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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 purpose of this Act is to address the  
2 county surcharge on state general excise and use taxes.  
3       More specifically, this Act:  
4       (1) Authorizes the extension of the surcharge by any  
5           county that has adopted an ordinance to establish the  
6           surcharge prior to the effective date of this Act;  
7       (2) Authorizes other counties to adopt ordinances  
8           establishing the surcharge;  
9       (3) For counties with a population greater than five  
10           hundred thousand:  
11           (A) Limits the use of surcharge revenues to "capital  
12            costs"; and  
13           (B) Expands the definition of "capital costs"; and  
14       (4) Amends the definition of "public lands" to include the  
15           air rights over any portion of state land upon which a  
16           county mass transit project is developed after July  
17           11, 2005.



1 SECTION 2. This Act shall not affect the validity or  
2 effect of any surcharge on state tax adopted pursuant to Act  
3 247, Session Laws of Hawaii 2005, prior to the effective date of  
4 this Act.

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

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

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

14 (2) The ordinance shall be adopted prior to December 31,  
15 2005; and

16 (3) No county surcharge on state tax that may be  
17 authorized under this [~~section~~] subsection shall be  
18 levied prior to January 1, 2007 [~~-~~], or after December  
19 31, 2022, unless extended pursuant to subsection (b).

20 Notice of the public hearing required under paragraph (1) shall  
21 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]~~ subsection shall notify the director of  
5 taxation within ten days after the county has adopted a  
6 surcharge on state tax ordinance and, beginning no earlier than  
7 January 1, 2007, the director of taxation shall levy, assess,  
8 collect, and otherwise administer the county surcharge on state  
9 tax.

10 (b) Each county that has established a surcharge on state  
11 tax prior to the effective date of this Act under authority of  
12 subsection (a) may extend the surcharge from January 1, 2023,  
13 until December 31, 2027, at the same rates. A county electing  
14 to extend this surcharge shall do so by ordinance; provided  
15 that:

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

18 and

19 (2) The ordinance shall be adopted prior to July 1, 2016,  
20 but no earlier than July 1, 2015.



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 an ordinance extending the  
4 surcharge on state tax. Beginning on January 1, 2023, the  
5 director of taxation shall levy, assess, collect, and otherwise  
6 administer the extended surcharge on state tax.

7        (c) Each county that has not established a surcharge on  
8 state tax prior to the effective date of this Act may establish  
9 the surcharge at the rates enumerated in sections 237-8.6 and  
10 238-2.6. A county electing to establish this surcharge shall do  
11 so by ordinance; provided that:

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

14        (2) The ordinance shall be adopted prior to July 1, 2016,  
15 but no earlier than July 1, 2015; and

16        (3) No county surcharge on state tax that may be  
17 authorized under this subsection shall be levied prior  
18 to January 1, 2018, or after December 31, 2027.

19        A county electing to exercise the authority granted under  
20 this subsection shall notify the director of taxation within ten  
21 days after the county has adopted a surcharge on state tax



1 ordinance. Beginning on January 1, 2018, the director of  
2 taxation shall levy, assess, collect, and otherwise administer  
3 the county surcharge on state tax.

4 (d) Notice of the public hearing required under subsection  
5 (b) or (c) before adoption of an ordinance establishing or  
6 extending the surcharge on state tax shall be published in a  
7 newspaper of general circulation within the county at least  
8 twice within a period of thirty days immediately preceding the  
9 date of the hearing.

10 [~~e~~] (e) Each county with a population greater than five  
11 hundred thousand that adopts or extends a county surcharge on  
12 state tax ordinance pursuant to subsection (a) or (b) shall use  
13 the surcharges received from the State for:

- 14 (1) [~~Operating or capital~~] Capital costs of a locally  
15 preferred alternative for a mass transit project; and
- 16 (2) Expenses in complying with the Americans with  
17 Disabilities Act of 1990 with respect to paragraph  
18 (1).

19 The county surcharge on state tax shall not be used to build or  
20 repair public roads or highways, bicycle paths, or support



1 public transportation systems already in existence prior to July  
2 12, 2005.

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

- 7 (1) Operating or capital costs of public transportation  
8 within each county for public transportation systems,  
9 including public roadways or highways, public buses,  
10 trains, ferries, pedestrian paths or sidewalks, or  
11 bicycle paths; and
- 12 (2) Expenses in complying with the Americans with  
13 Disabilities Act of 1990 with respect to paragraph  
14 (1).

15 ~~[(e)]~~ (g) As used in this section, "capital costs" means  
16 nonrecurring costs required to construct a transit facility or  
17 system, including debt service, costs of land acquisition and  
18 development, acquiring of rights-of-way, planning, design, and  
19 construction, and including equipping and furnishing the  
20 facility or system. For a county with a population greater than  
21 five hundred thousand, capital costs also include non-recurring



1 personal services and other overhead costs that are not intended  
2 to continue after completion of construction of the minimum  
3 operable segment of the locally preferred alternative for a mass  
4 transit project."

5 SECTION 4. Section 171-2, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§171-2 Definition of public lands. "Public lands" means  
8 all lands or interest therein in the State classed as government  
9 or crown lands previous to August 15, 1895, or acquired or  
10 reserved by the government upon or subsequent to that date by  
11 purchase, exchange, escheat, or the exercise of the right of  
12 eminent domain, or in any other manner; including lands accreted  
13 after May 20, 2003, and not otherwise awarded, submerged lands,  
14 and lands beneath tidal waters that are suitable for  
15 reclamation, together with reclaimed lands that have been given  
16 the status of public lands under this chapter, except:

- 17 (1) Lands designated in section 203 of the Hawaiian Homes  
18 Commission Act, 1920, as amended;
- 19 (2) Lands set aside pursuant to law for the use of the  
20 United States;
- 21 (3) Lands being used for roads and streets;



- 1           (4) Lands to which the United States relinquished the  
2           absolute fee and ownership under section 91 of the  
3           Hawaiian Organic Act prior to the admission of Hawaii  
4           as a state of the United States unless subsequently  
5           placed under the control of the board of land and  
6           natural resources and given the status of public lands  
7           in accordance with the state constitution, the  
8           Hawaiian Homes Commission Act, 1920, as amended, or  
9           other laws;
- 10          (5) Lands to which the University of Hawaii holds title;
- 11          (6) Lands to which the Hawaii housing finance and  
12          development corporation in its corporate capacity  
13          holds title;
- 14          (7) Lands to which the Hawaii community development  
15          authority in its corporate capacity holds title;
- 16          (8) Lands to which the department of agriculture holds  
17          title by way of foreclosure, voluntary surrender, or  
18          otherwise, to recover moneys loaned or to recover  
19          debts otherwise owed the department under chapter 167;
- 20          (9) Lands that are set aside by the governor to the Aloha  
21          Tower development corporation; lands leased to the





1 Aloha Tower development corporation by any department  
2 or agency of the State; or lands to which the Aloha  
3 Tower development corporation holds title in its  
4 corporate capacity;

5 (10) Lands that are set aside by the governor to the  
6 agribusiness development corporation; lands leased to  
7 the agribusiness development corporation by any  
8 department or agency of the State; or lands to which  
9 the agribusiness development corporation in its  
10 corporate capacity holds title; and

11 (11) Lands to which the high technology development  
12 corporation in its corporate capacity holds title[-];  
13 provided that, except as otherwise limited under federal law and  
14 except for state land used as an airport as defined in section  
15 262-1, public lands shall include the air rights over any  
16 portion of state land upon which a county mass transit project  
17 is developed after July 11, 2005."

18 SECTION 5. Section 237-8.6, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) Each county surcharge on state tax that may be  
21 adopted or extended pursuant to section [~~46-16.8(a)~~] 46-16.8



1 shall be levied beginning in the taxable year after the adoption  
2 of the relevant county ordinance; provided that no surcharge on  
3 state tax may be levied [~~prior~~]:

4 (1) Prior to:

5 (A) January 1, 2007[-], if the county surcharge on  
6 state tax was established by an ordinance adopted  
7 prior to December 31, 2005; or

8 (B) January 1, 2018, if the county surcharge on state  
9 tax was established by the adoption of an  
10 ordinance after June 30, 2015, but prior to July  
11 1, 2016; and

12 (2) After December 31, 2027."

13 SECTION 6. Section 238-2.6, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) Each county surcharge on state tax that may be  
16 adopted or extended shall be levied beginning in the taxable  
17 year after the adoption of the relevant county ordinance;  
18 provided that no surcharge on state tax may be levied [~~prior~~]:

19 (1) Prior to:



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

4           (B) January 1, 2018, if the county surcharge on state  
5           tax was established by the adoption of an  
6           ordinance after June 30, 2015, but prior to July  
7           1, 2016; and

8           (2) After December 31, 2027."

9           SECTION 7. Act 247, Session Laws of Hawaii 2005, is  
10 amended by amending section 9 to read as follows:

11           "SECTION 9. This Act shall take effect upon its approval;  
12 provided that:

13           (1) If none of the counties of the State adopt an  
14 ordinance to levy a county surcharge on state tax by  
15 December 31, 2005, this Act shall be repealed and  
16 section 437D-8.4, Hawaii Revised Statutes, shall be  
17 reenacted in the form in which it read on the day  
18 prior to the effective date of this Act;

19           (2) If any county does not adopt an ordinance to levy a  
20 county surcharge on state tax by December 31, 2005, it  
21 shall be prohibited from adopting such an ordinance



1           pursuant to this Act, unless otherwise authorized by  
2           the legislature through a separate legislative act;  
3           and

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

6           (A) The ordinance shall be repealed on December 31,  
7           2022; provided that the repeal of the ordinance  
8           shall not affect the validity or effect of an  
9           ordinance to extend a surcharge on state tax  
10           adopted pursuant to Act           , Session Laws of  
11           Hawaii 2015;

12           (B) This Act shall be repealed on December 31,  
13           ~~[2022,]~~ 2027; and

14           (C) Section 437D-8.4, Hawaii Revised Statutes, shall  
15           be reenacted in the form in which it read on the  
16           day prior to the effective date of this Act~~[-]~~;   
17           provided that the amendments made to section  
18           437D-8.4, Hawaii Revised Statutes, by Act 226,  
19           Session Laws of Hawaii 2008, as amended by Act  
20           11, Session Laws of Hawaii 2009, and Act 110,



1                    Session Laws of Hawaii 2014, shall not be  
2                    repealed."

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

5            SECTION 9. This Act shall take effect on July 1, 2015.



**Report Title:**

Public Transit; County Surcharge on State Tax

**Description:**

Reauthorizes the counties' authority to establish a county surcharge on state tax for a limited time period, with the surcharge to be effective until 12/31/2027, if adopted. Requires counties to adopt an ordinance to establish or extend a surcharge prior to 7/1/2016. Limits the use of surcharge revenues by counties that have already established a county surcharge on state tax to capital costs. Expands the definition of capital costs for counties with a population greater than 500,000. Amends the definition of "public lands" to include the air rights over any portion of state land upon which a county mass transit project is developed after 7/11/2005. (HB134 CD1)

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

