

# Resolution

No. 22-257

## APPROVING PROPOSALS FOR INCLUSION IN THE 2023 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE

WHEREAS, Section 13C of the Hawaii State Association of Counties' ("HSAC") bylaws provide for the submittal to the State Legislature of an annual HSAC Legislative Package composed of measures approved for inclusion by all four county councils; and

WHEREAS, four proposals were submitted by the County of Maui for possible inclusion in the 2023 HSAC Legislative Package, entitled:

"A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM";

"A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE";

"A BILL FOR AN ACT RELATING TO THE MINIMUM WAGE";

"A BILL FOR AN ACT RELATING TO SPECIAL MANAGEMENT AREAS"; and

WHEREAS, two proposals were submitted by the City and County of Honolulu for possible inclusion in the 2023 HSAC Legislative Package, entitled:

"A BILL FOR AN ACT RELATING TO THE REGULATION OF TOBACCO PRODUCTS";

"A BILL FOR AN ACT RELATING TO TRAFFIC FINES"; and

WHEREAS, one proposal was submitted by the County of Hawaii for possible inclusion in the 2023 HSAC Legislative Package:

A resolution entitled "REQUESTING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR A PERMIT TO DISCHARGE POLLUTANTS THAT CONSIDER THE MAJOR FACTORS THAT ARE

**Resolution No. 22-257**

CONSIDERED IN IDENTIFYING THE FUNCTIONAL EQUIVALENT OF A DIRECT DISCHARGE FOR POINT SOURCES OR NON-POINT SOURCES”; and

WHEREAS, by correspondence dated October 28, 2022, attached as Exhibit “1,” HSAC President Mason Chock informed the Council of the five proposals approved by the HSAC Executive Committee for possible inclusion in the 2022 HSAC Legislative Package, subject to concurrence by all county councils; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it approves the following proposals, attached as Exhibit “1,” for inclusion in the 2023 Hawaii State Association of Counties Legislative Package:
  - A. “A BILL FOR AN ACT RELATING TO THE EMPLOYEES’ RETIREMENT SYSTEM”;
  - B. “A BILL FOR AN ACT RELATING TO SPECIAL MANAGEMENT AREAS”;
  - C. A resolution entitled “REQUESTING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR A PERMIT TO DISCHARGE POLLUTANTS THAT CONSIDER THE MAJOR FACTORS THAT ARE CONSIDERED IN IDENTIFYING THE FUNCTIONAL EQUIVALENT OF A DIRECT DISCHARGE FOR POINT SOURCES OR NON-POINT SOURCES”;
  - D. “A BILL FOR AN ACT RELATING TO THE REGULATION OF TOBACCO PRODUCTS”;
  - E. “A BILL FOR AN ACT RELATING TO TRAFFIC FINES”; and
2. That a certified copy of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

INTRODUCED BY:

  
TAMARA PALTIN

Hawai'i State Association of Counties (HSAC)  
Counties of Kaua'i, Maui, Hawai'i, and City & County of Honolulu  
Website: [hawaiicounties.org](http://hawaiicounties.org) | Email: [hsac@hawaiicounties.org](mailto:hsac@hawaiicounties.org)

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October 28, 2022

Aloha Chair,

Attached for your consideration are proposals to be included in the 2023 Hawai'i State Association of Counties (HSAC) Legislative Package, which were approved by the HSAC Executive Committee on October 25, 2022. Please note that pursuant to Section 13C of the Bylaws of the Hawai'i State Association of Counties, Inc., proposals must be approved by all four County Councils in order to be included in the final package.

2023 HSAC LEGISLATIVE PACKAGE

1. A Bill For An Act Relating to the Employees' Retirement System. *(Proposed by the County of Maui).*
2. A Bill For An Act Relating to Special Management Areas. *(Proposed by the County of Maui).*
3. A Resolution Requesting the Department of Health to Adopt Rules For a Permit to Discharge Pollutants that Consider the Major Factors That are Considered in Identifying the Functional Equivalent of A Direct Discharge for Point Sources or Non-Point Sources. *(Proposed by the County of Hawai'i).*
4. A Bill For An Act Relating to the Regulation of Tobacco Products. *(Proposed by the County of Hawai'i).*
5. A Bill For An Act Relating to Traffic Fines. *(Proposed by the County of Hawai'i).*



**Legislative Priorities:**

1. Legislation related to increasing the availability of affordable housing and infrastructure on lands administered by the Department of Hawaiian Homelands.
2. Legislation related to workforce development for both civil service and green job positions.
3. Legislation related to wastewater infrastructure funding and programs to assist in the conversion of cesspools.
4. Legislation that will increase the availability of mental health and substance abuse services.

Your attention to this matter is greatly appreciated. Should you have any questions please contact Nahelani Parsons, [hsac@hawaiicounties.org](mailto:hsac@hawaiicounties.org)

Mahalo,

Mason Chock  
HSAC President

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# A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1           SECTION 1. The legislature finds existing state law requires  
2 a police officer employed after June 30, 2012, to meet both age  
3 and years of service requirements for retirement. An officer hired  
4 after this date is required to have twenty-five years of service  
5 and have attained the age of fifty-five. According to a study by  
6 the National Center for Biotechnology Information, the years of  
7 potential life lost for police officers was twenty-one times  
8 greater than that of the general population. Police officers  
9 generally have shorter life expectancy due to stress, shift work,  
10 obesity, and exposure to hazardous work environments. The study  
11 also found that a male police officer who reached age fifty between  
12 1950 and 2005 was expected to live only 7.8 additional years, while  
13 a male in the general population of the United States that reached  
14 age fifty in the same time period was expected to live an  
15 additional thirty-five years. Further, male police officers aged  
16 fifty to fifty-four years had a nearly forty percent probability  
17 of death compared to a one percent probability for males in the  
18 general population in the same age category.

\_\_\_\_.B. NO. \_\_\_\_\_

1           The legislature further finds that, upon considering the  
2 results of this study, eliminating the minimum age requirement for  
3 police officers and maintaining the twenty-five years of service  
4 requirement may help to reduce the mortality rate risk factor for  
5 police officers. For example, an officer who joins the police  
6 department at age twenty would have the option to retire at forty-  
7 five, which would significantly reduce the possibility of health  
8 risk factors associated with police work. Additionally, Honolulu  
9 and Maui police departments have developed a lateral transfer  
10 program to attract former officers from Hawaii or elsewhere to  
11 transfer to Honolulu or Maui, but the retirement requirements of  
12 twenty-five years of service and minimum age of fifty-five  
13 discourage many qualified individuals from transferring.

14           The purpose of this Act is to provide an incentive to recruit  
15 and retain more police officers.

16           SECTION 2. Section 88-73, Hawaii Revised Statutes, is amended  
17 by amending subsection (a) to read as follows:

18           “(a) Any member who:

19                 1. Became a member before July 1, 2012, and has at least  
20                         five years of credited service and has attained age  
21                         fifty-five;

22                 2. Became a member before July 1, 2012, and has at least  
23                         twenty-five years of credited service;

.B. NO.                         

1           3. Has at least ten years of credited service, which  
2           includes service as a judge before July 1, 1999, an  
3           elective officer, or a legislative officer;

4           4. Becomes a member after June 30, 2012, and has at least  
5           ten years of credited service and has attained age  
6           sixty; or

7           5. Becomes a member after June 30, 2012, and has at least  
8           twenty-five years of credited service [~~and has~~  
9           ~~attained age fifty five~~], shall become eligible to  
10          receive a retirement allowance after the member has  
11          terminated service,

12 shall become eligible to receive a retirement allowance after the  
13 member has terminated service.”

14          SECTION 3. Corresponding amendments are made to Section 88-  
15 99, Hawaii Revised Statutes.

16          SECTION 4. Statutory material to be deleted is bracketed and  
17 in strikethrough.

18          SECTION 5. This Act shall take effect upon its approval.

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20    INTRODUCED BY: \_\_\_\_\_

21          great:misc:003(2)abil101:kmatt



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# A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREAS.

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

1           SECTION 1. The legislature finds that targeted amendments  
2 to the definition of "development" as it relates to special  
3 management areas will promote, not undercut, the environmental  
4 controls and quality that special management area regulations  
5 are intended to protect. Currently, the broad definition of  
6 "development" coupled with rising labor and materials costs can  
7 result in a special management area use permit review being  
8 required for improvements, facilities, and incidental structures  
9 that may not warrant such intense scrutiny and the associated  
10 costs and delays that go along with it.

11           The legislature further finds that exclusions from the  
12 special management area definition of "development" are  
13 desirable for the following activities:

14           (1) Installation, maintenance, repair, and replacement of  
15           public pedestrian and bicycle facilities to reduce  
16           reliance on vehicles;

17           (2) Trash removal, invasive vegetation removal or control,  
18           and fencing for invasive species control or

\_\_\_\_.B. NO. \_\_\_\_\_

1           preservation of native habitats to improve the quality  
2           of the environment;

3           (3) Installation, maintenance, repair, and replacement of  
4           lighting, fixtures, and equipment to comply with  
5           standards at public facilities, including health and  
6           safety standards, to protect native seabird  
7           populations and reduce light pollution; and

8           (4) Installation, maintenance, repair, and replacement of  
9           security measures for existing public facilities.

10          The purpose of this Act is to expand exclusions to the  
11         definition of "development" in chapter 205A, Hawaii Revised  
12         Statutes, to reduce the need for special management area permits  
13         for certain activities.

14          SECTION 2. Section 205A-22, Hawaii Revised Statutes, is  
15         amended by amending the definition of "development" to read as  
16         follows:

17          "Development" ~~[means]~~ is:

18          (1) Means any of the uses, activities, or operations on  
19                 land or in or under water within a special management  
20                 area that are included below:

21                 ~~[(1)]~~ (A) Placement or erection of any solid material  
22                         or any gaseous, liquid, solid, or thermal waste;

\_\_\_\_.B. NO. \_\_\_\_\_

1            ~~[(2)]~~ (B) Grading, removing, dredging, mining, or  
2            extraction of any materials;

3            ~~[(3)]~~ (C) Change in the density or intensity of use of  
4            land, including but not limited to the division or  
5            subdivision of land;

6            ~~[(4)]~~ (D) Change in the intensity of use of water,  
7            ecology related thereto, or of access thereto; and

8            ~~[(5)]~~ (E) Construction, reconstruction, or alteration  
9            of the size of any structure.

10          [~~"Development" does~~] (2) Does not include the following:

11            ~~[(1)]~~ (A) Construction or reconstruction of a single-  
12            family residence that is less than [~~seven thousand~~  
13            ~~five hundred~~] five thousand square feet of floor  
14            area [~~7~~]; is not situated on a shoreline parcel or a  
15            parcel that is impacted by waves, storm surges, high  
16            tide, or shoreline erosion[~~7~~]; and is not part of a  
17            larger development;

18            ~~[(2)]~~ (B) Repair or maintenance of roads and highways  
19            within existing rights-of-way;

20            ~~[(3)]~~ (C) Routine maintenance dredging of existing  
21            streams, channels, and drainage ways;

\_\_\_\_.B. NO. \_\_\_\_\_

- 1           ~~[(4)]~~ (D) Repair and maintenance of underground
- 2           utility lines, including but not limited to water,
- 3           sewer, power, and telephone and minor appurtenant
- 4           structures such as pad mounted transformers and
- 5           sewer pump stations;
- 6           ~~[(5)]~~ (E) Zoning variances, except for height,
- 7           density, parking, and shoreline setback;
- 8           ~~[(6)]~~ (F) Repair, maintenance, or interior alterations
- 9           to existing structures;
- 10          ~~[(7)]~~ (G) Demolition or removal of structures, except
- 11          those structures located on any historic site as
- 12          designated in national or state registers;
- 13          ~~[(8)]~~ (H) Use of any land for the purpose of
- 14          cultivating, planting, growing, and harvesting
- 15          plants, crops, trees, and other agricultural,
- 16          horticultural, or forestry products or animal
- 17          husbandry, or aquaculture or mariculture of plants
- 18          or animals, or other agricultural purposes~~[7]~~;
- 19          including all traditional fishpond and traditional
- 20          agricultural practices;
- 21          ~~[(9)]~~ (I) Transfer of title to land;

\_\_\_\_.B. NO. \_\_\_\_\_

- 1            ~~[(10)]~~ (J) Creation or termination of easements,  
2            covenants, or other rights in structures or land;
- 3            ~~[(11)]~~ (K) Subdivision of land into lots greater than  
4            twenty acres in size;
- 5            ~~[(12)]~~ (L) Subdivision of a parcel of land into four  
6            or fewer parcels when no associated construction  
7            activities are proposed; provided that any land that  
8            is so subdivided shall not thereafter qualify for  
9            this exception with respect to any subsequent  
10           subdivision of any of the resulting parcels;
- 11           ~~[(13)]~~ (M) Installation of underground utility lines  
12           and appurtenant aboveground fixtures less than four  
13           feet in height along existing corridors;
- 14           ~~[(14)]~~ (N) Structural and nonstructural improvements  
15           to existing single-family residences, where  
16           otherwise permissible;
- 17           ~~[(15)]~~ (O) Nonstructural improvements to existing  
18           commercial or noncommercial structures; ~~[and]~~
- 19           ~~[(16)]~~ (P) Construction, installation, maintenance,  
20           repair, and replacement of emergency management  
21           warning or signal devices and sirens;

\_\_\_\_.B. NO. \_\_\_\_\_

- 1           (Q) Installation, maintenance, repair, and replacement
- 2           of public pedestrian and bicycle facilities,
- 3           including sidewalks, paths, bikeways, crosswalks,
- 4           stairs, ramps, traffic control barriers, signs,
- 5           signals, and associated improvements;
- 6           (R) Trash removal or invasive vegetation removal or
- 7           control, excluding the use of herbicides;
- 8           (S) Installation of fencing, including associated
- 9           improvements and incidental structures, for invasive
- 10           species control or preservation of native habitats
- 11           on conservation land;
- 12           (T) Installation, maintenance, repair, and replacement
- 13           of lighting, fixtures, and equipment to establish
- 14           compliance with current standards at existing public
- 15           facilities;
- 16           (U) Installation, maintenance, repair, and replacement
- 17           of security measures, including fencing, to existing
- 18           public facilities; and
- 19           (V) Traditional and customary practices, including
- 20           work conducted by traditional means near, in, or
- 21           related to loko i'a, traditional Hawaiian fishponds;

\_\_\_\_.B. NO. \_\_\_\_\_

1 provided that whenever the authority finds that any excluded  
2 use, activity, or operation may have a cumulative impact, or a  
3 significant environmental or ecological effect on a special  
4 management area, that use, activity, or operation shall be  
5 defined as "development" for the purpose of this part."

6 SECTION 3. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 4. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.

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13 INTRODUCED BY: \_\_\_\_\_

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15 paf:lma:22-208e

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**HOUSE CONCURRENT  
RESOLUTION**

REQUESTING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR A PERMIT TO DISCHARGE POLLUTANTS THAT CONSIDER THE MAJOR FACTORS THAT ARE CONSIDERED IN IDENTIFYING THE FUNCTIONAL EQUIVALENT OF A DIRECT DISCHARGE FOR POINT SOURCES OR NON-POINT SOURCES.

1           WHEREAS, the Clean Water Act was enacted to regulate  
2 pollution from point sources into surface waters by requiring a  
3 permit through the National Pollutant Discharge System (NPDES);  
4 that limits the pollutants that may be emitted by a point source  
5 and the treatment steps that are necessary to limit those  
6 pollutants; and

7  
8           WHEREAS, the U.S. Supreme Court held that the Clean Water  
9 Act requires a permit when pollutants originating from a non-  
10 point source can be conclusively traced to navigable waters via  
11 the "functional equivalent of a direct discharge"; and

12  
13           WHEREAS, determining "functional equivalent" is complicated  
14 by factors such as:

- 15           (1) Time and distance a pollutant travels;  
16           (2) The nature of the material through which the pollutant  
17           travels;  
18           (3) The extent to which the concentration of the pollutant  
19           changes as it travels; and

20  
21           WHEREAS, the Court elaborated that functional equivalent  
22 permitting determinations should preserve the authority of  
23 states to regulate groundwater and other non-point sources of  
24 pollution; and

25  
26           WHEREAS, the department of health is responsible for  
27 proposing rules defining "functional equivalent" relating to the  
28 discharge of pollutants that require a National Pollution  
29 Discharge Elimination System (NPDES) permit; now, therefore

30



1           BE IT RESOLVED by the House of Representatives of the  
2 Thirty-second Legislature of the State of Hawaii, Regular  
3 Session of 2023, the Senate concurring, that the Department of  
4 Health use the ruling of the U.S. Supreme Court in *County of*  
5 *Maui v. Hawaii Wildlife Fund* and guidelines established by the  
6 Environmental Protection Agency to adopt rules for a permit to  
7 discharge that include the major factors that are considered in  
8 identifying, for point sources or non-point sources, "the  
9 functional equivalent of a direct discharge; and

10

11           BE IT FURTHER RESOLVED that the Department of Health shall  
12 submit a report of findings and recommendations and draft rules  
13 relating to the requirement of a NPDES permit under the Clean  
14 Water Act for the discharge of point sources and non-point  
15 sources into navigable waters to the Legislature twenty days  
16 prior to the convening of the Regular Session of 2024; and

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18           BE IT FURTHER RESOLVED that a certified copy of this  
19 concurrent resolution be transmitted to the Director of Health.

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OFFERED BY: \_\_\_\_\_

REVISED:  
1ST DRAFT DATE:

\_\_\_ .B. NO. \_\_\_

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## A BILL FOR AN ACT

RELATING TO THE REGULATION OF TOBACCO PRODUCTS.

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

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SECTION 1. The legislature finds that tobacco use remains the leading cause of preventable death in the United States and in Hawaii. Recent years have brought a precipitous increase in consumer sales of electronic smoking devices, sometimes called "vapes", and one inhalation of these products can contain many times more nicotine than a conventional cigarette. Electronic smoking devices have played a major role in increased rates of youth nicotine addiction, which had been previously on the decline.

This increased youth tobacco prompted Hawaii to adopt laws to increase the smoking age to 21 years old, and treat electronic cigarettes in the same manner as the state treats conventional cigarettes for purposes of clean indoor air laws. The state and the County of Hawaii, County of Maui, and City and County of Honolulu have also adopted policies to ban smoking - including electronic cigarette use - at state and county beaches and parks.

In 2018, in order to ensure uniform regulations on tobacco sales, the legislature passed Act 206, which, in part, declared the sale of cigarettes, tobacco products, and electronic smoking devices a matter of statewide concern, and nullified any existing local ordinances or policies that restricted the sale of these products. However, the legislature finds that since the Act's passage, youth tobacco use has continued to increase to epidemic levels. According to the 2019 Hawaii Youth Risk Behavior Survey, thirty-one per cent of middle school students

30 and forty-eight per cent of public high school students had  
31 tried electronic smoking devices. The 2019 Hawaii Youth Risk  
32 Behavior Survey also indicates that eighteen per cent of middle  
33 school students and thirty-one per cent of high school students  
34 currently vape.

35

36 The legislature further finds that in order to end this youth  
37 vaping epidemic, the state must work in concert with youth,  
38 parents, and educational institutions, and laws must be changed  
39 at all levels of government to establish reasonable restrictions  
40 on the sale of and access to these addictive products.

41

42 Accordingly, the purpose of this Act is to reauthorize the  
43 counties to enact restrictions of the sales of tobacco products,  
44 including electronic smoking devices, by inserting a sunset date  
45 into Act 206, Session Laws of Hawaii 2018.

46

47

48 SECTION 2. Section §328J-11.5, Hawaii Revised Statutes, is  
49 repealed.

50

51 ~~[Statewide concern. (a) Sales of cigarettes, tobacco products,~~  
52 ~~and electronic smoking devices are a statewide concern. It is~~  
53 ~~the intent of the legislature to regulate the sale of~~  
54 ~~cigarettes, tobacco products, and electronic smoking devices in~~  
55 ~~a uniform and exclusive manner.~~

56

57 ~~———— (b) All local ordinances or regulations that regulate~~  
58 ~~the sale of cigarettes, tobacco products, and electronic smoking~~  
59 ~~devices are preempted, and existing local laws and regulations~~  
60 ~~conflicting with this chapter are null and void.~~

61

62 ~~———— (c) Nothing in this chapter shall be construed to~~  
63 ~~limit a county's authority under section 328J-15.]~~

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65 SECTION 3. Statutory material to be repealed is bracketed and  
66 stricken.

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68 SECTION 4. This Act shall take effect upon approval.

REVISED:  
1ST DRAFT DATE:

\_\_\_ .B. NO. \_\_\_

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# A BILL FOR AN ACT

RELATING TO TRAFFIC FINES.

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

1 SECTION 1. Many of poplar scenic areas draw thousands of  
2 visitors that over-burden state and county roads and highways  
3 and contribute to illegal parking that cause traffic gridlock  
4 and complaints from local communities.

5 In 2019, Act 250 established the State highway enforcement  
6 program, which added a surcharge for illegal parking violations.  
7 The act provided that fifty-percent of the surcharge be  
8 distributed to county police departments who are vital to the  
9 enforcement of parking violations, but have limited resources.

10 The purpose of this Act is to clarify that the counties may  
11 by ordinance designate county highways where the stopping,  
12 standing, or parking of vehicles are restricted or prohibited.

13 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
14 by adding a new section to be appropriately designated and to  
15 read as follows:

16 "46- Prohibition or restriction of stopping, standing, or  
17 parking of vehicles on county highways. Each county may by  
18 ordinance prohibit or restrict the stopping, standing, or

\_\_\_\_.B. NO.\_\_\_\_

1 parking of vehicles by designating specific sections of county  
2 highways subject to violations under section 291C-111. The  
3 county shall submit notice with a copy of the ordinance to the  
4 judiciary of passage of the ordinance."

5 SECTION 3. Section 291C-111, Hawaii Revised Statutes, is  
6 amended by amending subsection (c) to read as follows:

7 "(c) Any person committing a violation of any law or  
8 ordinance prohibiting or restricting the stopping, standing, or  
9 parking of vehicles on state highways or designated county  
10 highway shall be charged, in addition to any other applicable  
11 penalties and fines, a state highway enforcement program  
12 surcharge of \$200 to be enforced and collected by the district  
13 courts and to be deposited into the state highway fund; provided  
14 that fifty per cent of each surcharge collected shall be  
15 disbursed to the police department of the county in which the  
16 violation occurred."

17 SECTION 4. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2023.

19 INTRODUCED BY: \_\_\_\_\_

20 BY REQUEST

21

\_\_\_\_.B. NO.\_\_\_\_

**Report Title:**

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**Description:**

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