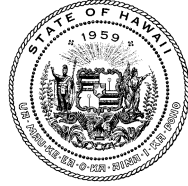


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

The Honorable Nadine K. Nakamura, Chair;
The Honorable Troy N. Hashimoto, Vice Chair;
and Members of the House Committee on Housing

From: Isaac W. Choy, Director
Department of Taxation

Date: February 16, 2021

Time: 11:30 A.M.

Place: Via Video Conference, State Capitol

Re: H.B. 1146, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding H.B. 1146, for your consideration.

H.B. 1146 extends the deadline for a county to adopt an ordinance to establish a general excise tax surcharge from March 31, 2019 to December 31, 2021, and allows the counties with a population of 500,000 or less to use the revenues from the surcharge for affordable and workforce housing infrastructure to provide housing for households under certain income limit. 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.

H.B. 1146 requires that the county ordinance be adopted prior to December 31, 2021 with imposition and collection of the CS to begin January 1, 2023. This will provide the Department with enough time to make form changes, develop and test technical configurations, and educate taxpayers.

The Department notes that there is inconsistency in the effective date of the CS in H.B. 1146. Section 1 requires the Department to levy, assess, and collect the CS beginning *January 1, 2023* if the ordinance is adopted prior to December 31, 2021. However, Sections 2 and 3 states 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 suggests that this inconsistency be resolved.

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

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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February 12, 2021

TESTIMONY OF MICHAEL P. VICTORINO
MAYOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEES ON ECONOMIC DEVELOPMENT and ON
HOUSING

Tuesday, February 16, 2021, 11:30 a.m.
House Conference Rooms 312 and 423 via Videoconference

HB1146, RELATING TO TAXATION

Honorable Sean Quinlan and the Honorable Nadine K. Nakamura, Chairs
Honorable Daniel Holt and the Honorable Troy N. Hashimoto, Vice Chairs
Honorable Members of the House Committees on Economic Development and on
Housing

Thank you for this opportunity to offer comments in **support of HB1146.**

This bill extends the period in which a county may adopt a surcharge on state tax, under certain conditions, from March 31, 2019 to December 31, 2021. It authorizes the use of county surcharge revenues for affordable and workforce housing infrastructure.

The County and the state have a mutual interest in supporting infrastructure projects, especially transportation infrastructure projects, which promote affordable housing development. County and state officials have already prioritized a list of projects in conjunction with the Maui Metropolitan Planning Organization where funding could be utilized. Passing this measure will help chip away at the affordable housing demand so greatly needed by our residents.

We **support** this measure, **HB1146.**

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; HB 1146

INTRODUCED BY: SB by KEITH-AGARAN, BAKER, ENGLISH; HB by YAMASHITA, HASHIMOTO, McKelvey

EXECUTIVE SUMMARY: Extends the period in which a county may adopt a surcharge on state tax, under certain conditions, from 3/31/2019 to 12/31/2021. 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 12/31/2021. The surcharge will go into effect on 1/1/2023 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.

Digested 2/8/2021



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND
COMMITTEE ON HOUSING
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOMS 312 & 423
TUESDAY, FEBRUARY 16, 2021 AT 11:30 A.M.**

To The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair; and
Members of the Committee on Economic Development,

To The Honorable Nadine K. Nakamura, Chair;
The Honorable Troy N. Hashimoto, Vice Chair; and
Members of the Committee on Housing,

COMMENTS ON HB1146 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 HB1146.

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 very 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.