

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 03, 2015 2:56 PM
To: FINTestimony
Cc: cfrith@fbsmgt.com
Subject: Submitted testimony for HB760 on Mar 4, 2015 15:00PM

HB760

Submitted on: 3/3/2015

Testimony for FIN on Mar 4, 2015 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Cynthia Frith	Time Out Honolulu	Oppose	Yes

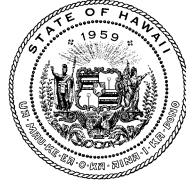
Comments: Strongly oppose!

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DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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HONOLULU, HAWAII 96809
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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, March 4, 2015
Time: 3:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 760, Relating to Transportation

The Department of Taxation (Department) provides the following comments regarding H.B. 760 for your consideration.

H.B. 760 amends section 248-2.6, Hawaii Revised Statutes, by reducing the amounts retained by the State, for the costs of assessment, collection, and disposition of the county surcharge on state tax, from ten percent to three percent of the gross proceeds of the a respective county's surcharge on state tax. H.B. 760 also requires the executive director of the Honolulu Authority for Rapid Transportation to submit an annual report to the legislature reporting the amount of county surcharge funds received by the authority and a detailed accounting of the usage of county surcharge funds by the authority. H.B. 760, if adopted, will be effective July 1, 2015.

The Department estimates that H.B. 760 would reduce the general fund receipts by the following amounts:

- FY 2016: \$17.5 million
- FY 2017: \$18.5 million
- FY 2018: \$19.4 million
- FY 2019: \$20.3 million
- FY 2020: \$21.2 million
- FY 2021: \$22.0 million

Thank you for the opportunity to provide comments.

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 03, 2015 1:02 PM
To: FINTestimony
Cc: michelematsuo@yahoo.com
Subject: Submitted testimony for HB760 on Mar 4, 2015 15:00PM

HB760

Submitted on: 3/3/2015

Testimony for FIN on Mar 4, 2015 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
michele matsuo	Time out honolulu	Oppose	Yes

Comments: Greetings Madam Chair and members of the Finance Committee. Thank you for this opportunity to testify and strongly oppose HB 760. I believe that we need to take a timeout on this rail project. Every promise made has been broken. We were promised on time and on budget. We were promised paid for entirely by this half percent GET surcharge until 2022. We were promised things relating to route and traffic relief. All seem now to be untrue and broken. Instead, we seem to mindlessly go along with this project which is spiraling out of control and has yet to provide an accounting of how all the funds received from the GET surcharge have been spent since 2007. This .rail project raises nothing but questions. On the other hand, we know for certain that the State has many unfunded liabilities which are urgent and that the State has other extremely pressing needs like funding pre-schools. We taxpayers can only pay so much! While this measure might be intended to be generous to the City, it takes away money from State needs which certainly need the money! Please vote NO on HB 760. Thank you for the opportunity to testify! Respectfully submitted, Michele Matsuo

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TO: Members of the Committee on Finance

FROM: Natalie Iwasa
Honolulu, HI 96825
808-395-3233

HEARING: 3 p.m. Wednesday, March 4, 2015

SUBJECT: HB 760, 3% Administration Fee Surcharge Tax - **SUPPORT**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB 760, which would reduce the state's portion of the county surcharge collection from 10% to 3% as well as require a detailed report of the surcharge funds used by HART.

It was recently reported that the HART board of directors discussed baiting legislators with a 25% chunk of the surcharge in exchange for an extension. It is not only inappropriate for a tax-funded agency to do this, it is obscene.

The current 10% fee is obviously too high. Please vote "yes" to reduce the fee and require an annual report from HART.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, County surcharge reimbursement

BILL NUMBER: HB 760

INTRODUCED BY: Cullen and Aquino

EXECUTIVE SUMMARY: The state now siphons 10% of the county surcharge on our general excise tax directly into the general fund, ostensibly to cover the costs of administering the tax. The amount siphoned is so grossly in excess of the costs involved that the siphoning provision can be thought of as either: (1) an unconstitutional tax on the City and County of Honolulu; or (2) an unconstitutional general excise tax that discriminates against Honolulu businesses. In either event, the bill does not go far enough to solve the problem – we must get away from revenue sharing altogether.

BRIEF SUMMARY: Amends HRS section 248-2.6 to provide that the director of finance shall deduct 3% rather than 10% of the gross proceeds of a respective county's surcharge on state tax to reimburse the state for the costs of assessing the surcharge.

Requires the executive director of the Honolulu authority for rapid transportation (HART) to submit an annual report to the legislature once reimbursement of all funds has been made to the state that shall include: (1) the amount of county surcharge funds received by HART; and (2) a detailed accounting of the usage of county surcharge funds by HART.

EFFECTIVE DATE: July 1, 2015

STAFF COMMENTS: Act 247, SLH 2005, allowed the counties to adopt a county surcharge on the state general excise tax. However, only the city and county of Honolulu adopted the surcharge at the rate of 0.5%. Perhaps believing the state should be reimbursed for the cost of collecting the surcharge and not knowing at the time what those costs would be, lawmakers specified that 10% of the surcharge collections be paid to the state.

In the fiscal year ending June 30, 2014, about \$242 million was collected for the county surcharge, meaning that the state kept \$24 million. Did it cost that much to collect the surcharge? The Governor's Budget in Brief says that it takes \$28 million a year for DOTAX to do everything it does, including collecting \$6.34 billion in total taxes other than the county surcharge.

There is a principle in constitutional law called "intergovernmental tax immunity." The doctrine was established by the United States Supreme Court in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), which ruled unanimously that states may not regulate property or operations of the federal government. There, Maryland state law subjected banks not chartered by the state to restrictions and taxes. In particular, Maryland attempted to impose those taxes and restrictions on the Second Bank of the United States, which at the time was the only out-of-state bank in Maryland. "That the power to tax involves the power to destroy," said the Court, striking down the tax. Some years later, the Court said in *Collector v. Day*, 78 U.S. (11 Wall.) 113 (1870), that the principle also works in reverse, so that the

federal government doesn't have the right to tax state and local governments when they exercise their sovereign functions.

Although the Hawaii Supreme Court hasn't spoken on the extent to which that principle applies, the constitutional principles should also apply. In order for the state and county governments to coexist within their respective spheres, they should not be burdened by each other, the same as is required for federal and state governments to coexist within their respective spheres. State and county governments aren't supposed to be taxing each other as well.

The Hawaii Supreme Court has given us some guidelines to distinguish between user fees and taxes. In *State v. Medeiros*, 89 Hawaii 361, 973 P.2d 736 (1999), it said that the courts should analyze whether the charge in question: "(1) applies to the direct beneficiary of a particular service, (2) is allocated directly to defraying the costs of providing the service, and (3) is reasonably proportionate to the benefit received." Under these principles, the 10% charge is a tax. It fails item (2) because the money collected goes straight to the general fund, and it fails item (3) because this charge brings in what amounts to 85% of DOTAX's budget while the county surcharge itself makes up less than 4% of the revenues DOTAX collects. As such, it can be seen as a tax on the city & county of Honolulu's governmental functions and it violates intergovernmental tax immunity.

Alternatively, we can look at the reality that governments don't pay taxes, but people do. When you take the impost in question as a tax, businesses in the city & county of Honolulu need to pay more into the general fund – presently 4.05% – while those in other counties pay 4.00%. That effectively makes the general excise tax discriminatory against businesses in Honolulu, without a rational basis for the discrimination. Equal Protection concerns are implicated.

Does this bill solve the problem? Decreasing the siphon from 10% to 3% seems like a step in the right direction, but partial measures don't solve the constitutional issue. If it is possible to ascertain the true costs incurred by the department of taxation in administering and collecting the surcharge and provide that those costs shall be reimbursed to DOTAX, then we have solved the problem. If we continue to think in terms of "revenue sharing" rather than reimbursing costs, we perpetuate the problem. Revenue sharing in this context is not constitutional and cannot be tolerated.

Digested 3/3/15



IN REPLY REFER TO:
CMS-AP00-01134

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

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Carrie K.S. Okinaga, Esq.

Statement of
DANIEL A. GRABAUSKAS
Executive Director and CEO, Honolulu Authority for Rapid Transportation
before the

HOUSE COMMITTEE ON FINANCE

Wednesday, March 4, 2015
3:00 p.m.
State Capitol, Conference Room 308

In consideration of
HB 760
RELATING TO TRANSPORTATION

Chair Luke, Vice Chair Nishimoto, and Members of the House Committee on Finance,

The Honolulu Authority for Rapid Transportation (HART) supports the intent of House Bill 760, which among other amendments, changes the State's automatic deduction of the gross proceeds of a county's surcharge on state tax for mass transit to three percent to reimburse the State for costs associated with handling of the county surcharge on state tax.

While House Bill 760 would result in an increase in the amount paid to the City and County of Honolulu (City) for HART to construct the Honolulu Rail Transit Project, HART believes, however, the extension or elimination of the general excise tax (GET) sunset date of December 31, 2022, is the best option to meet multiple goals. These goals are: (1) to eliminate the current projected deficit; (2) start immediate plans for extensions to the University of Hawaii at Manoa and downtown Kapolei; and (3) create an equitable source of operating subsidy, one-third of which is paid for by visitors to our island.

The Full Funding Grant Agreement (FFGA) provided the City with \$1.55 billion in Federal New Starts funding. The FFGA also states the City has an obligation to complete this project under the time frame specified in the agreement (20 miles, 21 stations, 80 rail vehicles) regardless of any financial challenges the City might encounter. If the City defaults on this agreement, then the City could face even greater fiscal challenges, including repayment of these Federal funds.

HART's major contracts must be advertised by the end of this year and awarded by mid-2016 to stay on schedule. Staying on schedule is critical to prevent costly delays and to comply with the terms of the FFGA. According to State law, Hawaii Revised Statutes Section 103D-309 and Hawaii Administrative Rules Section 3-122-102, pertaining to HART's contracts, the City must have funding in place before HART can award contracts to complete the project. No contracts can be awarded without funding in place.

In addition, Honolulu's construction costs are among the highest in the nation, and rising. HART has consulted with a wide spectrum of the construction industry, including experts who track construction prices across the country as well as here in Hawaii. All projections lead us to believe that construction costs are expected to increase 12% to 15% each year over the next two years. Pushing the project schedule back will mean higher bids and higher costs. For example, on a billion-dollar contract, with these projections, simply waiting a year will cost our taxpayers more than \$120 million to \$150 million with no benefit. Time is money and this is particularly true in the construction field.

While we support the intent of HB760, based upon the legal necessity to have funding in place in order to sign contracts, coupled with rapidly rising market costs that are beyond our control, we believe extending or eliminating the sunset on the GET now is the best course of action.

Thank you for this opportunity to submit written testimony.

finance1-Kim

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 4:45 PM
To: FINTestimony
Cc: vsc@hawaiiantel.net
Subject: *Submitted testimony for HB760 on Mar 4, 2015 15:00PM*

HB760

Submitted on: 2/28/2015

Testimony for FIN on Mar 4, 2015 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Victoria Cannon	Individual	Oppose	No

Comments:

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