



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 2601, H.D. 1, S.D. 1, RELATING TO TRANSPORTATION.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Wednesday, April 4, 2018

**TIME:** 10:30 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Gary S. Sukanuma,  
Deputy Attorney General, at 586-1470)

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Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General has concerns about this bill because it may be challenged as violating the Equal Protection and Privileges and Immunities Clauses of the United States Constitution.

This bill, as introduced, amended chapter 261, Hawaii Revised Statutes (HRS) to: (1) implement a supplemental rental motor vehicle user fee of \$4.50 per day for rental vehicles in a county with between 125,000 and 195,000 permanent residents; and (2) have said fees deposited in the state highway fund. Senate Draft 1 of this bill, among other things, amends chapter 251, HRS, to: (1) specify that a person renting a rental motor vehicle who does not have a Hawaii drivers license will pay an additional rental motor vehicle surcharge tax of \$2 dollars a day, and (2) mandate that this additional \$2 fee will be allocated to the county where the rental vehicle is driven.

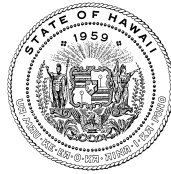
The Equal Protection Clause prohibits discrimination against a nonresident based solely on residency. See, e.g., Williams v. Vermont, 472 U.S. 14 (1985) (use tax credit for sales taxes paid on cars purchased in other states invalidated because it was only available to Vermont residents). The Intermediate Court of Appeals of Hawaii has recognized that the Equal Protection Clause applies where a tax operates unequally on persons or property of the same class. *In re Swann*, 7 Haw. App. 390, 776 P.2d 395 (1989).

Similarly, under the Privileges and Immunities Clause, a state may not impose higher taxes on a nonresident individual than it imposes on its own citizens.

The application of the \$2 fee to people renting cars without a Hawaii drivers license may be challenged as offensive to the Equal Protection and Privileges and Immunities Clauses because it arguably favors residents over nonresidents. This challenge may be avoided by eliminating the extra \$2 fee for drivers without a Hawaii license, or by imposing the additional surcharge tax equally on all persons regardless of where they reside.

Thank you for the opportunity to provide comments.

DAVID Y. IGE  
GOVERNOR



LAUREL A. JOHNSTON  
DIRECTOR

KEN N. KITAMURA  
ACTING DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**

TESTIMONY BY LAUREL A. JOHNSTON  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
HOUSE BILL NO. 2601, H.D. 1, S.D. 1

**LATE**

**April 4, 2018  
10:30 a.m.  
Room 211**

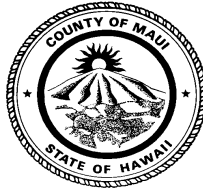
RELATING TO TRANSPORTATION

House Bill No. 2601, H.D. 1, S.D. 1, increases the rental motor vehicle surcharge tax by \$2 for lessees without a valid Hawaii driver's license and increases the tour vehicle surcharge by \$1 for each category of tour vehicle. The bill also proposes to establish county sub-accounts within the State Highway Fund (SHF) and to be expended for capacity road projects of the respective county.

The Department of Budget and Finance has policy concerns with earmarking of the increased fees and establishing county sub-accounts within SHF for road capacity projects of the respective county. The purpose of the SHF is to fund all highway operations and projects.

Thank you for your consideration of our comments.

ALAN M. ARAKAWA  
MAYOR



200 South High Street  
Wailuku, Maui, Hawai'i 96793-2155  
Telephone (808) 270-7855  
Fax (808) 270-7870  
E-mail: mayors.office@mauicounty.gov

**OFFICE OF THE MAYOR**  
Ke`ena O Ka Meia  
COUNTY OF MAUI – Kalana O Maui

April 3, 2018

TESTIMONY OF ALAN M ARAKAWA  
MAYOR  
COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, April 4, 2018, 10:30 A.M.  
Conference Room 211

HB2601 HD1 SD1 RELATING TO TRANSPORTATION.

Honorable Donovan M. Dela Cruz, Chair  
Honorable Gilbert S.C. Keith-Agaran, Vice Chair  
Honorable Members of the Senate Committee on Ways and Means

**LATE**

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Thank you for this opportunity to testify in **SUPPORT** OF HB2601 HD1 SD1.

The purpose of this bill is to increase the rental motor vehicle surcharge from \$3 to \$5 for lessees without a valid Hawaii driver's license from the rental motor vehicle surcharge. It also requires that the revenues from the increase in motor vehicle surcharge tax be expended for road capacity projects in the county in which the rental motor vehicle was operated under rental or lease. Lastly, it increases the tour vehicle surcharge by \$1 for each category of tour vehicle.

The State Department of Transportation (SDOT) has limited funds to start new traffic congestion mitigation projects. The funds created by this bill would allow for SDOT to move forward with several traffic congestion mitigation projects.

Some may say that this may cause people to cut back on renting vehicles. It may, indeed, do that. I would suggest that this may also be beneficial to mitigating traffic congestion in a small way.

For these reasons I support the passage of HB2601 HD1 SD1.

Sincerely,

Alan M. Arakawa  
Mayor, County of Maui

**LATE**

**HB-2601-SD-1**

Submitted on: 4/4/2018 9:38:07 AM  
Testimony for WAM on 4/4/2018 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Councilmember Yuki Lei Sugimura	Individual	Support	No

Comments:

As a member of Maui Metropolitan Planning Organization Policy Board, I offer my support of HB 2601 SD1, with amendments. I concur with Chair Crivello's comments that the bill maintain existing language which specifies that funds generated within each County must be used for transportation improvements within the same County. Traffic congestion on several Maui roadways has increased over the years, due in large part to the tourism-based economy and over 20,000 registered rental vehicles on the island. It is vital that this additional revenue source The Board would like to request that the bill be amended to ensure that capacity projects that are funded should be those that are a priority for each County or MPO as determined by: Priority projects identified in a County General Plan, Community Plan, or MPO transportation plan, and/or projects identified as priorities based on a performance measure evaluation process.



April 3, 2018

TESTIMONY OF MAUI MPO POLICY BOARD  
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, April 4, 2018, 10:30 A.M.  
Conference Room 211

**LATE**

HB2601 SD1 RELATING TO TRANSPORTATION

Honorable Donovan M. Dela Cruz, Chair  
Honorable Gilbert S.C. Keith-Agaran, Vice Chair  
Honorable Members of the Senate Committee on Ways and Means

Thank you for the opportunity to testify in **support** of HB 2601 SD1, with amendments requested below. The purpose and intent of this measure is to relieve traffic congestion in the State by increasing the rental motor vehicle surcharge to fund highway capital projects that address capacity issues.

The Maui Metropolitan Planning Organization (Maui MPO) is an agency formed per federal regulation in 2016 by the State of Hawai'i and County of Maui to facilitate comprehensive planning for federally-funded or regionally significant transportation systems on the island of Maui. The Maui MPO Policy Board met in March 2018 to discuss proposed State legislation, and approved the following testimony by vote at a meeting open to members of the public.

As the Maui MPO works to select projects and allocate federal highway funds for 2019-2022 through its Transportation Improvement Program, it is clear that the amount of federal funds available will not be sufficient to meet all the needs of Maui. Our transportation infrastructure needs funding to keep what we have in good, useable, and safe condition, as well as an increased ability to handle more users of the roadway network.

It is critical that the bill maintain existing language which specifies that funds generated within each County must be used for transportation improvements within the same County. Traffic congestion on several Maui roadways has increased over the years, due in large part to the tourism-based economy and over 20,000 registered rental vehicles on the island. It is vital that this additional revenue source be used for projects on Maui.

**We would like to request that the bill be amended to ensure that capacity projects that are funded should be those that are a priority for each County or MPO as determined by: Priority projects identified in a County General Plan, Community Plan, or MPO transportation plan, and/or projects identified as priorities based on a performance measure evaluation process.**

Sincerely,

A handwritten signature in black ink that reads "Stacy Crivello". The signature is fluid and cursive.

Stacy Crivello  
Chair, Maui MPO Policy Board



## Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

HB2601 HD1 SD1

**Relating To Transportation**

COMMITTEE ON WAYS AND MEANS

**Wednesday, April 4, 2018, 10:30am**

**Conference Room 211**

**LATE**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 185 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **opposed** to **HB 2601 HD1 SD1**, which increases the rental motor vehicle surcharge from \$3 to \$5 for lessees without a valid Hawaii driver's license from the rental motor vehicle surcharge. Requires that the revenues from the increase in motor vehicle surcharge tax be expended for road capacity projects in the county in which the rental motor vehicle was operated under rental or lease. Increases the tour vehicle surcharge by \$1 for each category of tour vehicle. Takes effect on 1/1/2019.

MHLA believes that this measure would harm car rental business. An additional \$2.00/day, proposed in HB 2601 HD1 SD1, would make the total amount of taxes and fees assessed on a rental transaction in Hawaii similar to a transaction in Los Angeles, Seattle, Miami, and New York.

Keeping our costs level is critical to our ability to compete against other sun destinations, especially now when we are seeing an increased amount of competition with new resort locations and other destinations' deeply discounted air/hotel/car packages. Hawaii has reached the point where high business costs and tax rates make it increasingly difficult for business to be profitable and competitive, in both the domestic and international markets.

Thank you for the opportunity to testify.





**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 415  
WEDNESDAY, APRIL 4, 2018 AT 10:30 A.M.**

To The Honorable Donovan M. Dela Cruz, Chair;  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair; and  
Members of Committee on Ways and Means;

**TESTIMONY ON HB2601 RELATING TO TRANSPORTATION**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. We would like to provide comments on HB2601 regarding increasing the motor vehicle surcharge.

We understand the concept of charging tax to raise funds for urgent infrastructure improvements. We also understand the intent to impose this tax on the visitor population that is a significant user of our infrastructure. In addition, we appreciate that the bill was amended to keep the money in the County in which it was raised. We hear concerns from the visitor industry that anything that raises costs to our visitor industry, given the highly competitive global market, may deter visitors from coming to Hawaii and has to be carefully weighed and considered. Therefore, the decrease to a \$2 charge may be more palatable to the industry.

Infrastructure in key areas on Maui like the Lahaina bypass and Paia bypass, both of which are desperately needed, have yet to be completely funded and will require additional funds. Both roads (as well as many others) are critical to our community and the lack of proper infrastructure hinders residents, businesses and visitors. The two bypass projects also address extreme safety issues. Without the Lahaina and Paia bypasses, these roads have constant gridlocks and there is a deep fear in instances of emergency where people cannot get to the hospital in time and the traffic does not provide a good experience to visitors. Our community is in dire need of these two projects.

Further, we are concerned with the comments by the Attorney General that indicated revenues generated by a public airport must be used for the airport/airport grounds. The critical need is not for roads near the airports and if this applies to the bill in its current form, it would prevent funding for our two most critical projects. We will not be present at the hearing to hear it if it has been determined that their concerns are correct. If they are, we would have a different opinion on this bill if the funds raised cannot be used for other priority projects. If there is a way to work this out so funds could be used for priority projects like the Lahaina and Paia bypasses, then we would like to see this bill moved forward.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.