dispute between the State and the county shall not be liable to any person for injury or damage sustained when using that road."

March 10, 2014

The Honorable Ryan I. Yamane, Chair

House Committee on Transportation
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: S.B. 2761, S.D.2, Relating to Transportation

HEARING: Monday, March 10, 2014 at 9:30 a.m.

Aloha Chair Yamane, Vice-Chair Takayama, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **strongly opposes Section 2** of S.B. 2761, S.D.2, which authorizes an additional one half percent county surcharge on the state's general excise tax to maintain and repair "roads in limo."

The "roads in limbo" ownership dispute between the state and county over certain roads has existed for many years. We believe this to be an important issue that needs to be resolved. However, we strongly oppose the funding mechanism proposed in S.B. 2761, S.D.2. Increasing the GET through a surcharge is not the answer to solving this or other specialized problems the State faces, and would exacerbate the already high cost of living in Hawaii.

While Hawaii's economy has been experiencing slow improvement, recent news reports indicate that Hawaii still has not fully recovered and that the economy is still faltering. HAR believes that, in the current economic environment, businesses and residents are particularly sensitive to additional financial burdens imposed by government. An additional half percent county surcharge increase in the GET will be especially burdensome for low-income families, who have the least ability to afford a new tax that would apply so broadly to a family's basic needs such as food, medicine, and clothing.

The current GET rate is seemingly low, relative to the sales tax rate assessed in other states and municipalities, studies have shown that, with the pyramiding effect of the GET, the effective tax rate is considerably higher. A 0.5% increase raises the stated GET tax rate to 4.5% (or 5.0% on Oahu), but increases the effective rate by 12.5%. The GET in Hawaii is applied to 160 of 168 goods and services, the most of any state in the nation. Consumers can ill afford a tax increase of this magnitude in their general excise tax burden, when they are struggling today to afford other necessities. We just cannot continue to place the burden of rising costs on already overtaxed citizens.

Mahalo for the opportunity to testify in strong opposition to Section 2 of this measure.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. No. 2761, SD 2

DATE: Monday, March 10, 2014

TIME: 9:30 am

To: Chairperson Ryan Yamane and Members of the House Committee on
Transportation:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in Support of S.B. No. 2761, SD 2, Relating to Transportation.

The purpose of this SD 2 measure is to enable government agencies to maintain roads whose ownership is in dispute between the state and counties.

HAJ specifically supports the provisions in Section 3 on page 3, lines 18-22, and on page 4, lines 1-5. Likewise HAJ supports the other similar provisions in this measure which address this issue. We feel that this will be a first step in solving a major dispute with these “roads in limbo”.

HAJ would also like to comment that there have been efforts to amend this legislation to include an immunity provision for a state agency which undertakes the repair and maintenance of these disputed roads and HAJ strongly opposes this effort.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, MISCELLANEOUS, County surcharge on state tax for road maintenance and repair

BILL NUMBER: SB 2761, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: This bill allows each of the counties, except Honolulu, to establish a county surcharge of 0.5% onto the state general excise and use tax which would be used for the maintenance or repair cost of disputed roads and expenses in complying with the Americans with Disabilities Act of 1990 relating to such roads. All of the counties, except Honolulu, must adopt an ordinance establishing the surcharge in order for the surcharge to take effect.

This measure, simply put, would result in a tax increase for those on the Neighbor Islands. Although the bill says the surcharge is temporary, tax increases tend to take on a life of their own and it becomes very hard to kill them off. In addition, this may set a precedent for other agencies to come in and request taxing authority just as the Department of Education did some years ago.

BRIEF SUMMARY: Adds a new section to HRS chapter 46 to allow each county, other than a county that has established a county surcharge on state tax, to establish a surcharge of 0.5% on the state's general excise tax under HRS chapter 237 and the use tax under HRS chapter 238. The surcharge shall be imposed by ordinance provided: (1) a county has held a public hearing on the proposed ordinance; (2) the ordinance is adopted prior to December 31, 2050; (3) the surcharge shall be levied on January 1, 2050; and (4) the surcharge shall take effect only if each county, other than a county that has already established a surcharge, has adopted an ordinance to impose the surcharge. Requires a county electing to impose the surcharge to notify the director of taxation within ten days after the county adopts the surcharge and requires the director to levy, assess, collect and administer the county surcharge tax no earlier than January 1, 2050. The surcharge shall be used for maintenance or repair costs of disputed roads and expenses in complying with the Americans with Disabilities Act of 1990 relating to such roads.

Appropriates \$_____ in general funds for fiscal 2015 to the department of taxation to offset costs associated with administering the additional county surcharge.

If an ordinance to impose an additional county surcharge on the state tax is adopted by December 31, 2050; the ordinance shall be repealed on December 31, 2022; and sections of this act adopting the surcharge shall be repealed on December 31, 2022.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This measure proposes to allow each of the counties, except Honolulu, to establish a county surcharge of up to 0.5% that would be piggybacked onto the state general excise and use tax

and used for the maintenance or repair cost of disputed roads and expenses in complying with the Americans with Disabilities Act of 1990 relating to such roads. All of the counties, except Honolulu, must adopt an ordinance establishing the surcharge in order for the surcharge to take effect.

This measure would authorize the counties to impose a general excise and use tax surcharge of 0.5% and will provide the counties with another source of revenue in addition to the real property tax and a share of the state transient accommodations tax.

This bill attempts to address a thorny problem called “roads in limbo.” There are roads on all islands whose ownership, as between the state and the county, is uncertain. These roads have fallen into disrepair. The county is concerned that if it repairs the road it will be an assertion of ownership, meaning that it will be saddled with the burden of maintaining the road forever after, and will also own any liability issues concerning that road that arose in the past, present, or future. So it doesn’t repair the road. The state, of course, has a similar concern so it doesn’t repair the road either.

This bill, therefore, represents one “solution,” if you can call it that, as it relates to all counties other than Honolulu. The state will attach a surcharge to the GET and use tax. That money will go to the counties, and they can use it to repair the roads while their ownership is being sorted out. If there is money left over, which apparently the counties are anticipating, they can use the money for Americans with Disabilities Act compliance as it relates to their roads.

This is all very nice, perhaps, for three of the counties. But then what happens to Honolulu? Honolulu is using its 0.5% surcharge for rail, but there are roads in limbo in Honolulu as well. So are we now thinking that Honolulu will someday tell the state, “You owe me one?” This branch of the story may get ugly.

Back to the main story. This bill proposes a tax increase. Once we go down this path, even though we say it’s going to be temporary, the new tax is going to be tough to give up. Do you remember that in 1986 lawmakers told us that they were going to enact a 5% transient accommodations tax and it was going to be temporary, just to pay for the convention center? It is now 28 years later, the convention center has been built, and the tax still hasn’t been allowed to sunset. Far from it! Just last year the state enacted Act 161, SLH 2013, making the “temporarily enhanced” 9.25% transient accommodations tax permanent because there was a need for that money. The justification for that increase, as set forth in Conf. Comm. Rep. No. 146 (2013), was:

Your Committee on Conference finds that allowing the transient accommodations tax rate to fall to 7.25 percent beginning on July 1, 2013, would deprive the general fund of needed tax revenues. According to the Department of Budget and Finance, retaining a 9.25 percent tax rate is a key component to ensuring that the State’s general fund financial plan remains balanced beyond the fiscal biennium 2013-2015. Your Committee on Conference further finds that the State requires a consistent amount of funds to effectively market itself in a competitive tourist industry, to maintain tourist attractions, and to enhance the visitor experience.

If this surcharge is adopted on a temporary basis, what do you think are the chances that the state or the counties, or both, will come up with a justification for extending the tax just like the above?

(The counties, of course, are presently clamoring for some additional monies from the transient accommodations tax too, but that’s another story, and another set of bills.)

And then, if this measure is adopted, why stop at the counties? In past years, for example, the Department of Education pushed very hard for school districts with taxing power. If this precedent is enacted, it will be tougher to tell the DOE to take a hike. If more of these taxing jurisdictions are adopted, as is the case in many other states, our general excise tax will mushroom, both in rate and complexity.

The bottom line is the same across the board. Elected officials must be willing to tighten the counties' or the state's purse strings in bringing expenditures into line with resources and setting priorities for what resources are already available. Instead of doing the fiscally responsible thing, this measure evidences a choice to beat up on the taxpaying public yet again.

Digested 3/8/14



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LATE

March 10, 2014
TESTIMONY OF STANLEY CHANG
CONCILMEMBER FOR THE CITY AND COUNTY OF HONOLULU
On
S.B. No. 2761, S.D.2, RELATING TO TRANSPORTATION
Committee on Transportation
Monday, March 10, 2014
9:30 a.m.
Conference Room 309

Dear Chair Yamane and Committee Members:

Thank you for allowing me the opportunity to submit testimony in support of S.B. 2761, S.D. 2, Relating to Transportation in my capacity as Councilmember of the City and County of Honolulu.

S.B. 2761, S.D. 2, specifies that a government agency does not assume ownership or jurisdiction over a disputed road solely through maintenance or repair activities. The bill also authorizes the State to quitclaim ownership of the roads in favor of counties. Finally, it establishes necessary funding for the maintenance and repair of disputed roads through the authorization of a county surcharge on state tax for counties that have not adopted an ordinance pursuant to section 46-16.8 HRS, at the rate of one-half percent.

There has been resistance to maintain such roads as it may be construed as assuming ownership and liability. However, proper maintenance of such routes is critical for the safety of both residents and visitors traversing on these roads. In addition, proper maintenance allows emergency services to safely and efficiently respond to calls from individuals in distress or in need of immediate attention. The additional county surcharge to the state tax would enable the Counties to fund maintenance projects for disputed roads.

For these reasons, I respectfully ask for your favorable passage of S.B. 2761, S.D. 2, Relating to Transportation and thank the Committee for allowing me to provide testimony.

Sincerely,



STANLEY CHANG

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Stanley Chang

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