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GOVERNOR

Testimony of
Linda L. Smith
Senior Policy Advisor to the Governor

Before the
SENATE COMMITTEES ON HUMAN SERVICES AND HEALTH
Thursday, February 4, 2010, 2:45 p.m.
Room 016, State Capitol

SB2806 RELATING TO THE EMERGENCY BUDGET AND RESERVE FUND

Chair Chun Oakland, Chair Ige, and Members of the Committees:

The Office of the Governor **provides comments on SB2806, but prefers the Administration measures SB2692 and SB2693**, which are also being heard on this agenda, due to the various requirements provided for in the Administration bills. The concept of SB2806 is to allow the Legislature to authorize the deposit of excess revenues into the Emergency Budget and Reserve Fund whenever the State's general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years. Such proposals are necessary to ensure funds are available for future emergencies by building a financial reserve in good years to offset the state budget shortfall in bad years.

However, we prefer SB2692 and SB2693 because we are unsure how the actual mechanics of this measure would work. SB2806 would allow the Legislature to authorize the deposit of excess revenues into the Emergency Budget and Reserve Fund, but the citation of article VII, section 6 of the Constitution in this bill also requires the Legislature to provide a tax refund or credit. We are unclear as to the order in which the refund or the deposit would occur. We recommend that priority be given to deposits

into the Emergency Budget and Reserve Fund, or the State Fiscal Stabilization Fund, as provided in SB2692 and SB2693.

We are also unsure regarding the reference in section 4 of this bill to article XVII, section 3, of the Constitution, which implies there is a constitutional amendment that must be ratified in order for this bill to take effect. It would be premature to comment without seeing the question for ratification, or the content of the constitutional amendment.

We believe the purpose of SB2806 is the same as SB2692 and SB2693, which is to ensure a steady source of revenues is available to build a fund balance for future emergencies. However, SB2692 and SB2693 provide more certainty that moneys will be deposited into a rainy day fund by setting specific conditions for fund deposits, such as:

- 1) Requiring five percent of year end general fund balances to be deposited whenever state general fund revenues for each of two successive fiscal years exceeds revenues for each of the preceding fiscal years by five percent. This actually increases the frequency of deposits when compared to the requirements of SB2806;
- 2) Requiring deposits into the fund through an automatic transfer by the Director of Finance. This ensures that no means are available for diverting the deposits;
- 3) Ensuring that moneys deposited into the fund will not count toward satisfying the conditions that trigger a constitutional tax refund, as this avoids double counting;
- 4) Stopping deposits into the State Fiscal Stabilization Fund whenever the fund balance is more than ten percent of general fund revenues for the preceding fiscal year. This ensures that constitutional tax refunds can be provided when there is an adequate balance in the State Fiscal Stabilization Fund; and

- 5) Requiring interest earned from moneys in the State Fiscal Stabilization Fund to remain in the fund, which helps to build a healthy fund balance.

We appreciate the concept of SB2806, but prefer the certainty that SB2692 and SB2693 provide, and therefore respectfully request that SB2692 and SB2693 be passed from your committees.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON HUMAN SERVICES AND HEALTH
ON
SENATE BILL NO. 2806

February 4, 2010

RELATING TO THE EMERGENCY AND BUDGET RESERVE FUND

Senate Bill No. 2806 amends Section 328L-3, Hawaii Revised Statutes, to allow the Legislature to authorize the deposit of excess revenues, available whenever the State's general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, to the Emergency and Budget Reserve Fund. This bill also amends Act 119, Session Laws of Hawaii 2009, to prevent the repeal of Section 328L-3 on June 30, 2015.

Instead of this bill, we recommend that the committees consider the Administration's proposals, Senate Bill No. 2692, Relating to the State Fiscal Stabilization Fund, and Senate Bill No. 2693, Proposing Amendments to the Constitution of the State of Hawaii Relating to the State Fiscal Stabilization Fund. Together, these measures establish a mechanism for the State to deposit excess revenues, from periods of economic growth, to the State Fiscal Stabilization Fund (currently the Emergency and Budget Reserve Fund). During periods of economic contraction, the additional resources, which would augment Tobacco Settlement moneys, would ensure that a fiscal reserve would be available to support the State's financial obligations during periods of economic difficulty and would provide an alternative to raising taxes at times when the people of our State can least afford it.

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SUBJECT: MISCELLANEOUS, Emergency and budget reserve fund

BILL NUMBER: SB 2806

INTRODUCED BY: Tsutsui, Chun Oakland, Galuteria, Hooser, Kidani, Nishihara, Sakamoto, Tokuda and 7 Democrats

BRIEF SUMMARY: Amends HRS section 328L-3 to add a new paragraph (3) to provide that whenever the state general fund balance at the close of each of two successive fiscal years exceeds 5% of general fund revenues for each of the two fiscal years and when such excess revenues are authorized by the legislature by law for deposit pursuant to Article VII, section 6 of the state constitution, they shall be deposited into the emergency and budget reserve fund.

This amendment shall take effect upon approval and upon compliance with article XVII, section 3, of the state constitution; provided that the amendments made to HRS section 328L-3, by section 1 of this Act shall not be repealed when HRS section 328L-3 is reenacted pursuant to section 6 of Act 119, SLH 2009.

EFFECTIVE DATE: Voter approval

STAFF COMMENTS: This measure proposes that any excess revenues realized when the general fund balance at the close of two successive fiscal years exceeds 5% of general fund revenues for each of the two fiscal years shall be deposited into the emergency and budget reserve fund rather than returning any excess revenues to taxpayers as a result of section 6 of Article VII of the state constitution. Unfortunately, while it appears that the sponsors of this measure may believe they are amending the constitution as it calls for “voter approval,” it is not. Therefore, calling for excess funds that are calculated under Article VII, Section 6, for deposit into the emergency and budget reserve fund has no effect as there is no provision in that section of the constitution that calls for a deposit of funds.

Originally, the “disposition of excess revenues” provision was enacted in tandem with the general fund spending limit. Although initially not a part of the spending limit discussion, the refund provision was proposed to insure that consideration be given to returning excess funds to taxpayers rather than to remain a target for excessive public expenditure. While this measure proposes that excess revenues be deposited into the emergency and budget reserve fund rather than refunded to taxpayers, its enactment would have the same effect as repealing the “excess revenues” provision.

Since the amount to be refunded is always specified by the legislature when the excess revenues provision needs to be addressed, if that track record is any indication, there is little hope that future legislatures will exercise any fiscal discipline in socking away any substantial amount into the “rainy day” fund. Thus, this proposal is nothing more than patronizing to the idea of “saving” for a rainy day while doing away with the mandatory refund credit.

SB 2806 - Continued

While the repeal of the mandatory refund provision may have political appeal because lawmakers have tacitly complied with a minimum \$1 refund per taxpayer, the refund provision serves a purpose. That purpose is making sure the general public is aware of their state finances. This provision insures people are reminded of just how much money the state is keeping for itself while maintaining the high burden of taxes. If the true spirit of the excess revenues provision is to be maintained, then another alternative should be considered and that would be to require that the legislature make a permanent downward adjustment in income or general excise tax rates as these are the two largest tax resources which benefit the general fund.

As proposed, it is questionable whether the effective date of this measure is appropriate to ensure its enactment. The measure begs serious re-drafting as it is not well informed, and so poorly drafted that it does not read well.

Digested 2/3/10