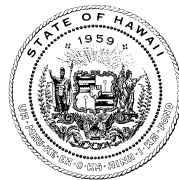


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SCAP-16-0000462
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DAVID Y. IGE
GOVERNOR



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**STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
APPELLATE DIVISION
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1360
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September 7, 2017

Chief Clerk
Supreme Court of Hawai'i
417 S. King Street
Honolulu, HI 96813

Re: *Tax Foundation of Hawai'i v. State of Hawai'i*, No. SCAP-16-0000462
Hawai'i Rules of Appellate Procedure Rule 28(j)

Dear Chief Clerk:

This appeal has been fully briefed and oral argument was held on July 6, 2017. Pursuant to Hawai'i Rules of Appellate Procedure ("HRAP") Rule 28(j), Defendant-Appellee State of Hawai'i wishes to inform the Court of pertinent and significant authority arising after the conclusion of briefing. That authority is Act 1 (S.B. 4), 29th Leg., 1st Spec. Sess. (2017), available at http://www.capitol.hawaii.gov/splsession2017a/GM102_.pdf, which took effect upon being signed by Governor David Y. Ige on September 5, 2017.

Section 5 of Act 1 pertains to pages 1, 30, 31, and 38 of the State's Answering Brief, where the State addresses whether the matter at issue in this case properly belongs in the Legislature or in the courts.

DKT #15

Chief Clerk, Supreme Court of Hawai'i
September 7, 2017
Page 2

A complete copy of Act 1 is attached to this letter for the Court's convenience.

Respectfully,

/s/ Robert T. Nakatsuji
Robert T. Nakatsuji
Hugh R. Jones
Nathan S.C. Chee
Deputy Attorneys General

Attorneys for Defendant-Appellee
State of Hawai'i

Attachment

cc: Paul Alston, Esq.
Lori King Stibb, Esq.
Attorneys for Plaintiff-Appellant
Tax Foundation of Hawai'i

Michael A. Lilly, Esq.
Attorney for Amicus Curiae
The Grassroot Institute of Hawai'i, Inc.



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

September 5, 2017

GOV. MSG. NO. 102

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

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth 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 September 5, 2017, the following bill was signed into law:

SB4

Relating to Government
ACT 001 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on SEP 5 2017

THE SENATE
TWENTY-NINTH LEGISLATURE, 2017
FIRST SPECIAL SESSION
STATE OF HAWAII

ACT 001

S.B. NO. 4

AUG 28 2017

A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

1

PART I

2

SECTION 1. The legislature finds that section 46-16.8,

3

Hawaii Revised Statutes, previously authorized each county to

4

adopt a surcharge on state tax. The legislature further finds

5

that the city and county of Honolulu is the only county that

6

adopted an ordinance for a surcharge. Specifically, in 2005,

7

the city and county of Honolulu adopted an ordinance to

8

establish a one-half of one per cent surcharge on state tax and

9

for that surcharge to be levied, assessed, and collected

10

beginning on January 1, 2007, to fund a rail transportation

11

project.

12

The purpose of this Act is to:

13

(1) Provide counties that have not previously adopted a

14

surcharge on state tax with another opportunity to

15

adopt a surcharge; and



S.B. NO. 4

1 (2) Provide the city and county of Honolulu with a
2 financial mechanism that will provide revenue sources
3 for the construction of its rail transportation
4 project.

5 SECTION 2. Section 46-16.8, Hawaii Revised Statutes, is
6 amended by amending subsections (b) and (c) to read as follows:

7 "(b) Each county that has established a surcharge on state
8 tax prior to [~~+~~]July 1, 2015, [~~+~~] under authority of subsection
9 (a) may extend the surcharge [~~from January 1, 2023,~~] until
10 December 31, [~~2027,~~] 2030, at the same rates. A county electing
11 to extend this surcharge shall do so by ordinance; provided
12 that:

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

16 (2) The ordinance shall be adopted prior to [~~July 1, 2016,~~
17 ~~but no earlier than July 1, 2015.~~] January 1, 2018.

18 A county electing to exercise the authority granted under
19 this subsection shall notify the director of taxation within ten
20 days after the county has adopted an ordinance extending the
21 surcharge on state tax. [~~Beginning on January 1, 2023, the~~] The



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

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

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

10 (2) The ordinance shall be adopted prior to [~~July 1, 2016,~~
11 ~~but no earlier than July 1, 2015;~~] March 31, 2018; and

12 (3) No county surcharge on state tax that may be
13 authorized under this subsection shall be levied prior
14 to January 1, [~~2018,~~] 2019, or after December 31,
15 [~~2027.~~] 2030.

16 A county electing to exercise the authority granted under
17 this subsection shall notify the director of taxation within ten
18 days after the county has adopted a surcharge on state tax
19 ordinance. Beginning on January 1, [~~2018,~~] 2019, the director
20 of taxation shall levy, assess, collect, and otherwise
21 administer the county surcharge on state tax."



S.B. NO. 4

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

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

8 (1) Prior to:

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

12 (B) January 1, [~~2018,~~] 2019, if the county surcharge
13 on state tax was established by the adoption of
14 an ordinance after June 30, 2015, but prior to
15 [~~July 1, 2016;~~] March 31, 2018; and

16 (2) After December 31, [~~2027.~~] 2030."

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

19 "(b) Each county surcharge on state tax that may be
20 adopted or extended shall be levied beginning in [~~the~~] a taxable



S.B. NO. 4

1 year after the adoption of the relevant county ordinance;
2 provided that no surcharge on state tax may be levied:

3 (1) Prior to:

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

7 (B) January 1, [~~2018,~~] 2019, if the county surcharge
8 on state tax was established by the adoption of
9 an ordinance after June 30, 2015, but prior to
10 [~~July 1, 2016,~~] March 31, 2018; and

11 (2) After December 31, [~~2027,~~] 2030."

12 SECTION 5. Section 248-2.6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~§~~**248-2.6** **County surcharge on state tax; disposition**
15 **of proceeds.** (a) If adopted by county ordinance, all county
16 surcharges on state tax collected by the director of taxation
17 shall be paid into the state treasury quarterly, within ten
18 working days after collection, and shall be placed by the
19 director of finance in special accounts~~[-]~~; provided that county
20 surcharge revenues levied, assessed, and collected in a county
21 with a population greater than five hundred thousand shall be



1 deposited into the mass transit special fund established under
2 section 248- . Out of the revenues generated by county
3 surcharges on state tax paid into each respective state treasury
4 special account~~[7]~~ or the mass transit special fund, the
5 director of finance shall deduct ~~[ten]~~ one per cent of the gross
6 proceeds of a respective county's surcharge on state tax to
7 reimburse the State for the costs of assessment, collection,
8 ~~[and]~~ disposition, and oversight of the county surcharge on
9 state tax incurred by the State. Amounts retained shall be
10 general fund realizations of the State.

11 (b) The amounts deducted for costs of assessment,
12 collection, ~~[and]~~ disposition, and oversight of county
13 surcharges on state tax shall be withheld from payment to the
14 counties by the State out of the county surcharges on state tax
15 collected for the current calendar year.

16 (c) For the purpose of this section, the costs of
17 assessment, collection, ~~[and]~~ disposition, and oversight of the
18 county surcharges on state tax shall include any and all costs,
19 direct or indirect, that are deemed necessary and proper to
20 effectively administer this section and sections 237-8.6 and
21 238-2.6.



S.B. NO. 4

1 (d) ~~[After]~~ For a county with a population equal to or
2 less than five hundred thousand that adopts a county surcharge
3 on state tax, after the deduction and withholding of the costs
4 under subsections (a) and (b), the director of finance shall pay
5 the remaining balance on ~~[+]a[+]~~ quarterly basis to the director
6 of finance of each county that has adopted a county surcharge on
7 state tax under section 46-16.8.

8 For a county with a population greater than five hundred
9 thousand that adopts or extends a county surcharge on state tax
10 ordinance, after the deduction and withholding of the costs
11 under subsections (a) and (b), the director of finance shall
12 administer the remaining surcharge revenues in accordance with
13 section 248- .

14 The ~~[quarterly]~~ payments shall be made after the county
15 surcharges on state tax have been paid into the state treasury
16 special accounts or the mass transit special fund or after the
17 disposition of any tax appeal, as the case may be. All county
18 surcharges on state tax collected shall be distributed by the
19 director of finance to the county in which the county surcharge
20 on state tax is generated and shall be a general fund



S.B. NO. 4

1 realization of the county, to be used for the purposes specified
2 in section 46-16.8 by each of the counties."

3 SECTION 6. Act 247, Session Laws of Hawaii 2005, as
4 amended by Act 240, Session Laws of Hawaii 2015, is amended by
5 amending section 9 to read as follows:

6 "SECTION 9. This Act shall take effect upon its approval;
7 provided that:

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

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

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



1 (A) The ordinance shall be repealed on December 31,
2 2022; provided that the repeal of the ordinance
3 shall not affect the validity or effect of an
4 ordinance to extend a surcharge on state tax
5 adopted pursuant to [~~Act 240, Session Laws of~~
6 ~~Hawaii 2015;~~] an act of the legislature; and

7 (B) This Act shall be repealed on December 31,
8 [~~2027;~~] 2030, and

9 [~~(C) Section~~] section 437D-8.4, Hawaii Revised
10 Statutes, shall be reenacted in the form in which
11 it read on the day prior to the effective date of
12 this Act; provided that the amendments made to
13 section 437D-8.4, Hawaii Revised Statutes, by Act
14 226, Session Laws of Hawaii 2008, as amended by
15 Act 11, Session Laws of Hawaii 2009, and Act 110,
16 Session Laws of Hawaii 2014, shall not be
17 repealed."

18 PART II

19 SECTION 7. Section 46-16.8, Hawaii Revised Statutes, is
20 amended by amending subsection (e) to read as follows:



S.B. NO. 4

1 "(e) Each county with a population greater than five
2 hundred thousand that adopts or extends a county surcharge on
3 state tax ordinance pursuant to subsection (a) or (b) shall use
4 the [~~surcharges~~] surcharge revenues received from the State
5 for[-

6 ~~(1) Capital]~~ capital costs of a locally preferred
7 alternative for a mass transit project; [~~and~~

8 ~~(2) Expenses in complying with the Americans with
9 Disabilities Act of 1990 with respect to paragraph~~

10 ~~(1).~~

11 ~~The]~~ provided that revenues derived from the county surcharge on
12 state tax shall not be used [~~to~~]:

13 (1) To build or repair public roads or highways, bicycle
14 paths, or support public transportation systems
15 already in existence prior to July 12, 2005[-];

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

19 (3) For administrative or operating, marketing, or
20 maintenance costs, including personnel costs, of a
21 rapid transportation authority charged with the



1 responsibility for constructing, operating, or
2 maintaining the mass transit project;
3 provided further that nothing in this section shall be construed
4 to prohibit a county from using county funds that are not
5 derived from a surcharge on state tax for a purpose described in
6 paragraph (2) or (3)."

PART III

8 SECTION 8. Chapter 248, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§248- **Mass transit special fund; established;**
12 **distribution of funds.** (a) There is established a mass transit
13 special fund to be administered by the department of budget and
14 finance.

15 (b) For the period beginning on January 1, 2018, to
16 December 31, 2030, transient accommodations tax and surcharge on
17 state tax revenues allocated to the mass transit special fund
18 pursuant to sections 237D-2(e) and 248-2.6 shall be deposited
19 into the special fund. All interest earned on the moneys in the
20 special fund shall be credited to the general fund. The mass
21 transit special fund shall be exempt from the central service



1 expenses deduction under section 36-27 and departmental
2 administrative expenses deduction under section 36-30.

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

12 (1) Operating or maintenance costs of the mass transit
13 project or any purpose not consistent with section 46-
14 16.8(e); or

15 (2) Administrative, operating, marketing, or maintenance
16 costs, including personnel costs, of a rapid
17 transportation authority charged with the
18 responsibility for constructing, operating, or
19 maintaining the mass transit project;

20 provided further that the total amount of funds that are
21 available, allocated, and disbursed by the director of finance



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1 pursuant to this section shall not be in excess of the total
2 amount indicated on the certification statement. The director
3 of finance may allocate and disburse moneys pursuant to this
4 section on a monthly basis.

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

11 (d) The director of finance shall post all certification
12 statements received from the comptroller pursuant to section 40-
13 on the department of budget and finance's website within ten
14 working days of payments made pursuant to this section.

15 (e) The department of budget and finance shall submit an
16 annual report to the legislature not later than twenty days
17 prior to the convening of each regular session on the total
18 amount of funds allocated pursuant to this section.

19 (f) The director of finance may establish rules, exempt
20 from chapter 91, for the purposes of this section."



1 SECTION 9. Section 237D-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§237D-2 Imposition and rates.** (a) There is levied and
4 shall be assessed and collected each month a tax of:

5 (1) Five per cent for the period beginning on January 1,
6 1987, to June 30, 1994;

7 (2) Six per cent for the period beginning on July 1, 1994,
8 to December 31, 1998;

9 (3) 7.25 per cent for the period beginning on January 1,
10 1999, to June 30, 2009;

11 (4) 8.25 per cent for the period beginning on July 1,
12 2009, to June 30, 2010; and

13 (5) 9.25 per cent for the period beginning on July 1,
14 2010, and thereafter;

15 on the gross rental or gross rental proceeds derived from
16 furnishing transient accommodations.

17 (b) Every operator shall pay to the State the tax imposed
18 by subsection (a), as provided in this chapter.

19 (c) There is levied and shall be assessed and collected
20 each month, on the occupant of a resort time share vacation
21 unit, a transient accommodations tax of:



S.B. NO. 4

- 1 (1) 7.25 per cent on the fair market rental value until
2 December 31, 2015;
- 3 (2) 8.25 per cent on the fair market rental value for the
4 period beginning on January 1, 2016, to December 31,
5 2016; and
- 6 (3) 9.25 per cent on the fair market rental value for the
7 period beginning on January 1, 2017, and thereafter.
- 8 (d) Every plan manager shall be liable for and pay to the
9 State the transient accommodations tax imposed by subsection (c)
10 as provided in this chapter. Every resort time share vacation
11 plan shall be represented by a plan manager who shall be subject
12 to this chapter.
- 13 (e) Notwithstanding the tax rates established in
14 subsections (a) (5) and (c) (3), the tax rates levied, assessed,
15 and collected pursuant to subsections (a) and (c) shall be 10.25
16 per cent for the period beginning on January 1, 2018, to
17 December 31, 2030; provided that:
- 18 (1) The tax revenues levied, assessed, and collected
19 pursuant to this subsection that are in excess of the
20 revenues realized from the levy, assessment, and
21 collection of tax at the 9.25 per cent rate shall be



S.B. NO. 4

1 deposited quarterly into the mass transit special fund
2 established under section 248- ; and
3 (2) If a court of competent jurisdiction determines that
4 the amount of county surcharge on state tax revenues
5 deducted and withheld by the State, pursuant to
6 section 248-2.6, violates statutory or constitutional
7 law and, as a result, awards moneys to a county with a
8 population greater than five hundred thousand, then an
9 amount equal to the monetary award shall be deducted
10 and withheld from the tax revenues deposited under
11 paragraph (1) into the mass transit special fund, and
12 those funds shall be a general fund realization of the
13 State.

14 The remaining tax revenues levied, assessed, and collected
15 at the 9.25 per cent tax rate pursuant to subsections (a) and
16 (c) shall be distributed in accordance with section 237D-
17 6.5(b)."

18 SECTION 10. Section 237D-6.5, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) [~~Revenues~~] Except for the revenues collected pursuant
21 to section 237D-2(e), revenues collected under this chapter



S.B. NO. 4

1 shall be distributed in the following priority, with the excess
2 revenues to be deposited into the general fund:

3 (1) \$1,500,000 shall be allocated to the Turtle Bay
4 conservation easement special fund beginning July 1,
5 2015, for the reimbursement to the state general fund
6 of debt service on reimbursable general obligation
7 bonds, including ongoing expenses related to the
8 issuance of the bonds, the proceeds of which were used
9 to acquire the conservation easement and other real
10 property interests in Turtle Bay, Oahu, for the
11 protection, preservation, and enhancement of natural
12 resources important to the State, until the bonds are
13 fully amortized;

14 (2) \$26,500,000 shall be allocated to the convention
15 center enterprise special fund established under
16 section 201B-8;

17 (3) \$82,000,000 shall be allocated to the tourism special
18 fund established under section 201B-11; provided that:

19 (A) Beginning on July 1, 2012, and ending on June 30,
20 2015, \$2,000,000 shall be expended from the
21 tourism special fund for development and



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1 implementation of initiatives to take advantage
2 of expanded visa programs and increased travel
3 opportunities for international visitors to
4 Hawaii;

5 (B) Of the \$82,000,000 allocated:

6 (i) \$1,000,000 shall be allocated for the
7 operation of a Hawaiian center and the
8 museum of Hawaiian music and dance at the
9 Hawaii convention center; and

10 (ii) 0.5 per cent of the \$82,000,000 shall be
11 transferred to a sub-account in the tourism
12 special fund to provide funding for a safety
13 and security budget, in accordance with the
14 Hawaii tourism strategic plan 2005-2015; and

15 (C) Of the revenues remaining in the tourism special
16 fund after revenues have been deposited as
17 provided in this paragraph and except for any sum
18 authorized by the legislature for expenditure
19 from revenues subject to this paragraph,
20 beginning July 1, 2007, funds shall be deposited
21 into the tourism emergency special fund,



S.B. NO. 4

1 established in section 201B-10, in a manner
2 sufficient to maintain a fund balance of
3 \$5,000,000 in the tourism emergency special fund;
4 (4) \$103,000,000 [~~for fiscal year 2014-2015, \$103,000,000~~
5 ~~for fiscal year 2015-2016, \$103,000,000 for fiscal~~
6 ~~year 2016-2017, and \$93,000,000 for each fiscal year~~
7 ~~thereafter]~~ shall be allocated as follows: Kauai
8 county shall receive 14.5 per cent, Hawaii county
9 shall receive 18.6 per cent, city and county of
10 Honolulu shall receive 44.1 per cent, and Maui county
11 shall receive 22.8 per cent; provided that commencing
12 with fiscal year 2018-2019, a sum that represents the
13 difference between a county public employer's annual
14 required contribution for the separate trust fund
15 established under section 87A-42 and the amount of the
16 county public employer's contributions into that trust
17 fund shall be retained by the state director of
18 finance and deposited to the credit of the county
19 public employer's annual required contribution into
20 that trust fund in each fiscal year, as provided in
21 section 87A-42, if the respective county fails to



S.B. NO. 4

1 remit the total amount of the county's required annual
2 contributions, as required under section 87A-43; and
3 (5) \$3,000,000 shall be allocated to the special land and
4 development fund established under section 171-19;
5 provided that the allocation shall be expended in
6 accordance with the Hawaii tourism authority strategic
7 plan for:

- 8 (A) The protection, preservation, maintenance, and
9 enhancement of natural resources, including
10 beaches, important to the visitor industry;
- 11 (B) Planning, construction, and repair of facilities;
12 and
- 13 (C) Operation and maintenance costs of public lands,
14 including beaches, connected with enhancing the
15 visitor experience.

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



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

4 PART IV

5 SECTION 11. (a) The state auditor shall conduct an audit
6 of the Honolulu authority for rapid transportation. The audit
7 shall include an examination of the financial records and an
8 analysis of the financial management of the Honolulu authority
9 for rapid transportation, including but not limited to:

- 10 (1) The Honolulu authority for rapid transportation's
11 financial plan and related systems of accounting;
- 12 (2) The Honolulu authority for rapid transportation's
13 fiscal and management policies, practices, and
14 processes associated with the plans, design, bidding,
15 and construction of the Honolulu rail transit project;
- 16 (3) All contracts awarded for, and expenditures associated
17 with, the Honolulu rail transit project, including
18 payments to contractors, subcontractors, and
19 consultants, as well as any change orders;
- 20 (4) Expenditures by the Honolulu authority for rapid
21 transportation for personnel costs, lease rent, and



1 any other costs associated with its management and
2 operations; and
3 (5) Any other subjects that the auditor deems necessary
4 for review,
5 to determine whether funds received by the Honolulu authority
6 for rapid transportation from the county surcharge on state tax
7 are being managed and used in a reasonable manner.

8 As part of its analysis, the state auditor shall research
9 the criteria used by the Federal Transit Authority to determine
10 whether expenditures comply with the requirements and
11 restrictions of the full funding agreement of the Honolulu rail
12 transit project.

13 (b) In addition to the audit required in this section, the
14 state auditor shall:

15 (1) Identify, based on information and prior analyses by
16 the Honolulu authority for rapid transportation,
17 alternative routes and development options and the
18 projected costs for each alternative route and
19 development option for the Middle Street to Ala Moana
20 segment of the Honolulu rail transit project; and



1 (2) Obtain from the Honolulu authority for rapid
2 transportation a detailed financial plan that
3 describes the predicted means by which the Honolulu
4 authority for rapid transportation and the city and
5 county of Honolulu will finance the ongoing costs of
6 maintaining and operating the Honolulu rail transit
7 project without the use of state moneys or other
8 state-provided financial supports. The state auditor
9 shall submit the auditor's findings and
10 recommendations on the financial reasonableness of the
11 financial plan and include these findings and
12 recommendations in the audit report.

13 (c) To effectuate the purpose of this section, the state
14 auditor shall have all the powers established pursuant to
15 chapter 23, Hawaii Revised Statutes, including the power to
16 subpoena the production of any documents from the Honolulu
17 authority for rapid transportation that may be necessary to
18 complete the audit required by this section.

19 (d) The state auditor shall report the auditor's findings
20 and recommendations to the legislature, state director of
21 finance, and the board of directors of the Honolulu authority



1 for rapid transportation no later than twenty days prior to the
2 convening of the regular session of 2019.

3 PART V

4 SECTION 12. Chapter 23, Hawaii Revised Statutes, is
5 amended by adding a new section to part I to be appropriately
6 designated and to read as follows:

7 "§23- Rapid transportation authority; annual review.

8 (a) Beginning on the effective date of Act , First Special
9 Session of 2017, and ending on December 31, 2031, the auditor,
10 on an annual basis, shall conduct a review of any rapid
11 transportation authority in the State charged with the
12 responsibility of constructing, operating, or maintaining a
13 locally preferred alternative for a mass transit project that
14 receives moneys from a surcharge on state tax established
15 pursuant to section 46-16.8, transient accommodations tax
16 revenues pursuant to section 237D-2(e), or both. The annual
17 review shall include a review of documents, including but not
18 limited to invoices, contracts, progress reports, and time
19 schedules, to determine that:

- 20 (1) Expenditures by the authority comply with the criteria
21 established pursuant to section 46-16.8(e); and



S.B. NO. 4

1 (2) The authority follows accounting best practices for
2 substantiating its expenditures.

3 (b) A rapid transportation authority subject to this
4 section and any private company or agency contracted to provide
5 services for the locally preferred alternative for a mass
6 transit project shall cooperate with and assist the auditor as
7 needed in conducting the annual review, including promptly
8 providing all records and other information requested by the
9 auditor in the course of the annual review.

10 (c) The auditor shall submit the findings and
11 recommendations of the auditor's review to the legislature and
12 the rapid transportation authority no later than twenty days
13 prior to the convening of the immediately following regular
14 session."

15 SECTION 13. Chapter 40, Hawaii Revised Statutes, is
16 amended by adding a new section to part IV to be appropriately
17 designated and to read as follows:

18 "§40- **Rapid transportation authority; certification**
19 **statement.** (a) Beginning on the effective date of Act ,
20 First Special Session of 2017, and ending on December 31, 2031,
21 the comptroller, upon the request for payment by the rapid



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

5 (b) The rapid transportation authority subject to this
6 section shall provide the comptroller with:

- 7 (1) The authority's financial plan and related systems for
8 accounting, including a budget for a locally preferred
9 alternative for a mass transit project;
10 (2) Expenditures for capital costs for a locally preferred
11 alternative for a mass transit project;
12 (3) Expenditures for personnel costs, lease rent, and any
13 other costs associated with the authority's management
14 and operations; and
15 (4) Any other information the comptroller may require to
16 accomplish the purpose of this section.

17 (c) After submission of invoices by the rapid
18 transportation authority for capital costs of a locally
19 preferred alternative for a mass transit project are verified by
20 the comptroller as an acceptable use of funds received pursuant
21 to a surcharge on state tax authorized pursuant to section 46-



1 16.8, the comptroller shall submit a certification statement,
2 including any appropriate supporting documents, to the
3 department of budget and finance for the allocation of funds, if
4 available, pursuant to sections 248- and 248-2.6(d). The
5 certification statement shall include, at a minimum, the total
6 amount contained in the invoices for capital costs that are
7 verified as an appropriate use of funds pursuant to section 46-
8 16.8(e).

9 (d) The comptroller may establish rules, exempt from
10 chapter 91, for the purposes of this section.

11 (e) For the purposes of this section, "rapid
12 transportation authority" means any entity established by a
13 county in the State for the purpose of constructing, operating,
14 or maintaining a locally preferred alternative for a mass
15 transit project and that receives moneys from a surcharge on
16 state tax established pursuant to section 46-16.8, transient
17 accommodations tax revenues pursuant to section 237D-2(e), or
18 both."

19 PART VI

20 SECTION 14.. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$100,000 or so much



1 thereof as may be necessary for fiscal year 2017-2018 to
 2 establish one full-time equivalent (1.0 FTE) civil service
 3 exempt position to assist the director of finance in determining
 4 the distribution and remittance of revenues derived from a
 5 county surcharge on state tax pursuant to section 248-2.6(d),
 6 Hawaii Revised Statutes, and the transient accommodations tax
 7 pursuant to part III of this Act.

8 The sum appropriated shall be expended by the department of
 9 budget and finance for the purposes of this Act. The
 10 appropriation made pursuant to this section shall not lapse at
 11 the end of the fiscal year in which the appropriation is made;
 12 provided that any amounts that remain unencumbered on June 30,
 13 2019, shall lapse on that date.

14 PART VII

15 SECTION 15. There is appropriated out of the general
 16 revenues of the State of Hawaii the sum of \$400,000 or so much
 17 thereof as may be necessary for fiscal year 2017-2018 to
 18 establish three full-time equivalent (3.0 FTE) civil service
 19 exempt positions to assist in verifying rapid transportation
 20 authority expenditures, pursuant to section 40- , Hawaii
 21 Revised Statutes. The comptroller may contract the services of



1 persons or entities to effectuate the purposes of this Act. Any
2 contract for services executed by the comptroller pursuant to
3 this section or section 40- , Hawaii Revised Statutes, shall be
4 exempt from chapter 103D, Hawaii Revised Statutes.

5 The sum appropriated shall be expended by the department of
6 accounting and general services for the purposes of this Act.
7 The appropriation made pursuant to this section shall not lapse
8 at the end of the fiscal year in which the appropriation is
9 made; provided that any amounts that remain unencumbered on June
10 30, 2019, shall lapse on that date.

11 PART VIII

12 SECTION 16. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$1,000,000 or so much
14 thereof as may be necessary for fiscal year 2017-2018 to:

- 15 (1) Conduct annual reviews, pursuant to section 23- ,
16 Hawaii Revised Statutes; and
17 (2) Conduct an audit of the Honolulu authority for rapid
18 transportation pursuant to section 11 of this Act.

19 The sum appropriated shall be expended by the office of the
20 auditor for the purposes of this Act. The appropriation made
21 pursuant to this section shall not lapse at the end of the



1 fiscal year in which the appropriation is made; provided that
2 any amounts that remain unencumbered on June 30, 2019, shall
3 lapse on that date.

4 PART IX

5 SECTION 17. There is appropriated out of the mass transit
6 special fund established pursuant to section 248- , Hawaii
7 Revised Statutes, the sum of \$1,000,000,000 or so much thereof
8 as may be necessary for fiscal year 2017-2018 for the director
9 of finance to pay the expenses of a rapid transit authority that
10 are certified pursuant to section 40- , Hawaii Revised Statutes.

11 The sum appropriated shall be expended by the department of
12 budget and finance for the purposes of this Act. The
13 appropriation made pursuant to this section shall not lapse at
14 the end of the fiscal year in which the appropriation is made;
15 provided that any amounts that remain unencumbered on June 30,
16 2019, shall lapse to the credit of the mass transit special fund
17 on that date.

18 PART X

19 SECTION 18. Notwithstanding any law, charter provision, or
20 ordinance to the contrary, in any county with a population
21 greater than five hundred thousand, in order to ensure the



1 appropriate use of state authorized funds to finance a locally
2 preferred alternative for a mass transit project, the president
3 of the senate and speaker of the house of representatives shall
4 each appoint two non-voting, ex-officio members to the board of
5 directors of the county's rapid transportation authority. The
6 terms for each member appointed pursuant to this section shall
7 be determined by the presiding officer who appointed them.

8 For the purposes of this section, "county rapid
9 transportation authority" means any entity established by a
10 county in the State with a population greater than five hundred
11 thousand for the purpose of constructing, operating, or
12 maintaining a locally preferred alternative for a mass transit
13 project and that receives moneys from a surcharge on state tax
14 established pursuant to section 46-16.8, Hawaii Revised
15 Statutes, transient accommodations tax revenues pursuant to
16 section 237D-2(e), Hawaii Revised Statutes, or both.

17 PART XI

18 SECTION 19. This Act shall not be construed to prohibit
19 the use of funds generated by a county for purposes not
20 prohibited by state law.



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1 SECTION 20. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 21. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 22. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 23. This Act shall take effect upon its approval.

13

APPROVED this 5 day of SEP , 2017

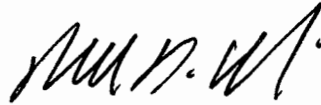


GOVERNOR OF THE STATE OF HAWAII

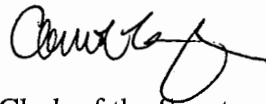
THE SENATE OF THE STATE OF HAWAII

Date: August 30, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Special Session of 2017.



President of the Senate



Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: September 1, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Special Session of 2017.



Speaker, House of Representatives



Clerk, House of Representatives

NOTICE OF ELECTRONIC FILING

Electronically Filed
Supreme Court
SCAP-16-0000462
07-SEP-2017
03:10 PM

An electronic filing was submitted in Case Number SCAP-16-0000462. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID: SCAP-16-0000462

Title: Tax Foundation of Hawaii, a Hawaii nonprofit corporation, on behalf of itself and those similarly situated, Plaintiff-Appellant, vs. State of Hawaii, Defendant-Appellee.

Filing Date / Time: THURSDAY, SEPTEMBER 7, 2017 03:10:57 PM

Filing Parties: Robert Nakatsuji

Case Type: Appeal

Lead Document(s): Other

Supporting Document(s):

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

This notification is being electronically mailed to:
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