

JAN 18 2013

S.B. NO. 359

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

2 SECTION 1. Section 237D-6.5, Hawaii Revised Statutes, is  
3 amended by amending subsection (b) to read as follows:

4 "(b) Revenues collected under this chapter, except for  
5 revenues collected under section 237D-2(b), shall be distributed  
6 as follows, with the excess revenues to be deposited into the  
7 general fund:

8 (1) 17.3 per cent of the revenues collected under this  
9 chapter shall be deposited into the convention center  
10 enterprise special fund established under section  
11 201B-8; provided that beginning January 1, 2002, if  
12 the amount of the revenue collected under this  
13 paragraph exceeds \$33,000,000 in any fiscal year,  
14 revenues collected in excess of \$33,000,000 shall be  
15 deposited into the general fund; and

16 (2) 34.2 per cent of the revenues collected under this  
17 chapter shall be deposited into the tourism special  
18 fund established under section 201B-11 for tourism



1 promotion and visitor industry research; provided that  
2 for any period beginning on July 1, 2012, and ending  
3 on June 30, 2015, no more than \$71,000,000 per fiscal  
4 year shall be deposited into the tourism special fund  
5 established under section 201B-11; provided further  
6 that beginning on July 1, 2012, and ending on June 30,  
7 2015, \$2,000,000 shall be expended from the tourism  
8 special fund for development and implementation of  
9 initiatives to take advantage of expanded visa  
10 programs and increased travel opportunities for  
11 international visitors to Hawaii; and provided further  
12 that beginning on July 1, 2002, of the first  
13 \$1,000,000 in revenues deposited:

14 (A) Ninety per cent shall be deposited into the state  
15 parks special fund established in section  
16 184-3.4; and

17 (B) Ten per cent shall be deposited into the special  
18 land and development fund established in section  
19 171-19 for the Hawaii statewide trail and access  
20 program;

21 provided that of the 34.2 per cent, 0.5 per cent shall  
22 be transferred to a sub-account in the tourism special



1 fund to provide funding for a safety and security  
2 budget, in accordance with the Hawaii tourism  
3 strategic plan 2005-2015; provided further that of the  
4 revenues remaining in the tourism special fund after  
5 revenues have been deposited as provided in this  
6 paragraph and except for any sum authorized by the  
7 legislature for expenditure from revenues subject to  
8 this paragraph, beginning July 1, 2007, funds shall be  
9 deposited into the tourism emergency trust fund,  
10 established in section 201B-10, in a manner sufficient  
11 to maintain a fund balance of \$5,000,000 in the  
12 tourism emergency trust fund[; and

13 ~~(3) 44.8 per cent of the revenues collected under this~~  
14 ~~chapter shall be transferred as follows: Kauai county~~  
15 ~~shall receive 14.5 per cent, Hawaii county shall~~  
16 ~~receive 18.6 per cent, city and county of Honolulu~~  
17 ~~shall receive 44.1 per cent, and Maui county shall~~  
18 ~~receive 22.8 per cent; provided that for any period~~  
19 ~~beginning on July 1, 2011, and ending on June 30,~~  
20 ~~2015, the total amount transferred to the counties~~  
21 ~~shall not exceed \$93,000,000 per fiscal year].~~



1 Revenues collected under section 237D-2(b) shall be  
2 deposited into the general fund. All transient accommodations  
3 taxes shall be paid into the state treasury each month within  
4 ten days after collection and shall be kept by the state  
5 director of finance in special accounts for distribution as  
6 provided in this subsection.

7 As used in this subsection, "fiscal year" means the twelve-  
8 month period beginning on July 1 of a calendar year and ending  
9 on June 30 of the following calendar year."

10 PART II

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

14 "§46- Additional county surcharge on state tax. (a)  
15 In addition to the surcharge authorized under section 46-16.8,  
16 each county may establish a surcharge on state tax at the rates  
17 enumerated in sections 237-8.6 and 238-2.6. A county electing  
18 to establish this surcharge shall do so by ordinance.

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



1 collect, and otherwise administer the county surcharge on state  
2 tax."

3 SECTION 3. Section 237-8.6, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) [~~The~~] A county surcharge on state tax, upon the  
6 adoption of county ordinances and in accordance with the  
7 requirements of section 46-16.8[~~7~~] or 46- ., shall be levied,  
8 assessed, and collected as provided in this section on all gross  
9 proceeds and gross income taxable under this chapter.

10 No county shall set [~~the~~] a surcharge on state tax at a  
11 rate greater than [~~one-half~~]:

12 (1) One-half per cent of all gross proceeds and gross  
13 income taxable under this chapter[~~7~~], for surcharges  
14 authorized under section 46-16.8; or

15 (2) One per cent of all gross proceeds and gross income  
16 taxable under this chapter, for surcharges authorized  
17 under section 46- .

18 All provisions of this chapter shall apply to [~~the~~] a  
19 county surcharge on state tax. With respect to the surcharge,  
20 the director of taxation shall have all the rights and powers  
21 provided under this chapter. In addition, the director of  
22 taxation shall have the exclusive rights and power to determine



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

6 SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is  
 7 amended by amending subsection (a) to read as follows:

8 "(a) [~~The~~] A county surcharge on state tax, upon the  
 9 adoption of a county ordinance and in accordance with the  
 10 requirements of section 46-16.8[~~7~~] or 46-\_\_\_\_\_, shall be levied,  
 11 assessed, and collected as provided in this section on the value  
 12 of property and services taxable under this chapter.

13 No county shall set the surcharge on state tax at a rate  
 14 greater than [~~one-half~~]:

15 (1) One-half per cent of the value of property taxable  
 16 under this chapter[~~7~~], for surcharges authorized under  
 17 section 46-16.8; or

18 (2) One per cent of the value of property taxable under  
 19 this chapter, for surcharges authorized under section  
 20 46-\_\_\_\_\_.

21 All provisions of this chapter shall apply to [~~the~~] a  
 22 county surcharge on state tax. With respect to the surcharge,



1 the director shall have all the rights and powers provided under  
2 this chapter. In addition, the director of taxation shall have  
3 the exclusive rights and power to determine the county or  
4 counties in which a person imports or purchases tangible  
5 personal property and, in the case of a person importing or  
6 purchasing tangible property in more than one county, the  
7 director shall determine, through apportionment or other means,  
8 that portion of the surcharge on state tax attributable to the  
9 importation or purchase in each county."

10 SECTION 5. Section 248-2.6, Hawaii Revised Statutes, is  
11 amended by amending subsection (d) to read as follows:

12 "(d) After the deduction and withholding of the costs  
13 under subsections (a) and (b), the director of finance shall pay  
14 the remaining balance on [a] quarterly basis to the director of  
15 finance of each county that has adopted a county surcharge on  
16 state tax under section 46-16.8[-] or 46-\_\_\_\_\_. The quarterly  
17 payments shall be made after the county surcharges on state tax  
18 have been paid into the state treasury special accounts or after  
19 the disposition of any tax appeal, as the case may be. All  
20 county surcharges on state tax collected shall be distributed by  
21 the director of finance to the county in which the county  
22 surcharge on state tax is generated and shall be a general fund



1 realization of the county, to be used for the purposes specified  
2 in section 46-16.8 or 46-\_\_\_\_\_, as applicable, by each of the  
3 counties."

4 SECTION 6. Section 437D-8.4, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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

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

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

20 (3) The rental motor vehicle surcharge tax as provided in  
21 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 7. Act 247, Session Laws of Hawaii 2005, is  
21 amended by amending section 9 to read as follows:



1 "SECTION 9. This Act shall take effect upon its approval;  
2 provided that:

3 (1) If none of the counties of the State adopt an  
4 ordinance to levy a county surcharge on state tax by  
5 December 31, 2005, this Act shall be repealed and  
6 section 437D 8.4, Hawaii Revised Statutes, shall be  
7 reenacted in the form in which it read on the day  
8 prior to the effective date of this Act;

9 (2) If any county does not adopt an ordinance to levy a  
10 county surcharge on state tax by December 31, 2005, it  
11 shall be prohibited from adopting such an ordinance  
12 pursuant to this Act, unless otherwise authorized by  
13 the legislature through a separate legislative act;

14 (3) If an ordinance to levy a county surcharge on state  
15 tax is adopted by December 31, 2005:

16 (A) The ordinance shall be repealed on December 31,  
17 2022; and

18 (B) [~~This~~] Section 2 of this Act shall be repealed on  
19 December 31, 2022[~~;~~and

20 ~~(C) Section 437D 8.4, Hawaii Revised Statutes, shall~~  
21 ~~be reenacted in the form in which it read on the~~  
22 ~~day prior to the effective date of this Act]."~~



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PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval; provided that the amendment made under section 1 of this Act shall not be repealed when section 237D-6.5, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 2009, pursuant to Act 61, Session Laws of Hawaii 2009, as amended by Act 103, Session Laws of Hawaii 2011.

INTRODUCED BY: Amid Y. Lee  
BY REQUEST



# S.B. NO. 359

**Report Title:**

Transit Accommodations Tax; County Surcharge on State Tax

**Description:**

Repeals the distribution of transit accommodations tax revenues to the counties. Authorizes a county to ordain a 1% surcharge on state general excise or use tax.

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

