



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1091, S.D. 1, RELATING TO THE COUNTIES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, March 1, 2023 **TIME:** 10:10 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Janine R. Udui,
Deputy Attorney General, at 808-586-1470)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill amends section 46-16.8(f), Hawaii Revised Statutes (HRS), to allow counties that have adopted a county surcharge on state tax ordinances and have a population equal or less than five hundred thousand people to "use the surcharges received from the State for . . . [the o]perating or capital costs of public transportation within the county for public transportation systems, including . . . private roadways that are open to and used by the public" (page 1, lines 7-14). The bill also amends section 243-6(e)(2), HRS, to allow county fuel taxes to be expended "[f]or acquisition, designing, construction, reconstruction, improvement, repair, and maintenance" of county streets, "including private roadways that are open to and used by the public" (page 4, lines 17-21). Similarly, the bill amends section 243-6(e)(5) to allow county fuel taxes to be used for "county traffic control and preservation of safety upon the public highways and streets, including private roadways that are open to and used by the public" (page 5, lines 15-18).

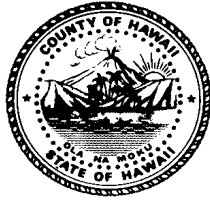
This bill could be strengthened by providing a more robust declaration of its public purpose in section 1. Article VII, section 4, of the Hawaii Constitution, titled "Appropriations for Private Purposes Prohibited," provides in part:

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*. [Emphasis added.]

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 by inserting legislative findings, similar to that found in the fourth paragraph of Standing Committee Report No. 135, into section 1 of the bill (e.g., "[The Legislature] finds that private roads that are currently open to and used by the public are also used by first responders to respond to emergencies and by school buses for the transportation of students to and from school.>").

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

Matt Kāneali‘i-Kleinfelder
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Finance Committee
Chair

Policy Committee Health, Safety, Well-Being
Vice Chair

Hawai‘i County Council
County of Hawai‘i
Hawai‘i County Building
25 Aupuni Street, Suite 2405 • Hilo, Hawai‘i 96720

Date: February 28, 2023

To: Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
And Members of the Senate Committee on Ways and Means

RE: TESTIMONY IN SUPPORT OF SENATE BILL 1091 SD1, RELATING TO COUNTIES

My name is Matt Kāneali‘i-Kleinfelder. I currently represent District 5 in the Hawai‘i County Council and also serve as the Chairman on the Committee on Finance. I am submitting testimony in **SUPPORT** of SB 1091, SD 1, which authorizes certain counties to use county surcharge on GET revenues and fuel tax revenues for the repair and maintenance of private roadways that are open to and used by the public.

In my district, subdivisions struggle with funding road maintenance given current constraints on counties that prevent public funds being put toward private roads. As many private roads serve as important avenues for first responders, public transportation, and emergency routes, the lack of maintenance creates a public safety hazard not only for those residents directly in the area, but for all that rely on those roads.

Thank you for the opportunity to submit testimony in **SUPPORT** of SB 1091 SD1. Thank you for your consideration.

Mahalo,

Matt Kāneali‘i-Kleinfelder

MKK:ac

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 1091 SD 1

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

EXECUTIVE SUMMARY: Allows certain counties to utilize tax revenues collected by the counties for the repair and maintenance of private roads that are open to and used by 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 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 private roadways that are open to and used by the public.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: July 1, 2023.

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: 2/27/2023

Friends of Puna's Future (FoPF)
P.O. box 644, Pahoia, HI 96778

2/28/2023



Testimony in Support

SB 1091

Aloha Senate WAM Committee,

I would like to testify on behalf of our membership in support of SB 1091. We have been working on the issues surrounding this bill for over twelve years. Hawaii County is rather unique in the hundreds of miles of private sub division roads which are open to the public and the only means of serving fire, police, rescue and schools. Miles of these roads are dangerous and often impassible.

SB 1091 would allow a reasonable mechanism for modest improvements to this situation.

Mahalo for your time and attention,

Robert Tucker
V.P. FoPF
808-987-5987

LATE

SB-1091-SD-1

Submitted on: 2/28/2023 12:19:56 PM

Testimony for WAM on 3/1/2023 10:10:00 AM

Submitted By	Organization	Testifier Position	Testify
Beth Block	Individual	Support	Written Testimony Only

Comments:

I strongly urge passage of SB1091. For too long, private subdivisions in Puna have not seen any benefits for our roads, despite paying the same taxes as everyone else. It's long past time to change this.

LATE

SB-1091-SD-1

Submitted on: 2/28/2023 1:07:06 PM

Testimony for WAM on 3/1/2023 10:10:00 AM

Submitted By	Organization	Testifier Position	Testify
linnette quade	Individual	Support	Written Testimony Only

Comments:

Please help us maintain one of our only two ingress roads in Hawaiian Acres Puna district (uhina ana road). The road is basically a rutted track that hardly supports school buses, police or first responders. the growth of population in our area has broken the road to a critical point. we recently did a community fund raiser and managed after several months to raise 40K which repaved 1/2 of the road way about 1100 feet of a 5 mile long road. Even if the county would have matched our funds at least we could have gone 1/2 mile of critical infrastructure. although we pay our taxes we do not have most county services, collecting our own water and maintaining our own sewage; no streetlights, sidewalks or any simple safety items. if we could at least have a road that didnt destroy our cars every trip out would be a blessing. as a side note, we have also been maintaning a state/ccounty roadway that has been labeled "road in limbo" which means the state and county just pass the buck between themselves and we have to also take care of that. thank you

Patti Pinto
PO Box 711382
Mountain View, HI 96771
808-430-1777 - pintonian@gmail.com

LATE

SB1091 SD1
Testimony in support

Hawaii County is unique in that it has hundreds of miles of subdivision roads that are owned and maintained by subdivision property owners and their community associations. This bill will give the County some flexibility in assisting these community associations in maintaining their main feeder roads and thoroughfares that are used by mass transit, County first responders, DOE school buses, and the public at large.

None of the roads in question are in gated or restricted communities but are accessed 24/7 by the public.

Mass transit and school buses, because of their weight, cause more road depreciation than a private vehicle. Community associations struggle to keep their bus routes adequately maintained and frequently do not have sufficient remaining funds to maintain the remaining roads in their charge.

We estimate that more than a quarter of our County population live on publicly accessed private subdivision roads. Please give our County the ability to assist this population with safer roads, better access to mass transit, enhanced public safety and emergency response, and less wear and tear on our vehicles (including Hele On and DOE buses).

Sincerely,
Patti Pinto

LATE

SB-1091-SD-1

Submitted on: 2/28/2023 3:29:42 PM

Testimony for WAM on 3/1/2023 10:10:00 AM

Submitted By	Organization	Testifier Position	Testify
Charles Vollmar	Individual	Support	Written Testimony Only

Comments:

I support this bill

LATE

SB-1091-SD-1

Submitted on: 2/28/2023 8:45:20 PM

Testimony for WAM on 3/1/2023 10:10:00 AM

Submitted By	Organization	Testifier Position	Testify
Jordan Epperson	Individual	Support	Written Testimony Only

Comments:

I supportg SB1091SD1

I live in Hawaiian Acres on the Big Island of Hawaii, my neighborhood was given permission to be developed by the State of Hawaii in the late 1950's with very minimal infrastucture and no provision to develop or maintain our roads in the future. I believe this was allowed by the state due to the fact that it would create a major tax base for the state and it would be decades before this neighborhood would face the development we are currently facing now in 2023. To this day our neighborhood has not established the proper protocol to assess the road development and repairs that are desperatly needed to establish safe travel in our neighborhood. It is a fact that traveling roads in such desrepair requires more fuel than traveling on improved roads, considering that along with the fact that the rural location of this neighborhood requires an adequate amount of fuel just to get to, I feel that we pay more than our fair share of fuel taxes with very inequitable representation.

We have absolutely no control over the rapid growth that the County and State continue to allow in this community, this development has added to the rapid deterioration of our roadways to the point that they are not safe to travel. Meanwhile we have recieved very little assistance in finding a resolution to our lack of infrastructure from the State or county. With that in mind it would at very least be nice to get a fair share of the fuel taxes we are paying to help establish a safe way to travel these roads.

If we aren't allowed to use the fuel taxes we pay on the roads we drive on, it seems like we should be allowed to use off road fuel. I think it would be even better to just pass this Bill!!

Once again, I support SB1091SD1.

Aloha,

Jordan Epperson