
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)

2 Each county, other than a county that has adopted an ordinance
3 pursuant to section 46-16.8, may establish a surcharge on state
4 tax at the rate of one-half per cent of all gross proceeds and
5 gross income taxable under chapters 237 and 238, notwithstanding
6 the rates enumerated in sections 237-8.6 and 238-2.6. A county
7 electing to establish this surcharge shall do so by ordinance;
8 provided that:

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

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

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

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

20 (b) A county electing to exercise the authority granted
21 under this section shall notify the director of taxation within
22 ten days after the county has adopted a surcharge on state tax



1 ordinance and, beginning no earlier than January 1, , the
2 director of taxation shall levy, assess, collect, and otherwise
3 administer the county surcharge on state tax.

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

7 (1) Maintenance or repair costs of disputed roads under
8 section 662- ; and

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

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

15 **"§662- Maintenance or repair of disputed roads;**
16 **quitclaim.** (a) While ownership of a road remains in dispute
17 between the State and a county, no action by a government agency
18 to maintain or repair a road shall be used to establish the
19 agency's ownership of or jurisdiction over the road and the
20 agency shall not be deemed to have assumed ownership of or
21 jurisdiction over the road solely because of action to maintain
22 or repair a road.



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

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

6 "**§46-15.9 Traffic regulation; repair and maintenance;**
7 **public right to use public streets, roads, or highways whose**
8 **ownership is in dispute.** (a) Any provision of law to the
9 contrary notwithstanding, any county and its authorized
10 personnel may impose and enforce traffic laws and shall enforce
11 chapters 249; 286; 287; 291; 291C; 291E; 431, articles 10C and
12 10G; and 486, part III on public streets, roads, or highways
13 whose ownership is in dispute between the State and the county.

14 (b) ~~[Any provision of the law to the contrary~~
15 ~~notwithstanding, any county and its authorized personnel may~~
16 ~~repair or maintain, in whole or in part, public streets, roads,~~
17 ~~or highways whose ownership is in dispute between the State and~~
18 ~~the county.] 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 (c) No presumption that a county owns a particular street,
4 road, or highway shall arise as a result of the county's
5 performance of the activities allowed by subsection (a) or (b).

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

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

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

20 SECTION 5. Section 237-8.6, 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 county ordinances 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 all gross
5 proceeds and gross income 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 all gross proceeds and gross income taxable
8 under this chapter. All provisions of this chapter shall apply
9 to [~~the~~] a county surcharge on state tax. With respect to [~~the~~]
10 a surcharge, the director of taxation shall have all the rights
11 and powers provided under this chapter. In addition, the
12 director of taxation shall have the exclusive rights and power
13 to determine the county or counties in which a person is engaged
14 in business and, in the case of a person engaged in business in
15 more than one county, the director shall determine, through
16 apportionment or other means, that portion of [~~the~~] a surcharge
17 on state tax attributable to business conducted in each county."

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

20 "(a) [~~The~~] A county surcharge on state tax, upon the
21 adoption of a county ordinance and in accordance with the
22 requirements of section 46-16.8[~~7~~] or 46-_____, shall be levied,



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

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

18 "(d) After the deduction and withholding of the costs
19 under subsections (a) and (b), the director of finance shall pay
20 the remaining balance on [+]a[+] quarterly basis to the director
21 of finance of each county that has adopted a county surcharge on
22 state tax under section 46-16.8[~~-~~] or 46-_____. The quarterly



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

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

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

21 (1) Establish multi-use paths, bicycle paths, and bicycle
22 lanes; and



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

6 Planning for any mass transit system shall include
 7 appropriate accommodation for bicycle lanes, bikeways, and
 8 bicycle routes, including bicycle racks on mass transit
 9 vehicles, to enable mass transit users to connect conveniently
 10 by bicycle to transit stations and bus stops.

11 This subsection shall not be construed as requiring the
 12 expenditure of a county surcharge on state tax under section
 13 46-16.8[7] or 46-_____, on bicycle paths if the application of
 14 this subsection conflicts with section 46-16.8[7] or 46-_____."

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

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

19 (1) The general excise tax attributable to the
 20 transaction;

21 (2) The vehicle license and registration fee and weight
 22 taxes, prorated at 1/365th of the annual vehicle



1 license and registration fee and weight taxes actually
2 paid on the particular vehicle being rented for each
3 full or partial twenty-four-hour rental day that the
4 vehicle is rented; provided the total of all vehicle
5 license and registration fees charged to all lessees
6 shall not exceed the annual vehicle license and
7 registration fee actually paid for the particular
8 vehicle rented;

9 (3) The rental motor vehicle surcharge tax as provided in
10 section 251-2 attributable to the transaction;

11 (4) [~~The~~] A county surcharge on state tax under section
12 46-16.8[+] or 46-_____; provided that the lessor
13 itemizes the tax for the lessee; and

14 (5) The rents or fees paid to the department of
15 transportation under concession contracts negotiated
16 pursuant to chapter 102, service permits granted
17 pursuant to title 19, Hawaii Administrative Rules, or
18 rental motor vehicle customer facility charges
19 established pursuant to section 261-7; provided that:

20 (A) The rents or fees are limited to amounts that can
21 be attributed to the proceeds of the particular
22 transaction;



- 1 (B) The rents or fees shall not exceed the lessor's
- 2 net payments to the department of transportation
- 3 made under concession contract or service permit;
- 4 (C) The lessor submits to the department of
- 5 transportation and the department of commerce and
- 6 consumer affairs a statement, verified by a
- 7 certified public accountant as correct, that
- 8 reports the amounts of the rents or fees paid to
- 9 the department of transportation pursuant to the
- 10 applicable concession contract or service permit:
- 11 (i) For all airport locations; and
- 12 (ii) For each airport location;
- 13 (D) The lessor submits to the department of
- 14 transportation and the department of commerce and
- 15 consumer affairs a statement, verified by a
- 16 certified public accountant as correct, that
- 17 reports the amounts charged to lessees:
- 18 (i) For all airport locations;
- 19 (ii) For each airport location; and
- 20 (iii) For each lessee;

1 (E) The lessor includes in these reports the
2 methodology used to determine the amount of fees
3 charged to each lessee; and

4 (F) The lessor submits the above information to the
5 department of transportation and the department
6 of commerce and consumer affairs within three
7 months of the end of the preceding annual
8 accounting period or contract year as determined
9 by the applicable concession agreement or service
10 permit.

11 The respective departments, in their sole discretion,
12 may extend the time to submit the statement required
13 in this subsection. If the director determines that
14 an examination of the lessor's information is
15 inappropriate under this subsection and the lessor
16 fails to correct the matter within ninety days, the
17 director may conduct an examination and charge a
18 lessor an examination fee based upon the cost per hour
19 per examiner for evaluating, investigating, and
20 verifying compliance with this subsection, as well as
21 additional amounts for travel, per diem, mileage, and
22 other reasonable expenses incurred in connection with



1 the examination, which shall relate solely to the
 2 requirements of this subsection, and which shall be
 3 billed by the departments as soon as feasible after
 4 the close of the examination. The cost per hour shall
 5 be \$40 or as may be established by rules adopted by
 6 the director. The lessor shall pay the amounts billed
 7 within thirty days following the billing. All moneys
 8 collected by the director shall be credited to the
 9 compliance resolution fund."

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

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

- 15 (1) The ordinance shall be repealed on December 31, 2022;
- 16 (2) Sections 2, 5, 6, 7, 8, and 9 of this Act shall be
 17 repealed on December 31, 2022; and
- 18 (3) Sections 264-18(a) and 437D-8.4(a), Hawaii Revised
 19 Statutes, shall be reenacted in the form in which they
 20 read on the day prior to the effective date of this
 21 Act.

22

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 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. (SD1)

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

