
HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A STUDY REGARDING THE TRANSFER
OF NON-GENERAL FUNDS TO THE GENERAL FUND.

1 WHEREAS, there are many non-general funds, and those funds
2 can provide financial relief to the State if transferred to the
3 general fund; and
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5 WHEREAS, while some non-general funds are easily defined
6 and can be legally transferred to the general fund, many non-
7 general funds are difficult to define and that ambiguity causes
8 problems in transferring funds to the general fund; and
9

10 WHEREAS, for example, under the Hawaii Insurers Council
11 case, special fund moneys derived from regulatory fees that are
12 imposed by an administrative agency pursuant to authority
13 delegated to the agency by the Legislature cannot be transferred
14 to the general fund; and
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16 WHEREAS, furthermore, the Hawaii Supreme Court determined
17 that this type of transfer violated the separation of powers
18 doctrine because administrative fees and assessments imposed by
19 an administrative agency can only be used for the purpose of
20 providing services to the persons or entities paying such fees,
21 and any other use of the fees would constitute a tax, which can
22 only be imposed by the Legislature; and
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24 WHEREAS, the source of the money comprising the special
25 fund is important in determining whether it is appropriate to
26 transfer moneys from that special fund to the general fund; now,
27 therefore,
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29 BE IT RESOLVED by the House of Representatives of the
30 Twenty-sixth Legislature of the State of Hawaii, Regular Session



1 of 2011, the Senate concurring, that the Auditor is requested to
2 conduct a study that identifies the non-general funds that can
3 be transferred to the general fund and determines the source of
4 the non-general fund moneys; and

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6 BE IT FURTHER RESOLVED that the study:

- 7
8 (1) Identify whether the source of the money is a
9 regulatory fee, a tax, or from a difference source;
10 and
11
12 (A) Whether the regulatory agency assessed the fee
13 via an administrative rule, whereby it is more
14 likely to be a regulatory fee; or
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16 (B) Whether the fee is statutorily set by the
17 Legislature, whereby it is more likely to be a
18 tax;
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20 (2) Identify whether the moneys collected by a special or
21 revolving fund are service or user fees, rather than
22 regulatory fees, and if fees were imposed by an
23 administrative rule, perform an analysis to determine
24 if such fees would be retained by the special fund or
25 could be transferred to the general fund;
26
27 (3) Determine whether the non-general moneys are used for
28 a public purpose, or to defray regulatory expenses;
29
30 (4) Identify whether an existing special or revolving fund
31 may be serving as security for revenue bonds issued by
32 a department;
33
34 (5) Identify if federal law requires federal funds be
35 segregated and used only for purposes specified by the
36 federal government;

37 and

38
39 BE IT FURTHER RESOLVED that the Auditor report its finding
40 and recommendations, including proposed legislation to implement
41 any recommended transfers of non-general fund moneys to the
42 general fund, to the Legislature no later than 20 days prior to
43 the convening of the Regular Session of 2012; and



1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Attorney General,
3 the Auditor, the Comptroller, and the Director of Finance.
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OFFERED BY:

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Tom Brun

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