

JAN 23 2014

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 SECTION 1. The legislature finds that the safety of
2 residents traveling over roads whose ownership and jurisdiction
3 are in dispute between the State and the counties, commonly
4 known as "roads in limbo", is affected by the lack of any
5 maintenance to these roads. The legislature also finds that
6 government agencies are unwilling to maintain these roads
7 because the maintenance activities may be construed as assuming
8 ownership and jurisdiction over the disputed roads due to the
9 maintenance activities.

10 The purpose of this Act is to enable government agencies to
11 maintain roads whose ownership and jurisdiction are in dispute
12 between the State and the counties and establish necessary
13 funding for the maintenance and repair of these roads through
14 the authorization of an additional county surcharge on state
15 tax.

16 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
17 by adding a new section to be appropriately designated and to
18 read as follows:



1 "§46- Additional county surcharge on state tax. (a) In
2 addition to the surcharge authorized under section 46-16.8, each
3 county may establish an additional surcharge on state tax at the
4 rates enumerated in sections 237-8.6 and 238-2.6. A county
5 electing to establish this additional surcharge shall do so by
6 ordinance; provided that:

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

9 (2) The ordinance shall be adopted prior to December 31,
10 _____ ; and

11 (3) No county surcharge on state tax that may be
12 authorized under this section shall be levied prior to
13 January 1, _____.

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

18 (b) A county electing to exercise the authority granted
19 under this section shall notify the director of taxation within
20 ten days after the county has adopted an additional surcharge on
21 state tax ordinance and, beginning no earlier than January 1,
22 _____, the director of taxation shall levy, assess, collect, and



1 otherwise administer the additional county surcharge on state
2 tax.

3 (c) Each county that adopts an additional county surcharge
4 on state tax ordinance pursuant to subsection (a) shall use the
5 surcharges received from the State for:

6 (1) Operating costs of public transportation within each
7 county for public transportation systems, including
8 public roadways or highways, public buses, trains,
9 ferries, pedestrian paths or sidewalks, or bicycle
10 paths; and

11 (2) Expenses in complying with the Americans with
12 Disabilities Act of 1990 with respect to paragraph
13 (1)."

14 SECTION 3. Chapter 662, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 **"§662- Maintenance or repair of disputed roads;**
18 **quitclaim.** (a) While ownership of a road remains in dispute
19 between the State and a county, no action by a government agency
20 to maintain or repair a road shall be used to establish the
21 agency's ownership of or jurisdiction over the road and the
22 agency shall not be deemed to have assumed ownership of or



1 jurisdiction over the road solely because of action to maintain
2 or repair a road.

3 (b) If a county requests or requires title to a disputed
4 road, the State may quitclaim whatever interest it has in the
5 road to the county."

6 SECTION 4. Section 46-15.9, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§46-15.9 Traffic regulation; repair and maintenance;**
9 **public right to use public streets, roads, or highways whose**
10 **ownership is in dispute.** (a) Any provision of law to the
11 contrary notwithstanding, any county and its authorized
12 personnel may impose and enforce traffic laws and shall enforce
13 chapters 249; 286; 287; 291; 291C; 291E; 431, articles 10C and
14 10G; and 486, part III on public streets, roads, or highways
15 whose ownership is in dispute between the State and the county.

16 (b) ~~[Any provision of the law to the contrary~~
17 ~~notwithstanding, any county and its authorized personnel may~~
18 ~~repair or maintain, in whole or in part, public streets, roads,~~
19 ~~or highways whose ownership is in dispute between the State and~~
20 ~~the county.] While ownership of a road remains in dispute
21 between the State and a county, no action by a government agency
22 to maintain or repair a road shall be used to establish the~~



1 agency's ownership of or jurisdiction over the road and the
2 agency shall not be deemed to have assumed ownership of or
3 jurisdiction over the road solely because of action to maintain
4 or repair a road.

5 (c) No presumption that a county owns a particular street,
6 road, or highway shall arise as a result of the county's
7 performance of the activities allowed by subsection (a) or (b).

8 (d) If a county requests or requires title to a disputed
9 road, the State may quitclaim whatever interest it has in the
10 road to the county.

11 [~~d~~] (e) The general public shall have the unrestricted
12 right to use public streets, roads, or highways whose ownership
13 is in dispute between the State and the county to access the
14 shoreline and other public recreational areas; provided that
15 this subsection shall not apply to any private street, road, or
16 highway whose ownership is in dispute.

17 [~~e~~] (f) As used in this section[+
18 ~~"Public recreational area"~~], "public recreational area"
19 means coastal and inland recreational areas, including beaches,
20 shores, public parks, public lands, public trails, and bodies of
21 water opened to the public for recreational use."



1 SECTION 5. Section 237-8.6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) [~~The~~] A county surcharge on state tax, upon the
4 adoption of county ordinances and in accordance with the
5 requirements of section 46-16.8[~~7~~] or 46-_____, shall be levied,
6 assessed, and collected as provided in this section on all gross
7 proceeds and gross income taxable under this chapter. No county
8 shall set [~~the~~] a surcharge on state tax at a rate greater than
9 one-half per cent of all gross proceeds and gross income taxable
10 under this chapter. All provisions of this chapter shall apply
11 to [~~the~~] a county surcharge on state tax. With respect to [~~the~~]
12 a surcharge, the director of taxation shall have all the rights
13 and powers provided under this chapter. In addition, the
14 director of taxation shall have the exclusive rights and power
15 to determine the county or counties in which a person is engaged
16 in business and, in the case of a person engaged in business in
17 more than one county, the director shall determine, through
18 apportionment or other means, that portion of [~~the~~] a surcharge
19 on state tax attributable to business conducted in each county."

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



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

19 SECTION 7. Section 248-2.6, Hawaii Revised Statutes, is
20 amended by amending subsection (d) to read as follows:

21 "(d) After the deduction and withholding of the costs
22 under subsections (a) and (b), the director of finance shall pay



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

13 SECTION 8. Section 264-18, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Out of the state highway fund amounts, whether state
16 funds or federal funds, shall be expended as necessary by the
17 State for the establishment of bikeways; provided that bikeways
18 shall be established, whenever practicable, wherever a new or
19 existing highway, road, or street is being designed, planned,
20 constructed, reconstructed, relocated, or rehabilitated. At
21 least two per cent of eligible federal funds, and in addition,



1 other state highway fund moneys as available, shall be expended
2 to:

3 (1) Establish multi-use paths, bicycle paths, and bicycle
4 lanes; and

5 (2) Install signage and safety devices along bikeways;
6 provided that the department of transportation shall include the
7 bicycling community in a public involvement process to determine
8 the location of multi-use paths, bicycle paths, bicycle lanes,
9 and installation of signage and safety devices along bikeways.

10 Planning for any mass transit system shall include
11 appropriate accommodation for bicycle lanes, bikeways, and
12 bicycle routes, including bicycle racks on mass transit
13 vehicles, to enable mass transit users to connect conveniently
14 by bicycle to transit stations and bus stops.

15 This subsection shall not be construed as requiring the
16 expenditure of a county surcharge on state tax under section
17 46-16.8[7] or 46-_____, on bicycle paths if the application of
18 this subsection conflicts with section 46-16.8[-] or 46-_____."

19 SECTION 9. Section 437D-8.4, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Notwithstanding any law to the contrary, a lessor may
22 visibly pass on to a lessee:



- 1 (1) The general excise tax attributable to the
2 transaction;
- 3 (2) The vehicle license and registration fee and weight
4 taxes, prorated at 1/365th of the annual vehicle
5 license and registration fee and weight taxes actually
6 paid on the particular vehicle being rented for each
7 full or partial twenty-four-hour rental day that the
8 vehicle is rented; provided the total of all vehicle
9 license and registration fees charged to all lessees
10 shall not exceed the annual vehicle license and
11 registration fee actually paid for the particular
12 vehicle rented;
- 13 (3) The rental motor vehicle surcharge tax as provided in
14 section 251-2 attributable to the transaction;
- 15 (4) [~~The~~] A county surcharge on state tax under section
16 46-16.8[+] or 46-_____; provided that the lessor
17 itemizes the tax for the lessee; and
- 18 (5) The rents or fees paid to the department of
19 transportation under concession contracts negotiated
20 pursuant to chapter 102, service permits granted
21 pursuant to title 19, Hawaii Administrative Rules, or



1 rental motor vehicle customer facility charges
2 established pursuant to section 261-7; provided that:

3 (A) The rents or fees are limited to amounts that can
4 be attributed to the proceeds of the particular
5 transaction;

6 (B) The rents or fees shall not exceed the lessor's
7 net payments to the department of transportation
8 made under concession contract or service permit;

9 (C) The lessor submits to the department of
10 transportation and the department of commerce and
11 consumer affairs a statement, verified by a
12 certified public accountant as correct, that
13 reports the amounts of the rents or fees paid to
14 the department of transportation pursuant to the
15 applicable concession contract or service permit:

16 (i) For all airport locations; and

17 (ii) For each airport location;

18 (D) The lessor submits to the department of
19 transportation and the department of commerce and
20 consumer affairs a statement, verified by a
21 certified public accountant as correct, that
22 reports the amounts charged to lessees:



- 1 (i) For all airport locations;
- 2 (ii) For each airport location; and
- 3 (iii) For each lessee;
- 4 (E) The lessor includes in these reports the
- 5 methodology used to determine the amount of fees
- 6 charged to each lessee; and
- 7 (F) The lessor submits the above information to the
- 8 department of transportation and the department
- 9 of commerce and consumer affairs within three
- 10 months of the end of the preceding annual
- 11 accounting period or contract year as determined
- 12 by the applicable concession agreement or service
- 13 permit.

14 The respective departments, in their sole discretion,

15 may extend the time to submit the statement required

16 in this subsection. If the director determines that

17 an examination of the lessor's information is

18 inappropriate under this subsection and the lessor

19 fails to correct the matter within ninety days, the

20 director may conduct an examination and charge a

21 lessor an examination fee based upon the cost per hour

22 per examiner for evaluating, investigating, and



1 verifying compliance with this subsection, as well as
2 additional amounts for travel, per diem, mileage, and
3 other reasonable expenses incurred in connection with
4 the examination, which shall relate solely to the
5 requirements of this subsection, and which shall be
6 billed by the departments as soon as feasible after
7 the close of the examination. The cost per hour shall
8 be \$40 or as may be established by rules adopted by
9 the director. The lessor shall pay the amounts billed
10 within thirty days following the billing. All moneys
11 collected by the director shall be credited to the
12 compliance resolution fund."

13 SECTION 10. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 11. This Act shall take effect upon its approval;
16 provided that if an ordinance to levy an additional county
17 surcharge on state tax is adopted by December 31, :

18 (1) The ordinance shall be repealed on December 31, 2022;

19 (2) Sections 2, 5, 6, 7, 8, and 9 of this Act shall be
20 repealed on December 31, 2022; and

21 (3) Sections 264-18(a) and 437D-8.4(a), Hawaii Revised
22 Statutes, shall be reenacted in the form in which they



1 read on the day prior to the effective date of this
2 Act.
3

J. K. Gill

INTRODUCED BY:

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S.B. NO. 2761

Report Title:

Disputed Roads; Road Maintenance; Quitclaim; County Surcharge

Description:

Specifies 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 counties. Establishes necessary funding for the maintenance and repair of disputed roads through the authorization of an additional county surcharge on state tax.

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

