

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that the development of housing is of critical importance to the State. Historically, the development of infrastructure (e.g., water, drainage, sewer, waste disposal, and waste treatment systems) to support housing has been the responsibility of the developers of housing projects. Accordingly, housing developers were responsible for raising large, additional amounts of capital to finance required infrastructure. These high infrastructure costs have often been cited by developers as a major impediment. Furthermore, these costs are ultimately passed on to homebuyers. This drives up the prices of new homes and is a reason why homes are so expensive, to the point of being unattainable for many local families.

The legislature further finds that because developers are focused on their specific housing developments, there are few incentives for the developers to design infrastructure in a manner that takes into account state and county planning objectives, long-range planning, or regional or island-wide cohesion. As a result, infrastructure development is often done in a haphazard, piecemeal manner that has caused problems for county residents and governments alike. For example, this has resulted in infrastructure being developed in inconvenient locations, far from necessary societal services to which residents would require access.

Accordingly, the legislature finds that it is in the best interest of the people of Hawaii to implement a policy shift with regard to the development of housing. Specifically, the counties, rather than private developers, should be responsible for the location, planning, and development of infrastructure to support housing. The legislature believes that authorizing a county to use revenues from the county surcharge on state tax for housing infrastructure would provide the funding necessary to effect this change in policy.

The legislature believes that the implementation of this policy would result in more efficient community planning. In particular, because counties typically take ownership of infrastructure upon completion of a housing project, it makes sense for the counties to also take ownership over the placement and planning of infrastructure and the infrastructure construction process. By taking charge of this process, counties would be able to direct the development of housing in locations that make the most sense. Counties can also ensure that infrastructure systems are designed in a manner that minimizes long-term operational and maintenance costs, allowing for better management of public resources.

Perhaps most significantly, under this policy, housing developers would no longer need to finance the costs of installing infrastructure up front, and homebuyers would no longer see these high costs passed on to them. This will result in lower housing prices, making home ownership attainable for more residents, and situating new housing developments closer to needed societal services.

Accordingly, the purpose of this Act is to:

- (1) Extend the period within which a county may adopt a surcharge on state tax, under certain conditions, from March 31, 2019, to December 31, 2023;
- (2) Authorize, in certain instances, the use of county surcharge revenues for housing infrastructure; and

- (3) Temporarily authorize counties that have previously adopted a surcharge on state tax to amend the uses of the surcharge.

PART II

SECTION 2. Section 46-16.8, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;
- (2) The ordinance shall be adopted ~~[prior to]~~ before December 31, 2005; and
- (3) No county surcharge on state tax that may be authorized under this subsection shall be levied ~~[prior to]~~ before January 1, 2007, or after December 31, 2022, unless extended pursuant to subsection (b).

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

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

(b) Each county that has established a surcharge on state tax ~~[prior to]~~ before July 1, 2015, under authority of subsection (a) may extend the surcharge until December 31, 2030, at the same rates. A county electing to extend this surcharge shall do so by ordinance; provided that:

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance; and
- (2) The ordinance shall be adopted ~~[prior to]~~ before January 1, 2018.

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

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

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;
- (2) The ordinance shall be adopted ~~[prior to March 31, 2019;]~~ before December 31, 2023; and
- (3) No county surcharge on state tax that may be authorized under this subsection shall be levied ~~[prior to]~~ before January 1, 2019, or after December 31, 2030.

A county electing to exercise the authority granted under this subsection shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance. Beginning on January 1, 2019, ~~[on]~~ January 1, 2020, January 1, 2024, or January 1, 2025, as applicable pursuant to sections

237-8.6 and 238-2.6, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

(d) Each county that has established a surcharge on state tax before March 31, 2019, under subsection (a) or (c) may amend the surcharge ordinance to change the authorized uses of surcharge revenues, pursuant to subsection (g); provided that:

(1) No ordinance shall be amended pursuant to this section until the county has conducted a public hearing on the proposed amendment; and

(2) The ordinance shall be amended before December 31, 2023.

~~[(d)]~~ (e) Notice of the public hearing required under subsection (b) [or], (c), or (d), before adoption or amendment of an ordinance establishing or extending the surcharge on state tax shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing.

~~[(e)]~~ (f) Each county with a population greater than five hundred thousand that adopts or extends a county surcharge on state tax ordinance pursuant to subsection (a) or (b) shall use the surcharge revenues received from the State for capital costs of a locally preferred alternative for a mass transit project; provided that revenues derived from the county surcharge on state tax shall not be used:

- (1) To build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence [~~prior to~~] before July 12, 2005;
- (2) For operating costs or maintenance costs of the mass transit project or any purpose not consistent with this subsection; or
- (3) For administrative or operating, marketing, or maintenance costs, including personnel costs, of a rapid transportation authority charged with the responsibility for constructing, operating, or maintaining the mass transit project;

provided further that nothing in this section shall be construed to prohibit a county from using county funds that are not derived from a surcharge on state tax for a purpose described in paragraph (2) or (3).

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

- (1) Operating or capital costs of public transportation within each county for public transportation systems, including [~~public~~]:
 - (A) Public roadways or highways[~~, public~~];
 - (B) Public buses[~~, trains, ferries, pedestrian~~];
 - (C) Trains;
 - (D) Ferries;
 - (E) Pedestrian paths or sidewalks[~~;~~]; or [~~bicycle~~]
 - (F) Bicycle paths; [~~and~~]
- (2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1)[~~;~~]; and
- (3) Housing infrastructure; provided that a county that uses surcharge revenues for housing infrastructure shall not pass on those housing infrastructure costs to the developer of a housing project; provided further that this paragraph shall apply only if a county amended its surcharge ordinance pursuant to subsection (d) or adopts a county surcharge on state tax ordinance after December 31, 2022;

provided that each county having a population equal to or less than five hundred thousand that adopts a county surcharge on state tax ordinance pursuant to this

section after December 31, 2022, shall use the surcharge revenues received from the State only for the purposes described in paragraph (3).

~~[(g)] (h)~~ As used in this section ~~[-“capital”]~~:

“Capital costs” means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, and including equipping and furnishing the facility or system. For a county with a population greater than five hundred thousand, capital costs also include non-recurring personal services and other overhead costs that are not intended to continue after completion of construction of the minimum operable segment of the locally preferred alternative for a mass transit project.

“Housing infrastructure” includes pedestrian paths or sidewalks on a county road near or around a public school, and water, drainage, sewer, water reuse, waste disposal, and waste treatment systems that connect to the infrastructure of the county.”

SECTION 3. Section 237-8.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each county surcharge on state tax that may be adopted [øf], extended, or amended pursuant to section 46-16.8 shall be levied beginning in a taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied:

(1) ~~[Prior to:]~~ Before:

- (A) January 1, 2007, if the county surcharge on state tax was established by an ordinance adopted ~~[prior to]~~ before December 31, 2005;
- (B) January 1, 2019, if the county surcharge on state tax was established by the adoption of an ordinance after June 30, 2015, but ~~[prior to]~~ before June 30, 2018; ~~[øf]~~
- (C) January 1, 2020, if the county surcharge on state tax was established by the adoption of an ordinance on or after June 30, 2018, but ~~[prior to]~~ before March 31, 2019; ~~[and]~~
- (D) January 1, 2024, if the county surcharge on state tax was established by the adoption of an ordinance on or after March 31, 2019, but before August 1, 2023; or
- (E) January 1, 2025, if the county surcharge on state tax was established by the adoption of an ordinance on or after August 1, 2023, but before December 31, 2023; and

(2) After December 31, 2030.”

SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each county surcharge on state tax that may be adopted [øf], extended, or amended shall be levied beginning in a taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied:

(1) ~~[Prior to:]~~ Before:

- (A) January 1, 2007, if the county surcharge on state tax was established by an ordinance adopted ~~[prior to]~~ before December 31, 2005;
- (B) January 1, 2019, if the county surcharge on state tax was established by the adoption of an ordinance after June 30, 2015, but ~~[prior to]~~ before June 30, 2018; ~~[øf]~~

- (C) January 1, 2020, if the county surcharge on state tax was established by the adoption of an ordinance on or after June 30, 2018, but ~~[prior to]~~ before March 31, 2019; ~~[and]~~
 - (D) January 1, 2024, if the county surcharge on state tax was established by the adoption of an ordinance on or after March 31, 2019, but before August 1, 2023; or
 - (E) January 1, 2025, if the county surcharge on state tax was established by the adoption of an ordinance on or after August 1, 2023, but before December 31, 2023; and
- (2) After December 31, 2030.”

PART III

SECTION 5. Section 23-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Beginning on September 5, 2017, and ending on December 31, 2031, the auditor, on an annual basis, shall conduct a review of any rapid transportation authority in the State charged with the responsibility of constructing, operating, or maintaining a locally preferred alternative for a mass transit project that receives moneys from a surcharge on state tax established pursuant to section 46-16.8, transient accommodations tax revenues pursuant to section 237D-2(e), or both. The annual review shall include a review of documents, including but not limited to invoices, contracts, progress reports, and time schedules, to determine that:

- (1) Expenditures by the authority comply with the criteria established pursuant to section ~~[46-16.8(e);]~~ 46-16.8(f); and
- (2) The authority follows accounting best practices for substantiating its expenditures.”

SECTION 6. Section 40-81.5, Hawaii Revised Statutes, is amended as follows:

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

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

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

“(c) After submission of invoices by the rapid transportation authority for capital costs of a locally preferred alternative for a mass transit project are verified by the comptroller as an acceptable use of funds received pursuant to a surcharge on state tax authorized pursuant to section 46-16.8, the comptroller shall submit a certification statement, including any appropriate supporting documents, to the department of budget and finance for the allocation of funds, if available, pursuant to sections 248-2.7 and 248-2.6(d). The certification statement shall include, at a minimum, the total amount contained in the invoices for capital costs that are verified as an appropriate use of funds pursuant to section ~~[46-16.8(e)-]~~ 46-16.8(f).”

SECTION 7. Section 248-2.7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Upon receiving a certification statement from the comptroller pursuant to section 40-81.5, the director of finance shall allocate and disburse moneys in the mass transit special fund to the director of finance of a county with

a population greater than five hundred thousand; provided that the director of finance shall only disburse those amounts that are certified in the certification statement for that county for the purposes specified in section 46-16.8; provided further that revenues allocated from the special fund shall not be used for:

- (1) Operating or maintenance costs of the mass transit project or any purpose not consistent with section ~~[46-16.8(e);~~ 46-16.8(f); or
- (2) Administrative, operating, marketing, or maintenance costs, including personnel costs, of a rapid transportation authority charged with the responsibility for constructing, operating, or maintaining the mass transit project;

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

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

PART IV

SECTION 8. ~~Statutory material to be repealed is bracketed and stricken.~~ New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 1, 2023.)