

DAVID Y. IGE
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ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: March 4, 2021
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 645, S.D.1, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding S.B. 645, S.D. 1, for your consideration.

S.B. 645, S.D. 1, extends the deadline for a county to adopt an ordinance to establish a general excise tax surcharge from March 31, 2019 to July 1, 2023. The bill is effective upon its approval. To date, Honolulu, Kauai, and Hawaii Counties have adopted a County Surcharge (CS). Thus, the extension to adopt a CS will only affects Maui County.

Section 1 of S.B. 645, S.D. 1, requires that the county ordinance be adopted prior to July 1, 2023 with imposition and collection of the CS to begin January 1, 2023. The Department has serious concerns regarding the retroactive date of the imposition and collection of CS. It will not provide the Department with enough time to make form changes, develop and test technical configurations, and educate taxpayers. This retroactive imposition will also cause significant compliance issues for taxpayers.

The Department notes that there is an inconsistency between the deadlines set forth in Section 1 and Sections 2 and 3. Sections 2 and 3 state that no CS may be levied prior to *July 1, 2023* if the CS was established by the adoption of an ordinance on or after March 31, 2019, but prior to *December 31, 2021*.

The Department strongly suggests that the deadlines in Sections 1-3 of this measure be corrected so that the measure can be properly administered.

Thank you for the opportunity to provide comments on this measure.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 2, 2021

TO: Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Alice L. Lee
Council Chair

A handwritten signature in cursive script, appearing to read "Alice L. Lee", is written over the printed name and title.

DATE: March 3, 2021

SUBJECT: **SUPPORT OF SB 645 SD1, RELATING TO TAXATION**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to extend the period in which a county may adopt a surcharge on State tax to December 31, 2021, and to authorize the use of county surcharge revenues for affordable- and workforce-housing infrastructure.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I **SUPPORT** this measure for the following reasons:

1. This measure would help support the development of much-needed infrastructure for housing units in Maui County.
2. This measure would help ensure skilled employees stay in Maui County, providing economic and social benefits to the community, instead of leaving because of a lack of housing options.
3. The County and the State have a mutual interest in supporting infrastructure projects that promote affordable-housing development. County and State officials, in conjunction with the Maui Metropolitan Planning Organization, have already prioritized a list of projects where funding could be utilized.

For the foregoing reasons, I **SUPPORT** this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, Extends Period for Counties to Opt-In on Surcharge

BILL NUMBER: SB 645, SD1

INTRODUCED BY: Senate Committee on Public Safety, Intergovernmental, and Military Affairs

EXECUTIVE SUMMARY: Extends the period in which a county may adopt a surcharge on state tax, under certain conditions, from 3/31/2019 to 7/1/2023. Authorizes the use of county surcharge revenues for affordable and workforce housing infrastructure.

SYNOPSIS: Amends section 46-16.8, HRS, to allow a county to adopt a surcharge on the state general excise tax by ordinance prior to 7/1/2023. The surcharge will go into effect on 7/1/2023 if the ordinance is passed before 12/31/2021.

Also provides that a county with a population not greater than 500,000 may use the surcharge money for affordable and workforce housing infrastructure to provide affordable housing (for households having incomes of no more than 140% of area median income).

Makes conforming amendments to section 237-8.6 and 238-2.6, HRS, relating to adoption of a surcharge on the General Excise Tax and Use Tax respectively.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This measure concerns the 0.5% surcharge on the general excise tax that was first 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 has adopted a 0.5% surcharge and Hawaii County has opted for 0.25% but later raised it to 0.5%. Maui County has not adopted the surcharge yet, and this bill would afford it an opportunity to do so.

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.

As a technical matter, the bill needs to specify when the surcharge goes into effect if the county ordinance is enacted after 12/31/2021.

Digested 2/8/2021



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
THURSDAY, MARCH 4, 2021 AT 10:00 A.M.**

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

COMMENTS ON SB645 SD1 RELATING TO TAXATION

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our comments on SB645 SD1.

We know the county supports this and we supported a similar bill last year. We wholeheartedly support moving forward with the development of needed affordable housing and rental units and infrastructure as this is always one of our top priorities. We appreciate the concept of this bill to use the funding for infrastructure, which is often the issue that keeps affordable housing and rental projects from penciling out and we feel this measure could help get more units built.

However, adding another layer of GET onto local residents who are not used to paying it and businesses who did not budget for it during a pandemic could create hardships. The GET impacts everyone and is a regressive tax versus a sales tax and is charged on food, medications and business expenses. We are still early in the legislative session and there are many bills still alive that seek to increase taxes and expenses for businesses and residents. It is hard to ring in when we cannot see the totality of the financial hit on our community.

Mahalo for your consideration of our testimony.

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.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

March 3, 2021

The Honorable Senator Donovan Dela-Cruz
The Honorable Senator Gilbert Keith-Agaran
Senate Committee on Ways and Means

RE: **SB645 SD1 – Relating to Taxation**
Hearing date: March 4, 2021 at 10:00AM

Aloha Chair Dela-Cruz, and Members of the Committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii providing **COMMENTS** on SB645, SD1. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals. NAIOP Hawaii strongly supports the development of housing for Hawaii residents at all levels of income, especially affordable housing projects.

SB645, SD1 extends the period in which a county may adopt a surcharge on state tax, under certain conditions. The measure further authorizes the use of county surcharge revenues for affordable and workforce housing infrastructure.

NAIOP Hawaii understands the intent of SB645, SD1, to generate additional GET tax revenue to assist in the development of more affordable and workforce housing. NAIOP appreciates the State's efforts to encourage the development of housing at or below 140% AMI. Further, the restriction on counties preventing them from passing on related infrastructure costs to the developer of a housing project that sells or rents its housing units to households having incomes of no more than 140% AMI is welcomed.

However, the measure adds another layer onto the State GET to pay for affordable housing and its infrastructure. Hawaii is already among the highest taxed states in the country and this measure will increase the already substantial tax burden on our residents. While NAIOP appreciates the Legislature's commitment to designing creative policy solutions, we believe that there are better alternatives for counties to fund more affordable housing instead of increasing GET taxes.

Mahalo for your consideration,

Catherine Camp, President
NAIOP Hawaii