

**COUNCIL OF THE COUNTY OF MAUI**

**POLICY, ECONOMIC DEVELOPMENT,  
AND AGRICULTURE COMMITTEE**

November 2, 2018

**Committee  
Report No. \_\_\_\_\_**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy, Economic Development, and Agriculture Committee, having met on October 15, 2018, makes reference to County Communication 17-9, from Council Chair Mike White, relating to the Maui County Legislative Package.

Your Committee notes each year the Council may compile a package of proposals and priorities to be presented to the State Legislature.

Your Committee has received four proposals for inclusion in the 2019 Maui County Legislative Package, including State bills to: 1) repeal and amend provisions relating to the preemption of local laws or ordinances that regulate the sale of cigarettes, tobacco products, and electronic smoking devices; 2) allocate an additional \$14,280,000 in transient accommodation tax revenues to Maui County, increasing the County's share to \$38.3 million, provided the additional monies shall be expended on projects authorized under the County's general plan, development plan, or tourism strategic plan; 3) define the burial sites of pre-contact Native Hawaiians as cemeteries and allow these sites to be dedicated as cemeteries under State law; and 4) conduct a comprehensive financial audit of the Department of Education using State general funds.

Proposal relating to County Authority on the Sale or Use of Tobacco Products

By correspondence dated September 21, 2018, Committee Chair Yuki Lei Sugimura transmitted a proposed resolution entitled "APPROVING FOR INCLUSION IN THE 2019 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO ADOPT AND ENFORCE ADDITIONAL LOCAL

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LAWS REGULATING THE SALE OR USE OF CIGARETTES, TOBACCO PRODUCTS, AND ELECTRONIC SMOKING DEVICES.” The purpose of the proposed resolution is to approve for inclusion in the 2019 Maui County Legislative Package a proposed State bill, entitled “A BILL FOR AN ACT RELATING TO COUNTY AUTHORITY ON THE SALE OF TOBACCO PRODUCTS.” The purpose of the proposed State bill is to repeal and amend provisions in State law relating to the preemption of local laws or ordinances that regulate the sale of cigarettes, tobacco products, and electronic smoking devices.

Your Committee discussed a similar State bill being proposed for inclusion in the 2019 Hawaii State Association of Counties (“HSAC”) Legislative Package. Your Committee felt that having proposals included in both the HSAC and the Maui County Legislative Packages would be beneficial to the County.

Your Committee voted 7-0 to recommend adoption of the proposed resolution. Committee Chair Sugimura, Vice-Chair Crivello, and members Atay, Carroll, Guzman, Hokama, and King voted “aye.” Committee members Cochran and White were excused.

Proposal relating to Transient Accommodations Tax (“TAT”) Revenues

By correspondence dated September 21, 2018, Committee Chair Yuki Lei Sugimura transmitted a proposed resolution entitled “APPROVING FOR INCLUSION IN THE 2019 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO ALLOCATE ADDITIONAL TRANSIENT ACCOMMODATION TAX REVENUES TO MAUI COUNTY.” The purpose of the proposed resolution is to approve for inclusion in the 2019 Maui County Legislative Package a proposed State bill, entitled “A BILL FOR AN ACT RELATING TO TAXATION.” The purpose of the proposed State bill is to allocate an additional \$14,820,000 in TAT revenues to Maui County, increasing the County’s share to \$38.3 million, provided the additional monies shall be expended on projects authorized under the County’s general plan, development plan, or tourism strategic plan.

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Your Committee noted the counties receive \$103 million of the approximately \$450 million generated in TAT revenues annually, but only 22.8 percent of the \$103 million is returned to Maui County.

Your Committee further noted neighbor-island counties have continually had to press the State Legislature for a more equitable share of TAT over the years, despite a State-County Functions Working Group tasked by the State Legislature in 2015, recommending a 55-45 split of TAT revenues between the State and counties.

Your Committee notes that while TAT revenues to the counties have remained the same, the cost to maintain county services has increased dramatically due to the influx of visitors to our islands.

Your Committee further notes TAT revenues are used to pay for operational costs for visitor-related expenses maintained by the county such as police, fire, and ocean safety protection; development and upkeep of most roads; and park development and maintenance.

Your Committee discussed how language which limits the County's ability to use TAT funds should be removed from the proposed State bill. Your Committee decided to revise the proposed resolution that limits the County's ability to use TAT funds.

Your Committee voted 7-0 to recommend adoption of the revised proposed resolution. Committee Chair Sugimura, Vice-Chair Crivello, and members Atay, Carroll, Guzman, Hokama, and King voted "aye." Committee members Cochran and White were excused.

Your Committee is in receipt of a revised proposed resolution, incorporating your Committee's recommended revisions to the State bill to remove language limiting the County's use of TAT funds on projects authorized under the County's general plan, development plan, or tourism strategic plan.

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Proposal relating to Native Hawaiian Burial Sites

By correspondence dated September 21, 2018, Councilmember Alika Atay transmitted a proposed resolution entitled "APPROVING FOR INCLUSION IN THE 2019 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO ALLOW PRE-CONTACT NATIVE HAWAIIAN BURIAL SITES TO BE DEDICATED AS CEMETERIES." The purpose of the proposed resolution is to approve for inclusion in the 2019 Maui County Legislative Package a proposed State bill entitled "A BILL FOR AN ACT RELATING TO CEMETERIES." The purpose of the proposed State bill is to define the burial sites of pre-contact Native Hawaiians as cemeteries and to allow these sites to be dedicated as cemeteries under State law.

Your Committee deferred the item pending further discussion.

Proposal relating to Audit of the Department of Education

By correspondence dated September 21, 2018, Councilmember Alika Atay transmitted a proposed resolution entitled "APPROVING FOR INCLUSION IN THE 2019 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL REQUIRING THE STATE AUDITOR TO CONDUCT A COMPREHENSIVE AUDIT OF THE DEPARTMENT OF EDUCATION." The purpose of the proposed resolution is to approve for inclusion in the 2019 Maui County Legislative Package a proposed State bill entitled "A BILL FOR AN ACT RELATING TO EDUCATION." The purpose of the proposed State bill is to conduct a comprehensive financial audit of the Department of Education using State general funds.

Your Committee deferred the item pending further discussion.

Your Policy, Economic Development, and Agriculture Committee RECOMMENDS the following:

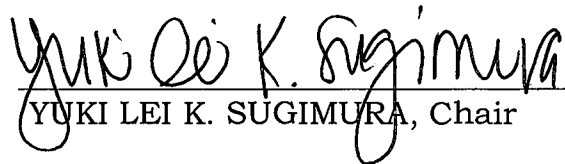
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1. That Resolution \_\_\_\_\_, attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2019 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO ADOPT AND ENFORCE ADDITIONAL LOCAL LAWS REGULATING THE SALE OR USE OF CIGARETTES, TOBACCO PRODUCTS, AND ELECTRONIC SMOKING DEVICES," be ADOPTED; and
  
2. That Resolution \_\_\_\_\_, attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2019 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO ALLOCATE ADDITIONAL TRANSIENT ACCOMMODATION TAX REVENUES TO MAUI COUNTY," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
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YUKI LEI K. SUGIMURA, Chair

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# Resolution

No. \_\_\_\_\_

APPROVING FOR INCLUSION IN THE  
2019 MAUI COUNTY LEGISLATIVE PACKAGE  
A STATE BILL TO ADOPT AND ENFORCE  
ADDITIONAL LOCAL LAWS REGULATING THE  
SALE OR USE OF CIGARETTES, TOBACCO  
PRODUCTS, AND ELECTRONIC SMOKING  
DEVICES

WHEREAS, tobacco use continues to be a public health problem in Hawaii, causing approximately 1,400 deaths per year among adults and costing approximately \$526 million in direct healthcare expenditures and \$387 million in lost productivity in the state; and

WHEREAS, the state has enacted many tobacco-control policies including clean air ordinances and raising the age of sale of tobacco products from 18 to 21; and

WHEREAS, many of these initiatives were county-led, and later adopted at the state level, extending these protections statewide and saving the state \$1 billion in healthcare costs over 10 years; and

WHEREAS, solutions addressed at the county level enable legislation tailored to a county's unique needs and provides a targeted approach to reduce health disparities; now, therefore,

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

1. That the proposed State bill, attached as Exhibit "A," to adopt and enforce additional local laws regulating the sale or use of cigarettes, tobacco products, and electronic smoking devices, is approved for inclusion in the 2019 Maui County Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Governor of the State of Hawaii; the President of the State Senate; the Speaker of the State House of Representatives; the County's delegation to the State Legislature; the Mayor of the County of Maui; and the Corporation Counsel.

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# A BILL FOR AN ACT

RELATING TO COUNTY AUTHORITY ON THE SALE OF TOBACCO PRODUCTS

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

1           SECTION 1. The legislature finds that tobacco use  
2 continues to be a public health problem in Hawaii, causing  
3 approximately 1,400 deaths per year among adults and costs  
4 approximately \$526,000,000 in direct health care expenditures  
5 and \$387,300,000 in lost productivity in the State. In response  
6 to the heavy burden of tobacco, Hawaii has enacted many tobacco  
7 control policies including clean indoor air ordinances and  
8 raising the age of sale of tobacco products from 18 to 21. Many  
9 of these initiatives were led by the counties and were later  
10 adopted at the state level, extending these protections  
11 statewide and ultimately saving the state \$1 billion in  
12 healthcare costs over 10 years.

13           The legislature further finds that different communities  
14 need different solutions, which are most effectively addressed  
15 at the local level, as local governments are best able to  
16 respond to the needs of the people who live and work there.

17           The legislature additionally finds that while it is  
18 important to establish minimum protections statewide, local

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

1 level policies are integral to tobacco control because they  
2 enable a targeted approach to reduce health disparities. The  
3 2017 Youth Risk Behavior Survey found that while 25.3% of high  
4 school students in Hawaii currently vape, both Maui and Hawaii  
5 County exceed this, with rates of 31.8% and 32.4% respectively.

6 The legislature understands that for public health,  
7 communities should not be prevented from working with their  
8 local elected officials to pass laws tailored to their unique  
9 needs. Reversing existing laws or preventing future enactment of  
10 such laws negates the value of home rule.

11 The legislature finds that an enabling clause to explicitly  
12 allow local jurisdictions to pass ordinances that are more  
13 stringent than state law was enacted by the legislature in 2006  
14 under HRS §328J-15, "County Ordinances." The legislature  
15 additionally finds that over the years, communities have adopted  
16 and put into action some of the strongest, most innovative, and  
17 effective tobacco control policies that have served as catalysts  
18 for changing social norms about tobacco use. These policies  
19 discourage young people from initiating use and encourage adult  
20 tobacco users to quit. A national Healthy People 2020 objective  
21 calls to eliminate state laws that preempt stronger local  
22 tobacco control laws.



**B. NO.**           

1           The purpose of this act is to repeal and amend provisions  
2 relating to the preemption of local laws or ordinances that  
3 regulate the sale of cigarettes, tobacco products, and  
4 electronic smoking devices.

5           SECTION 2. Section 328J-XX, Hawaii Revised Statutes, is  
6 repealed:

7           ~~["§328J— Statewide concern. (a) Sales of cigarettes,~~  
8 ~~tobacco products, and electronic smoking devices are a statewide~~  
9 ~~concern. It is the intent of the legislature to regulate the~~  
10 ~~sale of cigarettes, tobacco products, and electronic smoking~~  
11 ~~devices in a uniform and exclusive manner.~~  
12 ~~— (b) All local ordinances or regulations that regulate the~~  
13 ~~sale of cigarettes, tobacco products, and electronic smoking~~  
14 ~~devices are preempted, and existing local laws and regulations~~  
15 ~~conflicting with this chapter are null and void.~~  
16 ~~— (c) Nothing in this chapter shall be construed to limit a~~  
17 ~~county's authority under section 328J-15."]~~

18           SECTION 3. Section 328J-15, Hawaii Revised Statutes, is  
19 amended to read as follows:

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

21           "**§328J-15 County ordinances.** (a) Nothing in this chapter  
22 shall be construed to supersede or in any manner limit or

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

1 prohibit a county smoking ordinance or the ability of any county  
2 to adopt and enforce additional local laws or ordinances that  
3 regulate the sale or use of cigarettes, tobacco products, and  
4 electronic smoking devices; provided that the local law or  
5 ordinance is at least as protective of public health as this  
6 chapter."

7 (b) Nothing in this chapter shall prohibit a county  
8 from enacting ordinances more stringent than this chapter.

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.

# Resolution

No. \_\_\_\_\_

APPROVING FOR INCLUSION IN THE  
2019 MAUI COUNTY LEGISLATIVE PACKAGE  
A STATE BILL TO ALLOCATE ADDITIONAL  
TRANSIENT ACCOMMODATION TAX  
REVENUES TO MAUI COUNTY

WHEREAS, the intent of the Transient Accommodation Tax (TAT), or “hotel tax,” was to help counties deal with costs to pay for visitor-related expenses such as police, firefighters, parks, and other infrastructure impacted by tourists; and

WHEREAS, the amount of TAT received by each county was capped during the Great Recession with the intent to return to the original formula once the economy stabilized; and

WHEREAS, the cap on the counties’ share of TAT and the growth of visitors mean visitor-related expenses, which have gone up by more than \$260 million from fiscal years 2007 to 2017, must now be covered by residents; and

WHEREAS, the counties collectively share \$103 million of the approximately \$450 million collected in TAT each year as follows: Kauai County, 14.5 percent; Hawaii County, 18.6 percent; City and County of Honolulu, 44.1 percent; and Maui County, 22.8 percent; and

WHEREAS, for years, neighbor-island counties have continually pressed the State Legislature for a more equitable share of TAT revenues generated; and

WHEREAS, the proposed bill would provide an additional \$14,820,000 in TAT revenue to Maui County, increasing the county’s share to \$38.3 million, and is a step closer to an amount which should rightfully be returned to the County; now, therefore,

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

1. That the proposed State bill, attached as Exhibit “A,” to allocate additional TAT revenues to Maui County, is approved for inclusion in the 2019 Maui County Legislative Package; and

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2. That certified copies of this Resolution be transmitted to the Governor of the State of Hawaii; the President of the State Senate; the Speaker of the State House of Representatives; the County's delegation to the State Legislature; the Mayor of the County of Maui; and the Corporation Counsel.

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**A BILL FOR AN ACT**

RELATING TO TAXATION

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

1 SECTION 1. Section 237D-6.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) Except for the revenues collected pursuant to section  
4 237D-2(e), revenues collected under this chapter shall be  
5 distributed in the following priority, with the excess revenues  
6 to be deposited into the general fund:

7 (1) \$1,500,000 shall be allocated to the Turtle Bay  
8 conservation easement special fund beginning July 1,  
9 2015, for the reimbursement to the state general fund  
10 of debt service on reimbursable general obligation  
11 bonds, including ongoing expenses related to the  
12 issuance of the bonds, the proceeds of which were used  
13 to acquire the conservation easement and other real  
14 property interests in Turtle Bay, Oahu, for the  
15 protection, preservation, and enhancement of natural  
16 resources important to the State, until the bonds are  
17 fully amortized;

**EXHIBIT "A"**

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

- 1           (2)   \$26,500,000 shall be allocated to the convention
- 2                   center enterprise special fund established under
- 3                   section 201B-8;
- 4           (3)   \$82,000,000 shall be allocated to the tourism special
- 5                   fund established under section 201B-11; provided that:
- 6                   (A)   Beginning on July 1, 2012, and ending on June 30,
- 7                               2015, \$2,000,000 shall be expended from the
- 8                               tourism special fund for development and
- 9                               implementation of initiatives to take advantage
- 10                              of expanded visa programs and increased travel
- 11                              opportunities for international visitors to
- 12                              Hawaii;
- 13                   (B)   Of the \$82,000,000 allocated:
- 14                              (i)   \$1,000,000 shall be allocated for the
- 15                                      operation of a Hawaiian center and the
- 16                                      museum of Hawaiian music and dance at the
- 17                                      Hawaii convention center; and
- 18                              (ii)  0.5 per cent of the \$82,000,000 shall be
- 19                                      transferred to a sub-account in the tourism
- 20                                      special fund to provide funding for a safety
- 21                                      and security budget, in accordance with the
- 22                                      Hawaii tourism strategic plan 2005-2015; and

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

1 (C) Of the revenues remaining in the tourism special  
2 fund after revenues have been deposited as  
3 provided in this paragraph and except for any sum  
4 authorized by the legislature for expenditure  
5 from revenues subject to this paragraph,  
6 beginning July 1, 2007, funds shall be deposited  
7 into the tourism emergency special fund,  
8 established in section 201B-10, in a manner  
9 sufficient to maintain a fund balance of  
10 \$5,000,000 in the tourism emergency special fund;

11 (4) \$103,000,000 shall be allocated as follows: Kauai  
12 county shall receive 14.5 per cent, Hawaii county  
13 shall receive 18.6 per cent, city and county of  
14 Honolulu shall receive 44.1 per cent, and Maui county  
15 shall receive 22.8 per cent; provided that commencing  
16 with fiscal year 2018-2019, a sum that represents the  
17 difference between a county public employer's annual  
18 required contribution for the separate trust fund  
19 established under section 87A-42 and the amount of the  
20 county public employer's contributions into that trust  
21 fund shall be retained by the state director of  
22 finance and deposited to the credit of the county

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

1 public employer's annual required contribution into  
2 that trust fund in each fiscal year, as provided in  
3 section 87A-42, if the respective county fails to  
4 remit the total amount of the county's required annual  
5 contributions, as required under section 87A-43; [~~and~~]  
6 (5) \$3,000,000 shall be allocated to the special land and  
7 development fund established under section 171-19;  
8 provided that the allocation shall be expended in  
9 accordance with the Hawaii tourism authority strategic  
10 plan for:  
11 (A) The protection, preservation, maintenance, and  
12 enhancement of natural resources, including  
13 beaches, important to the visitor industry;  
14 (B) Planning, construction, and repair of facilities;  
15 and  
16 (C) Operation and maintenance costs of public lands,  
17 including beaches, connected with enhancing the  
18 visitor experience[~~-~~]; and  
19 (6) Beginning July 1, 2018, and ending December 31, 2030,  
20 in addition to any amounts allocated pursuant to  
21 paragraph (4), the following amounts shall be  
22 allocated to the counties of Kauai, Hawaii, and Maui:



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

1           (A) The county of Kauai shall receive \$9,425,000;

2           (B) The county of Hawaii shall receive \$12,090,000;

3           and

4           (C) The county of Maui shall receive \$14,820,000.

5           All transient accommodations taxes shall be paid into the  
6 state treasury each month within ten days after collection and  
7 shall be kept by the state director of finance in special  
8 accounts for distribution as provided in this subsection.

9           As used in this subsection, "fiscal year" means the twelve-  
10 month period beginning on July 1 of a calendar year and ending  
11 on June 30 of the following calendar year."

12           SECTION 2. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14           SECTION 3. This Act shall take effect upon its approval;  
15 provided that this Act shall be repealed on December 31, 2030,  
16 and section 237D-6.5(b), Hawaii Revised Statutes, shall be  
17 reenacted in the form in which it read on the day prior to the  
18 effective date of this Act.