

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to address the county surcharge on state general excise and use taxes.

More specifically, this Act:

- (1) Authorizes the extension of the surcharge by any county that has adopted an ordinance to establish the surcharge prior to the effective date of this Act;
- (2) Authorizes other counties to adopt ordinances establishing the surcharge;
- (3) For counties with a population greater than five hundred thousand:
 - (A) Limits the use of surcharge revenues to "capital costs"; and
 - (B) Expands the definition of "capital costs"; and
- (4) 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 July 11, 2005.

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

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

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

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;
- (2) The ordinance shall be adopted prior to December 31, 2005; and
- (3) No county surcharge on state tax that may be authorized under this ~~[section]~~ subsection shall be levied prior to January 1, ~~2007[-], or after December 31, 2022, unless extended pursuant to subsection (b).~~

Notice of the public hearing required under paragraph (1) shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing.

~~[(b)]~~ A county electing to exercise the authority granted under this ~~[section]~~ subsection shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance and, beginning no earlier than January 1, 2007, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

(b) Each county that has established a surcharge on state tax prior to the effective date of this Act under authority of subsection (a) may extend the

surcharge from January 1, 2023, until December 31, 2027, at the same rates. A county electing to extend this surcharge shall do so by ordinance; provided that:

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance; and
- (2) The ordinance shall be adopted prior to July 1, 2016, but no earlier than July 1, 2015.

A county electing to exercise the authority granted under this subsection shall notify the director of taxation within ten days after the county has adopted an ordinance extending the surcharge on state tax. Beginning on January 1, 2023, the director of taxation shall levy, assess, collect, and otherwise administer the extended surcharge on state tax.

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

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;
- (2) The ordinance shall be adopted prior to July 1, 2016, but no earlier than July 1, 2015; and
- (3) No county surcharge on state tax that may be authorized under this subsection shall be levied prior to January 1, 2018, or after December 31, 2027.

A county electing to exercise the authority granted under this subsection shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance. Beginning on January 1, 2018, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

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

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

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

The county surcharge on state tax shall not be used to build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence prior to July 12, 2005.

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

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

~~(e)~~ (g) As used in this section, "capital costs" means nonrecurring costs required to construct a transit facility or system, including debt service, costs of

land acquisition and development, acquiring of rights-of-way, planning, design, and construction, and including equipping and furnishing the facility or system. For a county with a population greater than five hundred thousand, capital costs also include non-recurring personal services and other overhead costs that are not intended to continue after completion of construction of the minimum operable segment of the locally preferred alternative for a mass transit project.”

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

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

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- (11) Lands to which the high technology development corporation in its corporate capacity holds title[-];

provided that, except as otherwise limited under federal law and except for state land used as an airport as defined in section 262-1, public lands shall include the air rights over any portion of state land upon which a county mass transit project is developed after July 11, 2005.”

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

“(b) Each county surcharge on state tax that may be adopted or extended pursuant to section ~~[46-16.8(a)]~~ 46-16.8 shall be levied beginning in the taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied ~~[prior]~~:

(1) Prior to:

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

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

(2) After December 31, 2027.”

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

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

(1) Prior to:

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

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

(2) After December 31, 2027.”

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

“SECTION 9. This Act shall take effect upon its approval; provided that:

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

(2) If any county does not adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, it shall be prohibited from adopting such an ordinance pursuant to this Act, unless otherwise authorized by the legislature through a separate legislative act; and

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

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

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

(C) Section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act[-]; provided that the amendments made to section 437D-8.4, Hawaii Revised Statutes, by Act 226, Session

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Laws of Hawaii 2008, as amended by Act 11, Session Laws of Hawaii 2009, and Act 110, Session Laws of Hawaii 2014, shall not be repealed.”

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

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

(Approved July 14, 2015.)