

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
FINANCE**

**Wednesday, February 20, 2019  
2:00 PM  
State Capitol, Conference Room 308**

**In consideration of  
HOUSE BILL 125  
RELATING TO NON-GENERAL FUNDS**

House Bill 125 proposes to abolish various non-general funds and accounts of the Department of Land and Natural Resources (Department) and transfer the unencumbered balances to the general fund. **The Department offers the following comments.**

*SECTION 2, 3, and 9: Natural Area Reserve Fund*

The Department recommends against abolishing the Natural Area Reserve Fund, as we feel it still serves a useful purpose for managing revenue generated by the management of natural area reserves. The existing balance in the fund is not available to the Department as there is no spending ceiling authorized by the legislature, but new revenues are expected to be generated by the Natural Area Reserves program. The Department would like to use this fund by developing new revenue sources, such as parking fees from the 'Āhihi Kīna'u Natural Area Reserve and utilizing those funds to support the management of natural area reserves. All expenditures from the fund would be authorized by a spending ceiling established by the legislature on an annual basis.

'Āhihi Kīna'u is one of the most highly visited tourist destinations in the State and needs additional funds for managing visitor impacts to its coastal and marine resources. Act 122, Session Laws of Hawaii (SLH) 2014 provided Capital Improvement Project (CIP) funds for the renovation of the 'Āhihi Kīna'u parking lot, followed by Act 53, SLH 2018, that provided additional CIP funds for equipment to collect parking fees at the reserve. In 2017, the Department modified Chapter 13-209, Hawaii Administrative Rules, to allow for parking fees to be collected in the reserve. As specified in the administrative rules, revenues will be deposited in the Natural Area Reserve Fund. The Department anticipates that these fees will generate

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

approximately \$360,000 per year and expects to begin collecting the fees in April of 2019. The Department would like to use the revenue generated at ‘Āhihi Kīna‘u to support management of natural area reserves. The Governor’s Fiscal Biennium 2019-2021 Executive Budget includes a request for a ceiling increase to allow the Department to spend these revenues. A closure of this fund will have the following consequences:

- Disincentivize the Department from developing revenues sources for natural resource management;
- Contradict public desire to have fees applied to the resource from which they were generated;
- Reduce potential funding available for the management of natural area reserves.

Use of the Natural Area Reserve Fund would be similar to the State Parks Special Fund, which the Auditor’s Report No. 18-19 recognized as meeting the criteria of a special fund. The State Parks Special Fund also collects parking fees as a major source of revenue that provides funding to augment the general funds appropriated to the State Parks System.

#### *SECTION 4. Assistance in Managing Land Fund*

The Department agrees with the findings of Auditor’s Report No. 18-19.

#### *SECTION 5. Native Resources and Fire Protection Program Special Fund*

The Department agrees with the Auditor’s comments and shall close the account.

#### *SECTION 6. Preservation of Endangered Plants Trust Fund*

The Department agrees with the Auditor’s comments and shall close the account.

#### *SECTION 7. Proceeds from Seizure/Forfeited Property Trust Account*

The Department recommends against abolishing the Proceeds from Seizure/Forfeited Property Trust Account. The Department respectfully disagrees that this account functions more like a trust fund. A trust fund is described as “created or established by gift or grant, contribution, device or bequest that limits the use of the fund to designated objects or purposes.” This account has historically served as a holding account to deposit and keep proceeds from seized items until the suspect violation has been adjudicated. If the proceeds are deemed to be the property of the State, the Department has discretion on how it expends the proceeds on allowable other expenditure, and there are no designated beneficiaries of the funds.

The Department agrees that the account has not had significant recent activity and currently lacks revenue. The Department’s Division of Conservation and Resources Enforcement (DOCARE) has not seen activity for many years due to its inability to legally forfeit for natural resources cases. However, the need for this account still exists for future cases where forfeiture is necessary, such as in narcotics and illegal weapons cases.

The Department has not yet met the legal requirements set for the in the case of *Carlisle v. One Boat*. This case law requires promulgating a forfeiture penalty within the Department’s administrative rules so that forfeiture can be used as a penalty in natural resources cases. Thus, activity within this fund has been minimal. The Department, however, continues to retain authority to conduct forfeiture in non-natural resources cases, such as those involving narcotics

and illegal weapons. Consequently, the Department will require the means to deposit and hold forfeiture proceeds.

In 2009, the account was suspended due to inactivity, but the Department needed to re-activate the account for this purpose. Depositing of proceeds from forfeitures into the Conservation and Resources Enforcement Special Fund, where the Department currently receives a continuous flow of funds and expenditure relating to the Transient Accommodations Tax would compromise the tracking of the proceeds from these forfeitures.

It is important to segregate monies obtained from forfeiture from other monies. Generally, forfeiture funds were obtained from the proceeds of criminal acts, or were funds used to facilitate or in direct commission of a crime. To protect the integrity of the Department's funds, it is essential that forfeiture funds are not comingled with other funds. This will assist in maintaining the integrity of DOCARE's monies and assure that the funds are trackable.

*SECTION 8. Recreational Renaissance – State Parks Special Fund*

The Department agrees with the Auditor's comments and shall close the account.

Thank you for the opportunity to comment on this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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SUBJECT: MISCELLANEOUS, Repeal non-general funds

BILL NUMBER: HB 125

INTRODUCED BY: LUKE, CULLEN

EXECUTIVE SUMMARY: Abolishes various non-general funds and accounts of the Department of Land and Natural Resources and transfers the unencumbered balances to the general fund, in accordance with the State Auditor's recommendation in Report No. 18-19.

SYNOPSIS: Repeals HRS section 195-9, providing for the natural area reserve fund.

Repeals six other administratively established funds.

All unencumbered balances remaining on July 1, 2019, will lapse to the general fund.

EFFECTIVE DATE: July 1, 2019.

STAFF COMMENTS: This measure implements the state auditor's recommendation in Report No. 18-19.

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, Hawaii Revised Statutes 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 review assists in making government finances more transparent. This law gave rise to the present report and the recommendations that came with it.

Digested 1/28/2019

Testimony of The Nature Conservancy of Hawai'i  
Opposing Sections 2, 3 and 9 of H.B. 125 Relating to Non-General Funds  
House Committee on Finance  
Wednesday, February 20, 2019, 2:00 PM, Room 308

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*The Nature Conservancy of Hawai'i is a non-profit conservation organization dedicated to the preservation of the lands and waters upon which all life depends. The Conservancy has helped protect more than 200,000 acres of natural lands in Hawai'i and Palmyra Atoll. We manage 40,000 acres in 13 nature preserves and work in over 30 coastal communities to help protect the near-shore reefs, waters and fisheries of the main Hawaiian Islands. We forge partnership with government, private parties and communities to protect forests and coral reefs for their ecological values and the many benefits they provide to people.*

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The Nature Conservancy requests that the Legislature not eliminate the Natural Area Reserve Fund and lapse any balances in that fund to the general fund.

Elimination of the Natural Area Reserve Fund would hinder the DLNR's ability to generate and reinvest revenue from non-resident and commercial access to appropriate State Natural Area Reserves. This activity is similar to non-resident parking fees currently charged at some locations by the Division of State Parks with revenue reinvested in park management and maintenance.

Thank you for your consideration.

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# SIERRA CLUB OF HAWAII

## MĀLAMA I KA HONUA. *Cherish the Earth.*

### HOUSE COMMITTEE ON FINANCE

February 20, 2019    2:00 PM    Conference Room 308

In **OPPOSITION** of **HB 125** Relating to non-general funds

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Aloha Chair Luke, Vice Chair Cullen, and members of the committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **opposes HB 125** to abolish the Natural Area Reserve System Fund and transfer the unencumbered balances to the general fund.

The statewide Natural Area Reserves System (NARS) was established to preserve diverse ecosystems and geological sites throughout Hawai'i and currently consists of 21 reserves on five islands.<sup>1</sup> The NARS fund is crucial to protecting the future of our drinking water resources, for these monies are used to manage essential forest and watershed resources. Watersheds are foundation of our survival in the Hawaiian Islands. Healthy native forests capture rainwater, preventing harmful runoff and replenishing our future drinking water supplies. It is absolutely crucial that we fund the protection of our watersheds.

The NARS fund is the backbone of public-private conservation programs like the highly successful Watershed Partnerships. More than 2.2 million acres of upland forests are in active management by these partnerships to restore and perpetuate native ecosystems.<sup>2</sup> These protected ecosystems capture rainwater for storage in our aquifers so that it can be used by future generations for drinking and sustenance. The conservation work provided by these partnerships translates into quantifiable ecosystem services that benefit everyone in Hawai'i. For example, the Ko'olau Mountain watershed provides O'ahu residents with 133 billion gallons of freshwater annually, as well as helping to keep nearshore areas clean from runoff and sedimentation, which impact reefs and fishing.<sup>3</sup>

Please continue the long-term investment in our watersheds and defer action on HB 125 to abolish the NARS fund.

Mahalo,

Jodi Malinoski, Policy Advocate

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<sup>1</sup> <http://dlnr.hawaii.gov/ecosystems/nars/>

<sup>2</sup> <http://hawp.org/partnerships/>

<sup>3</sup> <http://koolauwatershed.org/about/>