



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1312, RELATING TO STATE FUNDS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 18, 2015 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Tokuda and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill seeks to comply with article VII, section 6, of the Hawaii State Constitution by providing for a deposit of general revenues into the Emergency and Budget Reserve Fund ("EBRF").

Once the conditions of article VII, section 6, of the Hawaii State Constitution have been met, the 2015 Legislature must provide for a tax refund or tax credit, and cannot make a deposit into the EBRF because it must also comply with the conditions of section 328L-3(a) (3), Hawaii Revised Statutes (HRS), pertaining to the EBRF, which it has not yet done.

Article VII, section 6, of the Hawaii State Constitution provides:

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, or make a deposit into one or more funds, as provided by law, which shall serve as temporary supplemental sources of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue, as provided by law .

In this instance, because the Legislature seeks to make a deposit into the EBRF, the applicable law referred to in article VII, section 6, of the Hawaii State Constitution, is section 328L-3(a)(3), HRS, which governs the EBRF and provides:

§328L-3 Emergency and budget reserve fund. (a) There is established in the state treasury the emergency and budget reserve fund which shall be a special fund administered by the director of finance, into which shall be deposited:

. . .

(3) Five per cent of the state general fund balance at the close of the fiscal year, whenever state general fund revenues for each of two successive fiscal years exceeds revenues for each of the preceding fiscal years by five per cent, pursuant to article VII, section 6 of the Hawaii constitution. For the purpose of this section, the general fund balance at the close of the fiscal year shall be calculated before any tax refund or tax credit is authorized by the legislature, pursuant to article VII, section 6 of the Hawaii constitution, that is provided during the same regular session as the transfer depositing such moneys to the emergency and budget reserve fund; provided that transfers shall not be made to the emergency and budget reserve fund whenever the balance of the emergency and budget reserve fund is equal to or more than ten per cent of general fund revenues for the preceding fiscal year. The transfer shall be executed by the director of finance;

provided that all moneys deposited into the emergency and budget reserve fund under paragraphs (1) and (2) and all moneys deposited under paragraph (3) shall be kept in separate and distinct accounts.

In particular, section 328L-3(a)(3) provides that whenever general fund revenues for each of the two successive fiscal years exceeds revenues for each of the preceding fiscal years by five percent, five percent of the general fund balance shall be deposited into the EBRF.

We understand that for fiscal years 2012-2013 and 2013-2014, the general fund balances were greater than five per cent of general fund revenues, thus satisfying article VII, section 6, of the Hawaii State Constitution. In addition, we understand that the fiscal year 2012-2013 general fund revenues were greater than five per cent of the previous year's revenues. However, the general fund revenues for fiscal year 2013-2014 were not greater than five percent of the

previous year's (fiscal year 2012-2013) revenues that section 328L-3(a)(3) requires for the deposit of moneys into the EBRF. Consequently, as it currently stands, because the conditions specified in article VII, section 6, of the Hawaii State Constitution were met, but the conditions specified in section 328L-3(a)(3) were not, the 2015 Legislature must provide for a tax refund or tax credit, but cannot make a deposit into the EBRF.

Notwithstanding this, it is still possible to effectuate the intent of this bill to deposit such moneys into the EBRF rather than paying a tax refund or tax credit to Hawaii taxpayers. We suggest the following provisions be added to the bill:

SECTION . Notwithstanding any law to the contrary, for fiscal year 2014-2015, the director of finance shall transfer to the emergency and budget reserve fund the total sum of the tax credit or tax refund as determined by the legislature pursuant to the provisions of article VII, section 6, of the Hawaii state constitution.

SECTION . This Act shall take effect upon its approval.

This addition has the effect of amending section 328L-3(a) (3) only for fiscal year 2014-2015.

We respectfully ask the Committee to consider our comments.

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 1312

February 18, 2015

RELATING TO STATE FUNDS

Senate Bill No. 1312 proposes to make an undetermined general fund appropriation to be deposited into the Emergency and Budget Reserve Fund (EBRF). The measure is being proposed as a means to comply with the constitutional mandate to provide a tax refund or credit or make a deposit into a reserve fund.

The Department of Budget and Finance would like to point out that there are two aspects to Article VII, Section 6, Hawaii State Constitution, regarding the Disposition of Excess Revenues. First, Article VII, Section 6, requires that whenever the State general fund balance at the close of each of two successive fiscal years exceeds 5% of general fund revenues for each of the two fiscal years, the Legislature must provide for a tax refund or tax credit to State taxpayers, or make a deposit into a reserve fund as provided by law. The second aspect is the requirement to make a deposit into a reserve fund. This is governed by Section 328L-3, HRS, which provides that whenever general fund revenues for each of two successive fiscal years exceeds revenues for each of the preceding fiscal years by 5%, 5% of the general fund balance shall be deposited into the EBRF.

For Fiscal Years (FY) 13 and 14, general fund balances were greater than 5% of general fund revenues and for FY 13, general fund revenues were greater than 5% of the previous year's revenues; however, general fund revenues for FY 14 were not

greater than 5% of the previous year's revenues. Therefore, the 2015 Legislature, according to Article VII, Section 6 of the Hawaii State Constitution, must provide a tax refund or tax credit, but, according to Section 328L-3, HRS, is not required to make a deposit into the EBRF.

Consequently, based on our discussions with the Department of the Attorney General, it is our understanding that the Legislature is required to make a tax refund or tax credit but cannot use Article VII, Section 6, of the Hawaii Constitution, alone to make a deposit directly into the EBRF.

We defer to the Department of the Attorney General for a legal explanation and remedy.