

**OFFICE OF PLANNING
STATE OF HAWAII**



DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
SENATE COMMITTEE ON WAYS AND MEANS
Wednesday, February 19, 2020
10:00 AM
State Capitol, Conference Room 211

in consideration of
SB 2074 SD1
**PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF
HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON
REAL PROPERTY TO FUND INFRASTRUCTURE IMPROVEMENTS NEAR RAPID
TRANSIT STATIONS.**

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means.

The Office of Planning (OP) offers **comments** on SB 2074 SD1, which proposes a State constitutional amendment to allow the State Legislature to establish a surcharge on real property to fund infrastructure improvements around rapid transit stations.

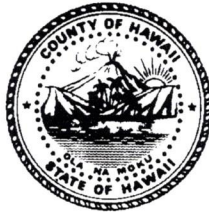
OP supports the underlying intent of this measure to find alternative means to finance the significant infrastructure improvements that will be needed to support the creation of mixed use, dense, transit-oriented urban communities on State lands along the Honolulu rail corridor.

Financing options for State investment in TOD-serving infrastructure is one component of an ongoing OP study of anticipated development of State lands in three transit-oriented development (TOD) priority areas—East Kapolei, Halawa-Stadium, and Iwilei-Kapalama—and the infrastructure required to support TOD buildout over the next 30-40 years. The inability to use tax increment financing (TIF)—already authorized in Hawaii Revised Statutes Chapter 46—due to a cloud over its constitutionality, removes an important tool from the financing toolbox. TIF enables public entities to tap the increased real property value created by public investment in infrastructure to pay for that infrastructure. A proposal to clarify the constitutionality of tax increment financing would enable the counties, partnering with the State, to access another source of financing for needed public infrastructure for TOD.

Thank you for the opportunity to testify on this measure.

Harry Kim
Mayor

LATE



Roy Takemoto
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

February 18, 2020

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Ways and Means

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

RE: SB 2074, SD1 Proposing an Amendment to the Constitution of the State of Hawai'i to Authorize the Legislature to Establish a Surcharge on Real Property to Fund Infrastructure Improvements Near Rapid Transit Stations

I respectfully and urgently request that SB 2074, SD1, amending the Constitution to authorize a State surcharge on certain real property, not move forward.

I recognize that SB 2074, SD1 may have some superficial political appeal, restricted as it is to the rail corridor. However, no matter what the potential benefits of SB 2074, SD1 might be, impinging on the counties' singular source of income would be devastating to us.

As you well know, the counties have little or no control over their revenue except in one area, real property taxes, and therefore we rely overwhelmingly on real property taxes to fund our operations. For the County of Hawai'i, a full 74% of our revenue is from property taxes.

The burden of the property tax can be heavy for many residents, but since it is virtually the only tool we have, we use it the best we can. A surcharge on properties would obviously limit County options and make it even more difficult to balance our budgets. Therefore, we have to jealously guard this taxing authority, and ask that you not break the bright line of separation.

Yes, this bill is only for rail, so at least for now, it would only affect Oahu. But also introduced this year was HB 2671, authorizing DOE to tax real property statewide. Two years ago, a constitutional amendment passed, by this Legislature, authorizing the State to tax residential investment property. Who knows what next year will bring.

The drafters of our Hawai'i Constitution must have understood that it was critical to the viability of the counties that they have exclusive authority over the property tax.

February 18, 2020

Page 2

The drafters provided that, "The taxing power shall be reserved to the State, except...relating to the taxation of real property" which "shall be exercised exclusively by the counties...". If that wall is breached, severe damage will be done to home rule, we would be ignoring the progress the counties have made since Statehood, and there would be a crippling of the State/County partnership that has grown over the years in an imperfect but meaningful attempt to best serve the 1.41 million people of Hawai'i.

None of these arguments are meant to downgrade the importance of infrastructure to Hawai'i's past, present, and future. I simply ask that further progress not be made on the backs of the counties which have so few alternate resources to fall back on.

Please hold SB 2074, SD1.

Respectfully Submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive style with a large, stylized "K" at the end.

Harry Kim
MAYOR

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, CONSTITUTIONAL AMENDMENT, Real Property Tax Surcharge to Fund Infrastructure Improvements Near Rapid Transit Stations

BILL NUMBER: SB 2074, SD-1

INTRODUCED BY: Senate Committee on Judiciary

EXECUTIVE SUMMARY: Allows the legislature to impose a surcharge on real property tax to fund infrastructure improvements near rapid transit stations. Limits should be written into the amendment or the voters should be apprised that they are voting only on granting power to the legislature to impose a state level real property tax surcharge, with no limitations on that power.

SYNOPSIS: Amends Article VIII, section 3, of the Hawaii Constitution to provide that “the legislature may establish, as provided by law, a surcharge on real property taxes for real property parcels located within one mile at their nearest point of any rapid transit station to fund infrastructure improvements needed to support or accommodate the transit station or new residential or commercial development resulting from proximity to the transit station; provided further that a surcharge on any such real property parcel shall be established solely to fund improvements in the area of the transit station which makes the parcel eligible for the surcharge.”

EFFECTIVE DATE: Upon voter approval.

STAFF COMMENTS: The proposed measure empowers the legislature to establish a surcharge on real property tax “for real property located near rapid transit stations.”

The proposed measure does not say “residential,” “commercial,” or any other class of real property. Therefore, if adopted, any real property may be surcharged.

The proposed measure says it is “for real property located near rapid transit stations,” not “upon real property ...” or “with respect to real property” Although the committee report expresses an intention that only properties within a mile of the transit station are to be surcharged, the actual language chosen does not appear to limit the ability to tax. Therefore, if adopted, the amendment could be interpreted, contrary to the committee report, to allow any real property to be surcharged wherever located. Maui property could be surcharged to pay for Oahu rail, for example.

Furthermore, there are no limits to the amount of the surcharge. The surcharge could be less than the current property tax, or it could be many times the current property tax.

In other words, once the amendment passes, the genie is out of the bottle. It may not even be under control of the members now in the legislature, because future legislators (note that this year is an election year) may have different ideas from current members.

We need to ask ourselves if we want to or need to give the genie that much power. If we do, then we only have ourselves to blame for what happens when the genie does come out. If we don't, then we should either kill the constitutional amendment or write strict limits into it.

Another fundamental question that needs to be asked is why the State is inserting itself into a purely local matter. If the idea is for a property tax surcharge to be imposed on parcels within one mile of a rail station for the purposes of funding infrastructure improvements to that rail station, why can't the City & County of Honolulu, where all the rail stations will be, do it by ordinance? The counties now have the exclusive power to impose real property tax, and the amendment proposed by this bill monkeys with this power for as yet undisclosed reasons.

Digested 2/16/2020



February 17, 2020

Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Strong Opposition to SB 2074, SD1, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON REAL PROPERTY TO FUND INFRASTRUCTURE IMPROVEMENTS NEAR RAPID TRANSIT STATIONS. (Proposes an amendment to the Constitution of the State of Hawaii to authorize the State legislature to establish a surcharge on taxation of real property near rapid transit stations for the purpose of funding infrastructure improvements in those areas. (SD1))

WAM Hearing: Thursday, February 20, 2020, 10:35 a.m., in Conf Rm 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and utility companies. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its **strong opposition to SB 2074, SD1.**

SB 2074, SD1. This measure proposes an amendment to the Constitution of the State of Hawaii to authorize the State legislature to establish a surcharge on taxation of real property near rapid transit stations for the purpose of funding infrastructure improvements in those areas. The purpose, intent, structure and language of this bill is very similar to SB 2922, SD1, HD1 (2018) which was invalidated by the Hawaii Supreme Court in 2018.

LURF's position. LURF opposes SB 2074, SD1, based on the same reasoning and rationale that the Hawaii Supreme Court used to invalidate the proposed 2018 Constitutional amendment ("*surcharge on investment property to be used to support public education*").

The following are LURF's arguments in opposition to SB 2074:

1. **The ballot question in SB 2074, SD1 is unclear and inherently misleading to the public, because it does not disclose the nature of the proposed material change to the Constitution.** The question fails to provide notice to the lay voter that a "yes" vote would establish "an exception to a present law" which prohibits the State from taxing real property. The ballot question does not contain information from which a voter could ascertain that the counties already have the constitutional authority to impose the property tax at issue and, consequently, that the "chief effect" of the amendment would be to allow two different government entities to tax the same property. Since this important information is not conveyed by the ballot question, it is likely to leave the average lay voter with the false impression that a vote in favor of the amendment will not increase their taxes.
2. **The language and effect of the ballot question is potentially confusing in several other ways:**
 - a. **"Surcharge."** The average voter would not understand the term "surcharge."
 - i. Black's Law Dictionary defines "surcharge" as "an additional tax, charge or cost." This definition is not clearly explained in the ballot question.
 - ii. If most voters respond "Yes" and approve the ballot question, it will allow the State to impose an additional independent tax on real property (which it is currently prohibited from doing). The term "surcharge" and the ballot question are misleading, because it does not convey this meaning of the word "surcharge."
 - iii. If, instead, the amendment would authorize only a dependent, supplemental charge added to an existing tax, the ballot question still fails to accurately state upon what basis the surcharge will be calculated and levied.
 - iv. Bottomline, it is misleading to ask voters to authorize a new additional tax, without ever using the term "tax."
 - b. **"Real Property located near the rapid transit stations."** SB 2074, SD1 fails to define this term, and a voter would not be able to discern what is "real property located "near" the rapid transit stations.
 - i. The term "near" is vague and ambiguous. It can mean different distances to different voters. It could mean a few feet, it could mean a few yards, it could mean the distance of a 1-minute walk, a 5-minute walk, a 10-minute walk, or maybe even a 15-minute walk.
 - ii. It implies that the properties subject to the surcharge are very "near" to the rapid transit stations, when in reality, the properties subject to the surcharge could be as far away as the Legislature determines – which could be any distance.
 - iii. To the extent that this implication is inaccurate, the ballot question is unclear and misleading.

c. “For the purpose of funding infrastructure improvements to these areas.”

- i. This phrase is likely to mislead the average lay voter into believing that if the amendment is enacted: (a) the state spending on infrastructure will necessarily increase and (b) that there will be a corresponding improvement of the infrastructure in the area.
- ii. In actuality, the amendment does not require a net increase in infrastructure spending. The “money raised by the surcharge, including the legislature’s budgetary expenditures are fungible.” This means that in increase in funding from one source (the surcharge) can be offset by a decrease in funding for infrastructure from other sources.
- iii. Should the amendment be enacted, nothing would prevent the legislature from funding infrastructure entirely through the revenues raised through the surcharge, while using the usual amount of funds for infrastructure for some other purpose or use.
- iv. Thus, the net effect of the surcharge could mean an actual decrease in the amount of funding for infrastructure near the rapid transit stations.
- v. Also, the use of the word “improvements” could incorrectly imply to some voters that surcharge would actually improve the infrastructure. This is not true, the surcharge funding could be used for repair and maintenance and to maintain the status quo, with no appreciable “improvement” in level of service.
- vi. Like the language of the illegal 2018 Constitutional amendment, the phrase “for purposes of funding infrastructure improvements to these areas” is an “appeal to all humane instincts,” and a voter would not be unreasonable in assuming that such a measure would in fact result in an increase in funding for infrastructure and improved infrastructure. Yet by its plain text, the ballot question and amendment make no such guarantees, and no explanatory materials are provided that would dispel this misconception.

Conclusion. In its opinion invalidating the 2018 proposed constitutional amendment to enact a surcharge to fund public education, the Hawaii Supreme Court held that the provisions of Hawaii’s Constitution are of such foundational importance that the utmost care must be taken to apprise citizens of the effect of their vote on a proposed constitutional amendment. When the language of effect of a proposed amendment or its corresponding ballot question is unclear, misleading, or deceptive, the ballot is not capable of generating the “knowing and deliberate expression of voter choice” necessary for ratification. The ballot question proposed by SB 2074, 1 is fatally flawed because it is unclear, misleading and does not present the information necessary to produce such a choice, and thus, we believe that it will be invalidated by Hawaii’s courts.

Based on the above, LURF must **strongly oppose SB 2074, SD1**, and respectfully requests

February 19, 2020

The Honorable Donovan Dela Cruz, Chair

Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: Senate Bill 2074, SD1 - PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON REAL PROPERTY TO FUND INFRASTRUCTURE IMPROVEMENTS NEAR RAPID TRANSIT STATIONS.

HEARING: Wednesday, February 19, 2020, at 10:00 a.m.

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

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **strongly opposes** S.B. 2074, SD1, which proposes an amendment to the Constitution of the State of Hawai'i to authorize the State legislature to establish a surcharge on taxation of real property near rapid transit stations for the purpose of funding infrastructure improvements in those areas.

According to the Asset Limited, Income Constrained, Employed (ALICE) Report prepared by United Way many households earning more than the federal poverty level still cannot afford housing, child care, food, transportation and health care. At a time when the Legislature has prioritized addressing the high cost of living, this measure will have the effect of a double property tax on homeowners.

Moreover, a double property tax would also impact first-time homebuyers, and continue to put the dream of homeownership further out of reach of Hawai'i families and residents.

Mahalo for the opportunity to testify.

SB-2074-SD-1

Submitted on: 2/14/2020 4:58:08 PM

Testimony for WAM on 2/19/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jared Watumull	Individual	Oppose	No

Comments:

I oppose this measure. The counties have the right to assess taxes on real property and are responsible for the infrastructure in the area around the transit hubs they build. The State should stay out of taxing real property.

TO: Members of the Committee on Ways and Means

FROM: Natalie Iwasa
808-395-3233

HEARING: 10:00 a.m. Wednesday, February 19, 2020

SUBJECT: SB 2074, SD1 Constitutional Amendment for Real Property Tax Surcharge
in Transit Oriented Development Areas - **OPPOSED**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB 2074, SD1, which would propose an amendment to the Constitution of the State of Hawaii to authorize the state to establish a surcharge on real property taxes on properties around rail stations.

I absolutely oppose this measure. People are already having a hard time making ends meet. The City and County of Honolulu consistently raises its real property taxes. In addition, transit oriented development is supposed to be one way to support affordable housing. It will not be affordable if taxes are added at the state level.

Please vote “no” on this measure.