



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 63, RELATING TO NON-GENERAL FUNDS.

BEFORE THE:

HOUSE COMMITTEE ON HIGHER EDUCATION AND TECHNOLOGY

DATE: Wednesday, February 3, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Via Videoconference, Conference Room 309

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact James Paige or Bryan Yee,
Deputy Attorneys General, at 586-1180)

Chair Takayama and Members of the Committee:

The Attorney General provides the following comments on section 10 of the bill.

Section 10 of this bill provides that the national mortgage settlement trust account be abolished and any remaining amounts lapse to the credit of the general fund. The Attorney General strongly cautions against this course of action and instead recommends that the remaining \$66,000 from the national mortgage settlement be appropriated for uses consistent with the court order. The national mortgage settlement was reached with the five major national banks, and was resolved pursuant to five federal court consent judgments in the spring of 2012, all of which restrict the use of the national mortgage settlement moneys received by the State. Specifically, these judgments provide that the settlement moneys received by the State of Hawaii may only be used as follows:

The monies are to be held in trust for the benefit of homeowners and others in the State of Hawaii who are, have been, or may be affected by mortgage loan proceedings. This includes, but is not limited to, those who have been subject to foreclosure, are in foreclosure, are at risk of foreclosure, have delinquent mortgage loan payments, have negative equity in their homes, have lost their homes due to foreclosure, have been unable to refinance their mortgage loans, or are leasing a dwelling affected by foreclosure. **The monies shall be used for housing and financial counseling, public education, mediation, dispute resolution, and enforcement of laws and agreements protecting the rights of homeowners and lessees.** The monies shall be used only for these purposes. The monies shall be deposited into an administrative trust account to be administered by the Attorney General of the State of Hawaii, who as

custodian shall have sole discretion to make determinations as to the amounts and the purposes for which the monies are to be expended. United States of America, et al., v. Bank of America Corp. et al., Civ. No. 12-0361 (D.D.C. 2012) filed April 4, 2012 (emphases added).

The current pandemic has created a number of needs for which the money can be used to help homeowners and lessees with counseling, education, mediation, dispute resolution, or enforcement of laws to protect homeowners and lessees. We strongly urge the Legislature to appropriate the money for one of these purposes and not lapse the money to the credit of the general fund, in violation of the federal court consent judgment.

Thank you for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Repeal Non-General Funds

BILL NUMBER: HB 63

INTRODUCED BY: LUKE

EXECUTIVE SUMMARY: Reclassifies the notaries public revolving fund and criminal forfeiture revolving fund as special funds. Reclassifies the litigation deposits trust fund as a trust account. Abolishes the national mortgage settlement trust account. Abolishes the criminal justice commission trust account. Abolishes the UH intercollegiate athletics special funds

SYNOPSIS:

- Reclassifies the litigation deposits trust fund in section 28-16, HRS, as a trust account.
- Reclassifies the notaries public revolving fund in section 456-9.5 as a special fund..
- Repeals the UH-Manoa and UH-Hilo intercollegiate athletics special funds in section 304A-2176.
- Abolishes the Hawaii criminal justice commission trust account.
- Abolishes the national mortgage settlement trust account.

Makes technical and conforming amendments.

Provides that any unencumbered balances in the repealed funds lapse to the credit of the general fund.

EFFECTIVE DATE: July 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. 19-16 (relating to the department of the attorney general) and 20-03 (relating to the University of Hawaii).

Digested 1/30/2021



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Higher Education & Technology
February 3, 2021 at 2:00 p.m., Room 309

by
Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

HB 63 – RELATING TO NON-GENERAL FUNDS

Chair Takayama, Vice Chair DeCoite, and members of the Committee:

Thank you for the opportunity to present testimony today. The University of Hawai'i (UH) opposes House Bill No. 63, Relating to Non-General Funds, because it proposes to eliminate the athletics special funds at both UH Mānoa and UH Hilo. Eliminations of these special funds would significantly alter the entire operations of both athletics programs and how either campus operates.

The UH suggests that neither Athletics Special Fund be repealed. The 2020 Legislative Auditor's "Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the University of Hawai'i" noted that the UH Mānoa Intercollegiate Athletics Special Fund was not self-sufficient and should be repealed. The UH offered comment that collegiate athletics is a major function at the UH and is operated as an enterprise. Athletics generates significant revenues from multiple sources (i.e., ticket sales, sponsorships, concessions, promotions, etc.). Most of those revenues pay for the operational activity of the athletic programs, but are also supplemented with campus revenues and state appropriations.

Although the fund is not self-sufficient and therefore fails to meet the criteria in the Auditor's Report, the fund still provides a useful function. Repealing the fund would mean that the Athletics program at UH Mānoa would be entirely dependent on the general fund. All expenditures related to the athletics program, including travel, conference guarantees, salaries, student meals, student-athlete health and wellness, etc., would be paid by the State general fund. Additionally, the revenues that are collected for athletics purposes, including ticket revenue, broadcast distribution deals, concession agreements, and facilities rentals would be captured by the State general fund. This would significantly reduce the transparency of the Athletics program and create an unnecessary burden on the Athletics program, without improving the self-sufficiency of the program. The UH has been actively trying to build its athletics programs toward the goal of a true business enterprise – one that is self-sufficient. The vast overwhelming majority of collegiate athletics programs at other universities and colleges are also not self-sufficient, but UH believes that our combination of public- and university-funding support could help place UH athletics on sound footing.

Thank you for this opportunity to testify.