

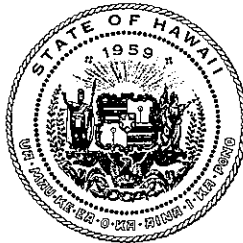
TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 504, H.D. 1

March 15, 2013

RELATING TO STATE FUNDS

House Bill No. 504, H.D. 1, amends the criteria to establish new special or revolving funds to clarify that a special or revolving fund to be established or continued shall reflect a clear nexus between the benefits sought and charges made upon the program users or beneficiaries or between the program and the sources of revenue. This bill also requires the auditor to review special funds, in addition to revolving and trust funds, every five years based on specified departmental groupings.

The Department of Budget and Finance supports this bill and its intent to provide more specific criteria for the establishment of new special and revolving funds and the continuance of existing special and revolving funds. Because special, revolving and trust funds should only be used for their specified purpose and cannot be used for other programs, we must continue to ensure that these funds are the most appropriate funding mechanism for the programs which they support.



**TESTIMONY OF JAN K. YAMANE, ACTING STATE AUDITOR, ON HOUSE BILL
NO. 504, HOUSE DRAFT 1, RELATING TO STATE FUNDS**

**Senate Committee on Ways and Means
March 15, 2013**

Chair Ige and Members of the Committee:

I am Jan Yamane, Acting State Auditor. Thank you for the opportunity to testify in support of House Bill No. 504, House Draft 1 (HB504 HD1), which implements recommendations in our July 2012 Report No. 12-04, *Study of the Transfer of Non-general Funds to the General Fund*, requested by the 2011 Legislature in House Concurrent Resolution No 166 by:

- (1) Clarifying the criteria to be used by the Auditor in analyzing proposed special funds or proposed revolving funds;
- (2) Expanding the Auditor's periodic five-year review of funds to include special funds as well as revolving funds and trust funds and adding the funds of the Department of Transportation and the Department of Defense to the schedule of reviews; and
- (3) Clarifying the criteria to be used by the Legislature in determining whether to establish or continue special funds and revolving funds.

The Senate companion to this bill is Senate Bill 190, which we testified in support before this Committee in February. Upon review of both bills, we prefer HB504 HD1, and offer additional amendments.

First, in Section 2 (page 2, lines 4–13) of the bill, we support the proposed language under Section 23-11(b) (1), HRS, articulating evidence of need when analyzing new funds. We believe application of these criteria will result in more effective analysis of each new fund and, hence, better information for your legislative decision-making.

We also suggest that these criteria be inserted in Sections 4 and 5 (page 6, lines 9 and 10; and page 7, lines 12 and 13, respectively) of this bill—amending Sections 37-52.3(1) and 37-52.4(1), HRS—for alignment. Inserting these criteria in these provisions of law would require that we apply them when we conduct reviews of funds on a five-year rotational basis. In effect, the law would demand that we conduct the same analysis when we analyze new funds under Section 23-11(b), HRS, and when we periodically review funds under Section 23-12(a), HRS, utilizing criteria in Sections 37-52.3 and 37-52.4, HRS. I have attached suggested language to my testimony for your review.

Second, we note that this bill stops short of implementing our recommendation to eliminate the following funds for failing to meet criteria for continuance:

- Driver Education Fund;
- Emergency Medical Services Special Fund;
- Mental Health and Substance Abuse Special Fund;
- Land Conservation Fund;
- Natural Area Reserve Fund; and
- Research and Training Revolving Fund.

To fully implement our report recommendations, we ask that you consider amending this measure to repeal these funds. The unencumbered balance of these funds was \$49.7 million as of June 30, 2011.

Finally, we ask that the effective date be amended to July 1, 2013.

Thank you for the opportunity to testify in support of HB504 HD1. I am happy to answer any questions you may have.

A BILL FOR AN ACT

RELATING TO STATE FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the office of the
2 auditor concluded in its July 2012 *Study of the Transfer of Non-*
3 *general Funds to the General Fund*, Report No. 12-04, that to
4 gain more flexibility over the budget process, new safeguards
5 need to be built into criteria for special and revolving funds.

6 The purpose of this Act is to implement certain
7 recommendations of the auditor, including requiring special and
8 revolving funds to reflect a link between the program funded and
9 the source of revenue.

10 SECTION 2. Section 23-11, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§23-11[+] New special or revolving funds. (a) Within
13 five days after the deadline for the introduction of bills in
14 each legislative session, the clerks of each house of the
15 legislature shall transmit, to the [~~legislative~~] auditor for
16 analysis, copies of all legislative bills that were introduced
17 in their respective houses during that session that propose to
18 establish new special or revolving funds.



1 (b) The criteria to be used by the auditor in analyzing
2 each legislative bill shall include [~~7, but not be limited to, the~~
3 ~~extent to which the fund~~]:

4 (1) [~~Serves the purpose for which it is being created;~~
5 and] The need for the fund, as demonstrated by:

6 (A) The purpose of the program to be supported by the
7 fund;

8 (B) The scope of the program, including financial
9 information on fees to be charged, sources of
10 projected revenue, and costs; and

11 (C) An explanation of why the program cannot be
12 implemented successfully under the general fund
13 appropriation process; and

14 (2) [~~Reflects~~] Whether there is a clear [link] nexus
15 between the [~~benefit~~] benefits sought and [~~changes~~]
16 charges made upon the program users or beneficiaries
17 [~~of the program,~~] or a clear link between the program
18 and the sources of revenue, as opposed to serving
19 primarily as a means to provide the program or users
20 with an automatic means of support [~~which~~] that is
21 removed from the normal budget and [~~appropriations~~]
22 appropriation process.



1 Each analysis shall set forth the probable effects of the
2 proposed fund and shall also assess alternative forms of
3 funding.

4 (c) No later than thirty days prior to the adjournment
5 sine die of each legislative session, the [~~legislative~~] auditor
6 shall submit the analysis of each transmitted legislative bill
7 to each house of the legislature."

8 SECTION 3. Section 23-12, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§23-12 Review of special, revolving, and trust funds.

11 (a) The office of the [~~state~~] auditor shall report to the
12 legislature, at each regular session, a review of special,
13 revolving, and trust funds established to provide services
14 rendered by any state department or establishment to other state
15 departments or establishments or to any political subdivision of
16 the State. The review shall include [~~but not be limited to~~]:

- 17 (1) An evaluation of the original intent and purpose of
18 each fund, both as expressed by the legislature and as
19 understood by the expending agency;
- 20 (2) The degree to which each fund achieves the stated and
21 claimed purposes;



- 1 (3) An evaluation of performance standards established by
2 the agency; and
- 3 (4) A summary statement reflecting total fund transactions
4 in the preceding five fiscal years, including the fund
5 balance at the beginning of each fiscal year, total
6 deposits and withdrawals, amount of interest earned,
7 total expenditures made from the fund, and the ending
8 fund balance for each fiscal year.
- 9 (b) Each special, revolving, and trust fund shall be
10 reviewed every five years as follows:
- 11 (1) Beginning 1994 and every five years thereafter, the
12 auditor shall submit a review of the special,
13 revolving, and trust funds of the department of
14 accounting and general services; the department of
15 agriculture; the department of budget and finance; and
16 the department of land and natural resources;
- 17 (2) Beginning 1995 and every five years thereafter, the
18 auditor shall submit a review of the special,
19 revolving, and trust funds of the department of the
20 attorney general; the department of business, economic
21 development, and tourism; and the University of Hawaii
22 system;



- 1 (3) Beginning 1996 and every five years thereafter, the
2 auditor shall submit a review of the special,
3 revolving, and trust funds within the judiciary and of
4 the department of commerce and consumer affairs; the
5 department of Hawaiian home lands; the department of
6 health; and the department of human services;
- 7 (4) Beginning 1997 and every five years thereafter, the
8 auditor shall submit a review of the special,
9 revolving, and trust funds of the office of the
10 governor; the office of Hawaiian affairs; and the
11 department of education; [~~and~~]
- 12 (5) Beginning 1998 and every five years thereafter, the
13 auditor shall submit a review of the special,
14 revolving, and trust funds of the department of labor
15 and industrial relations; the department of taxation;
16 the department of human resources development; the
17 department of public safety; and all other moneys
18 expended in accordance with section 37-40[-]; and
- 19 (6) Beginning 2014 and every five years thereafter, the
20 auditor shall submit a review of the special,
21 revolving, and trust funds of the department of
22 transportation and the department of defense."



1 SECTION 4. Section 37-52.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§~~[+]~~37-52.3~~[+]~~ Criteria for the establishment and
4 continuance of special funds. Special funds shall ~~[only]~~ be
5 established only pursuant to an act of the legislature. The
6 legislature, in establishing or reviewing a special fund to
7 determine whether it should be continued, shall ensure that the
8 special fund:

- 9 (1) ~~[Serves the purpose for which it was originally~~
10 ~~established;]~~ *insert language fr. page 2, lines 4-13 (attached) **
- 11 (2) Reflects a clear nexus between the benefits sought and
12 charges made upon the program users or beneficiaries
13 ~~[of the program,]~~ or a clear link between the program
14 and the sources of revenue, as opposed to serving
15 primarily as a means to provide the program or users
16 with an automatic means of support that is removed
17 from the normal budget and appropriation process;
- 18 (3) Provides an appropriate means of financing for the
19 program or activity; ~~[and]~~
- 20 (4) Demonstrates the capacity to be financially self-
21 sustaining~~[+]~~; and



**insert p. 6 at lines 9 and 10*

4 (1) [~~Serves the purpose for which it is being created,~~
5 and] The need for the fund, as demonstrated by:
6 (A) The purpose of the program to be supported by the
7 fund;
8 (B) The scope of the program, including financial
9 information on fees to be charged, sources of
10 projected revenue, and costs; and
11 (C) An explanation of why the program cannot be
12 implemented successfully under the general fund
13 appropriation process;

1 (5) Is used only when the means of financing is essential
2 to the successful operation of the program or
3 activity."

4 SECTION 5. Section 37-52.4, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§37-52.4[+] Criteria for the establishment and
7 continuance of revolving funds. Revolving funds shall only be
8 established pursuant to an act of the legislature. The
9 legislature, in establishing or reviewing a revolving fund to
10 determine whether it should be continued, shall ensure that the
11 revolving fund:

- 12 (1) ~~Serves the purpose for which it was originally~~
13 ~~established;~~ *insert language fr. page 2, lines 4-13 (attached) **
- 14 (2) Reflects a clear nexus between the benefits sought and
15 charges made upon the program users or beneficiaries
16 ~~[of the program,]~~ or a clear link between the program
17 and the sources of revenue, as opposed to serving
18 primarily as a means to provide the program or users
19 with an automatic means of support that is removed
20 from the normal budget and appropriation process;
- 21 (3) Provides an appropriate means of financing for the
22 program or activity; [and]



** insert p. 7 at lines 12 and 13*

4 (1) [~~Serves the purpose for which it is being created,~~
5 and] The need for the fund, as demonstrated by:
6 (A) The purpose of the program to be supported by the
7 fund;
8 (B) The scope of the program, including financial
9 information on fees to be charged, sources of
10 projected revenue, and costs; and
11 (C) An explanation of why the program cannot be
12 implemented successfully under the general fund
13 appropriation process;

- 1 (4) Demonstrates the capacity to be financially self-
- 2 sustaining[-]; and
- 3 (5) Is used only when the means of financing is essential
- 4 to the successful operation of the program or
- 5 activity."

6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored. 2013

8 SECTION 7. This Act shall take effect on July 1, [2030].
^



Report Title:

Special funds; Revolving Funds; Auditor Report

Description:

Amends criteria to be used in establishing and evaluating new special or revolving funds, requiring link between benefits sought and charges on users, and a clear link between program and revenue source. Effective 07/01/2030. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEE ON WAYS AND MEANS
Friday, March 15, 2013
9:05 a.m.
State Capitol, Conference Room 211
In consideration of

HB 504 HD1 RELATING TO STATE FUNDS.

Chair Ige, Vice Chair Kidani, and Members of the Committee on Ways and Means.

The High Technology Development Corporation (HTDC) respectfully **offers comments** on HB 504 HD1 which requires an audit on special and revolving funds every five years. HTDC offers comments broken out by section:

SECTION 3. Section 23-12(b)(2):

The insertion of special funds in this section as it reads would require a review of the special fund beginning 1995 and every 5 years thereafter. This may require the auditor to do a retroactive review of special funds going back to 1995 to comply with the statute. This is unnecessary and not practicable. We suggest that clarifying language be included to state that special funds will be subject to review effective from enactment of this addition and every 5 years thereafter.

SECTION 4. Section 37-52.3 (2):

The statute will read, “Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenues, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process”.

Past history has indicated that Department(s)/agencies tasked with implementing provisions of an updated statute tends to be conservative in interpreting the intention of the language inserted into bills and then narrowly define the intent. There is the potential that “a clear link between the program and the sources of revenue” is to be interpreted to mean that the source of the revenues must be solely expended on the project generating the revenues. An example is revenues generated by HTDC’s incubation technology centers can only be expended for the technology centers program expenses and activities. This narrow interpretation would be too restrictive for HTDC’s purposes.

206M-15.5, High Technology Special Fund allows funds deposited into its special fund to be used for all activities of the agency. In past hard fiscal times, the Legislature reduced HTDC’s general fund appropriation directing HTDC to become more reliant upon the revenues deposited

into the special fund to fulfill all aspects of its mission. A narrow interpretation of 37- 52.3 (2) by the responsible department/agency without knowledge of the past direction given to HTDC could potentially limit the types of expenses being funded by the special fund and jeopardize the agency's ability to meet its financial obligations.

Thank you for the opportunity to submit testimony on this bill.



March 14, 2013

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means

Testimony in Support of Proposed Amendment to HB 504, HD1, Relating to State Funds (Amends criteria to be used in establishing and evaluating new special or revolving funds, requiring “clear nexus” link between benefits sought and charges on users, and a clear link between program and revenue source.)

Friday, March 15, 2013, 9:05 a.m., in CR 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

HB 504, HD1. This bill proposes the following: (1) Clarification of the criteria to be used by the Auditor in analyzing proposed special funds or proposed revolving funds; (2) Expanding the Auditor's periodic five-year review of funds to include special funds as well as revolving funds and trust funds and adding the funds of the Department of Transportation and the Department of Defense to the schedule of reviews; and (3) Clarifying the criteria to be used by the Legislature in determining whether to establish or continue special funds and revolving funds. All of these purposes and the provisions of this measure are based on the recommendations of, and a draft bill prepared by the State Auditor in her July 2012 report to the Governor and Legislature, entitled "*Study of the Transfer of Non-General Funds to the General Fund*" ("*State Auditor's 2012 Report*").

LURF notes, however, that this bill stops short of implementing the state Auditor’s final recommendation to eliminate funds for failing to meet the “clear nexus” criteria for continuance, including:

- Land Conservation Fund, Department of Land and Natural Resources, is funded from 10 percent of state real property conveyance tax receipts, but beneficiaries are state residents as a whole, not just individuals and companies who pay conveyance taxes; and
- Natural Area Reserve Fund, Department of Land and Natural Resources, provides broad benefits but a narrow funding base from the conveyance tax paid on real estate transactions.

LURF's Position supporting an amendment implementing the State Auditor's recommendation to repeal funds which do not meet the "clear nexus legal requirements for a special fund. LURF supports HB 504, HD1, and its purpose to promote the efficient allocation of public funds between general funds and special, revolving, and trust funds. LURF also strongly supports natural area reserves, preserving watersheds and controlling invasive species, however, this measure should be amended, consistent with the State Auditor's recommendations, to repeal these programs, which are currently funded through the conveyance tax, which is paid by sellers of real property and has no "clear nexus" or clear benefit-user linkage.

The State Auditor's 2012 report identified six special and revolving funds which do not meet the criteria for continuance and should be repealed, as there was no clear link between the benefits sought and user or beneficiary charges. LURF agrees with the State Auditor's conclusion that the beneficiaries of such conservation and preservation programs are state residents as a whole, and such programs are so important that they should be supported by funding from a broader tax on all state residents, because of the broad state benefit.

LURF members are the leaders in providing affordable housing and set aside and partner with the state as stewards of natural lands for conservation and watershed purposes. Nevertheless, LURF also supports the Auditor's recommendation and the portion of the *State Auditor's 2012 Report* and the Auditor's proposed legislation, which recommends the repeal of the land conservation fund, natural area reserve fund and all other funds which do not meet the legal criteria for continuance as a special fund, but should otherwise be supported by the state general fund and all state taxpayers.

LURF fully supports the funding of the land conservation fund and natural area reserve fund through general funds which are based on a broad-based tax. However, LURF recommends **that HB 504, HD1 be amended to include the State Auditor's recommendation for the repeal of the land conservation fund, natural area reserve fund and all other funds which do not meet the legal criteria for continuance as a special fund**, and that such worthy purposes be otherwise supported by the state general fund.

Based on the above, LURF **supports the above-referenced amendment to HB 504, HD1**, and respectfully urges your favorable consideration of this bill with the proposed amendment.

Thank you for the opportunity to present testimony in support of this measure.

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Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Review of special or revolving funds

BILL NUMBER: HB 504, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 23-11 to amend the criteria used by the auditor in analyzing legislative bills containing new special or revolving funds to: (1) include evidence of need by stating the program's purpose, describing the scope, presenting financial information on fees to be charged, sources of projected revenue and costs, with an explanation why the program cannot be implemented successfully under the general fund appropriation process; and (2) that the fund reflects a clear link between the benefits sought and charges made on the program users or beneficiaries or a clear link between the program and the sources of revenue, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process.

Amends HRS section 23-12 to provide that special funds shall be included in the auditor's review of revolving and trust funds of the state and beginning 2014 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds of the department of transportation and the department of defense.

Amends the definition of "revolving fund" and "special fund" to add "provided that the funds are used only when the means of financing is essential to the successful operation of a program or activity and there is a clear link between the program or activity and the sources of revenue dedicated to its support."

Makes conforming amendments to HRS sections 37-52.3 and 37-52.4.

EFFECTIVE DATE: July 1, 2030

STAFF COMMENTS: Under the existing law the state auditor is required to review the revolving and trust funds of the state and submit a report to the legislature. It should be remembered that the 1990 legislature by Act 240 required the auditor to conduct a review of all special and revolving funds and submit recommendations as to whether they should be continued, modified or repealed. While the completed reviews were submitted in 1991 and 1992, an update done in July 2001 revealed that 71 special and revolving funds had been repealed or discontinued. The auditor later found that 106 out of 166 of the special funds they reviewed were still being utilized as of July 1, 1999.

Over the last 15 years, more and more of the state's operating budget has been underwritten by special funds, many of which were created during that same time period. These are other than the three special funds established long before statehood for the transportation programs of the state. For example 11.7% of the 1995-1997 biennial budget appropriated by the legislature was financed from special funds other

than the transportation special funds. That portion grew to more than 17.3% as of the 2007-2009 biennial budget. As a result, when those programs were moved to earmarked funding status, they freed up more general funds that were used to finance those programs allowing lawmakers to fund brand-new programs that probably would not have been funded in the past. Not only did this process obscure the growth and size of state government, but it also allowed lawmakers to escape the governance of the constitutional general fund expenditure ceiling as this mechanism does not indicate a growth in the size of state general fund spending. Bringing both those favored programs and their earmarked sources of funding back on to the general fund table will give lawmakers and taxpayers a better idea of the size of government.

While this measure proposes that special funds shall also be reviewed by the auditor, it should be noted that while HRS section 37-47 requires each state department to report on each of their non-general fund accounts to the legislature annually, these reports just contain information on the financial condition of each account. However, these reports are incomplete or lack the detail that would otherwise reveal the mismanagement and potential fraud that had or could occur. Such is the case with the state's beverage deposit fund which the Auditor, as well as a third party observer, found to be rife with inaccuracies and missing information.

While this measure would allow the auditor to continuously review the special funds, it may also reveal the number of new special funds added each year by the legislature and bring to light how much money is hidden in these special funds. Lawmakers may consider adding another provision requesting that the Auditor also total the amount of money being spent through these special funds not meeting the criteria and present that number, in the aggregate, to give lawmakers a better idea of how much it would cost if they were required to be funded through the general fund. Once totaled, that number, together with funds appropriated from the general fund in that respective year, could be measured up against the constitutional general fund ceiling for the respective year. This would give lawmakers and the taxpaying public a better idea of whether or not state government has kept up with the growth in the state's economy or exceeded it. Currently, because these special funds obscure the overall cost of government, taxpayers - as well as lawmakers - have no clue as to the true size of government.

Finally, from a legislator's self-interest, why would the elected officials want to allow these programs to have a dedicated source of funding as opposed to having program managers supplicate themselves each year and explain how they used past appropriations and justify their requests for future funding. Once a program is given its dedicated source of funding, those program managers no longer have to prove that their program is of a higher priority than another pressing need before the legislature.

Digested 3/12/13

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: TABRAHAM08@GMAIL.COM
Subject: Submitted testimony for HB504 on Mar 15, 2013 09:05AM
Date: Saturday, March 09, 2013 10:55:31 AM

HB504

Submitted on: 3/9/2013

Testimony for WAM on Mar 15, 2013 09:05AM in Conference Room 211

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| TROY ABRAHAM | Individual | Support | No |

Comments: i support urgent passage of this bill

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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