

June 9, 2023

MEMO TO: BFED-74 File

F R O M: Yuki Lei K. Sugimura, Chair *Yuki Lei Sugimura*
Budget, Finance, and Economic Development Committee

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO
GENERAL EXCISE AND USE TAX SURCHARGE** (BFED-74)

The attached informational document pertains to Item 74 on the Committee's agenda.

bfed:ltr:074afile02:ljcm

Attachment



GOV. MSG. NO. 1148

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

June 1, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 1, 2023, the following bill was signed into law:

HB1363 HD3 SD2 CD1

RELATING TO TAXATION.
ACT 048

Sincerely,

A handwritten signature in black ink that reads "Josh Green".

Josh Green, M.D.
Governor, State of Hawai'i

on JUN 1 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 1363
H.D. 3
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that the development of
3 housing is of critical importance to the State. Historically,
4 the development of infrastructure (e.g., water, drainage, sewer,
5 waste disposal, and waste treatment systems) to support housing
6 has been the responsibility of the developers of housing
7 projects. Accordingly, housing developers were responsible for
8 raising large, additional amounts of capital to finance required
9 infrastructure. These high infrastructure costs have often been
10 cited by developers as a major impediment. Furthermore, these
11 costs are ultimately passed on to homebuyers. This drives up
12 the prices of new homes and is a reason why homes are so
13 expensive, to the point of being unattainable for many local
14 families.

15 The legislature further finds that because developers are
16 focused on their specific housing developments, there are few
17 incentives for the developers to design infrastructure in a



1 manner that takes into account state and county planning
2 objectives, long-range planning, or regional or island-wide
3 cohesion. As a result, infrastructure development is often done
4 in a haphazard, piecemeal manner that has caused problems for
5 county residents and governments alike. For example, this has
6 resulted in infrastructure being developed in inconvenient
7 locations, far from necessary societal services to which
8 residents would require access.

9 Accordingly, the legislature finds that it is in the best
10 interest of the people of Hawaii to implement a policy shift
11 with regard to the development of housing. Specifically, the
12 counties, rather than private developers, should be responsible
13 for the location, planning, and development of infrastructure to
14 support housing. The legislature believes that authorizing a
15 county to use revenues from the county surcharge on state tax
16 for housing infrastructure would provide the funding necessary
17 to effect this change in policy.

18 The legislature believes that the implementation of this
19 policy would result in more efficient community planning. In
20 particular, because counties typically take ownership of
21 infrastructure upon completion of a housing project, it makes



1 sense for the counties to also take ownership over the placement
2 and planning of infrastructure and the infrastructure
3 construction process. By taking charge of this process,
4 counties would be able to direct the development of housing in
5 locations that make the most sense. Counties can also ensure
6 that infrastructure systems are designed in a manner that
7 minimizes long-term operational and maintenance costs, allowing
8 for better management of public resources.

9 Perhaps most significantly, under this policy, housing
10 developers would no longer need to finance the costs of
11 installing infrastructure up front, and homebuyers would no
12 longer see these high costs passed on to them. This will result
13 in lower housing prices, making home ownership attainable for
14 more residents, and situating new housing developments closer to
15 needed societal services.

16 Accordingly, the purpose of this Act is to:

- 17 (1) Extend the period within which a county may adopt a
18 surcharge on state tax, under certain conditions, from
19 March 31, 2019, to December 31, 2023;
- 20 (2) Authorize, in certain instances, the use of county
21 surcharge revenues for housing infrastructure; and



1 (3) Temporarily authorize counties that have previously
2 adopted a surcharge on state tax to amend the uses of
3 the surcharge.

4 PART II

5 SECTION 2. Section 46-16.8, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§46-16.8 County surcharge on state tax.** (a) Each county
8 may establish a surcharge on state tax at the rates enumerated
9 in sections 237-8.6 and 238-2.6. A county electing to establish
10 this surcharge shall do so by ordinance; provided that:

11 (1) No ordinance shall be adopted until the county has
12 conducted a public hearing on the proposed ordinance;

13 (2) The ordinance shall be adopted [~~prior to~~] before
14 December 31, 2005; and

15 (3) No county surcharge on state tax that may be
16 authorized under this subsection shall be levied
17 [~~prior to~~] before January 1, 2007, or after
18 December 31, 2022, unless extended pursuant to
19 subsection (b).

20 Notice of the public hearing required under paragraph (1) shall
21 be published in a newspaper of general circulation within the



1 county at least twice within a period of thirty days immediately
2 preceding the date of the hearing.

3 A county electing to exercise the authority granted under
4 this subsection shall notify the director of taxation within ten
5 days after the county has adopted a surcharge on state tax
6 ordinance and, beginning no earlier than January 1, 2007, the
7 director of taxation shall levy, assess, collect, and otherwise
8 administer the county surcharge on state tax.

9 (b) Each county that has established a surcharge on state
10 tax [~~prior to~~] before July 1, 2015, under authority of
11 subsection (a) may extend the surcharge until December 31, 2030,
12 at the same rates. A county electing to extend this surcharge
13 shall do so by ordinance; provided that:

14 (1) No ordinance shall be adopted until the county has
15 conducted a public hearing on the proposed ordinance;
16 and

17 (2) The ordinance shall be adopted [~~prior to~~] before
18 January 1, 2018.

19 A county electing to exercise the authority granted under
20 this subsection shall notify the director of taxation within ten
21 days after the county has adopted an ordinance extending the



1 surcharge on state tax. The director of taxation shall levy,
2 assess, collect, and otherwise administer the extended surcharge
3 on state tax.

4 (c) Each county that has not established a surcharge
5 pursuant to subsection (a) on state tax [~~prior to~~] before July
6 1, 2015, may establish the surcharge at the rates enumerated in
7 sections 237-8.6 and 238-2.6. A county electing to establish
8 this surcharge shall do so by ordinance; provided that:

9 (1) No ordinance shall be adopted until the county has
10 conducted a public hearing on the proposed ordinance;

11 (2) The ordinance shall be adopted [~~prior to March 31,~~
12 ~~2019,~~] before December 31, 2023; and

13 (3) No county surcharge on state tax that may be
14 authorized under this subsection shall be levied
15 [~~prior to~~] before January 1, 2019, or after December
16 31, 2030.

17 A county electing to exercise the authority granted under
18 this subsection shall notify the director of taxation within ten
19 days after the county has adopted a surcharge on state tax
20 ordinance. Beginning on January 1, 2019, [~~or~~] January 1, 2020,
21 January 1, 2024, or January 1, 2025, as applicable pursuant to



1 sections 237-8.6 and 238-2.6, the director of taxation shall
2 levy, assess, collect, and otherwise administer the county
3 surcharge on state tax.

4 (d) Each county that has established a surcharge on state
5 tax before March 31, 2019, under subsection (a) or (c) may amend
6 the surcharge ordinance to change the authorized uses of
7 surcharge revenues, pursuant to subsection (g); provided that:

8 (1) No ordinance shall be amended pursuant to this section
9 until the county has conducted a public hearing on the
10 proposed amendment; and

11 (2) The ordinance shall be amended before December 31,
12 2023.

13 [~~d~~] (e) Notice of the public hearing required under
14 subsection (b) [~~e~~], (c), or (d), before adoption or amendment
15 of an ordinance establishing or extending the surcharge on state
16 tax shall be published in a newspaper of general circulation
17 within the county at least twice within a period of thirty days
18 immediately preceding the date of the hearing.

19 [~~e~~] (f) Each county with a population greater than five
20 hundred thousand that adopts or extends a county surcharge on
21 state tax ordinance pursuant to subsection (a) or (b) shall use



1 the surcharge revenues received from the State for capital costs
2 of a locally preferred alternative for a mass transit project;
3 provided that revenues derived from the county surcharge on
4 state tax shall not be used:

5 (1) To build or repair public roads or highways, bicycle
6 paths, or support public transportation systems
7 already in existence [~~prior to~~] before July 12, 2005;

8 (2) For operating costs or maintenance costs of the mass
9 transit project or any purpose not consistent with
10 this subsection; or

11 (3) For administrative or operating, marketing, or
12 maintenance costs, including personnel costs, of a
13 rapid transportation authority charged with the
14 responsibility for constructing, operating, or
15 maintaining the mass transit project;

16 provided further that nothing in this section shall be construed
17 to prohibit a county from using county funds that are not
18 derived from a surcharge on state tax for a purpose described in
19 paragraph (2) or (3).

20 [~~(f)~~] (g) Each county [~~with~~] having a population equal to
21 or less than five hundred thousand that adopts a county



1 surcharge on state tax ordinance pursuant to this section shall
2 use the surcharges received from the State for:

3 (1) Operating or capital costs of public transportation
4 within each county for public transportation systems,
5 including ~~public~~:

6 (A) Public roadways or highways ~~[, public]~~;

7 (B) Public buses ~~[, trains, ferries, pedestrian]~~;

8 (C) Trains;

9 (D) Ferries;

10 (E) Pedestrian paths or sidewalks ~~[,]~~; or ~~[bicyele]~~

11 (F) Bicycle paths; ~~[and]~~

12 (2) Expenses in complying with the Americans with
13 Disabilities Act of 1990 with respect to paragraph
14 (1) ~~[-]~~; and

15 (3) Housing infrastructure; provided that a county that
16 uses surcharge revenues for housing infrastructure
17 shall not pass on those housing infrastructure costs
18 to the developer of a housing project; provided
19 further that this paragraph shall apply only if a
20 county amended its surcharge ordinance pursuant to



1 subsection (d) or adopts a county surcharge on state
2 tax ordinance after December 31, 2022;
3 provided that each county having a population equal to or less
4 than five hundred thousand that adopts a county surcharge on
5 state tax ordinance pursuant to this section after December 31,
6 2022, shall use the surcharge revenues received from the State
7 only for the purposes described in paragraph (3).

8 ~~[(g)]~~ (h) As used in this section~~["capital"]~~:
9 "Capital costs" means nonrecurring costs required to
10 construct a transit facility or system, including debt service,
11 costs of land acquisition and development, acquiring of
12 rights-of-way, planning, design, and construction, and including
13 equipping and furnishing the facility or system. For a county
14 with a population greater than five hundred thousand, capital
15 costs also include non-recurring personal services and other
16 overhead costs that are not intended to continue after
17 completion of construction of the minimum operable segment of
18 the locally preferred alternative for a mass transit project.

19 "Housing infrastructure" includes pedestrian paths or
20 sidewalks on a county road near or around a public school, and
21 water, drainage, sewer, water reuse, waste disposal, and waste



1 treatment systems that connect to the infrastructure of the
2 county."

3 SECTION 3. Section 237-8.6, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

10 (1) ~~[Prior to:]~~ Before:

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

14 (B) January 1, 2019, if the county surcharge on state
15 tax was established by the adoption of an
16 ordinance after June 30, 2015, but ~~[prior to]~~
17 before June 30, 2018; ~~[or]~~

18 (C) January 1, 2020, if the county surcharge on state
19 tax was established by the adoption of an
20 ordinance on or after June 30, 2018, but ~~[prior~~
21 ~~to]~~ before March 31, 2019; ~~[and]~~



1 (D) January 1, 2024, if the county surcharge on state
2 tax was established by the adoption of an
3 ordinance on or after March 31, 2019, but before
4 August 1, 2023; or

5 (E) January 1, 2025, if the county surcharge on state
6 tax was established by the adoption of an
7 ordinance on or after August 1, 2023, but before
8 December 31, 2023; and

9 (2) After December 31, 2030."

10 SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Each county surcharge on state tax that may be
13 adopted [~~or~~], extended, or amended shall be levied beginning in
14 a taxable year after the adoption of the relevant county
15 ordinance; provided that no surcharge on state tax may be
16 levied:

17 (1) [~~Prior to~~] Before:

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



1 (B) January 1, 2019, if the county surcharge on state
2 tax was established by the adoption of an
3 ordinance after June 30, 2015, but [~~prior to~~]
4 before June 30, 2018; [~~or~~]

5 (C) January 1, 2020, if the county surcharge on state
6 tax was established by the adoption of an
7 ordinance on or after June 30, 2018, but [~~prior~~
8 ~~to~~] before March 31, 2019; [~~and~~]

9 (D) January 1, 2024, if the county surcharge on state
10 tax was established by the adoption of an
11 ordinance on or after March 31, 2019, but before
12 August 1, 2023; or

13 (E) January 1, 2025, if the county surcharge on state
14 tax was established by the adoption of an
15 ordinance on or after August 1, 2023, but before
16 December 31, 2023; and

17 (2) After December 31, 2030."

18 PART III

19 SECTION 5. Section 23-14, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Beginning on September 5, 2017, and ending on
2 December 31, 2031, the auditor, on an annual basis, shall
3 conduct a review of any rapid transportation authority in the
4 State charged with the responsibility of constructing,
5 operating, or maintaining a locally preferred alternative for a
6 mass transit project that receives moneys from a surcharge on
7 state tax established pursuant to section 46-16.8, transient
8 accommodations tax revenues pursuant to section 237D-2(e), or
9 both. The annual review shall include a review of documents,
10 including but not limited to invoices, contracts, progress
11 reports, and time schedules, to determine that:

- 12 (1) Expenditures by the authority comply with the criteria
13 established pursuant to section [~~46-16.8(e);~~
14 46-16.8(f)]; and
- 15 (2) The authority follows accounting best practices for
16 substantiating its expenditures."

17 SECTION 6. Section 40-81.5, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) Beginning on September 5, 2017, and ending on
21 December 31, 2031, the comptroller, upon the request for payment



1 by the rapid transportation authority, shall verify that the
2 authority's invoices for the capital costs of a locally
3 preferred alternative for a mass transit project comply with
4 section [~~46-16.8(e).~~] 46-16.8(f)."

5 2. By amending subsection (c) to read:

6 "(c) After submission of invoices by the rapid
7 transportation authority for capital costs of a locally
8 preferred alternative for a mass transit project are verified by
9 the comptroller as an acceptable use of funds received pursuant
10 to a surcharge on state tax authorized pursuant to
11 section 46-16.8, the comptroller shall submit a certification
12 statement, including any appropriate supporting documents, to
13 the department of budget and finance for the allocation of
14 funds, if available, pursuant to sections 248-2.7 and
15 248-2.6(d). The certification statement shall include, at a
16 minimum, the total amount contained in the invoices for capital
17 costs that are verified as an appropriate use of funds pursuant
18 to section [~~46-16.8(e).~~] 46-16.8(f)."

19 SECTION 7. Section 248-2.7, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:



1 "(c) Upon receiving a certification statement from the
2 comptroller pursuant to section 40-81.5, the director of finance
3 shall allocate and disburse moneys in the mass transit special
4 fund to the director of finance of a county with a population
5 greater than five hundred thousand; provided that the director
6 of finance shall only disburse those amounts that are certified
7 in the certification statement for that county for the purposes
8 specified in section 46-16.8; provided further that revenues
9 allocated from the special fund shall not be used for:

- 10 (1) Operating or maintenance costs of the mass transit
11 project or any purpose not consistent with
12 section [~~46-16.8(e)~~] 46-16.8(f); or
13 (2) Administrative, operating, marketing, or maintenance
14 costs, including personnel costs, of a rapid
15 transportation authority charged with the
16 responsibility for constructing, operating, or
17 maintaining the mass transit project;

18 provided further that the total amount of funds that are
19 available, allocated, and disbursed by the director of finance
20 pursuant to this section shall not be in excess of the total
21 amount indicated on the certification statement. The director



1 of finance may allocate and disburse moneys pursuant to this
2 section on a monthly basis.

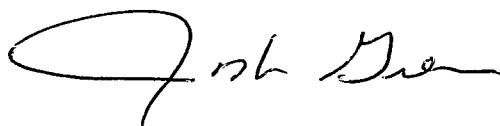
3 Any amounts allocated and disbursed pursuant to this
4 section shall be subject to the availability of funds deposited
5 and on balance in the special fund. The director of finance
6 shall not allocate or disburse any amounts from the special fund
7 that are in excess of any amounts deposited and on balance in
8 the special fund."

9 PART IV

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

12 SECTION 9. This Act shall take effect upon its approval.

APPROVED this 1st day of June , 2023



GOVERNOR OF THE STATE OF HAWAII



HB No. 1363, HD 3, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives

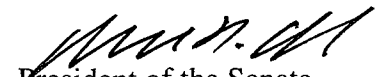



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate