DAVID Y. IGE
GOVERNOR

LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813
http://tax.hawaii.gov/
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Date: Friday, February 2, 2018
Time: 3:00 P.M.
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2137, Relating to County Taxing Authority

The Department of Taxation (Department) offers the following comments regarding S.B. 2137 for the Committee's consideration.

S.B. 2137 gives broad taxing authority to the counties. Specifically, each county would have the power to levy, assess, and collect taxes, including surcharges on taxes imposed by the State for general revenue purposes. The bill is effective upon its approval.

The Department first notes that the Legislature should give careful consideration to ensuring that tax policy between the counties and the State are consistent. Inconsistent tax policy could lead to a decline in tax revenue.

In addition, if the Committee wishes to advance this measure, the Department suggests that the: (1) allocation of costs of government functions between the State and the Counties and (2) revenue allocations to the Counties from the State be included as part of the discussion.

Thank you for the opportunity to provide comments.

LATE

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813
PHONE: (808) 768-4141 • FAX: (808) 768-4242 • INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU
FRIDAY, FEBRUARY 2, 2018; 3:00 PM

TO: THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
THE HONORABLE GLENN WAKAI, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

FROM: KIRK CALDWELL, MAYOR
CITY AND COUNTY OF HONOLULU

SUBJECT: SUPPORT OF SB2137

The City and County of Honolulu (City) strongly supports SB2137, which expands the taxing authority of the counties. Other local jurisdictions across the country have expanded authority to generate revenue. This measure provides the counties with the flexibility to raise revenue from more appropriate sources if necessary.

Thank you for your consideration of this testimony in strong support of SB2137.

Eileen O'Hara
Council Member
Council District 4

Chair: *Environmental Management Committee*

Phone: *(808) 965-2712*
Fax: *(808) 961-8912*
Email: eileen.ohara@hawaiicounty.gov

Vice Chair: *Planning Committee and Agriculture, Water & Energy Sustainability Committee*

County of Hawaii

Hawaii County Council

25 Aupuni Street, Suite 1402 • Hilo, Hawai'i 96720

Senator Clarence K. Nishihara
Chair, Committee on Public Safety, Intergovernmental, and Military Affairs
Hawai'i State Senate

February 1, 2018

Re: In Support of Senate Bill 2137, from Hawai'i County Council District 4
To be heard by PSM on 02-02-18 3:00PM in conference room 414

Aloha Chair Nishihara and Committee Members:

I'm writing to express my support of Senate Bill 2137, which expands the taxing authority of the counties.

This provides more flexibility to the Counties regarding how to best expend funds to address the different problems facing each jurisdiction. Please consider the relief the passing of this Bill will offer, and contact me if you have any questions about my support or knowledge of the subject.

Sincerely,

Eileen O'Hara

Eileen O'Hara
Council Member
Council District 4

Hawai‘i Association of REALTORS®

808-733-7060

808-737-4977

1259 A‘ala Street, Suite 300
Honolulu, HI 96817

February 2, 2018

The Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental and Military Affairs
State Capitol, Room 414
Honolulu, Hawaii 96813

RE: S.B. 2137, Relating to County Taxing Authority

HEARING: Friday, February 2, 2018, at 3:00 p.m.

Aloha Chair Nishihara, Vice Chair Wakai and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, here to testify on behalf of the Hawai‘i Association of REALTORS® (“HAR”), the voice of real estate in Hawai‘i, and its over 9,500 members. HAR **strongly opposes** Senate Bill 2137, which grants the county the power to collect taxes, including surcharges on taxes imposed by the State, some examples of state taxes that would be burdensome with an additional surcharge include:

General Excise Tax
The General Excise Tax is a regressive tax that weighs more heavily on the poor because lower-income residents are forced to contribute a larger share of their incomes to cover the tax.

The burden of the pyramiding of the GET is hidden in the prices of goods and services. For example, if a person buys a loaf of bread on O‘ahu for $5.00, the store will typically add the excise tax of 4.712% and charges the person $5.24, so the “visible tax” is 24 cents. In reality, however, the $5.00 price has to cover the tax on goods and services as the bread moves through the production chain albeit at a lesser 0.5%. When it is all added up, the tax is a lot more than 24 cents.

Hawaii’s general excise tax is unique and while it looks like a sales tax being imposed on every transaction, it is nothing like a retail sales tax found in some forty-four other states. This is because it is not a tax that is paid by the consumer, but one that is imposed on the business for the "privilege of doing business in the state."

Studies have shown that with the pyramiding effect of the GET, the effective tax rate is considerably higher. For example, a surcharge increase from 4% to 5% or 5.5% on O‘ahu would be equivalent to at least 17.5% upwards to 26% retail sales tax depending on the pyramiding. Also, the GET in Hawai‘i is applied to 160 of 168 good and services, the most of any State in the nation.

Conveyance Tax

The Conveyance Tax applies to the conveyance of multi-family rentals, land for residential subdivisions, mixed-income and multi-use properties, commercial properties, resort properties, and agricultural lands, as well as condominium and single-family homes. It applies whether or not a property is sold at a gain or a loss.

The tax applies to the entire purchase price, and does not take into account the amount of indebtedness that may be on the property being sold, or whether the seller may be selling at less than what the seller originally acquired the property for. Thus, in certain circumstances the seller may not have the cash to be able to pay the Conveyance Tax, or the amount of tax may be so high relative to the net proceeds that the seller is receiving as to become confiscatory.

In conclusion, HAR believes that Hawaii's residents continuously struggle to keep up with the cost of living. An additional surcharge on virtually every State tax, will continue to add to that burden.

Furthermore, while the counties provide valuable programs and services, HAR believes granting the counties the authority to place a surcharge on taxes imposed by the State would add an additional layer of complexity to the taxation process.

Mahalo for the opportunity to testify in strong opposition to this measure.

SUBJECT: MISCELLANEOUS, Open-Ended Taxing Authority to Counties

BILL NUMBER: SB 2137; HB 1664 (Identical)

INTRODUCED BY: SB by Kouchi by request; HB by Saiki by request

EXECUTIVE SUMMARY: Gives open-ended taxing authority to the counties. With the Hawaii Constitution putting the state Legislature in the position of being gatekeeper of state taxing authority, it may not be advisable to enact this bill and thereby abrogate the Legislature's role.

SYNOPSIS: Adds a new paragraph to HRS section 46-1.5 which states that each county shall have the power, by ordinance, for general revenue purposes, to levy, assess, and collect, or provide for the levying, assessment, and collection of taxes, including surcharges on taxes imposed by the State, as each county shall determine on persons, transactions, occupations, privileges, subjects, and personal property located within its geographical limits, and upon the transfer of real property, or of any interest in real property situate within the county levying and assessing the tax.

In other words, under the bill any county can enact whatever type of tax it wishes, including surcharges upon State taxes.

EFFECTIVE DATE: This Act shall take effect upon its approval.

STAFF COMMENTS: This bill is part of the legislative package offered by the Hawaii Council of Mayors.

Under the Hawaii Constitution, the counties have exclusive authority over only the real property tax. By exclusive authority we mean that the counties can determine the different classifications of property to tax, and the rates to be applied to each. In 2002, in a case called Anzai v. Honolulu, our supreme court said that the State has no right to force the counties to exempt anything, and generally can't tell the counties what to do with real property tax money.

In contrast, the State has general taxing power and can (and does) impose taxes on many different things. The State may also delegate its taxing power to the counties, and if it does so, it does have some say over how the revenue is going to be spent. This is how the Honolulu rail surcharge came about. The State set up the mechanics of the surcharge, and then said that each county could participate if it wished. Any county wishing to participate, however, needed to enact a taxing ordinance, and it needed to use the funds on transportation projects. The City & County of Honolulu used to be the only county that bought in; Kauai will join the party in the beginning of 2019.

The State also gives the counties authority to impose a gallonage tax on fuel, a weight tax on motor vehicles, and an annual registration fee for motor vehicles. All counties presently impose these taxes at varying rates. So, for example, Maui adds 23 cents per gallon of gas as county tax, while the Big Island adds 8.8 cents.

Another statute gives the counties authority to impose user fees. All counties use this authority as well. A 1999 case called *State v. Medeiros* showed that this authority had limits. The Hawaii Supreme Court said that a legitimate user fee "(1) applies to the direct beneficiary of a particular service, (2) is allocated directly to defraying the costs of providing the service, and (3) is reasonably proportionate to the benefit received." The City & County of Honolulu slapped a so-called user fee on each criminal convicted to cover costs of prosecution, but the fee was found to be a general revenue raising measure, and was invalidated as being actually a tax.

The State also has been sharing the transient accommodations tax, or TAT, with the counties since 1990. The amount shared has been a bone of contention in recent years. When the TAT was imposed at 7.25%, after satisfying specified earmarks, 44.8% was distributed to the counties. The TAT rate was increased (on a "temporary" basis) to 9.25% under a 2009 law, and in 2013 the 9.25% rate was made permanent while fixing $93 million as the amount to be shared among the counties. The counties complained about their allocations, thinking that they should get 45% of the current TAT take, which is more like $150 million. (Ironically, the counties argued that they needed stable and predictable funding. Isn't a fixed amount stable and predictable?) The debate over this sharing has raged over the past four years and is still ongoing. Most counties now find that the TAT sharing is an indispensable item in their revenue budget, second only to the real property tax.

Given the limited amount of dollars that taxpayers are willing or able to share with any government, our lawmakers must keep in mind that the funding of services at all levels needs to be balanced and reflective of the priorities of the constituency. There will be and should be an ongoing healthy debate over these services, and the mechanisms for funding them.

The constitutional provisions discussed earlier demonstrate that the people of Hawaii entrusted their state legislature to be the gatekeeper for requests for more expensive and more burdensome county taxation. Given the stories about county fiscal waste that have shown up in the media lately, as well as the controversy surrounding ex-Big Island Mayor Billy Kenoi, it might not be advisable to enact a bill such as this, which all but abrogates the Legislature's gatekeeping function.

Digested 1/30/2018