



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2673, H.D. 1, RELATING TO ROADS .

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Friday, February 9, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Winston I. Wong, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to permit the counties to use county surcharge revenues for the maintenance of private roadways that are open to the public and require the counties to use fuel tax revenues for the repair, maintenance, and improvement of those roadways.

This bill amends section 46-16.8, Hawaii Revised Statutes (HRS), to add a new subsection (h) to read, "In addition to the uses authorized by subsections (f) and (g), each county that adopts a county surcharge on state tax ordinance pursuant to this section may use the surcharges received from the State for the maintenance, including flood mitigation, of privately-owned roadways that are open to the public." Page 7, line 17, to page 8, line 2. This bill also amends section 243-6, HRS, to permit the expenditure of county fuel taxes for the purpose of "reconstruction, improvement, repair, and maintenance, including flood mitigation, of privately-owned roadways that are open to the public[.]" Page 11, lines 14-16.

Section 46-16.8(f)(1), HRS, prohibits the use of county surcharge funds "[t]o build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence before July 12, 2005;" (page 5, lines 7-16) so this bill as drafted may result in the unintended situation where tax funds are permitted to be used for the repair of private roadways but not for the repair of certain public roadways in

counties with a population greater than five hundred thousand. One possible remedy is to delete the prohibition against the use of the county surcharge on state tax for the repair of certain “public roads or highways” on page 5, lines 14-16, and amend the wording on page 7, line 17, to page 8, line 2, to read as follows:

(h) In addition to the uses authorized by subsections (f) and (g), each county that adopts a county surcharge on state tax ordinance pursuant to this section may use the surcharges received from the State for the maintenance of public roadways or the maintenance, including flood mitigation, of privately-owned roadways that are open to the public.

This bill may also be strengthened by providing a more robust declaration of its public purpose in section 1. Article VII, section 4, of the Hawaii Constitution, titled “Appropriations for Private Purposes Prohibited,” provides in part:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose.

Determining what constitutes a public purpose is generally a question for the Legislature to decide. *State ex rel. Amemiya v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-81 (1976). The question is whether the ultimate objective of the act serves a public purpose and benefits accruing to private interests are incidental. *Id.* at 576, 545 P.2d at 1182. Because this bill proposes to improve privately owned roads that are open to and used by the public, this bill could be better insulated against a challenge by explaining in more detail the public-purpose rationale underpinning the bill.

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

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, FUEL, Allow county revenues to repair private roadways used by the public

BILL NUMBER: HB 2673 HD 1

INTRODUCED BY: House Committee on Transportation

EXECUTIVE SUMMARY: Permits the counties to use county surcharge revenues for maintenance of private roadways that are open to the public. Requires the counties to use fuel taxes for reconstruction, improvement, repair, and maintenance of private roads that are open to the public.

SYNOPSIS: Amends section 46-16.8, HRS, to allow each county with a population less than or equal to 500,000 to use county surcharge revenue to be used for the maintenance, including flood mitigation, of private roadways that are open to and used by the public.

Amends section 243-6, HRS, to allow fuel taxes deposited in county highway funds to be used for reconstruction, improvement, repair, and maintenance, including flood mitigation, of private roadways that are open to and used by the public.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: Section 243-6, HRS, provides generally that fuel taxes, both at the state and county levels, are deposited into the highway fund. The highway fund generally funds construction and improvements to our highways and byways.

The Highway Fund is needed under federal law to demonstrate the state's expenditures for transportation infrastructure, which is a requirement to get federal aid for highway construction.

The county surcharge on the General Excise Tax is used in the City & County of Honolulu to support its rail mass transit project. The law creating the county surcharge for the other counties allowed those counties to use the surcharge funds for transportation infrastructure.

It appears that the proposed additional use of highway funds and transportation-related county surcharge revenue is within the spirit of the law. The fuel tax disposition statute, HRS section 243-6, already contains language stating that no expenditures shall be made if they would jeopardize federal aid for highway construction.

Digested: 2/7/2024

HB-2673-HD-1

Submitted on: 2/8/2024 7:25:32 PM

Testimony for JHA on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Scott Kidd	Individual	Oppose	Written Testimony Only

Comments:

I oppose this measure, private roads should not get public funds when our current public roadways are in massive need of repair. Private roads should not be subsidized by the state.