
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 there are roads in
2 Hawaii the ownership and jurisdiction of which is disputed
3 between the State and counties. The legislature further finds
4 that the safety of persons traveling over these so called "roads
5 in limbo" is affected by the lack of any maintenance to these
6 roads. The legislature also finds that neither State nor county
7 agencies are willing to maintain these roads because the
8 maintenance activities may be construed as assuming ownership
9 and jurisdiction over the disputed roads.

10 The purpose of this Act is to enable government agencies to
11 maintain roads the ownership and jurisdiction of which are in
12 dispute between the State and the counties and establish
13 necessary funding for the maintenance and repair of these roads
14 through the authorization of an additional county surcharge on
15 state 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 chapter 237 and the value of property
6 taxable under chapter 238. A county electing to establish this
7 surcharge shall do so by ordinance; provided that:

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

10 (2) The ordinance shall be adopted prior to December 31,
11 2050;

12 (3) The county surcharge on state tax that may be
13 authorized under this section shall be levied
14 beginning on January 1, 2050; and

15 (4) No ordinance shall be effective unless each county,
16 other than a county that has adopted an ordinance
17 pursuant to section 46-16.8, has adopted the
18 ordinance.

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



1 (b) A county electing to exercise the authority granted
 2 under this section shall notify the director of taxation within
 3 ten days after the county has adopted a surcharge on state tax
 4 ordinance and, beginning no earlier than January 1, 2050, the
 5 director of taxation shall levy, assess, collect, and otherwise
 6 administer the county surcharge on state tax.

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

10 (1) Maintenance or repair costs of disputed roads under
 11 section 27- ; and

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

15 SECTION 3. Chapter 27, Hawaii Revised Statutes, is amended
 16 by adding a new section to part V to be appropriately designated
 17 and to read as follows:

18 "§27- Maintenance or repair of disputed public streets,
 19 roads, or highways; quitclaim. (a) While ownership of a public
 20 street, road, or highway remains in dispute between the State
 21 and a county, no action by a government agency to maintain or
 22 repair a public street, road, or highway shall be used to



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

6 (b) If a county requests or requires title to a disputed
7 public street, road, or highway, the State may quitclaim
8 whatever interest it has in the public street, road, or highway
9 to the county."

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

12 **"§46-15.9 Traffic regulation; repair and maintenance;**
13 **public right to use public streets, roads, or highways whose**
14 **ownership is in dispute. (a) Any provision of law to the**
15 **contrary notwithstanding, any county and its authorized**
16 **personnel may impose and enforce traffic laws and shall enforce**
17 **chapters 249; 286; 287; 291; 291C; 291E; 431, articles 10C and**
18 **10G; and 486, part III on public streets, roads, or highways**
19 **whose ownership is in dispute between the State and the county.**

20 (b) ~~[Any provision of the law to the contrary~~
21 ~~notwithstanding, any county and its authorized personnel may~~
22 ~~repair or maintain, in whole or in part, public streets, roads,~~



1 ~~or highways whose ownership is in dispute between the State and~~
2 ~~the county.]~~ While ownership of a public street, road, or
3 highway remains in dispute between the State and a county, no
4 action by a government agency to maintain or repair a public
5 street, road, or highway shall be used to establish the agency's
6 ownership of, or jurisdiction over, the public street, road, or
7 highway and the agency shall not be deemed to have assumed
8 ownership of, or jurisdiction over, the public street, road, or
9 highway solely because of action to maintain or repair a public
10 street, road, or highway.

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

14 (d) If a county requests or requires title to a disputed
15 public street, road, or highway, the State may quitclaim
16 whatever interest it has in the public street, road, or highway
17 to the county.

18 [~~d~~] (e) The general public shall have the unrestricted
19 right to use public streets, roads, or highways whose ownership
20 is in dispute between the State and the county to access the
21 shoreline and other public recreational areas; provided that



1 this subsection shall not apply to any private street, road, or
2 highway whose ownership is in dispute.

3 [~~(e)~~] (f) As used in this section[+
4 "~~Public recreational area~~"], "public recreational area"
5 means coastal and inland recreational areas, including beaches,
6 shores, public parks, public lands, public trails, and bodies of
7 water opened to the public for recreational use."

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

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



1 in business and, in the case of a person engaged in business in
2 more than one county, the director shall determine, through
3 apportionment or other means, that portion of [~~the~~] a surcharge
4 on state tax attributable to business conducted in each county."

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

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



1 other means, that portion of [~~the~~] a surcharge on state tax
2 attributable to the importation or purchase in each county."

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

5 "(d) After the deduction and withholding of the costs
6 under subsections (a) and (b), the director of finance shall pay
7 the remaining balance on [~~+~~]a[~~+~~] quarterly basis to the director
8 of finance of each county that has adopted a county surcharge on
9 state tax under section 46-16.8 [~~-~~] or 46-_____. The quarterly
10 payments shall be made after [~~the~~] a county [~~surcharges~~]
11 surcharge on state tax [~~have~~] has been paid into the state
12 treasury special accounts or after the disposition of any tax
13 appeal, as the case may be. All county surcharges on state tax
14 collected shall be distributed by the director of finance to the
15 county in which the county surcharge on state tax is generated
16 and shall be a general fund realization of the county, to be
17 used for the purposes specified in section 46-16.8 or 46-_____ by
18 each of the counties."

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

21 "(a) Out of the state highway fund amounts, whether state
22 funds or federal funds, shall be expended as necessary by the



1 State for the establishment of bikeways; provided that bikeways
2 shall be established, whenever practicable, wherever a new or
3 existing highway, road, or street is being designed, planned,
4 constructed, reconstructed, relocated, or rehabilitated. At
5 least two per cent of eligible federal funds, and in addition,
6 other state highway fund moneys as available, shall be expended
7 to:

8 (1) Establish multi-use paths, bicycle paths, and bicycle
9 lanes; and

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

15 Planning for any mass transit system shall include
16 appropriate accommodation for bicycle lanes, bikeways, and
17 bicycle routes, including bicycle racks on mass transit
18 vehicles, to enable mass transit users to connect conveniently
19 by bicycle to transit stations and bus stops.

20 This subsection shall not be construed as requiring the
21 expenditure of a county surcharge on state tax under section



1 46-16.8[7] or 46-_____, on bicycle paths if the application of
2 this subsection conflicts with section 46-16.8[7] or 46-_____."

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

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

7 (1) The general excise tax attributable to the
8 transaction;

9 (2) The vehicle license and registration fee and weight
10 taxes, prorated at 1/365th of the annual vehicle
11 license and registration fee and weight taxes actually
12 paid on the particular vehicle being rented for each
13 full or partial twenty-four-hour rental day that the
14 vehicle is rented; provided the total of all vehicle
15 license and registration fees charged to all lessees
16 shall not exceed the annual vehicle license and
17 registration fee actually paid for the particular
18 vehicle rented;

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



- 1 (4) [~~The~~] A county surcharge on state tax under section
2 46-16.8[+] or 46-_____; provided that the lessor
3 itemizes the tax for the lessee; and
- 4 (5) The rents or fees paid to the department of
5 transportation under concession contracts negotiated
6 pursuant to chapter 102, service permits granted
7 pursuant to title 19, Hawaii Administrative Rules, or
8 rental motor vehicle customer facility charges
9 established pursuant to section 261-7; provided that:
- 10 (A) The rents or fees are limited to amounts that can
11 be attributed to the proceeds of the particular
12 transaction;
- 13 (B) The rents or fees shall not exceed the lessor's
14 net payments to the department of transportation
15 made under concession contract or service permit;
- 16 (C) The lessor submits to the department of
17 transportation and the department of commerce and
18 consumer affairs a statement, verified by a
19 certified public accountant as correct, that
20 reports the amounts of the rents or fees paid to
21 the department of transportation pursuant to the
22 applicable concession contract or service permit:



- 1 (i) For all airport locations; and
- 2 (ii) For each airport location;
- 3 (D) The lessor submits to the department of
- 4 transportation and the department of commerce and
- 5 consumer affairs a statement, verified by a
- 6 certified public accountant as correct, that
- 7 reports the amounts charged to lessees:
- 8 (i) For all airport locations;
- 9 (ii) For each airport location; and
- 10 (iii) For each lessee;
- 11 (E) The lessor includes in these reports the
- 12 methodology used to determine the amount of fees
- 13 charged to each lessee; and
- 14 (F) The lessor submits the above information to the
- 15 department of transportation and the department
- 16 of commerce and consumer affairs within three
- 17 months of the end of the preceding annual
- 18 accounting period or contract year as determined
- 19 by the applicable concession agreement or service
- 20 permit.

21 The respective departments, in their sole discretion,
22 may extend the time to submit the statement required



1 in this subsection. If the director determines that
2 an examination of the lessor's information is
3 inappropriate under this subsection and the lessor
4 fails to correct the matter within ninety days, the
5 director may conduct an examination and charge a
6 lessor an examination fee based upon the cost per hour
7 per examiner for evaluating, investigating, and
8 verifying compliance with this subsection, as well as
9 additional amounts for travel, per diem, mileage, and
10 other reasonable expenses incurred in connection with
11 the examination, which shall relate solely to the
12 requirements of this subsection, and which shall be
13 billed by the departments as soon as feasible after
14 the close of the examination. The cost per hour shall
15 be \$40 or as may be established by rules adopted by
16 the director. The lessor shall pay the amounts billed
17 within thirty days following the billing. All moneys
18 collected by the director shall be credited to the
19 compliance resolution fund."

20 SECTION 10. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so
22 much thereof as may be necessary for fiscal year 2014-2015 to



1 the department of taxation to offset costs associated with
2 administering the additional county surcharge on state tax.

3 The sum appropriated shall be expended by the department of
4 taxation for the purposes of this Act.

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

7 SECTION 12. This Act shall take effect on July 1, 2050;
8 provided that:

- 9 (1) If an ordinance to levy a county surcharge on state
10 tax pursuant to this Act is adopted prior to December
11 31, 2050, by each of the counties other than a county
12 that has adopted an ordinance pursuant to section 46-
13 16.8, Hawaii Revised Statutes, the ordinance shall be
14 repealed on December 31, 2022;
- 15 (2) Sections 2, 5, 6, 7, 8, and 9 of this Act shall be
16 repealed on December 31, 2022;
- 17 (3) Section 264-18(a), Hawaii Revised Statutes, shall be
18 reenacted on December 31, 2022, in the form in which
19 it read on the day prior to the effective date of this
20 Act; and
- 21 (4) Section 437D-8.4(a), Hawaii Revised Statutes, shall be
22 reenacted on December 31, 2022, in the form in which



1 it read on the day prior to the effective date of Act
2 247, Session Laws of Hawaii 2005.
3



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. Makes an appropriation. Effective 07/01/2050. (SD2)

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

