Testimony Presented Before the
House Committee on Veterans, Military, & International Affairs, & Culture and the Arts
January 30, 2013 at 8:30 a.m.
by
Dr. Gene I. Awakuni
Chancellor
University of Hawaiʻi – West Oahʻu

HB 574 – RELATING TO PUBLIC FUNDS

Chair Takai, Vice Chair Ito, and Members of the Committee:

Thank you for the opportunity to present testimony on HB 574 – Relating to Public Funds.

The EB-5 loan program, as authorized under Section 203(b) (5) of the Immigration and Nationality Act, is a well established Federal immigrant investor program used to fund many municipal projects nationwide and create jobs. The Hawaiʻi Regional Center of the program is administered under a contract awarded by the State of Hawaiʻi Department of Business, Economic Development and Tourism. By way of a letter dated December 7, 2012, the University of Hawaiʻi – West Oahʻu (UHWO) received approval for its project by the United States Citizenship and Immigration Services. The EB-5 loan proceeds will be utilized by UHWO to complete construction and development of Phase I of its Kapolei campus.

While we are unclear as to the details of this legislation, we appreciate any financial support the state may provide for UHWO.

Veterans, Military & International Affairs and Culture and Arts

Chairman Takai, Vice Chair Ito and Members of the Committee,

My name is Andre Hurst and I am a principle for Hawaii Island's Regional Center with offices in Hawaii, California and Shanghai, China.

I am in support of HB 574 and 576. Hawaiian Islands Regional Center, LLC ("HIRC") is an approved Regional Center by the United States Citizenship and Immigration Services ("USCIS"), which covers the area of the State of Hawaii (RCW1031910042).

HB 574 would allow the HIRC to loan funds for capital improvement projects within Hawaii to secured by a guarantee from the State. The benefit is that these projects can utilize low cost funds now to build and create jobs within the state of Hawaii. Projects that cauls fund infrastructure, education, healthcare and a number of other state projects can be built now to create jobs and stimulate the economy. HIRC has the ability to raise millions of dollars in funds each year from Foreign nationals that are applying under the EB-5 Visa program. The EB-5 Visa allows these immigrants to invest a minimum of $500,000 into a business or fund that will create 10 direct or indirect local jobs.

From 2008-2011 states like Vermont and South Dakota have utilized this program to bring in over 500 million dollars of development money and create over 10,000 new jobs. These are states where the population is far less then Hawaii. In the next 2 years these states will be utilizing the same amount that was utilized in the first 5 years.

Hawaii in comparison has only utilized 10 million dollars in development money from EB-5. The difference has been that Vermont and South Dakota have put forth legislation like HB574 and HB576 to support these development projects. These bills will attract investors to deposit money into Hawaii projects rather than other state projects.

HB576 will allow Hawaii Health Systems the ability to finance renovation and repair projects that directly affect the life and safety of our residents. In addition it will insure that HHSC will keep up with infrastructure and technology to provide state of the art health care to Hawaii.

I thank you for the opportunity to testify, I will be available for questions.

Andre Hurst

LATE TESTIMONY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON VETERANS, MILITARY,
& INTERNATIONAL AFFAIRS, & CULTURE AND THE ARTS
ON
HOUSE BILL NO. 574

January 30, 2013

RELATING TO PUBLIC FUNDS

House Bill No. 574 amends Section 237-31, HRS, to require that general excise tax (GET) revenues be directly set aside to repay loans provided under the Immigrant Investor Pilot Program when the proceeds are used to finance State projects.

The Department of Budget and Finance is strongly opposed to this bill because:

- The direct set aside of GET revenues to repay Immigrant Investor Program loans would not go through the appropriation process; and
- There are, in certain instances, limited Executive and Legislative oversight of utilization of these types of loans.

The Immigration and Nationality Act established an Immigrant Investor Pilot Program which allows foreign nationals to obtain a Green Card (lawful permanent resident status) if they make qualified investments in the U.S. Typically, foreign nationals will invest in loans, debt instruments or take an equity interest in an American enterprise to qualify under the program. These types of financial investments are commonly referred to as EB-5 loans.

Currently, when State agencies undertake capital improvement projects, budget appropriations, as well as bond authorizations, are used as a basis to issue debt. If an department/agency has specific authority to issue revenue bonds, special funds are used to repay the revenue bond debt, otherwise general funds are used to repay general obligation bond debt.

A department/agency may also enter into municipal leases under Chapter 37D, HRS, to obtain funds for capital improvements. With the exception of the Hawaii Health Systems Corporation (HHSC), all agencies must obtain prior approval from the Department of the Attorney General (AG) and the Department of Budget and Finance (B&F) to utilize municipal leases. The University of Hawaii (UH) may enter into a financing agreement without the approval of the AG and B&F if the total amount of the financing agreement does not exceed $3 million.

The capital improvement project appropriation process and Chapter 37D, HRS, provide Executive and Legislative oversight and control for the financing of capital improvements. Through the appropriation process, the Legislature has direct control over the use of State funds, and the Executive, by releasing funds through the capital improvement project allotment process also provides oversight. Under Chapter 37D, HRS, the Executive includes appropriations to repay a financing agreement in its Executive Budget requests and the Legislature, as the appropriating body, can choose to fund or not fund the repayment amounts. Under previous EB-5 arrangements employed within State departments, EB-5 loan repayments have been explicitly treated as subject to annual appropriation of the Legislature.

Under House Bill No. 574, GET revenues, which go to the general fund, would be directly set aside to repay any EB-5 loans without going through the appropriation process. Further, if the EB-5 loans were to be used by a department/agency funded by special funds, general funds would be used to pay for what otherwise would be a special fund expense.

Furthermore, the structure and concept of requiring general excise tax revenue to repay EB-5 loan arrangements essentially establishes a general obligation on the State. This is counter to the practical policy of loans and leases (of which EB-5 is considered) being subject to annual appropriation of the State. EB-5 loans are not currently, and should not be considered in the future, subject to guaranteed repayment from general revenue proceeds of the State.

Our other concern with this bill is that HHSC has no dollar limit under Chapter 37D; thus, HHSC, without any oversight, could enter into financing agreements using proceeds from EB-5 loans, all of which would be repaid by GET revenues. This bill would also allow the UH, without oversight, to seek EB-5 loans, up to $3 million for each project.

For these reasons, B&F strongly opposes this bill.

L E G I S L A T I LATE TESTIMONY

TAXBILLSERVICE

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SUBJECT: GENERAL EXCISE, Disposition for repayment of loans of the immigrant investor pilot program

BILL NUMBER: SB 1313; HB 574 (Identical)

INTRODUCED BY: SB by Dela Cruz and Solomon; HB by Ito, Har, Ichiyama, Oshiro, Say, Tsuji

BRIEF SUMMARY: Amends HRS section 237-31 to provide that a sum from all general excise tax revenues equal to the principal and interest payable during each fiscal year for any EB-5 program loan that financed a state project shall be deposited into the fund and from which the loan is to be repaid. Defines "EB-5 program loan" as a loan under the immigrant investor pilot program authorized under section 203(b)(5) of the Immigration and Nationality Act.

EFFECTIVE DATE: July 1, 2013

STAFF COMMENTS: The immigrant investor, or EB-5, program allows a foreign national to obtain permanent residence status quicker than other options. Under the program, the immigrant investor is required to make an investment of $1 million (or $500,000 in a high unemployment or rural area) in a commercial enterprise that will employ ten full-time U.S. workers. The permanent residence obtained by the investor is conditional for two years and can be made permanent upon satisfying the U.S. Center for Immigration Services (USCIS) that at the end of the two years the investment proceeds have not been withdrawn and the required jobs have been created. The investor may invest in: (1) their own commercial enterprise; (2) a commercial enterprise owned by other parties; or (3) a pre-approved "regional center." Regional centers are geographical areas for which USCIS has determined that investments will create the necessary ten jobs per investor in the geographical area. The immigrant investor's investment can also be used as part of a fixed term loan to a company, business or economic development agency, rather than being used as a direct investment in a specific building, resort or enterprise. This measure proposes to earmark general excise tax revenues in an amount necessary to repay the principal and interest of a USCIS EB-5 program.

Under a loan program, the loan is repaid by the recipient of the loan when funds are available as the business begins to generate income. While this measure proposes to repay an EB-5 loan with general excise tax revenue, it would appear that it is the state who benefitted from the loan proceeds. If this measure is enacted, it would not only earmark general funds but also establish an automatic funding system to repay the EB-5 program loans without any legislative intervention or scrutiny. It should be remembered that earmarking general funds for specific purpose reduces the amount of general funds available to the legislature and is poor tax and finance policy.

The legislature by Act 368, SLH 1989, set a precedent by earmarking $90 million in general excise tax revenues to be deposited into a special fund established for the purpose of improvement and construction of educational facilities under the department of education. This earmarking was rescinded when the money supply for the general fund started to run dry.

LATE TESTIMONY

It should be noted that as with any earmarking, the legislature will be giving their stamp of approval for another "automatic funding" mechanism, in this case, repayment of the USCIS EB-5 loans. Funds would be diverted to the fund without any legislative intervention. Without legislative scrutiny, it would be difficult to ascertain the effectiveness of the reimbursement program and whether or not the fund has too little or too much revenue. More importantly, the diversion of general excise tax revenues, as proposed, would mean that there would be that much less in general funds for other programs and services.

The danger in adopting this measure is that it may spawn additional requests for funding of other "needy" programs through the earmarking of general excise tax revenues. Such earmarking of what is a general fund receipt circumvents the general fund expenditure ceiling as the general excise tax is the main source of revenue for the general fund. If it is the responsibility of the state to repay this loan, then regular appropriations from the general fund should be made to meet this obligation. Earmarking receipts of the general excise tax violates the transparency of appropriating taxpayer funds and should not be adopted.

Digested 1/30/13