

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 884, S.D. 2

March 25, 2009

RELATING TO NON-GENERAL FUNDS

The original version of Senate Bill No. 884 allowed the Legislature to determine the excess funds in the Wireless Enhanced 911 Fund and the Deposit Beverage Container Deposit Special Fund and authorized the Director of Finance to transfer \$9 million from the Wireless Enhanced 911 Fund and \$10 million from the Deposit Beverage Container Deposit Special Fund to the general fund in Fiscal Year 2010. S.D. 2 transfers an unspecified amount from the Wireless Enhanced 911 Fund and an unspecified amount from the Deposit Beverage Container Deposit Special Fund to the general fund in Fiscal Year 2010.

We strongly support passage on this bill with the amounts identified in the original draft. Transfers from both funds are needed to assist in addressing the severe budget shortfall facing the State and ensuring that the State is operating within a balanced budget. When the Fiscal Biennium 2009-11 Executive Budget was submitted, we had projected general fund balances of \$42.5 million, \$39.0 million and \$100.5 million at the end of Fiscal Year 2009, Fiscal Year 2010 and Fiscal Year 2011, respectively. To achieve these balances, we counted on transferring \$45 million from these two special funds. Since then, the amount of excess funds available from these special funds has been adjusted due to revised program requirements. In addition, in January, the Council on Revenues reduced its general fund revenue projections by \$650 million over the three-year period from Fiscal Year 2009 to Fiscal Year 2011. In March, the Council further reduced the total by \$256 million. Thus, it is even more critical that these transfers are authorized.

Linda Lingle
Governor



Darwin L.D. Ching
Director

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
State Fire Council
830 Punchbowl Street
Honolulu, Hawaii 96813

March 24, 2009

The Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro:

Subject: S.B. 884, S.D. 2 Relating to Non-General Funds

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD oppose S.B. 884, S.D. 2, which proposes to divert excess wireless enhanced 911 (E911) funds into the general fund.

Fees collected from consumers for E911 services should be utilized for the administration of the E911 system. The Federal ENHANCE 911 Act enacted in 2004 addressed the diversion of E911 funds by individual states. As a result, states that use E911 funds for other purposes are not eligible for federal grant programs.

As communication technology advances, systems and equipment costs will increase, and the E911 funds must be available for its intended purposes. E911 services are an essential part of homeland security and emergency response to manmade and natural disasters. Our community deserves the best emergency communication system when timely response is literally the difference between life and death.

The SFC and the HFD respectfully urge your committee to defer on the passage of S.B. 884, S.D. 2.

Should you have any questions, please call HFD Legislative Liaison Lloyd Rogers at 723-7171.

Sincerely,

A handwritten signature in black ink that reads "Kenneth G. Silva".

KENNETH G. SILVA
Chair

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

HOUSE COMMITTEE ON FINANCE

S.B. 884, S.D. 2, RELATING TO NON-GENERAL FUNDS

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

March 25, 2009
3:00 P.M.

1 **Department's Position:** The Department opposes the bill in its current S.D. 2 draft form. The
2 Department supports the original draft of this measure, which authorized the transfer of \$10 million
3 from the DBC special fund, which is consistent with current executive budget priorities.

4 **Fiscal Implications:** Unspecified transfer of deposit beverage container special funds to the general
5 fund.

6 **Purpose and Justification:** The purpose of this measure is to address the budget shortfall by
7 transferring an unspecified amount from the deposit beverage container (DBC) and the wireless
8 enhanced 911 special funds.

9 The Department believes the original version of this bill that specified a transfer amount of \$10
10 million is the right approach to improve the general fund.

11 Thank you for the opportunity to testify on this measure.

12

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HARNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZOLU
KARL A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE MC-LS

March 25, 2009

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: Senate Bill No. 884, S.D. 2, Relating to Non-General Funds

I am Marie McCauley, Major of the Communications Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD strongly opposes Senate Bill No. 884, S.D. 2. This bill seeks the power to move surcharge money from the funds collected specifically for the 9-1-1 system and transfer it to the state general fund to help with the budget shortfall. Funds that are collected from fees imposed on consumer bills for the purpose of funding enhanced 9-1-1 services should be expended for that reason.

The HPD is the largest Public Safety Answering Point (PSAP) in Hawaii. Over a million calls a year are routed to our PSAP, with almost 80 percent of the calls requesting police service. Enhanced wireless service has been available in Honolulu since January 2007. Prior to going "live," our department did not have an accurate idea of the changes that would be required or the amount of money that would be needed to pay for the increase in technology.

We are now in a position to see what computer equipment and interfaces are needed. We also have a better understanding of the amount of money that will be necessary to accomplish this task.

The HPD is in support of legislation that will allow the current wireless fund to oversee the transfer to the Next Generation 9-1-1 (NG 9-1-1) system. We believe that all parties that have access to 9-1-1 should share in the cost of creating and maintaining a universal emergency telephone number system. Enhanced 9-1-1 services are a national priority. The NG 9-1-1 system will force all PSAPs to accept broadband service, digital Internet protocol

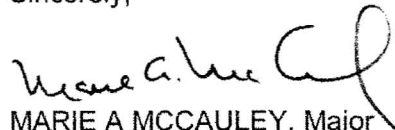
Honorable Marcus R. Oshiro
and Members
Page 2
March 25, 2009

communication devices, and new types of communication that will work with existing legacy equipment. These changes will be expensive, and we will need the fund to remain in place. Payments from additional communications service providers will help fund those changes. Additionally, Enhanced 9-1-1 services are essential to our nation's homeland and our island's hometown security.

The federal Ensuring Needed Help Arrives Near Callers Employing 9-1-1 Act of 2004 addressed the problem of dedicated state 9-1-1 funds being diverted by individual states for other purposes. States that divert 9-1-1 funds collected for the purpose of supporting 9-1-1 services will not be eligible for federal grant programs. The economic stimulus package has great opportunities for telecommunication grant applications, but our state may not be eligible for this money if the fund is diverted in any way.

Thank you for giving us the opportunity to express our concerns about this bill.

Sincerely,


MARIE A MCCAULEY, Major
Communications Division

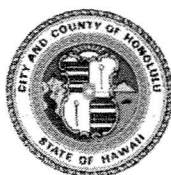
APPROVED:


BOISSE P. CORREA
Chief of Police

DEPARTMENT OF INFORMATION TECHNOLOGY
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 5TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-7684 □ Fax: (808) 527-6272 □ Internet: www.honolulu.gov

MUFI HANNEMANN
MAYOR



GORDON J. BRUCE
DIRECTOR & CIO

March 24, 2009

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: Senate Bill 884, SD2, Relating to Non-General Funds

I am Gordon J. Bruce, Director of the Department of Information Technology and Chief Information Officer for the City and County of Honolulu. In an interest of full disclosure, I also want to point out that I represent the City and County of Honolulu on the Wireless Enhanced 911 Board, but I am NOT speaking for the Board with this testimony.

The Department of Information Technology, who supports the technical aspects of the 911 system for the City and County of Honolulu, strongly opposes Senate Bill No. 292, which seeks to take money collected for the purpose of 9-1-1 to assist with the state deficit.

Any funds that are collected from fees imposed on consumer bills for the purposes of funding enhanced 9-1-1 services should go only for the purposes for which the funds are collected.

The Federal ENHANCE 9-1-1 Act of 2004 addressed the problem of dedicated state 9-1-1 funds being diverted by individual states for other purposes. It indicates that States that divert collected 9-1-1 funds, which are collected from consumers on their monthly phone bills for the purpose of supporting 9-1-1 service, will not be eligible for federal grant programs. The Economic Stimulus package has great opportunities for telecommunication grant applications. Any action to raid this fund can potentially damage our state's ability to be eligible for telecommunications funds, if funds are diverted in any way. The lack of receipt for economic stimulus funds could also jeopardize the states ability to react to proposed legislation in support of the Hawaii State Broadband task force.

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
SB884, SD2, Relating to Special Funds
March 24, 2009
Page 2

The cost of upgrading and maintaining enhanced wireless service and the upcoming Next Generation 9-1-1 is expensive. The money that has been collected is necessary to continue the changes needed to provide public safety service to the community. Enhanced 9-1-1 services are an essential aspect of our state's homeland security, transportation safety, disaster response and health care delivery system.

Legislators will not only put themselves in the position of jeopardizing the safety of the public, but to receive funds to deploy broadband services, further negatively impacting the economic situation here in Hawaii. Please remove any reference to the Wireless Fund as stated in Section 2 from this measure.

Thank you for giving us the opportunity to express our support as well as our concerns with this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon J. Bruce", with a long horizontal line extending to the right.

Gordon J. Bruce (MBA)
Director and CIO

Bernard P. Carvalho, Jr.
Mayor

Robert F. Westerman
Fire Chief

John T. Blalock
Deputy Fire Chief



COUNTY OF KAUAI
Fire Department
Mo'ikeha Building
4444 Rice Street, Suite 295
Lihu'e, Kaua'i, Hawaii 96766

March 24, 2009

The Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro:

Subject: S.B. 884, S.D. 2 Relating to Non-General Funds

I am Robert F. Westerman, Fire Chief of the Kauai Fire Department (KFD) and a member of the State Fire Council (SFC). The SFC and the KFD opposes S.B. 884, S.D. 2, which proposes to divert excess wireless enhanced 911 funds into the general fund. Fees collected from consumers for E911 services should be utilized for the administration and expenses of the E911 system. The Federal ENHANCE 911 Act enacted in 2004 addressed the diversion of E911 funds by individual states. As a result, states that use E911 funds for other purposes are not eligible for federal grant programs. As communication technology advances, systems and equipment costs will increase, and the E911 funds must be available for its intended purposes. E911 services are an essential part of homeland security and emergency response to manmade and natural disasters. Our community deserves the best emergency communication system when timely response is literally the difference between life and death.

The SFC and the KFD respectfully urge your committee to defer on the passage of S.B. 884, S.D. 2.

Please call me at (808) 241-4980 should you have any questions regarding this matter.

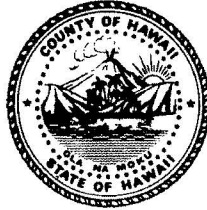
Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive, flowing style.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

William P. Kenoi
Mayor



Lono A. Tyson
Director

Ivan M. Torigoe
Deputy Director

County of Hawai'i
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
25 Aupuni Street • Hilo, Hawai'i 96720
(808) 961-8083 · Fax (808) 961-8086
http://co.hawaii.hi.us/directory/dir_envmng.htm

March 23, 2009

The Honorable Marcus Oshiro, Chair
and Members of the House of Representatives
Committee on Finance
Hawai'i State Capitol
Honolulu, Hawai'i 96813

HEARING DATE: March 25, 2009
HEARING TIME: 3:00 P.M.
HEARING LOCATION: Conference Room 308

Re: Oppose Senate Bill 884, S.D. 2

Dear Representative Oshiro and Members of the House Finance Committee,

Thank you for the opportunity to present testimony on Senate Bill (SB) 884, S.D.2. The County of Hawai'i (County) Department of Environmental Management is opposed to the sections of the Bill that seek to transfer funds from the Deposit Beverage Container (DBC) Special Fund.

The County's HI5 program has grown considerably since its inception in 2005. The public has become accustomed to redeeming their HI5 containers at the nineteen (19) certified redemption centers on the island. To continue this program, "adequate" funding is needed. The HI5 program is an essential part of our overall Solid Waste Management Program. We are concerned the program funding will be depleted and services on the Big Island discontinued if the monies in the DBC Special Fund are lost through transfer.

There are approximately eighty (80) jobs with six different companies in the County of Hawai'i dependent on HI5 activities. Without adequate funding in the DBC Special Fund, these jobs will likely be lost and the Big Island economy could further suffer during this time of economic crisis.

All of the County's redemption centers depend on the money in the DBC Special Fund being available at all times for reimbursement of handling fees. It should be noted that State of Hawaii Department of Health (DOH) representative Larry Lau stated on 2/20/09 to KHON News, that there needs to be about four (4) to five (5) million dollars readily available to pay HI5 deposit and handling fees. Should the DBC Special Fund be depleted, there will likely not be enough funds to cover these necessary expenses.

In addition, ten (10) redemption centers at County operated transfer stations are partially funded through a special grant from the DBC Special Fund. This funding makes redemption centers possible in rural locations where there would otherwise be no redemption services available.

The County has an agreement with DOH to assist the State in overseeing the HI5 program on the Big Island. Two Recycling Specialist positions are funded solely with monies from the DBC Special Fund. The County also receives additional funds from the DBC Special Fund for recycling education and recycling projects.

The County is putting our DBC Special Funds to good use. As you may know, we had a 90% HI5 redemption rate for FY07-08, the highest in the State. This is evidence that the program is working and the County would like to see DBC funding continued at it's current or higher level.

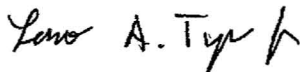
HRS 342G-104 clearly states that DBC Special Funds shall be used for recycling program expenses such as: reimbursement and payment of fees; funding redemption center infrastructure improvements; recycling education and demonstration projects; promoting recyclable market development activities; and personnel. Our recycling programs are dependent on funding for all of these activities.

Recycling is particularly dependent on DBC Special Fund support, since the more effective it is, the more landfill and tipping fee revenue are reduced. Tipping fees are used to pay for our County's Recycling programs. Additionally, in a weak recyclable commodities market, municipalities tend to have to subsidize recycling programs more, thus making recycling more expensive for counties such as Hawai'i. These points emphasize the financial vulnerability of recycling programs, and the need to preserve the DBC Special Fund

Transfer of deposit beverage container fees from the DBC Special Fund to the State's General Fund could be interpreted as unconstitutional under the separation of powers doctrine as shown by *Hawaii Insurers Council v Lingle*, Hi. Sup. Ct. No. 27840 (December 18, 2008). Additionally, the DBC Special Fund is among the special funds exempted by law from 5% contribution to General Fund for central service expenses of government related to special funds, under HRS section 36-27(20).

While the County of Hawai'i understands that we are facing challenging economic times, removing money from the HI5 Special Fund is not the solution. On behalf of the County of Hawai'i, please accept my respectful opposition to SB 884, S.D.1.

Best Regards and Aloha,



Lono Tyson
DIRECTOR

cc: Mayor William Kenoi

CHARMAINE TAVARES
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY

200 DAIRY ROAD
KAHULUI, MAUI, HAWAII 96732
(808) 270-7561
FAX (808) 270-7919

March 24, 2009

The Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro:

Subject: S.B. 884, S.D. 2 Relating to Non-General Funds

I am Jeffrey A. Murray, Fire Chief of the County of Maui Department of Fire and Public Safety (DOFAPS), and a Member of the State Fire Council (SFC). The DOFAPS and the SFC opposes S.B. 884, S.D. 2, which proposes to divert excess wireless enhanced 911 funds into the general fund. Fees collected from consumers for E911 services should be utilized for the administration and expenses of the E911 system. The Federal ENHANCE 911 Act enacted in 2004 addressed the diversion of E911 funds by individual states. As a result, states that use E911 funds for other purposes are not eligible for federal grant programs. As communication technology advances, systems and equipment costs will increase, and the E911 funds must be available for its intended purposes. E911 services are an essential part of homeland security and emergency response to manmade and natural disasters. Our community deserves the best emergency communication system when timely response is literally the difference between life and death.

The DOFAPS and the SFC respectfully urge your committee to defer on the passage of S.B. 884, S.D. 2.

Should you have any questions, please call Honolulu Fire Department's Legislative Liaison Lloyd Rogers at 723-7171.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Murray".

JEFFREY A. MURRAY
Fire Chief

JAM:rkm

**TESTIMONY FROM THE
COUNTY OF KAUA'I
OFFICE OF PUBLIC WORKS**

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE

Hearing Scheduled:
March 25, 2009 at 3:00 pm

TESTIMONY ON SENATE BILL NO.884, SD 2, RELATING TO RELATING TO NON-GENERAL FUNDS

**TO THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR
AND MEMBERS OF THE COMMITTEE:**

My name is Donald Fujimoto, County Engineer, Department of Public Works, County of Kauai, testifying in opposition to Senate Bill (SB) 884, which proposes to transfer funds from the Deposit Beverage Container (DBC) special fund in order to address the budget shortfall.

The DBC program is an extremely successful recycling program. With a statewide diversion rate at 72% for fiscal year 2008, the program demonstrates the impact of economic incentive on recycling behavior. Kauai residents and businesses have become accustomed to redeeming their beverage containers at the nine certified redemption centers throughout the island. The program has created new recycling businesses, jobs, and fundraising opportunities for schools and non-profits here on Kauai.

The DBC program is an essential part of the County's waste diversion program, as it has increased participation in recycling, diversion from landfill, and overall awareness of these issues. The DBC grant to the County of Kauai currently supports an enhanced local program, including two full time staff persons working to monitor certified redemption centers and retailers for compliance with the law and to respond to public questions and complaints, contracts for redemption centers in remote locations, program promotion and public education, and related program equipment. Because of this support, the County has had the opportunity to develop and maintain new programs that have increased DBC recycling rates, such as a parks recycling program, a program to loan bins and provide recycling guidance for community events, a program to distribute free bins to schools and non-profits collecting HI5 containers, distribution of recycled products to promote awareness of "closing the loop", and educational presentations schools.

We are concerned that the proposed fund transfer could destroy the DBC program, and negate all of the positive impact that it has had on recycling in our State, where recycling is a difficult challenge. If the DBC special fund had insufficient funds to pay redemption center operators their deposit refunds and handling fees, HI5 redemption centers would cease to operate, and these closures would result in over 300 jobs lost in Hawaii's recycling industry.

However, we recognize the difficult financial crisis we are facing statewide. We believe there are options that would allow changes in fund use to address the financial crisis, without jeopardy to the funding of Kaua'i's successful recycling programs at current levels. We would welcome the opportunity to assist in developing these options for your consideration.

We thank the Committee for the opportunity to testify on this matter.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Transfer of non-general funds

BILL NUMBER: SB 884, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Amends HRS section 138-3 to remove the restriction that moneys in the wireless enhanced 911 fund shall not be general funds of the state. Also provides that any funds that accumulate in the fund shall be retained in the fund unless determined by the legislature to be in excess.

Amends HRS section 342G-104 to provide that any funds in the deposit beverage container deposit special fund shall be retained in the fund unless the legislature determines that it is in excess.

If the legislature determines that there is at least an excess of \$_____ in the deposit beverage container deposit special fund on July 1, 2009, the director of finance is authorized to transfer \$_____ million to the general fund for fiscal 2010.

If the legislature determines that there is at least an excess of \$_____ in the wireless enhanced 911 fund on July 1, 2009, the director of finance is authorized to transfer \$_____ to the general fund for fiscal 2010.

EFFECTIVE DATE: January 1, 2010

STAFF COMMENTS: This was an administration measure submitted by the department of budget and finance BUF-13(09). The proposed measure would transfer moneys in special funds, determined to be in excess of what is needed in the fund, to the general fund. The measure proposes to transfer \$_____ from the deposit beverage container deposit special fund and \$_____ from the wireless enhanced 911 fund. Due to the state budget shortfall, lawmakers are searching for moneys to cover that shortfall and are tapping the various special funds of the state.

It should be noted that the transfer of moneys from special funds to the general fund was found to be unconstitutional. In Hawaii Insurers Council v. Lingle, Hawaii Supreme Court, No. 27840, December 18, 2008, the court found that the transfer of moneys held in a special fund to the general fund was unconstitutional under the separation of powers doctrine. The court determined that the assessments which were deposited into a special fund were regulatory fees since they were imposed because they were: (1) imposed by a regulatory agency; (2) the agency placed the moneys in a special fund; and (3) the money was not used for a general purpose but to defray expenses generated by the insurers. The transfer of moneys from the special fund to the general fund was unconstitutional because it made the fees collected by the agency for a specific purpose as if they were derived from general tax revenues. The court found that the legislature's bills to transfer the moneys from the special fund to the general fund resulted in an "impermissible blurring of the distinction between the executive power to assess regulatory fees and the legislative power to tax for general purposes." While this measure proposes to transfer

moneys from special funds to the general fund, such transfers may be unconstitutional. Before pursuing this proposal, an opinion from the attorney general should be secured.

It should be remembered that the 1990 legislature directed the State Auditor to evaluate all special and revolving funds as of July 1, 1990 and recommend whether they should be continued or eliminated. The Auditor is also to examine any new or proposed special or revolving fund which would decrease general fund revenues. While the Auditor had a completion date of 1995, the review was completed in 1992.

The Auditor's report noted that, "Special funds give agencies full control of these unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. Many experts say that special funds are likely to hamper budget administration. And from a legislative perspective, they are less desirable because they are not fully controlled by the appropriation process."

Given the findings of the Auditor and the current financial crisis, it is quite clear that the creation of numerous special funds has eroded the integrity of state finances. Moneys in special funds are neither subject to the general fund expenditure limitation nor to the close scrutiny that general funds are subject to in the budgeting process. Special funds which earmark general fund revenues cannot be justified as they restrict budget flexibility, create inefficiencies, and lessen accountability.

There is no doubt that carving out portions from the general fund has created the lack of funds lawmakers face each year. Such a shortfall will inevitably lead to a call for tax increases even though money abounds in these special funds. One only has to review the measures introduced each year which set up numerous new special funds or add new fees or charges, the receipts of which are earmarked for special funds, to see the prolific establishment of special funds. The result is what this measure proposes to do, to raid these special funds.

As has been consistently noted, these fees were increased or approved and earmarked for totally irrelevant programs. The result has been this mismatch of either not enough funds to carry out the program or, as in these cases, an excess of funds that then become the target for a raid like this. Lawmakers should learn a lesson and repeal many of the earmarked sources and their special funds and cease from creating any more new special funds or earmarking any more revenues for such worthy causes.

Further, while the wireless enhanced 911 fund and the deposit beverage container deposit special fund appear to contain funds in excess of the program requirements, consideration should be given to evaluate the effectiveness of the programs as a reduction or elimination of the fees may be warranted.

It should be noted that since the enhanced 911 system is up and running in the state, it is questionable whether the wireless enhanced 911 surcharge is still necessary. Hawaii was very close last year to reducing this charge which the state had over-collected from Hawaii's wireless customers. A fee reduction would have been the appropriate response. However because there was no reduction in the fee, the surplus in this fund is providing a politically convenient opportunity to expeditiously raid the fund in order to balance the state general fund.



To: Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Committee on Finance

Fr: Terry G. Telfer, President
Reynolds Recycling

Date: Wednesday, March 25, 2009, 3:00 pm, Conference Room 308

Re: Testimony against SB 884, SD2 Relating to Non-General Funds

Thank you for the opportunity to testify on this bill.

Reynolds Recycling is strongly opposed to SB 884 SD2.

As you may have already heard, since the last official report to the legislature, the redemption rate in Hawaii has reached an average of over 81% for the last 5 months (per oral testimony of DOH Deputy Director Larry Lau). Congratulations to the state, as no redemption state has reached this level in the short time that Hawaii has. Congratulations also to the recyclers who have spent heavily to enable this to happen. This is a higher level of redemption than many long established redemption states.

There is unfortunately a problem though with this high redemption rate. The Bottle Deposit Law was designed to be self-funding and able to maintain its special deposit fund up to a redemption rate of 68%. It has been over this level for quite a while. This means that the Deposit Beverage Container is already quickly depleting the special fund. Where there used to be a \$30 million surplus of unencumbered deposits, this fund has gradually been depleted to \$13-\$17 million. This bill would further deplete an unknown amount of money from this already depleting fund.

With the current state of the economy, logic would indicate that many people will reduce their consumption of expensive bottled beverages, and will, at the same time, recycle more to support their family income. This is exactly what is happening. Sales of deposit beverages are down 17% or more, and recycling is up. This will exasperate the current depletion of the Deposit Beverage Container Special fund, possibly causing further delays in the payment of deposit funds to certified redemption center (CRC) operators. As it is, these operators are already fronting the deposits for the state to pay the public their deposits.

If this special fund is depleted, the state will not be able to pay back the CRC operators in a timely manner. In a survey recently taken by the DOH of all CRC operators, when asked if they would be able to continue operating without the timely repayment of deposits and handling fees, ALL CRC operators that handle only deposit beverage containers said that they would NOT be able to continue operating for any length of time. Receiving these funds is crucial to the recyclers who make this redemption system function. If this special fund is not adequately funded, the deposit beverage redemption system will quickly stop functioning smoothly.

Please do not cause this system to fail. Please do not deplete the Deposit Beverage Container Special Fund. Reynolds Recycling strongly opposes SB884 SD2 because it will do just that.

Thank you for the opportunity to testify.



To: Representative Marcus Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Committee on Finance

From: Jim Nutter, President
Island Recycling, Inc.

Date: March 25, 2009
3:00pm
Conference Room 308
State Capitol
415 Beretania St
Honolulu, HI

RE: Testimony AGAINST SB 884, relating to Non-General Funds

Dear Chair Oshiro, Vice-Chair Lee and Members of the Committee:

Thank you for this opportunity to testify on SB 884.

Island Recycling, Inc. is opposed to the section of this bill that will allow transfer of \$10 million from the Deposit Beverage Container Special Fund into the General Fund.

Since its initiation in 2002, the State's Deposit Law has helped increase Hawaii's recycling rate to 72% in 2008. The law was enacted to encourage recycling by rebating consumers a five-cent refund and collecting from distributors a one-cent deposit tax.

This program has been self-funded, with revenues from this tax and from unclaimed refunds. These funds should be used for its intended purpose, to support the State's recycling program, including rebate payments, administrative activities by the State, education and market development, and subsidies for recyclers to handle and transport beverage containers to off-island end-users.

The five-cent deposit is money owned by the consumer and is not a tax and should be held "in trust" by the State until it is redeemed by a certified recycler.

The State's program was designed to reach a balance at an 80% redemption rate, which we feel will be reached very soon. Recyclers are very concerned that the program will be at risk when this rate is acquired, as these funds will no longer be available. Now there is a possibility, with SB 884, that the funds will be gone before that goal is reached.

Island Recycling firmly believes this action is not in the best interest of the State's Deposit Program, of recycling businesses and of the public.

To: The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice Chair
House Committee on Finance

From: Laura Robertson, President/CEO
Goodwill Industries of Hawaii, Inc.

Date: March 25, 2009

Re: **Testimony opposed to S.B. 884 SD2 – Relating to Non-General Funds.**

We applaud the legislature for its leadership in addressing the state's economic crisis. While we appreciate the intent of measures that seek to address the plight of Hawaii's taxpayers, we respectfully oppose this measure which will transfer excess balance from the deposit beverage container special fund to the general fund to address the budget shortfall in fiscal biennium 2009-2011 and authorizes the administration to set reasonable deposit beverage container fees.

Goodwill Industries of Hawaii anticipates that it will negatively impact the beverage container deposit program. Goodwill currently operates six (6) recycling centers and believes in the merits of the program

Goodwill Industries of Hawaii is a 501(c)3 non-profit organization providing educational and career development programs for people with disabilities and other employment barriers, including welfare dependency, economic and resource barriers, lack of education/work experience, illiteracy and disadvantaged youth. Goodwill Industries of Hawaii, Inc. helps people with employment barriers to reach their full potential and become self-sufficient.

Since 1959, Goodwill Industries of Hawaii has provided small classes, on-the-job training, and placement services to fulfill our mission to put people back to work. Last year, Goodwill Industries of Hawaii served more than 9,400 individuals throughout the state in its career development and training programs and placed over 1,800 into jobs. It is our belief that any individual who wants to work should be able to work, and that work is a basic right that will assist people to attain other life goals.

Employment strengthens communities at all levels. Working citizens provide tax revenues to the government and are able to purchase goods and services from community businesses. Businesses run at top-efficiency when fully staffed with trained and motivated employees. When its citizens are employed, government is able to re-direct tax revenues to provide fundamental community services rather than family/individual financial public assistance.

Thank you for this opportunity to provide testimony on this matter.



Written Testimony of
David Thorp
Director, Government Affairs
American Beverage Association
1101 16th Street, N.W.
Washington, D.C. 20036

Before the House Committee on Finance
Subject: S.B. 884 SD2, Relating to Non-General Funds

March 25, 2009; 3:00 p.m. (Agenda #2)

Chair Oshiro, Vice Chair Lee, and Members of the Committee,

Thank you very much for the opportunity to present comments on S.B. 884 SD2, which transfers excess balances from certain special funds to the general fund to address the budget shortfall in fiscal biennium 2009-2011. **The American Beverage Association (ABA) is testifying in strong opposition to the section of the bill that seeks to raid the deposit beverage container deposit special fund.**

ABA is the trade association representing the non-alcoholic beverage industry. Founded in 1919, ABA represents hundreds of beverage producers, distributors, franchise companies and supporting businesses that employ more than 217,000 people across the country. The beverage companies throughout Hawaii directly employ over 500 workers and indirectly impact the jobs of thousands of others across the state.

ABA members offer consumers myriad brands, flavors and packaging choices and a full range of drink options including soft drinks, diet soft drinks, ready-to-drink teas, bottled waters, water beverages, 100 percent juice, juice drinks, sports drinks and energy drinks.

Beverage Container Deposit Law's 5-cent deposit and 1-cent fee (tax)

S.B. 884 SD2 seeks to transfer at least \$10 million from the deposit beverage container deposit special fund to the state's general fund. Hawaii's Beverage Container Deposit Law imposes a five-cent refund value and a one-cent deposit fee (tax) on beverage containers.

Hawaii Act 176 (the 2002 deposit law) impacts beverage containers made of glass, metal, PET, and HDPE containing 68 ounces or less of "beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks..., soda, or noncarbonated water, and all nonalcoholic drinks in liquid form..." Wine and spirits as well as concentrates, flavorings, medicines, nutritional supplements, powders, milk, and dairy-derived products are exempt.

According to Act 176, revenues from the five-cent refund value and one-cent deposit fee (tax) are for payment of refunds and handling fees: administrative, audit, and compliance activities by the state; recycling education and demonstration projects; market development for recyclables; subsidies for handling and transporting beverage container materials to end-users; and periodic management and financial audits of the program.

S.B. 884 is a hidden tax on consumers

Hawaii consumers have been paying the five-cent refund value and one-cent deposit fee (tax) for several years and have been led to believe that the unclaimed refund value and the deposit fee (tax) are to be used for running the deposit program and other specific environmental programs.

The many millions of dollars currently in the deposit special fund should be used for its stated purposes of the deposit program and beyond, including funding environmental programs such as recycling education.

Hawaii's taxpayers have spoken out in the past about the Legislature's attempt to raid other revenue generating programs, such as the Hurricane Fund. This latest attempt to take away taxes already paid by consumers is no different and should not be allowed.

Re-evaluate the deposit program or provide refunds for Hawaii consumers and businesses

Hawaii's deposit program costs consumers and businesses tens of millions of dollars every year to address about two percent of the waste stream and about 9% of all litter. We need to pursue a better way to address waste and litter that is more convenient and efficient than the deposit program – a way that consumers, businesses, and lawmakers can support, such as comprehensive recycling. Rather than the discriminatory tax imposed only on beverage consumers by the deposit program, what should be considered is a comprehensive recycling program in Hawaii as exists in 40 other states that would provide convenient recycling access to all residents and businesses for all recyclables – not just the small fraction contributed by beverage containers.

In the meantime, ABA respectfully suggests that, instead of raiding the deposit program of millions of excess tax dollars already paid by consumers and businesses, the Legislature should lessen the tax burden on these same businesses and consumers by lowering or eliminating the deposit program's one-cent deposit fee (tax).

We encourage the Committee to reject the proposal to raid the deposit beverage container deposit special fund and ask the Committee to consider immediately lowering or eliminating the one-cent deposit fee (tax) as the State pursues a more comprehensive and economical way to address waste and litter.

Sincerely,

David Thorp

David Thorp
Director, Government Affairs
American Beverage Association



March 23, 2009

Re: Oppose SB884 SD2

Aloha Honorable Members of the FIN committee,

Aloha Shell Service (est. 1967) has been a redemption center for four years and is the only redemption center in the state open 24 hrs a day, 7 days a week, 365 days a year. We have never closed.

The Hi5 program is a good program. The numerous benefits to the community far outweigh the costs. For many, it is a means to help with living expenses. For some, it provides a purpose or a feeling of self worth. For those too young to have a job, it gives them an opportunity to earn money and teach them the value of hard work.

It also teaches everyone that we live on a small island and it is very important to recycle. Since its inception, the program has gained tremendous acceptance and we believe it is responsible for making more people aware of recycling than any other program.

We understand the shortfalls from the economic situation and are directly impacted by it also.

The Hi5 beverage container program should not be compromised by raiding the excess funds. The money was paid by consumers to specifically fund the Hi5 program. Excess funds should be used to improve the Hi5, recycling programs and/or other green initiatives.

The current law that regulates the fee charged to the consumer is adequate. The power to determine the fees should be controlled by the people and not the governor.

We have spent over \$200,000.00 on improvements and equipment and anticipate spending \$300,000.00 more over the next two years. We employ redemption specialists, cashiers, cdl truck drivers, certified forklift operators, repair, maintenance, management and clerical people.

We are committed to the people of Maui to provide the best service possible. We do not want anything to jeopardize the Hi5 program. Please do not allow SB884 SD2 to proceed.

Mahalo,

Paul Hanada
Vice President, CEO



Dan Youmans
Director
External Affairs

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March 25, 2009

The Honorable Rep. Marcus Oshiro
Chair, Committee on Finance
Hawaii House of Representatives
State of Hawaii

RE: Oppose Senate Bill 884 SD2

Dear Rep. Oshiro and Members of the Committees:

AT&T urges opposition to Senate Bill 884 SD2, which would allow the E911 fund – now dedicated to ensuring the safety of Hawaiian citizens – to be used for general fund purposes.

The E911 Fund, financed by a 66-cent surcharge on wireless customers, was established to provide valuable technology to help first-responders provide emergency and sometimes life-saving services to our customers. AT&T supported the establishment of this program, although we recognize that there is now a surplus of these funds. Instead of using these funds for other purposes, we recommend that the State of Hawaii closely examine the current and future needs of the E911 system. A thorough study would answer the following questions:

- Have all of the funding needs of the current E911 system been met, or are upgrades still needed to offer emergency location-based services to Hawaiian citizens?
- Are there new technologies to enhance the E911 system, such as Next Generation E911, that will require substantial investments in the near future?
- Can the E911 surcharge be reduced so that the tax burden on the wireless customer can be reduced?

While AT&T recognizes that the State of Hawaii faces difficult budget challenges, we oppose solving these problems by using funds that our customers generated for E911. Since the state's general fund provides programs for all Hawaiian citizens, it is our view that the burden for solving this problem – whether through taxes or budget cuts – should be shared by all citizens.

Respectfully Submitted

Dan Youmans
Director, External Affairs
AT&T



March 25, 2009

Representative Marcus Oshiro, Chair
House Committee on Finance

Wednesday, March 25, 2009; 3:00 p.m.
Conference Room 308, Agenda #2

Re: SB 884 SD2 - RELATING TO NON-GENERAL FUNDS

Chair Oshiro, Vice Chair Lee, and members of the Committee:

My name is Gary Yoshioka, General Manager of The Pepsi Bottling Group of Hawaii ("Pepsi"), testifying in strong opposition to SB 884 SD2, which transfers excess funds from the deposit beverage container deposit special fund to the general fund to address the budget shortfall in fiscal biennium 2009-2011.

Pepsi urges the Committee to consider the commitments that were made to consumers, retailers, and the beverage industry during the contemplation of the bottle bill that established the deposit beverage container program. By statute, moneys in the fund shall be used primarily to reimburse refund values and pay handling fees to redemption centers and fund the reverse vending machine rebate and the redemption center and recycling infrastructure improvement programs. In addition, the Department of Health is required to use excess funds to conduct recycling education and demonstration projects and promote recyclable market development activities. If the funds are used for other purposes, they become a tax. Not only does the proposed raid disregard the commitments made to the environmental community, it sets the stage for the diversion of other special funds that serve similarly worthy purposes.

Internationally, nationally, and locally, Pepsi recognizes our responsibility to be a good steward of the environment, both as a corporate citizen and as a way to support the company's goals. We respectfully ask the Committee to stand behind commitments that were made at the inception of this program to Hawaii's consumers, retailers, beverage manufacturers and distributors, and the recycling community, statewide, that recycling initiatives would be funded by unredeemed nickels.

On behalf of The Pepsi Bottling Group Hawaii, thank you for the opportunity to testify.

Coca-Cola Bottling Company of Hawaii

Representative Marcus Oshiro, Chair
House Committee on Finance

Wednesday, March 25, 2009
3:00 p.m., Conference Room 308 (Agenda #2)

RE: SB 884 SD2 - RELATING TO NON-GENERAL FUNDS

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

My name is Dan Whitford, Area Vice President for Coca-Cola Bottling Company of Hawaii, a local franchisee, testifying in opposition to SB 884 SD2 which, in part, transfers excess balance from the deposit beverage container deposit special fund to the general fund to address the budget shortfall in fiscal biennium 2009-2011. The diversion amount is not stated.

I was an active participant in the initial legislative discussions on the bottle tax, and, as a result of its passage, the Coca-Cola Bottling Company of Hawaii was tasked with keeping empty cans and bottles out of the litter stream. Beverage containers are the only consumer products in Hawaii with forced deposits and fees, despite, as we pointed out during those initial discussions, being a very small part of the litter and solid waste streams. The Department of Health, at the time of passage of the bottle tax, committed to using the funds to develop recycling programs and making the redemption of empties easy for the people of the state. I am pleased to report that the Coca-Cola Bottling Company of Hawaii here in the islands and the Coca-Cola system, across the globe, is doing its part, engaging in partnerships and launching environmental initiatives. For instance, the Coca-Cola system is a lead sponsor of the Ocean Conservancy's International Coastal Cleanup (ICC). The ICC is the largest one-day volunteer event in the world devoted to cleaning oceans and waterways. On September 20, 2008, sixty-three members of the Coca-Cola ohana gathered at Kailua Beach Park to collect over 200 pounds of trash threatening to impact the ocean and wildlife. As we pointed out back in those initial legislative discussions, the bottle tax doesn't do anything about all the rest of the litter, and what we picked up proves us correct.

Unfortunately, we have not seen the recycling programs that the Department committed to implementing. The Hawaii State Auditor's 2005 Audit of the Deposit Beverage Container Program noted that, "Many view the program as an attempt to impose another state tax by forcing consumers to pay the deposit but making it difficult to obtain the refund." It continues, "In the bill's preamble, the Legislature emphasized that recycling is an important element of an integrated solid waste management system, which can protect and preserve environmental resources and reduce economic costs to residents and businesses. The Legislature also noted a need to expand participation in recycling

programs and minimize costs to those participating and to government. The purpose of Act 176 is to increase participation in deposit programs, increase recycling rates for specified deposit beverage containers, provide a connection between manufacturing decisions and recycling program management, and reduce litter.”

Supporters of the bottle tax successfully argued that passage of the initiative would change the way Hawaii recycles. As we said then and has been proven, that has not occurred. And, opponents of the measure, at that time, including the Coca-Cola Bottling Company of Hawaii, saw a potential raid of the fund from the earliest discussions. If this fund has not been adequately utilized, Coca-Cola respectfully suggests that the Department of Health be urged to comply with their recycling mandate.

We all were told when the bottle tax passed that the money would be used for such purposes. Now, we are told that this money instead will go to help balance the State’s budget, when no other consumer products are so taxed. This clearly is unfair, is a misrepresentation of the policy and a misuse of the deposit beverage container deposit special fund. It amounts to double jeopardy for beverages subject to the bottle tax – an environmental fee and the subsidizing of the General Fund. Again, no other consumer products are subject to this treatment.

We are significantly concerned that even a partial depletion of the deposit beverage container deposit special fund could result in an increase in the handling fee. The beverage industry and consumers will be expected to fund shortfalls in the program.

The Coca-Cola Bottling Company of Hawai’i respectfully requests that the Committees hold SB 884 SD2. Thank you for the opportunity to testify.