

JAN 16 2020

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# A BILL FOR AN ACT

RELATING TO INFRASTRUCTURE IMPROVEMENT DISTRICTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that insufficient  
2 infrastructure is one of the factors contributing to the lack of  
3 affordable housing in Hawaii. Forcing developers to fund  
4 necessary infrastructure improvements has led to delays in  
5 construction and the development only of homes with high price  
6 points so that the developers may recover their high  
7 construction costs. Most jurisdictions fund infrastructure  
8 improvements through real property taxes. However, real  
9 property taxes in Hawaii are relatively low, which hinders the  
10 ability of the counties to fund infrastructure.

11           The purpose of this Act is to implement a constitutional  
12 amendment to amend the exclusive authority of the counties to  
13 tax real property and to provide the legislature with the  
14 authority to establish a surcharge on taxation of certain  
15 property within an infrastructure improvement district.

16           More specifically, this measure establishes a mechanism to  
17 fund infrastructure improvements by establishing a surcharge on



1 taxation of real property parcels near transit stations, but  
2 making the application of the surcharge dependent upon:

- 3 (1) An appropriation of funds for infrastructure  
4 improvements around the applicable transit station;  
5 and  
6 (2) The parcel near that transit station being sold or  
7 developed after the appropriation of funds.

8 Thus, property that does not change ownership will not be  
9 subject to the surcharge.

10 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is  
11 amended by adding a new part to be appropriately designated and  
12 to read as follows:

13 **"PART . INFRASTRUCTURE IMPROVEMENT DISTRICTS**

14 **§206E-A Definitions.** As used in this part:

15 "Infrastructure improvement district" means the land within  
16 two thousand feet of a transit station. The area around each  
17 transit station shall be considered a separate infrastructure  
18 improvement district.

19 "Property" shall have the same meaning as in section 248-1.

20 "Sold" shall not include the transfer of any property to a  
21 trust or any transfer through inheritance.



1 "Transit-oriented development property" means a parcel  
2 completely or partially within two thousand feet of a transit  
3 station; provided that the entire parcel shall be within one  
4 mile of the transit station.

5 **§206E-B Surcharge on transit-oriented development parcels;**  
6 **establishment; purpose.** (a) There is established an annual  
7 surcharge on real property tax on transit-oriented development  
8 properties as provided in this part. The purpose of the  
9 surcharge shall be to fund infrastructure improvements within  
10 infrastructure improvement districts.

11 (b) No surcharge established by this part shall be  
12 assessed on any transit-oriented development property until:

13 (1) An act appropriates funds to the corresponding  
14 infrastructure improvement district for infrastructure  
15 improvements; and

16 (2) After the effective date of an act in paragraph (1),  
17 the transit-oriented development property is sold or  
18 developed.

19 Any transit-oriented development property that does not change  
20 ownership shall not be subject to a surcharge established  
21 pursuant to this part.



1 (c) Any act that appropriates funds to an infrastructure  
2 improvement district for infrastructure improvements shall state  
3 the name of the transit station and the transit-oriented  
4 development district for which the appropriated funds shall be  
5 expended.

6 **§206E-C Applicability.** (a) A corporation, copartnership,  
7 company, or other private business entity that owns or operates  
8 property shall be subject to any applicable surcharge  
9 established by this part. Property of a corporation,  
10 copartnership, company, or other private businesses shall be  
11 assessed the surcharge under its corporate or firm name.

12 (b) A person or private business that is a wholly owned  
13 subsidiary or acting as an agent or on behalf of a corporation  
14 having its principal place of business outside Hawaii shall be  
15 subject to any applicable surcharge established by this part.

16 (c) Every personal representative, trustee, guardian, or  
17 other fiduciary shall be responsible for the performance of all  
18 acts required by this part with respect to any applicable  
19 surcharge on taxation of property in their fiduciary capacity  
20 and shall be liable for the payment of a surcharge held in the  
21 fiduciary's capacity, but shall not be personally liable and may



1 retain, out of the money or other property that may be obtained  
2 in the fiduciary's capacity, so much as may be necessary to pay  
3 the surcharge, recoup the payment thereof, or recover the amount  
4 paid from the beneficiary to whom property subject to a  
5 surcharge pursuant to this part have been distributed.

6 (d) The penalties provided by section 231-39 for failure  
7 to file a tax return shall be imposed on the amount of the  
8 applicable surcharge for:

9 (1) Failure to pay a surcharge;

10 (2) Failure to file appropriate documentation with regard  
11 to a surcharge; or

12 (3) Failure to correctly report the amount of a surcharge.

13 **§206E-D Amount; levy; assessment.** (a) The amount of the  
14 surcharge assessed each year shall be \$7.50 per \$1,000 of net  
15 taxable value.

16 (b) The surcharge shall be imposed on the most recent  
17 valuation that is assessed by the county where the property is  
18 located for the purpose of determining the annual county  
19 property tax liability.

20 (c) For the purposes of this part, life tenants, personal  
21 representatives, trustees, guardians, or other fiduciaries may



1 be, and persons holding government property under an agreement  
2 for the conveyance of the same to those persons shall be,  
3 considered as owners during the time any property is held or  
4 controlled by them, including:

5 (1) Lessees holding under any government lease during the  
6 time any property is held;

7 (2) Any tenant occupying government land for a period of  
8 one year or more;

9 (3) Persons holding any property under an agreement to  
10 purchase the same;

11 (4) Persons holding any property under a lease for a term  
12 to last during the lifetime of the lessee; and

13 (5) Persons bearing tax liability on the property during  
14 the time period for which a surcharge on the property  
15 has been assessed.

16 **§206E-E Notice and returns.** (a) The department of land  
17 and natural resources shall maintain on its website a list of  
18 all transit-oriented development parcels and the transit-  
19 oriented development zone associated with those parcels.

20 (b) Within thirty days of the effective date of an act  
21 appropriating funds to an infrastructure improvement district



1 for infrastructure improvements, the department of land and  
2 natural resources shall indicate which transit-oriented  
3 development parcels shall be subject to the surcharge under this  
4 part if the parcel is sold or developed after the effective date  
5 of the act.

6 (c) Upon recording a fee or lease conveyance of a parcel,  
7 the bureau of conveyances or the office of the assistant  
8 registrar of the land court shall determine whether the  
9 department of land and natural resources has indicated that the  
10 parcel is subject to the surcharge under this part if the parcel  
11 is sold or developed pursuant to subsection (b). If the parcel  
12 is subject to the surcharge pursuant to the indication of the  
13 department of land and natural resources, the bureau of  
14 conveyances or the office of the assistant registrar of the land  
15 court shall inform the applicable county director of finance.

16 (d) Notices of the amount of the surcharge shall be  
17 transmitted by each county through the United States mail to any  
18 property owner subject to the surcharge. Notice of the  
19 surcharge amount shall be transmitted no later than October 31  
20 of each calendar year to the owner's last known address or place  
21 of business.



1 (e) Each county shall by ordinance permit an owner to pay  
2 the surcharge in the same manner provided for the payment of  
3 real property taxes.

4 (f) Whenever any county director of finance finds that  
5 there is not sufficient evidence to form, for assessment  
6 purposes, a sound appraisal of the value of the property or  
7 properties, it may require an owner to file a return within  
8 thirty days of the county's mailing of notice to the owner.  
9 Consideration of and liability for a return, including in  
10 determining the fair market value of a property or properties,  
11 shall be made in the same manner and with the same limitations  
12 as for real property tax returns in the county in which the  
13 property is located.

14 (g) All returns made under this section shall be open to  
15 inspection by the public and shall be admissible in evidence  
16 against the owner making the return, in any state court in any  
17 action wherein the value of the property, or portion thereof,  
18 may be in dispute.

19 (h) Failure to file a return required under this section  
20 shall render the owner liable for payment of an additional sum





1 equal to the sum defined in and prescribed for failure to file a  
2 tax return under section 231-39(b)(1).

3 (i) If any return is sent by United States registered or  
4 certified mail, a record authenticated by the United States  
5 Postal Service of the registration or certification shall be  
6 considered evidence that the return was delivered to the county  
7 director of finance. The date of registration or certification  
8 shall be deemed the postmarked date for filing purposes.

9 (j) Each county director of finance shall make publicly  
10 available a form for a return related to the surcharge on  
11 property for use in collecting the surcharge.

12 **§206E-F Appeals.** (a) Any owner of property who is  
13 aggrieved by an assessment used to determine the amount of the  
14 surcharge on property for any year or by a refusal to be granted  
15 an exemption from the surcharge may appeal the assessment in the  
16 manner provided in the case of real property tax appeals.

17 (b) No owner shall be deemed to be aggrieved by any  
18 assessment made upon the owner's property that is based upon the  
19 opinion of value set forth in the owner's return unless the  
20 owner shows lack of uniformity or inequality as set forth in  
21 section 232-3.



1 (c) Each of the counties shall by ordinance provide for  
2 appeal from an assessment used to determine the amount of the  
3 surcharge and denial of an exemption in the same manner as  
4 provided in the case of real property tax appeals.

5 (d) Any county decision on an appeal for relief or  
6 exemption from the surcharge may be appealed to the tax appeal  
7 court as provided in chapter 232.

8 **§206E-G Disposition of proceeds.** (a) The surcharge shall  
9 be collected by the counties in accordance with this section.  
10 All moneys collected by the counties pursuant to the  
11 establishment of a surcharge shall be paid into each county's  
12 treasury within ten working days after collection and shall be  
13 placed by each county's director of finance in special accounts.  
14 Out of each \$7.50 in revenues generated by the surcharge, the  
15 director of finance of each county shall deduct \$1.50 from the  
16 surcharge to reimburse the county for the costs of assessment,  
17 collection, and disposition of the surcharge incurred by the  
18 county.

19 (b) After the deduction pursuant to subsection (a), the  
20 director of finance of each county shall, on a quarterly basis,  
21 pay the remaining balance of revenue collected under the



1 surcharge to the state director of finance. The quarterly  
2 payments shall be made after the surcharge has been paid into  
3 the county treasury special accounts and after the disposition  
4 of any appeal.

5 (c) Surcharge payments received by the state director of  
6 finance from the counties shall be deposited into the general  
7 fund.

8 **§206E-H Exemptions.** (a) This part shall not apply to any  
9 property while that property is:

- 10 (1) Not subject to real property taxation;
- 11 (2) Leased, purchased, or otherwise obtained by a lessee,  
12 tenant, purchaser, or homesteader under the Hawaiian  
13 Homes Commission Act of 1920, or as amended, a lease  
14 of land made for a term of nine hundred ninety-nine  
15 years under provisions of law that were repealed by  
16 section 3 of Joint Resolution 12, Session Laws of  
17 1949, ratified by the Congress of the United States by  
18 the Act of September 1, 1950;
- 19 (3) Used exclusively for charitable, including property  
20 used for church purposes and cemeteries that are  
21 maintained by a religious organization;



- 1           (4) Used for school purposes including:
- 2           (A) Prekindergarten facilities, including any
- 3           property used to administer the executive office
- 4           on early learning public prekindergarten program
- 5           under section 302L-7;
- 6           (B) Kindergartens, grade schools, junior high
- 7           schools, and high schools, which carry on a
- 8           program of instruction meeting the requirements
- 9           of compulsory school attendance pursuant to
- 10          section 302A-1132; and
- 11          (C) Colleges or junior colleges offering a general
- 12          program of instruction;
- 13          (5) Owned by a nonprofit corporation to which admission is
- 14          restricted by corporate charter to members of a labor
- 15          union or government employees' association, one of the
- 16          primary purposes of which is to improve employment
- 17          conditions of its members;
- 18          (6) Dedicated to public use by the owner, which dedication
- 19          has been accepted by the State or any county, reduced
- 20          to writing, and recorded in the bureau of conveyances;



1           (7) Set aside for public use; provided that any exemption  
2           pursuant to this paragraph shall not be for a period  
3           of less than ten years after enactment of Act       ,  
4           Session Laws Hawaii 2020; and

5           (8) Owned by any entity granted a transient accommodations  
6           tax exemption under section 237D-3.

7           (b) No exemption from this part shall be allowed to any  
8           corporation, copartnership, company, or other private business  
9           entity, unless otherwise specified by law.

10          (c) An exemption shall only be granted for property for  
11          which every owner or ownership interest qualifies for one or  
12          more exemptions provided by this section.

13          **§206E-I Enforcement.** (a) The director of taxation shall  
14          administer and enforce this part; provided that each county  
15          director of finance and the state director of finance, as  
16          applicable, shall administer and enforce:

17          (1) The examinations of books and records of any person or  
18          private entity subject to the surcharge on property  
19          tax; and



1 (2) The imposition of penalties upon failure or refusal by  
2 a person or private entity to file a return, sworn  
3 return, or proper return.

4 (b) The department of taxation may contract with any state  
5 or county department or agency for the purposes of implementing  
6 or enforcing this part.

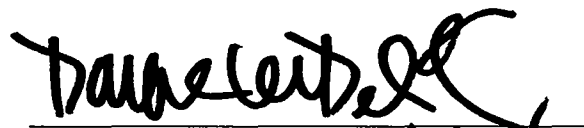
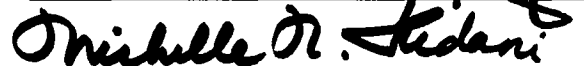
7 (c) The director of taxation may adopt rules pursuant to  
8 chapter 91 to carry out this part.

9 **§206E-J Reports.** No later than twenty days prior to the  
10 convening of each regular session, the department shall submit a  
11 report to the legislature containing an accounting of the  
12 revenues generated from surcharges imposed pursuant to this  
13 part."

14 SECTION 3. This Act shall take effect upon ratification of  
15 the constitutional amendment proposed in S.B. No. , Regular  
16 Session of 2020, permitting the legislature to establish a  
17 surcharge on taxes on properties to fund infrastructure  
18 improvements.

19

INTRODUCED BY:



S.B. NO. 2054

A handwritten signature in black ink, consisting of several fluid, overlapping loops and strokes.

~~AND C. Kirk-App~~



# S.B. NO. 2054

**Report Title:**

Transit-Oriented Development; Tax; Surcharge; Property;  
Infrastructure Improvement District

**Description:**

Establishes an annual surcharge on property taxes on parcels within an infrastructure improvement district that are sold or developed after an appropriation is made to improve the infrastructure of that district. Authorizes the counties to retain a portion of the surcharge for administrative expenses. Exempts from the surcharge parcels that do not change ownership.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

