



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 1244, RELATING TO ROADS.

BEFORE THE:
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

DATE: Tuesday, February 11, 2025 **TIME:** 3:01 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lane Kaiwi Opulauoho, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of this bill is to allow county surcharge revenues, such as general excise and fuel taxes, to be used for maintenance of **private** roadways that are open to and used by the public.

To accomplish this purpose, this bill amends the following sections of the Hawaii Revised Statutes (HRS):

In section 1 of this bill, section 46-16.8(g)(1)(B) is amended to read: "Private roadways that are open to and used by the public]." (page 6, lines 7-8); and section 46-16.8(h) is amended to read: "Each county that adopts a county surcharge on state tax ordinance pursuant to this section may use the surcharges received from the State for the maintenance of privately-owned roadways that are open to the public." (page 7, lines 11-14);

In section 2 of this bill, section 243-6(e)(2) is amended to read: "For acquisition, designing, construction, reconstruction, improvement, repair, and maintenance of county main and general thoroughfares, highways, and other streets, including private roadways that are open to and used by the public, street lights, storm drains, and bridges," (page 10, line 19, to page 11, line 3); section 243-6(e)(3) is amended to read: "For reconstruction, improvement, repair, and maintenance of privately-owned

roadways that are open to the public[.]" (page 11, lines 7-9); and, section 243-6(e)(6) is amended to read: "For purposes and functions connected with county traffic control and preservation of safety upon the public highways and streets, including private roadways that are open to and used by the public[.]" (page 11, line 20, to page 12, line 2).

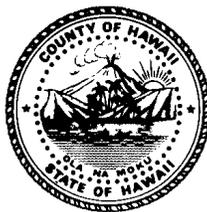
Because the bill allows a percentage of general excise tax and fuel tax revenues to be used for maintenance of private roads, there is a concern that public money would be used for a non-public purpose. Article VII, section 4, of the Hawaii Constitution, titled "Appropriations for Private Purposes Prohibited," provides in part:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, *directly or indirectly*, **except for a public purpose**. (Emphases added).

Determining what constitutes a public purpose is generally a question for the Legislature to decide. *State ex rel. Amemiya v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-81 (1976). The question is whether the ultimate objective of the act serves a public purpose and benefits accruing to private interests are incidental. *Id.* at 576, 545 P.2d at 1182. Because this bill proposes to improve privately owned roads that are open to and used by the public, this bill could be better insulated against a constitutional challenge by providing a declaration of its public purpose in section 1 of the bill, explaining in detail the public-purpose rationale underpinning the bill by inserting legislative findings.

Thank you for the opportunity to provide comments on this bill.

HEATHER L. KIMBALL
COUNCIL DISTRICT 1
(North Hilo, Hāmākua, and portion of
Waimea)



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HAWAI'I COUNTY COUNCIL

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LATE

February 11, 2025

Senate Committee on Transportation and Culture and the Arts
Honorable Senator Chris Lee, Chair
Honorable Senator Lorraine R. Inouye, Vice Chair
Submission via online testimony only

RE: **Support of SB1244**

Dear Chair Lee, Vice Chair Inouye, and Members of the Committee on Consumer Protection and Commerce:

As the sitting Council Member for Council District 1, I thank you for the opportunity to submit **testimony in SUPPORT of SB1244.**

This measure is critical in ensuring the safety, accessibility, and sustainability of roadways that serve our residents and visitors alike. Private roads that provide public access are essential components of our transportation infrastructure, yet they often lack the dedicated funding necessary for adequate maintenance and improvements. By allowing counties to use a portion of these tax revenues for the reconstruction, improvement, repair, and maintenance of private roadways, we can address long-standing safety concerns, reduce liability risks, and enhance overall mobility within our communities.

The ability to direct county resources toward these critical needs will not only enhance public safety and transportation efficiency but also support economic development and quality of life for residents throughout our communities. SB1244 would provide counties with the flexibility needed to maintain and improve essential road infrastructure.

Thank you for the opportunity to submit testimony on this important issue. If you would like to discuss my knowledge of this matter further, please do not hesitate to contact me directly.

Sincerely,

HEATHER L. KIMBALL

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, GENERAL EXCISE; Maintenance of Privately-Owned Roadways

BILL NUMBER: SB 1244

INTRODUCED BY: SAN BUENAVENTURA

EXECUTIVE SUMMARY: Allows for a percentage of general excise and fuel taxes generated by the counties to be used for maintenance of private roadways that are open to the public.

SYNOPSIS: Amends section 46-16.8(g), HRS, for counties with population equal to or less than 500,000 that adopt the county surcharge, to use the surcharges for private roadways that are open to and used by the public.

Amend section 46-16.8(h), HRS, to allow counties, regardless of population size, to use county surcharge revenue for the maintenance of private roadways that are open to and used by the public.

Amends section 243-6(e), HRS, to allow City & County fuel taxes deposited to the highway fund to be used for reconstruction, improvement, repair, and maintenance of privately owned roadways that are open to the public.

EFFECTIVE DATE: July 1, 2025.

STAFF COMMENTS: Section 243-6, HRS, provides generally that fuel taxes, both at the state and county levels, are deposited into the highway fund. The highway fund generally funds construction and improvements to our highways and byways.

The Highway Fund is needed under federal law to demonstrate the state's expenditures for transportation infrastructure, which is a requirement to get federal aid for highway construction.

The county surcharge on the General Excise Tax is used in the City & County of Honolulu to support its rail mass transit project. The law creating the county surcharge for the other counties allowed those counties to use the surcharge funds for transportation infrastructure.

It appears that the proposed additional use of highway funds and transportation-related county surcharge revenue is within the spirit of the law. The fuel tax disposition statute, HRS section 243-6, already contains language stating that no expenditures shall be made if they would jeopardize federal aid for highway construction.

We do recommend, however, that the proviso at the end of current subsection (g) be clarified. As currently phrased, Maui County, which is the only county to adopt the surcharge after 2022, is only supposed to use the surcharge revenues for housing infrastructure. If the

Re: SB 1244

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intent is for this bill to allow Maui to use it on transportation infrastructure as well, the proviso at the end of subsection (g) needs to be amended to permit such a use.

Digested: 2/9/2025

LATE

SB-1244

Submitted on: 2/11/2025 12:12:01 PM

Testimony for TCA on 2/11/2025 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Matthew Kanealii-Kleinfelder	Testifying for Hawaii County Council	Support	Written Testimony Only

Comments:

Aloha Fellow Elected Officials,

As District 5 Representative and Finance Chair for the Hawai'i County Council, I hereby submit testimony in strong support of SB1244.

Given the passage of Hawaii County Bill 82 and allowances by the HRS for Counties to provide maintenance on private roads serving public purpose, it is imperative that funding sources be created!

Thousands of miles of private roads were created between 1950 and 1970 before the implementation of the subdivision codes. These substandard private roads are now left to individual HOA's to maintain and manage and is one the biggest issues in our County.

As we continue to allow infill in rural, low income areas while promoting affordable housing initiatives, we have a moral responsibility to provide basic infrastructure and services. This allowance, should it pass, will provide a funding lifeline to these communities.

Mahalo for your time and attention to this matter.

Have Fun!!

LATE

SB-1244

Submitted on: 2/11/2025 9:24:25 AM

Testimony for TCA on 2/11/2025 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Ralph Boyea	Individual	Support	Written Testimony Only

Comments:

Aloha Senators,

I am testifying in favor of SB1244.

I fully support allowing a percentage of the State general excise taxes and fuel taxes to be used for the maintenance of private subdivision roads that are open to public use.

As a resident of Orchidland Estates in Puna, Hawaii Island for nearly 50 years, I know how difficult it is for private subdivisions to collect enough money to maintain their roads.

Orchidland has over 40 miles of undeveloped roads. All of Orchidland's private roadways are open to the public. Some are used extensively by the public, especially when there are traffic issues on Highway 130. At times these roadways are used by the State and County as "alternate" routes. Orchidland Drive is used daily by the public to access the commercial development,. Those commercial developments do not pay their fair share in the maintenance of that section of roadway. It is VERY often in disrepair.

Please vote in favor of SB 1244

Ralph Boyea

LATE

SB-1244

Submitted on: 2/11/2025 9:30:07 AM

Testimony for TCA on 2/11/2025 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Andy Kagemoto	Individual	Support	Written Testimony Only

Comments:

This bill will help to bring much needed repair and maintenance to our roads. The condition of some of the private roadways in our community is becoming increasingly urgent.

LATE

SB-1244

Submitted on: 2/11/2025 9:36:22 AM

Testimony for TCA on 2/11/2025 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Shannon Matson	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and Committee Members,

Mahalo for hearing this bill that is so important to me and my community. I live in Hawaiian Acres, which consists of 4,000 three acre lots and 75 miles of unpaved, unimproved roads. A couple of these roads are regularly used by the public, with a couple of the roads heavily used as alternative routes during times of emergency or accidents on either the lower or upper highways that surround our portion of Puna.

We do not have mandatory road fees in our community and many of our residents are living in extreme poverty. We need help maintaining these roads as a matter of public safety. As we have seen due to recent disasters, flooding, fires, lava, and storms, we badly need multiple well-maintained and accessible roads in and out of our subdivisions. We have recently worked with Hawai'i County to create a process where we can apply to get County support to help maintain certain roads that are used by the public and would have otherwise in the past been considered ineligible for funding. This bill at the State level will further support our mission to get safe and accessible roads for our community.

Please pass this bill.

Mahalo,

Shannon Matson

Hawai'i Island Resident

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TESTIMONY IN SUPPORT OF SB1244

This legislation is particularly applicable to Hawaii County where about a third of the Island's population live in huge sprawling subdivisions with substandard infrastructure, poor access to services, and, in many cases, delayed access to emergency response services. School buses have difficulty in traversing many subdivisions, and consequently, school attendance is impacted by this situation.

These substandard subdivision roads are ALL open to the public and are maintained by community associations tasked with the responsibility of levying road maintenance fees and contracting for the maintenance work.

This year Hawaii County will begin to allocate some of its road maintenance budget to assist these community associations in their daunting efforts to improve and maintain their roads. As all the subdivision roads are publicly accessed, we have long sought to allocate a small fraction of the fuel tax revenues that we all pay at the pump to assist community associations in their work.

Please support this legislation. It will give the counties more flexibility in providing for the public safety of its roads. It will give a more equitable share of our fuel tax revenues to the hundreds of miles of roads in our subdivisions. **And it is long overdue.**

LATE

SB-1244

Submitted on: 2/11/2025 1:25:30 PM

Testimony for TCA on 2/11/2025 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Graceson Ghen	Individual	Support	Written Testimony Only

Comments:

Aloha,

This bill would greatly help many communities on the Big Island which are required to maintain roadways that are open to public and commercial traffic. These communities pay private road fees, which improve roadways, which in turn raise their property values and thus the amount of property taxes paid.

This bill would at minimum help maintain roadways better that are used for private and commercial traffic passing through our communities on their way to other connected state and county roads.

Taxes raised on gas sales would directly benefit these roads. Just to leave my neighborhood I drive 10 miles each way. So gas I use in my community is currently raising funds for other roadways. Given our community has a roadway that connects two state highways, the commercial traffic just passing through does not have anything but a negative impact on our roadways and road repair budgets.

Thank you for your support.

Mahalo, Graceson Ghen