

# Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu

74-5044 Ane Keohokalole Hwy, Bldg. A, Kailua-Kona, HI 96740



## **A G E N D A**

**HSAC EXECUTIVE COMMITTEE MEETING**  
Friday, October 27, 2017 at 3 p.m. or soon thereafter  
Historic County Building  
4396 Rice Street, Suite 201  
Lihue, HI 96766

### **I. CALL TO ORDER**

### **II. APPROVAL OF AGENDA**

### **III. MINUTES**

A. September 11, 2017 HSAC meeting minutes

### **IV. REPORTS**

A. Treasurer's August 2017 Report

B. County Reports

1. City and County of Honolulu Report
2. County of Hawaii Report
3. County of Kauai Report
4. County of Maui Report

C. National Association of Counties (NACo) Report

D. Western Interstate Region (WIR) Report

### **V. OLD BUSINESS**

### **VI. NEW BUSINESS**

### **VII. ANNOUNCEMENTS**

- A. Scheduling the next meeting
- a. Change November 6, 2017 date

B. Other announcements

### **VIII. ADJOURNMENT**

Hawai'i State Association of Counties (HSAC)  
Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu

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**MINUTES**

HSAC EXECUTIVE COMMITTEE MEETING  
Monday, September 11, 2017  
Honolulu Hale, Committee Meeting Room  
530 South King Street  
Honolulu, Hawaii 96813

**I. CALL TO ORDER**

The HSAC Executive Committee was called to order by HSAC President Dru Kanuha at 10:33 a.m. The following members comprising a quorum were present:

County of Hawaii:	President Dru Kanuha Councilmember, Hawaii County Council
County of Kauai:	Vice President Derek Kawakami Councilmember, Kauai County Council
County of Maui:	Secretary Stacy Crivello Presiding Officer Pro Tempore, Maui County Council
City and County of Honolulu:	Treasurer Ikaika Anderson Councilmember, Honolulu City Council
Others Present:	Leinani Wessel, Council Aide to Councilmember Dru Kanuha, Hawaii County Council Aida Kawamura, Legislative Assistant, Office of Council Services, Kauai County Council Brandon Mitsuda, Administrative Support Services, Honolulu City Council Francisco Figueiredo, Office of Councilmember Ikaika Anderson, Honolulu City Council Todd Swisher, Legislative Analyst, Office of Council Services, Honolulu City Council Carla Nakata, Legislative Attorney, Office of Council Services, Maui County Council



## II. APPROVAL OF AGENDA

There being no objections, the agenda was approved as circulated.

## III. MINUTES

- A. Minutes of the July 31, 2017 HSAC Executive Committee meeting
- B. Minutes of the August 10, 2017 HSAC Executive Committee meeting

Treasurer Anderson moved to approve the Minutes as circulated. The motion was seconded by Secretary Crivello and unanimously carried.

## IV. REPORTS

### A. Treasurer's Report

- 1. Treasurer's Report for July 2017.

Treasurer Anderson reported that HSAC started the month of July with a balance of \$156,813.69 and had expenses of \$12,691.22 and a deposit of \$442.13, leaving an ending balance of \$144,564.60. See attached worksheet for additional information.

Secretary Crivello moved to approve the Treasurer's Report for July 2017. The motion was seconded by Vice-President Kawakami and unanimously carried.

### B. County Reports.

- 1. City and County of Honolulu Report. Treasurer Anderson reported that at the last City Council meeting held on September 6, they passed on second reading Bill 70 relating to smoking, which will expand and clarify the current ordinances concerning smoking, including electronic smoking devices and smoking in motor vehicles with minors present. They also passed on second reading Bill 72, CD 1, relating to City-owned streams. They also passed on second reading Bill 43, relating to the plumbing code; and on third reading, Bill 3, relating to the building code, which Treasurer Anderson introduced and which was patterned after New York City law that requires construction windows to be placed on walls surrounding any commercial construction site to allow for greater transparency into the construction area. They also passed on third reading Bill 66 relating to curb ramps, and Bill 68, CD 2, relating to special transit service. The City Council passed Bill 45 relating to the transportation surcharge which will extend the GET surcharge to help pay for construction of the rail system. On first reading, they passed: (1)



Bill 71 relating to environmental health to address environmental health concerns relating to certain types of disposable food containers; (2) Bill 74 relating to emergency management; and (3) Bill 75, adopting a revised Central Oahu sustainable communities plan. They adopted a resolution urging the Honolulu Police Commission to select a Chief of Police by October 31 of this year; they have been without a full-time Police Chief since the retirement of former Chief Louis Kealoha. They also adopted Resolution 17-208, affirming the resolution from HSAC, supporting the State Legislature's approval of an extension of the Honolulu general excise and use tax surcharge as necessary for the rail system. They adopted Resolution 17-178, which urges the Director of the Department of Planning and Permitting to increase enforcement and propose any modifications to the Department's administrative rules or legislation the Director deems necessary to address the problem of the illegal use of large residential structures in residential zoning districts. They adopted Resolution 16-247, approving the downtown neighborhood transit-oriented development plan. They are still in the preparation stage for the 2017 Honolulu City lights celebration. Treasurer Anderson also noted that, for the past few years because the building code has changed, all of the Christmas trees at the City lights festival at Honolulu Hale have been artificial. Treasurer Anderson has introduced legislation recently, which passed, to allow fresh-cut Christmas trees to once again be at Honolulu Hale. He thanked the HSAC Executive Committee for their continued support of the City Council's position to extend the GET surcharge to help pay for rail. A copy of the Honolulu report is attached.

2. County of Hawaii Report. President Kanuha said they got back from the Environmental Management Commission the polystyrene limited ban bill and it was a positive recommendation from the Commission. The bill passed on first reading with a 7-2 vote. He said this is a pretty controversial piece of legislation. President Kanuha said their Finance Director recently resigned. They also don't currently have a Director of Public Works (retired beginning of August). He said on the Kona side, they are down five water wells, so there has been an emergency mandatory water restriction on water use in Kona, waiting for new pumps to come in. The Mayor did issue an emergency proclamation on September 6. Hopefully that will pave the way for faster procurement to get parts fixed. The Department of Water Supply is a semi-autonomous body and the Council doesn't have much oversight.
3. County of Kauai Report. Vice-President Kawakami said today they celebrated 25 years since Hurricane Iniki, and they also spent some time in remembrance of 9/11. As a reminder, emergency preparedness messages have been going out to their community; they are still not out of hurricane season. They recently hosted the State Fire Council meeting, so the chiefs from various counties came to talk to them. Various fire departments have been pushing for mandatory fire



sprinklers. The only thing that stops these mandatory fire sprinklers is legislation passed a few years ago prohibiting the counties from mandating them. Both at the Council level and during his time at the State Legislature, he proposed a tax credit. Even though the title of the measure says fire sprinklers, the measure should refer to fire suppression because technology has opened up other options besides fire sprinklers. The State tax credit would work similarly to photovoltaic systems, to steer people towards good behavior – a 25 percent tax credit on the cost of a system. The original bill included up to a \$5,000 credit, so there was a cap. That's a proposed item for the upcoming Legislative package. The other measure he has been working on at the County level is a real property tax exemption of up to \$40,000 on the valuation of a home for a fire suppression system. They are reaching out to contractors' associations, plumbers and fitters, and fire departments, and laying the groundwork needed before throwing the proposal out on the Council table. The proposal has been received favorably by the departments and the trades. Some of the discussion that came up is only rich people who can afford to install fire sprinklers will get a tax exemption. He believes there are a lot of families who, given the option, would implement it. Vice President Kawakami said we are graying as a society and as we age, many will be housing elderly parents. If you have young children or someone living with you with disabilities, you may consider putting in a fire suppression system. He said they should be ready to launch the measure on the Council table within a month. He said the big initiative that will consume a lot of their time is their general plan update. There is a misperception from some that it needs to be detailed and regulatory in nature. But the purpose of the General Plan is just to lay the foundation, then build different community plans and enact ordinances that are in line with the General Plan.

4. County of Maui Report. Secretary Crivello reported that at the September 8 Council meeting, the Council adopted a resolution urging the State Legislature to amend Chapter 92, Hawaii Revised Statutes, to require the Legislature to abide by the Sunshine Law. The resolution was modeled after one that she understands was proposed by the County of Kauai. By Section 92-10, HRS, the Legislature has authorized itself to adopt rules and regulations that take precedence over the Sunshine Law. The resolution was introduced by Council Chair White. Maui's Water Resources Committee received a presentation on potential water resource savings that can be realized through the use of scalping plants located in the vicinity of sewage pumping stations to clean wastewater for beneficial reuse. She reported the Molokai Community Plan update is in progress.

Secretary Crivello made a motion to receive the reports. Vice-President Kawakami seconded the motion, which was unanimously carried.



- C. National Association of Counties (NACo) Report. There were no updates.
- D. Western Interstate Region (WIR) Report. President Kanuha said there is nothing to update, except that the Fall Board meeting for WIR will be held October 9 through 11 in Pinedale, Wyoming, in Sublette County. He said he would like to open up representing WIR to others. He said Mel Rapozo has expressed an interest in the WIR board of director's slot. If there is no objection, Treasurer Anderson said he would be open to that. President Kanuha said he will figure out how to bring the issue to the Executive Committee.

## V. OLD BUSINESS

- A. A Resolution To Acknowledge The Importance Of Maintaining Critical Federal Programs For The Native Hawaiian Community

The resolution was submitted by Senator Hirono's office on our behalf. President Kanuha asked what the Executive Committee wants to do with this resolution. They noted the resolution had already been approved. He said he would reach out to Senator Hirono's office to confirm the resolution has the Executive Committee's full support.

- B. Special Legislative Session Update

Secretary Crivello reported that she was there at the Special Session, and the Council Chairs were there. She said they stood firm. She felt bridges have to be built because of work on other legislation. She said she appreciated the Chairs who stood up and testified knowledgeably. Chair White talked about how much money the counties are losing from remarketers. She said she could forward the article from Tom Yamachika. (It was subsequently passed out at the meeting and is attached.) President Kanuha said HSAC had a position that it would support Honolulu in the extension of the GET. He said he hopes bridges can be mended. He said the members got a lot of pressure. They knew if they voted yes for this, the perception on Hawaii Island was that you would be taxing our people to fund rail.

Vice-President Kawakami agreed, saying the Council was getting questions from residents about how this will impact them. The message resonating with people was that this was a tax on neighbor islanders, when in actuality it's a tax on neighbor island tourists and won't affect residents unless they're staying in a hotel. The message was leading people to believe that neighbor islands are being taxed for Oahu's rail, which isn't true; it's our tourists. The House and the Senate left the last session not even talking to each other, fractured, with no resolution for rail. Then they came back for the Special Session. What came out of negotiations was a combination of the GET and the TAT surcharge. The Senate's position was GET, the House's position was TAT, and the compromise is what we have. In the big picture, he said he didn't know if the strategy was



to make a statement and burn bridges, but he is very concerned that in this whole process to make a statement, lifeguards, the eventual removal of the TAT cap, and other things targeted as priorities were jeopardized. The mission moving forward is to try and reestablish some of these relationships.

Secretary Crivello said residents are going to be affected on Maui because tourism is their livelihood. There is an indirect impact because visitors utilize all the services our County offers. Vice-President Kawakami agrees; he was not discussing the impact. He said he is very supportive of the visitor industry. He was just saying the information being sent out was inaccurate. He said he's always advocated for the counties to get the TAT cap lifted. When it went from 7.25 to 9.25 percent, the cap was meant to return back to 7.25. The legislative intent was always temporary in nature.

Treasurer Anderson said there is fence mending to do on all sides as we move forward into the legislative session. He said we are serving the same constituency and voters expect that we can all work together. He said he is hopeful that as we advance our legislative package that we'll at least have the opportunity to have the legislature consider it. President Kanuha said it is important to have the package there. The Executive Committee discussed possible effects of positions taken during the Special Session and opportunities for future collaboration. The committee also discussed how having a healthy Honolulu economy impacts the neighbor islands as well.

## VI. NEW BUSINESS

### A. Discussion of 2018 HSAC Legislative Package Items

1. Maui: Council Member Stacy Crivello to update and/or report.
  - a. A Resolution Re: A State Bill To Increase The State Minimum Wage To \$15.00 Per Hour For Employers With 26 Employees Or More Beginning January 1, 2021 And For Employers With 25 Employees Or Less Beginning January 1, 2023.

Secretary Crivello said this measure did not go on the September 8 Council agenda, but it would be voted on at the September 22 Council meeting. The Executive Committee noted the county councils need to approve their proposals before they are sent to the Executive Committee for action. Vice-President Kawakami said there may be some unintended consequences to be considered, including that the first people to be cut are students, people with disabilities, kupuna. President Kanuha noted if Maui hears the resolution at the end of the month, it will move the date for finalizing the package a whole month. The Executive



Committee said there is no support to take this proposal up at this time because it is outside the time frame set by the general membership and too late to be incorporated into the package.

- b. A Resolution Re: A State Bill To Increase Revenue For Each County's Affordable Housing Fund Through A One Percent Conveyance Tax.

Secretary Crivello said she thinks this is something we all need.

- c. A Resolution Re: A State Bill To Require Online Travel Companies And Other Transient Accommodations Remarketers To Pay Transient Accommodations Tax On Their Respective Portions Of Gross Rental Proceeds From The Payment Of Accommodations.

Vice-President Kawakami said the thing that makes him concerned is Airbnb because now you have another party coming in, circumventing the County process, changing the landscape of how neighborhoods look. If they were to come in and start collecting GET and TAT, that may legitimize the operation in a roundabout way. When Kauai County tried to address vacation rentals, they said if you can show you're paying these taxes, you may qualify for an after-the-fact permit, so this may be another Pandora's box. They may come in and say, you didn't have a problem collecting my tax. It's good as far as revenue generation, but how does it impact our regulations and enforcement initiatives. Secretary Crivello said this proposal is to tax remarketers like Expedia and Travelocity that are taxing the visitor, while the State is not getting a dime of it.

Secretary Crivello made a motion to accept the two proposals that had been approved by the Maui County Council (conveyance tax and TAT remarketers) into the HSAC package. The motion was seconded by Vice-President Kawakami and unanimously approved.

2. Kauai: Council Member Derek Kawakami to update and/or report. Pending Kauai County Council meeting on September 6, 2017
  - a. Relating To Transient Accommodations Tax. Removes The Cap For Distribution Of Transient Accommodations Tax Revenue To The Counties.

Vice-President Kawakami said they have been communicating about the need for the counties to get their share of the TAT. It serves as a good reminder that the cap was always intended to be



temporary in nature. The amount of services needed to support the visitor industry continues to grow. The Legislature may say \$103 million is an increase, but it just gets the counties back to where we were. Removal of the cap is something we need to push for.

- b. Relating To Fire Sprinklers. Establishes A Tax Credit Of 25 Percent Of The Total Cost, Including Installation, Of An Automatic Fire Sprinkler Or Automatic Fire Sprinkler System In Any New Detached One Or Two-Family Dwelling Unit In A Structure Used Only For Residential Purposes. Sunsets On June 30, 2026.

Vice-President Kawakami said this measure is intended to be proactive and to counter any sort of measure to mandate fire suppression. He said if it's an incentive it's easier to swallow.

He moved to amend the language in the State bill from fire sprinklers to fire suppression. Treasurer Anderson seconded the motion, which was unanimously carried.

- c. Relating To Taxation. Provides A Taxpayer Who Hires An Individual With A Disability A Nonrefundable Tax Credit For The Six-Month Period After The Individual Is Initially Hired By The Taxpayer.

Vice-President Kawakami said usually the two classes you see being removed from the workforce are the elderly and people with disabilities. The measure would offer a six-month tax credit for employers who hire these two classes.

- d. Relating To Taxation. Provides A Taxpayer Who Hires An Elderly Individual A Nonrefundable Tax Credit For The Six-Month Period After The Individual Is Initially Hired By The Taxpayer.

Vice-President Kawakami said for the elderly category, age 67 was chosen because that's when someone qualifies for full benefits with Social Security. If they hold off from collecting Social Security until age 70, there is an added benefit because the monthly Social Security check increases.

- e. Relating To Zoning. Clarifies County Zoning Authority By Distinguishing Single Family Residential Use From Single-Family Vacation Rental Use And Allowing Amortization By Ordinance For Single Family Transient Vacation Rentals Over A Reasonable Period.



This measure was introduced when Vice President Kawakami was at the Legislature at the request of their Planning Department, and allows for the amortization of transient vacation rentals over a reasonable period of time. Enabling language is needed to amortize TVRs out of their inventory and return neighborhoods to what they were before.

President Kanuha requested a cliff notes version to explain the proposals to the councils.

Treasurer Anderson made a motion to approve Kauai's five proposals. The motion was seconded by Secretary Crivello, and unanimously carried.

3. 2017 Legislative Package items for inclusion of the 2018 HSAC Legislative Package
  - a. A Bill For An Act Relating To Tort Liability
  - b. A Bill For An Act Relating To Transient Accommodations Tax
  - c. A Bill For An Act Relating To Unadjudicated Traffic Fines
  - d. A Bill For An Act Making An Appropriation For Emergency Medical Services
  - e. A Bill For An Act Relating To Unmanned Aerial Vehicles
  - f. A Bill For An Act Relating To Community Meetings
  - g. A Bill For An Act Relating To Government Records
  - h. A Bill For An Act Relating To Collective Bargaining
  - i. A Bill For An Act Relating To Important Agricultural Lands
  - j. A Bill For An Relating To Identification Cards For Persons With Disabilities

Treasurer Anderson made a motion to include all ten proposals in the package. Vice-President Kawakami seconded the motion, which was carried unanimously.

Secretary Crivello said ACLU was objecting to the bill relating to identification cards because disabled persons may not want to have this kind of identification. She said last session, Kit put together a good pamphlet of bills. It made it easy for the members when they met with their legislators. Shall the Executive Committee do something like that again? The Executive Committee said if there's anything within this package that any individual county objects to, it will be off the list when it comes back to us.

President Kanuha said they hadn't yet discussed whether they want to set priorities. Do they want to set five priorities? Vice-President



Kawakami said tort liability should be a top priority, as well as the TAT measure. Secretary Crivello said the TAT remarketers should also be a priority because it brings in revenues and that the conveyance tax for affordable housing is for all of us. Vice-President Kawakami also noted the community meetings bill is important because the restriction poses a hindrance. President Kanuha said the Executive Committee can set priorities later, if that's what they choose to do.

There was no further discussion on the proposals in the 2017 package for inclusion in the 2018 package.

#### B. HSAC Post-Conference Wrap-Up/Pre-Conference Planning Event Discussion

President Kanuha said the Executive Committee had received a letter from Kauai to discuss the past conference and plan for the upcoming conference. Treasurer Anderson said he would agree that the Executive Committee accommodate the host of the 2017 conference and go to Kauai, work with them on this debriefing, and discuss the upcoming conference in Honolulu for 2018. President Kanuha also said every year the municipal attorneys have a conference and there are a lot of opportunities for them to connect with HSAC. The organizers of the Municipal Attorneys Conference asked if there's any way they can combine or be a part of the HSAC Conference because it is expensive for them to put the conference on. Vice-President Kawakami said it's no problem, as long as they're very clear that the HSAC Conference is a revenue generator for the organization, and as long as the Municipal Attorneys Conference is just informational. Secretary Crivello said the income Kauai generated from the conference was impressive so it would be good to have this discussion and get their expertise. President Kanuha asked whether the Executive Committee wants to meet at the same time. The Executive Committee discussed a date for the conference wrap-up to coincide with the HSAC Executive Committee meeting. Vice-President Kawakami said they want to get the money approved and close the conference account. The Executive Committee set the meeting tentatively for October 30, at 11 am, to be followed by the post-conference debriefing.

Secretary Crivello made a motion to approve funding not to exceed \$5,000 coming out of the conference account. The motion was seconded by Vice-President Kawakami, and was carried unanimously.

## VII. ANNOUNCEMENTS

#### A. Scheduling the next meeting.

The next meeting is tentatively scheduled for October 30, 2017, at 11 a.m., at the Kauai County Building. The Executive Committee will consider scheduling



its November meeting on November 6, at 11 a.m. on Maui, and the December meeting on December 4, at 11 a.m., at the Kona Council Chambers.

B. Other announcements.

There were no other announcements.

**VIII. ADJOURNMENT**

The meeting was adjourned at 12:45 p.m.

*ocs:proj:HSAC:FY2018:Minutes.170911*

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**To: The Honorable Ikaika Anderson, Treasurer**  
**From: Brandon Mitsuda, Council Liaison**  
**Date: September 11, 2017**  
**Re: Honolulu Report**  
**Hawaii State Association of Counties Executive Committee Meeting**

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**Update on Honolulu City Council Meetings**

- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Second Reading **Bill 70**: Relating to smoking. (Expanding and clarifying the current ordinances relating to smoking, including but not limited to regulating electronic smoking devices and smoking in motor vehicles.)
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Second Reading **Bill 72, CD1**: Relating to City-owned streams. (Addressing camping at City-owned streams or portions thereof.)
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Second Reading **Bill 43 (2016)**: Relating to the Plumbing Code. (Updating the Plumbing Code of the City and County of Honolulu.)
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Third Reading **Bill 3 (2016)**: Relating to the Building Code. [Amending Chapter 16 ("Building Code") of the Revised Ordinances of Honolulu 1990, with respect to construction barriers.]

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### Update on Honolulu City Council Meetings (Continued)

- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Third Reading **Bill 67, CD1**: Relating to curb ramps. (Preserving access to curb ramps designed for use by persons with disabilities.)
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Third Reading **Bill 68, CD2**: Relating to special transit service. [Clarifying the operations of the City's special transit service (TheHandi-Van) and establishing policies for improved and efficient operations of special transit services in the City and County of Honolulu.]
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on Third Reading **Bill 45, CD1**: Relating to the transportation surcharge. (Amending the ordinances pertaining to the County surcharge on general excise and use taxes.)
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on First Reading **Bill 71**: Relating to environmental health. (Addressing environmental health concerns related to the use of certain types of disposable food containers.)
- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on First Reading **Bill 74**: Relating to emergency management. (Authorizing the City to retain a contractor to assist the Department of Emergency Services in providing disaster relief, and to establish certain requirements for disaster relief contractors.)

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### Update on Honolulu City Council Meetings (Continued)

- The Honolulu City Council at our last Full Council Meeting on September 6, 2017 passed on First Reading **Bill 75**: To adopt the revised Central O'ahu Sustainable Communities Plan for the City and County of Honolulu. (Repealing the existing Sustainable Communities Plan (SCP) for Central O'ahu, Article 5, Chapter 24, Revised Ordinances of Honolulu 1990, and to adopt a new Article 5 incorporating the revised Central O'ahu Sustainable Communities Plan.
- The Honolulu City Council at our last Full Council Meeting September 6, 2017 adopted **Resolution 17-220 CD1**: Urging the Honolulu Police Commission to select a Chief of Police by October 31, 2017.
- The Honolulu City Council at our last Full Council Meeting September 6, 2017 adopted **Resolution 17-208 CD1**: Affirming the Resolution from the Hawaii State Association of Counties supporting the Hawaii State Legislature's approval of an extension of the Honolulu general excise and use tax surcharge as necessary to enable the completion of the Minimum Operable Segment of the Honolulu High-Capacity Transit Corridor Project to Ala Moana Center.
- The Honolulu City Council at our last Full Council Meeting September 6, 2017 adopted **Resolution 17-198**: Urging the Director of Planning and Permitting to increase enforcement and propose any modifications to the Department's administrative rules or legislation the Director deems necessary to address the problem of the illegal use of large residential structures in residential zoning districts.
- The Honolulu City Council at our last Full Council Meeting September 6, 2017 adopted **Resolution 16-247**: Approving the Downtown Neighborhood Transit-Oriented Development (TOD) Plan.

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### **Update on Honolulu City Council Projects and Events**

- The Honolulu City Legislative Branch is still preparing for the 2017 Honolulu City Lights Celebration that showcases the Holiday Spirit here at Historic Honolulu Hale.

Monday, September 11, 2017

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Sunday, September 10, 2017

### [Rail: Heads We Win, Tails You Lose](#)

By Tom Yamachika @ 5:01 AM :: 742 Views :: [Rail](#), [Taxes](#)

### [Rail: Heads We Win, Tails You Lose](#)

by Tom Yamachika, President Tax Foundation Hawaii

The tax bill moving through the Rail Special Session contains one provision that, to me, sticks out above the rest as a "Heads We Win, Tails You Lose" proposition.

As you may remember, the Tax Foundation sued the State, contending that the "10% Skim" that the State helps itself to off the top of the county surcharge collections is grossly excessive and unconstitutional. The suit is still pending in the court system.

The special session rail bill, SB 4, provides that if the Foundation wins and the State is ordered to refund money to the City, then the State will scoop the same amount of money from the City's share of transient accommodations tax money, and keep it in the State general fund.

To understand what this is like, imagine if you were driving to work one day and a State vehicle rear-ends you. Crash! You incur \$10,000 in damages, including car repair charges, medical bills, and the like. You sue the State. But before the judge can rule, the legislature passes a law that says if the court rules in your favor and you recover any money, there will be a special tax in the same amount that applies just to you, so that you must pay back every dime that the court says you are entitled to. "We need to protect the State's revenue," the legislators say.

Fortunately, our state constitution provides an answer: They can't do that! It says, "No laws shall be passed mandating any political subdivision to pay any previously accrued claim." A lawsuit is the classic example of a previously accrued claim. Party A says the State did something bad in the past. Party A then files a claim to ask the State to make it right. The State refuses, and Party A takes the case to the court system.

The historical records say that the framers inserted this provision "to curb some legislative practices found obnoxious by local units. One of these practices is compelling county government to pay accrued claims. This form of legislation it was urged, usurped the judgment of the courts and interfered unnecessarily with local affairs and finances. It was for the purpose of preventing such continued practice that the sentence, 'No laws shall be passed mandating any political subdivision to pay any previously accrued claim,' was incorporated into the provision on local government." Proceedings of the Constitutional Convention of Hawaii, vol. I, Committee of the Whole Report No. 21 (1950).

This provision was left intact through the Constitutional Convention of 1978, and is now in Article VIII, Section 4 of our constitution.

That lawmakers have even considered "heads I win, tails you lose" legislation is profoundly disturbing. Even more disturbing is that they passed it and it is expected to be signed into law.

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To be sure, our state is not alone. Other states have recently used their legislatures to upend the civil justice system. We previously have written about a case in the State of Washington where the legislature nullified a taxpayer victory in court by rewriting the law 27 years retroactively. Retroactive tax laws that unwound taxpayer victories were also enacted in Michigan, *Gillette Commercial Operations North America v. Michigan Dept. of Treasury*, 878 N.W.2d 891 (Mich. Ct. App. 2015), and New York, *Caprio v. New York State Dept. of Revenue & Taxation*, 25 N.Y.3d 744 (2015). The U.S. Supreme Court declined to take up these cases, but of course that doesn't mean the Court approved of them. It certainly does not make them right.

It's been said that legislation is the art of compromise. But what possible compromise could have given rise to this provision? We elected our legislators to use their sense of justice and fairness, not to leave it behind when they walk into the Capitol.

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Hawai'i State Association of Counties (HSAC)  
Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu  
200 S. High Street, Waipuku, Hawaii 96793 (808) 270-7665 [www.hicounties.com](http://www.hicounties.com)

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October 18, 2017

Councilmember Dru Kanuha, President  
Hawaii State Association of Counties  
Hawaii County Council  
74-5044 Ane Keohokalole Hwy, Bldg. A  
Kailua-Kona, HI, 96740

Dear President Kanuha:

**SUBJECT: TREASURER'S REPORT FOR AUGUST 2017**

Attached please find a report of the Association's revenues and expenses for the period of August 1-30, 2017.

Malama Pono,

Ikaika Anderson  
HSAC Treasurer

Attachment

**Treasurer's Report for August 2017**

HSAC started the month of August with a balance of \$144,564.60, and had expenses of \$11,119 and we ended the month of August with a balance of \$133,447.95.

Hawaii State Association of Counties  
**REVENUES COLLECTED AND EXPENSES PAID**  
 Period: August 1 through August 30, 2017

BEGINNING BALANCE				\$144,564.60
	August 2017	FY 2017 Year to Date	FY 2017 Budget	
<b>REVENUES</b>				
Membership Fees	\$0.00	\$43,680.00	\$43,680.00	
Conference Income	\$0.00	\$19,168.26	\$18,000.00	
Interest Income	\$2.35	\$32.69	\$28.00	
Corporate Sponsorship	\$0.00	\$0.00	\$0.00	
Miscellaneous	\$0.00	\$9.73	\$0.00	
NACo Prescription Drug	\$0.00	\$3,503.20	\$6,000.00	
Fund Balance, prior FY		\$0.00	\$107,164.00	
<b>Total</b>	<b>\$2.35</b>	<b>\$66,393.88</b>	<b>\$174,872.00</b>	
<b>Total Receipts This Period</b>				<b>\$2.35</b>
<b>EXPENSES</b>				
<b>HSAC</b>				
Executive Committee Travel-Air, Ground, Lodging & Membership	\$1,220.13	\$17,649.41	\$17,600.00	
Auditing Services	\$0.00	\$5,416.67	\$5,000.00	
Stationery	\$0.00	\$726.21	\$150.00	
Miscellaneous	\$1,135.84	\$12,024.18	\$2,000.00	
Online Quickbooks Monthly Fee	\$52.25	\$593.80	\$500.00	
		\$0.00		
<b>Special Committees</b>		<b>\$0.00</b>		
Travel	\$0.00	\$0.00	\$500.00	
Miscellaneous	\$0.00	\$0.00	\$100.00	
		\$0.00		
<b>NACo</b>		<b>\$0.00</b>		
Board Travel-Air, Ground, and Lodging	\$2,000.00	\$24,203.06	\$20,000.00	
Steering Committees Travel-Air, Ground & Lodging	\$0.00	\$0.00	\$6,000.00	
Promotional	\$0.00	\$0.00	\$250.00	
Dues	\$0.00	\$30,258.00	\$27,268.00	
Miscellaneous	\$560.23	\$4,002.43	\$1,000.00	
<b>WIR</b>				
WIR Travel-Air, Ground and Lodging	\$2,448.60	\$8,162.14	\$10,500.00	
WIR Promotional	\$0.00	\$0.00	\$0.00	
WIR Dues	\$0.00	\$0.00	\$3,804.00	
WIR Miscellaneous	\$0.00	\$0.00	\$1,000.00	
WIR 2015 Conference	\$0.00	\$0.00	\$0.00	
<b>OTHER</b>				
Adjustments for Travel and Related Expenses	\$0.00	\$0.00	\$6,295.00	
National Conference Fund	\$0.00	\$0.00	\$44,000.00	
Prescription Drug Scholarship Program	\$0.00	\$0.00	\$6,500.00	
County Leadership Institute Attendee	\$0.00	\$0.00	\$3,000.00	
Prescription Drug Promotion	\$0.00	\$0.00	\$5,000.00	
HSAC Promotion	\$3,701.95	\$14,868.96	\$11,505.00	
<b>Total</b>	<b>\$11,119.00</b>	<b>\$117,904.86</b>	<b>\$171,972.00</b>	
<b>Total Expenses This Period</b>				<b>\$11,119.00</b>
<b>ENDING BALANCE</b>				
				<b>\$133,447.95</b>