

JAN 18 2023

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# A BILL FOR AN ACT

RELATING TO TAXATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 247, Session  
2 Laws of Hawaii 2005, authorized the counties to adopt a  
3 surcharge of up to one-half of one per cent on state tax to  
4 support public transportation projects. The law has been  
5 subsequently amended, including by Act 1, Special Session Laws  
6 of Hawaii 2017, and Act 11, Session Laws of Hawaii 2018, to  
7 extend the time period in which a county may adopt and impose  
8 the surcharge on state tax. The law currently authorizes a  
9 county that has previously adopted a surcharge on state tax to  
10 extend the surcharge through December 31, 2030. Counties that  
11 had not previously adopted a surcharge on state tax had until  
12 March 31, 2019, to adopt a surcharge that could be imposed  
13 through December 31, 2030. The legislature concludes that it is  
14 appropriate to authorize the counties to permanently adopt and  
15 impose a public transportation surcharge, which shall be at a  
16 lower rate of one-fourth of one per cent after December 31,  
17 2030.



1           The legislature further finds that a county with a  
2 population greater than five hundred thousand is currently  
3 restricted to using the surcharge revenues for capital costs of  
4 mass transit projects while smaller counties may use their  
5 surcharge for other purposes, including operational costs of  
6 public transportation systems, and that the restrictions on the  
7 larger counties should be amended to allow for wider use of the  
8 funds.

9           The purpose of this Act is to further amend the county  
10 surcharge on state general excise and use taxes by:

- 11           (1) Authorizing a county with a pre-existing surcharge on  
12 state general excise and use taxes to permanently  
13 extend its surcharge to be imposed after December 31,  
14 2030 at a lower rate of one-fourth of one per cent;
- 15           (2) Authorizing counties that have not previously adopted  
16 an ordinance to establish a surcharge on state general  
17 excise and use taxes to establish a surcharge at the  
18 rate of one-half of one per cent until December 31,  
19 2030, and thereafter at a rate of one-fourth of one  
20 per cent; and



1           (3) For counties with a population greater than five  
2           hundred thousand, authorizing use of surcharge  
3           revenues for more than capital costs of mass transit  
4           systems, as smaller counties are not restricted to  
5           using those revenues only for capital costs of public  
6           transportation.

7           SECTION 2. Section 40-81.5, Hawaii Revised Statutes, is  
8 amended as follows:

9           1. By amending subsection (a) to read:

10           "(a) Beginning on September 5, 2017, [~~and ending on~~  
11 ~~December 31, 2031,~~] the comptroller, upon the request for  
12 payment by the rapid transportation authority, shall verify that  
13 the authority's invoices for the [~~capital~~] costs of a locally  
14 preferred alternative for a mass transit project comply with  
15 section 46-16.8(e)."

16           2. By amending subsection (c) to read:

17           "(c) After submission of invoices by the rapid  
18 transportation authority for capital costs of a locally  
19 preferred alternative for a mass transit project are verified by  
20 the comptroller as an acceptable use of funds received pursuant  
21 to a surcharge on state tax authorized pursuant to section 46-



1 16.8, the comptroller shall submit a certification statement,  
2 including any appropriate supporting documents, to the  
3 department of budget and finance for the allocation of funds, if  
4 available, pursuant to sections 248-2.7 and 248-2.6(d). The  
5 certification statement shall include, at a minimum, the total  
6 amount contained in the invoices for [~~capital~~] costs that are  
7 verified as an appropriate use of funds pursuant to section 46-  
8 16.8(e)."

9 SECTION 3. Section 46-16.8, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§46-16.8 County surcharge on state tax.** (a) Each county  
12 may establish a surcharge on state tax at the rates enumerated  
13 in sections 237-8.6 and 238-2.6. A county electing to establish  
14 this surcharge shall do so by ordinance; provided that:

- 15 (1) No ordinance shall be adopted until the county has  
16 conducted a public hearing on the proposed ordinance;
- 17 (2) The ordinance shall be adopted prior to December 31,  
18 2005; and
- 19 (3) No county surcharge on state tax that may be  
20 authorized under this subsection shall be levied prior



1 to January 1, 2007 [~~, or after December 31, 2022,~~  
2 unless extended pursuant to subsection (b)].

3 Notice of the public hearing required under paragraph (1) shall  
4 be published in a newspaper of general circulation within the  
5 county at least twice within a period of thirty days immediately  
6 preceding the date of the hearing.

7 A county electing to exercise the authority granted under  
8 this subsection shall notify the director of taxation within ten  
9 days after the county has adopted a surcharge on state tax  
10 ordinance and, beginning no earlier than January 1, 2007, the  
11 director of taxation shall levy, assess, collect, and otherwise  
12 administer the county surcharge on state tax.

13 (b) Each county that has established a surcharge on state  
14 tax prior to July 1, 2015, under authority of subsection (a) may  
15 extend the surcharge [~~until December 31, 2030,~~] at the [~~same~~]  
16 rates[~~-~~] enumerated in sections 237-8.6 and 238-2.6. A county  
17 electing to extend this surcharge shall do so by ordinance;  
18 provided that [+

19 ~~(1)~~ ~~No~~] no ordinance shall be adopted until the county has  
20 conducted a public hearing on the proposed ordinance[~~-~~  
21 and



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1       ~~(2) The ordinance shall be adopted prior to January 1,~~  
2               ~~2018].~~

3       A county electing to exercise the authority granted under  
4 this subsection shall notify the director of taxation within ten  
5 days after the county has adopted an ordinance extending the  
6 surcharge on state tax. The director of taxation shall levy,  
7 assess, collect, and otherwise administer the extended surcharge  
8 on state tax.

9       (c) Each county that has not established a surcharge on  
10 state tax prior to July 1, 2015, may establish the surcharge at  
11 the rates enumerated in sections 237-8.6 and 238-2.6. A county  
12 electing to establish this surcharge shall do so by ordinance;  
13 provided that:

14       (1) No ordinance shall be adopted until the county has  
15               conducted a public hearing on the proposed ordinance;

16       (2) The ordinance shall be adopted prior to March 31,  
17               2019; and

18       (3) No county surcharge on state tax that may be  
19               authorized under this subsection shall be levied prior  
20               to January 1, 2019 [~~or after December 31, 2030].~~



1 A county electing to exercise the authority granted under  
2 this subsection shall notify the director of taxation within ten  
3 days after the county has adopted a surcharge on state tax  
4 ordinance. Beginning on January 1, 2019, or January 1, 2020, as  
5 applicable pursuant to sections 237-8.6 and 238-2.6, the  
6 director of taxation shall levy, assess, collect, and otherwise  
7 administer the county surcharge on state tax.

8 (d) Each county that has not established a surcharge on  
9 state tax prior to July 1, 2023, may establish the surcharge at  
10 the rates enumerated in sections 237-8.6 and 238-2.6. A county  
11 electing to establish this surcharge shall do so by ordinance;  
12 provided that no ordinance shall be adopted until the county has  
13 conducted a public hearing on the proposed ordinance.

14 A county electing to exercise the authority granted under  
15 this subsection shall notify the director of taxation within ten  
16 days after the county has adopted a surcharge on state tax  
17 ordinance. The director of taxation shall levy, assess,  
18 collect, and otherwise administer the county surcharge on state  
19 tax.

20 [~~(d)~~] (e) Notice of the public hearing required under  
21 [~~subsection~~] subsections (b) [~~or (e)~~] through (d) before



1 adoption of an ordinance establishing or extending the surcharge  
2 on state tax shall be published in a newspaper of general  
3 circulation within the county at least twice within a period of  
4 thirty days immediately preceding the date of the hearing.

5 ~~[(e)]~~ (f) Each county with a population greater than five  
6 hundred thousand that adopts or extends a county surcharge on  
7 state tax ordinance pursuant to subsection (a) or (b) shall use  
8 the surcharge revenues received from the State for ~~[capital]~~:

- 9 (1) Capital, operating, or maintenance costs of a locally  
10 preferred alternative for a mass transit project; and
- 11 (2) Expenses in complying with the Americans with  
12 Disabilities Act of 1990 with respect to paragraph  
13 (1);

14 provided that revenues derived from the county surcharge on  
15 state tax shall not be used[+

16 ~~(1) To~~ to build or repair public roads or highways,  
17 bicycle paths, or support public transportation  
18 systems already in existence prior to July 12, 2005;

19 ~~[(2) For operating costs or maintenance costs of the mass~~  
20 ~~transit project or any purpose not consistent with~~  
21 ~~this subsection; or~~





1       ~~(3) For administrative or operating, marketing, or~~  
2           ~~maintenance costs, including personnel costs, of a~~  
3           ~~rapid transportation authority charged with the~~  
4           ~~responsibility for constructing, operating, or~~  
5           ~~maintaining the mass transit project,]~~

6 provided further that nothing in this section shall be construed  
7 to prohibit a county from using county funds that are not  
8 derived from a surcharge on state tax for ~~[a purpose described~~  
9 ~~in paragraph (2) or (3).]~~ the purposes described in paragraphs  
10 (1) or (2).

11       ~~[+f)]~~ (g) Each county with a population equal to or less  
12 than five hundred thousand that adopts a county surcharge on  
13 state tax ordinance pursuant to this section shall use the  
14 surcharges received from the State for:

15       (1) ~~[Operating or capital]~~ Capital, operating, or  
16           maintenance costs of public transportation within each  
17 county for public transportation systems, including  
18 public roadways or highways, public buses, trains,  
19 ferries, pedestrian paths or sidewalks, or bicycle  
20 paths; and



1           (2) Expenses in complying with the Americans with  
2           Disabilities Act of 1990 with respect to paragraph  
3           (1).

4           [~~(g)~~] (h) As used in this section, "capital costs" means  
5 nonrecurring costs required to construct a transit facility or  
6 system, including debt service, costs of land acquisition and  
7 development, acquiring of rights-of-way, planning, design, and  
8 construction, and including equipping and furnishing the  
9 facility or system. For a county with a population greater than  
10 five hundred thousand, capital costs also include non-recurring  
11 personal services and other overhead costs that are not intended  
12 to continue after completion of construction of the minimum  
13 operable segment of the locally preferred alternative for a mass  
14 transit project."

15           SECTION 4. Section 237-8.6, Hawaii Revised Statutes, is  
16 amended by amending subsections (a) and (b) to read as follows:

17           "(a) The county surcharge on state tax, upon the adoption  
18 of county ordinances and in accordance with the requirements of  
19 section 46-16.8, shall be levied, assessed, and collected as  
20 provided in this section on all gross proceeds and gross income  
21 taxable under this chapter. No county shall set the surcharge



1 on state tax to be levied, assessed, or collected at a rate  
2 greater than [~~one-half~~]:

3 (1) One-half of one per cent if prior to January 1, 2031;  
4 and

5 (2) One-fourth of one per cent if after December 31, 2030,

6 of all gross proceeds and gross income taxable under this  
7 chapter. All provisions of this chapter shall apply to the  
8 county surcharge on state tax. With respect to the surcharge,  
9 the director of taxation shall have all the rights and powers  
10 provided under this chapter. In addition, the director of  
11 taxation shall have the exclusive rights and power to determine  
12 the county or counties in which a person is engaged in business  
13 and, in the case of a person engaged in business in more than  
14 one county, the director shall determine, through apportionment  
15 or other means, that portion of the surcharge on state tax  
16 attributable to business conducted in each county.

17 (b) Each county surcharge on state tax that may be adopted  
18 or extended pursuant to section 46-16.8 shall be levied  
19 beginning in a taxable year after the adoption of the relevant  
20 county ordinance; provided that no surcharge on state tax may be  
21 levied[+]



1       ~~(1) Prior to:~~  
2               ~~(A)]~~ prior to:  
3       (1) January 1, 2007, if the county surcharge on state tax  
4               was established by an ordinance adopted prior to  
5               December 31, 2005;  
6       ~~[(B)]~~ (2) January 1, 2019, if the county surcharge on state  
7               tax was established by the adoption of an ordinance  
8               after June 30, 2015, but prior to June 30, 2018; or  
9       ~~[(C)]~~ (3) January 1, 2020, if the county surcharge on state  
10              tax was established by the adoption of an ordinance on  
11              or after June 30, 2018, but prior to March 31, 2019[~~+~~  
12              and  
13       ~~(2) After December 31, 2030]."~~

14       SECTION 5. Section 238-2.6, Hawaii Revised Statutes, is  
15       amended by amending subsections (a) and (b) to read as follows:  
16              "(a) The county surcharge on state tax, upon the adoption  
17       of a county ordinance and in accordance with the requirements of  
18       section 46-16.8, shall be levied, assessed, and collected as  
19       provided in this section on the value of property and services  
20       taxable under this chapter. No county shall set the surcharge



1 on state tax to be levied, assessed, or collected at a rate  
2 greater than [~~one-half~~]:

3 (1) One-half of one per cent if prior to January 1, 2031;

4 and

5 (2) One-fourth of one per cent if after December 31, 2030,

6 of the value of property taxable under this chapter. All  
7 provisions of this chapter shall apply to the county surcharge  
8 on state tax. With respect to the surcharge, the director shall  
9 have all the rights and powers provided under this chapter. In  
10 addition, the director of taxation shall have the exclusive  
11 rights and power to determine the county or counties in which a  
12 person imports or purchases property and, in the case of a  
13 person importing or purchasing property in more than one county,  
14 the director shall determine, through apportionment or other  
15 means, that portion of the surcharge on state tax attributable  
16 to the importation or purchase in each county.

17 (b) Each county surcharge on state tax that may be adopted  
18 or extended shall be levied beginning in a taxable year after  
19 the adoption of the relevant county ordinance; provided that no  
20 surcharge on state tax may be levied[+]

21 ~~(1) Prior to:~~



1           ~~(A)~~ prior to:

2           (1) January 1, 2007, if the county surcharge on state tax  
3           was established by an ordinance adopted prior to  
4           December 31, 2005;

5           ~~(B)~~ (2) January 1, 2019, if the county surcharge on state  
6           tax was established by the adoption of an ordinance  
7           after June 30, 2015, but prior to June 30, 2018; or

8           ~~(C)~~ (3) January 1, 2020, if the county surcharge on state  
9           tax was established by the adoption of an ordinance on  
10          or after June 30, 2018, but prior to March 31, 2019 ~~(-~~  
11          and

12          ~~(2) After December 31, 2030]."~~

13          SECTION 6. Section 248-2.7, Hawaii Revised Statutes, is  
14          amended by amending subsections (b) and (c) to read as follows:

15          "(b) ~~[For the period beginning]~~ Beginning on January 1,  
16          2018, ~~[to December 31, 2030,]~~ transient accommodations tax and  
17          surcharge on state tax revenues allocated to the mass transit  
18          special fund pursuant to sections 237D-2(e) and 248-2.6 shall be  
19          deposited into the special fund. All interest earned on the  
20          moneys in the special fund shall be credited to the general  
21          fund. The mass transit special fund shall be exempt from the



1 central service expenses deduction under section 36-27 and  
2 departmental administrative expenses deduction under section  
3 36-30.

4 (c) Upon receiving a certification statement from the  
5 comptroller pursuant to section 40-81.5, the director of finance  
6 shall allocate and disburse moneys in the mass transit special  
7 fund to the director of finance of a county with a population  
8 greater than five hundred thousand; provided that the director  
9 of finance shall only disburse those amounts that are certified  
10 in the certification statement for that county for the purposes  
11 specified in section 46-16.8; [~~provided further that revenues  
12 allocated from the special fund shall not be used for:~~

13 ~~(1) Operating or maintenance costs of the mass transit  
14 project or any purpose not consistent with section 46-  
15 16.8(e); or~~

16 ~~(2) Administrative, operating, marketing, or maintenance  
17 costs, including personnel costs, of a rapid  
18 transportation authority charged with the  
19 responsibility for constructing, operating, or  
20 maintaining the mass transit project;]~~



1 provided further that the total amount of funds that are  
2 available, allocated, and disbursed by the director of finance  
3 pursuant to this section shall not be in excess of the total  
4 amount indicated on the certification statement. The director  
5 of finance may allocate and disburse moneys pursuant to this  
6 section on a monthly basis.

7 Any amounts allocated and disbursed pursuant to this  
8 section shall be subject to the availability of funds deposited  
9 and on balance in the special fund. The director of finance  
10 shall not allocate or disburse any amounts from the special fund  
11 that are in excess of any amounts deposited and on balance in  
12 the special fund."

13 SECTION 7. Act 247, Session Laws of Hawaii 2005, as  
14 amended by Act 240, Session Laws of Hawaii 2015, as amended by  
15 Act 1, Special Session of 2017, is amended by amending section 9  
16 to read as follows:

17 "SECTION 9. This Act shall take effect upon its approval[+  
18 ~~provided that:~~

19 ~~(1) If none of the counties of the State adopt an~~  
20 ~~ordinance to levy a county surcharge on state tax by~~  
21 ~~December 31, 2005, this Act shall be repealed and~~





1 ~~section 437D-8.4, Hawaii Revised Statutes, shall be~~  
2 ~~reenacted in the form in which it read on the day~~  
3 ~~prior to the effective date of this Act;~~

4 ~~(2) If any county does not adopt an ordinance to levy a~~  
5 ~~county surcharge on state tax by December 31, 2005, it~~  
6 ~~shall be prohibited from adopting such an ordinance~~  
7 ~~pursuant to this Act, unless otherwise authorized by~~  
8 ~~the legislature through a separate legislative act;~~

9 ~~(3) If an ordinance to levy a county surcharge on state~~  
10 ~~tax is adopted by December 31, 2005:~~

11 ~~(A) The ordinance shall be repealed on December 31,~~  
12 ~~2022; provided that the repeal of the ordinance~~  
13 ~~shall not affect the validity or effect of an~~  
14 ~~ordinance to extend a surcharge on state tax~~  
15 ~~adopted pursuant to an act of the legislature;~~  
16 ~~and~~

17 ~~(B) This Act shall be repealed on December 31, 2030;~~  
18 ~~and section 437D-8.4, Hawaii Revised Statutes,~~  
19 ~~shall be reenacted in the form in which it read~~  
20 ~~on the day prior to the effective date of this~~  
21 ~~Act; provided that the amendments made to section~~



1 ~~437D-8.4, Hawaii Revised Statutes, by Act 226,~~  
2 ~~Session Laws of Hawaii 2008, as amended by Act~~  
3 ~~11, Session Laws of Hawaii 2009, and Act 110,~~  
4 ~~Session Laws of Hawaii 2014, shall not be~~  
5 ~~repealed]."~~

6 SECTION 8. This Act shall not affect the validity or  
7 effect of any surcharge on state tax adopted pursuant to  
8 Act 247, Session Laws of Hawaii 2005; Act 240, Session Laws of  
9 Hawaii 2015; Act 137, Session Laws of Hawaii 2017; Act 1,  
10 Special Session Laws of Hawaii 2017; and Act 11, Session Laws of  
11 Hawaii 2018, prior to the effective date of this Act.

12 SECTION 9. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 10. This Act shall take effect on July 1, 2023.

15

INTRODUCED BY: \_\_\_\_\_

*Karl Abroad*



# S.B. NO. 176

**Report Title:**

General Excise Tax; County Surcharge; Tax Assessment

**Description:**

Authorizes a county with a pre-existing surcharge to continue the surcharge after December 31, 2030 at a lower rate of one-fourth per cent. Authorizes counties that have not adopted a surcharge ordinance on state tax to adopt a surcharge ordinance at the current rate of one-half of one per cent through December 31, 2030 and at a rate of one-fourth of one per cent after December 31, 2030. Expands the authorized use of surcharge revenues to more than capital costs for counties with a population greater than five hundred thousand.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

