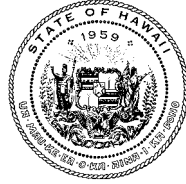


NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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

JOSHUA WISCH
DEPUTY DIRECTOR



To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Ways and Means

Date: Tuesday, February 25, 2014
Time: 9:20 A.M.
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2761, S.D. 1, Relating to Transportation

The Department of Taxation (Department) provides the following comments and concerns regarding S.B. 2761, S.D. 1 for your consideration.

S.B. 2761, S.D. 1 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 to establish a surcharge on the State tax at the rates enumerated in sections 237-8.6 and 238-2.6, Hawaii Revised Statutes.

The Department notes that the Senate Committees on Transportation and International Affairs, Public Safety, Intergovernmental and Military Affairs, and Judiciary and Labor, amended this measure to apply the county surcharge at the same 0.5% rate for all counties. Having rates that vary county-to-county could have resulted in administrative and compliance enforcement problems and could potentially affect the State's participation in pending federal legislation, which would allow the State to compel online retailers to collect Use Tax on items sold into the State.

The Department appreciates the S.D.1 amendment which requires that all counties have the same 0.5% surcharge rate. However, in order for the Department to administer and implement the surcharge for three additional counties, the Department will also require the following additional amendments:

- **Delayed effective date.** At this time, some the Department's most experienced staff that could implement this type of project are dedicated to the Tax System Modernization project full-time. With current staffing levels, implementation of this surcharge amendment will require delays to the required annual income tax updates and any legislative changes adopted.
- **Adoption of the surcharge must be mandatory for all counties and**

effective on the same effective date. The Department is unable to administer and implement a new surcharge for three counties with possibly three different effective dates. Additionally, different effective dates would create significant reporting and enforcement problems, particularly with taxpayers that have business activity in more than one county.

- **Appropriation dedicated for the implementation of the additional surcharge for three counties.** The Department's current staffing resources are insufficient to administer and adopt a county surcharge for three additional counties. Based on prior experience, the Department will need additional funding for the following: additional staff and computer resources to development and testing of the computer system modifications; state-wide comprehensive educational program for taxpayers to ensure taxpayers accurately allocate and report the surcharge to the appropriate county; and additional taxpayer services and compliance staff for each of the Department's Hawaii, Kauai and Maui District Offices. In 2005, an emergency appropriation of approximately \$5 million dollars was provided to implement the current county surcharge; at this time, it is unknown how much additional funding would be needed to implement the surcharge for the other remaining counties.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Tuesday February 25, 2014
9:20 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2761 SENATE DRAFT 1
RELATING TO TRANSPORTATION**

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

ESTHER KIA'AINA
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



Senate Bill 2761 Senate Draft 1 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 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."

"(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."



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

BILL NUMBER: SB 2761, SD-1

INTRODUCED BY: Senate Committees on Transportation and International Affairs, Public Safety, Intergovernmental and Military Affairs and Judiciary and Labor

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 a county has held a public hearing on the proposed ordinance. 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, _____. The surcharge shall be used for maintenance or repair cost of disputed roads and expenses in complying with the Americans with Disabilities Act of 1990 relating to such roads.

If an ordinance to impose an additional county surcharge on the state tax is adopted by December 31, _____; 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.

This measure would authorize the counties to impose a general excise and use tax surcharge of up to 0.5% and will provide the counties with another source of revenue in addition to their largest source of revenue, the real property tax.

Although imposing a surcharge on the general excise and use tax would give county officials another resource to underwrite their spending, the real question is whether or not the counties have dealt with the real problem and that is one of spending more than they are willing to take the political heat to raise. Not only do county lawmakers have complete control over the real property tax, but they also have a portion of the receipts of the TAT. Allowing the counties to now piggyback on the general excise and use tax would merely blur the lines of accountability, not only for the county but for the state. This is the very situation that the 1989 Tax Review Commission advised against, a sharing of the same tax resource by two different levels of government.

By allowing the counties to levy a surcharge on the general excise and use tax, this measure will complicate what otherwise is an easy tax with which to comply, especially if some counties opt to levy the additional rate and others do not or opt for a different rate. Confusion may arise when a business does business in more than one county but may be physically located in one county. This is already the case for the surcharge on state tax for the mass transit system in the city and county of Honolulu.

If this measure is adopted, it may open the door for similar requests. In past years, for example, the Department of Education pushed very hard for school districts with taxing power. If more of these taxing jurisdictions are adopted, as is the case in many other states, our general excise tax will grow in rate and complexity.

Another uncertainty is whether there will be sufficient revenues generated from the proposed tax at the rate of 0.5%. If this “nominal” rate does not produce sufficient revenues to cover the costs of the county projects, then there will no doubt be subsequent pressure on the legislature to raise the surcharge tax rate yet again.

Above all, lawmakers should be aware that of all the taxes imposed in Hawaii, the general excise tax imposes a serious burden on businesses and individuals alike. It is not only regressive, taking a larger percentage of a poorer family’s budget than a high-income family’s budget, but it also takes its share off the top of a business’ income without regard to the profitability of that business.

The bottom line is the same across the board. It is not a matter of not having enough revenue as it is the unwillingness of elected officials 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, the easiest response is to just raise more taxes as evidenced by this measure.

Digested 2/23/14