

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  
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To: The Honorable Clarence K. Nishihara, Chair;  
The Honorable J. Kalani English, Vice Chair;  
and Members of the Senate Committee on Public Safety, Intergovernmental, and  
Military Affairs

From: Isaac W. Choy, Director  
Department of Taxation

Date: February 11, 2021  
Time: 1:30 P.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 645, Relating to Taxation**

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

S.B. 645 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. 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.

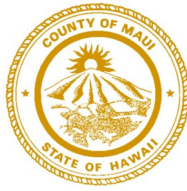
S.B. 645 requires that the county ordinance be adopted prior to December 31, 2021 with imposition and collection of the CS to begin January 1, 2023. This will provide the Department with enough time to make form changes, develop and test technical configurations, and educate taxpayers.

The Department notes that there is inconsistency in the effective date of the CS in S.B. 645. 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  
[www.mauicounty.gov](http://www.mauicounty.gov)

**LATE**

February 10, 2021

TESTIMONY OF MICHAEL P. VICTORINO  
MAYOR  
COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,  
AND MILITARY AFFAIRS  
Thursday, February 11, 2021, 1:30 p.m.  
Via Videoconference

**SB645 RELATING TO TAXATION**

Senator Clarence K. Nishihara, Chair  
Senator J. Kalani English, Vice Chair

Honorable members of the Committee on Public Safety, Intergovernmental, and  
Military Affairs

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Thank you for this opportunity to testify in **STRONG SUPPORT** for **SB645**.

This bill 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. 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.

Thank you for the opportunity to testify in **STRONG SUPPORT** for **SB645**.

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



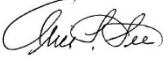
Director of Council Services  
Traci N. T. Fujita, Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

**LATE**

February 10, 2021

TO: Honorable Clarence K. Nishihara, Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

FROM: Alice L. Lee  
Council Chair 

DATE: February 11, 2021

SUBJECT: **SUPPORT OF SB 645, 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, under certain conditions, from 3/31/2019 to 12/31/2021 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, 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.

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; 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

**LATE**

**HEARING BEFORE THE SENATE COMMITTEE ON  
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
HAWAII STATE CAPITOL, VIA VIDEOCONFERENCE  
THURSDAY, FEBRUARY 11, 2021 AT 1:30 P.M.**

To The Honorable Clarence K. Nishihara, Chair;  
The Honorable J. Kalani English, Vice Chair; and  
Members of the Committee on Public Safety, Intergovernmental & Military Affairs,

**COMMENTS ON SB645 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.

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.

**SB-645**

Submitted on: 2/8/2021 12:45:02 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip T. Rapoza	Individual	Oppose	No

Comments:

I oppose