



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

H.B. NO. 2604, RELATING TO PERFORMING ARTS.

BEFORE THE:

HOUSE COMMITTEE ON CULTURE & ARTS

DATE: Friday, February 6, 2026 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Cynthia M. Johiro, Deputy Attorney General

Chair Kapela and Members of the Committee:

The Department of Attorney General has a concern regarding this bill and provides the following comments.

This bill proposes to amend chapter 237, Hawaii Revised Statutes (HRS), by adding a new section to levy and assess a performing arts ticket surcharge on a primary venue ticket provider, except for ticket sales "[f]rom any event produced by a Hawaii-based nonprofit organization[.]" Section 2, page 3, lines 1-2.

This bill could be subject to challenge under the Commerce Clause of the United States Constitution, which provides that Congress shall have the power to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce." *Or. Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98 (1994). This negative aspect of the Commerce Clause is known as the dormant Commerce Clause.

Tax schemes that discriminate against interstate commerce may violate the dormant Commerce Clause. For example, in *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542 (2015), the United States Supreme Court struck down a tax scheme where resident taxpayers paid income tax to another jurisdiction for income earned in that state but were not allowed a tax credit for a portion of these taxes. The

Court noted that the dormant Commerce Clause prohibits states from "discriminat[ing] between transactions on the basis of some interstate element." *Wynne*, 575 U.S. at 549. Further, the Court explained that a state "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Id.* (citations omitted). Because Maryland's law functioned as a tariff by discriminating against interstate commerce, it violated the dormant Commerce Clause. *See id.* at 567.

Here, this bill could potentially result in the taxation of out-of-state performances by nonprofit entities that are not "Hawaii-based." The exclusion of performances associated with locally based nonprofit organizations could, like the scheme in *Wynne*, be viewed as functioning as a tariff and therefore render the bill vulnerable to challenge under the dormant Commerce Clause.

Based on the foregoing, we respectfully ask that this concern be addressed by deleting the phrase "Hawaii-based" in the new section 237- (b)(3) at page 3, lines 1-2.

Thank you for the opportunity to provide comments.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



GARY S. SUGANUMA
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**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 2604, Relating to Performing Arts

BEFORE THE:

House Committee on Culture & Arts

DATE: Friday, February 6, 2026
TIME: 9:30 a.m.
LOCATION: State Capitol, Room 309

Chair Kapela, Vice-Chair Kong, and Members of the Committee:

The Department of Taxation (DOTAX) offers the following comments regarding H.B. 2604 for your consideration.

H.B. 2604 amends chapter 237, Hawaii Revised Statutes (HRS), governing the general excise tax (GET) by inserting a new section relating to a “performing arts ticket surcharge” (PAT surcharge) of one dollar on each primary sale of a performing arts ticket for admission to a covered event held in the State. The PAT surcharge is to be collected by the primary ticket venue and shall be disclosed and passed on to the purchaser as a separate line item on the ticket, receipt, invoice, or electronic confirmation provided to the purchaser at the time of sale. The surcharge proceeds are to be deposited into the performing arts grants special fund under section 9-19.5, HRS.

A “primary venue ticket provider” means the person or entity that engages in the primary sale of performing arts event tickets or retains the authority to otherwise distribute performing arts event tickets. “Covered event” means a performing arts event offered for sale to the general public and marketed for commercial entertainment, for which tickets are offered for sale to the general public. “Ticket price” means the total amount required to be paid for admission to a covered event, including any mandatory fees or charges other than tax.

H.B. 2604 exempts performing arts ticket sales that are:

- From any event that is primarily performed by students enrolled at a school in the University of Hawai'i system or public school; or
- For which the primary sale ticket price is \$35 or less; or
- From any event produced by a Hawai'i-based nonprofit organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (IRC) and has as its primary mission the provision of performing arts education to minors.

Any primary venue ticket provider claiming exemption to the PAT surcharge is required to retain records and make the same available upon request by DOTAX for a period of two years.

The bill is effective upon approval.

DOTAX recommends aligning the record-keeping requirement with Section 237-41, which governs the maintenance, production, and examination of records, by adding the following provision:

"Every primary venue ticket provider shall, in addition to the requirements of section 237-41, keep in the English language within the State, and preserve for a period of three years, suitable records of to verify qualification of the exemption under this section, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof."

DOTAX notes that the provision requiring an allocation of revenues into the performing arts grants special fund would require a fundamental change in the way that DOTAX accounts for and reports on GET revenues. This bill would create administrative difficulties, as DOTAX will need to reconcile the amounts reported with actual amounts collected. Discrepancies will arise because the amount of tax collected often does not match the amount of tax reported for various reasons, including errors in payment or reporting or intentional underpayment. Additionally, many taxpayers report multiple categories of business activities on a single GET return, which complicates the accurate determination of amounts to be allocated. DOTAX therefore requests that the allocation of revenue to the special fund be replaced with an appropriation of a set dollar amount.

Finally, DOTAX recommends that the effective date be amended to January 1, 2027, to allow time for form, instruction, and system changes, and notice to taxpayers.

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



HAWAI'I
STATE FOUNDATION on
CULTURE and the ARTS

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**Testimony of KAREN EWALD, Executive Director
State Foundation on Culture and the Arts**

**Before the
HOUSE COMMITTEE ON CULTURE & ARTS
FRIDAY, FEBRUARY 6, 2026 Conference Room 309 at 9:30AM**

**HOUSE BILL 2604
RELATING TO PERFORMING ARTS**

Dear Chair Kapela and members of the Committee,

The State Foundation on Culture and the Arts (SFCA), is dedicated to the promotion, perpetuation, and preservation of culture and the arts in Hawai'i.

SFCA **SUPPORTS** H.B. 2604 which establishes a performing arts ticket surcharge on the sale of certain performing arts tickets for an event held in the State.

State legislatures use a mixture of strategies to provide public support for state arts agencies (SAAs). By far the largest state funding source for SAAs—currently and historically—is state general funds. However, state legislatures have enacted a variety of other legislative strategies to provide additional support. Examples of these funding mechanisms include dedicated taxes, Special Funds, sales of specialty license plates, and gaming and tourism revenues. The SFCA supports the investigation into alternate funding sources for culture and arts activities.

The SFCA supports the intent of this measure to support performing arts in Hawaii. The SFCA supports collecting revenues equal to a percentage of all ticket sales from concerts held at state venues to implement the proposed intent, provided doing so does not take away from or adversely impact the revenue to State organizations running State facilities.

Thank you for the opportunity to provide testimony on this measure.

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, New Performing Arts Ticket Surcharge and Special Fund

BILL NUMBER: HB 2604, SB 3330

INTRODUCED BY: HB by KAPELA, BELATTI, KEOHOKAPU-LEE LOY, KUSCH, MARTEN, PERRUSO, POEPOE, SHIMIZU, Kila; SB by LEE, C.

EXECUTIVE SUMMARY: Establishes a performing arts ticket surcharge on the sale of certain performing arts tickets for an event held in the State.

SYNOPSIS: Adds a new section to chapter 237, HRS, that would impose a performing arts ticket surcharge of \$1 to be paid by each primary venue ticket provider on each primary sale of a performing arts ticket for admission to a covered event held in the State. Requires the primary venue ticket provider to disclose the surcharge as a separate line item on the ticket, receipt, invoice, or electronic confirmation provided to the purchaser at the time of sale.

The following are exempt from the surcharge: (1) any event that is primarily performed by students enrolled at a school in the University of Hawaii system or public school; (2) any event for which the primary sale ticket price is \$35 or less; or (3) any event produced by a Hawaii-based nonprofit organization that (A) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and (B) has as its primary mission the provision of performing arts education to minors.

The surcharge proceeds shall be deposited into the performing arts grants special fund established under section 9-19.5.

"Covered event" means a performing arts event that is offered for sale to the general public and marketed for commercial entertainment, for which tickets are offered for sale to the general public for an admission charge.

"Performing arts" has the same meaning as in section 9-1.

"Performing arts event" means a live, in-person event held before an audience for entertainment, including a concert, musical performance, theatrical performance, dance performance, comedy show, magic show, spoken word performance, or other staged live entertainment, whether presented indoors or outdoors.

"Primary venue ticket provider" means an owner or operator of a venue, a manager or provider of a performing arts event, a performing arts event promoter, an online ticketing platform, a provider of ticketing services, or an agent of the owner, operator, manager, or provider, that

engages in the primary sale of performing arts event tickets or retains the authority to otherwise distribute performing arts event tickets.

"Ticket price" means the total amount required to be paid for admission to a covered event, including any required service fee, facility fee, processing fee, or other mandatory charge, but excluding taxes imposed under this chapter and any optional donation.

"Venue" means a facility, space, or location in the State where a performing arts event is held, whether indoors or outdoors, including an arena, stadium, amphitheater, theater, concert hall, convention facility, hotel ballroom, outdoor performance space, or similar place of public assembly."

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: It should be remembered that the activity of selling performing arts tickets is already subject to the Hawaii General Excise Tax, as is most other economic activity in this State. The discussion should turn on whether there is some component of this business that justifies burdening it with additional taxes that are not imposed on most other businesses. Sin taxes, for example, are imposed to discourage dangerous behavior. Environmental taxes compensate for damage to or wear and tear on associated infrastructure, or for costs to remedy environmental degradation. Going to a performing arts performance is neither antisocial nor dangerous, and does not seem to damage society.

Digested: 2/4/2026

HB-2604

Submitted on: 2/5/2026 1:22:37 PM

Testimony for CAA on 2/6/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Gregory Dunn	Hawaii Theatre Center	Oppose	Written Testimony Only

Comments:

Aloha Rep. Kapela and Committee Members!

With respect to this bill, we are generally supportive of the intent to drive more funding to support the Performing Arts in the state of Hawaii. However, we are finding that the general public is suffering financially due to our stagnant economy, and this bill essentially places another tax on the patron who wishes to attend arts performances. We have seen ticket sales decline significantly, and have had several shows cancel due to soft ticket sales in the past several months.

As a private non-profit organization that is dedicated to the preservation of the Historic Hawaii Theatre and to providing theatre education to children, we are concerned that additional burdens placed on our community members will further deter people from attending our live performances.

Mahalo!

Gregory Dunn, President & CEO, Hawaii Theatre Center

HB-2604

Submitted on: 2/3/2026 4:57:20 PM

Testimony for CAA on 2/6/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

Enough with these surcharges, fee increases, etc. We are tired of being nickeled and dimed. It seems that everywhere we turn prices are rising, and the legislature is doing it too. There are proposals to high the condo education fee fund among others. People are having trouble paying rent, maintenance costs, movie tickets, tickets to live shows, bus fares, food, etc. They have less to spend on discretionary items as well as necessities.

The buck stops with you. Vote no on this bill. The wahine and kane on the street can't afford it.