

STAND. COM. REP. NO.

1560

Honolulu, Hawaii

APR 10 2015

RE: H.B. No. 134
H.D. 1
S.D. 2

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred H.B. No. 134, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose and intent of this measure is to address the county surcharge on state tax.

More specifically, this measure:

- (1) Extends the existing county surcharge on state tax, established by Act 247, Session Laws of Hawaii 2005, until December 31, 2027, with the opportunity for the Legislature to extend the county surcharge on state tax in two, ten-year increments, until no later than December 31, 2047;
- (2) Re-opens the opportunity for all counties to adopt an ordinance to establish a county surcharge on state tax, from July 1, 2015, to December 31, 2015;
- (3) Provides that, for a county with a rail transit project funded by a county surcharge on state tax:



- (A) Prior to the expiration of the initial extension of the county surcharge on state tax to December 31, 2027, the Legislature may choose to extend the county surcharge on state tax up to an additional twenty years, in ten-year increments, through the adoption of a concurrent resolution for each extension; provided that each ten-year extension of the county surcharge on state tax shall be used to fund additional transit routes to the University of Hawaii at Manoa and West Kapolei, respectively; and
- (B) Prior to the introduction of a concurrent resolution to extend the county surcharge on state tax, for each ten-year extension:
- (i) The transit agency shall obtain all necessary state and federal environmental clearances for the applicable additional transit route for the rail transit project;
 - (ii) The transit agency shall have an updated financial plan reviewed and approved by the appropriate county council;
 - (iii) The transit agency shall have an updated preliminary engineering costs estimate reviewed and approved by the appropriate county council;
 - (iv) The Auditor shall have completed a financial and management audit of the transit agency; and
 - (v) Any other requirement that the Legislature, by law, deems appropriate shall be completed; and
- (4) Provides that, for other counties without a rail project, prior to the introduction of a concurrent resolution to extend the county surcharge on state tax, for each ten-year extension, the appropriate county council shall adopt a resolution requesting the extension, which shall include information and a



financial plan on how the surcharge revenues will be used over the requested extension period.

Your Committee received testimony in support of this measure from the Mayor of the County of Maui, Mayor of the County of Kauai, a member of the Hawaii County Council, General Contractors Association of Hawaii, The Hawaii Chamber of Commerce, Hawaii Construction Alliance, Hawaii Government Employees Association, Hawaii Laborers-Employers Cooperation and Education Trust, Hawaii State AFL-CIO, Honolulu Authority for Rapid Transit, Board of Directors of the Honolulu Authority for Rapid Transportation, and forty-seven individuals. Your Committee received testimony in opposition to this measure from Time Out Honolulu Rail and six individuals. Your Committee received comments on this measure from the Department of Budget and Finance, Mayor of the City and County of Honolulu, two members of the Kauai County Council, Building Industry Association - Hawaii, Grassroot Institute of Hawaii, Land Use Research Foundation of Hawaii, Tax Foundation of Hawaii, and one individual.

Prior to the public hearing on this measure, your Committee circulated for review and comment a proposed draft of this measure. The proposed draft amended the measure by deleting its contents and replacing it with language that:

- (1) Extends the sunset date of the county surcharge on state tax to December 31, 2027;
- (2) Provides counties that have not established a county surcharge on state tax with the ability to adopt a county surcharge on state tax; provided that the county adopts an ordinance to establish the surcharge by December 31, 2015. If the ordinance is adopted, the surcharge will be levied from January 1, 2017, until December 31, 2027;
- (3) Requires any county that has already adopted a county surcharge on state tax to adopt another ordinance and meet other requirements in order to extend its surcharge on state tax beyond December 31, 2022. If the ordinance is adopted, the surcharge will be extended from January 1, 2023, until December 31, 2027;



- (4) Deletes the authorization to use surcharge revenues for operating costs:
- (A) For a locally preferred alternative for a mass transit project in a county with a population greater than five hundred thousand; and
 - (B) For public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths, in a county with a population of five hundred thousand or less; and
- (5) Requires the board of directors of the transit agency constructing the locally preferred alternative for a mass transit project to:
- (A) Conduct annual audits;
 - (B) Submit annual reports to the Legislature and the Governor on transit-oriented development initiatives, management and financial performance, and status reports submitted to the federal government; and
 - (C) Place audits and reports on the board's agenda and, in accordance with the sunshine law, take testimony on the audits and reports.

Your Committee received testimony in support of the proposed draft from the General Contractors Association of Hawaii, The Hawaii Chamber of Commerce, and Hawaii Government Employees Association of Hawaii. Your Committee received testimony in opposition to the proposed draft from one individual. Your Committee received comments on the proposed draft from the Department of Budget and Finance, Department of Taxation, Mayor of the City and County of Honolulu, Mayor of the County of Kauai, FACE Housing Task Force, Grassroot Institute of Hawaii, Hawaii Construction Alliance, Hawaii Regional Council of Carpenters, Honolulu Authority for Rapid Transportation, Board of Directors of the Honolulu Authority for Rapid Transportation, Kapolei Chamber of Commerce, Pacific Resource Partnership, and Tax Foundation of Hawaii.



Your Committee finds that Act 247, Session Laws of Hawaii 2005, authorized the counties to adopt a county surcharge on state general excise and use taxes to be effective until December 31, 2022. In counties with a population of greater than five hundred thousand, the surcharge would be used to provide a funding source for the operating or capital costs of a locally preferred alternative for a mass transit project, while in other counties, the surcharge would be used for public transportation. The City and County of Honolulu was the only county to adopt a surcharge on state tax, in accordance with Act 247, Session Laws of Hawaii 2005. The City and County of Honolulu subsequently established the Honolulu Authority for Rapid Transportation to oversee a rail transit project.

Your Committee also finds that the rail transit project of the Honolulu Authority for Rapid Transit (HART) has experienced significant financial difficulties that will result in a projected deficit of over \$900 million if no extension is granted and is calling into question the ability for them to complete the project on time. In discussions with HART, your Committee determined that if the end goal was to finish what had been started, in terms of the Full Funding Grant Agreement with the federal government, a five year extension would be sufficient to both cover costs and provide for contingencies. Your Committee also determined that if there was both the political and public will to seek out an extension to either the University of Hawaii at Manoa or Kapolei from the initial 20.1 mile transit line, the City and County of Honolulu would have both the legal authority and fiscal resources available to initiate the federal funding and environmental impact statement process as set forth in this measure.

Your Committee has amended this measure by replacing its contents with that of the proposed draft and has further amended it by:

- (1) Allowing a county with a population of five hundred thousand or less to use surcharge revenues for operating costs, as well as capital costs;
- (2) Expanding the definition of "capital costs" for counties with a population greater than five hundred thousand to also include non-recurring personal services and other



overhead costs that are not intended to continue after the completion of construction of the minimum operable segment of the locally preferred alternative for a mass transit project;

- (3) Changing the effective date to July 1, 2015; and
- (4) Making technical nonsubstantive amendments for the purposes of consistency, clarity, and style.

Your Committee adopts by reference the statements made in Senate Standing Committee Report No. 898 on Senate Bill No. 19, S.D. 2, that are not inconsistent with this measure.

Your Committee notes that if the Department of Taxation determines that it requires additional resources to carry out its duties under the measure, as amended, the Department may request funds from the Legislature.

Your Committee intends that the expanded definition of "capital costs" will permit HART to use surcharge revenues to fund HART's current activities to complete construction of the minimum operable segment. As used in this report and in the measure, as amended, "minimum operable segment" means the University of Hawaii-West Oahu to Ala Moana Center alignment of the rail transit project. Your Committee finds that HART's personal services and other overhead costs would be eligible to be "project funded" if paid from bonds issued to finance a public infrastructure project. Thus, your Committee finds that such personal services and other overhead costs may be deemed nonrecurring "capital costs."

Your Committee also intends that, under the existing definition of "capital costs," HART may engage in planning and design for alignments of the rail transit project beyond the minimum operable segment. Your Committee does not intend that this measure limit HART's planning and design effort to the minimum operable segment.

Your Committee expresses its strong concern that the City and County of Honolulu does not have an adequate and sustainable plan to fund the operating and maintenance cost of the integrated mass transit system. The City and County of Honolulu estimates that the integrated system will require a massive annual subsidy,



recognizing that farebox revenues will not be sufficient to pay for the entire operating and maintenance cost of the integrated system. Yet, the City and County of Honolulu has not committed to using any specific revenue source for the subsidy. Your Committee feels that the financial plan to address the operating and maintenance cost is too general. Nor is your Committee encouraged by the discussion at the public hearing regarding the City and County of Honolulu's admitted difficulty with formulating a viable and sustainable financial plan to address the operating and maintenance cost that does not depend on continued surcharge revenues. Your Committee warns the City and County of Honolulu that it should not rely on any future legislation that would extend the surcharge and allow the City and County of Honolulu to use the proceeds to fund the operating and maintenance cost of the integrated mass transit system.

Your Committee emphasizes that this measure is first and foremost meant to:

- (1) Assist the City and County of Honolulu and HART in finishing what they started -- completing construction of the minimum operable segment; and
- (2) Provide both the resources and flexibility to continue planning and design for the remainder of the locally preferred alternative alignment.

Finally, your Committee intends to monitor HART and the City and County of Honolulu on its efforts to complete the rail transit project. As indicated in this Report, your Committee supports the present project, yet is critical of the actions taken thus far by HART and the City and County of Honolulu. Your Committee intends to scrutinize HART and the City and County of Honolulu closely in order to ensure completion of the minimum operable segment within the resources provided under this measure.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 134, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 134, H.D. 1, S.D. 2.



Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,



JILL N. TOKUDA, Chair



The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:*	Committee Referral:	Date:		
HB134 HDI SDI	TRA/PSM, WAM	4-7-15		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TOKUDA, Jill N. (C)	✓			
KOUCHI, Ronald D. (VC)	✓			
CHUN OAKLAND, Suzanne	✓			
DELA CRUZ, Donovan M.	✓			
ENGLISH, J. Kalani	✓			
GALUTERIA, Brickwood	✓			
HARIMOTO, Breene	✓			
INOUYE, Lorraine R.	✓			
RIVIERE, Gil			✓	
RUDERMAN, Russell E.	✓			✓
SLOM, Sam	✓		✓	
TOTAL	8	0	2	1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<i>[Handwritten Signature]</i>				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes