



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1091, RELATING TO THE COUNTIES.

**BEFORE THE:**

SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND  
MILITARY AFFAIRS

**DATE:** Friday, February 3, 2023                      **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 225

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Janine R. Udui, Deputy Attorney General

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Chair Wakai and Members of the Committee:

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

This bill amends section 46-16.8(f), Hawaii Revised Statutes (HRS), to allow counties that have adopted a county surcharge on state tax ordinances and have a population equal or less than five hundred thousand people to "use the surcharges received from the State for . . . [the o]perating or capital costs of public transportation within the county for public transportation systems including . . . private roadways that are open to and used by the public" (page 1, lines 7-14). Similarly, the bill also amends section 243-6(e)(2), HRS, to allow county fuel taxes to be expended "[f]or acquisition, designing, construction, reconstruction, improvement, repair, and maintenance" of county streets, "including private roadways that are open to and used by the public" (page 4, lines 17-21).

This bill could be strengthened by providing a more robust declaration of its public purpose in section 1. 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.* [Emphasis 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 challenge by explaining in more detail the public-purpose rationale underpinning the bill.

Finally, on page 5, lines 17-18, of the bill, the words “public roadway” may have inadvertently been used instead of “private roadway.” If the intent was to have the fuel taxes used in the section for private roadways, the Department recommends the section read as follows:

- (5) “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;”

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

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

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**SUBJECT:** GENERAL EXCISE, FUEL, Allow county revenues to repair private roadways used by the public

**BILL NUMBER:** HB 279, SB 1091

**INTRODUCED BY:** HB by KILA, CHUN, ICHIYAMA, KAPELA, LAMOSAO, TAKENOUCHI; SB by LEE, CHANG, KEITH-AGARAN, SAN BUENAVENTURA

**EXECUTIVE SUMMARY:** Allows certain counties to utilize tax revenues collected by the counties for the repair and maintenance of private roads that are open to and used by the public.

**SYNOPSIS:** Amends section 46-16.8, HRS, to allow each county with a population less than or equal to 500,000 to use county surcharge revenue to be used for private roadways that are open to and used by the public.

Amends section 243-6, HRS, to allow fuel taxes deposited in county highway funds to be used for private roadways that are open to and used by the public.

Makes additional technical and conforming amendments.

**EFFECTIVE DATE:** July 1, 2023.

**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.

Digested: 1/28/2023

**SB-1091**

Submitted on: 1/30/2023 8:40:41 PM

Testimony for PSM on 2/3/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gerard Silva	Individual	Support	Written Testimony Only

Comments:

The Countys were sappedosed to be doing this from when they stated Taxing the Gas!!!!!!