

SB 2761

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.

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 4, 2014
1:15 p.m.
State Capitol, Room 224

SB 2761
RELATING TO TRANSPORTATION

Senate Committee(s) on Transportation and International Affairs
& Public Safety, Intergovernmental and Military Affairs
& Judiciary and Labor

The Department of Transportation (DOT) supports the intent of this bill to continue the efforts that Act 288, Session Laws of 1993 started in addressing the 1989 Legislative Reference Bureau Report, "Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute." Pursuant to Senate Concurrent Resolution 49 of the 2012 Session, the current "Roads in Limbo" Working Group discussed the Roads in Limbo issue and made findings and recommendations in its report to the Legislature, which recommended that the Legislature pass legislation to protect government agencies maintaining disputed roads pending resolution of the dispute.

This bill assists government agencies through proposed amendments to section 46-15.9 and chapter 662, Hawaii Revised Statutes. The bill provides government agencies with protection from liability when those agencies begin to maintain roads that are disputed between the State and the counties. However, the bill as currently drafted does not provide protection to the State from being held liable as the "owner" of the disputed road even if it is the county that is maintaining or repairing the road. The DOT suggests that the new section 622- be amended to provide such liability protection to the State when the maintenance or repair is being performed by the county.

Government agencies have been reluctant to assume maintenance of "Roads in Limbo" because the agency's maintenance activities may be characterized as evidencing ownership or jurisdiction of a disputed road, subjecting the agency to liability. Providing an interim period in which the government agency can perform maintenance activities without the fear of liability will encourage agencies to begin to maintain these disputed roads, which are in dire need of repair and maintenance.

Finally, as a housekeeping matter, the DOT notes that the amendment to section 46-15.9, Hawaii Revised Statutes, should be placed under Section 2 of this bill, followed by the new proposed section 662- , Hawaii Revised Statutes, in Section 3 of this bill.

Thank you for the opportunity to provide testimony.

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 J. Kalani English, Chair
and Members of the Senate Committee on Transportation
and International Affairs

The Honorable Will Espero, Chair
and Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs

The Honorable Clayton Hee, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, February 4, 2014
Time: 1:15 P.M.
Place: Conference Room 224, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: **S.B. No. 2761**, Relating to Transportation

The **Department of Taxation** (Department) provides the following **comments** regarding S.B. 1728 for your consideration.

S.B. 1728 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 at present only the City and County of Honolulu has established a surcharge on the General Excise Tax (GET) and Use Tax, and that the rate of the surcharge is one half of one percent. Creating a new separate surcharge with the potential to have different tax rates within the State creates an administrative and enforcement problem for the Department. Differing surcharge rates are also likely to cause some taxpayers to improperly source their income to the county with the lowest rate. The Department also notes that having multiple tax rates could affect the State's ability to participate in pending federal legislation which would allow States to compel online retailers to collect Use Tax on items sold into the State, potentially denying the State of significant amounts of tax revenue.

The Department suggests that if other counties were to implement a surcharge, that the rate be the same as the one established by the City and County of Honolulu, and that the effective date be the same for all counties. By keeping the surcharge rate the same for all counties, there would be no advantage to allocating income to one county over another.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committees on
TRANSPORTATION AND INTERNATIONAL AFFAIRS,
and
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
and
JUDICIARY AND LABOR

Tuesday February 4, 2014
1:15 PM
State Capitol, Conference Room 224

In consideration of
SENATE BILL 2761
RELATING TO TRANSPORTATION

Senate Bill 2761 proposes that: 1) A government agency does not assume ownership or jurisdiction over a disputed road solely through maintenance or repair activities, 2) Authorizes the State to quitclaim ownership of roads in favor of the counties and 3) 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 as discussed below.**

In the event that the intent of this bill is to provide an incentive to State and County agencies to voluntarily undertake repair and maintenance projects over "roads in dispute", then the Department believes the **bill should contain language for no liability.** If the intent of the bill is as aforesaid, then the Department respectfully offers the following amendments:

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."

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

"§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."

Bernard P. Carvalho, Jr.
Mayor



Larry Dill, P.E.
County Engineer

Nadine K. Nakamura
Managing Director

Lyle Tabata
Deputy County Engineer

DEPARTMENT OF PUBLIC WORKS
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February 3, 2014

Testimony of **Larry Dill**, County Engineer, County of Kaua'i

Before the Senate Committee On Transportation And International Affairs

Senator Will Espero, Chair

Committee On Public Safety, Intergovernmental And Military Affairs

Senator Kalani English, Chair

Committee On Judiciary And Labor

Senator Clayton Hee, Chair

Tuesday, February 4, 2014

1:15 p.m.

Conference Room 224

State Capitol, 415 South Beretania Street

In consideration of

SB 2761

RELATING TO TRANSPORTATION

Dear Chair, Vice-Chair, and Members:

I am **Larry Dill**, County Engineer, **County of Kaua'i Department of Public Works (DPW)**. **DPW supports SB 2761**. While the measure does not solve the long-standing "roads in limbo" issue, it does allow for the Counties to maintain these neglected roads should they choose to do so, without incurring liability or assuming ownership or jurisdiction over those disputed roads.

Thank you for the opportunity to submit this testimony.

Sincerely,

Larry Dill, P.E.
County Engineer

An Equal Opportunity Employer

February 4, 2014

The Honorable J. Kalani English, Chair

Senate Committee on Transportation and International Affairs

The Honorable Will Espero, Chair

Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Honorable Clayton Hee, Chair

Senate Committee on Judiciary and Labor

State Capitol, Room 224

Honolulu, Hawaii 96813

RE: S.B. 2761, Relating to Transportation

HEARING: Tuesday, February 4, 2014, at 1:15 p.m.

Aloha Chair English, Chair Espero, Chair Hee, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS[®] ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR strongly opposes Section 2 of S.B. 2761 which authorizes an additional county surcharge on the state's general excise tax.


It is consumer confidence and spending that will revitalize and strengthen our economy. Residents and businesses continue to struggle to keep up with the cost of living and doing business in Hawai'i, and authorizing the counties to add a new tax will only contribute to this burden.


The proposed county surcharge on the State's General Excise Tax (GET) in Section 2 will take millions out of the pockets of our consumers. Our priority should be to restore consumer confidence and we cannot do so with a significant tax increase, even if it's a half or quarter of one percent of county surcharge.


HAR believes that, in the current economic environment, businesses and residents are particularly sensitive to additional financial burdens imposed by government. HAR further believes that a county surcharge in GET will be especially burdensome for low-income families, who have the least ability to afford a new tax which may apply broadly to a family's basic needs such as food, medicine, and clothing.

While the current GET rate is seemingly low, relative to the sales tax rate assessed in other states and municipalities, studies have shown that, with the pyramiding effect, the effective rate is considerably higher. A 0.5% increase, equivalent to a 12.5% increase in the tax rate,



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raises the stated rate to 4.5% (or 5.0% on Oahu), but increases the effective rate even more drastically. Consumers can ill afford this tax increase at this time. The GET in Hawaii is applied to 160 of 168 goods and services, the most of any state in the nation. Our citizens cannot afford a 12.5% increase in their general excise tax burden, when they are struggling today to afford other necessities.

We just cannot continue to place the burden of rising costs on already overtaxed citizens.

Mahalo for the opportunity to testify in strong opposition to Section 2 of this measure.

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TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 2761; HB 1728 (Identical)

INTRODUCED BY: SB by Keith-Agaran, Baker, English, Ruderman, Tokuda; HB by Souki & Yamane

BRIEF SUMMARY: Adds a new section to HRS chapter 46 to allow each county 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 operating costs of public transportation within each county for public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths; and expenses in complying with the Americans with Disabilities Act of 1990.

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 3, 2022.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This measure proposes to allow each of the counties 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 public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths. While the purpose clause of the measure states that it is to enable government agencies "to maintain roads whose ownership and jurisdiction are in dispute between the state and the counties . . ." the use specified in the proposed measure is more liberal as it also includes public transportation systems, including buses, trains and ferries.

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, the 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 for that matter opt at 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 the case of 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 and will result in an ever increasing rise in the general excise tax.

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 is no doubt that the surcharge tax rate will be increased to generate the additional revenues needed.

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 2/3/14