



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

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

Before the
SENATE COMMITTEE ON WAYS AND MEANS
Monday, February 8, 2010, 9:30 a.m.
Room 211, State Capitol

**SB2807 PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 6, OF THE
HAWAII CONSTITUTION, RELATING TO THE TAX REBATE REQUIREMENT**

Chair Mercado Kim, Vice Chair Tsusui, and Members of the Committee:

The Office of the Governor expresses **strong concerns regarding SB2807, and prefers SB2692 and SB2693**, which are Administration proposals that create the State Fiscal Stabilization Fund and require five percent of year end general fund balances to be deposited into the fund when certain conditions are met. SB2807 is a constitutional amendment that allows the Legislature to authorize a constitutional tax refund or deposit 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 are concern that under this constitutional amendment it is unlikely any funds will be deposited into the Emergency Budget and Reserve Fund in the foreseeable future, and even less likely that constitutional tax refunds will be provided to Hawaii taxpayers. We are unsure what the intent of this measure is by changing the

current requirement to provide a constitutional tax refund, to instead give permissive authority to the Legislature to either provide a tax refund or make deposits into the Emergency Budget and Reserve Fund. By changing the "shall" into a "may" in section 2 of this amendment, is the intent to allow the Legislature to neither provide a tax refund nor deposit moneys into the Rainy Day Fund if it so chooses? Furthermore, we must note that if the trigger for deposits into the Emergency Budget and Reserve Fund are the same as the constitutional tax refund, it is unlikely that a refund or deposit will be triggered from now to 2015, based on the current financial plan.

We believe the purpose of SB2807 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 SB2807;
- 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.

As such, we prefer the certainty that SB2692 and SB2693 provide, and therefore respectfully request that a hearing be held for SB2692 and SB2693 in your committee at your earliest convenience.

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2807

February 8, 2010

PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 6, OF THE HAWAII
CONSTITUTION, RELATING TO THE TAX REBATE REQUIREMENT

Senate Bill No. 2807 proposes a constitutional amendment to allow the Legislature to provide a tax refund or tax credit, or deposit excess funds into the Emergency and Budget Reserve Fund when there are excess balances in the general fund for two consecutive years. This measure would make the tax refund or tax credit an option, not a constitutional requirement, when excess balances are available.

Instead of this bill, we recommend that the committee 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: CONSTITUTIONAL AMENDMENT, Deposit into emergency and budget reserve fund

BILL NUMBER: SB 2807

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

BRIEF SUMMARY: Amends Article VII, section 6, of the state constitution to provide that whenever the general fund year-end balance at the close of two successive fiscal years exceeds 5% of general fund revenues, the legislature, in the next regular session, shall, as an alternative to refunding an amount to taxpayers, deposit the amount that would have otherwise been refunded to taxpayers under the excess revenues provision into the emergency and budget reserve fund.

EFFECTIVE DATE: Voter approval

STAFF COMMENTS: The proposed measure provides that when the excess revenues provision of the state constitution is triggered, the amount that would otherwise have been refunded to taxpayers under the excess revenues requirement shall be deposited into the emergency and budget reserve fund as an alternative to refunding that amount to taxpayers.

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.

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.

Digested 2/3/10