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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. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4 "§46- County surcharge on state tax. (a) Each county  
5 may establish a surcharge on state tax at the rates enumerated  
6 in sections 237- and 238- . A county electing to establish  
7 this surcharge shall do so by ordinance; provided that:

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

10 (2) The ordinance shall be adopted prior to December 31,  
11 2015; and

12 (3) No county surcharge on state tax that may be  
13 authorized under this section shall be levied prior to  
14 January 1, 2017.

15 Notice of the public hearing required under paragraph (1) shall  
16 be published in a newspaper of general circulation within the



1 county at least twice within a period of thirty days immediately  
2 preceding the date of the hearing.

3 (b) A county electing to exercise the authority granted  
4 under this section shall notify the director of taxation within  
5 ten days after the county has adopted a surcharge on state tax  
6 ordinance and, beginning no earlier than January 1, 2017, the  
7 director of taxation shall levy, assess, collect, and otherwise  
8 administer the county surcharge on state tax.

9 (c) Each county with a population greater than five  
10 hundred thousand that adopts a county surcharge on state tax  
11 ordinance pursuant to subsection (a) shall use the surcharges  
12 received from the State for:

13 (1) Capital costs of a locally preferred alternative for a  
14 mass transit project; and

15 (2) Expenses in complying with the Americans with  
16 Disabilities Act of 1990 with respect to paragraph

17 (1).

18 The county surcharge on state tax shall not be used to build or  
19 repair public roads or highways, bicycle paths, or support  
20 public transportation systems already in existence prior to the  
21 effective date of this Act.



1        (d) Each county with a population equal to or less than  
2 five hundred thousand that adopts a county surcharge on state  
3 tax ordinance pursuant to subsection (a) shall use the  
4 surcharges received from the State for:

5        (1) Operating or capital costs of public transportation  
6 within each county for public transportation systems,  
7 including public roadways or highways, public buses,  
8 trains, ferries, pedestrian paths or sidewalks, or  
9 bicycle paths; and

10       (2) Expenses in complying with the Americans with  
11 Disabilities Act of 1990 with respect to paragraph  
12 (1).

13       (e) As used in this section, "capital costs" means  
14 nonrecurring costs required to construct a transit facility or  
15 system, including debt service, costs of land acquisition and  
16 development, acquiring of rights-of-way, planning, design, and  
17 construction, and including equipping and furnishing the  
18 facility or system."

19       SECTION 2. Chapter 237, Hawaii Revised Statutes, is  
20 amended by adding a new section to be appropriately designated  
21 and to read as follows:



1        "§237-        County surcharge on state tax; administration.

2        (a) The county surcharge on state tax, upon the adoption of  
3        county ordinances and in accordance with the requirements of  
4        section 46-        , shall be levied, assessed, and collected as  
5        provided in this section on all gross proceeds and gross income  
6        taxable under this chapter. No county shall set the surcharge  
7        on state tax at a rate greater than .25 per cent of all gross  
8        proceeds and gross income taxable under this chapter. All  
9        provisions of this chapter shall apply to the county surcharge  
10       on state tax. With respect to the surcharge, the director of  
11       taxation shall have all the rights and powers provided under  
12       this chapter. In addition, the director of taxation shall have  
13       the exclusive rights and power to determine the county or  
14       counties in which a person is engaged in business and, in the  
15       case of a person engaged in business in more than one county,  
16       the director shall determine, through apportionment or other  
17       means, that portion of the surcharge on state tax attributable  
18       to business conducted in each county.

19       (b) Each county surcharge on state tax that may be adopted  
20       pursuant to section 46- (a) shall be levied beginning in the  
21       taxable year after the adoption of the relevant county



1 ordinance; provided that no surcharge on state tax may be levied  
2 prior to January 1, 2017.

3 (c) The county surcharge on state tax, if adopted, shall  
4 be imposed on the gross proceeds or gross income of all written  
5 contracts that require the passing on of the taxes imposed under  
6 this chapter; provided that if the gross proceeds or gross  
7 income are received as payments beginning in the taxable year in  
8 which the taxes become effective, on contracts entered into  
9 before June 30 of the year prior to the taxable year in which  
10 the taxes become effective, and the written contracts do not  
11 provide for the passing on of increased rates of taxes, the  
12 county surcharge on state tax shall not be imposed on the gross  
13 proceeds or gross income covered under the written contracts.  
14 The county surcharge on state tax shall be imposed on the gross  
15 proceeds or gross income from all contracts entered into on or  
16 after June 30 of the year prior to the taxable year in which the  
17 taxes become effective, regardless of whether the contract  
18 allows for the passing on of any tax or any tax increases.

19 (d) No county surcharge on state tax shall be established  
20 on any:



1        (1) Gross income or gross proceeds taxable under this  
2        chapter at the one-half per cent tax rate;

3        (2) Gross income or gross proceeds taxable under this  
4        chapter at the 0.15 per cent tax rate; or

5        (3) Transactions, amounts, persons, gross income, or gross  
6        proceeds exempt from tax under this chapter.

7        (e) The director of taxation shall revise the general  
8        excise tax forms to provide for the clear and separate  
9        designation of the imposition and payment of the county  
10       surcharge on state tax.

11       (f) The taxpayer shall designate the taxation district to  
12       which the county surcharge on state tax is assigned in  
13       accordance with rules adopted by the director of taxation under  
14       chapter 91. The taxpayer shall file a schedule with the  
15       taxpayer's periodic and annual general excise tax returns  
16       summarizing the amount of taxes assigned to each taxation  
17       district.

18       (g) The penalties provided by section 231-39 for failure  
19       to file a tax return shall be imposed on the amount of surcharge  
20       due on the return being filed for the failure to file the  
21       schedule required to accompany the return. In addition, there



1 shall be added to the tax an amount equal to ten per cent of the  
2 amount of the surcharge and tax due on the return being filed  
3 for the failure to file the schedule or the failure to correctly  
4 report the assignment of the general excise tax by taxation  
5 district on the schedule required under this subsection.

6 (h) All taxpayers who file on a fiscal year basis whose  
7 fiscal year ends after December 31 of the year prior to the  
8 taxable year in which the taxes become effective, shall file a  
9 short period annual return for the period preceding January 1 of  
10 the taxable year in which the taxes become effective. Each  
11 fiscal year taxpayer shall also file a short period annual  
12 return for the period starting on January 1 of the taxable year  
13 in which the taxes become effective, and ending before January 1  
14 of the following year."

15 SECTION 3. Chapter 238, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:

18 **"§238- County surcharge on state tax; administration.**

19 (a) The county surcharge on state tax, upon the adoption of a  
20 county ordinance and in accordance with the requirements of  
21 section 46- , shall be levied, assessed, and collected as



1 provided in this section on the value of property and services  
2 taxable under this chapter. No county shall set the surcharge  
3 on state tax at a rate greater than .25 per cent of the value of  
4 property taxable under this chapter. All provisions of this  
5 chapter shall apply to the county surcharge on state tax. With  
6 respect to the surcharge, the director shall have all the rights  
7 and powers provided under this chapter. In addition, the  
8 director of taxation shall have the exclusive rights and power  
9 to determine the county or counties in which a person imports or  
10 purchases tangible personal property and, in the case of a  
11 person importing or purchasing tangible property in more than  
12 one county, the director shall determine, through apportionment  
13 or other means, that portion of the surcharge on state tax  
14 attributable to the importation or purchase in each county.

15 (b) Each county surcharge on state tax that may be adopted  
16 shall be levied beginning in the taxable year after the adoption  
17 of the relevant county ordinance; provided that no surcharge on  
18 state tax may be levied prior to January 1, 2017.

19 (c) No county surcharge on state tax shall be established  
20 upon any use taxable under this chapter at the .25 per cent tax



1 rate or upon any use that is not subject to taxation or that is  
2 exempt from taxation under this chapter.

3 (d) The director of taxation shall revise the use tax  
4 forms to provide for the clear and separate designation of the  
5 imposition and payment of the county surcharge on state tax.

6 (e) The taxpayer shall designate the taxation district to  
7 which the county surcharge on state tax is assigned in  
8 accordance with rules adopted by the director of taxation under  
9 chapter 91. The taxpayer shall file a schedule with the  
10 taxpayer's periodic and annual use tax returns summarizing the  
11 amount of taxes assigned to each taxation district.

12 (f) The penalties provided by section 231-39 for failure  
13 to file a tax return shall be imposed on the amount of surcharge  
14 due on the return being filed for the failure to file the  
15 schedule required to accompany the return. In addition, there  
16 shall be added to the tax an amount equal to ten per cent of the  
17 amount of the surcharge and tax due on the return being filed  
18 for the failure to file the schedule or the failure to correctly  
19 report the assignment of the use tax by taxation district on the  
20 schedule required under this subsection.



1       (g) All taxpayers, who file on a fiscal year basis whose  
2 fiscal year ends after December 31 of the year prior to the  
3 taxable year in which the taxes become effective, shall file a  
4 short period annual return for the period preceding January 1 of  
5 the taxable year in which the taxes become effective. Each  
6 fiscal year taxpayer shall also file a short period annual  
7 return for the period starting on January 1 of the taxable year  
8 in which the taxes become effective, and ending before January 1  
9 of the following year."

10       SECTION 4. Chapter 248, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13       "§248-     County surcharge on state tax; disposition of  
14 proceeds. (a) If adopted by county ordinance, all county  
15 surcharges on state tax collected by the director of taxation  
16 shall be paid into the state treasury quarterly, within ten  
17 working days after collection, and shall be placed by the  
18 director of finance in special accounts. Out of the revenues  
19 generated by county surcharges on state tax paid into each  
20 respective state treasury special account, the director of  
21 finance shall deduct       per cent of the gross proceeds of a



1 respective county's surcharge on state tax to reimburse the  
2 State for the costs of assessment, collection, and disposition  
3 of the county surcharge on state tax incurred by the State.  
4 Amounts retained shall be general fund realizations of the  
5 State.

6 (b) The amounts deducted for costs of assessment,  
7 collection, and disposition of county surcharges on state tax  
8 shall be withheld from payment to the counties by the State out  
9 of the county surcharges on state tax collected for the current  
10 calendar year.

11 (c) For the purpose of this section, "costs of assessment,  
12 collection, and disposition of the county surcharges on state  
13 tax" includes any and all costs, direct or indirect, that are  
14 deemed necessary and proper to effectively administer this  
15 section and sections 237- and 238- .

16 (d) After the deduction and withholding of the costs under  
17 subsections (a) and (b), the director of finance shall pay the  
18 remaining balance on a quarterly basis to the director of  
19 finance of each county that has adopted a county surcharge on  
20 state tax under section 46- . The quarterly payments shall be  
21 made after the county surcharges on state tax have been paid



1 into the state treasury special accounts or after the  
 2 disposition of any tax appeal, as the case may be. All county  
 3 surcharges on state tax collected shall be distributed by the  
 4 director of finance to the county in which the county surcharge  
 5 on state tax is generated and shall be a general fund  
 6 realization of the county, to be used for the purposes specified  
 7 in section 46- by each of the counties."

8 SECTION 5. Section 437D-8.4, Hawaii Revised Statutes, is  
 9 amended by amending subsection (a) to read as follows:

10 "(a) Notwithstanding any law to the contrary, a lessor may  
 11 visibly pass on to a lessee:

- 12 (1) The general excise tax attributable to the
- 13 transaction;
- 14 (2) The vehicle license and registration fee and weight
- 15 taxes, prorated at 1/365th of the annual vehicle
- 16 license and registration fee and weight taxes actually
- 17 paid on the particular vehicle being rented for each
- 18 full or partial twenty-four-hour rental day that the
- 19 vehicle is rented; provided the total of all vehicle
- 20 license and registration fees charged to all lessees
- 21 shall not exceed the annual vehicle license and



1 registration fee actually paid for the particular  
2 vehicle rented;

3 (3) The surcharge taxes imposed in chapter 251  
4 attributable to the transaction; [~~and~~]

5 (4) The county surcharge on state tax under section 46- ;  
6 provided that the lessor itemizes the tax for the  
7 lessee; and

8 [~~(4)~~] (5) The rents or fees paid to the department of  
9 transportation under concession contracts negotiated  
10 pursuant to chapter 102, service permits granted  
11 pursuant to title 19, Hawaii Administrative Rules, or  
12 rental motor vehicle customer facility charges  
13 established pursuant to section 261-7; provided that:

14 (A) The rents or fees are limited to amounts that can  
15 be attributed to the proceeds of the particular  
16 transaction;

17 (B) The rents or fees shall not exceed the lessor's  
18 net payments to the department of transportation  
19 made under concession contract or service permit;

20 (C) The lessor submits to the department of  
21 transportation and the department of commerce and



1 consumer affairs a statement, verified by a  
2 certified public accountant as correct, that  
3 reports the amounts of the rents or fees paid to  
4 the department of transportation pursuant to the  
5 applicable concession contract or service permit:  
6 (i) For all airport locations; and  
7 (ii) For each airport location;  
8 (D) The lessor submits to the department of  
9 transportation and the department of commerce and  
10 consumer affairs a statement, verified by a  
11 certified public accountant as correct, that  
12 reports the amounts charged to lessees:  
13 (i) For all airport locations;  
14 (ii) For each airport location; and  
15 (iii) For each lessee;  
16 (E) The lessor includes in these reports the  
17 methodology used to determine the amount of fees  
18 charged to each lessee; and  
19 (F) The lessor submits the above information to the  
20 department of transportation and the department  
21 of commerce and consumer affairs within three



1 months of the end of the preceding annual  
2 accounting period or contract year as determined  
3 by the applicable concession agreement or service  
4 permit.

5 The respective departments, in their sole discretion,  
6 may extend the time to submit the statement required  
7 in this subsection. If the director determines that  
8 an examination of the lessor's information is  
9 inappropriate under this subsection and the lessor  
10 fails to correct the matter within ninety days, the  
11 director may conduct an examination and charge a  
12 lessor an examination fee based upon the cost per hour  
13 per examiner for evaluating, investigating, and  
14 verifying compliance with this subsection, as well as  
15 additional amounts for travel, per diem, mileage, and  
16 other reasonable expenses incurred in connection with  
17 the examination, which shall relate solely to the  
18 requirements of this subsection, and which shall be  
19 billed by the departments as soon as feasible after  
20 the close of the examination. The cost per hour shall  
21 be \$40 or as may be established by rules adopted by



1 the director. The lessor shall pay the amounts billed  
2 within thirty days following the billing. All moneys  
3 collected by the director shall be credited to the  
4 compliance resolution fund."

5 SECTION 6. Act 247, Session Laws of Hawaii 2005 is  
6 repealed.

7 SECTION 7. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect upon its approval;  
10 provided that:

11 (1) If none of the counties of the State adopt an  
12 ordinance to levy a county surcharge on state tax by  
13 December 31, 2015, this Act shall be repealed;

14 (2) If any county does not adopt an ordinance to levy a  
15 county surcharge on state tax by December 31, 2015, it  
16 shall be prohibited from adopting such an ordinance  
17 pursuant to this Act, unless otherwise authorized by  
18 the legislature through a separate legislative act;

19 (3) If an ordinance to levy a county surcharge on state  
20 tax is adopted by December 31, 2015:

21 (A) The ordinance shall be repealed on ; and



1 (B) This Act shall be repealed on ; and  
2 (4) Section 6 of this Act shall take effect on December  
3 31, 2015.



**Report Title:**

County Surcharge on State Tax

**Description:**

Removes the authority of the City and County of Honolulu to collect county surcharges on state tax under Act 247, Session Laws of Hawaii 2005, beginning on January 1, 2016. Allows all counties, including the City and County of Honolulu, to adopt ordinances allowing for county surcharges on state general excise and use taxes at a .25 per cent rate, beginning January 1, 2017. Amends the administrative fee for the collection of a county surcharge by the State. (HB134 HD1)

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

