



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 1632, RELATING TO NON-GENERAL FUNDS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 19, 2020 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Rodney Kimura, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General opposes a portion of this bill.

The purpose of this measure is to reclassify or abolish certain non-general funds of the Department of the Attorney General (Department) per the recommendations in the Auditor's Report No. 19-16 and transfer the remaining unencumbered balances to the general fund. Our comments are directed only to section 2 relating to the Antitrust Trust Fund (Fund).

Currently, section 28-13, Hawaii Revised Statutes (HRS), creates an antitrust trust fund with a cap of \$250,000. Other than the initial appropriation of \$150,000 when this section was enacted into law, this fund has been entirely supported by the ten percent of antitrust judgments or settlements deposited into this trust fund pursuant to section 28-13(a)(1), HRS. Section 2 of this bill proposes to change the trust fund into a special fund.

The Attorney General opposes section 2 because, unlike the current trust fund designation, a special fund designation will inhibit antitrust law enforcement and the efficient distribution of proceeds pursuant to settlements and judgments.

The Attorney General is statutorily empowered to perform an important law enforcement function to enforce the civil and criminal provisions of the Hawaii Antitrust Law set forth in chapter 480, HRS.

The law enforcement function includes investigation into, and litigation in connection with alleged antitrust violations. This often includes joint work with other

states as well as certain federal agencies such as the United States Department of Justice and the Federal Trade Commission.

There is no predictability as to when and how alleged antitrust violations will occur. As constituted today, the Fund provides needed financial resources that cannot be anticipated in advance. If the Fund was re-designated as a special fund, the Department would have to create a budget and seek an appropriation – neither of which is possible for the kind of work undertaken.

A re-designation of the Fund could indeed hamper and even prevent law enforcement action because operational restrictions associated with special funds will impede immediate access to financial resources needed to support investigations as well as for litigation where we must tender a mandatory cost share contribution as a prerequisite for state participation in multi-state litigation.

In addition, the Fund also serves a critical role in the distribution of the proceeds of judgments and settlements. Often, judgments and settlements include specifications of the purpose(s) of the proceeds and the class(es) of recipients of the proceeds. We therefore have an obligation to implement a proper and timely distribution of the proceeds.

To fulfill our distribution responsibility, the proceeds are deposited into the Fund and thereafter distributed out of the Fund in accordance with the specifications.

This distribution function comports with the definition of a “trust fund” in section 37-62, HRS, because: (i) the proceeds are temporarily held for the benefit of designated classes of persons who have in essence a vested interest or ownership in a share of the proceeds; and (2) the proceeds are established for the benefit of the specified purpose(s).

It is essential to note that re-designation means that five percent of any proceeds will be taken away from recipients because of the surcharge imposed on all receipts going into a special fund, without a corresponding benefit towards antitrust enforcement. In addition, distributions to recipients will be delayed pending an

appropriation by the Legislature to the detriment of the recipients and the general fund.

Since 2004, we have addressed the issue of the designation of the Fund on multiple occasions in our letters to the Auditor. There have been no significant changes warranting a re-designation of the Fund.

We respectfully request that section 2 of this measure be deleted.