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DEPARTMENT OF TAXATION**

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To: The Honorable Lorraine R. Inouye, Chair
and Members of the Senate Committee on Transportation and Energy

Date: Wednesday, February 14, 2018
Time: 1:25 P.M.
Place: Conference Room 225, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 3088, Relating to Taxation

The Department of Taxation (Department) offers the following comments on S.B. 3088, for the Committee's consideration.

S.B. 3088, extends the deadline for a county to adopt an ordinance to establish a general excise tax surcharge (CS) from March 31, 2018 to September 30, 2018. The bill is effective upon approval. To date, only Honolulu and Kauai Counties have adopted a CS. Thus, this measure would provide Hawaii and Maui Counties with the extension.

The Department first notes that current law requires that the county ordinance be adopted prior to March 31, 2018 with imposition and collection of the CS to begin January 1, 2019. This provides the Department with a minimum of nine months to prepare. S.B. 3088 extends the ordinance adoption deadline, but does not extend the date on which the imposition and collection begins. The Department respectfully requests that the deadline to adopt an ordinance be extended to June 30, 2018 instead of September 30, 2018. This will provide the Department a minimum of six months to prepare.

In the alternative, the Committee may want to consider providing a one-year extension to adopt an ordinance with imposition and collection to begin on January 1, 2020, similar to S.B. 2614, S.D. 1. In order to extend the deadline for Hawaii and Maui Counties to adopt an ordinance and to start the imposition and collection for Kauai County on January 1, 2019, the last sentence of Hawaii Revised Statutes (HRS) section 46-16.8, may be amended to read as follows:

For a county that has adopted an ordinance before
March 31, 2018, the director of taxation shall levy
assess, collect, and otherwise administer the county
surcharge on state tax starting on January 1, 2019.
For a county that has adopted an ordinance before
March 31, 2019, the director of taxation shall levy

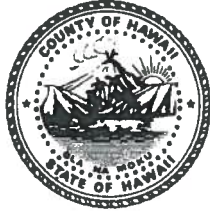
assess, collect, and otherwise administer the county surcharge on state tax starting on January 1, 2020.

If the Committee wishes to provide a one-year extension, the Department also suggests leaving HRS sections 237-8.6(b)(1)(B) and 238-2.6(b)(1)(B) unamended, and inserting the following subparagraph as HRS sections 237-8.6(b)(1)(C) and 238-2.6(b)(1)(C) respectively:

January 1, 2020, if the county surcharge on state tax was established by the adoption of an ordinance after June 30, 2015, but prior to March 31, 2019;

Thank you for the opportunity to provide comments.

DRU MAMO KANUHA
Council Member
District 7, Central Kona



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HAWAI'I COUNTY COUNCIL

West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

February 12, 2018

TESTIMONY OF DRU KANUHA
COUNCIL MEMBER, HAWAI'I COUNTY COUNCIL
ON SB 3088, RELATING TO TAXATION
Senate Committee on Transportation and Energy
Wednesday, February 14, 2018
1:25 p.m.
Conference Room 225

Aloha Chair Inouye and Members of the Committee:

I thank you for the opportunity to testify in **support** of SB 3088, relating to taxation. My testimony is submitted in my individual capacity as a member of the Hawai'i County Council and Chair of Governmental Relations and Economic Development.

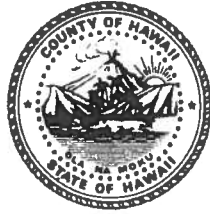
The purpose of this measure is to extend the period by six months that a county may adopt a surcharge on state tax, under certain conditions, from March 31, 2018 to September 30, 2018. The extension of six months will allow counties more time to adopt a surcharge on state tax by passing an ordinance in their respective counties.

For the reason stated above I urge the Senate Committee on Transportation and Energy to support this measure as well. Should you have any questions, please feel free to contact me at (808) 323-4267.

Mahalo for your consideration.

DRU KANUHA
COUNCIL MEMBER, HAWAI'I COUNTY COUNCIL

Maile Medeiros David
Council District 6
Portion N. S. Kona/Ka'ū /Volcano



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February 13, 2018

Honorable Lorraine R. Inouye, Chair
Honorable Will Espero, Vice Chair
Committee on Transportation and Energy
Hawai'i State Capitol, House Conference Room 225
Honolulu, Hawai'i 96813

Re: S.B. 3088 No. – Relating to Taxation.

Honorable Chair Inouye and Vice Chair Espero:

Aloha and mahalo a nui loa for this opportunity to provide testimony in support of S.B. No. 3088. My name is Maile David, Councilmember representing Council District 6 (rural districts of South Kona, Ka'ū and Volcano Village). I am a strong supporter of extending the time within which counties could determine whether or not to establish a surcharge on state tax. As this proposal will have huge impacts upon the people, I feel, we must do our best in representing the best interests of our people and thoroughly determine the degree of impact such a surcharge will have on the people of Hawaii County before rendering a decision. Bill No. 102 was brought to the County Council On February 6, 2018, on the Finance Committee Agenda. Quite frankly, Bill 102 was unexpected and came as a surprise to councilmembers.

Regardless, if the Council is to make an informed decision regarding the merits of whether or not to impose such a surcharge on the citizens of Hawai'i Island, given the time constraints within which the council has to work within, ample time to make that decision is necessary.

For the above reasons I fully support the intent of S.B. 3088 extending the deadline to establish this surcharge from March 31, 2018 to September 30, 2018.

Mahalo a nui loa for your positive and consideration.

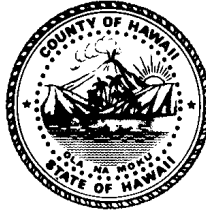
Very truly yours,

Maile David

Maile David, Council Member
Council District 6, S. Kona, Ka'ū, and Volcano Village

*Serving the Interests of the People of Our Island
Hawai'i County Is an Equal Opportunity Provider And Employer*

Karen Eoff
Council Vice Chair
Council District 8 - North Kona



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February 13, 2018

Senator Lorraine R. Inouye, Chair
Senator Will Espero, Vice Chair
Senate Committee on Transportation and Energy

Re: Testimony Supporting SB3088; Relating to Taxation
Hearing Date and Time: February 14, 2018 at 1:25 p.m., Conference Room 225

Dear Committee:

On behalf of myself and constituents of Council District 8, North Kona, support for the above referenced Bill is expressed, with brief testimony provided as follows:

We are a supporter of extending the time within which the counties may determine whether or not to establish a surcharge on State tax.

We want to represent the best interest of our constituents we will need additional time prior to render a decision.

Extending the period of time by six months that a county may adopt s surcharge on State tax, under certain conditions, from March 31, 2018 to September 30, 2018 is in this County's best interest.

We strongly recommend the passing of this bill.

Sincerely,

KAREN EOFF, Council Vice Chair
Council District 8, North Kona

KE.wpb

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Extends Period for Counties to Opt-In on GET Surcharge

BILL NUMBER: SB 3088; HB 2587

INTRODUCED BY: SB by DELA CRUZ, Wakai; HB by SAIKI

EXECUTIVE SUMMARY: Extends the period by six months that a county may adopt a surcharge on state tax, under certain conditions, from March 31, 2018, to September 30, 2018.

SYNOPSIS: Amends section 46-16.8(c), HRS, to give all counties the option to adopt a general excise and use tax surcharge for an additional six months, to September 30, 2018.

Makes conforming amendments in sections 237-8.6 and 238-2.6, HRS.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This measure concerns the 0.5% surcharge on the general excise tax that is currently imposed in the City and County of Honolulu, sometimes known as the “rail surcharge.” As originally enacted in 2006, the rail surcharge was scheduled to sunset on December 31, 2022. The surcharge authority was extended to December 31, 2027, by Act 240, Session Laws of Hawaii 2015, and the City & County of Honolulu extended the surcharge by Ordinance 16-1. To date, Kauai County is the only other county that has adopted a surcharge ordinance, and collections of the Kauai surcharge will begin in January 2019. Kauai Ord. No. 1021 (Dec. 11, 2017).

How can counties raise money to balance their budgets?

One source of funding that is available to any county is the real property tax. Article VIII, section 3 of the Hawaii Constitution exclusively and directly gives power to the counties to impose real property tax. *State ex rel. Anzai v. City and County of Honolulu*, 99 Hawai‘i 508, 57 P.3d 433 (2002), established that for at least the past twenty years, any county is “free to exercise its exclusive authority to increase, diminish, enact, or repeal any exemptions involving real property taxes without interference by the legislature.” *Id.*, 57 P.3d at 446. The real property tax is imposed by county ordinance, it is imposed on those under the jurisdiction of the county and not of the state, and the money raised belongs to the county imposing it.

Another source of funding is state tax; specifically, state tax that is shared with the counties. Article VIII, section 3 of the Hawaii Constitution provides:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

Where the funds raised are by state statute imposing a state tax, the money raised is the State's money. The Hawaii Constitution, in the language quoted above, explicitly empowers the Legislature to apportion that money to one or more political subdivisions however the Legislature sees fit. Money can be raised for general revenue purposes, as is the case with most taxes including the Transient Accommodations Tax. That money can also be directed to special funds used for specific purposes, as is the case with the fuel tax that feeds the Highway Fund. Sometimes the tax money raised is directed to a multitude of uses, as with the TAT and the Conveyance Tax. It has been held that such funds can be disbursed to one or more counties through grants in aid, and that the State can enact conditions upon the power to disburse or give discretion to the Executive Branch to withhold disbursement. *Fasi v. Burns*, 56 Hawai'i 615, 618-19, 546 P.2d 1122, 1125 (1976).

The county surcharge on the GET, which is the subject of this bill, is imposed by county ordinance and not state law, although state statute delegates the power to tax. So far Oahu and Kauai have adopted ordinances imposing the surcharge, and Hawaii County is in the process of holding public meetings on the topic to gauge support for doing the same.

Digested 2/12/2018