

August 14, 2020

MEMO TO: GET-3(2) File

F R O M: Alice L. Lee, Council Chair

A handwritten signature in black ink, appearing to read "Alice L. Lee", followed by a small "R" or "K" mark.

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
2021 HAWAII STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE** (PAF 19-314)

The attached legislative proposal pertains to Item 3(2) on the Committee's agenda.

paf:ans:19-314b

Attachment

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2021 HAWAII
STATE ASSOCIATION OF COUNTIES LEGISLATIVE
PACKAGE A STATE BILL TO ALLOW MAUI COUNTY TO
ESTABLISH A GENERAL EXCISE TAX SURCHARGE

WHEREAS, Maui County was authorized to establish a General Excise Tax surcharge up until March 31, 2019; and

WHEREAS, extending the deadline would allow Maui County to establish the surcharge; and

WHEREAS, Maui County is the only county in the State that is not receiving the benefits of a General Excise Tax surcharge; and

WHEREAS, the surcharge would provide much-needed diversification in Maui County's ability to generate revenue, while limiting the burden on residents subject to the Real Property Tax; and

WHEREAS, the funds derived from the surcharge would allow for a greater investment in infrastructure, affordable housing, transportation, and other countywide priorities; and

WHEREAS, these funds will be even more necessary in light of the negative economic impacts of the COVID-19 pandemic; and

WHEREAS, enabling legislation has already been introduced to the Council and is pending before the Economic, Development and Budget Committee; now, therefore,

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

1. That the proposed State bill, attached as Exhibit "A," to allow Maui County to establish a General Excise Tax surcharge, is approved for inclusion in the 2021 Hawaii State Association of Counties Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 46-16.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§46-16.8 County surcharge on state tax.**

4 (a) Each county may establish a surcharge on state tax at
5 the rates enumerated in sections 237-8.6 and 238-2.6. A county
6 electing to establish this surcharge shall do so by ordinance;
7 provided that:

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

10 (2) The ordinance shall be adopted prior to December
11 31, 2005; and

12 (3) No county surcharge on state tax that may be
13 authorized under this subsection shall be levied prior to
14 January 1, 2007, or after December 31, 2022, unless
15 extended pursuant to subsection (b).

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

20 A county electing to exercise the authority granted under
21 this subsection shall notify the director of taxation within ten
22 days after the county has adopted a surcharge on state tax
23 ordinance and, beginning no earlier than January 1, 2007, the
24 director of taxation shall levy, assess, collect, and otherwise
25 administer the county surcharge on state tax.

26 (b) Each county that has established a surcharge on state
27 tax prior to July 1, 2015, under authority of subsection (a) may
28 extend the surcharge until December 31, 2030, at the same rates.
29 A county electing to extend this surcharge shall do so by
30 ordinance; provided that:

31 (1) No ordinance shall be adopted until the county
32 has conducted a public hearing on the proposed ordinance;
33 and

____.B. NO. _____

1 (2) The ordinance shall be adopted prior to January 1,
2 2018.

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 an ordinance extending the
6 surcharge on state tax. The director of taxation shall levy,
7 assess, collect, and otherwise administer the extended surcharge
8 on state tax.

9 (c) Each county that has not established a surcharge on
10 state tax prior to July 1, 2015, may establish the surcharge at
11 the rates enumerated in sections 237-8.6 and 238-2.6. A county
12 electing to establish this surcharge shall do so by ordinance;
13 provided that:

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

16 (2) The ordinance shall be adopted prior to ~~March~~
17 ~~31, 2019~~ June 30, 2021; and

18 (3) No county surcharge on state tax that may be
19 authorized under this subsection shall be levied prior to
20 January 1, 2019, or after December 31, 2030.

21 A county electing to exercise the authority granted under
22 this subsection shall notify the director of taxation within ten
23 days after the county has adopted a surcharge on state tax
24 ordinance. Beginning ~~[on]~~ no earlier than January 1, 2019, ~~[on~~
25 ~~January 1, 2020,~~] as applicable pursuant to sections 237-8.6 and
26 238-2.6, the director of taxation shall levy, assess, collect,
27 and otherwise administer the county surcharge on state tax.

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

34 (e) Each county with a population greater than five
35 hundred thousand that adopts or extends a county surcharge on
36 state tax ordinance pursuant to subsection (a) or (b) shall use
37 the surcharge revenues received from the State for capital costs
38 of a locally preferred alternative for a mass transit project;
39 provided that revenues derived from the county surcharge on
40 state tax shall not be used:

41 (1) To build or repair public roads or highways,
42 bicycle paths, or support public transportation systems
43 already in existence prior to July 12, 2005;

____.B. NO. _____

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

(3) For administrative or operating, marketing, or maintenance costs, including personnel costs, of a rapid transportation authority charged with the responsibility for constructing, operating, or maintaining the mass transit project; provided further that nothing in this section shall be construed to prohibit a county from using county funds that are not derived from a surcharge on state tax for a purpose described in paragraph (2) or (3).

(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 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).

(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 2. Section 237-8.6, Hawaii Revised Statutes, is amended to read as follows:

"§237-8.6 County surcharge on state tax; administration.

(a) The county surcharge on state tax, upon the adoption of county ordinances and in accordance with the requirements of section 46-16.8, shall be levied, assessed, and collected as provided in this section on all gross proceeds and gross income taxable under this chapter. No county shall set the surcharge

1 on state tax at a rate greater than one-half per cent of all
2 gross proceeds and gross income taxable under this chapter. All
3 provisions of this chapter shall apply to the county surcharge
4 on state tax. With respect to the surcharge, the director of
5 taxation shall have all the rights and powers provided under
6 this chapter. In addition, the director of taxation shall have
7 the exclusive rights and power to determine the county or
8 counties in which a person is engaged in business and, in the
9 case of a person engaged in business in more than one county,
10 the director shall determine, through apportionment or other
11 means, that portion of the surcharge on state tax attributable
12 to business conducted in each county.

13 (b) Each county surcharge on state tax that may be adopted
14 or extended pursuant to section 46-16.8 shall be levied
15 beginning in a taxable year after the adoption of the relevant
16 county ordinance; provided that no surcharge on state tax may be
17 levied:

18 (1) Prior to:

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

22 (B) January 1, 2019, if the county surcharge on
23 state tax was established by the adoption of an
24 ordinance after June 30, 2015, but prior to June 30,
25 2018; or

26 (C) January 1, 2020, if the county surcharge on
27 state tax was established by the adoption of an
28 ordinance on or after June 30, 2018, but prior to
29 March 31, 2019; ~~and~~

30 (D) January 1, 2021, if the county surcharge on
31 state tax was established by the adoption of an
32 ordinance on or after March 31, 2019, but prior to
33 June 30, 2020;

34 (E) January 1, 2022, if the county surcharge on
35 state tax was established by the adoption of an
36 ordinance on or after June 30, 2020, but prior to June
37 30, 2021; and

38 (2) After December 31, 2030.

39 (c) The county surcharge on state tax, if adopted, shall be
40 imposed on the gross proceeds or gross income of all written
41 contracts that require the passing on of the taxes imposed under
42 this chapter; provided that if the gross proceeds or gross
43 income are received as payments beginning in the taxable year in
44 which the taxes become effective, on contracts entered into

____.B. NO. _____

1 before June 30 of the year prior to the taxable year in which
2 the taxes become effective, and the written contracts do not
3 provide for the passing on of increased rates of taxes, the
4 county surcharge on state tax shall not be imposed on the gross
5 proceeds or gross income covered under the written
6 contracts. The county surcharge on state tax shall be imposed
7 on the gross proceeds or gross income from all contracts entered
8 into on or after June 30 of the year prior to the taxable year
9 in which the taxes become effective, regardless of whether the
10 contract allows for the passing on of any tax or any tax
11 increases.

12 (d) No county surcharge on state tax shall be established
13 on any:

14 (1) Gross income or gross proceeds taxable under this
15 chapter at the one-half per cent tax rate;

16 (2) Gross income or gross proceeds taxable under this
17 chapter at the 0.15 per cent tax rate; or

18 (3) Transactions, amounts, persons, gross income, or
19 gross proceeds exempt from tax under this chapter.

20 (e) The director of taxation shall revise the general
21 excise tax forms to provide for the clear and separate
22 designation of the imposition and payment of the county
23 surcharge on state tax.

24 (f) The taxpayer shall designate the taxation district to
25 which the county surcharge on state tax is assigned in
26 accordance with rules adopted by the director of taxation under
27 chapter 91. The taxpayer shall file a schedule with the
28 taxpayer's periodic and annual general excise tax returns
29 summarizing the amount of taxes assigned to each taxation
30 district.

31 (g) The penalties provided by section 231-39 for failure to
32 file a tax return shall be imposed on the amount of surcharge
33 due on the return being filed for the failure to file the
34 schedule required to accompany the return. In addition, there
35 shall be added to the tax an amount equal to ten per cent of the
36 amount of the surcharge and tax due on the return being filed
37 for the failure to file the schedule or the failure to correctly
38 report the assignment of the general excise tax by taxation
39 district on the schedule required under this subsection.

40 (h) All taxpayers who file on a fiscal year basis whose
41 fiscal year ends after December 31 of the year prior to the
42 taxable year in which the taxes become effective, shall file a
43 short period annual return for the period preceding January 1 of
44 the taxable year in which the taxes become effective. Each

____.B. NO. _____

1 fiscal year taxpayer shall also file a short period annual
2 return for the period starting on January 1 of the taxable year
3 in which the taxes become effective, and ending before January 1
4 of the following year."

5
6 SECTION 3. Section 238-2.6, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§238-2.6 County surcharge on state tax; administration.**

9 (a) The county surcharge on state tax, upon the adoption
10 of a county ordinance and in accordance with the requirements of
11 section 46-16.8, shall be levied, assessed, and collected as
12 surcharge on state tax at a rate greater than one-half per cent
13 of the value of property taxable under this chapter. All
14 provisions of this chapter shall apply to the county surcharge
15 on state tax. With respect to the surcharge, the director shall
16 have all the rights and powers provided under this chapter. In
17 addition, the director of taxation shall have the exclusive
18 rights and power to determine the county or counties in which a
19 person imports or purchases property and, in the case of a
20 person importing or purchasing property in more than one county,
21 the director shall determine, through apportionment or other
22 means, that portion of the surcharge on state tax attributable
23 to the importation or purchase in each county.

24 (b) Each county surcharge on state tax that may be adopted
25 or extended shall be levied beginning in a taxable year after
26 the adoption of the relevant county ordinance; provided that no
27 surcharge on state tax may be levied:

28 (1) Prior to:

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

32 (B) January 1, 2019, if the county surcharge on
33 state tax was established by the adoption of an
34 ordinance after June 30, 2015, but prior to June 30,
35 2018; or

36 (C) January 1, 2020, if the county surcharge on
37 state tax was established by the adoption of an
38 ordinance on or after June 30, 2018, but prior to
39 March 31, 2019; ~~and~~

40 (D) January 1, 2021, if the county surcharge on
41 state tax was established by the adoption of an

____.B. NO. _____

1 ordinance on or after March 31, 2019, but prior to
2 June 30, 2020;

3 (E) January 1, 2022, if the county surcharge on
4 state tax was established by the adoption of an
5 ordinance on or after June 30, 2020, but prior to June
6 30, 2021; and

7 (2) After December 31, 2030.

8 (c) No county surcharge on state tax shall be established
9 upon any use taxable under this chapter at the one-half per cent
10 tax rate or upon any use that is not subject to taxation or that
11 is exempt from taxation under this chapter.

12 (d) The director of taxation shall revise the use tax
13 forms to provide for the clear and separate designation of the
14 imposition and payment of the county surcharge on state tax.

15 (e) The taxpayer shall designate the taxation district to
16 which the county surcharge on state tax is assigned in
17 accordance with rules adopted by the director of taxation under
18 chapter 91. The taxpayer shall file a schedule with the
19 taxpayer's periodic and annual use tax returns summarizing the
20 amount of taxes assigned to each taxation district.

21 (f) The penalties provided by section 231-39 for failure
22 to file a tax return shall be imposed on the amount of surcharge
23 due on the return being filed for the failure to file the
24 schedule required to accompany the return. In addition, there
25 shall be added to the tax an amount equal to ten per cent of the
26 amount of the surcharge and tax due on the return being filed
27 for the failure to file the schedule or the failure to correctly
28 report the assignment of the use tax by taxation district on the
29 schedule required under this subsection.

30 (g) All taxpayers who file on a fiscal year basis whose
31 fiscal year ends after December 31 of the year prior to the
32 taxable year in which the taxes become effective, shall file a
33 short period annual return for the period preceding January 1 of
34 the taxable year in which the taxes become effective. Each
35 fiscal year taxpayer shall also file a short period annual
36 return for the period starting on January 1 of the taxable year
37 in which the taxes become effective, and ending before January 1
38 of the following year.

39
40 SECTION 4. Statutory material to be deleted is bracketed
41 and in strikethrough. New statutory material is underscored.

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

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INTRODUCED BY: _____

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