

**"CHAPTER 248
COUNTY BUDGETS; TAX FUNDS**

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Revision Note

Throughout this chapter, "council" and "director of finance" have been substituted for "board of supervisors" and "treasurer" to conform to county charters.

" **§248-1 Definitions.** Wherever used in this chapter:

"Council" means the county council of each county concerned.

"Director" means the state director of finance unless otherwise stated or indicated in context.

"Liquid fuel" or "fuel" has the meaning defined by section 243-1.

"Property" or "real property" means and includes all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the same, and any fixture that is erected on or affixed to such land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use thereof is necessary to the utility of such land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to such land, buildings, structures, fences, and improvements, excluding, however, any growing crops. [RL 1935, pts of §§1900, 2010, and 2100; am L 1935, c 153, §§1, 3; am L 1937, c 172, §4; am L Sp 1941, c 26, pt of §1; RL 1945, §5251; am L 1947, c 111, §4; RL 1955, §129-1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §248-1; am L 2016, c 52, §4]

Revision Note

Definitions rearranged.

" **§248-2 REPEALED.** L 2000, c 18, §9.

" **§248-2.5 REPEALED.** L 2003, c 135, §14.

" **[§248-2.6] County surcharge on state tax; disposition of proceeds.** [Section repealed December 31, 2027. L 2015, c 240, §7.] (a) If adopted by county ordinance, all county surcharges on state tax collected by the director of taxation shall be paid into the state treasury quarterly, within ten working days after collection, and shall be placed by the director of finance in special accounts. Out of the revenues generated by county surcharges on state tax paid into each respective state treasury

special account, the director of finance shall deduct ten per cent of the gross proceeds of a respective county's surcharge on state tax to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State. Amounts retained shall be general fund realizations of the State.

(b) The amounts deducted for costs of assessment, collection, and disposition of county surcharges on state tax shall be withheld from payment to the counties by the State out of the county surcharges on state tax collected for the current calendar year.

(c) For the purpose of this section, the costs of assessment, collection, and disposition of the county surcharges on state tax shall include any and all costs, direct or indirect, that are deemed necessary and proper to effectively administer this section and sections 237-8.6 and 238-2.6.

(d) After the deduction and withholding of the costs under subsections (a) and (b), the director of finance shall pay the remaining balance on [a] quarterly basis to the director of finance of each county that has adopted a county surcharge on state tax under section 46-16.8. The quarterly payments shall be made after the county surcharges on state tax have been paid into the state treasury special accounts or after the disposition of any tax appeal, as the case may be. All county surcharges on state tax collected shall be distributed by the director of finance to the county in which the county surcharge on state tax is generated and shall be a general fund realization of the county, to be used for the purposes specified in section 46-16.8 by each of the counties. [L 2005, c 247, §§5, 9]

Attorney General Opinions

Because the legislature was within its authority to retain ten per cent of the county surcharge, even if the retained amount exceeds the actual costs of administering the surcharge, there is no conflict within Act 247, Session Laws of Hawaii 2005, and no requirement that the State retain less than the ten per cent specified in subsection (a). Att. Gen. Op. 15-1.

The State's retention of any funds in excess of what is deemed necessary and proper to administer the surcharge does not violate either the equal protection clause or the due process clause of the United States Constitution or the Hawaii State Constitution. Att. Gen. Op. 15-1.

The ten per cent deduction of the county surcharge for the costs of assessment, collection, and disposition of the county surcharge on state general excise tax into the state general

fund is neither unconstitutional nor illegal. Att. Gen. Op. 15-1.

The term "shall" in "[T]he director of finance shall deduct ten per cent of the gross proceeds" in subsection (a) is mandatory, not directory. Att. Gen. Op. 15-1.

" **§248-3 State requirements.** (a) On or before January 31 of each calendar year the state director of finance shall compute and submit to the council of each county the amounts which are payable to or retainable by the State for that county for the calendar year to meet interest charges for serial bonds, and the principal for all serial bonds maturing the following calendar year, which bonds have been issued by the State for county purposes (except bonds issued prior to January 1, 1945 for highway purposes).

(b) The board of trustees of the employees retirement system of the State, on or before January 31 of each calendar year, shall submit to each county the amount estimated to be due from such county for the calendar year, pursuant to chapter 88, on account of the employees thereof who are members of the employees retirement system.

(c) Any other information or estimates as to requirements for the calendar year, necessary to be given by any state office to any council in order that such requirements may be included in determining the tax rate for the county, shall be submitted by such officer to the council not later than January 31 of such year. [L Sp 1957, c 1, §15(a)(3); am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; Supp, §129-5.1; HRS §248-3]

" **§248-4 Submission of budgets during years legislature meets.** In each year in which the legislature meets in regular session, each county shall submit to the legislature and to the director of finance, at least twenty days before the legislature convenes, the budget of the county for the current fiscal year and the next succeeding fiscal year. Such budgets shall show estimated receipts as well as estimated expenditures. The form in which budgets shall be submitted and the itemization thereof may be prescribed by the legislature which may require the inclusion therein of relevant information concerning the last two completed fiscal years. [L 1941, c 236, §1; RL 1945, §5253; am L 1947, c 111, §2; RL 1955, §129-6; am L Sp 1957, c 1, §15(a)(4); am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; am L 1965, c 166, §§1, 2; HRS §248-4; am L 1977, c 43, §1]

" **§248-5 REPEALED.** L 2016, c 52, §6.

" **§248-6 REPEALED.** L 1989, c 338, §2.

" **§248-7 Tax payments, how made; caveat.** All payments to be made by the state director of finance shall be made upon warrants issued by the state comptroller. Nothing in this chapter shall be construed as in any way amending or repealing any law authorizing the withholding, by the state director of finance or the state comptroller, of moneys in the state treasury belonging or due to any county for the payment of principal or interest for state bonds, or any other charges. [L 1932 2d, c 40, pt of §71; RL 1935, pt of §1922; am L 1937, c 172, pt of §2; RL 1945, pt of §5254; am L 1945, c 82, §4; am L 1947, c 111, pt of §3; RL 1955, §129-10; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §248-7]

"FUEL TAX FUNDS

§248-8 Special funds in treasury of State. There are created in the treasury of the State three special funds to be known, respectively, as the state highway fund, the airport revenue fund, and the boating special fund. All taxes collected under chapter 243 in each calendar year, except the "county of Hawaii fuel tax", "city and county of Honolulu fuel tax", "county of Maui fuel tax", and "county of Kauai fuel tax", shall be deposited in the state highway fund; provided that:

- (1) All taxes collected under chapter 243 with respect to gasoline or other aviation fuel sold for use in or used for airplanes shall be set aside in the airport revenue fund; and
- (2) All taxes collected under chapter 243 with respect to liquid fuel sold for use in or used for small boats shall be deposited in the boating special fund.

As used in this section, "small boats" means all vessels and other watercraft except those operated in overseas transportation beyond the State, and ocean-going tugs and dredges. The chairperson of the board of land and natural resources, from July 1, 1992, and every three years thereafter, shall establish standards or formulas that will as equitably as possible establish the total taxes collected under chapter 243 in each fiscal year that are derived from the sale of liquid fuel for use in or used for small boats. The amount so determined shall be deposited in the boating special fund.

An amount equal to 0.3 per cent of the highway fuel tax but not more than \$250,000 collected under chapter 243 shall be allocated each fiscal year to the special land and development fund for purposes of the management, maintenance, and

development of trails and trail accesses under the jurisdiction of the department of land and natural resources established under section 198D-2. [L 1932 1st, c 19, pt of §12; RL 1935, pt of §2021; am L 1937, c 172, pt of §3; RL 1945, pt of §5260; am L 1945, c 82, pt of §5; am L 1947, c 196, pt of §1; am L 1951, c 67, §1 and c 302, §2; am L 1955, c 250, §1(a); RL 1955, §129-11; am L 1957, c 217, §3; HRS §248-8; am L 1969, c 10, §5; am L 1972, c 180, §4; am L 1991, c 272, §7; am L 1993, c 273, §4; am L 1997, c 106, §3]

Note

Sustainability of state highway fund; governor to report to the legislature no later than November 1, 2018. L 2016, c 195, §4.

Cross References

Charge against highway fund, see §36-28.
Tobacco liability act, see chapter 675.

Case Notes

Cited: 36 H. 170, 175; 44 H. 154, 172, 352 P.2d 861.

- " **§248-9 State highway fund.** (a) Moneys in the state highway fund may be expended for the following purposes:
- (1) To pay the costs of operation, maintenance, and repair of the state highway system, 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, including, without limitation, the cost of equipment and general administrative overhead;
 - (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where the bonds are designated to be reimbursable out of the state highway fund; and
 - (4) To pay the costs of construction, maintenance, and repair of county roads; provided that none of the funds expended on a county road or program shall be

federal funds when such expenditure would cause a violation of federal law or a federal grant agreement.

(b) 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 exceed one hundred thirty-five 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 the determination, the director of transportation shall take into consideration:

- (1) The amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the state highway fund during the period;
- (2) Amounts on deposit in the state highway fund that are encumbered or otherwise obligated;
- (3) Budgeted amounts payable from the state highway fund during the period;
- (4) Revenues anticipated to be received by and expenditures to be made from the state highway fund during the period based on existing agreements and other information for the ensuing twelve months; and
- (5) Any other factors as the director of transportation shall deem appropriate. [L 1932 1st, c 19, pt of §12; am imp L 1932 2d, c 40, §§26, 71; am L Sp 1933, c 6, §1; RL 1935, pt of §2021; am L 1937, c 172, pt of §3; am L 1941, c 212, §1; am L Sp 1941, c 49, §1; RL 1945, pt of §5260; am L 1945, c 82, pt of §5; am L 1947, c 32, §5, c 36, §1, and c 196, pt of §1; am L 1953, c 189, §1; am L 1955, c 250, §1(b); am L 1955, c 249, §2, rat 70 Stat 545, c 602; RL 1955, §129-12; am L Sp 1959 2d, c 1, §§14, 16, 26; am L 1963, c 114, §1; am L 1966, c 43, §2; am L 1967, c 204, §1; HRS §248-9; am L 1977, c 68, §2; am L 1979, c 167, §1; am L 1989, c 309, §5; am L 1997, c 270, §1; am L 2006, c 125, §2 and c 166, §2; am L 2007, c 286, §1]

Note

The governor may modify the provisions of L 2006, c 125, but shall report any modification to the legislature. L 2006, c 125, §3.

Cross References

Use of highway fund for bikeways, see §264-18.

" **§248-10 State highway fund; disposition of certain income.**

The department of land and natural resources shall deposit to the credit of the state highway fund created by section 248-8, all income received from the rental or lease of real property which has been acquired for highway purposes and paid for out of the state highway fund. Moneys thus deposited are hereby appropriated and may be expended by the department of transportation in accordance with section 248-9.

The department of transportation shall reimburse the department of land and natural resources, from the state highway fund, for all expenditures involved in the collection of such rental income and of the management and maintenance of such property. Such reimbursements shall be deposited in the general fund.

Nothing in this section shall be construed to amend or restrict the funds to be expended under any other law appropriating or authorizing the expenditure of other moneys by the department of transportation. [L 1951, c 251, §1; am L 1953, c 132; RL 1955, §129-13; am L 1959, c 265, §16; am L Sp 1959 2d, c 1, §§21, 26; am L 1961, c 132, §2; HRS §248-10]

" **§248-11 REPEALED.** L 1979, c 167, §2.

" **[\$248-12] State highway fund to defray expenses of motor vehicle safety office.** The department of transportation may expend funds from the state highway fund to defray the cost of administration and operation of the motor vehicle safety office. [L 1978, c 159, §6]