



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2089, RELATING TO HEALTHY START.

**BEFORE THE:**

SENATE COMMITTEES ON HUMAN SERVICES AND ON HEALTH

**DATE:** Monday, February 1, 2010 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Andrea J. Armitage, Deputy Attorney General

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Chairs Chun Oakland and Ige and Members of the Committees:

The Department of the Attorney General provides these comments regarding a constitutional problem in this bill.

This measure would codify the establishment of a healthy start program within the Department of Health to provide support services within a family's natural environment to reduce the likelihood of child abuse or neglect. The bill would also exempt this healthy start program from sections 37-32, 37-34, and 37-37, Hawaii Revised Statutes (HRS), in that it would not be subject to budget reductions under the allotment system.

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The sections of this bill exempting the healthy start program from budget reductions under the allotment system violate the separation of powers doctrine, and those portions are therefore unconstitutional.

Section 2 of the bill would create a new section in chapter 37 that would list programs, including the healthy start program, that would be exempt from the allotment system. Section 3 of the bill, which establishes the healthy start program within the department of health, also exempts that program from any budget reductions pursuant to the allotment system.

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The legislative and executive branches have distinct roles in the budget and appropriation process. Under the State Constitution, the authority to appropriate moneys for the working of state government rests with the Legislature. Once the appropriations bill has been enacted and the fiscal year begins, the legislative work is completed and it then becomes the responsibility of the executive branch to implement the budget. Therefore, specifically exempting programs, such as healthy start, from the executive branch's ability to allocate funds would violate the separation of powers doctrine.

In Board of Educ. of State of Hawaii v. Waihee, 70 Haw. 253, 768 P.2d 1279 (1989), the Board of Education and others brought an action to challenge the acts of the Governor and the Director of Finance in connection with the budget appropriation for the Department of Education. Among other things, the Hawaii Supreme Court found that the Governor and the Director of Finance are authorized to impose spending restrictions on moneys appropriated by the Legislature.

The Hawaii Supreme Court summarized the State's budget and allotment process as follows:

The Governor, in whom "[t]he executive power of the State [is] vested," is responsible under the State Constitution "for the faithful execution of the laws." Hawaii State Constitution (Haw. Const.) art. V, §§ 1 and 5. He is responsible too for the submission "to the legislature [prior to the opening of each regular session in an odd-numbered year of] a budget in a form provided by law setting forth a complete plan of proposed expenditures of the executive branch[.]" Haw. Const. art VII, § 8. "[U]pon the opening of each such session, [he] submit[s] bills to provide for such proposed expenditures [,]" *id.*, and the legislature enacts "an appropriation bill or bills providing for the anticipated total expenditures of the State for the ensuing fiscal biennium." *Id.*, § 9. Since general fund expenditures exceeding the State's current general fund revenues and unencumbered cash balances are

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interdicted by the State Constitution, it also mandates that "[p]rovision for the control of the rate of expenditures of appropriated state moneys, and for the reduction of such expenditures under prescribed conditions, shall be made by law." Haw. Const. art. VII, § 5.

The Governor exercises control over the executive budget through the Department of Budget and Finance, which is headed by the Director of Finance. Pursuant to Hawaii Revised Statutes (HRS) § 26-8, the department is charged with "the preparation and execution of the executive budget of the state government;" it is also directed thereunder to "conduct a systematic and continuous review of the finances, organization, and methods of each department of the State to assist each department in achieving the most effective expenditure of ... public funds and to determine that such expenditures are in accordance with the budget laws and controls in force[.]"

70 Haw. at 256-257, 768 P.2d at 1281.

The Governor's authority to restrict appropriated funds as authorized by Article VII, section 5 of the Hawaii State Constitution, is implemented through the allotment system which is set forth in sections 37-31 to 37-43, HRS. The allotment system requires departments to request the release of appropriated moneys from the Director of Finance or the Governor before the expenditure of such moneys can occur. The allotment requirement is the Administration's means of controlling expenditures and enforcing the Administration's policies.

Also, the Hawaii Supreme Court noted that section 37-31 states that

the policy and intent of the legislature that the total appropriations made by it, or the total of any budget approved by it, for any department [is] the maximum amount authorized to meet the requirements of the department . . . for the period of the appropriation . . . the governor and the director of finance [have been] given the powers [to effect savings] by careful supervision throughout each appropriation period with due regard to changing

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conditions; and by promoting more economic and efficient management . . . .

70 Haw. at 265, 768 P.2d at 1286-87.

In finding that the Governor's one percent spending restriction imposed on the Department of Education's budget appropriations was constitutional and violated no statutes, the Hawaii Supreme Court noted:

In essence, the plaintiffs alleged the Governor interfered with the Board's implementation of the budget approved by the legislature when he imposed a one per cent spending restriction on the DOE. The Governor, the plaintiffs maintain, may impose such restrictions only if sufficient funds are not available. But "the policy and intent of the legislature [is] that the total appropriations made by it . . . for any department [is] the maximum amount authorized to meet the requirements of the department . . . for the period of the appropriation," and "the governor and the director of finance [have been] given the powers [to effect savings] by careful supervision throughout each appropriation period[.]" HRS § 37-31. Moreover, when advised by the director of finance "that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor," the Governor is obliged "to redetermine the allotment ceiling [.]" HRS § 37-37(b).

70 Haw. at 268, 768 P.2d at 1288.

Consequently, while the power to appropriate moneys is a legislative function, the power to expend and manage such appropriations is an executive function. See Communications Workers of America, AFL-CIO v. Florio, 617 A.2d 223, 235 (N.J. 1992) ("There is one thing the Legislature cannot do. It cannot exercise the functions of the executive. It cannot administer the money after it has been once appropriated.") (internal quotation marks, brackets, and citation omitted). The decisions

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on how to expend appropriations and manage the State's finances are for the Governor, and not the Legislature, to make.

In implementing the budget, the Administration may impose restrictions on funding to address situations such as the uncertainty regarding the receipt of revenues or to ascertain whether a program's requirements would be satisfied by the expenditure of funds. Thus, restrictions are an essential tool in administering the State's budget.

Since the the healthy start program to be implemented within the Department of Health would be part of the Executive Branch, it would be subject to the Governor's authority to restrict appropriated funds as authorized by article VII, section 5 of the Hawaii State Constitution. Therefore, the parts of this bill that would exempt the healthy start program from the executive branch's ability to reduce its budget would be a violation of powers and thus, unconstitutional.

We respectfully ask the Committees to amend this bill by deleting section 2, and deleting subsection (c) from the proposed new section in chapter 321, HRS, that appears in section 3 of the bill.