

ACT 309

H.B. NO. 1842

A Bill for an Act Relating to State Special Funds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide executive departments with increased flexibility in the disposition of moneys in special funds which are determined to be in excess of requirements for any ensuing twelve-month period in such funds, in order to more effectively utilize the financial resources of the State so long as such disposition will not jeopardize federal grant agreements.

The Legislature hereby finds and determines that certain special funds under the control of the department of transportation have experienced unprecedented growth in recent years while other special funds under the control of the department of transportation are operating on a marginal basis; that such circumstances result in an inefficient allocation of the State's financial resources; that it is necessary and desirable to provide a mechanism to permit the transfer of excess moneys from special funds under the control of the department of transportation to other special funds under the control of the department of transportation or to the general fund of the State to finance the important public purposes for which such funds have been established; that it is reasonable to maximize the use of existing financial resources of the State rather than to increase taxes or fees to finance the important public purposes for which the special funds under the control of the department of transportation and the State general fund have been established; and that the enactment of this Act is in the public interest.

SECTION 2. Section 37-53, Hawaii Revised Statutes, is amended to read as follows:

"§37-53 Transfer of special funds [to general revenues]. At any time during [the] a fiscal [period,] year, notwithstanding any other [provisions of] law to the contrary, [departments] any department may, with the approval of the governor or the director of finance if so delegated by the governor, transfer from the special funds relating to such department to the general revenues of the State all or any portion of [monies] moneys¹ determined to be in excess of fiscal [period] year requirements for [the] such special [funds.] funds, except for special funds under the control of the department of transportation relating to highways, airports, transportation use, and harbors activities. At any time the department of transportation, with the approval of the governor or the director of finance if so delegated by the governor, may transfer from any of the special funds under the control of the department of transportation to the general revenues of the State or to any special fund under the control of the department of transportation all or any portion of moneys determined to be in excess of requirements for the ensuing twelve months, provided no such transfer shall be made which would cause a violation of federal law or federal grant agreements."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER TRANSPORTATION USE SPECIAL FUND

§ -1 Transportation use special fund; established. There is created in the treasury of the State the transportation use special fund into which shall be deposited that portion of the moneys received by the department of transportation paid under contract entered into as authorized by section 261-7 on account of the display, sale and delivery of in-bond merchandise displayed or sold at locations in the State other than on airport properties as permitted under federal law without causing a violation of federal grant agreements, or as shall be mutually agreed upon by the State and any appropriate agency of the federal government, and as may be provided by rules promulgated pursuant to chapter 91; provided that no moneys so deposited may be appropriated, applied or expended from the transportation use special fund prior to July 1, 1990; except that such funds shall continue to be available and be used for purposes provided under section 261-5. The director of transportation shall administer the fund.

§ -2 Disposition of the transportation use special fund. For so long as airport revenue bonds issued before the effective date of this Act are outstanding, the director of transportation shall transfer to the airport revenue fund created by section 248-8 from moneys on deposit in the transportation use special fund, as permitted by and in accordance with section 37-53, an amount which, together with moneys on deposit in the airport revenue fund, will cause the aggregate amount of moneys on deposit in the airport revenue fund to be at least one hundred fifty per cent of the requirements of such fund for the ensuing twelve months. At any time after complying with the provisions of the preceding sentence, the director of transportation may transfer all or any portion of the balance of the moneys on deposit in the transportation use special fund to the general fund of the State or to any special fund under the control of the department of transportation as permitted by and in accordance with section 37-53.

§ -3 Exempted from reimbursement for departmental administrative expenses. The transportation use special fund is exempted from section 36-30.

§ -4 Report to the legislature. The director of transportation shall submit a report to the legislature, not later than thirty days after the end of each fiscal year with respect to the transportation use special fund. The report shall include, but not be limited to, the following:

- (1) The amount of moneys received and deposited in the transportation use special fund and the amount of moneys transferred from the transportation use special fund to any other special fund of the department of transportation for the fiscal year just ended;
- (2) The amount of moneys expected to be received by the department of transportation, pursuant to section -1, for the transportation use special fund and to be transferred to any other special fund of the department of transportation for the current fiscal year; and
- (3) Any interest accrued or expense deducted from the moneys in the transportation use special fund, with an explanation for each.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended to read as follows:

“§36-30 Special fund reimbursements for departmental administrative expenses. Each special fund, except the transportation use special fund established

by section -1; the special summer school fund under section 298-3.5; the school cafeteria special funds of the community colleges, the department of education, and the university laboratory school; and the special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii, 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. Administrative expenses shall include, but shall not be limited to, salaries, maintenance of buildings and grounds, utilities, and general office expenses. The pro rata share of each special fund shall be that proportion of the administrative expenses of the department, including those paid from all special funds administered by the department, which the expenditures of the special fund bear to the total expenditures of the department; provided that in determining the amount to be charged to each special fund for its pro rata share, credit shall be given for any administrative expenses paid from the special fund concerned and such other adjustments shall be made as may be necessary to achieve an equitable apportionment. The director of finance may determine the amount to be charged to each special fund and may cause the amounts to be transferred to the general funds as reimbursements."

SECTION 5. Section 248-9, Hawaii Revised Statutes, is amended to read as follows:

"§248-9 State highway fund. Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of [repairs and maintenance] operation, maintenance, and repair of the state highway system, [which includes] including without limitation, the cost of equipment and general administrative overhead[.];
- (2) To pay the costs of acquisition (including real property and interests therein), planning, designing, construction and reconstruction of the state highway system, and bikeways, [which include] including, without limitation, the cost of equipment and general administrative overhead[.]; and
- (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where such bonds are designated to be reimbursable out of the [special] state highway fund.

At any time the director of transportation may transfer from the state highway fund all or any portion of available moneys determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the state highway fund as permitted by and in accordance with section 37-53. For purposes of such determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the state highway fund during such period, amounts on deposit in the state highway fund which are encumbered or otherwise obligated, budgeted amounts payable from the state highway fund during such period, and revenues anticipated to be received by and expenditures to be made from the state highway fund during such period based on existing agreements and other information for the ensuing twelve months, and such other factors as the director of transportation shall deem appropriate."

SECTION 6. Section 261-5, Hawaii Revised Statutes, is amended to read as follows:

"§261-5 Disposition of airport revenue fund. (a) Except for that portion of the payments received by the department under a contract entered into as au-

thorized by section 261-7 and deposited in the transportation use special fund pursuant to section -1. [All] all¹ moneys received by the department [of transportation] from rents, fees and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All [such] moneys paid into the airport revenue fund shall be appropriated, applied or expended by the department [for the statewide system of airports, including the construction of airports and air navigation facilities approved by the legislature, including acquisition of real property and interests therein; and for operation and maintenance of airports and air navigation facilities; and for the payment of indebtedness heretofore or hereafter incurred by the department, or its predecessor, the Hawaii aeronautics commission, for any of the purposes of this chapter.] for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section [39-59;] 39-61;¹ provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director's discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year.

(b) At any time the director of transportation may transfer from the airport revenue fund all or any portion of the moneys received by the department paid under a contract entered into as authorized by section 261-7 on account of the display, sale and delivery of in-bond merchandise displayed or sold at locations in the State other than on airport properties, as permitted under federal law without causing a violation of federal grant agreements, which the director of transportation shall determine, pursuant to rules promulgated pursuant to chapter 91, to be in excess of one hundred fifty per cent of the requirements of the airport revenue fund for the ensuing twelve months.

[(b)] (c) All expenditures by the department shall be on vouchers duly approved by the director of transportation or such other officer as may be designated by the director.

(d) Notwithstanding the provisions contained in contract authorized by section 261-7 in effect on the effective date of this Act, from and after the effective date of this Act to and including June 30, 1990, all payments made under such contract allocable to the display and sale of in-bond merchandise at locations in the State other than on airport properties shall be deposited in the transportation use special fund but shall not be appropriated, applied, or expended prior to July 1, 1990, except that such funds shall continue to be available and be used for purposes provided under section 261-5."

SECTION 7. Section 266-19, Hawaii Revised Statutes, is amended to read as follows:

“§266-19 [Harbor special fund; harbor reserve fund.] Creation of harbor special fund; disposition of harbor special fund. (a) There is created in the treasury of the State the harbor special fund [into which funds collected by the department of transportation under]. All moneys received by the department of transportation from the rates and fees pursuant to section 266-17(1) shall be [deposited] paid into the harbor special fund. The harbor special fund and the second separate harbor special fund heretofore created shall be consolidated into the harbor special fund at such time as there are no longer any revenue bonds payable from the second separate harbor special fund. The harbor reserve fund heretofore created is abolished.

[The harbor special fund shall be applied, used, and disposed of as follows, and in the following order of priority:

First, for the payment when due of all bonds and interest thereon, for the payment of which the revenues are or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;

Second, for the expenses of operation and maintenance of the properties designated in section 266-17(1), including reserves therefor and the expenses of the operation of the department in connection with those properties, the general administrative overhead to be prorated between those properties and the properties principally used for recreation or the landing of fish;

Third, for the purposes, within the jurisdiction, powers, duties, and functions of the department, including the creation and maintenance of reserves, as have been covenanted in any resolution or resolutions of the department or certificate or certificates of the head of the department providing for the issuance of revenue bonds or creating other revenue obligations;

Fourth, to reimburse the general fund of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements with respect to properties designated in section 26-17(1),¹ excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties, or to refund any of the bonds, except insofar as the obligation or reimbursement has been or is canceled by the legislature. Unless otherwise provided by the legislature, bond requirements are the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;

Fifth, for any purpose within the jurisdiction, powers, duties, and functions of the department (excluding properties principally used for recreation or the landing of fish, except the properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu), including acquisitions, constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. There is created in the treasury of the State a second separate harbor special fund, into which shall be deposited all moneys to be applied to the foregoing purposes of this paragraph. In anticipation of the payments into and accumulations in the second separate special fund, the department may issue revenue bonds or other revenue obligations of the State, in such sums only as may be authorized by specific act or acts of the legislature and repayable solely out of the second separate special fund, to finance in whole or in part the cost of any acquisition, construction, addition, expansion, improvement, renewal, replacement, or reconstruction. If any revenue bonds or other revenue obligations payable from the second separate special fund are issued, then while any such revenue bonds or other revenue obligations are outstanding:

- (1) The amount deposited and to be deposited in the second separate special fund from the moneys in the harbor special fund shall never be less than the amount necessary to pay when due the principal of and interest on the bonds and other obligations, including reserves therefor;
- (2) The department may create any accounts within the second separate special fund as it may deem necessary or desirable; and
- (3) The moneys in the harbor special fund and in the second separate special fund, in lieu of being appropriated, applied, or expended for the purposes and in the order of priority set forth in section 39-60, shall be appropriated, applied, or expended as provided in this section, subject to the modifications hereinafter set forth in this paragraph.

While any revenue bonds of the State payable directly from the harbor special fund are outstanding, the payments into the second separate special fund to provide for the payment of principal of and interest on the revenue bonds or other revenue obligations payable solely out of the second separate special fund, including reserves therefor, shall be made after the application of moneys in the harbor special fund for first, second, and third priority items of this section but prior to the application thereof for the purposes of the remaining paragraphs of this section. After all revenue bonds of the State payable directly from the harbor special fund have been paid or sufficient funds for their payment have been set aside in trust for that purpose, the payments into the second separate special fund to provide for the payment of the principal of and interest on the revenue bonds or other revenue obligations payable solely from the second separate special fund,¹ including reserves therefor, shall be made prior to the use and application of the moneys in the harbor special fund for any other purposes of this section, including without limitation, the second through ninth priority items. Any moneys in the second separate special fund, including reserves therefor, shall be applied to the payment of the costs of acquisitions, constructions, additions, expansions, improvements, renewals, replacements, and reconstructions required by the legislature to be paid from either the harbor special fund or the second separate special fund. All revenue bonds or other revenue obligations for harbor acquisitions, constructions, additions, expansions, improvements, renewals, replacements, or reconstructions authorized by the legislature at the regular session of 1966, or thereafter, to be issued pursuant to part III, chapter 39, may be issued by the department, either payable as to principal and interest directly from the harbor special fund or from the second separate special fund pursuant to this paragraph;

Sixth, to make payments into the general fund as may be required under section 36-29;

Seventh, to make any and all other outlays or expenditures not otherwise restricted in this section;

Eighth, to provide a reserve for betterments to harbor undertakings under the jurisdiction of the department;

Ninth, to provide funds for other special reserve funds and other special funds as are created by law.

Until adequate provision is otherwise made for the purposes of this section, no transfer shall be made of all or any part of the moneys in the harbor special fund or in any other special fund created in this section, to the general funds of the State nor shall the funds be applied for any other purposes.

There is created the harbor reserve fund into which the department may make transfers from the harbor special fund in the amounts and at the times as the department shall determine. The amount of the harbor reserve fund shall not at any time exceed \$750,000. The harbor reserve fund may be expended for any of the purposes of and in the same manner as the harbor special fund and shall be subject to the same limitations as are placed upon the harbor special fund. No amount held

in or paid from the harbor reserve fund shall be used to reduce the rates assessable or chargeable by the department under section 266-17(1), but in computing its expense under section 266-17(1), the department shall not include any amount for the purpose of increasing or replenishing the reserve fund. The harbor reserve fund shall be maintained at the balances required by the resolutions or certificates providing for the issuance of all bonds payable from the harbor special fund and issued prior to January 1, 1967, or issued thereafter, payable on a parity with bonds issued prior to January 1, 1967, and when permitted by the resolutions or certificates, the moneys in the harbor reserve fund may be applied to the final payment or redemption of those bonds, and the harbor reserve fund shall thereupon be abolished.]

All moneys derived pursuant to this chapter from harbor properties of the statewide system of harbors (excluding properties principally used for recreation or the landing of fish, except properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu) shall be paid into the harbor special fund and each fiscal year shall be appropriated, applied, or expended by the department of transportation for the statewide system of harbors for any purpose within the jurisdiction, powers, duties, and functions of the department of transportation related to the statewide system of harbors (excluding properties principally used for recreation or the landing of fish, except the properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu), including, without limitation, the costs of operation, maintenance and repair of the statewide system of harbors and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, for the statewide system of harbors, all or any of which in the judgment of the department of transportation are necessary to the performance of its duties or functions.

(b) At any time the director of transportation may transfer from the harbor special fund created by paragraph (a) of this section, all or any portion of available moneys on deposit in the harbor special fund determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the harbor special fund as permitted by and in accordance with section 37-53. For purposes of such determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the harbor special fund during such period, amounts on deposit in the harbor special fund which are encumbered or otherwise obligated, budgeted amounts payable from the harbor special fund during such period, and revenues anticipated to be received by and expenditures to be made from the harbor special fund during such period based on existing agreements and other information for the ensuing twelve months, and such other factors as the director of transportation shall deem appropriate.

(c) All expenditures by the department shall be made on vouchers duly approved by the director of transportation or such other officer as may be designated by the director of transportation."

SECTION 8. Nothing contained in this Act shall impair or be deemed to impair the rights and privileges of the holders of indebtedness outstanding as of the effective date of this Act and payable from moneys in the airport revenue fund. If and to the extent the application of monies in the airport revenue fund as heretofore provided by any certificate securing airport revenue bonds is construed to be inconsistent with the provisions of this Act, such moneys shall continue to be applied in accordance with such certificate so long as any airport revenue bonds secured thereby remain outstanding.

SECTION 9. Nothing contained in this Act shall impair or be deemed to impair the rights and privileges of the holders of indebtedness outstanding as of

the effective date of this Act and payable from moneys in the harbor special fund or the second separate harbor special fund. If and to the extent the application of moneys in the harbor special fund or the second separate harbor special fund as heretofore provided by any certificate securing harbor revenue bonds is construed to be inconsistent with the provisions of this Act, such moneys shall continue to be applied in accordance with such certificate so long as any harbor revenue bonds secured thereby remain outstanding.

SECTION 10. The provisions of this Act shall be performed to the extent they are permitted under federal law without causing a violation of federal grant agreements, federal law or regulations. Nothing contained in this Act shall be deemed or construed to obligate the State or the department of transportation, either legally or morally, to extend the term, conditions and provisions of any agreement in effect as of the effective date of this Act beyond the expiration of such agreement by its terms. The provisions of this Act are not severable. If any provision of this Act, or the application thereof to any person or circumstance is held invalid or in conflict with applicable federal law or federal grant agreements, this Act, in its entirety, shall be invalid and Sections 36-30, 37-53, 248-9, 261-5, and 266-19, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.

SECTION 11. Statutory material to be deleted is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon approval.

(Approved June 13, 1989.)

Note

1. So in original.