

JAN 27 2021

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 time to authorize the counties to permanently adopt and impose a
15 public transportation surcharge, which shall be at a lower rate
16 of one-quarter per cent after December 31, 2030.



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1 The legislature further finds that a county with a
2 population greater than 500,000 is currently restricted to using
3 the surcharge revenues for capital costs of public
4 transportation projects while smaller counties may use their
5 surcharge for other purposes, including operational costs, and
6 that the restrictions on the larger counties should be amended
7 to allow for wider use of the funds.

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

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



1 revenues for more than capital costs of public
2 transportation systems, as smaller counties are not
3 restricted to using those revenues only for capital
4 costs.

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

7 **"§46-16.8 County surcharge on state tax.** (a) Each county
8 may establish a surcharge on state tax at the rates enumerated
9 in sections 237-8.6 and 238-2.6. A county electing to establish
10 this surcharge shall do so by ordinance; provided that:

- 11 (1) No ordinance shall be adopted until the county has
12 conducted a public hearing on the proposed ordinance;
- 13 (2) The ordinance shall be adopted prior to December 31,
14 2005; and
- 15 (3) No county surcharge on state tax that may be
16 authorized under this subsection shall be levied prior
17 to January 1, 2007 [~~, or after December 31, 2022,~~
18 ~~unless extended pursuant to subsection (b)] .~~

19 Notice of the public hearing required under paragraph (1) shall
20 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 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 a surcharge on state tax
6 ordinance and, beginning no earlier than January 1, 2007, the
7 director of taxation shall levy, assess, collect, and otherwise
8 administer the county surcharge on state tax.

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

15 ~~(1) No~~ No ordinance shall be adopted until the county has
16 conducted a public hearing on the proposed ordinance[+]
17 and

18 ~~(2) The ordinance shall be adopted prior to January 1,~~
19 ~~2018].~~

20 A county electing to exercise the authority granted under
21 this subsection shall notify the director of taxation within ten



1 days after the county has adopted an ordinance extending the
2 surcharge on state tax. The director of taxation shall levy,
3 assess, collect, and otherwise administer the extended surcharge
4 on state tax.

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

- 10 (1) No ordinance shall be adopted until the county has
11 conducted a public hearing on the proposed ordinance;
- 12 (2) The ordinance shall be adopted prior to March 31,
13 2019; and
- 14 (3) No county surcharge on state tax that may be
15 authorized under this subsection shall be levied prior
16 to January 1, 2019 [~~, or after December 31, 2030~~].

17 A county electing to exercise the authority granted under
18 this subsection shall notify the director of taxation within ten
19 days after the county has adopted a surcharge on state tax
20 ordinance. Beginning on January 1, 2019, or January 1, 2020, as
21 applicable pursuant to sections 237-8.6 and 238-2.6, the



1 director of taxation shall levy, assess, collect, and otherwise
2 administer the county surcharge on state tax.

3 (d) Each county that has not established a surcharge on
4 state tax prior to July 1, 2021, may establish the surcharge at
5 the rates enumerated in sections 237-8.6 and 238-2.6. A county
6 electing to establish this surcharge shall do so by ordinance;
7 provided that no ordinance shall be adopted until the county has
8 conducted a public hearing on the proposed ordinance.

9 A county electing to exercise the authority granted under
10 this subsection shall notify the director of taxation within ten
11 days after the county has adopted a surcharge on state tax
12 ordinance. The director of taxation shall levy, assess,
13 collect, and otherwise administer the county surcharge on state
14 tax.

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



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

- 5 (1) Capital, operating, or maintenance costs of a locally
6 preferred alternative for a mass transit project; and
7 (2) Expenses in complying with the Americans with
8 Disabilities Act of 1990;

9 provided that revenues derived from the county surcharge on
10 state tax shall not be used[-

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

14 ~~[(2) For operating costs or maintenance costs of the mass~~
15 ~~transit project or any purpose not consistent with~~
16 ~~this subsection; or~~

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



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

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

9 (1) [~~Operating or capital~~] Capital, operating, or
10 maintenance costs of public transportation within each
11 county for public transportation systems, including
12 public roadways or highways, public buses, trains,
13 ferries, pedestrian paths or sidewalks, or bicycle
14 paths; and

15 (2) Expenses in complying with the Americans with
16 Disabilities Act of 1990 with respect to paragraph
17 (1).

18 [~~(g)~~] (h) As used in this section, "capital costs" means
19 nonrecurring costs required to construct a transit facility or
20 system, including debt service, costs of land acquisition and
21 development, acquiring of rights-of-way, planning, design, and



1 construction, and including equipping and furnishing the
2 facility or system. For a county with a population greater than
3 five hundred thousand, capital costs also include non-recurring
4 personal services and other overhead costs that are not intended
5 to continue after completion of construction of the minimum
6 operable segment of the locally preferred alternative for a mass
7 transit project."

8 SECTION 3. Section 237-8.6, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) The county surcharge on state tax, upon the adoption
11 of county ordinances and in accordance with the requirements of
12 section 46-16.8, shall be levied, assessed, and collected as
13 provided in this section on all gross proceeds and gross income
14 taxable under this chapter. No county shall set the surcharge
15 on state tax to be levied, assessed, or collected at a rate
16 greater than [~~one-half~~]:

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

18 and

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

20 of all gross proceeds and gross income taxable under this
21 chapter. All provisions of this chapter shall apply to the



1 county surcharge on state tax. With respect to the surcharge,
2 the director of taxation shall have all the rights and powers
3 provided under this chapter. In addition, the director of
4 taxation shall have the exclusive rights and power to determine
5 the county or counties in which a person is engaged in business
6 and, in the case of a person engaged in business in more than
7 one county, the director shall determine, through apportionment
8 or other means, that portion of the surcharge on state tax
9 attributable to business conducted in each county.

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

15 ~~(1) Prior to:~~

16 ~~(A)] prior to:~~

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



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

4 [~~(C)~~] (3) January 1, 2020, if the county surcharge on state
5 tax was established by the adoption of an ordinance on
6 or after June 30, 2018, but prior to March 31, 2019 [~~+~~
7 and

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

9 SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) The county surcharge on state tax, upon the adoption
12 of a county ordinance and in accordance with the requirements of
13 section 46-16.8, shall be levied, assessed, and collected as
14 provided in this section on the value of property and services
15 taxable under this chapter. No county shall set the surcharge
16 on state tax to be levied, assessed, or collected at a rate
17 greater than [~~one-half~~]:

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

19 and

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



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

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

16 ~~(1) Prior to:~~

17 ~~(A)]~~ prior to:

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



1 ~~[(B)]~~ (2) January 1, 2019, if the county surcharge on state
2 tax was established by the adoption of an ordinance
3 after June 30, 2015, but prior to June 30, 2018; or
4 ~~[(C)]~~ (3) January 1, 2020, if the county surcharge on state
5 tax was established by the adoption of an ordinance on
6 or after June 30, 2018, but prior to March 31, 2019~~[-~~
7 and
8 ~~(2) After December 31, 2030]."~~

9 SECTION 5. Section 248-2.7, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) Upon receiving a certification statement from the
12 comptroller pursuant to section 40-81.5, the director of finance
13 shall allocate and disburse moneys in the mass transit special
14 fund to the director of finance of a county with a population
15 greater than five hundred thousand; provided that the director
16 of finance shall only disburse those amounts that are certified
17 in the certification statement for that county for the purposes
18 specified in section 46-16.8; ~~[provided further that revenues~~
19 ~~allocated from the special fund shall not be used for.~~



- 1 ~~(1) Operating or maintenance costs of the mass transit~~
2 ~~project or any purpose not consistent with section 46-~~
3 ~~16.8(e); or~~
- 4 ~~(2) Administrative, operating, marketing, or maintenance~~
5 ~~costs, including personnel costs, of a rapid~~
6 ~~transportation authority charged with the~~
7 ~~responsibility for constructing, operating, or~~
8 ~~maintaining the mass transit project;]~~

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

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



1 SECTION 6. Act 247, Session Laws of Hawaii 2005, as
2 amended by Act 240, Session Laws of Hawaii 2015, and by Act 1,
3 Special Session of 2017, is amended by amending section 9 to
4 read as follows:

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

7 ~~(1) If none of the counties of the State adopt an~~
8 ~~ordinance to levy a county surcharge on state tax by~~
9 ~~December 31, 2005, this Act shall be repealed and~~
10 ~~section 437D-8.4, Hawaii Revised Statutes, shall be~~
11 ~~reenacted in the form in which it read on the day~~
12 ~~prior to the effective date of this Act;~~

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

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

20 ~~(A) The ordinance shall be repealed on December 31,~~
21 ~~2022; provided that the repeal of the ordinance~~



1 ~~shall not affect the validity or effect of an~~
2 ~~ordinance to extend a surcharge on state tax~~
3 ~~adopted pursuant to an act of the legislature,~~
4 ~~and~~

5 ~~(B) This Act shall be repealed on December 31, 2022,~~
6 ~~and section 437D-8.4, Hawaii Revised Statutes,~~
7 ~~shall be reenacted in the form in which it read~~
8 ~~on the day prior to the effective date of this~~
9 ~~Act, provided that the amendments made to section~~
10 ~~437D-8.4, Hawaii Revised Statutes, by Act 226,~~
11 ~~Session Laws of Hawaii 2008, as amended by Act~~
12 ~~11, Session Laws of Hawaii 2009, and Act 110,~~
13 ~~Session Laws of Hawaii 2014, shall not be~~
14 ~~repealed]."~~

15 SECTION 7. This Act shall not affect the validity or
16 effect of any surcharge on state tax adopted pursuant to
17 Act 247, Session Laws of Hawaii 2005, Act 240, Session Laws of
18 Hawaii 2015, Act 137, Session Laws of Hawaii 2017, Act 1,
19 Special Session Laws of Hawaii 2017, and Act 11, Session Laws of
20 Hawaii 2018, prior to the effective date of this Act.



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

3 SECTION 9. This Act shall take effect on July 1, 2021.

4

INTRODUCED BY: _____



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Report Title:

General Excise Tax; Surcharge; County Tax; 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. Amends restrictions on the 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.

