



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

ON THE FOLLOWING MEASURE:
S.B. NO. 2178, RELATING TO ROADS.

BEFORE THE:
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

DATE: Tuesday, February 13, 2024 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

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

Chair Lee 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, “[e]ach 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 privately-owned roadways that are open to the public.” Page 7, lines 8-11. 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 of privately-owned roadways that are open to the public[.]” Page 11, lines 3-5.

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 4-6) 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, line 4, and amend the wording on page 7, lines 8-11, to read as follows:

(h) 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 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 by adding a preamble. 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

126 Queen Street, Suite 305

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

BILL NUMBER: HB 2673, SB 2178

INTRODUCED BY: HB by ILAGAN; SB by INOUYE, CHANG, Kim

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: Upon approval.

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: 1/29/2024

SB-2178

Submitted on: 2/12/2024 9:11:14 AM

Testimony for TCA on 2/13/2024 3:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Ferreira	Individual	Support	Written Testimony Only

Comments:

Aloha,

If a private road is open to the motoring public than it should be considered a public raod and be maintaned as other public roads are. The people using it have paid for the registration and weight taxes for their cars using it. It only makes sense that the roads be maintained for what people poay for. SUpport

Michael Ferreira

Makakilo