

TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Repeal Non-General Funds

BILL NUMBER: HB 61

INTRODUCED BY: LUKE, CULLEN

EXECUTIVE SUMMARY: Reclassifies or repeals non-general funds of the Department of Hawaiian Home Lands or Judiciary.

SYNOPSIS:

- Reclassifies the Hawaiian home receipts fund in section 213(g) of the Hawaiian Homes Commission Act as a trust account.
- Repeals the probation services special fund (section 706-649, HRS).

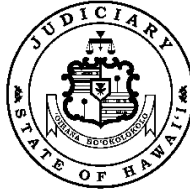
Makes conforming amendments and lapses unencumbered balances to the general fund.

EFFECTIVE DATE: 7/1/2021.

STAFF COMMENTS: The 1989 Tax Review Commission noted that use of special fund financing is a “departure from Hawaii’s sound fiscal policies and should be avoided.” It also noted that special funds are appropriate where the revenues to the funds maintain some direct connection between a public service and the beneficiary of that service. The Commission found that special funds which merely set aside general funds cannot be justified as such actions restrict budget flexibility, create inefficiencies, and lessen accountability. It recommended that such programs can be given priority under the normal budget process without having to resort to this type of financing.

Because of the spotlight of monies in special funds, HRS section 23-12 requires the State Auditor to review all existing special, revolving, and trust funds beginning in 2014 and at five-year intervals. This bill was the result of Auditor’s Report Nos. 20-16 and 201-17.

Digested 2/14/2021



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 17, 2021, 2:00 PM
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 61, Relating to Non-General Funds.

Purpose: Reclassifies or repeals non-general funds of the Department of Hawaiian Home Lands or Judiciary. Part II, Sections 3-7 repeals the Judiciary’s probation services special fund and Part III, Sections 8-9 reclassifies the supreme court bar examination trust fund as a special fund as recommended by the auditor in Auditor’s Report No. 20-17.

Judiciary's Position:

Part II, Sections 3-7 – Probation Services Special Fund

The Judiciary respectfully, but strongly opposes, Part II, Sections 3-7.

De-funding or abolishing the Probation Services Special Fund would lead to the following devastating impacts:

- Reduced resources for supervision and activities of Probation Officers (POs) of over 18,000 offenders statewide.
- Loss of six positions that assist with the supervision of offenders which will impact the workload of the remaining staff, and likely result in overworked staff that could affect public safety.



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- Jeopardized training and certification of POs statewide on risk assessments and evidence-based components, which could result in less skilled and trained probation officers and a negative impact on public safety.
- Jeopardized safety of POs due to the lack of training and certification.

The Probation Services Special Fund provides the means for statewide evidence-based training and certification for POs, which enables them to work with offenders to target criminogenic factors and effectuate prosocial thinking and change. The training covers motivational interviewing, cognitive behavior techniques, and collaborative casework, as well as national trends and best practices. It also funds required training for all POs to become certified in using the risk assessment tool. This training and certification are absolutely vital to POs' effectiveness and to the safety of the POs, office staff, and clients—during field visits, home visits, and in-office visits.

The Probation Service Special Fund also funds maintenance costs for the statewide Adult Probation case management system and the statewide risk assessment and case planning system. The assessments captured in this database include sex offenders, domestic violence offenders, and high-risk drug offenders, and provide management of risk classification and case planning for offenders.

Six positions are typically funded by the Probation Services Special Fund—two PO positions, three Social Service Assistant positions, and one clerical position. All of these positions support offender supervision statewide. Notably, four of the six positions have been left vacant to save costs to the fund. Additional efforts to reduce costs to the fund include using general funds to cover the costs of the systems maintenance noted above. However, these cost-saving measures are not sustainable long-term.

Additionally, removing the Interstate Compact Application Fee as a revenue source for the Probation Services Special Fund will cause serious repercussions for the State of Hawai'i. The Interstate Compact for Adult Offender Supervision is a compact agreement between all 50 states, including District of Columbia, Puerto Rico, and the US Virgin Islands. The compact was established to control the movement of offenders on probation and parole leaving and entering the State of Hawai'i. The compact is subject to federal rules that are supported by Hawai'i Revised Statutes (HRS) §§ 353B-1 through 353B-6. Compact states face sanctioning for non-compliance of the Federal Interstate Compact rules. Sanctioning includes remedial training, large monetary fines, legal action in Federal Court, and suspension of the compact. States are subject to annual National audits. The interstate coordinator monitors the tracking system to ensure that the state stays in compliance.

Payments of the Interstate Compact Application Fee are placed in the Probation Services Special Fund to support the Interstate Compact Offender Tracking System (ICOTS) coordinator



position. This position is vital to the compliance of the federal rules. The position manages and maintains the statewide ICOTS. In addition, the position is responsible to respond to state inquiries, track offenders leaving the state and entering the State of Hawai‘i, and monitoring the interstate activities of probation and parole officers. This position was recently vacated as the incumbent retired. Due to the declining revenue in the fund, a decision was made to temporarily suspend hiring until the fund can be replenished. Due to COVID-19 and travel restrictions from Compact states, there has been a reduction in the number of interstate compact transfer cases. This reduction, however, is temporary because as travel becomes more accessible, there will be an increase in the number of interstate and intrastate transfer cases. This increase will compel the need to fill the coordinator position. Currently, the State of Hawai‘i has 404 probation and parole offenders that fall under the federal rules of the compact.

In short, this special fund is already having difficulty fully supporting activities that protect and advance public safety. De-funding or abolishing this special fund will have significant, long-lasting effects on public safety.

Part III, Sections 8-9 – Supreme Court Bar Examination Fund

The Judiciary and the Board of Examiners respectfully submit the following testimony in opposition to Part III, sections 8 and 9.

Pursuant to HRS § 605-1 (a), the supreme court has the authority to examine, admit, and reinstate such person as it finds qualified to practice law in Hawai‘i. HRS § 605-1(b) provides as follows:

In order to be licensed by the supreme court, a person must be of good moral character, and shall satisfy such residence and other requirements as the supreme court may prescribe.

To implement its authority to oversee the practice of law in Hawai‘i, the supreme court required the appointment of a Board of Examiners to administer the process of admission to the bar. See Rule 1(a) of the Rules of the Supreme Court (RSCH) (as amended April 16, 1984).¹ RSCH Rule 1.2(c) sets forth the duties of the Board as follows:

(c) Duties. The Board shall examine the qualifications of each applicant, his or her knowledge of legal ethics, and his or her moral character, and shall administer a written examination. The record of the examination shall be filed with the Clerk

¹ Prior to 1984, RSCH Rule 15 was the supreme court rule on admission to the bar and the Board of Examiners.



and the Board shall report its recommendations to the Supreme Court which shall make the final decision for all admissions to the bar.

The Board of Examiners is also tasked with reviewing character and fitness issues, see RSCH Rule 1.3(d) and grading the bar examinations. RSCH Rule 1.4(a) requires the payment of an application fee. The application fees paid by bar applicants are used to pay for all costs associated with the bar examination, which is given twice each year. These costs include: (1) rental costs of the facility where the exam is given; (2) exam materials distributed to each applicant during the bar examination; (3) supplies needed for applicants to take the bar exam; (4) rental of software and hardware for applicants who request non-standard accommodations to take the exam²; (5) cost of retaining court reporters to provide assistance to applicants during exam; (6) electricians to wire the exam site to enable applicants to use their own laptops for the exam; (7) security for the exam site; and (8) grading workshops or conferences to train Board members who grade the exams.³

With regard to the holding of application fees, review of the Board's fiscal file, which includes documents from the State Department of Budget and Finance, shows that the application fees have been held in a trust account since 1977. It was determined the fees could not be held as a special fund, because there was no statutory authority to create a special fund.⁴ In reliance on the information provided by the State Department of Budget and Finance, the Judiciary continued the Bar Examination Trust Fund until today. Moreover, according to the Auditors Report, the Auditor conducted six audits of Judiciary's funds. No previous audit questioned the validity of the Bar Examination Trust Fund, and both the Judiciary and the Board of Examiners believe reclassifying the Trust Fund to a special fund is not warranted.⁵

² For example, in past years the Board incurred costs to provide blind applicants with a separate computer loaded with specific software used by vision impaired individuals. In other instances, the Board incurred costs to pay for court reporters to take dictation for preparation of the written portion of the bar exam for applicants who were either quadriplegic or otherwise unable to write or type without assistance.

³ Based upon statements in the Auditor's Report, it seems the Auditor does not believe these grading workshops or conferences directly benefit applicants. The Judiciary and the Board disagree. The grading workshops are clearly a benefit to applicants, because the workshops ensure graders, who are all volunteers, have information needed to review and grade the written portion of each applicant's bar exam.

⁴ Creation of special funds is governed by HRS §37-52.3

⁵ The Auditor's Report noted that the Bar Examination Trust Fund continues to serve the purpose for which it was created and found no discrepancies in how the fund is used.



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Based upon statements in the Auditor's Report, a trust fund must be used for the benefit of the beneficiaries of the fund. The Auditor's Report states specifically that the Trust Fund serves the purpose for which it was created. It seems, however, that the auditor has a misunderstanding of the fund and the beneficiaries of the Trust Fund.

Bar applicants, present and future, are the beneficiaries of the Trust Fund. The Trust Fund is used solely for the benefit of these beneficiaries. No other funds, either Judiciary or general, are used. With regard to the grading workshops and conferences, which seem to be the activities that led the Auditor to conclude the fund is designated incorrectly, most other states pay graders. The attorneys in Hawai'i who serve as members of the Board of Examiners are very civic-minded and volunteer a significant amount of time to grade the exams and handle other aspects of the bar admission process. To assist them and to insure the accuracy of grading, which is a benefit to every bar applicant, the Board of Examiners send the graders to grading workshops. Other jurisdictions who pay their graders also send them to the grading workshops. As a whole, the cost associated with sending our volunteers to the workshops and to conferences is far less than the cost of paying graders.

A bar exam is not only a grueling process for the exam takers, it is a grueling process for the administrators and Board members. The Board of Examiners must make sure the application process and the exam itself is bias free and fair. With statutes and laws changing, it is important for the Board members to keep up to date on issues related to the application and exam process. The steps and time they must take to develop policies and procedures that comply with the changing laws and procedures are necessary and benefit the entire class of bar applicant beneficiaries.

Based upon the foregoing, we believe the Trust Fund serves the purpose for which it was created and is properly designated as a Trust Fund to provide benefits to its class of beneficiary bar applicants. No change to the fund is needed.

Thank you for the opportunity to submit testimony in opposition to Part II, Sections 3-7, and Part III, Sections 8-9 of House Bill No. 61.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

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TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 17, 2021 AT 2:00PM VIA VIDEOCONFERENCE

HB 61 RELATING TO NON-GENERAL FUNDS

February 17, 2021

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits testimony in opposition to Part I of this bill that reclassifies the Hawaiian home receipts fund (HHRF), a DHHL trust fund, to a trust account.

Reclassifying the HHRF to a “trust account” impairs or reduces the benefit of oversight that is normally provided by a “fund,” thereby requiring Congressional consent for the amendment to take effect. Section 37-62, HRS defines “trust fund” to mean a fund “in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” The Auditor in his report describes trust accounts as a separate holding or clearing account for state agencies. Trust accounts also serve as “accounting devices to credit or charge agencies or projects for payroll or other costs.” DHHL could not find a statutory definition of a trust account in the HRS.

The HHRF is much more complex than perceived. The HHRF does not operate on a cash basis. The HHRF is accounted for on a modified accrual basis to account for the interest receivables as accrued and account for deposits of interest payments as received from DHHL’s direct mortgage loan portfolio. These direct mortgage loans are for a period not to exceed 30 years, representing the interest receivable portion of approximately 1,200 DHHL direct mortgage loans. The HHRF complies with the revenue recognition standards as prescribed by the Governmental Accounting Standards Board and is audited annually by an independent Certified Public Accounting firm as selected by the State Auditor. The accounting of this fund reflects the true complexities of DHHL business-type activities while simultaneously providing revenue.

Thank you for your consideration of our testimony.