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STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHAHA

March 18, 2024

To: The Honorable Henry J.C. Aquino, Chair,
The Honorable Sharon Y. Moriwaki, Vice Chair, and
Members of the Senate Committee on Labor and Technology

Date: Monday, March 18, 2024
Time: 3:30 p.m.
Place: Conference Room 224, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 2235 HD1 RELATING TO NON-GENERAL FUNDS

The **DLIR strongly supports** HB2235 HD1 that proposes to reclassify or repeal certain non-general funds of the DLIR according to the recommendations made in Auditor's Report No. 23-06. The department concurs with the State Auditor's recommendations and strongly supports the exemption of the Boiler and Elevator Fund from the central service expenses found in 36-27, Hawaii Revised Statutes (HRS).

The DLIR notes that it has a request through the Governor's Executive Supplemental Budget to re-establish a \$300,000 ceiling on the Labor Law Enforcement Special Fund to enable the department to use penalties collected by the Hawaii Occupational Safety and Health (HIOSH) and the Wage Standards Division to collect penalties and fees assessed by the department.

Pursuant to § 371-12.5 all penalties collected pursuant to §§ 388-9.7 & 388-10 (Payment of Wages) as well as civil penalties under § 396-10 (Occupational Safety and Health) are deposited to the Labor Law Enforcement Special Fund. § 371-12.5 requires the depositing into the general fund by June 30 every year the unencumbered balance of the fund exceeding \$500,000. General fund deposits have ranged from \$1.5M to \$2.5M over the past four fiscal years.

The department notes that the Legislature is currently deliberating on the Human Trafficking Victim Services Fund in HB1967 HD1.

TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Reclassify or Repeal DLIR Funds

BILL NUMBER: HB 2235 HD 1

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Reclassifies or repeals certain non-general funds of the Department of Labor and Industrial Relations, pursuant to the recommendations made by the Auditor in Auditor's Report No. 23-06. Exempts the boiler and elevator special fund from central services expenses.

SYNOPSIS: Amends section 371-12.5, HRS, to reclassify the labor law enforcement special fund as a trust account.

Amends section 397-13, HRS, to reclassify the boiler and elevator revolving fund as a special fund.

Repeals section 706-650.5, HRS, which established the human trafficking victim services fund.

Reclassifies the national governors' association grant trust account, administratively established in 2021, and the non-profit employers deposit account, administratively established in 1972, as trust funds.

Makes conforming changes.

Amends section 36-27(a), HRS to add the boiler and elevator special fund under section 397-13 as exempted from prorated central service expenses.

EFFECTIVE DATE: July 1, 3000.

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 on 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 No. 23-06.

A Hawaii law dating back to 1955, which now can be found at HRS section 36-27, says that 5% of any special fund’s income will be paid to the state general fund to pay “central service

expenses,” which we assume are shared services costs such as payroll, accounting, compliance reporting, and other administrative costs. HRS sections 36-28, 36-28.5, and 36-29 apply a similar skim to the highway, airport, and harbor funds respectively, except that the 5% applies to the fund’s income net of payments for principal and interest on bonds.

The same 1955 law contained another provision, now found at HRS section 36-30, which says that each special fund “shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.” This law does not provide for a flat percentage, but instead requires the state department in charge of the special fund to figure out the proper administrative costs.

In 1994, the State Auditor, Marion Higa at the time, issued Report 94-17 on these assessments. She concluded that it was appropriate for special funds to pay their fair share of administrative costs. But she observed that a flat 5% seemed to be an arbitrary percentage and wondered whether it was a reasonable amount, observing that other states that charged central services expenses were charging quite a bit less in percentage terms.

To determine whether the 5% flat amount is fair, we need to know what costs this charge was meant to cover. The State Auditor recommended that the Department of Budget and Finance put out some rules, which the statute authorizes explicitly, to add clarity and consistency. We’re still waiting for those rules 30 years later.

This bill proposes to exempt the boiler and elevator fund from central services expenses. No rationale is given in the committee report, and we see no reason why the fund should be given special treatment as proposed.

Digested: 3/14/2024