



**TESTIMONY OF JAN K. YAMANE, ACTING STATE AUDITOR,
ON SENATE BILL NO. 190 AND PROPOSED SENATE DRAFT 1, RELATING TO
STATE FUNDS**

**Senate Committee on Ways and Means
February 6, 2013**

Chair Ige and Members of the Committee:

I am Jan Yamane, Acting State Auditor. Thank you for this opportunity to testify in support of Senate Bill No. 190 (SB190) and with reservations on the proposed Senate Draft 1 (proposed SD1). In its original form, SB190 implements our 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) Amending Section 23-11, HRS, to require evidence of need for evaluating new special and revolving funds;
- 2) Amending Section 23-12, HRS, to institute regular reviews of special funds, and include the Departments of Transportation and of Defense in regular reviews of revolving and trust funds;
- 3) Amending Sections 37-52.3(2) and 37-52.4(2), HRS, to establish the clear nexus criterion for the establishment and continuance of special and revolving funds and Section 37-62, HRS, to clarify the definitions of special and revolving funds, and
- 4) Repealing funds that fail to meet criteria for continuance.

Whereas SB190 addresses all of our report's recommendations, the proposed SD1 does not by omitting language to repeal funds that we determined fail to meet criteria for continuance (item 4 above). Thus, we have reservations about the proposed SD 1.

I will begin with our recommendations addressed by both bills, SB 190 and the proposed SD 1. First, Section 23-11 requires my office to analyze new special and revolving funds proposed in each regular session to ensure the fiscal integrity of the State. Over the years, we have noted that the criteria for analyzing new funds are limited. Thus, we recommend requiring evidence of need before establishing new special and revolving funds. Section 1 in both bills addresses this by establishing that the evidence of need should: state the program's purpose; describe the scope; present financial information on fees to be charged, sources of projected revenue, and costs; and explain why the program cannot be implemented successfully under the general fund appropriate process. 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.

Second, Section 2 of both bills adds review of special funds to existing reviews of trust and revolving funds conducted by my office on a five-year rotational basis. We have conducted reviews of trust and revolving funds since the enactment of Act 240, Session Laws of Hawai'i 1990. With these reviews, the Legislature has been able to monitor whether revolving and trust funds meet criteria for continuance; however, no mechanism exists for periodic reviews of special funds. For example, we conducted evaluations of special funds in 1991, 1992, and 2001, making our 2012 evaluation of special funds in Report No. 12-04 the first in ten years.

Currently, 186 special funds are not subject to periodic review and in FY2011 comprised 24.3

percent (\$2.48 billion) of the State's \$10.2 billion operating budget. And while special funds account for a significant portion of the State's operating budget, the moneys are not subject to the same level of legislative scrutiny as general funds. Requiring period reviews of existing special funds would be fiscally prudent, especially since our most recent evaluation of funds determined that five special funds did not meet criteria for continuance.

Third, although the sections in the bills differ, both bills amend the law to clarify criterion for the establishment and continuance of special and revolving funds that is intended to safeguard against overproliferation and inefficiencies. Designating revenue for specific purposes flows from the *benefit theory* of public finance, which postulates that those who benefit from a program should pay for it. The *clear nexus* requirement is arguably drawn from this theory. Adhering to the benefit theory can result in an efficient allocation of services in which the cost of providing a service is reflected in the charges made to users or beneficiaries. However, there are instances in which the revenue source is related to the program activities, such as in the case of regulatory fines, but program beneficiaries or users do not pay. Based on our analysis of nine special funds, we concluded it would be reasonable for the Legislature to continue funds that fail to meet the clear nexus criterion in situations where there are linkages between the programs and the sources of revenue dedicated to their support. Both bills accomplish this by clarifying the criteria for and definitions of special and revolving funds under Sections 37-52.3(2), 37-52.4(2), and 37-62, HRS.

And this is where the bills depart. SB190 would implement our final recommendation to eliminate funds for failing to meet criteria for continuance. The relevant amendments to carry

this out are included in this bill. On the other hand, the proposed SD1 would disregard our analysis by enabling the identified funds to continue, irrespective of their failure to meet criteria for continuance. In essence, the proposed SD1 agrees with us on the need to change the criteria, but appears to disagree with our analysis by not supporting repeal of the relevant funds.

Accordingly, we have reservations about the proposed SD1 and urge passage of SB190, unamended. Thank you for your attention and for your interest in our work. I invite your questions.



SB190
RELATING TO STATE FUNDS
Senate Committee on Ways and Means

February 6, 2013

9:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB190, which seeks to remove reliable and consistent funding for emergency medical services, natural area reserves, watershed protection, protection of cultural resources and other important programs that carry out the state's constitutional responsibilities.

The funds targeted by this measure provide consistent and reliable funding for programs critical to Hawai'i's environment, people and economy. For example, the Natural Area Reserves (NARS) special fund helps the NARS Program carry out vital parts of the state's responsibility to conserve, protect, and manage our natural and cultural resources, by preserving representative samples of Hawai'i's diverse biological systems for study by and the appreciation of Hawai'i's residents. The NARS special fund also specifically supports watershed management initiatives critical to our natural and cultural resources, as well as the sustainability of our islands' water supply and distribution system. Similarly, the land conservation fund supports programs that also promote watershed protection, as well as the protection of our coastal areas and beaches, important habitats, cultural and historic sites, and open spaces and scenic resources. These programs are therefore critical to Hawai'i's social and environmental interests as well as our tourism-supported economy, and require stable and consistent funding to ensure their continued existence and operational capacity.

Given the constitutionally-recognized importance of these programs, as well as the long-term, indirect and behind-the-scenes nature of the benefits they provide to Hawai'i and its residents, OHA believes that they should continue to benefit from the aforementioned special fund mechanisms that remain relatively stable and insulated from the general fund appropriation process.

The OHA administration recognizes that an alternate proposed draft of this measure has been posted for public comment and review. The OHA administration appreciates that the proposed draft omits the bill's current provisions targeting the aforementioned special funds for elimination. **Accordingly, OHA staff will not recommend that the Board of Trustees oppose this proposed draft measure, should it be adopted by the Committee.**

In summary, OHA urges the Committee to **HOLD** SB190 in its current form. Thank you for the opportunity to testify.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEE ON WAYS AND MEANS
Wednesday, February 6, 2013
9:00 a.m.
State Capitol, Conference Room 211
In consideration of

SB 190 Proposed SD1 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 SB 190 Proposed SD1 which requires an audit on special and revolving funds every five years. HTDC offers comments broken out by section:

SECTION 2. 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 (such as beginning 2013) and every 5 years thereafter.

SECTION 3. 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 [~~of the program,~~] 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.

SECTION 5, Section 37-62 relating to the definition of "Special Fund". The concern is similar to that included above for section 37-52.3 (2).

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

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SUBJECT: MISCELLANEOUS, Review of special or revolving funds

BILL NUMBER: SB 190, Proposed SD-1

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Amends HRS section 23-11 to amend the criteria used by the auditor in analyzing legislative bill 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: June 30, 2013

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, how 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.

Digested 2/4/13

Dear Senator Ige,

I understand you are sponsoring SB 0190, which reduces from \$3 to \$1 the drivers education fund underwriters fee and repeals the \$2 of the fee allocated to the DOE drivers education program and traffic safety education program. I oppose this bill, as it should not have even been created.

Did you know that if driving were a disease it would be the number one killer of teen? Killing between 5,000 and 6,000 teens every year. Car crashes, not accidents, occur every day on our roads and statistics say 1 out 4 cars on the road is driven by a teen. Teenage drivers account for 12.6 percent of all drivers involved in fatal crashes. Why? Because a teenager's frontal lobe, which is responsible for reasoning and problem solving, is not fully developed. A teen driver has driving errors due to being inexperienced. If this is not convincing just Google it.

I am the ONLY Driver Education Program (DEP) person on the island of Molokai and even though we don't have traffic, let alone a traffic light, students are lining up to take my class. Some of them want to be educated on the laws of the road, some of them want to learn how to drive in snow or heavy rains, while many just want that freedom of going to the beach or getting some hot bread, without their parents.

There is no private drive school on our island and in this tough economic times, who's going to pay \$400 for their child to obtain their license? Which then will have negative impact and we will have even more underage drivers on our roads.

I am not only involved with DEP, but since SY 2008-2009, I have advised at least one senior on some kind of traffic safety education through their senior inquiry project in the English Language Arts class. A notable and memorable project's outcome was a mock-car crash video called "The Last Pa`ina", which I have heard that if you are arrest with a DUI, in Maui County, and attend the class you will watch our video. It has also been shared at a The National Student Safety Program (NSSP), which is the youth program of the American Driver and Traffic Safety Education Association ([ADTSEA](#)) and just a few weeks ago at a teen driving and health summit.

Additionally, the quality of the state-sponsored DEP are consistent in quality, especially in light of the fact that the teachers and the driver education programs are evaluated annually. The curriculum is uniform throughout the state and is constantly updated. We in the public schools have more stringent rules than non-public school driver education.

In closing, I implore you and members of your committee to continue to fund our State's DEP at its current level. Maintaining and improving the quality of driver education should be the goal of all who truly have an interest in highway safety.

If you need to contact me: malia_lee@notes.k12.hi.us OR, (808)936-6434(telephone).

Thank you very much for your time and attention in this matter.

Sincerely,

Malia Lee
DEP coordinator/instructor at Molokai High School

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: Caulinn@gmail.com
Subject: Submitted testimony for SB190 on Feb 6, 2013 09:00AM
Date: Monday, February 04, 2013 10:26:40 AM

SB190

Submitted on: 2/4/2013

Testimony for WAM on Feb 6, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Caulin Nelson-Angelsea	Individual	Oppose	No

Comments: The passing of this bill would be detrimental to the youth of Hawaii. I think that getting rid of public education to young drivers will hurt us more than helping because drivers ed. and traffic safety teach necessary skills for life. I also feel that, because young people will still find ways to drive, this will do much more harm than good.

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February 4, 2013

To: Senator David Ige

From: Dennis Sasai

Re: Bill/Resolution #SB 0190

I am writing to request that in the above-mentioned bill/resolution, that portion related to the driver education fund and underwriters fee be deleted/repealed.

Driver Education is something that goes beyond the physical skills needed to safely operate a vehicle. It is about self-responsibility, being able to cooperate and communicate with others on the road to make it safer. The students learn empathy by learning about how we affect others with our actions or inactions. These are character traits I believe we all want for our children.

We all want our children to safe, but we can't watch them all the time and need to trust that they'll make the right decisions, especially if they're behind the wheel of a 4 thousand pound weapon. Driver's education teaches them all of this.

The world has changed a lot in the last 20 years, we need to keep up with the new technologies and new teaching strategies. Without funding the driver education programs, we will become obsolete and can no longer teach our children up to date strategies to be a safe driver. Hawaii's Department of Education Driver Education program is one of the most up to date and well regulated programs in the country. The instructors receive annual training and monitoring, ensuring consistency across the state. They have streamlined record keeping processes and offer technical assistance whenever needed.

In closing, please repeal this bill or at the very least take driver's education out of the language and maintain the current funding for the program.

If you need to contact me: dennis.sasai@gmail.com OR, 281-4852 (telephone).

Thank you very much for your time and attention in this matter.

Sincerely, Dennis Sasai
Concerned parent, voter and tax payer
Driver education advocate

2/4/13

Dear Senator David Ige and the Senate Ways and Means Committee:

I oppose SB 190 which would seize monies from the driver education program and other K-12 traffic safety programs. The driver education program here on Molokai is the only one offered to young adults who want to get their driver's license, and if you pass the bill, I'm afraid that there will be more underage and unlicensed drivers here. This ultimately affects the safety of our whole community. We don't have other resources or driver education centers where students can go for the appropriate driver's education courses. In order to keep the roads safe, we need to continue to offer the driver's education classes and other traffic safety programs, so please don't pass SB 190.

Thank you for your consideration,
Erin Raguindin

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: madani@aloha.net
Subject: Submitted testimony for SB190 on Feb 6, 2013 09:00AM
Date: Monday, February 04, 2013 6:16:25 PM

SB190

Submitted on: 2/4/2013

Testimony for WAM on Feb 6, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Madani	Individual	Oppose	No

Comments: I completely oppose anything that jeopardizes the Driver's Education Program on Molokai. It is necessary that our children are provided this program to ensure safe drivers on our roads. Molokai is dependent on cars, with limited public transportation available. I am shocked that this program is even being considered to face cuts/closure. It is simple common sense that the state must make this necessary program readily available to all its residents (especially its youth). Thank you.

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January 29, 2013

To: Senator David Ige

From: Sam Lee

Re: Bill/Resolution #SB 0190

I am writing to request that in the above-mentioned bill/resolution, that portion related to the driver education fund and underwriters fee be deleted/repealed.

Not to repeal it would put our state's driver education program in a precarious situation. The current funds are needed to support quality improvement, support growth, and continued standardization of the program. Quality programs require professionally trained instructors, up-to-date equipment, and state-of-the-art technology. Most certainly, I do not think the State wants to jeopardize the safety of any student in the driver education program for lack of professionally trained personnel and unsafe equipment (e.g., driver education vehicles).

Driver Education provides, among others, knowledge of road laws, skills in safe driving, safe driving practices, basic car control. It addresses life style, attitudes, motivations, peer influences, cognitive and decision-making skills in shaping driving styles and crash involvement.

Two mainstays in our State's driver education program are the Graduated Driver Licensing system and parent involvement. The former provides motivation to apply safe driving practices as there are provisions in which progress toward graduation is halted or reversed if violations or crashes occur. The latter component provides supervised driving practice and enforcing graduated licensing rules.

For students to enroll in the State's driver education program, the cost is ten dollars (\$10). This makes it very affordable to the general public. Contrast this amount with which commercial/private driving schools charge which ranges from \$250 - \$300 if not more, for the same program and same curriculum.

In closing, I implore you and members of your committee to continue to fund our State's driver education at its current level. Maintaining and improving the quality of driver education should be the goal of all who truly have an interest in highway safety.

If you need to contact me: samlee908@yahoo.com OR, 545-1063 (telephone).

Thank you very much for your time and attention in this matter.

(signed) Sam Lee
Concerned parent, voter and tax payer
Driver education advocate
Traffic safety education advocate

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: roxy_girl_4ever2008@yahoo.com
Subject: Submitted testimony for SB190 on Feb 6, 2013 09:00AM
Date: Monday, February 04, 2013 3:57:27 PM

SB190

Submitted on: 2/4/2013

Testimony for WAM on Feb 6, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Tawney Fernandez	Individual	Oppose	No

Comments: I was an active participant of Driver's Ed. I feel like driver's ed helped me 100% to become a more responsible and safe driver on the roads. Before drivers ed i knew the basics of driving such as gas, brake, turn signals, etc. After drivers ed i realized that their are way more to driving then the basics that i was taught. Knowing my situation to the lack of knowledge about driving makes me worried and concerned about other young drivers that may be in the same situation as i was in. Taking away drivers ed will have a major effect on the young population. Taking away drivers ed will increase the risk of accidents in young drivers because they will lack the important knowledge needed to drive safely. Please don't take away something so special that saves lives in the long run. Driver's ed is a good useful prevention class that wants to teach teens the right way to drive.

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: trevconn93@gmail.com
Subject: *Submitted testimony for SB190 on Feb 6, 2013 09:00AM*
Date: Sunday, February 03, 2013 1:21:38 PM

SB190

Submitted on: 2/3/2013

Testimony for WAM on Feb 6, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Trevor Connolly	Individual	Oppose	No

Comments:

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