
Study of the Transfer of Non-general Funds to the General Fund

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 12-04
July 2012



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

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“Having a large number of separate funds is a relic of 19th-century state budgeting.”

—National Conference of State Legislatures

Recommendations

Responses

Prior Studies

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Study of the Transfer of Non-general Funds to the General Fund

Report No. 12-04, July 2012

Special and revolving funds require closer scrutiny

Fund growth raises concerns about budget flexibility

Non-general funds, such as special, revolving, federal, and trust funds, exist outside the State's main financial account, or general fund. Over the past 30 years, the number of non-general funds and the amount of money contained in them have substantially increased. In FY2011, non-general funds accounted for about half of the State's \$10.4 billion operating budget, up from one-third in 1992. This proliferation of non-general funds has hampered the Legislature's ability to direct general fund spending.

For example, the Legislature typically seeks money in special and revolving funds when general fund budget shortfalls occur. We found that the transfer, or “raid,” process is cumbersome, involving a review of hundreds of funds in addition to a legal review and committee hearings.

We also found:

- At least 729 non-general funds and accounts hold an estimated unencumbered cash balance of \$2.47 billion.
- Between 1980 and 2010, the number of special and revolving funds almost tripled to 313 funds.
- Fund raids authorized by the Legislature in FY2009, FY2010, and FY2011 totaled \$161 million.
- Not all annual, non-general fund reports are filed as required by law.
- No regular reviews of special funds are conducted to determine if they meet criteria set in Hawai'i law.
- Of the 47 special and revolving funds we tested, six failed to meet criteria for continuance. We recommend these be repealed and the \$49.7 million they hold be deposited into the general fund.

Need for more structured legal review process

We also found the process for reviewing proposed fund transfers by the attorney general should be more systematic and structured to eliminate error and liability to the State. A 2008 Hawai'i Supreme Court decision also has complicated these so-called fund raids, eliminating certain types of money that can be transferred. In addition, the Department of the Attorney General's legal review process relies on a single deputy attorney general, is done on an ad-hoc basis, and is not documented. We found some reviews were not as robust or complete as others, resulting in transfers that may violate federal laws. In 2009, the Legislature mistakenly authorized transfers of \$16.5 million from two funds, in possible violation of federal law.

Agencies' responses

Overall, the Department of Budget and Finance agreed with our recommendations. The department reported that it has found some, but not all, of the missing non-general fund reports we cited in our report. This discovery does not change our conclusion that the tracking of funds is problematic.

The Department of the Attorney General objected to our recommendation that a checklist be used, but recognized the need to train all deputies whose clients manage special funds. The department also took issue with several conclusions which we considered. We added clarifying language to the text, but we stand by our report's conclusions and recommendations.

Study of the Transfer of Non-general Funds to the General Fund

A Report to the
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Legislature of
the State of
Hawai'i

Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No.12-04
July 2012

Foreword

House Concurrent Resolution No. 166 of the 2011 legislative session requested that the State Auditor conduct a study regarding the transfer of non-general funds to the general fund. This report responds to the Legislature's request.

We wish to express our appreciation for the cooperation and assistance extended to us by various legislative staff, the officials and staff of the Departments of Budget and Finance, the Attorney General, and Accounting and General Services, and staff of other agencies whom we contacted during the course of this study.

Marion M. Higa
State Auditor

Table of Contents

Chapter 1 Introduction

Background.....	1
Prior Studies	9
Objectives of the Study.....	10
Scope and Methodology	11

Chapter 2 Special and Revolving Funds Require Closer Scrutiny

Summary of Findings	13
Creating Special and Revolving Funds Reduces Legislature’s Budgetary Flexibility To Direct General Fund Spending	14
The Legal Review Process Used by the Attorney General Needs a More Systematic and Structured Approach	34
Conclusion.....	42
Recommendations.....	42

Responses of the Affected Agencies.....	133
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List of Appendixes

Appendix A	Glossary.....	45
Appendix B	Individual Analysis of Funds No Longer Serving a Purpose	47
Appendix C	Individual Analysis of Funds Not Meeting Criteria ...	53
Appendix D	Individual Analysis of Funds With Logical Relationship.....	59
Appendix E	Individual Analysis of Funds Meeting Criteria	69
Appendix F	Non-general Fund Checklist	95
Appendix G	Proposed Legislation	97

List of Exhibits

Exhibit 1.1	Non-general Fund, Account Totals for Executive Branch Departments	4
Exhibit 1.2	FY2010 Executive Branch Funds and Accounts By Type	5
Exhibit 1.3	Executive Branch Unencumbered Balances (in millions)	6
Exhibit 1.4	Special and Revolving Funds, Account Transfer Authorizations In FY2009-2011	8
Exhibit 2.1	General Fund Portion of State Operating Budget.....	15
Exhibit 2.2	Role of All Funds in FY2011 Executive Branch Operating Budget.....	16
Exhibit 2.3	Hawai'i Operating Budget by Means of Financing....	17
Exhibit 2.4	Proposed Special, Revolving Fund Legislation 1991-2010.....	25
Exhibit 2.5	Analysis of Funds No Longer Serving a Purpose	27
Exhibit 2.6	Analysis of Funds Not Meeting Criteria for Continuance.....	28
Exhibit 2.7	Funds with Logical Relationship	31
Exhibit 2.8	Funds Meeting Criteria for Continuance.....	35
Exhibit 2.9	Process for Identifying Transfers of Non-general Funds to General Fund.....	36

Chapter 1

Introduction

In House Concurrent Resolution No. 166, the 2011 Legislature asked the Auditor to look at the appropriateness of transferring non-general funds, including special and revolving funds, to the general fund, determine the source of the moneys, and determine whether the moneys are used for a public purpose. The resolution noted that while some non-general funds are easily defined, and legally transferable to the general fund as a way of providing financial relief to the State, many are difficult to define, thus making transfers problematic. In one instance, the Hawai‘i Supreme Court ruled the Legislature violated the Separation of Powers doctrine when it authorized certain transfers of money from an insurance special fund to the general fund. Other issues for the study relate to identification of funds serving as security for revenue bonds and federal requirements for use of federal funds. The Auditor is also asked to propose legislation to implement any recommended transfers of moneys in the funds to the general fund.

Background

For purposes of this study, we limited our focus to the appropriateness of using special and revolving funds as a means of financing particular programs and directing moneys accumulated in these types of funds to the general fund to address budget shortfalls in a sluggish economy. A glossary of words used throughout this study can be found in Appendix A.

Impetus for the study

House Concurrent Resolution No. 166 requests the Auditor to conduct a study regarding the transfer of non-general funds to the general fund in light of the Hawai‘i Supreme Court decision, *Hawaii Insurers Council v. Linda Lingle, Governor, State of Hawai‘i, et al.* In December 2008, the court ruled that the Legislature violated the Separation of Powers doctrine in an unconstitutional raid of an insurance special fund.

The case centered on two transfers totaling \$3.5 million from an insurance special fund to the general fund in 2002 and 2003. One of the responsibilities the Compliance Resolution Fund inherited in 2002 was covering the budget of the Department of Commerce and Consumer Affairs’ Insurance Division by collecting assessments, fines, penalties, and fees from insurers. In Act 178, Session Laws of Hawai‘i (SLH) 2002, the Legislature determined that the special fund contained at least \$4 million in excess of requirements needed to support the insurance program. The then-governor vetoed a portion of the appropriation

bill, reducing the transfer to \$2 million, which the director of finance transferred in 2002. In the following session, the Legislature determined the special fund contained \$15 million in excess of requirements and authorized an additional transfer in Act 178, SLH 2003. The director of finance transferred \$1.5 million in 2003.

An industry group, the Hawai'i Insurers Council, filed a lawsuit against the governor, the directors of finance and commerce and consumer affairs, and the insurance commissioner, asserting the transfers converted the insurance assessments into an illegal and unconstitutional tax. In December 2008, the Hawai'i Supreme Court agreed and ruled the transfer bills "amounted to an impermissible blurring of the distinction between the executive power to assess regulatory fees and the legislative power to tax for general purposes." The Legislature was ordered to return \$3.5 million to the Compliance Resolution Fund. In coming to its decision, the court applied a three-pronged test for determining whether an assessment is a regulatory fee or a tax, to be expended for general public purposes or used for the regulation or benefit of the parties upon whom the assessment is imposed.

Description of general fund and non-general funds

By definition, the general fund is commonly known as the fund into which tax collections and non-tax revenues of the State are deposited. In FY2010, 85 percent (\$4.36 billion) of tax collections from the general excise and use tax, individual income tax, transient accommodation tax, fuel tax, and motor vehicle tax were deposited into the general fund. It is the primary source of revenue for the state operating budget that provides for the administration of state government. Any activity not financed through another fund is financed through the general fund.

The term "non-general fund" is not statutorily defined in the Executive Budget Act, codified in Part IV, Chapter 37, Hawai'i Revised Statutes (HRS). It refers generically to a range of funds as sources of revenue that are set aside for special purposes. Examples of non-general funds as a means of financing particular government programs include: special funds, general obligation bond funds, general obligation reimbursable bond funds, revenue bond funds, federal funds, private funds, county funds, trust funds, federal stimulus funds, revolving funds, and other funds (a catch-all category).

Non-general fund reports to the Legislature

Regarding non-general funds, Section 37-46, HRS, requires the director of finance to notify the Legislature of any transfer of non-general funds to the general fund. Section 37-47, HRS, requires every executive branch department to submit non-general fund reports before the start

of the legislative session containing information about each non-general fund account. The Judiciary also transmits non-general fund reports at the request of the Legislature. Specifically, executive branch departments must report the:

- legal authority;
- intended purpose;
- program activities supported;
- balance at the start of the fiscal year;
- total expenditures and other outlays for the previous fiscal year;
- total revenue deposited for the previous fiscal year;
- detailed listing of all transfers from the fund;
- amount of moneys encumbered at the beginning of the fiscal year;
- amount required for bond conveyance or other related bond obligations;
- amount of moneys derived from bond proceeds; and
- amount of moneys held in certificates of deposit, escrow accounts, or other investments.

New special and revolving funds are created by statute, as mandated in Sections 37-52.3 and 37-52.4, HRS. Other non-general funds can be created administratively. For funds or accounts that are established administratively, departments are also required to transmit reports to the Legislature with information justifying their establishment, the sources of revenue, the list of all accounts or funds, and all revenues, expenditures, encumbrances and ending balances. In 2002, the Legislature through Act 178, SLH 2002, codified in Section 37-52.5, HRS, set the criteria for the establishment and continuance of administratively established accounts and funds.

The non-general fund reports submitted to the 2011 Legislature by 17 departments and the University of Hawai‘i contain information about 729 non-general funds and accounts with an aggregate unencumbered balance of \$2.47 billion in FY2012, as shown in Exhibit 1.1.

Exhibit 1.1 Non-general Fund, Account Totals for Executive Branch Departments

Department	Fund and Account Totals (FY2010)	Estimated Unencumbered Balance (FY2012)
Accounting and General Services	47	\$49,698,557
Agriculture	36	\$14,362,443
Attorney General	39	\$18,140,147
Business, Economic Development and Tourism	31	\$118,991,560
Budget and Finance	16	\$343,585,013
Commerce and Consumer Affairs	35	\$163,748,011
Defense	24	\$7,017,989
Education	39	\$32,136,113
Hawaiian Home Lands	12	\$95,927,628
Health	90	\$131,845,218
Human Resources Development	1	\$639,568
Human Services	112	\$18,786,898
Labor and Industrial Relations	6	\$4,133,330
Land and Natural Resources	69	\$38,301,870
Public Safety	20	\$8,095,151
Taxation	2	\$797,597
Transportation	46	\$1,237,223,334
University of Hawai'i	104	\$185,668,210
Total	729	\$2,469,098,637

Source: Office of the Auditor

Description of special and revolving funds

The 1990 Legislature in Act 240, SLH 1990, recognized that special and revolving funds “provide guaranteed sources of revenue to particular programs without regard to the State’s overall fiscal condition.” Moneys deposited into and spent from special and revolving funds are not subject to an equivalent level of legislative scrutiny as those in the general fund.

Special funds

Section 37-62, HRS, defines special funds as “funds which are dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.” This definition has not changed, despite a 1993 report by the Legislative Reference Bureau criticizing the term as vague and overly broad thus providing “little guidance to legislators in determining the parameters of this type of fund.” Hawai‘i’s Budgetary Control Act of 1957, codified in Section 37-51, HRS, places

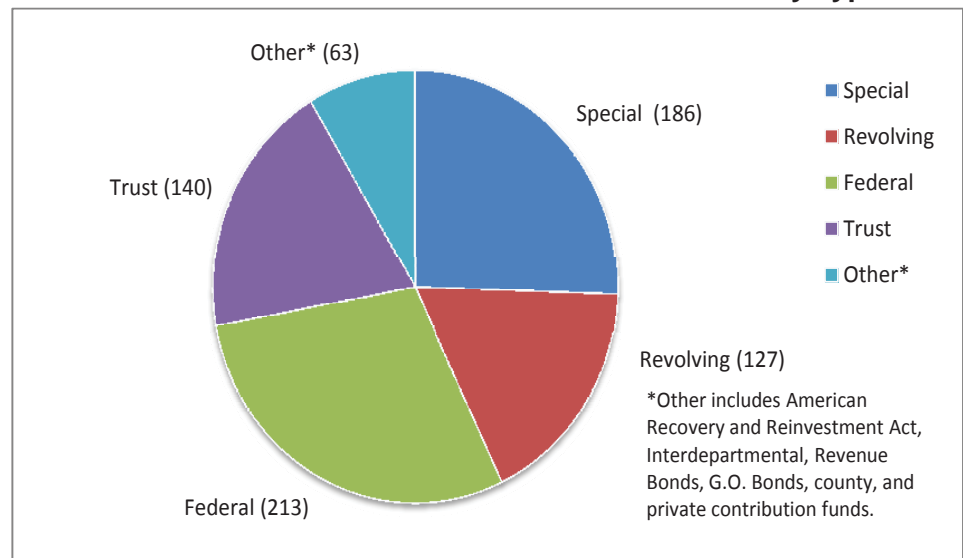
all special funds under legislative and executive budgetary control in the same manner as the general fund, except for funds subject to federal laws or regulations and payments on principal and interest on revenue bonds.

Revolving funds

Section 37-62, HRS, defines a revolving fund as a fund from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts and funds. Revolving funds are often established with an appropriation of seed money from the general fund. Activities commonly financed through revolving funds include loan programs that are then replenished through the repayment of loans.

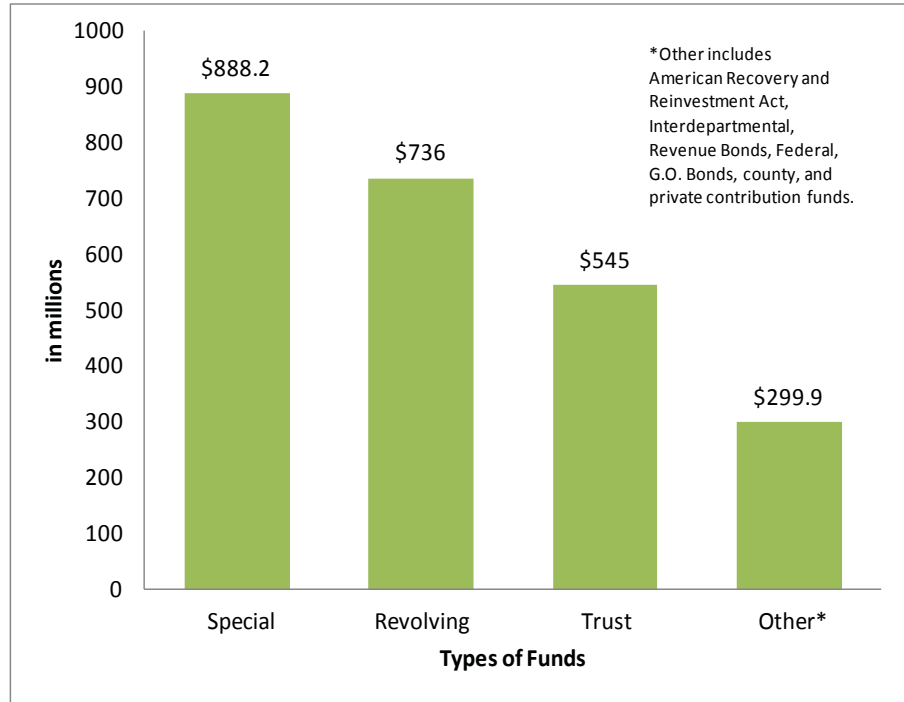
In the non-general fund reports filed in December 2010, the departments provided information about 186 special and 127 revolving funds and accounts in FY 2010 and reported estimated FY2012 unencumbered balances of approximately \$888.2 million and \$736 million, respectively, as illustrated in Exhibits 1.2 and 1.3.

Exhibit 1.2
FY 2010 Executive Branch Funds and Accounts By Type



Source: Office of the Auditor

Exhibit 1.3
Executive Branch Unencumbered Balances (in millions)



Source: Office of the Auditor

Criteria for reviewing special and revolving funds

Criteria for the establishment and continuance of special and revolving funds were enacted by the 2002 Legislature through Act 178, SLH 2002, Sections 37-52.3 and 37-52.4, HRS. To be approved for continuance, a special or revolving fund must:

- serve the purpose for which it was originally established;
- reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- provide an appropriate means of financing for the program or activity; and
- demonstrate the capacity to be financially self-sustaining.

The first and second criteria are nearly identical to those in Act 240, SLH 1990, codified in Section 23-11, HRS, requiring the Auditor to review all legislative bills in each session to establish new special or

revolving funds. The 1990 Legislature determined it was fiscally prudent to establish a review for all proposed special and revolving funds and to have the Auditor perform a one-time review of existing funds.

Governor's authority to transfer special funds

By law, the governor can approve departmental requests to transfer excess money from special funds to the general fund, except those related to the Hawai'i Health Systems Corporation and the University of Hawai'i. The governor also is restricted from making transfers of certain Department of Transportation special funds. According to the administrator of the budget, program planning, and management division within the Department of Budget and Finance, and according to the director of finance, past and present governors typically have not chosen to use this unilateral power broadly; rather, most have chosen to work with the Legislature on non-general fund transfers for purposes of transparency. Most of the fund transfers are authorized through legislation except for those funds that are automatically swept into the general fund as provided by law.

Legislature's powers to make laws, tax, and control spending

The Hawai'i Constitution grants the Legislature the power to tax and the power to control the spending of tax generated revenues through appropriations made by law. The Legislature exercises its constitutional power to make laws by creating and repealing funds, set fund appropriations, set fund definitions, create criteria for the establishment and continuance of special and revolving funds, require periodic fund reviews, obtain money from funds for agency administrative costs and central services fees, and transfer non-general fund moneys to the general fund.

Given the extraordinary fiscal crisis confronting the State from the 2008 recession and its aftermath, the Legislature reviewed and scrutinized special and revolving funds under the control of executive branch departments and the Judiciary to determine if excess balances were available to help balance the State's general fund budget. A balanced budget means proposed general fund expenditures are covered by general fund revenues and unencumbered cash balances and is intended to prevent deficit spending. Consequently, if there is a projected budget shortfall, the Legislature must propose revenue enhancements or reductions in expenditures. The Legislature has also used other means to address budget shortfalls such as authorizing transfers of excess revenues from special and revolving funds to the general fund.

Summary of special and revolving fund transfers in fiscal years 2009-2011

The Legislature faced budget shortfalls totaling \$4.6 billion in FY2009, FY2010, and FY2011. In 2009, there was a shortfall of about \$2.1 billion and in 2010, a shortfall of \$1.2 billion. Before the end of the 2011 session, the Legislature faced an estimated budget shortfall of \$1.3 billion.

In each of these years, the Legislature produced a “raid” bill that authorized the director of finance to transfer funds from special and revolving funds and accounts to the general fund. For the three years, the Legislature authorized a total of \$161 million, of which the director of finance transferred \$144.9 million to the general fund. Exhibit 1.4 shows the measures authorizing the transfers, the amounts authorized by the Legislature, and the actual amounts transferred by the director of finance. According to the House Committee on Finance, the amounts authorized by the Legislature and the actual amounts transferred by the director can differ because the director of finance is not required to implement transfer authorizations.

**Exhibit 1.4
Special and Revolving Funds, Account Transfer
Authorizations In FY2009-2011**

Non-general Fund and Account Transfer Authorizations - FY2009-2011		
Transfer Legislation	Authorized by Legislature	Transferred by Finance Director
Act 79 (SLH 2009)	\$97,950,000	\$81,950,000
Act 192 (SLH 2010)	\$46,000,000	\$45,800,000
Act 124 (SLH 2011)	\$17,111,162	\$17,156,252
Totals:	\$161,061,162	\$144,906,252

Source: Office of the Auditor

Role of the Department of the Attorney General

The Department of the Attorney General plays a key role in the Legislature’s fund transfer process by conducting legal reviews of proposed fund transfers. The department is headed by the attorney general and administers and renders legal services to the executive branch and the Legislature. As such, the department is called upon by the House Committee on Finance and Senate Committee on Ways and Means to assess whether the Hawai‘i Supreme Court decision, *Hawai‘i Insurers Council v. Linda Lingle, Governor, State of Hawai‘i, et al.*, applies to certain funds identified for possible transfer.

Prior Studies

In 1990, pursuant to Act 240, SLH 1990, we began a review of special and revolving funds as of July 1, 1990. The review was completed and presented in five separate reports issued in 1991 and 1992. We updated our review of existing and newly created special and revolving funds as of July 1, 1999 in 2000 at the request of the Legislature in House Concurrent Resolution No. 89 of the 2000 Regular Session. Our reports are summarized here:

- Report No. 91-10, *Review of Special and Revolving Funds of the Departments of Accounting and General Services, Agriculture, and Budget and Finance*, was the first of a series of reports produced as a result of Act 240, SLH 1990. Beyond the review of funds in several departments, the study also had as an objective the development of criteria for evaluating the appropriateness of existing and new special and revolving funds. The study also noted how funds may be used to avoid the general fund expenditure ceiling.
- Report No. 92-14, *Loss of Budgetary Control: A Summary Report of the Review of Special and Revolving Funds*, found use of special and revolving funds distorted the State's financial picture by making both revenues and expenditures appear to be less than they are. We determined that special and revolving funds divert moneys from the general fund, thereby reducing the Legislature's control of state finances while escaping legislative scrutiny because the Legislature limits its oversight of programs financed outside the general fund appropriations process. We recommended the Legislature repeal or discontinue 70 special and revolving funds, amend Section 37-62, HRS, to clarify definitions of special and revolving funds, amend Section 23-11, HRS, to require proposals to establish special and revolving funds be supported by evidence of need and strengthening oversight of non-general funds, and consider sunset dates for all existing and newly established special and revolving funds.
- Report No. 01-12, *Update of the 1992 Summary of Special and Revolving Funds*, found 106 of the 166 funds previously reviewed were still in existence. We recommended the Legislature strengthen oversight over non-general funds by reconsidering recommendations in Report No. 92-14 or related options discussed in Report No. 01-04, *Review and Identification of Fiscally Related Powers Conferred Upon or Assumed by the Executive Branch*.

Section 23-12, HRS, expands the concept of Act 240, SLH 1990, by requiring our office to review each revolving and trust fund once every five years. Since 1994, we have issued 19 reports as follows:

- Report Nos. 94-4, 99-6, 03-13, 09-01, *Review of Revolving Funds, Trust Funds, and Trust Accounts of the Departments of Accounting and General Services, Agriculture, Budget and Finance, and Land and Natural Resources.*
- Report Nos. 94-19, 00-07, 04-13, 09-11, *Review of the Revolving Funds, Trust Funds and Trust Accounts of the Departments of the Attorney General, and Business, Economic Development and Tourism, and the University of Hawaii.*
- Report Nos. 95-32, 01-07, 05-08, 10-09, *Review of Revolving Funds, Trust Funds, and Trust Accounts of the Judiciary and the Departments of Commerce and Consumer Affairs, Hawaiian Home Lands, Health, and Human Services.*
- Report Nos. 96-21, 02-05, 06-08, 11-04, *Review of Revolving Funds, Trust Funds and Trust Accounts of the Office of the Governor, Office of the Lieutenant Governor, Department of Education and Hawai'i State Library System, and Office of Hawaiian Affairs.*
- Report Nos. 97-20, 02-15, 07-07, *Review of Revolving Funds, Trust Funds and Trust Accounts of the Departments of Human Resources Development, Labor and Industrial Relations, Public Safety, and Taxation.*

Objectives of the Study

1. Define the legal review process by which non-general funds are identified for possible transfer to the general fund.
2. Assess if the non-general funds authorized for transfer in the 2009, 2010, and 2011 legislative sessions meet the criteria for which they were established.
3. Make recommendations as appropriate.

Scope and Methodology

House Concurrent Resolution No. 166 calls for the Auditor to apply the three-pronged analysis set forth in the *Hawai‘i Insurers Council* decision to determine which non-general funds can be transferred lawfully by the Legislature.

In planning this study, we learned that a legal review process is already conducted by the Department of the Attorney General on an as-needed basis at the request of the Legislature. The Senate Ways and Means Committee and the House Finance Committee have requested reviews of proposed fund transfers by the attorney general, who is charged with providing legal advice to the Legislature under Section 26-7, HRS. Because a legal review process that applies the three-pronged test in the *Hawai‘i Insurers Council* case exists, such a study by the Auditor would be duplicative. Instead, we focused our study on the legal review process for identifying funds for transfer and on determining whether special and revolving funds continue to serve the purpose for which they were established. We also reviewed how increased use of special and revolving funds impacts the legislative budget process.

We researched court decisions, statutes, administrative rules, fund reports, and media reports. We interviewed legislative budget analysts and deputy attorneys general to determine criteria and breadth of the study. Through a review of appropriations acts from 2009, 2010, and 2011, we identified three so-called raid bills—Act 79, SLH 2009, Act 192, SLH 2010, and Act 124, SLH 2011—from which we compiled a list of special and revolving funds with excess balances that were identified for transfer. Non-general fund reports filed with the state Department of Budget and Finance were also cross-referenced.

We reviewed 34 special and 13 revolving fund and accounts, located in 11 executive branch departments, the Judiciary, and the University of Hawai‘i, with excess moneys that were authorized for transfer to the general fund by the Legislature in 2009, 2010, and 2011. To gain an understanding and verify information obtained relating to fund criteria, revenue sources, and uses, we sent questionnaires and conducted follow-up interviews with key departmental fiscal and program personnel responsible for the selected funds. We did not audit the agencies’ financial data, which are provided only for informational purposes. Nor do we present any conclusions about the effectiveness of the programs, management, or whether the program should be continued.

We also reviewed pertinent literature from prior reports, the Legislative Reference Bureau, the U.S. Government Accountability Office, and other states’ accounting manuals to determine methodologies and definitions used in oversight of financial accounts.

Our study was conducted from June 2011 to April 2012 according to generally accepted government auditing standards and the Office of the Auditor's *Manual of Guides*. These standards require that we plan and perform an audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our study objectives.

Chapter 2

Special and Revolving Funds Require Closer Scrutiny

In 1992 we reported that the proliferation of special and revolving funds had a deleterious effect on the Legislature’s ability to control the state budget. Twenty years later, the same effect holds true. An overabundance of special and revolving funds hampers legislative budget-making flexibility that is essential to direct general fund spending. Closer scrutiny to the creation and continuance of special and revolving funds through their monitoring and review is needed. Based on our review of 47 special and revolving funds, we believe there are several ways the Legislature can decrease the high number of these funds and shift moneys to the general fund. For example, the Legislature can repeal six funds and lapse moneys (approximately \$49.7 million) to the general fund that we determined fail to meet the criteria for continuance.

Moreover, the 2008 Hawai‘i Supreme Court decision in *Hawai‘i Insurers Council v. Linda Lingle, Governor, State of Hawai‘i, et al.* weakens the Legislature’s capacity to “raid” special and revolving funds in an effort to balance the budget. As a result, closer scrutiny through legal reviews of special and revolving funds identified for transfer to the general fund is needed to minimize the risk of error and liability to the State. We found the attorney general’s legal review process does not ensure that all applicable laws are methodically considered and documented. The lack of a standardized process may have contributed to inconsistent legal analysis in the past that led to improper fund transfer authorizations by the Legislature. Our study shows the Legislature mistakenly authorized transfers from two special funds to the general fund of \$16.5 million, contrary to the funds’ purposes. Federal officials have yet to ask that the the \$16 million diverted from the State’s Wireless Enhanced 911 Fund be returned. The attorney general has noted that the possible consequences of diverting such funds in violation of federal law may be penalties and fines imposed by Congress, and the withholding of federal funds.

Summary of Findings

1. Creating special and revolving funds reduces the Legislature’s flexibility to direct the spending of general fund revenues.
2. Due to budget shortfalls, the Legislature has sought to transfer moneys from special and revolving funds, resulting in a legal review

of such funds. The legal review process conducted by the attorney general needs a more systematic and structured approach to minimize the risk of error and liability to the State.

Creating Special and Revolving Funds Reduces Legislature's Budgetary Flexibility To Direct General Fund Spending

Today special, revolving, and other types of non-general funds collectively represent about half of the state operating budget, with dozens of funds being proposed each year. The Legislature's budgetary flexibility to direct the spending of general fund revenues has declined as the number and use of special and revolving funds has risen. Some special-funded programs run a surplus as general-funded programs compete for scarce revenues. To improve its control of the budget, the Legislature can decrease the high number of special and revolving funds by using the fund creation and continuance criteria. This would shift money to the general fund, giving it more flexibility in constructing balanced budgets. Our review identified six special and revolving funds that should be repealed for failing to meet criteria, and the unencumbered cash balance (approximately \$49.7 million as of the end of FY2011) should lapse to the general fund.

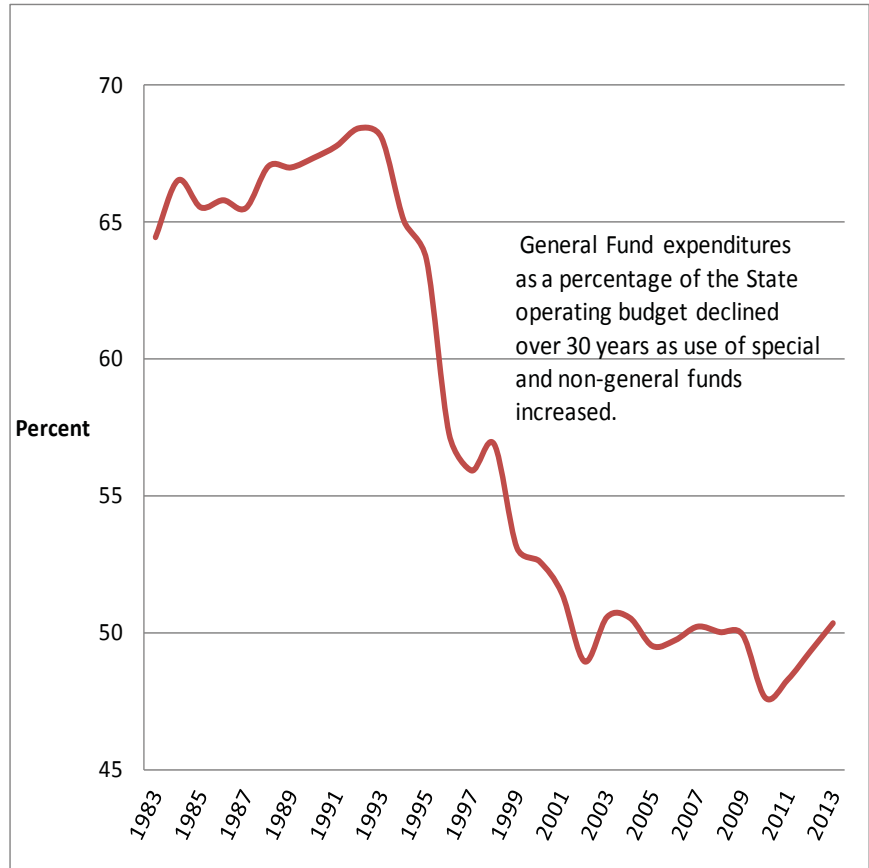
Creating special and revolving funds diminishes ability to direct general fund revenues

The aggregate number of special and revolving funds almost quadrupled over the past three decades. The use of special and revolving funds plays a significant role in distorting the State's general fund picture by making both revenues and expenditures appear to be less than they are. As we reported 20 years ago, special and revolving funds also make it appear that the State is spending less than it is. While special and revolving funds account for a significant portion of the State's operating budget, the moneys are not subject to the same level of legislative scrutiny as general funds.

Substantial amounts not subject to general fund appropriation process

As a means of financing, the percentage of general funds in the State operating budget shrank over the past 30 years as the use of special funds, in particular, ballooned. General funds represented about two-thirds of operating budget outlays in the late 1980s but have dwindled to about half of operating expenditures in recent years. General fund expenditures as a portion of the State operating budget declined from a high of 68.4 percent in FY1992 to a low of 47.6 percent in FY2010, as shown in Exhibit 2.1.

Exhibit 2.1 General Fund Portion of State Operating Budget



Source: Office of the Auditor

This highlights the growth in the use of other means of financing. Between 1983 and 2013, special, revolving, and other types of non-general fund outlays in the budget increased eight-fold, rising to \$5.52 billion projected for FY2013 from \$687.5 million in FY1983. By comparison, general fund expenditures rose 4.5 times over the same period.

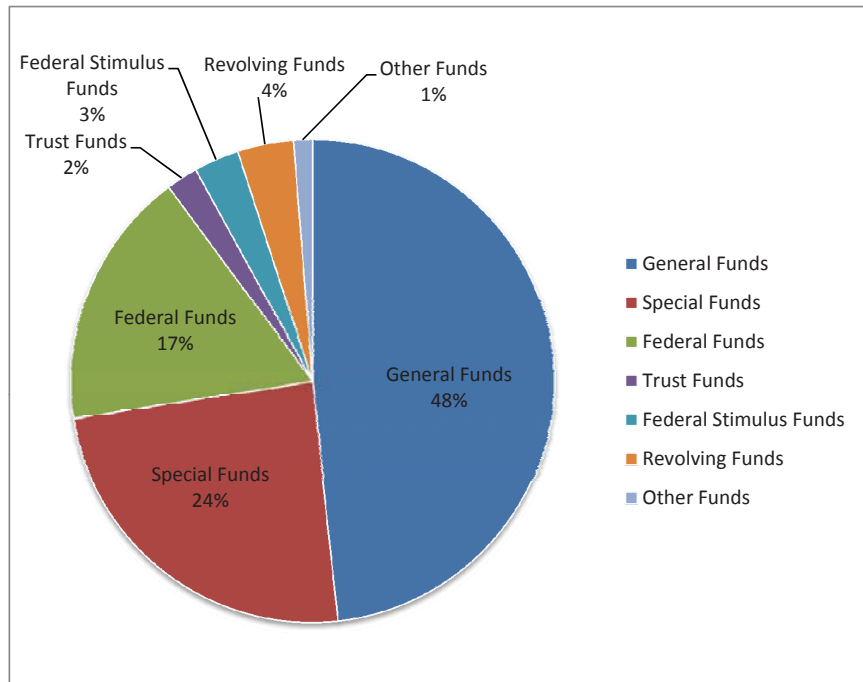
Our analysis of the operating budget projections in the state Multi-Year Program and Financial Plan and Executive Budget documents shows:

- Between FY2002 and FY2011, non-general fund outlays represented a larger portion of operating budget outlays than the general fund did in six of the ten years;
- In FY2010, the general fund portion of the operating budget reached a nearly three-decade low of 47.6 percent, in part due to an injection of federal stimulus money from the American Recovery and Reinvestment Act, which accounted for 6.3 percent of the FY2010 executive branch operating budget.

- In FY2011, special funds comprised 24.3 percent (\$2.48 billion) of the State’s \$10.2 billion operating budget. Revolving funds comprised 3.8 percent (\$384.2 million). The general fund, which is the largest portion of the operating budget, consisted of 48.3 percent, or about \$4.94 billion.

Exhibit 2.2 shows the source of revenue from all funds in the FY2011 executive branch operating budget.

Exhibit 2.2
Role of All Funds in FY2011 Executive Branch Operating Budget



“Other Funds” includes interdepartmental transfers, private contributions, and county funds. Percentages do not add up to 100 because of rounding.

Source: Office of the Auditor

As a means of financing, the general fund comprised about 48 percent to 50 percent of the State operating budget, and special funds comprised 19 percent to 25 percent for FY2005 through FY2012. Exhibit 2.3 shows the percentage of general, special, revolving, and trust funds used to pay for state government programs over eight fiscal years.

Exhibit 2.3 Hawai'i Operating Budget by Means of Financing

Means of Financing	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012
General Fund	49.5%	49.7%	50.2%	50.0%	49.9%	47.6%	48.3%	49.3%
Special Fund	20.1%	18.9%	18.6%	19.3%	19.5%	22.7%	24.3%	25.6%
Federal Fund	17.8%	16.9%	16.8%	16.4%	15.7%	16.5%	17.3%	18.1%
Revolving Fund	3.9%	4.0%	3.7%	3.6%	3.4%	4.0%	3.8%	3.6%
Trust Fund	0.5%	0.6%	0.6%	0.7%	0.7%	0.9%	2.1%	2.1%
Federal Stimulus						6.30%	3.00%	0.50%

Source: Office of the Auditor

The decline in general fund outlays as a percentage of the operating budget has implications for the Legislature, because of the nature of the funds and the constitutional requirement for a balanced general fund budget. The mandate that general fund expenditures not exceed general fund revenue and unencumbered cash is intended to prevent deficit spending. Consequently, if there is a projected budget shortfall to pay for proposed general fund expenditures, then the Legislature must propose revenue enhancements or reductions in expenditures.

Money in the general fund is subject to competition from various programs, with those deemed to have the highest priority receiving funding. Special and revolving funds typically have a dedicated revenue source, and the programs they support are not subject to the general fund appropriations process. This can result in situations where a special or revolving fund may be running a surplus while programs budgeted through the general fund are left to compete for scarce revenues to meet their needs.

For example, the University of Hawai'i's Research and Training Revolving Fund is used to further research and training as well as activities that result in additional research grants and contracts for the university. Federal reimbursements for indirect costs that once were deposited to the general fund are now deposited to this revolving fund. In FY2011, the fund's revenues more than covered expenses, including a \$400,000 transfer of excess money to the general fund. The fund ended the year with an unencumbered cash balance of \$16.6 million. During that same year, the 2011 Legislature struggled to deal with a projected biennium budget shortfall of \$1.3 billion.

Decisionmaking for spending requires budgetary flexibility

Fundamentals of Sound Budgeting Practices, a report by the National Conference of State Legislatures (NCSL), notes there is no single preferred procedure for allocating funds, and as a result "the main

principle of sound state budgeting is to maintain flexibility.” The NCSL suggests maintaining flexibility by reviewing fund management practices and consolidating funds into the general fund. It concludes:

Having a large number of separate funds is a relic of 19th-century state budgeting, when the practice was to assign a revenue source and a fund to each of many different activities and to get along without a comprehensive budget. A large number of funds unnecessarily complicates revenue forecasting, budgeting and accounting, and is likely to confuse the public.

Moreover, as a best practice, the NCSL recommends a careful examination of earmarking of revenues, since a large number of funds reduces the decisionmakers’ power to set budget priorities. Careful use of earmarked revenues is warranted, the NCSL notes, because “the long-term consequences of earmarking is reduced control over the relative shares of state spending for different programs, a kind of rigidity that is exactly opposite to the flexibility and program review many encourage state governments to increase.”

In Report No. 92-14, *Loss of Budgetary Control: A Summary Report of the Review of Special and Revolving Funds*, we noted that the “power of the Legislature is partly a function of the amount of money under its control.” The report goes on to say, “Special and revolving funds divert moneys from the general fund, thereby reducing the Legislature’s control of state finances.” This occurs because, by definition, earmarked revenues are automatically channeled to finance a specific program. Often this legislative earmarking occurs when a program can generate revenues that, in turn, are used to support the program. This practice flows from the “benefit theory” of finance, meaning that those who benefit from the program should pay for the program.

An example of earmarking revenues that illustrates the loss of legislative budgetary control is found in the continuance of the University of Hawai‘i Research and Training Revolving Fund, despite a series of Auditor reviews, starting in 1992 and continuing through 2009, which found the fund did not meet criteria for continuance. In Report No. 92-14, a 1992 review of this fund noted that the general fund absorbed all overhead costs for electricity, telephone, and various facilities’ expenses even though reimbursements for these costs from federal contracts and grants at the University of Hawai‘i were earmarked to the revolving fund. At the time, we recommended repealing the fund created under Section 304-8.1, HRS, and budgeting through the general fund.

Our 2001 report found the fund continued to exist and was an inappropriate financing mechanism. We concluded that since the overhead costs were usually paid for by the general fund, the revolving fund should be used to reimburse the general fund for the portion of

indirect overhead incurred by federal grants and projects. In 2006, through Act 75, SLH 2006, the Legislature recodified the fund in Section 302A-2253, HRS, giving the Board of Regents full control to expend 100 percent of the revenues including any reimbursements for overhead costs for federally financed projects. As discussed later in this chapter, we recommend this fund be repealed for failing to meet the revolving fund's statutory criteria for continuance.

To be sure, when used as intended, special and revolving funds play an important role in allocating public services. The earmarking of revenue in funds can be a way to provide continuous, guaranteed support for a favored program, or a way to win voter support for a tax increase. The creation of special and revolving funds also can be used to meet federal requirements or as an efficient way to allocate resources in cases where revenue from user charges or fees matches the costs for services delivered to users. Some individual types of funds, such as "rainy day" funds through which governments save money from prosperous years for use in bad ones, are seen as an asset for state governments. Following best practices, the 1999 Legislature created a special fund for rainy day purposes, which earmarks 15 percent of proceeds from the \$1.4 billion the State stands to receive under the Tobacco Master Settlement Agreement. All interest earned from this fund is credited to the general fund.

Proliferation of special and revolving funds undermines budgetary flexibility

On the other hand, an overabundance of special and revolving funds undermines the Legislature's budgetary flexibility, considered a major hallmark of a sound budgeting and revenue system. In 1992, we reported that the proliferation of special and revolving funds as financing mechanisms to support state programs had a deleterious effect on the Legislature's ability to control the state budget. In addition, the Legislature has received several studies on special funds including one by the Legislative Reference Bureau, *A Review of the Definitions of Special, Revolving, and Trust Funds in Hawai'i*, noting that too many funds decreases the State's ability to budget wisely because unnecessary funds result in inflexibility, undue complexity, and inefficient financial administration.

In our prior reports, we noted the proliferation of special funds has a cumulative effect on the overall financial condition of the State and provides a means to avoid the general fund expenditure ceiling. We also noted legislative control was reduced because special and revolving funds diverted moneys from the general fund, and distorted the State's financial picture by making revenues and expenditures appear to be less than they are. Moreover, we noted the Legislature primarily focuses on

the general fund and limits its oversight of programs financed outside the general fund appropriations process. Hence, from a legislative perspective, special funds are less desirable because the funding stream is not fully controlled by the appropriation process.

In the past two decades, we have seen a notable rise in the number of special and revolving funds. Our 1992 report found at most 83 funds existed in 1980. This grew to 166 in 1990 and to 220 in 1999.

Our examination of non-general fund reports filed in 2010 with the Department of Budget and Finance show the existence of 313 special and revolving funds and accounts including 186 special funds (with unencumbered cash balances of \$888.2 million) and 127 revolving funds (with balances of \$736 million) as shown in Exhibits 1.2 and 1.3. This means 18 departments including the University of Hawai'i have an estimated unencumbered cash balance of \$1.62 billion in FY 2012 outside the general fund.

Collectively, the 18 executive branch departments including the University of Hawai'i can receive money from 729 funds—special, revolving, federal, trust, and other—with moneys that sit outside the general fund and have an aggregate unencumbered cash balance estimated at approximately \$2.47 billion in FY2012, as shown in Exhibit 1.1. The actual number may be higher because the non-general fund reports we reviewed for this study do not include information about funds under the Judiciary, the Office of Hawaiian Affairs, the Legislature and the governor's office. For reasons discussed in this study's section on fund monitoring, it is believed more accounts exist within executive departments than are reported.

***Special and Revolving
Funds Scrutinized
To Address Critical
Budget Shortfalls***

The Legislature has a variety of means for obtaining money from non-general funds and has used them to address budget shortfalls. For example, in the face of critical revenue shortfalls from the 2008 recession, the Legislature in FY2009 through FY2011 authorized the transfer of approximately \$161 million from 47 special and revolving funds and accounts to help balance the state general fund budget. But the appropriations process for transferring money is a cumbersome one that interferes with the Legislature's ability to quickly respond to changing economic times. We also found that the Legislature's primary means of monitoring departments through non-general fund reports has information gaps.

The Legislature raided money set aside for specific purposes as it sought to recapture general fund revenues

Over the past decade, the Legislature authorized the transfer of \$412 million from non-general funds to the general fund as it scrambled to deal with billions of dollars in projected budget shortfalls.

The transfers were one of several means used to obtain moneys in non-general funds. Actions taken by the Legislature include:

- Transferring fund balances identified as having excess balances. More than \$161 million was authorized for transfer by the Legislature since 2009, as shown in Exhibit 1.4.
- Setting automatic sweeps of fund moneys that are above a certain balance. This includes amounts of more than \$1 million in the Public Utilities Commission Special Fund and of more than \$500,000 in the State Parking Revolving Fund;
- Repealing funds and transferring balances into the general fund. More than a dozen funds have been repealed, including the \$3.48 million Photo Enforcement Revolving Fund;
- Authorizing the transfer of the interest earned on 45 non-general fund balances;
- Expanding the number of funds required to pay central services fees, which is a 5 percent assessment on fund receipts that goes to pay for state government services. In FY2010, this amounted to \$32.8 million; and
- Requiring dozens of special funds to pay their pro-rata share for departmental administrative expenses. The State collected \$2.95 million in administrative expenses from funds in FY2010.

Money in special and revolving funds difficult to redeploy as budget priorities change

One of the primary criticisms of earmarking revenue sources for special funds is that it hampers the ability of legislators to rework budgets as economic conditions change. The Legislature's ability to redeploy moneys from special and revolving funds is complicated by the three-pronged test applied by the Hawai'i Supreme Court in *Hawai'i Insurers Council* case.

In 2008, the Hawai'i Supreme Court ordered the Legislature to return \$3.5 million which it raided from the insurance regulation account within the Department of Commerce and Consumer Affairs' Compliance

Resolution Fund through two transfer bills in 2002 and 2003. The sole issue before the court was whether moneys from a fund made up entirely of assessments, fees, fines, penalties, and reimbursements could be transferred to the general fund. The court held the Legislature's transfers of legitimate regulatory fees to the general fund was an unconstitutional exercise of its taxing powers in violation of the Separation of Powers doctrine. Under the broad scope of this doctrine, the legislative branch is assigned the power to make laws and appropriate the funds, while the executive branch is charged with the responsibility of executing laws and expending funds. The court decided that the "Legislature's promulgation of the transfer bills amounted to an impermissible blurring of the distinction between the executive power to assess regulatory fees and the legislative power to tax for general purposes."

The three-pronged test applied by the court is now recognized by the Legislature and the attorney general as criteria for determining whether money can be transferred to the general fund. The test applies three questions:

1. Whether a regulatory agency assessed the fee;
2. Whether the money was placed in a special fund; and
3. Whether the money was used for a general purpose or one regulatory in nature, such as defraying the expenses of regulation, or for the benefit of parties upon whom the assessment was imposed.

The ruling arguably affected subsequent legislative efforts to transfer moneys from special funds to the general fund. The Legislature and the Department of Budget and Finance now consider the test when contemplating non-general fund transfers, both seeking advice from the Department of the Attorney General as to whether excess balances from all or parts of funds can be transferred.

As discussed above, there are several ways to obtain money out of the funds, with fund raids yielding the largest amounts. However, the process for identifying excess balances within funds, checking on their availability, conducting a legal review, and passing a raid bill is a time-consuming one. Prior to the start of each session, budget analysts for the Senate Committee on Ways and Means and House Committee on Finance review each department's non-general fund report and budget testimony to identify potential funds for transfer. These analysts look for large unencumbered balances (money not encumbered or committed) of special and revolving funds. They then consult with departments, typically the administrative services officers, to determine if funds can be taken without crippling program finances.

Once the funds are identified, both committees seek legal reviews from the Department of the Attorney General before recommending funds for inclusion in the transfer legislation. This includes considering whether the three-pronged test would prevent the Legislature from authorizing a transfer. Problems with the legal review process are discussed later in this study.

Tracking of special funds is problematic

Non-general fund reports serve as one of the main sources of the Legislature's information regarding special, revolving, and other non-general funds. From our review of 47 special and revolving funds and accounts, we noted the absence of such reports or information and concluded that some departments do not file all reports for every non-general fund under their control or provide the kind of detailed information mandated by Section 37-47, HRS.

At the time of our fieldwork, we found six instances of missing non-general fund reports, three of which represent some of the State's largest funds—the State Highway Fund, Harbors Special Fund, and State Educational Facilities Improvement Special Fund.

The absence of non-general fund reports is noteworthy, because budget analysts use them to track fund balances submitted by agencies to the Department of Budget and Finance. For example, even though the Photo Enforcement Revolving Fund was repealed by the 2002 Legislature, \$3.48 million sat unnoticed in the fund until 2011. Presumably the money could have been detected earlier by legislative budget analysts if the revolving fund's non-general fund report had been filed. But no such report could be found in our check of filings for 2009, 2010, and 2011.

It should be noted that some of the 11 departments with special and revolving funds that we tested file the reports as required, with some adding extra pages to fulfill the information requirements. However, we found some reports in which detailed information is missing or inaccurate. We noted six Department of Transportation funds that lacked mandated data, including one that failed to list the name of the fund, its purpose, revenue source, legal authority, and program activities. We also noted errors in data reported. For example, a Department of Human Services fund report listed the Health Care Revolving Fund as having a balance of \$916 instead of its actual balance of \$916,000. This error is significant because of the money involved, and the balance likely escaped legislative scrutiny, since budget analysts typically look for funds with large unencumbered balances, such as those with more than \$100,000.

The Legislature is also able to monitor whether revolving and trust funds meet criteria for continuance through regular reviews performed by our office that began in 1994 as listed in Chapter 1. Under Section 23-12, HRS, the revolving and trust funds are evaluated periodically based on four criteria: the intent and purpose, whether the purpose is achieved, performance standards, and a statement reflecting total fund transactions. But not all departments are included in the periodic reviews—revolving and trust funds under the Department of Transportation and the Department of Defense are not in the statute requiring the periodic examinations.

Criteria for special and revolving funds are intended to safeguard against overproliferation and inefficiencies

Using the criteria for the establishment and continuance of special and revolving funds, we analyzed 47 funds raided by the Legislature through Act 79, SLH 2009, Act 192, SLH 2010 and Act 124, SLH 2011. Our review of 34 special and 13 revolving funds and accounts highlights several options for the Legislature to consider. To improve its budgetary flexibility, the Legislature should rely on safeguards built into the statutory criteria, and include requiring evidence of need before establishing a new fund, repealing a fund that fails to meet the clear nexus criteria, unless it reflects a clear linkage between the program and sources of revenue dedicated to support it, and amending the law to include special fund reviews similar to our periodic reviews of revolving and trust funds. By doing so, we believe the Legislature can decrease the high number of special and revolving funds and shift moneys to the general fund, giving itself more flexibility in constructing balanced budgets.

Legislature should rely on safeguards against overproliferation included in criteria

The Legislature created criteria with which to analyze new or proposed special and revolving funds, and for analyzing whether special and revolving funds should be established or continued. But we found the Legislature is not using these reviews to their fullest to regain control and budget flexibility.

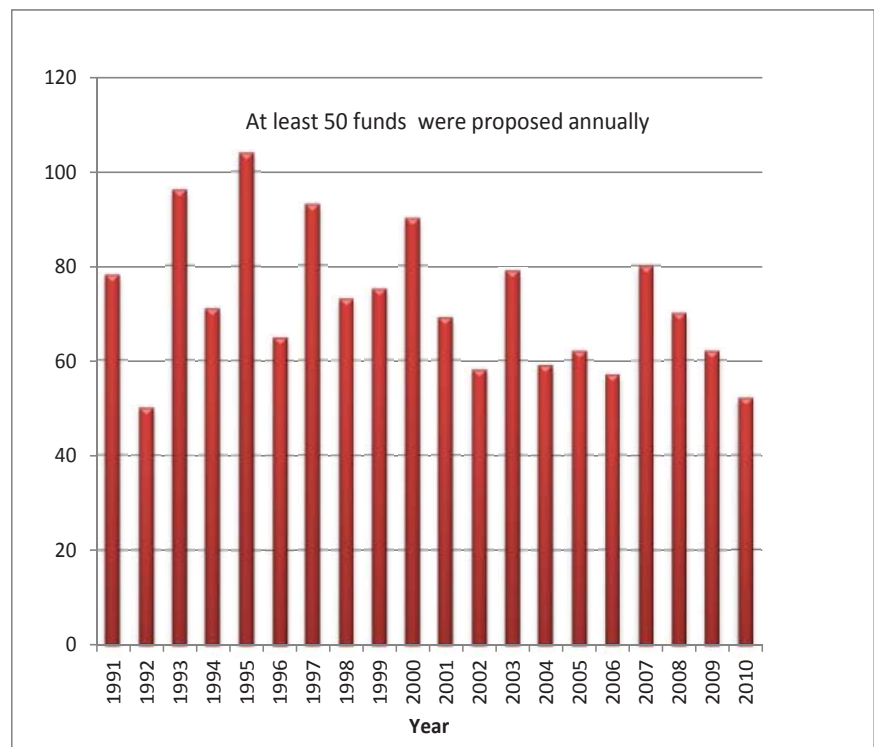
Since the enactment of Act 240, SLH 1990, legislation proposing special or revolving funds is analyzed by the Office of the Auditor to see if the funds meet criteria for establishment. The purpose of the act was to ensure the fiscal integrity of the State by establishing a review process for all new special and revolving funds proposed in each regular legislative session. The fund proposals are reviewed by the Office of the

Auditor using the criteria in Section 23-11, HRS, to see if the fund being put forth:

- serves the purpose for which it is being created; and
- reflects a clear link between the benefit sought and the charges made of users or beneficiaries of the program, as opposed to providing the program with an automatic means of support removed from the normal budget and appropriations process.

Between 1991 and 2010, more than 1,440 special and revolving funds were proposed. In the past decade, an average of 65 special or revolving funds was proposed annually. Exhibit 2.4, Proposed Special, Revolving Fund Legislation 1991-2010, shows the number of special and revolving funds proposed each year by the Legislature.

Exhibit 2.4
Proposed Special, Revolving Fund Legislation 1991-2010



Source: Office of the Auditor

We found the Legislature has not made full use of the proposed fund reviews. As part of our examination of 47 funds and accounts, we checked our reviews of proposed funds and found eight were created despite failing to meet criteria for new special and revolving funds. Examples include the Mental Health and Substance Abuse Special Fund, created in 1991, and the Emergency Medical Services Special Fund,

created in 2004, which analyses showed did not meet criteria. Transfers of \$4 million from the Emergency Medical Services Special Fund and \$2 million from the Substance Abuse Special Fund were authorized by the Legislature in FY2009 and FY2011, respectively. Both funds are discussed among the six we recommend should be repealed.

In 1992, we noted the criteria for new funds had limitations and recommended amending Section 23-11, HRS, to require evidence of need before establishing new special and revolving funds. To help analyze the fund more effectively and give the Legislature better information, we recommended the evidence of need should:

- state the program's purpose;
- describe the scope;
- present financial information on fees to be charged, sources of projected revenue, and costs; and
- explain why the program cannot be implemented successfully under the general fund appropriation process.

Adopting the evidence of need criteria continues to be a valid recommendation for the Legislature to consider.

Legislature may repeal funds with no clear nexus or efficient relationship between the source of revenues and users or services provided

In 2002, the Legislature set the criteria for determining whether special or revolving funds should be established or continued through Act 178, SLH 2002 and codified in Sections 37-52.3 and 37-52.4, HRS. To justify the creation and continuance, the Legislature must ensure that a special or revolving fund:

- serves the purpose for which it was originally established;
- reflects a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- provides an appropriate means of financing for the program or activity; and
- demonstrates the capacity to be financially self-sustaining.

We applied the criteria in Sections 37-52.3 and 37-52.4, HRS, to 47 funds and accounts that were the subject of general fund transfer authorizations during FY2009, FY2010, and FY2011. We sent questionnaires to 11 executive branch departments, the Judiciary, and the University of Hawai‘i. Departments were asked to provide a description of the fund, identify the program it supported, sources of revenues, beneficiaries, and whether the fund was self-sustaining. Responses, along with statutes creating the funds, non-general fund reports, and other information, were then used to analyze whether each fund met criteria for continuance.

Six funds no longer serve a purpose

Since six of the 47 special and revolving funds have already been repealed or are inactive, they no longer serve the purpose for which they were originally established. The funds are listed in Exhibit 2.5, showing a total of \$4.08 million remaining in the funds as of June 30, 2011. Individual analyses of funds, including where the cash balances, if any, were transferred in FY2011 and FY2012, are appended to this study in Appendix B *Individual Analysis of Funds No Longer Serving a Purpose*.

**Exhibit 2.5
Analysis of Funds No Longer Serving a Purpose**

Fund Name	Fund Type	6/30/11 Unencumbered Balance (in thousands)	Finding				
			No longer serves original purpose	No clear link between benefits sought and user charges	Does not have appropriate financing means	Is not financially self-sustaining	Already repealed or not active
Department of Business, Economic Development and Tourism							
UH Faculty Housing Project Series 1995 Bond Proceed Fund	Special	\$4	X	X		X	X
Waialua Loan/Subsidy Program	Special	\$0	X			X	X
Kīkala-Kēōkea Revolving Loan Program	Revolving	\$0	X	X	X	X	X
Department of Commerce and Consumer Affairs							
Loss Mitigation Grant Fund	Special	\$260	X	X	X	X	X
Department of Human Services							
Health Care Revolving Fund	Revolving	\$0	X				X
University of Hawai‘i							
Housing Assistance Revolving Fund	Revolving	\$3,817	X				X
Total		\$4,081					

Source: Office of the Auditor

Six funds fail to meet applicable criteria for continuance

We found six special and revolving funds do not meet criteria for continuance and should be repealed; there is no clear link between the benefits sought and user or beneficiary charges. In addition, the means of financing for five of the special funds is not appropriate. Exhibit 2.6 shows a list of funds not meeting criteria for continuance. Based on our analyses, we conclude that these funds or accounts earmarked by the Legislature should be repealed and that the unencumbered balance totaling \$49.7 million should lapse to the general fund. An individual analysis of each fund is appended to this study in Appendix C.

**Exhibit 2.6
Analysis of Funds Not Meeting Criteria for Continuance**

Fund Name	Fund Type	6/30/11 Unencumbered Balance (in thousands)	Finding				
			No longer serves original purpose	No clear link between benefits sought and user charges	Does not have appropriate financing means	Is not financially self-sustaining	
Department of Education							
Driver Education Fund	Special	\$1,634		X	X		
Department of Health							
Emergency Medical Services Special Fund	Special	\$19,947		X	X		
Mental Health and Substance Abuse Special Fund	Special	\$5,533			X		
Department of Land and Natural Resources							
Land Conservation Fund	Special	\$2,500		X	X		
Natural Area Reserve Fund	Special	\$3,532		X	X		
University of Hawai'i							
Research and Training Revolving Fund	Revolving	\$16,573		X			
Total		\$49,719					

Source: Office of the Auditor

Designating revenue for specific purposes flows from the “benefit theory” of public finance, which postulates that those who benefit from a program should pay for it. Revenue earmarking is more defensible when there is a clear benefit-user charge as opposed to when there is no such linkage and earmarking is used solely as a political shield to protect a program by providing it with an automatic means of support. We found four special funds and one revolving fund that fall into the latter category.

The Department of Education's (DOE) Driver Education Fund is a case in point, with an automatic means of support coming from insurance companies rather than the students taking the high school driver's education courses. Under Section 431:10C-115, HRS, the insurance commissioner must assess a driver education fund underwriters fee of \$3 a year on each insured motor vehicle. The fees are deposited into the special drivers education fund account under the Department of Commerce and Consumer Affairs' (DCCA) insurance division. Section 431:10C-115(c)(2)(A) and (B), HRS, authorizes the commissioner to allocate \$2 per registration to the director of DCCA for the DOE-administered driver's education program for high school students and the DOE traffic safety education program. Students (the program's beneficiaries) do not contribute to the program's budget, but rather pay a \$10 enrollment fee that is deposited into the general fund. There is no clear link between the insurance fees paid by insurers and allocated to the DOE's Driver Education Fund and the students enrolled in the driver education program. As such, the fund does not meet one criterion for continuance, and the Legislature should consider repealing Section 431:10C-115(c)(2)(A) and (B), HRS.

Similarly, the University of Hawai'i's Research and Training Revolving Fund benefits principal investigators, faculty, staff, and students performing research contracts, along with supporting the university's research and training mandate. Money in the fund largely comes from federal government reimbursements for indirect costs incurred in undertaking federally funded research and training. There is no clear link between the benefit sought and charges made upon the beneficiaries of the program because there are no user fees or charges on the researchers.

Another example of a fund that has no benefit-user charge linkage is the Department of Land and Natural Resources' Land Conservation Fund. Under Section 247-7(1), HRS, the Legislature authorized funding from 10 percent of the state real property conveyance tax receipts. However, the purpose of the fund is to conserve and protect lands having value as a resource to the state through either acquisition of property or through permanent conservation easements to protect resource values. Hence, beneficiaries of the conservation and preservation programs are state residents as a whole, and as such the programs should be supported by funding from a broader tax because of the broad public benefit. Although the Legislature determined the conveyance tax an appropriate means of funding conservation of natural resources, the Land Conservation Fund established under Section 247-7(1), HRS, the program should draw support from the general fund rather than a tax charged on individuals and companies involved in real estate transactions.

Likewise, the Natural Area Reserve Fund has minimal linkage between the benefits and the fund revenue, which comes from conveyance taxes paid on real estate transactions. The fund supports programs such as the Natural Area Partnership and Forest Stewardship programs, projects undertaken in accordance with watershed management plans, and the Youth Conservation Corps. Individuals that pay this tax may benefit from the Natural Area Reserves program, but so do other Hawai'i residents and visitors to the state.

The Emergency Medical Services Special Fund is used for operating state comprehensive emergency medical services, and its main sources of revenue include \$5 from the vehicle registration fee charged and 0.5 cents per cigarette from the tobacco tax charged to wholesalers and dealers. We found there is no clear link between the benefits sought and the source of the revenues.

Five special funds also did not demonstrate the appropriate means of financing in that the programs they supported had population-wide benefits that are typically supported by general fund appropriations or supported programs that already drew most of their budget from the general fund. For example, the Mental Health and Substance Abuse Special Fund fails the appropriate means of financing test, because the program it supports draws most of its budget from the general fund. For FY2011, the general fund appropriation was about 81 percent of the total appropriation for the program. For FY2012, the general fund appropriation was about 85 percent of the total appropriation for the program. Thus, the fund is not an appropriate means of financing for the program and should be budgeted through the general fund.

Nine special funds do not meet clear nexus criterion but have a logical relationship

We found nine special funds fail to meet the *clear nexus* criterion but nevertheless may be an appropriate means of financing, because there is a logical relationship between the program and the sources of revenue dedicated to its support. Moreover, some funds in the group also possess other characteristics that might preclude them from being repealed and having their programs budgeted through the general fund. Exhibit 2.7, Funds with Logical Relationship, lists the funds not meeting the clear nexus criterion, but demonstrate a funding relationship to justify continuance. Appendix D, *Individual Analysis of Funds with Logical Relationship*, contains the results of each analysis of these funds.

Exhibit 2.7 Funds with Logical Relationship

Fund Name	Fund Type	6/30/11 Unencumbered Balance (in thousands)	Finding			
			No longer serves original purpose	No clear link between benefits sought and user charges	Does not have appropriate financing means	Is not financially self-sustaining
<i>Department of the Attorney General</i>						
Medicaid Investigations Recovery Fund	Special	\$1,191		X		
<i>Department of Business, Economic Development and Tourism</i>						
Convention Center Enterprise Special Fund	Special	\$7,022		X		
<i>Department of Commerce and Consumer Affairs</i>						
Compliance Resolution Fund - Office of Consumer Protection	Special	\$489		X		
Driver Education Fund	Special	\$60		X		
<i>Department of Health</i>						
Neurotrauma Special Fund	Special	\$945		X		
Tobacco Settlement Special Fund	Special	\$19,450		X		
Trauma System Special Fund	Special	\$6,185		X		
<i>Department of Public Safety</i>						
Federal Reimbursement Maximization Special Fund	Special	\$1,326		X		
<i>University of Hawai'i</i>						
University Revenue - Undertakings Fund	Special	\$11,223		X		
Total		\$47,890				

Source: Office of the Auditor

Based on our analysis of these funds, we conclude that it is reasonable for the Legislature to continue funds that fail to meet the clear nexus criterion in situations where there are linkages between the programs and the sources of revenue dedicated to their support. This could be accomplished by clarifying the definitions of special and revolving funds under Section 37-62, HRS, as we recommended in prior reports. In Report No. 92-14, we recommended that special and revolving funds should be created and used only when the means of financing is essential to the successful operation of a program or activity and reflected a clear link between the program and the sources of revenue dedicated to its support. While the Department of Budget and Finance did not fully support the report's re-wording of the definitions, it agreed with the report's recommendation to revise the statutory definitions of special

and revolving funds. Support for amending the statutory definition was provided in a Legislative Reference Bureau study that found the definitions were overly broad and vague. Amending the definitions would help resolve problems that certain funds face when they fail the clear nexus criterion but demonstrate a link between their programs and their sources of revenue. For consistency, similar adjustments in the clear nexus criteria under Sections 37-52.3(2), and 37-52.4(2), HRS, would also be appropriate.

The clear nexus requirement is arguably drawn from the public finance benefit theory discussed earlier. Adhering to the benefit theory can result in an efficient allocation of services in which the cost of providing a service is reflected in the charges made to users or beneficiaries. However, there are instances in which the revenue source is related to program activities, such as in the case of regulatory fines, but program beneficiaries or users do not pay.

In our review of 47 funds we noted the criterion produces a negative outcome when applied to special funds that get revenue from ostensibly logical and related sources, such as a regulatory program funded by fines and penalties. The Compliance Resolution Fund's Office of Consumer Protection account (OCP) relies on funding from penalties, fines, and settlements paid by individuals or companies for violating consumer protection laws along with other fees for services. Hawai'i consumers are the beneficiaries, and as such the fund fails to meet the clear nexus criterion because they are not paying for OCP's services such as investigating and prosecuting violations of consumer protection laws. Yet it appears the funding arrangement—money paid by violators of consumer protection laws—is a reasonable source of revenue that fully supports the law enforcement and education programs.

Moreover, there are funds with possibly mitigating circumstances that raise the question of whether the clear nexus criterion should be disregarded in certain instances to give the program more flexibility. When the then-state finance director testified in 2002 on the bill that would become Act 178, which established the fund creation and continuance criteria, he noted that while generally agreeing with the criteria, he had a concern “that there may be circumstances where a fund that fails to meet one or more of these criteria may still be appropriate (e.g., the Emergency and Budget Reserve Fund does not include user charges).”

The OCP account is illustrative of a fund that if repealed conflicts with other policies. The account is under the Department of Commerce and Consumer Affairs, which became fully self-funded in 1999 and generates revenue by charging for services related to regulation, registration, licensing, or other services the department provides. Repealing the

OCP account and having the program budgeted through the general fund would run counter to the policy of having a self-supporting department.

There are other funds that fail the nexus test but could present problems if closed. The University Revenue—Undertakings Fund moneys are pledged against University of Hawai‘i revenue bonds to pay the principal and interest on the bonds. According to the university, transferring the money for other uses could breach bond covenants and result in lower bond ratings, higher interest rates for future bond sales, and less of a market for University of Hawai‘i revenue bonds. Bond repayment money is also included in the Convention Center Enterprise Special Fund.

In addition, strict application of the current statutory special fund criteria can pose a risk to the Legislature. For example, we found the Federal Reimbursement Maximization Fund is among nine funds that do not meet all the criteria to continue as a special fund. Should lawmakers then elect to repeal this fund under the belief they could direct the moneys to the general fund, their actions would arguably be illegal. Doing so could be contrary to Section 37-51, HRS, which places all special funds under legislative and executive control except funds that are subject to applicable federal regulations. Moreover, it would be a possible violation of the federal State Criminal Alien Assistance Program, which requires that the funds be used for correctional purposes only.

Regular reviews of special funds should be conducted

This is the first study reviewing the appropriateness of special funds in ten years. While we have performed 19 scheduled reviews of most existing revolving and trust funds over the past 18 years, no mechanism exists for periodic reviews of special funds similar to those required by Section 23-12, HRS. Evaluations of special funds by the office were done in 1991, 1992, and in 2001. However, regular reviews, such as those completed for most revolving and trust funds, are not required, and thus have not been performed for existing special funds.

It also appears the Legislature does not make use of special fund criteria found in Section 37-52.3, HRS. Reviewing funds to see if they meet their original purpose is not performed by legislative money committees as part of the budget process. The budget chief of the Senate Committee on Ways and Means said the only instance he could recall of funds being reviewed occurred with the periodic reviews of revolving and trust funds done by our office. During times when it is looking for excess money to transfer, the Department of Budget and Finance reviews special funds to see if they meet their original purpose as it looks for excess fund balances. But, according to the department, the reviews are not done on a regular or comprehensive basis. Requiring periodic reviews of

existing special funds, similar to reviews for most revolving and trust funds required under Section 23-12, HRS, would be fiscally prudent. The Legislature should also require periodic reviews of revolving and trust funds under the Department of Transportation and the Department of Defense, which are not included in the review schedule. The lack of regular reviews for special funds is significant considering questions about budget flexibility and the high number of special funds. While most of the 127 revolving funds reported in the non-general fund reports are subject to a review every five years, 186 special funds have no regular examination. It is also notable that in our evaluation of funds, 34 of the 47 were special funds, and of these, five did not meet criteria for continuance. That translates into an almost 15 percent criteria failure rate for special funds, which would indicate regular reviews of special funds may turn up more funds that should be repealed with money lapsed into the general fund.

Most of the funds reviewed—26 of 47—met criteria for continuance. Exhibit 2.8, *Funds Meeting Criteria for Continuance*, shows special and revolving funds that meet criteria for continued operation. Individual analysis of funds meeting criteria are appended to this study in Appendix E, *Individual Analysis of Funds Meeting Criteria*, details the results of our review.

The Legal Review Process Used by the Attorney General Needs a More Systematic and Structured Approach

The Legislature has authorized the transfer of \$161 million from special and revolving funds over the past three fiscal years, relying on a process that included legal reviews conducted by the Department of the Attorney General. We found these reviews lack a robust and methodical approach. This may have resulted in inconsistent legal analyses relied upon by the Legislature when it authorized the transfer of \$16.5 million of the \$161 million, contrary to the funds' purposes under federal law. To reduce the risk of error, the legal review needs to adopt a more formal approach that includes procedures for ensuring that applicable Hawai'i case law, federal and state laws, and rules are taken into account, and that reviews are documented.

The process for scrutinizing special and revolving funds includes a legal review by the Department of the Attorney General

Since general fund expenditures cannot exceed general fund revenues and unencumbered cash balances, the Legislature authorized the transfer of excess balances from 47 special and revolving funds and accounts as part of a strategy to address budget shortfalls during and after the 2008 financial collapse. The Legislature sought to identify non-general funds with excess balances that could be transferred to the general fund.

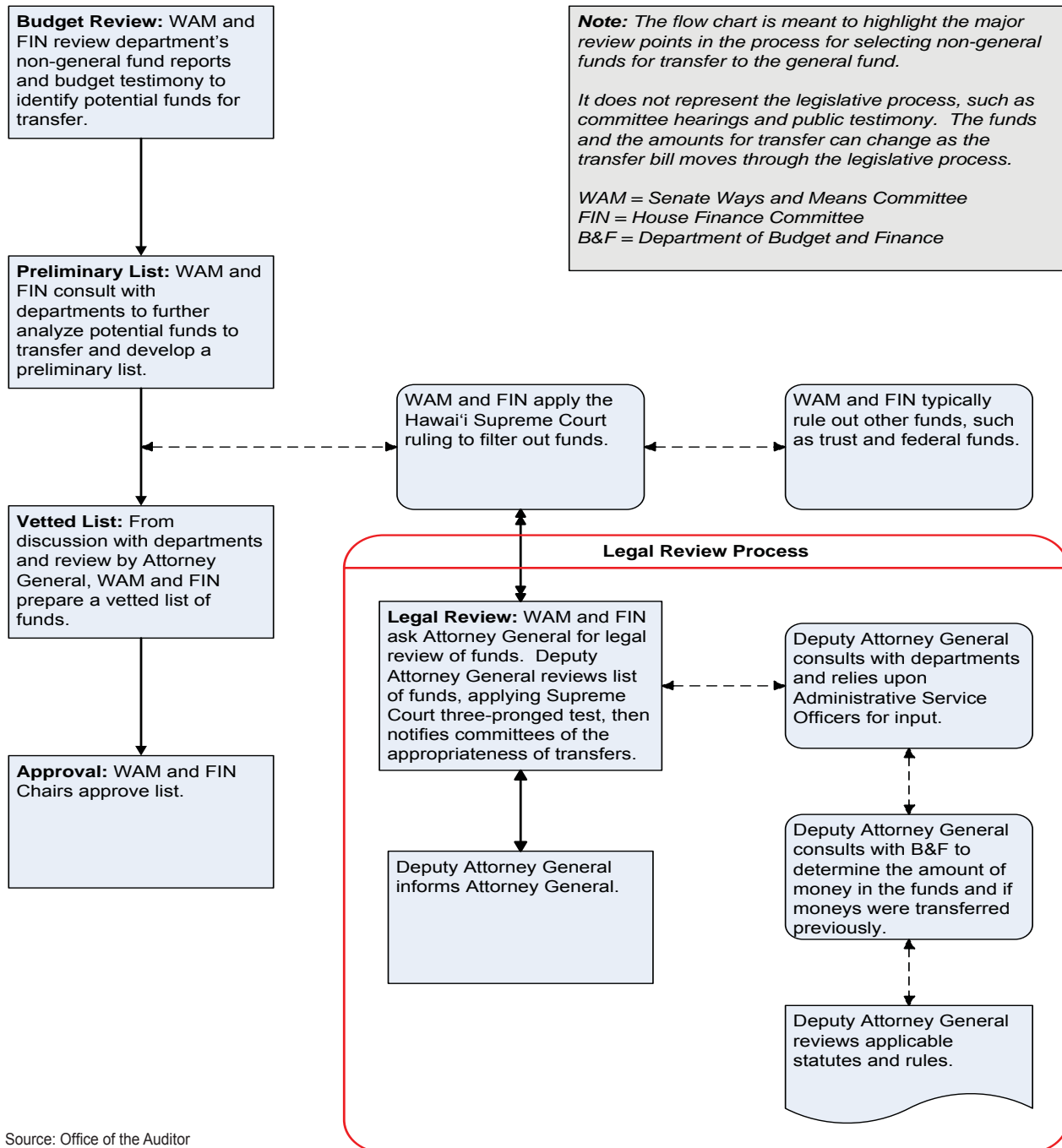
Exhibit 2.8 Funds Meeting Criteria for Continuance

Fund Name	Fund Type	6/30/11 Unencumbered Balance (in thousands)
Department of Agriculture		
Agricultural Reserve Fund	Special	\$1,739
Agricultural Loan Revolving Fund	Revolving	\$6,371
Department of the Attorney General		
State Identification Revolving Fund	Revolving	\$1,193
Department of Accounting and General Services		
Stadium Special Fund	Special	\$4,556
Wireless Enhanced 911 Fund	Special	\$7,639
State Motor Pool Revolving Fund	Revolving	\$2,041
State Risk Management Revolving Fund	Revolving	\$23,300
Department of Business, Economic Development and Tourism		
Foreign Trade Zone Special Fund	Special	\$661
Hydrogen Investment Capital Special Fund	Special	\$149
Dwelling Unit Revolving Fund	Revolving	\$20,640
State Disaster Revolving Fund	Revolving	\$267
Hawai'i Community Development Revolving Fund	Revolving	\$30,770
Housing Finance Revolving Fund	Revolving	\$3,884
Department of Commerce and Consumer Affairs		
Captive Insurance Administration Fund	Special	\$3,097
Compliance Resolution Fund - Business Registration	Special	\$6,160
Compliance Resolution Fund - PUC Special Fund - Consumer Advocacy	Special	\$2,617
Department of Education		
Community Use of School Facilities	Special	\$2,623
Federal Grants Search, Development & Application Revolving Fund	Revolving	\$2,231
Department of Health		
Deposit Beverage Container Special Fund	Special	\$10,444
Drug Demand Reduction Assessments Special Fund	Special	\$539
Environmental Management Special Fund	Special	\$1,976
Department of Labor and Industrial Relations		
Employment and Training Fund	Special	\$2,130
Special Fund for Temporary Disability Benefits	Special	\$2,517
Department of Land and Natural Resources		
Special Land and Development Fund	Special	\$5,476
Judiciary		
Driver Education Training Fund	Special	\$1,080
Judiciary Computer System Special Fund	Special	\$3,630
Total		\$147,730

Source: Office of the Auditor

The process for identifying excess fund balances for transfer to the general fund is similar for both the House Committee on Finance (FIN) and the Senate Committee on Ways and Means (WAM). Based on our interviews with budget analysts, we developed a flow chart describing the process as shown in Exhibit 2.9.

Exhibit 2.9
Process for Identifying Transfers of Non-general Funds to General Fund



Source: Office of the Auditor

As previously discussed, transfers of excess balances from special and revolving funds are multi-step processes that begin before the start of the legislative session and involve budget analysts combing through non-general fund reports, discussions with departments, and a legal review.

At the Department of the Attorney General, we found responsibility for the legal review falls to a single deputy attorney general, who provided legal advice and testimony relating to the transfer bills enacted in 2009, 2010, and 2011. Through an interview with the deputy attorney general, we learned that funds are reviewed on an ad-hoc basis. The deputy attorney general does not always follow the same process, depending on the fund, though it typically includes reviews of statutes and rules and discussions with department administrative service officers about revenue sources. Evaluations may include an examination of a fund's *discrete components*, such as individual accounts within funds, and how the funds are spent. The deputy attorney general may also check with the staff of the Department of Budget and Finance to obtain information on fund balances and previous raids by the Legislature. He explained that the process is fluid, that he has no written procedures, and does not document his reviews.

The legal review also involves using as a guide the three-pronged test articulated by the Hawai'i Supreme Court in the *Hawai'i Insurers Council* case. The court's questions include: Does a regulatory agency assess the fee? Is the money placed in a special fund? Is the money used for a general purpose, or is the use regulatory in nature to defray expenses or benefit parties upon whom the assessment was imposed? The deputy attorney general has conducted at least 72 reviews and determined that:

- 33 non-general funds may be transferred to the general fund given the preliminary review;
- 27 non-general funds required further review to determine if discrete parts could be transferred; and
- 12 non-general funds should not be transferred because of potential problems, including regulatory fee funding, possible adverse tax consequences, or possible lawsuits.

In our review of written testimonies submitted by the Department of the Attorney General on the transfer bills, we found a range of recommendations and objections to certain transfers, with advice generally falling into three categories: 1) funds that can be transferred under a preliminary review that had been done; 2) funds that potentially could be transferred after an analysis of discrete components; and 3) funds that posed potential problems if transferred.

The legal review process has worked for the most part, but several transfers are problematic

We found some of the legal reviews by the Department of the Attorney General were not as robust or complete as necessary, resulting in transfers that may violate federal and state laws. For example, the legal analysis of the Wireless Enhanced 911 Fund presented to the 2009 Legislature was inconsistent with the analysis given to the 2010 and 2011 Legislatures. In addition, when the Senate Ways and Means Committee was advised by a Department of the Attorney General email in 2010 that moneys in the Department of Public Safety's Federal Reimbursement Maximization Special Fund could be transferred under the *Hawai'i Insurers Council* ruling, there was no mention that a federal law restricts the use of federal State Criminal Alien Assistance Program reimbursements to correctional purposes only.

The questionable transfers appear to have resulted from incomplete analyses due to the ad-hoc nature of the legal review process. We found weaknesses in the process resulted in transfers that the Legislature should not have authorized. A more methodical approach is needed to minimize the risk of error and potential liability to the State.

Transfers may have occurred in violation of federal law

The State knows firsthand what can happen when federal moneys designated for a specific use in a non-general fund are transferred to the general fund. In 2009, the State was required to refund \$157,000 to the U.S. Department of Health and Human Services after a federal review. The money was part of a \$1.0 million transfer in FY2005 from the State Motor Pool Revolving Fund, which accounts for moneys paid by state agencies for use of vehicles.

In 2012, the State agreed to refund \$758,405 to the U.S. Department of Health and Human Services because of problems with the same fund. Part of the refund is linked to a FY2011 fund raid that transferred \$1.5 million from the State Motor Pool Revolving Fund to the general fund. The fund transfer occurred pursuant to Act 192, SLH 2010 and was processed on March 23, 2011.

However, the State's liability may not end there, because there are other transfers that appear to be in violation of federal laws. Under a 2008 law passed by Congress, states were allowed to impose a fee on commercial mobile services and IP-enabled voice services provided the money was spent on supporting or improving 911 services and enhanced 911 services. In April 2009, the Department of the Attorney General testified that moneys from the State's Wireless Enhanced 911 Fund could be transferred given a review conducted using the criteria established under the *Hawai'i Insurers Council* case. The Legislature authorized the transfer of \$16 million from the fund pursuant to Act 79, SLH 2009.

But when the Legislature proposed raiding the 911 fund again in 2011, the attorney general warned that a diversion of fund money to the general fund could result in imprisonment for up to a year and a fine of up to \$10,000 because of federal law. According to the deputy attorney general, while the federal government is aware that money was transferred to the general fund for non-911/Enhanced purposes, federal officials have yet to ask that the money be returned to the fund.

According to the Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, submitted by the Federal Communications Commission in August 2010, Hawai'i was one of ten states that used funds collected from 911/Enhanced 911 surcharges to assist with its general fund.

A legal review also did not result in a warning regarding the federal requirements applying to the Federal Reimbursement Maximization Special Fund, and the Legislature authorized the transfer of \$500,000 to the general fund in Act 192, SLH 2010. Under the federal Violence Against Women and Department of Justice Reauthorization Act of 2005, states and local governments may receive funds for incarcerating undocumented criminal aliens under the State Criminal Alien Assistance Program, provided the funds are used only for correctional purposes.

Transfers occurred even though prohibited by state law

Money in some special funds is expressly prohibited in statute from transfer to the general fund. In this respect the Legislature's authorization of transfers from these funds without amending the laws is potentially costly. For example, the Hawai'i Supreme Court found it notable in the *Hawai'i Insurers Council* case that the Legislature authorized transfers despite state law barring reversion of the insurance fund moneys to the general fund. We found other instances where transfers were authorized without changing state law specifically prohibiting reversion of such funds to the general fund.

This can be seen in the 2011 Legislature's transfer authorization of \$2.5 million from the Captive Insurance Administrative Fund. The fund is used to finance the operations of the Captive Insurance Administrative Branch and consists of premium taxes and fees paid by the insurance companies that the branch regulates. Section 431:19-101.8(e), HRS, provides that moneys deposited in the fund shall not revert to the general fund. The Department of the Attorney General's analysis of the fund determined a transfer might be possible if an analysis of discrete fund components was undertaken.

In 2009, the legal guidance regarding the Judiciary Computer System Special Fund noted that further study was needed, but that based on a

preliminary analysis the fund could be transferred. Over the course of two legislative sessions, \$3 million was authorized for transfer from the fund pursuant to Acts 79, SLH 2009 and 192, SLH 2010. But the law creating the fund for computer and information technology upgrades for the State's court system, Section 601-3.7, HRS, provides that moneys shall not revert to the general fund.

When queried about the statutory prohibitions, the deputy attorney general explained that the doctrine of implied repeals, Section 1-9, HRS, allowed for the transfers. According to the statute, the repeal of a law is either express or implied. It is express when it is literally declared by a subsequent law; it is implied when the new law contains provisions contrary to, or irreconcilable with, those of the former law. Thus, the section preventing the transfer is repealed on an implied basis to allow the transfer, according to the deputy attorney general.

The deputy's explanation confirms our finding that transfers were authorized without changing state law prohibiting reversion of such funds to the general fund. In fact, current laws still prohibit such reversions.

A lack of standardized procedures can result in inconsistent legal analysis of funds

Our study found the legal analysis process lacks safeguards against incomplete reviews, and may have contributed to inconsistent analyses and problematic transfers. In general, we found the process is undocumented and has no systematic, written methodology.

As mentioned earlier in this report, the department relies on a single deputy attorney general who evaluates funds on an ad-hoc basis based on his knowledge of law and discussions with department administrative staff. If the deputy attorney general were to leave the department, this institutional knowledge would be lost.

The deputy attorney general said he takes about an hour to analyze each fund because of his familiarity with the review process and his ability to recall the results of prior analyses performed on funds. The deputy has no written procedure, nor any other guidance—for example a checklist—to conduct the reviews. Further, the deputy attorney general does not document his analyses, which typically are requested by the Legislature through emails or telephone calls.

Having documentation would help in conducting repeat fund analyses and help produce consistent recommendations. This can be seen with three slightly different recommendations regarding the Hawai'i Tobacco Settlement Special Fund. In 2009, the attorney general testified that while further study was needed, a preliminary review indicated the tobacco settlement money may be transferred to the general fund. In a 2010 email to the FIN and WAM staff, the deputy attorney general gave

a recommendation that the money could be transferred. In a 2011 email to the Office of the Auditor, the deputy attorney general noted the fund was among those whose discrete components needed to be analyzed to determine whether such components may be transferred.

Having proper documentation is part of internal control systems—whether in operating manuals, management directives or administrative policies—that help policymakers and managers achieve better results, according to the federal Government Accountability Office (GAO). Internal control provides management with reasonable assurance that objectives, including those dealing with legal and regulatory compliance, are met. Given the apparent errors we detected with some of the legal reviews, the Department of the Attorney General might benefit from a more systematic and documented process.

For example, individual steps for the review of legal issues could be documented through a checklist. According to the GAO's and the President's Council on Integrity & Efficiency's *Financial Audit Manual*, managers employing a checklist gain a systematic, organized, and structured approach to reviews.

There are arguments both for and against using checklists. Checklists can focus users on checking off boxes instead of solving the problem at hand. Moreover, they may not fit some activities that require creativity and improvisation, and may focus users on complying with checklist requirements rather than thinking about what makes sense. On the other hand, the *Checklist Manifesto: How to Get Things Right*, suggests that it is easy for people to miss a step during complex routines, potentially producing disastrous consequences. This *New York Times* bestseller focuses on the power of checklists to ensure complicated projects are brought to fruition. Hence, the entire purpose of a checklist is to reduce the number of uncertainties in a complex procedure. The non-general funds legal review process could benefit from a more robust and methodical approach that can be gained through the use of a checklist. Employing a checklist also could provide a record of legal analysis to defend against transfer challenges, and it also could help to serve as a guide or cross train other deputies, in preparation for a time the deputy attorney general is not available during session due to unforeseen circumstances.

The Department of the Attorney General should consider utilizing a checklist to standardize and document the legal review. We have proposed a checklist that goes beyond the three-pronged test applied by the Supreme Court in the *Hawai'i Insurers Council* decision. We include other questions regarding federal or state law that could preclude transfers, such as raiding non-general funds that contain bond proceeds. Transfers from these funds could pose a tax problem for the State,

according to the Department of the Attorney General. The checklist we developed can be found in Appendix F, *Non-general Fund Legal Checklist*.

Conclusion

Hawai'i lawmakers have attempted to address concerns about the growing number of special, revolving and other non-general funds by enacting fund criteria and seeking reviews of funds. However, gaps in monitoring and reviews have led to an increase in funds. To gain more flexibility over the budget process, the Legislature should rely on safeguards built into criteria for special and revolving funds; repeal funds that we found fail to meet criteria, unless the funds reflect a link between the program and the source of revenue; lapse cash balances from affected programs to the general fund; and require periodic reviews of special funds by amending the law. Moreover, the Legislature can sharpen its process for transferring special and revolving funds to the general fund with a more structured approach. Addressing key legal points in a systematic way will help lawmakers strengthen the process and avoid potentially costly fund returns after federal government audits are conducted or lawsuits are filed by industry groups.

Recommendations

1. The Legislature should consider:
 - a. Amending Section 23-11, HRS, to require evidence of need for evaluating new special and revolving funds.
 - b. Instituting regular reviews of special funds by amending Section 23-12, HRS, and include the Department of Transportation and the Department of Defense in regular reviews of revolving and trust funds.
 - c. Clarifying the definitions of special and revolving funds under Section 37-62, HRS, and the clear nexus criterion under Sections 37-52.3(2), and 37-52.4(2), HRS.
 - d. Repealing funds that fail to meet criteria as follows:
 - Driver Education Fund, Department of Education;
 - Emergency Medical Services Special Fund, Department of Health;
 - Mental Health and Substance Abuse Special Fund, Department of Health;

- Land Conservation Fund, Department of Land and Natural Resources;
- Natural Area Reserve Fund, Department of Land and Natural Resources; and
- Research and Training Revolving Fund, University of Hawai‘i.

Proposed legislation to implement these recommendations is appended to this study in Appendix G.

2. The Department of the Attorney General should employ a more robust and methodical process of analyzing special and revolving funds for transfer of excess moneys to the general fund such as using a checklist similar to one that we developed. The checklist can be found in Appendix F *Non-general Fund Legal Checklist*.

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Appendix A Glossary

Fund Types:

- **General Fund:** The fund used to account for all transactions that are not accounted for in another fund. It is more commonly known as the fund to which tax and non-tax revenues of the State are deposited.
- **Non-general Funds:** There is no entry for the term *non-general fund* in the State’s executive budget definitions in Section 37-62, Hawai‘i Revised Statutes. In practice, the term refers to the group of funds and accounts outside the general fund. The group includes federal, revolving, special, trust, and other funds not defined here (for example, general obligation bond funds, county funds, and private funds).

Types of non-general funds:

- **Federal Fund:** Usually has requirements specifying their use. The federal appropriations law—Title 31, *Money and Finance*, Pub. L. 97-258, 96 Stat. 877, Chapter 13, *Appropriations*—says that appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.
- **Federal Stimulus Funds:** Funds provided under the American Recovery and Reinvestment Act of 2009.
- **Revolving Fund:** A fund from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds.
- **Special Fund:** The term “special fund” can be used in different ways. We followed the legal definition, which is “funds that are dedicated or set aside by law for a specified object or purpose, but exclude revolving funds and trust funds.” In other materials, however, the term *special fund* is sometimes used as a substitution for *non-general funds*. These funds are commonly associated with programs with revenue generating capabilities.
- **Trust Fund:** A fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.

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Appendix B Individual Analysis of Funds No Longer Serving a Purpose

Six of the 47 funds we reviewed do not meet criteria because they have already been repealed or are no longer active and no longer serve the purpose for which they were originally established. The funds are evenly divided between revolving and special funds.

Health Care Revolving Fund, Section 346E-15, HRS Department of Human Services

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$916	\$0
Revenues	0	0
Interest	0	0
Expenditures	(916)	0
Transfers	0	0
Ending Fund Balance	0	0
Encumbrances	0	0
Unencumbered Cash Balance	0	0

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$916,000 on June 22, 2011, pursuant to Act 124, SLH 2011.

The fund, established in 1993, received health care provider taxes on nursing and acute facilities. The tax was imposed on all room and board revenue for both acute and nursing facilities and was used as a state match under the Title XIX, Hawai'i Medicaid Program. Reimbursement for Medicaid was increased in total by the additional tax revenue plus any federal funding received based on the increased tax revenue used as the state match. In 2000, the department filed an appeal with the Federal Board of Appeals regarding the Centers of Medicare and Medicaid Services decision to disallow the federal funding earned as a result of using the providers' taxes as the state matching funds.

The fund was subsequently repealed by Act 178, SLH 2002, and money (\$916,000) was left in the account in case the centers prevailed in the disallowance appeal. In July 2005, the departmental appeals board of the federal Department of Health and Human Services reversed the disallowance. The money transferred to the general fund at the end of FY2011. This fund does not meet the criteria for continuance of a revolving fund, since it no longer serves the purpose for which it was originally created.

**Housing Assistance Revolving Fund, Section 304A-2258, HRS
University of Hawai‘i**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$5,357	\$3,826
Revenues	659	0
Interest	20	0
Expenditures	(210)	0
Transfers	(2,000)	(3,826)
Ending Fund Balance	3,826	0
Encumbrances	(9)	0
Unencumbered Cash Balance	3,817	0

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$2 million on May 4, 2011, pursuant to Act 192, SLH 2010.

The fund, established in 1991, provided financial assistance and rental housing units to faculty and staff of the University of Hawai‘i. The sources of revenue included housing rents and parking fees, laundry commissions, and interest earned. Funds were expended to help newly and recently appointed eligible personnel of the ten-campus university system obtain suitable housing. Programs included the 28 condominiums at the Kau‘iokahaloa Iki (K-Iki) housing project, and a financial assistance program. In 2009, the university implemented a new program that involves loan guarantees to help high-performing faculty qualify for the purchase of a home in Hawai‘i. The university expended \$1.6 million to fund this program.

There was a clear link between the benefit sought and charges made upon the beneficiaries of the program—the faculty and staff of the university. The fund provided an appropriate means of financing for the program, and demonstrated the capacity to be financially self-sustaining. However, the fund no longer serves the purpose for which it was established, since the fund was repealed through Act 124, SLH 2011, and the remaining fund balance was transferred to the credit of the Mānoa Faculty Housing Program under the University of Hawai‘i Auxiliary Enterprises Special Fund established under Section 304A-2157, HRS.

Kīkala-Kēōkea Revolving Loan Program, Section 201H-81, HRS Department of Business, Economic Development and Tourism

Financial Data for Fiscal Years 2011-2012 (in thousands) *

	FY2011	FY2012
Beginning Fund Balance	\$429	\$0
Revenues	45	0
Interest	0	0
Expenditures	0	0
Transfers	(474)	0
Ending Fund Balance	0	0
Encumbrances	0	0
Unencumbered Cash Balance	0	0

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$474,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The Kīkala-Kēōkea Housing Revolving Fund was established in 2001. The Legislature made a \$200,000 general fund appropriation for the fund pursuant to Act 196, SLH 2006, effective FY2007. The fund was created to provide low-interest loans for home construction for Kīkala-Kēōkea leaseholders who had been denied loans from traditional financial institutions. Under the program, a *leaseholder* is defined as a person who was awarded a lease by the Department of Land and Natural Resources for the Kīkala-Kēōkea residential subdivision. Loans were to be used for home construction, with a maximum loan amount of \$100,000, not exceeding a term of 40 years.

The fund is no longer active and there are no outstanding loans. The fund is projected to have no revenues, no expenses, and no balance for FY2012. Accordingly, it is no longer serving the purpose for which it was created. The fund is also no longer financially self-sustaining because it has no money to make loans. Thus, the fund does not meet the criteria for continuance as a revolving fund.

**Loss Mitigation Grant Fund, Section 431:22-102, HRS
Department of Commerce and Consumer Affairs**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,401	\$260
Revenues	59	0
Interest	0	0
Expenditures	0	0
Transfers	(3,200)	(260)
Ending Fund Balance	260	0
Encumbrances	0	0
Unencumbered Cash Balance	260	0

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$3.2 million on March 24, 2011, pursuant to Act 192, SLH 2010.

The fund, created in 2002, supported a program assisting residents with installation of devices to strengthen their homes against wind damage during hurricanes and tropical storms. The program was funded by appropriations out of the Hawai‘i Hurricane Relief Fund. Beneficiaries were homeowners who were given grants to help retrofit their homes to better withstand hurricanes. The program was discontinued as of June 30, 2008, due to the loss of appropriation and most of its funding transferred back to the general fund in March 2011. The statute creating the fund was repealed by Act 124, SLH 2011. Thus the fund does not serve the purpose for which it was created.

UH Faculty Housing Project Series 1995 Bond Proceed Fund, Section 201H-80, HRS Department of Business, Economic Development and Tourism

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$518	\$4
Revenues	8	0
Interest	0	0
Expenditures	0	0
Transfers	(521)	(4)
Transfers - Disbursing	(2)	
Ending Fund Balance	4	0
Encumbrances	0	0
Unencumbered Cash Balance	4	0

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$521,000 on June 23, 2011, pursuant to Act 124, SLH 2011. The remaining balance is to be transferred in FY2012.

The fund, established in 1995, accounted for the issuance and repayment of bond proceeds for the rental housing system of the University of Hawai‘i Faculty Housing Project. With the refinancing of the bonds in 2009, the agency reports that the fund is no longer active. The fund had no expenditures for FY2011 and is not projected to have revenues and expenditures for FY2012 through FY2014. Additionally, \$520,780 was transferred to the general fund in FY2011, leaving an unencumbered cash balance of \$3,598, which will be transferred to the general fund in FY2012. This will leave the fund without a balance.

Since the fund is inactive and is not projected to have a balance, it is no longer serving the purpose for which it was created. Additionally, since all revenues, income, and receipts derived from a housing project are pledged for the payment of the bond proceeds, there is no clear link to the beneficiaries identified by the agency—UH faculty. The fund is also not self-sustaining. The agency classifies this as a “special revolving” fund. However, the Executive Budget Act, Chapter 37, HRS, has no such definition. Nonetheless, the fund does not fully meet the criteria for continuance either as a special fund or a revolving fund.

**Waialua Loan/Subsidy Program, Acts 30 and 31, Special Session Laws of
Hawai'i (SSLH) 1995
Department of Business, Economic Development and Tourism**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$41	\$0
Revenues	1	0
Interest	0	0
Expenditures	0	0
Transfers	(41)	0
Transfers	(1)	(0)
Ending Fund Balance	0	0
Encumbrances	0	0
Unencumbered Cash Balance	0	0

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The fund was established for a loan and rental-subsidy program for the former employees, retirees, or their surviving spouses displaced by the closure of Waialua Sugar Company. Acts 30 and 31, SSLH 1995, appropriated \$550,000 and \$664,000, respectively, for the loan and rental-subsidy program. The fund is no longer active and there is only one outstanding loan. The fund had revenues of \$845 and no expenditures for FY2011 and is projected to have no revenues and no expenditures for FY2012 through FY2014. The fund is also projected to have no balance for FY2012. Accordingly, it is no longer serving the purpose for which it was created. In addition, the fund is not self-sustaining, since it will no longer have a balance from which to make loans or provide rental subsidies. Thus, the fund does not fully meet the criteria for continuance as a special fund.

Appendix C Individual Analysis of Funds Not Meeting Criteria

Driver Education Fund (not created by statute) Department of Education

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$2,588	\$2,042
Revenues	1,727	1,700
Interest	0	0
Expenditures	(2,272)	(3,000)
Transfers	0	0
Ending Fund Balance	2,042	742
Encumbrances	(408)	(600)
Unencumbered Cash Balance	1,634	142

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$1 million was transferred to the general fund on June 13, 2011, pursuant to Act 192, SLH 2010. The transfer is included in the \$2.27 million of fund expenditures for FY2011.

The Driver Education Fund was not created in statute but was established in 1987 to receive fees collected by the insurance commissioner from motor vehicle insurers under Section 431:10C-115, HRS. A portion of the insurance fees is used to support the Department of Education (DOE) High School Driver Education Program and the Traffic Safety Program. Section 431:10C-115(c)(2)(A) and (B), HRS, authorize the insurance commissioner to allocate \$2 per registration to the director of commerce and consumer affairs for the drivers education program administered by the DOE for high school students and the DOE traffic safety education program. The DOE Driver Education Program also charges students a \$10 course fee that is deposited into the general fund. There is no clear link between the students who are the users or beneficiaries and the revenues from insurers. Nor does the fund provide the appropriate means of financing. Our 1992 and 2001 analyses of this fund found it did not meet all the criteria and should be repealed. Similarly, Sections 431:10C-115(c)(2)(A) and (B), HRS, should be repealed.

Note: The fund is related to the Department of Commerce and Consumer Affairs's Driver Education Fund discussed in Appendix D and the Judiciary's Driver Education Training Fund discussed in Appendix E.

**Emergency Medical Services Special Fund, Sections 245-3, 245-15, 249-31(b), and 321-234, HRS
Department of Health**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$21,219	\$19,947
Revenues	10,079	9,871
Interest	0	0
Expenditures	(11,350)	(13,197)
Transfers	0	0
Ending Fund Balance	19,947	16,622
Encumbrances	0	0
Unencumbered Cash Balance	19,947	16,222

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$4 million of transfers to the general fund were authorized pursuant to Act 79, SLH 2009, but never transferred by the director of finance.

The Emergency Medical Services Special Fund, established pursuant to Act 158, SLH 2004, and administered by the Department of Health, is used for operating a state comprehensive emergency medical services (EMS) system, including enhanced and expanded services, and to supplant funding for EMS authorized prior to July 1, 2004. The system provides for personnel, training, communications, emergency transportation, facilities, coordination with emergency medical and critical care services, coordination and use of available public safety agencies, promotion of consumer participation, accessibility to care, mandatory standard medical recordkeeping, consumer information and education, independent review and evaluation, disaster linkage, mutual aid agreements, and other necessary components. Initial funding for start-up costs came from a \$2,205,000 general fund appropriation. Act 158, SLH 2004, required the Department of Health to deposit an equal amount to the general fund from moneys collected and deposited into the special fund by June 30, 2006.

This fund is serving the purpose for which it was originally created and demonstrates the capacity to be self-sustaining. However, there is no clear link between the benefits sought for a comprehensive EMS system and the sources of revenues authorized under Section 321-234, HRS. The main sources of revenues include: \$5 from the vehicle registration fee charged on essentially all vehicles annually provided under Section 249-31(b), HRS; and 0.5 cents per cigarette from tobacco tax charged to wholesalers and dealers for the privilege of conducting business as provided under Sections 245-15(4)(D), HRS. Thus, the fund does not meet all the criteria for continuance as a special fund and is not an appropriate means of financing. In our 2004 proposed funds report, we found that program support could be provided through direct general fund appropriations. The Legislature should consider repealing the fund established under Section 321-234, HRS.

Land Conservation Fund, Section 173A-5, HRS Department of Land and Natural Resources

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$10,571	\$10,174
Revenues	4,796	4,600
Interest	0	0
Expenditures	(4,793)	(5,100)
Transfers	(400)	(791)
Ending Fund Balance	10,174	8,883
Encumbrances	(7,674)	(7,800)
Unencumbered Cash Balance	2,500	1,083

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$1 million was transferred to the general fund on August 31, 2010, pursuant to Act 192, SLH 2010.

The Land Conservation Fund, initially created in 1973 as the Fund for the Environment, provides funding to conserve and protect Hawai‘i’s natural beauty by preserving, protecting, and enhancing State lands, coastal areas, natural resources, and watershed areas of an environmental, recreational, scenic, cultural, agricultural, or historic value to the state. Under Section 247-7(1), HRS, the revenue source is 10 percent of the state real property conveyance tax, determined by the Legislature to be an appropriate means of financing for conservation purposes. Although the fund is serving the purpose for which it was originally created, beneficiaries of conservation and preservation programs are the public as a whole and not payers of the conveyance tax, who represent only a portion of the people present and future that benefit from these programs. Thus, there is no clear nexus between the source of funding and the benefits provided. The program should receive appropriations from the general fund. Because the fund does not meet the criteria for continuance as a special fund, the Legislature should consider repealing Sections 73A-5 and 247-7(1), HRS.

**Mental Health and Substance Abuse Special Fund, Section 334-15, HRS
Department of Health**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$13,324	\$15,248
Revenues	6,629	8,000
Interest	0	0
Expenditures	(4,705)	(11,000)
Transfers	0	0
Ending Fund Balance	15,248	12,248
Encumbrances	(9,715)	(4,743)
Unencumbered Cash Balance	5,533	7,505

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$2 million was transferred to the general fund on June 23, 2011, pursuant to Act 124, SLH 2011, and was included in FY2011 expenditures.

The Mental Health and Substance Abuse Special Fund, established pursuant to Act 243, SLH 1991, collects revenues and other moneys from certification programs and treatment services rendered by the state Department of Health’s mental health and substance abuse programs. Program activities include community-based outpatient services, case management services, psychosocial rehabilitation services, crisis services, residential services, bilingual support services, crisis services, extended adult residential care, adult day services, group home services, and semi-independent housing services.

The fund is serving the purpose for which it was originally created, and there is a clear link between the benefits sought and the charges made upon users. The fund also demonstrates the capacity to be self-sustaining. Although there is a link between benefits and charges, the program also receives general and federal fund appropriations from the Legislature. As such, the fund does not meet all the criteria for continuance as a special fund. Therefore, the Legislature should consider repealing Sections 334-15, and 321-12.5, HRS. This mirrors a finding in our Report No. 01-12, *Update of the 1992 Summary of Special and Revolving Funds*, in which we recommended the fund should be discontinued because it receives general funds for operations and does not meet the criteria for a special fund. We recommended the program be supported through direct general fund appropriation because it did not meet the criteria for a special fund.

Natural Area Reserve Fund, Section 195-9, HRS Department of Land and Natural Resources

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$6,397	\$6,624
Revenues	9,595	9,200
Interest	0	0
Expenditures	(6,346)	(7,591)
Transfers	(3,023)	(3,020)
Ending Fund Balance	6,624	5,213
Encumbrances	(3,091)	(3,000)
Unencumbered Cash Balance	3,532	2,213

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$500,000 was transferred to the general fund on August 31, 2010, pursuant to Act 192, SLH 2010.

This fund was established in 1987 for the Department of Land and Natural Resources to implement the purposes of the Natural Area Reserves System to protect and strengthen the present system of preserves, sanctuaries, and refuges. The department also sets aside and administers additional areas of land and shoreline suitable for preservation, acquires private lands for new natural area reserves, operates a heritage program, and provides matching funds for the natural areas partnership program.

The fund generally serves the purpose for which it was established and demonstrates a capacity to be financially self-sustaining. Moneys in the fund are disbursed to specified programs such as the Natural Area Partnerships and Forest Stewardship programs, to projects undertaken in accordance with watershed management plans, and to the Youth Conservation Corps. However, the fund also supports the Invasive Species Council Program, a program that is not provided for in the Natural Area Reserves System law. There is minimal to partial linkage between the benefit sought and charges made upon the beneficiaries of the program. Most of the revenue for the fund comes from conveyance taxes paid upon real estate transactions provided under Section 247-7(3), HRS. Individuals that pay this tax may benefit from the Natural Area Reserves Program, but so do other Hawai'i residents and visitors to the state. The fund therefore does not meet the criteria for continuance as a special fund and the Legislature should consider repealing Sections 195-9 and 247-7(3), HRS.

**Research and Training Revolving Fund, Section 304A-2253, HRS
University of Hawai‘i**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$16,290	\$20,689
Revenues	46,448	44,500
Interest	0	0
Expenditures	40,167	41,774
Transfers	(1,882)	0
Ending Fund Balance	20,689	23,415
Encumbrances	(4,115)	(4,280)
Unencumbered Cash Balance	16,573	19,135

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: General fund transfers include \$5.1 million on June 10, 2009, pursuant to Act 79, SLH 2009, and \$400,000 on May 12, 2011, and Act 192, SLH 2010.

This revolving fund, established in 1974, supports research and training activities that may result in additional grants and contracts, facilitate research and training at the university, and further deposit into the Discoveries and Inventions Revolving Fund. The sources of revenue include federal and non-federal reimbursements for indirect facilities and administrative costs. The beneficiaries are the principal investigators, faculty, staff, and students performing research contracts and grants or involved in providing support services.

Under Section 304A-2253(a), HRS, the University of Hawai‘i Board of Regents is authorized to expend 100 percent of the revenues deposited in the fund. Moneys are used to finance activities such as research or training seed money, travel grants, salaries, start-up requirements, and other operational expenses that are related to enhancing research and training such as supporting innovation and research commercialization and indirect overhead costs. Under Section 304A-2253(c), HRS, the Board of Regents may establish a separate account within the revolving fund for advance funding to meet reimbursable costs incurred in connection with federally financed research and training projects.

The fund serves the purpose for which it was originally created, provides an appropriate means of financing, and demonstrates the capacity to be financially self-sustaining. However, there is no clear link between the benefit sought and charges made upon the beneficiaries of the program since there are no user fees or charges. In Report No. 09-11, we found the fund does not have a direct link between the benefit sought and charges made upon beneficiaries since there are no user fees or charges. The fund does not meet the criteria for continuance as a revolving fund, and the Legislature should consider repealing Section 304A-2253, HRS.

Appendix D Individual Analysis of Funds With Logical Relationship

Compliance Resolution Fund – Office of Consumer Protection, Sections 26-9, and 487-2, HRS

Department of Commerce and Consumer Affairs

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$685	\$489
Revenues	1,631	885
Interest	18	15
Expenditures	(1,336)	(1,451)
Net Transfers	(468)	728
Ending Fund Balance	530	665
Encumbrances	(41)	0
Unencumbered Cash Balance	489	665

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: General fund transfers include \$900,000 on June 22, 2009, pursuant to Act 79, SLH 2009, and \$1.1 million on June 22, 2011, pursuant to Act 124, SLH 2011.

The Compliance Resolution Fund's Office of Consumer Protection (OCP) account was created in 1999 to support the office operations. The OCP relies solely on the fund to carry out its statutory responsibilities in protecting Hawai'i consumers through investigations, civil enforcement actions, and consumer education programs. The OCP obtains the funds through: 1) penalties or fines assessed as a result of OCP actions; 2) penalties, fines, or recovery of costs or attorney fees in actions for violations of Chapters 480 and 487, HRS, as well as other consumer protection statutes; 3) various service fees and charges; and 4) settlements and awards from various multistate cases which OCP participates in with other states across the country. The fund pays for operating expenses incurred by OCP offices on O'ahu, Maui, and Hawai'i Island, including the salaries of 16 civil service and professional staff members.

The fund serves the purpose for which it was originally created. However, the fund does not meet the criteria for continuance because there is no clear nexus between the benefits sought (consumer protection) and the charges made upon the users or beneficiaries of the program. The benefits accrue to consumers throughout the state and not to payers assessed penalties and fines for violating the consumer protection law. However, strict application of the clear nexus criterion may not be proper for a seemingly logical way of funding the consumer protection program from penalties and settlements. The fund has an appropriate means of financing, but, according to the department, it is not financially self-sustaining because the amount of revenue collected year-to-year from penalties, fines, and settlements is unpredictable. Nonetheless, revenues exceeded expenditures in three of the last four years when adjusted for transfers to the general fund of \$900,000 in FY2009 and \$1.1 million in FY2011. But because the fund does not meet the clear nexus criterion, it does not meet the criteria for continuance. It also should be noted the office account is under the Department of Commerce and Consumer Affairs' Compliance Resolution Fund, which became fully self-funded in 1999 and

Appendix D

generates revenue by charging for services related to regulation, registration, license, or other services the department provides. Repealing the OCP account and having the program budgeted through the general fund would run counter to the policy of having a self-supporting department.

Convention Center Enterprise Special Fund, Section 201B-8, HRS Department of Business, Economic Development and Tourism

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$6,112	\$7,022
Revenues	54,730	53,993
Interest	0	0
Expenditures	(51,820)	(53,993)
Transfers	(2,000)	0
Ending Fund Balance	7,022	7,022
Encumbrances	0	0
Unencumbered Cash Balance	7,022	7,022

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$2 million was transferred from this fund to the general fund on April 15, 2011, pursuant to Act 192, SLH 2010.

The Convention Center Enterprise Special Fund was established in 2002 to finance the Hawai‘i Convention Center’s operations, maintenance, marketing, and debt service. The convention center was built to help strengthen Hawai‘i’s economy by expanding the tourism market to convention-going visitors. In addition to interest earned from investments, the fund receives revenues from: 1) a portion of the transient accommodations tax; 2) moneys derived from the operations of the convention center; 3) private contributions, interest, compensation, gross or net revenues, proceeds, or other moneys derived from any source or for any purpose arising from the use of the facility; and 4) appropriations by the Legislature, such as transfers from the Tourism Special Fund.

The fund is serving the purpose for which it was originally created and demonstrates the capacity to be self-sustaining. Additionally, it is an appropriate means of financing. However, there is no clear link between the benefits sought and the charges imposed upon the users or beneficiaries of the fund since only a fraction of visitors are conventioners. As such, the fund does not meet all the criteria for continuance as a special fund. But this appears to be an instance where a special fund criterion found in Section 37-52.3, HRS—that of requiring a clear nexus between benefits sought and charges upon users or beneficiaries—does not fit what appears to be a logical way to support the program.

Driver Education Fund, Section 431:10C-115, HRS Department of Commerce and Consumer Affairs

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$1,138	\$60
Revenues	2,869	2,810
Interest	13	15
Expenditures	(2,560)	(2,870)
Transfers	(1,400)	0
Ending Fund Balance	60	15
Encumbrances	0	0
Unencumbered Cash Balance	60	15

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$1.4 million was transferred from this fund to the general fund on March 24, 2011, pursuant to Act 192, SLH 2010.

The Department of Commerce and Consumer Affairs' Drivers Education Fund, created in 1987, provides funding for driver education programs operated by the Department of Education and the Judiciary. The fund's revenues primarily consist of a \$3 Drivers Education Fund underwriters fee levied upon each motor vehicle insured by insurers and self-insurers annually. For every vehicle registration, \$1 is allocated to the Judiciary's Drivers Education Program and \$2 to the Department of Education's Driver Education Program. The fund also receives money from the Motorcycle and Motor Scooter Operators Education Fund, which is distributed to the Department of Transportation's Motorcycle and Motor Scooter Education Program.

The fund is serving the purpose for which it was created. The fund provides an appropriate means of financing for the program and demonstrates a capacity to be financially self-sustaining. However, there is no clear link between charges made upon insurers for each vehicle, motorcycle, and motor scooter and the beneficiaries or users of the traffic safety programs. As such, the fund does not fully meet the criteria for continuance as a special fund. But this appears to be an instance of where a special fund criterion found in Section 37-52.3, HRS, does not fit what appears to be a logical way to support the programs.

Note: Separate analyses for the Department of Education's Driver Education Fund and the Judiciary's Driver Education Training Fund can be found in Appendices B and E, respectively.

**Federal Reimbursement Maximization Special Fund, Section 353C-7, HRS
Department of Public Safety**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$1,507	\$1,326
Revenues	387	300
Interest	0	0
Expenditures	(567)	(300)
Transfers	0	0
Ending Fund Balance	1,328	1,326
Encumbrances	(2)	0
Unencumbered Cash Balance	1,326	1,326

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$500,000 was transferred to the general fund on January 21, 2011, pursuant to Act 192, SLH 2010, and is included in the fund's expenditures for FY2011.

The Federal Reimbursement Maximization Special Fund, created in 2001, receives federal reimbursements under the federal government's State Criminal Alien Assistance Program (SCAAP). The program provides money to offset the State's cost for incarcerating criminal aliens in state correctional facilities that must be used for correctional purposes only. Federal law authorizes payments to the states, and state law (Section 353C-7, HRS) authorizes deposits of SCAAP moneys into the fund. The State uses the money to secure matching federal funds for various correctional programs, including residential and re-entry programs. The fund serves the purpose for which it was created, provides an appropriate means of financing for the program being supported, and has demonstrated a capacity to be financially self-sustaining. But there is no clear link between the reimbursements from the federal government and benefits accrued to the department and inmates because no charges are made on these users or beneficiaries. As such, the fund does not meet all the criteria for continuance as a special fund.

However, repealing the fund and transferring moneys to the general fund would be contrary to the federal State Criminal Alien Assistance Program, which requires that moneys be used for correctional purposes only. Additionally, this appears to be another instance where a strict interpretation of criteria found in Section 37-52.3, HRS, requiring a clear nexus between benefits sought and charges upon users or beneficiaries, is overly restrictive, since the revenue source is not intended to receive most of the benefits.

Medicaid Investigations Recovery Fund, Section 28-91, HRS Department of the Attorney General

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$2,692	\$1,191
Revenues	869	600
Interest	0	0
Expenditures	(370)	(388)
Transfers	(2,000)	0
Ending Fund Balance	1,191	1,403
Encumbrances	(1)	0
Unencumbered Cash Balance	1,190	1,403

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: General fund transfers include \$1.5 million on June 8, 2009, pursuant to Act 79, SLH 2009; \$1.5 million on March 28, 2011, pursuant to Act 192, SLH 2010; and \$500,000 on June 22, 2011, pursuant to Act 124, SLH 2011.

This special fund, established in 1995, supports operating expenses of the Medicaid Fraud Control Unit. The unit investigates and prosecutes fraud against the state Medicaid program and recovers overbillings by health care providers and penalties based on improper claims. It also investigates and prosecutes cases of patient abuse. Revenues include moneys resulting from Medicaid fraud settlements and fraud investigations. The unit receives 25 percent of its support from the fund, with a 75 percent match from the federal government. Prior to 1995, the state matching funds were provided through general fund appropriations.

The fund serves the purpose for which it was created, has an appropriate means of financing, and has demonstrated a capacity to be self-sustaining. But there is no clear link between benefits sought and charges made upon users or beneficiaries, because there are no fees or charges imposed upon beneficiaries. As such the fund does not meet all the criteria for continuance as a special fund. However, this may be an instance of where the special fund criteria found in Section 37-52.3, HRS—that of requiring a clear nexus between benefits sought and charges upon users or beneficiaries—does not fit what may be a logical way to support a federally-required program.

**Neurotrauma Special Fund, Section 321H-4, HRS
Department of Health**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,107	\$2,295
Revenues	868	870
Interest	0	0
Expenditures	(431)	(1,349)
Transfers	(1,250)	0
Ending Fund Balance	2,295	1,815
Encumbrances	(1,349)	(900)
Unencumbered Cash Balance	945	915

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: General fund transfers include \$750,000 on June 5, 2009, pursuant to Act 79, SLH 2009; \$1 million on March 28, 2011, pursuant to Act 192, SLH 2010; and \$250,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The Neurotrauma Special Fund, established in 2002, is used for funding and contracting for services relating to neurotrauma including: 1) education on neurotrauma; 2) assistance to individuals and families to identify and obtain access to services; 3) creation of a registry of neurotrauma injuries within the State to identify incidence, prevalence, individual needs, and related information; and 4) administrative expenses not to exceed 2 percent of the total amount collected. Revenues for the fund consist of surcharges imposed on violators of certain traffic offenses such as accidents involving death or serious bodily injury or accidents involving substantial bodily injury.

The fund serves the purpose for which it was created and demonstrates the capacity to be self-sustaining. In addition, the fund provides an appropriate means of financing. However, there is no clear link between the benefits sought for services relating to neurotrauma and the users or beneficiaries as the source of revenues. There is only partial linkage to the surcharge paid by violators of certain traffic-related violations who may be convicted of causing serious bodily injury to the brain or spinal cord. As such, the fund does not fully meet the criteria for continuance as a special fund. But this appears to be another case where requiring a clear nexus between benefits sought and charges upon users or beneficiaries does not fit what appears to be a logical way to support a worthy program.

Tobacco Settlement Special Fund, Section 328L-2, HRS Department of Health

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$39,714	\$27,577
Revenues	35,290	29,855
Interest	0	0
Expenditures	(29,050)	(40,982)
Transfers	(19,437)	0
Fund Additions	1,060	0
Ending Fund Balance	27,577	8,323
Encumbrances	(8,127)	0
Unencumbered Cash Balance	19,450	8,323

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: General fund transfers include \$20 million on June 5, 2009, pursuant to Act 79, SLH 2009, and \$7.2 million on March 28, 2011, pursuant to Act 192, SLH 2010. For FY2012, the estimated revenues and expenditures do not reflect changes enacted pursuant to Act 124, SLH 2011.

The Tobacco Settlement Special Fund, established in 1999, receives all tobacco settlement moneys and interest and earnings accruing from the investment of moneys in the fund. In November 1998, the attorneys general of 46 states signed a comprehensive agreement with the nation's largest tobacco companies, requiring them to make annual payments to states in perpetuity as reimbursement for past tobacco-related costs, such as Medicaid expenditures. This settlement is referred to as the Master Settlement Agreement (MSA). According to the Department of the Attorney General, Hawai'i has received a total of \$490.4 million in tobacco settlement moneys as of the end of FY2010.

Pursuant to Act 304, SLH 1999, the fund was to serve as a mechanism to maximize financial resources for tobacco prevention and control, health promotion and disease prevention programs, and children's health programs, and as a long-term source of stable funding for prevention-oriented public health efforts. The MSA imposes no requirements on how states spend the tobacco settlement money; states are free to use the funds for any purpose. The following chart shows how moneys were initially appropriated pursuant to Act 304 and how they are appropriated currently pursuant to Act 124, SLH 2011.

Appendix D

Act 304 (SLH 1999) (Established Fund)		Act 124 (SLH 2011) (For FY2012 and FY2013)	
Emergency and Budget Reserve Fund	40%	Emergency and Budget Reserve Fund	0%
Department of Health	35%	Department of Health	25%
Hawaii Tobacco Prevention and Control Trust Fund	25%	Hawaii Tobacco Prevention and Control Trust Fund	0%
		University Revenue-Undertakings Fund	28%
		State General Fund	47%

Source: Office of the Auditor

The fund is serving the purpose for which it was originally created despite percentage changes in the allocation of funds. The Department of Health receives a portion of the fund revenue for purposes of Section 328L-4, HRS, which governs use of funds appropriated to the department. The amounts being deposited to the general fund from the Emergency and Budget Reserve Fund and the Hawai‘i Tobacco Prevention and Control Trust Fund are only for fiscal years 2012 and 2013. The Emergency and Budget Reserve Fund is intended as a temporary supplemental source of funding for the State during times of emergency, economic downturn, or unforeseen reduction in revenues. The amount being deposited to the general fund from the reserve fund serves this purpose.

The fund also demonstrates the capacity to be self-sustaining and is an appropriate funding mechanism to collect and allocate tobacco settlement money. Although the moneys can be used for any purpose, there is no link between the benefits sought and the charges imposed. Since the fund revenues are in the form of settlement moneys received from the tobacco companies, there are no charges imposed upon user or beneficiaries, who are the citizens of Hawai‘i. As such, the fund does not fully meet the criteria for continuance as a special fund. Again, this may be a case where strict application of the clear nexus criterion in Section 37-52.3, HRS, that of requiring a clear nexus between benefits sought and charges upon users or beneficiaries, does not fit what is a seemingly logical way of providing funding.

Trauma System Special Fund, Section 321-22.5, HRS Department of Health

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$8,098	\$6,185
Revenues	6,510	6,886
Interest	0	0
Expenditures	(8,423)	(6,876)
Transfers	0	0
Ending Fund Balance	6,185	6,195
Encumbrances	0	0
Unencumbered Cash Balance	6,185	6,195

*Estimated. Numbers in tables may not add up to totals because of rounding.

Note: \$1 million was transferred to the general fund on June 23, 2011, pursuant to Act 124, SLH 2011, and is included in expenditures for FY2011.

The Trauma System Special Fund, established in 2006, supports the Department of Health's continuing development and operation of a comprehensive state trauma system. Moneys subsidize hospital costs of under-compensated and uncompensated trauma care for providing care to trauma patients and for maintaining on-call physicians for trauma care. Revenues include surcharges collected for certain traffic violations, accidents involving bodily injury, accidents involving damage to vehicle or property, and unattended vehicle or other property damage, cigarette tax revenues, and interest earned on the fund.

The fund is serving the purpose for which it was originally created and demonstrates the capacity to be self-sustaining. Additionally, the fund is an appropriate means of financing. However, there is no clear link between the benefits sought and charges made on the user or the beneficiaries. For fiscal years 2009 and 2010, about 99 percent of the fund's revenues were from the excise tax paid on cigarettes and tobacco by wholesalers and dealers. Thus, the fund does not meet all the criteria for continuance as a special fund. The clear nexus criterion found in Section 37-52.3, HRS, does not allow what may be a logical way to support a seemingly needed health program.

**University Revenue – Undertakings Fund, Section 304A-2167.5, HRS
University of Hawai‘i**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$11,406	\$11,293
Revenues	0	0
Interest	27	26
Expenditures	(296)	(134)
Transfers	156	(3)
Ending Fund Balance	11,293	11,182
Encumbrances	(70)	(69)
Unencumbered Cash Balance	11,223	11,113

*Estimated. Numbers in tables may not add up to totals because of rounding. This analysis was performed on the UH Systemwide/UH Mānoa portion of the fund. Accounts under the University Revenue-Undertakings Fund also exist for the Hilo and community college campuses.

Note: Transfers in FY2011 include offsetting effects of \$2.5 million transferred to the general fund by the 2010 Legislature pursuant to Act 192, SLH 2010, and the annual transfers in tobacco settlements funds from the Department of Health (approximately \$9.9 million) and transfers out of funds for debt service payments (approximately \$9.9 million).

The University Revenue-Undertakings Fund is part of a bond financing system for the University of Hawai‘i’s building program that allows the university to finance projects with revenue bonds under Subpart D, Part VI, Chapter 304A, HRS, relating to university purposes and projects. Fund moneys are used to finance projects with revenue bonds issued by the university, including those that financed the John A. Burns School of Medicine. Revenue for the fund comes from transfers and interest from tobacco settlement moneys received by the Department of Health. Beneficiaries are the University of Hawai‘i and its community. The fund is meeting the purpose for which it was created and provides the appropriate means of financing as a special fund. It also demonstrates a capacity to be financially self-sustaining. But the fund does not reflect a clear link between the benefit sought and the charges made upon users or beneficiaries because there are no charges made upon users or beneficiaries. As such, the fund does not meet all the criteria for continuance as a special fund. This fund is among others that fail to meet the clear nexus criterion in Section 37-52.3, HRS, which requires a clear link between benefits sought and charges upon users or beneficiaries.

However, closing the University Revenue-Undertakings Fund and transferring its moneys to the general fund for failing to meet the clear nexus criterion potentially creates other serious problems. Bond covenants may be jeopardized and may result in lower bond ratings, higher interest rates in future bond sales, and less of a market for University of Hawai‘i revenue bonds. State law also restricts the transfer of moneys pledged to the payment of revenue bonds.

Appendix E Individual Analysis of Funds Meeting Criteria

Our review found 26 special and revolving funds meet applicable criteria for continuance. Of these, nine are revolving funds and 17 are special funds.

Agricultural Loan Reserve Fund, Section 155-14, HRS Department of Agriculture

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$2,642	\$1,739
Revenues	856	972
Interest	0	0
Expenditures	(699)	(1,090)
Transfers	(1,000)	0
Ending Fund Balance	1,799	1,621
Encumbrances	(61)	0
Unencumbered Cash Balance	1,739	1,621

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$500,000 on June 5, 2009, pursuant to Act 79, SLH 2009, and \$1 million on March 29, 2011, pursuant to Act 192, SLH 2010.

The origin of the Agricultural Loan Reserve Fund (also known as the Agricultural Reserve Fund) may date back to 1919 as the Farm Loan Reserve Fund. It supports the operations of the Agricultural Loan Program, with funds used to cover the expenses of the Agricultural Loan Division. Any moneys surplus to these needs shall be transferred to the Agricultural Loan Revolving Fund at the discretion of the Department of Agriculture. Revenue includes loan interest and fees collected by the department along with interest on uncommitted funds and lease fees. Beneficiaries are farmers, ranchers, food manufacturers, farmer cooperatives, and farm organizations. The fund serves the purpose for which it was created and reflects a clear link between the benefits sought and charges made upon the users or beneficiaries of the program. Additionally, the fund demonstrates a capacity to be financially self-sustaining. The fund meets the criteria for continuance.

Note: The department classifies this as a special fund with a revolving fund means of financing. However, the fund appears to be a revolving fund since a revolving fund is defined in Section 37-62, HRS, as a fund from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds. Activities commonly financed through revolving funds include loan programs, which are initially established by general fund seed money and are then replenished through the repayment of loans.

**Agricultural Loan Revolving Fund, Section 155-14, HRS
Department of Agriculture**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$6,660	\$6,371
Revenues	1,919	1,111
Interest	0	0
Expenditures	(2,207)	(4,500)
Transfers	0	0
Ending Fund Balance	6,371	2,983
Encumbrances	0	0
Unencumbered Cash Balance	6,371	2,983

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on June 5, 2009, pursuant to Act 79, SLH 2009.

The revolving fund, established in 1919, assists farmers and farm organizations in securing credit from private lenders through participation with lenders insuring private lender loans, cooperating with other lenders, or on a direct basis. Special emphasis is placed on loan servicing, including management and financial counseling on participation and direct loans. The sources of revenue are from the principal repayment of loans and advances. All payments received of loan principal are credited to the fund while interest is deposited to the Agricultural Loan Reserve Fund. The beneficiaries are farmers, ranchers, food manufacturers, farmer cooperatives, and farm organizations. The fund serves the purpose for which it was originally created, and there is a clear link between the benefits sought and the charges made upon the beneficiaries of the program. Further, the fund is self-sustaining and does not require any general fund appropriations. The fund therefore meets the criteria for continuance as a revolving fund.

Captive Insurance Administrative Fund, Section 431:19-101.8, HRS Department of Commerce and Consumer Affairs

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$5,152	\$3,097
Revenues	1,704	1,705
Interest	83	55
Expenditures	(1,299)	(1,742)
Transfers	(2,500)	(385)
Ending Fund Balance	3,140	2,729
Encumbrances	(42)	0
Unencumbered Cash Balance	3,097	2,729

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: \$2.5 million was transferred to the general fund on June 22, 2011, pursuant to Act 124, SLH 2011.

The Captive Insurance Administrative Fund, established in 1997, supports the State's Captive Insurance Program. Revenues include all moneys collected, including premium taxes from captive insurance companies licensed under the Captive Insurance law in Section 431:19, HRS. All captive insurance company application fees, annual license fees, and examination fees are paid into the fund. Fund money is used to defray administrative costs and other costs necessary to carry out the Captive Insurance Program, including promotion of Hawai'i as a domicile for captive insurance companies. There is a clear link between the fees paid by captive insurance companies and the oversight and regulation offered by the Captive Insurance Administrative Branch. The fund provides the appropriate means of financing and demonstrates the capacity to be a self-sustaining special fund. The fund meets the criteria for continuance as a special fund.

Note: Section 431:19-101.8(e), HRS, prohibits moneys deposited by the commissioner into the fund to "revert to the general fund." This may be inconsistent with the sum of \$2.5 million authorized for transfer by the Legislature in Act 124, SLH 2011, which did not include language suspending or repealing the section prohibiting the reversion. In response to an email query from the Office of the Auditor, a state deputy attorney general said an implied repeal was used. Section 1-9, HRS, *Express or implied repeals*, can be cited when a new law contains provisions contrary to, or irreconcilable with, those of the former law.

**Compliance Resolution Fund – Business Registration, Section 26-9, HRS
Department of Commerce and Consumer Affairs**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$9,311	\$6,160
Revenues	5,825	8,350
Interest	156	100
Expenditures	(4,728)	(5,842)
Transfers	(4,354)	(1,038)
Ending Fund Balance	6,210	7,730
Encumbrances	(49)	0
Unencumbered Cash Balance	6,160	7,730

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: \$1.5 million was transferred to the general fund on March 24, 2011, pursuant to Act 192, SLH 2010.

The business registration account in the fund, created in 1995, supports the operation of the Business Registration Division. The division's activities include business and trademark registrations and maintaining registry records. The Securities Enforcement Branch regulates the securities and franchise industry and helps educate the public about investments. Revenues include fees from business registrations, licenses, and other services. There is a clear link between the benefits sought and the charges made upon the beneficiaries. The fund is self-sustaining and does not require any general fund appropriations. The fund meets the criteria for continuance as a special fund.

**Compliance Resolution Fund-Public Utilities Commission (PUC) Special Fund-Consumer Advocacy, Section 269-3, HRS
Department of Commerce and Consumer Affairs**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,572	\$2,617
Revenues	2,349	2,701
Interest	65	50
Expenditures	(1,729)	(3,211)
Transfers	(871)	(426)
Ending Fund Balance	3,387	1,731
Encumbrances	(770)	0
Unencumbered Cash Balance	2,617	1,731

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: Transfers in FY2011 include \$551,480 sent to the general fund on June 22, 2011, pursuant to Act 124, SLH 2011.

The account in the Compliance Resolution Fund, created in 1994, supports the operations of the Department of Commerce and Consumer Affairs' Division of Consumer Advocacy. The division represents the interests of regulated utility and transportation services consumers before the Hawai'i Public Utilities Commission. The beneficiaries are consumers of regulated transportation and utilities services. Revenues come from the Public Utilities Commission Special Fund, which allocates up to 30 percent of the balance to the Division of Consumer Advocacy by placing the money in the Compliance Resolution Fund. The Public Utilities Commission Special Fund's revenues come from fees paid by regulated companies that are allowed to recover up to half of the fees through customer surcharges.

The fund serves the purpose for which it was created, funding the Division of Consumer Advocacy. There is at least a partial nexus between the benefits sought—the division representing the interests of consumers before the PUC—and the utility payments to the Public Utilities Commission Special Fund, a portion of which comes from customer surcharges. The account has the appropriate funding as a special fund and demonstrates a capacity to be financially self-sustaining. It meets the criteria for continuance as a special fund.

**Community Use of School Facilities, Section 302A-1148, HRS
Department of Education**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$2,837	\$2,863
Revenues	1,748	1,700
Interest	0	0
Expenditures	(1,723)	(4,000)
Transfers	0	0
Ending Fund Balance	2,863	563
Encumbrances	(240)	(300)
Unencumbered Cash Balance	2,623	263

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: \$1 million was transferred to the general fund on June 22, 2011, pursuant to Act 124, SLH 2011, and is reported in FY2011 expenditures.

The Community Use of School Facilities Fund, created in 1982, receives fees and charges from those who use school buildings, grounds, and equipment for recreational and community purposes. Expenditures include but are not limited to custodial supplies, repairs, maintenance and replacement of equipment. The fund is meeting the purpose for which it was created and demonstrates a link between the benefits gained by community groups renting the facilities and the charges made upon them. The fund provides the appropriate means of financing and has shown a capacity to be self-sustaining, although its stability could be threatened if expenditures exceed revenues on a continuing basis. The fund meets the criteria for continuance as a special fund.

Deposit Beverage Container Special Fund, Section 342G-104, HRS Department of Health

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$32,537	\$24,415
Revenues	55,069	55,069
Interest	0	0
Expenditures	(61,892)	(61,892)
Transfers	(1,300)	0
Ending Fund Balance	24,415	17,592
Encumbrances	(13,970)	(13,970)
Unencumbered Cash Balance	10,444	3,621

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on March 28, 2011, pursuant to Act 192, SLH 2010, and \$300,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The fund, established in 2002, supports the Deposit Beverage Container Program, which was established to increase participation in recycling activities. The Legislature found that recycling is an important element of an integrated solid waste management system, which can protect and preserve environmental resources and reduce economic costs to residents and businesses within the state. The program collects the deposit and container fees on every deposit beverage sold in Hawai'i. Expenses include deposit reimbursements paid to consumers when they recycle containers and a handling fee paid to recycling companies. The fund is serving the purpose for which it was originally created and there is a clear link between the benefits sought by the Deposit Beverage Container Program and the charges imposed on users and beneficiaries. The fund is an appropriate means of financing and demonstrates the capacity to be financially self-sustaining. The fund meets all the criteria for continuance as a special fund.

**Driver Education Training Fund, Section 286G-2, HRS
The Judiciary**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$2,347	\$1,080
Revenues	2,373	2,272
Interest	36	0
Expenditures	(2,118)	(2,820)
Transfers	(1,500)	0
Ending Fund Balance	1,138	533
Encumbrances	(58)	0
Unencumbered Cash Balance	1,080	533

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1.5 million on April 13, 2011, pursuant to Act 192, SLH 2010.

The Driver Education Training program, created in 1974, supports the Judiciary’s Traffic Safety Education and Training Program as a preventative and rehabilitative effort for both adult and juvenile traffic offenders. The fund receives deposits from the Driver Education Fund Underwriter’s Fee, traffic fines, fines for driving under the influence of an intoxicant, and fines for not using child passenger restraint systems. Program expenditures include traffic safety classes. The fund is serving the purpose for which it was created and has a partial nexus between benefits sought and charges made upon users or beneficiaries. The fund has the appropriate means of financing and has a capacity to be financially self- sustaining, although the program has raised the issue of financial difficulties ahead because of a \$1.5 million transfer in FY2011 to the general fund. The fund meets the criteria for continuance as a special fund.

Note: Separate analyses can be found for the Department of Education’s Driver Education Fund and the Department of Commerce and Consumer Affairs’ Driver Education Fund in Appendices C and D, respectively.

Drug Demand Reduction Assessments Special Fund, Section 706-650(3), HRS Department of Health

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$901	\$539
Revenues	626	450
Interest	0	0
Expenditures	(288)	(300)
Transfers	(700)	0
Ending Fund Balance	539	689
Encumbrances	0	0
Unencumbered Cash Balance	539	689

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on June 5, 2009, pursuant to Act 79, SLH 2009, and \$700,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The Drug Demand Reduction Assessments Special Fund, established in 1995 on a temporary basis and made permanent in 2004, is used to supplement drug treatment and other drug demand reduction programs. Fund deposits consist of assessments made on those convicted of crimes related to drugs and intoxicating compounds and deposited into the fund. The fund is serving the purpose for which it was created, and a partial link exists with the benefit sought supplementing drug treatment programs and fees charged to those convicted of crimes related to drugs and intoxicating compounds. The beneficiaries are those on in-community supervised release who are referred by the Department of Public Safety, Intake Service Center. The fund is an appropriate means of financing for the program and demonstrates the capacity to be self-sustaining. It meets criteria for continuance as a special fund.

**Dwelling Unit Revolving Fund, Section 201H-191, HRS
Department of Business, Economic Development and Tourism**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$86,717	\$103,213
Revenues	30,723	8,688
Interest	0	0
Expenditures	(11,039)	(59,983)
Transfers	(3,189)	(3,000)
Ending Fund Balance	103,213	48,918
Interim Loan Commitments	79,995	76,637
Encumbrances	2,578	0
Unencumbered Cash Balance	20,640	(27,719)

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$600,000 on June 30, 2009, pursuant to Act 79, SLH 2009.

The fund was established in 1970 in accordance with Act 105, SLH 1970. This act, together with Act 195, SLH 1976, and Act 225, SLH 1976, authorizes the State to issue general obligation bonds of \$125 million for acquiring, developing, selling, and leasing rental residential, commercial, and industrial properties. It also provides for mortgage, interim construction, down payment, participation mortgage, and agreement of sale loans. Revenue sources are repayment on loans; sales of dwelling units, land, and other assets; rental payments and lease rent payments from dwelling owners; and investment interest. The beneficiaries of the fund are families in need of affordable housing. The fund serves the purpose for which it was created, and there is a clear link between the benefits sought and the charges made upon the beneficiaries of the program. Further, the fund is self-sustaining and does not require any general fund appropriations. It meets the criteria for continuance as a revolving fund.

Employment and Training Fund, Section 383-128, HRS Department of Labor and Industrial Relations

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$1,220	\$2,168
Revenues	1,474	1,800
Interest	0	0
Expenditures	(526)	(2,000)
Transfers	0	0
Ending Fund Balance	2,168	1,968
Encumbrances	(38)	(400)
Unencumbered Cash Balance	2,130	1,568

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$44,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The Employment and Training Fund, established in 1992, supports grants and subsidies to public and private agencies and to non-profit corporations for employment, education, and training programs with a goal of training and maintaining a skilled competitive workforce. This includes programs such as training for individuals in need of assistance to improve career employment prospects, for workers who have recently become unemployed or likely to be unemployed, and for residents who do not otherwise qualify for federal or state job training programs. Due to the insolvency of the Unemployment Trust Fund, Act 2, SLH 2011, authorized the Employment and Training Fund to collect assessments from employers to pay for interest on money borrowed from the federal government to pay unemployment benefits. Act 2 amending Section 383-128, HRS, was repealed on January 1, 2012.

The fund is serving the purpose for which it was created. The fund still meets its purpose of financing employment and workforce training programs. It reflects a clear link between the benefit sought and charges made upon the users or beneficiaries of the Employment and Training Fund. The fund is an appropriate means of financing and has no other means of financing. It demonstrates the capacity to be self-sustaining. Although estimated expenditures will exceed anticipated revenues for FY2012, the fund is projected to have a positive unencumbered cash balance. The fund has had a positive unencumbered cash balance going back to FY2008. It meets the criteria for continuance as a special fund.

**Environmental Management Special Fund, Section 342G-63, HRS
Department of Health**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,477	\$2,664
Revenues	1,177	1,177
Interest	0	0
Expenditures	(1,240)	(1,240)
Transfers	(750)	0
Ending Fund Balance	2,664	2,601
Encumbrances	(668)	(688)
Unencumbered Cash Balance	1,976	1,913

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on June 5, 2009, pursuant to Act 79, SLH 2009, and \$750,000 on June 23, 2011, pursuant to Act 124, SLH 2011.

The Environmental Management Special Fund, established in 1993, has three functions and sources of revenue: 1) advance glass disposal, 2) solid waste tip fees, and 3) tire surcharge fees. Moneys from the advance disposal fee are used to fund county glass recovery programs. Moneys from the solid waste disposal surcharge can be used to partially fund the operating costs of the program, fund statewide education programs, and provide annual training for municipal solid waste operators. Moneys from the motor vehicle tire surcharge may be used to support permitting, monitoring, and enforcement activities. In addition, moneys in the fund are used to promote tire recovery, recycling, and reuse in the State.

The motor vehicle tire surcharge was repealed January 1, 2006. According to the department, it stopped collecting the surcharge June 30, 2003, since the fund reached its statutory limit, which capped the amounts collected to between \$2.75 million and \$3 million. Currently, there are no revenues related to the tire surcharge. Moneys remaining are still being used to support monitoring and enforcement of illegally dumped tires. The fund is serving the purpose for which it was created. There is a partial link to the benefits sought with the charges made upon users or beneficiaries. The fund is an appropriate means of financing the program and demonstrates the capacity to be self-sustaining. It meets criteria for continuance as a special fund.

**Federal Grants Search, Development and Application Revolving Fund,
Section 302A-1405, HRS
Department of Education**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,136	\$2,334
Revenues	121	120
Interest	0	0
Expenditures	(923)	(2,354)
Transfers	0	0
Ending Fund Balance	2,334	100
Encumbrances	(3)	0
Unencumbered Cash Balance	2,231	100

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$500,000 on June 22, 2011, pursuant to Act 124, SLH 2011.

This fund, established in 2000, receives reimbursements or the recovery of administrative or central services costs incurred by the department in carrying out federal grant awards through assessment of an indirect cost rate as authorized by the federal government. Fund revenues come from an indirect overhead assessment against expenditures of the federal discretionary grants. The fund is not limited to search and development applications but can be used for administrative purposes, such as developing program applications to secure additional revenues for the department. The fund can also be used for consultant services and operational expenses, including the hiring of temporary staff to administer the fund. The fund serves the purpose for which it was established, and there is a clear link between the benefit sought and charges made upon the beneficiaries of the program. The fund provides an appropriate means of financing for the program, and it demonstrates the capacity to be financially self-sustaining. The fund meets the criteria for continuance as a revolving fund.

**Foreign Trade Zone Special Fund, Section 212-9, HRS
Department of Business, Economic Development and Tourism**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$1,023	\$922
Revenues	1,598	1,600
Interest	0	
Expenditures	(1,599)	(1,600)
Transfers	(100)	0
Ending Fund Balance	922	922
Encumbrances	(261)	(310)
Unencumbered Cash Balance	661	612

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$100,000 on June 9, 2011, pursuant to Act 192, SLH 2010.

The Foreign Trade Zone Special Fund, established in 1971, supports the operation and maintenance of foreign trade zones, which were established in Hawai'i as part of a proposed international trade complex to encourage economic development. By federal law, the State must provide and maintain facilities such as docks, warehouses, loading and unloading facilities, and adequate water and sewer mains for foreign trade zones.

The fund is serving the purpose for which it was originally created and has a clear link between the benefit sought and charges made upon the users or beneficiaries of the program because user charges for foreign-trade zone facilities are used to provide and maintain those facilities. The fund provides an appropriate means of financing and is financially self-sustaining. It meets criteria for continuance as a special fund.

Hawai'i Community Development Revolving Fund, Section 206E-16, HRS Department of Business, Economic Development and Tourism

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$40,245	\$34,792
Revenues	3,829	4,273
Interest	0	0
Expenditures	(12,287)	(17,362)
Transfers	3,005	(199)
Ending Fund Balance	34,792	21,505
Encumbrances	4,023	16,751
Unencumbered Cash Balance	30,770	4,754

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: FY2011 expenditures include \$1 million to the general fund on March 24, 2011, pursuant to Act 192, SLH 2010.

The fund, established in 1976, supports community development objectives of the Hawai'i Community Development Authority (HCDA). Sources of funds are fees collected from private developers, assessments paid by landowners for their proportionate share of Improvement District costs, lease rents on HCDA-owned properties, and revenues from HCDA-operated parking facilities. The authority uses the funds to prepare and implement a community development district plan; to improve infrastructure; to develop and maintain major public facilities; to administer a reserved housing program to provide affordable housing units; to maintain HCDA assets in the Kaka'ako community development district; and to maintain a database of ceded land parcels. The beneficiaries are the landowners, developers, businesses and residents of the Kaka'ako and Kalaeloa community development districts, Hawaiians who benefit from Office of Hawaiian Affairs programs, and the general public.

The fund continues to serve the purpose for which it was established. There is a clear link between the benefit sought and charges made upon the beneficiaries of the program. The fund provides an appropriate means of financing for the program; it demonstrates the capacity to be financially self-sustaining. It meets the criteria for continuance as a special fund.

**Housing Finance Revolving Fund, Section 201H-80, HRS
Department of Business, Economic Development and Tourism**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,286	\$3,924
Revenues	3,030	879
Interest	0	0
Expenditures	(233)	(250)
Transfers	(2,159)	(2,300)
Ending Fund Balance	3,924	2,253
Encumbrances	(40)	0
Unencumbered Cash Balance	3,884	2,253

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$20 million on June 30, 2009, pursuant to Act 79, SLH 2009.

This revolving fund, established in 1985, supports long-term and other special financing of the Hawai'i Housing Finance and Development Corporation, and necessary administrative expenses. Programs covered by the fund include the Mortgage Credit Certificate, the Kahana Valley Loan, and the Low-Income Housing Tax Credit programs. Transactions for the Low-Income Housing Tax Credit, Mortgage Credit Certificate and Down Payment Loan programs are recorded in the fund. Revenues are generated through loan repayments and interest payments. There is a clear link between the benefit sought and charges made upon the beneficiaries of the program—first-time homebuyers and affordable housing renters. The fund provides an appropriate means of financing for the program, and it demonstrates the capacity to be financially self-sustaining. It meets the criteria for continuance as a revolving fund.

Hydrogen Investment Capital Special Fund, Section 211F-5.7, HRS Department of Business, Economic Development and Tourism

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$4,379	\$2,310
Revenues	75	4
Interest	0	0
Expenditures	(2,144)	(2,247)
Transfers	0	0
Ending Fund Balance	2,310	67
Encumbrances	(2,161)	0
Unencumbered Cash Balance	149	67

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$2 million in two separate transactions on June 25, 2009, and October 2, 2009, pursuant to Act 79, SLH 2010.

The Hydrogen Investment Capital Special Fund, established in 2006, provides seed capital for and venture capital investments in private and federal projects for research, development, testing, and implementation of the Hawai'i Renewable Hydrogen Program. As of December 31, 2010, the fund had venture investments in six private renewable energy companies totaling \$4,225,000. Act 240, SLH 2006, also established the Hawai'i Renewable Hydrogen Program to manage the State's transition to a renewable hydrogen economy. The Legislature initially appropriated \$10 million out of the State's general revenues for the fund, of which \$2 million was transferred back.

The fund is serving the purpose for which it was originally established. Residents of Hawai'i are the beneficiaries of the fund and the program. There is a clear link between the charges made on the residents of the State, and the benefit sought by achieving energy self-sufficiency. The fund is also an appropriate means of financing and is self-sustaining at this time. However, the continued sustainability of the fund will depend on the success of the investments made on the various projects reaching commercialization stage. The fund meets criteria for continuance as a special fund.

**Judiciary Computer System Special Fund, Section 601-3.7, HRS
The Judiciary**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$8,972	\$3,630
Revenues	5,843	5,843
Interest	142	142
Expenditures	(6,435)	(6,380)
Transfers	(2,000)	0
Ending Fund Balance	6,521	3,235
Encumbrances	(2,891)	0
Unencumbered Cash Balance	3,630	3,235

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on June 30, 2009, pursuant to Act 79, SLH 2009, and \$2 million on April 13, 2011, pursuant to Act 192, SLH 2010.

The fund, created in 1996, supports upgrades and enhancements to the Judiciary’s statewide computer systems. Revenue is from traffic abstract fees, civil filing fees in district and circuit courts, certain traffic citation processing costs, and other fees. The money is used to fund a variety of technological enhancements, including a computerized case management system that allows for more timely access to information delivered in a variety of ways. The eTraffic system, for example, allows for traffic citation payments over the Internet or telephone, while eCourt Kokua makes court records accessible to the public over the Internet.

The fund is serving the purpose for which it was created and provides partial linkage between the benefits sought and the charges upon those paying civil filing fees, getting traffic abstracts, or administrative fees for traffic citations in either circuit or district courts. Benefits accrue to these payers, other consumers of court services, the Judiciary, and the state as a whole. The fund provides an appropriate means of financing and demonstrates a capacity to be financially self-sustaining, although it sustained an operating loss in FY2011 and is projected to have another operating loss in FY2012. The fund meets the criteria for continuance as a special fund.

Note: The fund’s balance has remained strong despite a \$2 million transfer of moneys to the general fund in April 2011. The transfer authorized in Act 192, SLH 2010, appears to have occurred without legislators repealing or suspending a portion of the fund law, Section 601-3.7, HRS, that says moneys in the Judiciary Computer System Special Fund shall not revert to the general fund.

Special Fund for Temporary Disability Benefits, Chapter 392-61, HRS Department of Labor and Industrial Relations

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$9,418	\$2,517
Revenues	6	0
Interest	145	100
Expenditures	(52)	(100)
Transfers	(7,000)	0
Ending Fund Balance	2,517	2,517
Encumbrances	0	0
Unencumbered Cash Balance	2,517	2,517

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$7 million on December 27, 2010, pursuant to Act 192, SLH 2010.

The fund was established pursuant to Act 148, SLH 1969, exclusively for the purposes of the Hawai‘i Temporary Disability Insurance law. Temporary disability benefits from the fund are paid to individuals who become disabled when unemployed and are ineligible for unemployment insurance benefits. The fund also pays temporary disability benefits to employees who are entitled to benefits but cannot receive them because of employer bankruptcy or employer noncompliance with the law. In 1969, a one-time assessment of employers was used to establish the fund.

The Legislature amended the Temporary Disability Insurance law pursuant to Act 7, SSLH 2009, to expand the fund’s support to establishing and maintaining a family leave data collection system. The Legislature appropriated from the fund \$10,000 for FY2010 and \$10,000 for FY2011 for development costs of the system. According to the Department of Labor and Industrial Relations, the governor did not release the appropriations for fiscal years 2010 and 2011.

Although there was an amendment to the fund’s purpose, which the department cannot fulfill until funds are released, the fund is serving the purposes for which it was originally created. There is a clear link between the assessments on employers and the temporary disability benefits to be paid to employees. The fund is an appropriate means of financing for temporary disability benefits and demonstrates the capacity to be self-sustaining. It meets the criteria for continuance as a special fund.

**Special Land and Development Fund, Section 171-19, HRS
Department of Land and Natural Resources**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$5,710	\$6,542
Revenues	8,716	7,800
Interest	0	0
Expenditures	(4,928)	(5,800)
Transfers	(2,955)	(4,250)
Ending Fund Balance	6,542	4,292
Encumbrances	(1,067)	(1,000)
Unencumbered Cash Balance	5,476	3,292

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on June 12, 2009, pursuant to Act 79, SLH 2009.

The fund, established in 1962, receives proceeds from the Land Division from the sale of public lands, rents from leases, licenses and permits. The beneficiaries of the fund are the lessees of public lands, the Land Division, the Office of Conservation and Coastal Lands, other divisions and offices of the Department of Land and Natural Resources, and the Board of Land and Natural Resources. Funds are expended to cover the payroll, fringes, operating, and maintenance expenses of the Land Division, the Geothermal Program staff, and the Dam Safety Program. The fund also covers the payroll and fringe benefits of certain staff from the Commission on Water Resources Management, and has been relied upon by most divisions and offices with the department to cover emergency response, hazard mitigation, and budgetary shortfalls in program funding.

The fund serves the purpose for which it was established, provides an appropriate means of financing for the program, and demonstrates the capacity to be financially self-sustaining. There is partial linkage between the Land Division and the land proceeds received from the lease of public lands, as the Land Division manages the public lands from which revenues are derived. Linkage also continues with lessees of public lands who benefit from the use of public lands and are charged rental and other fees. However, there is no linkage between the benefit sought with other divisions and offices as there are no user charges. Overall, the fund meets the criteria for continuance as a special fund. But the department should identify other sources of funding for these divisions and offices currently supported by this fund.

Stadium Special Fund, Section 109-3, HRS
Department of Accounting and General Services

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$7,720	\$4,556
Revenues	6,922	7,488
Interest	126	0
Expenditures	(6,729)	(8,847)
Transfers	(2,503)	0
Ending Fund Balance	5,536	3,196
Encumbrances	(980)	0
Unencumbered Cash Balance	4,556	3,196

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1.5 million on June 15, 2009, pursuant to Act 79, SLH 2009; \$2 million on March 24, 2011, pursuant to Act 192, SLH 2010, and \$500,000 on June 22, 2011, pursuant to Act 124, SLH 2011.

The Stadium Special Fund, created in 1970, holds money collected by the Stadium Authority. The authority's revenue comes from a variety of sources, including rental fees for Aloha Stadium and the Aloha Stadium Swap Meet, advertising fees, concession fees, and parking fees. The fund is used to pay for the upkeep and promotion of Aloha Stadium, its operations, and security. The fund serves the purpose for which it was created, and there is clear link between the charges for use of the stadium and the benefits delivered through the Stadium Authority. It also demonstrates a capacity to be self-sustaining. The fund meets criteria for continuance as a special fund.

**State Disaster Revolving Fund, Section 209-34, HRS
Department of Business, Economic Development and Tourism**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$1,245	\$267
Revenues	22	0
Interest	0	0
Expenditures	(0)	(0)
Transfers	(1,000)	0
Ending Fund Balance	267	267
Encumbrances	0	0
Unencumbered Cash Balance	267	267

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1 million on December 29, 2010, pursuant to Act 192, SLH 2010.

This fund, established in 1961, provides loans to businesses and individuals who suffer damages in a state-declared disaster. The source of funds is the loan principal and interest repayment and interest earned. The fund serves the purpose for which it was established, and there is a clear link between the benefit sought and charges made upon the beneficiaries of the program—businesses and individuals affected by damages suffered through a state-declared disaster. The fund provides an appropriate means of financing for the program, and demonstrates the capacity to be financially self-sustaining. During FY2011, \$1 million was transferred to the general fund, diminishing lending capacity should a state-declared disaster occur before more funds could be added. The fund meets the criteria for continuance as a revolving fund.

State Identification Revolving Fund, Section 846-27, HRS Department of the Attorney General

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$1,104	\$1,325
Revenues	890	900
Interest	0	0
Expenditures	(843)	(900)
Transfers	174	(500)
Ending Fund Balance	1,325	825
Encumbrances	(131)	0
Unencumbered Cash Balance	1,193	825

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$700,000 on June 8, 2009, pursuant to Act 79, SLH 2009. In FY2012, another \$500,000 is to be transferred to the general fund.

The fund, established in 1998, provides the necessary resources and improvements required to meet the public's demand for State identification cards. The Hawai'i Criminal Justice Data Center is responsible for the processing of applications and issuance of state identification cards, which provide an alternative photograph identification for the general public. Revenue consists of fees collected for the issuance of the identification cards. The fund serves the purpose for which it was originally created, and there is a clear link between the benefits sought and the charges made upon the beneficiaries of the program. Further, the fund is self-sustaining and does not require any general fund appropriations. The fund meets the criteria for continuance as a revolving fund.

**State Motor Pool Revolving Fund, Section 105-11, HRS
Department of Accounting and General Services**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$3,601	\$2,290
Revenues	2,447	2,470
Interest	24	0
Expenditures	(2,281)	(2,518)
Transfers	(1,500)	0
Ending Fund Balance	2,290	2,243
Encumbrances	(249)	0
Unencumbered Cash Balance	2,041	2,243

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$1.5 million on March 23, 2011, pursuant to Act 192, SLH 2010.

This fund was established in 1986 to finance the State’s motor pool expenses, which include the acquisition, operation, repair, maintenance, storage, and disposal of vehicles. Revenues come from the rental of motor vehicles, investment pool interest, sale of salvageable materials, and pCard rebates. Beneficiaries are state agencies that utilize vehicle lease and repair services to carry out their mission and responsibilities. The fund serves the purpose for which it was created. There is a clear link between the benefits sought and the charges made upon the beneficiaries of the program, and the fund is self-sustaining and does not require any general fund appropriations. The fund meets the criteria for continuance as a revolving fund.

State Risk Management Revolving Fund, Section 41D-4, HRS Department of Accounting and General Services

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$28,217	\$23,330
Revenues	13,739	12,120
Interest	455	350
Expenditures	(16,111)	(17,866)
Transfers	(3,000)	0
Ending Fund Balance	23,300	17,904
Encumbrances	0	0
Unencumbered Cash Balance	23,300	17,904

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$5 million on June 12, 2009, pursuant to Act 79, SLH 2009; \$2 million on March 23, 2011, pursuant to Act 192, SLH 2010; and \$1 million on June 22, 2011, pursuant to Act 124, SLH 2011.

This fund, established in 1988, supports the State Risk Management Program's operating costs. The program receives revenue from annual cost allocation assessments, various State special- and trust-funded departments and agencies, investment pool earnings, insurance claim proceeds, and other recoveries. Fund moneys pay for statewide property, excess liability, and crime insurance policies; the State's self-insured automobile program; informal claims against the State and property claims within the insurance deductible. All state departments and agencies are the beneficiaries, with the exception of the workers' compensation and employee benefits programs. The fund serves the purpose for which it was originally established. There is a clear link between the benefits sought and the charges made upon the beneficiaries. The fund is self-sustaining, with general fund appropriations received for general-funded agencies provided service. The fund meets the criteria for continuance as a revolving fund.

**Wireless Enhanced 911 Fund, Section 138-3, HRS
Department of Accounting and General Services**

Financial Data for Fiscal Years 2011-2012 (in thousands)*

	FY2011	FY2012
Beginning Fund Balance	\$8,385	\$13,028
Revenues	8,285	8,292
Interest	9	8
Expenditures	(3,650)	(19,389)
Transfers	0	0
Ending Fund Balance	13,028	1,939
Encumbrances	(5,389)	0
Unencumbered Cash Balance	7,639	1,939

*Estimated. Numbers in table may not add up to totals because of rounding.

Note: General fund transfers include \$16 million on June 18, 2009, pursuant to Act 79, SLH 2009.

The fund, established in 2004, accounts for the collection of surcharges from wireless phone users, and for the distribution of moneys for upgrade of the 911 system. The beneficiaries of the fund are wireless service providers, wireless phone users, and the Public Safety Answering Points, which are the dispatching points for first responders such as police, fire, and emergency medical services. The fund is used to reimburse Public Safety Answering Points and wireless service providers for costs incurred related to enhanced 911 services. The fund serves the purpose for which it was established and there is a clear link between the benefit sought and charges made upon the beneficiaries of the program. It also provides an appropriate means of financing for the program and demonstrates the capacity to be financially self-sustaining. The fund therefore meets the criteria for continuance as a special fund.

Note: The federal New and Emerging Technologies 911 Improvement Act of 2008 gives states the authority to impose and collect a fee or charge applicable to commercial mobile services or IP-enabled voice services provided that the fee or charge is expended only in support of 911 and enhanced 911 services. The Legislature, through Act 79, SLH 2009, authorized a transfer of \$16 million from the fund to the general fund in an apparent violation of the federal law.

**Appendix F
Non-general Fund Checklist**

This checklist should help in determining whether the Legislature’s authority to transfer non-general funds to the general fund is consistent with its constitutional power to tax by distinguishing a regulatory fee from a tax. The checklist may be used for ensuring all factors consistent with the three-pronged test articulated in the Hawai‘i Supreme Court decision in *Hawai‘i Insurers Council v. Linda Lingle, et al.*, are taken into account and balanced against a careful analysis of the facts and circumstances of a particular fund under review. The checklist also provides for the consideration of federal laws restricting use of funds and state laws prohibiting transfers to the general fund.

Non-general Fund Transfer Criteria				Notes
	Yes	No	N/A	
<i>Hawai‘i Insurers Council v. Linda Lingle, et al.</i> adopted a three-pronged test to determine whether an assessment was a regulatory fee (probably not transferable) or a tax (probably transferable).				
Prong 1: Is a regulatory agency assessing the fee or revenue source for the fund?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the fund cannot be authorized for transfer by the Legislature.
Prong 2: Is the fee or revenue source placed into a special fund?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the fund money cannot be transferred.
Prong 3: Is the money used for general public purposes or for the regulation or benefit of parties upon whom the fund assessment is imposed?				
<ul style="list-style-type: none"> ▪ Is the money used for the regulation or benefit of the parties upon whom the assessment is imposed? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the fund cannot be transferred.
<ul style="list-style-type: none"> ▪ Is the money used to provide a general benefit to the public of a sort often financed by a general tax? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the fund can be transferred.
Separation of Powers Doctrine:				
Was the fee or revenue source set in statute?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the fund can be transferred.
Was the fee or charge established via an administrative rule?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the fund cannot be transferred.

Appendix F

Non-general Fund Transfer Criteria				Notes
	Yes	No	N/A	
Other Considerations:				
Does the fund contain federal funds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean the federal portion of the fund cannot be transferred. Federal grant agreements may preclude transfers and use for general fund purposes.
Does federal law restrict use of fund moneys?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the federal money in the fund cannot be transferred. Federal law may preclude transfers or other uses.
Does state law preclude a transfer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, the statute may need to be amended or an implied repeal used to allow for a transfer.
Does the fund contain bond proceeds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the money cannot be transferred. Repeal of bond funds secured by a trust indenture may subject State to lawsuit.
Does the fund contain money tied to general obligation bonds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the money cannot be transferred. Transfers of revenue from general obligation bonds may result in adverse tax consequences.
Does the fund contain money pledged to payment of revenue bonds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the money cannot be transferred. Transfers may be prohibited by Section 39-62, HRS.
Does the fund contain private donor money that carries specified uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean all or part of the money cannot be transferred. Private donations must be used in a manner consistent with donor's instructions.
Is the fund a trust fund?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, it may mean the money cannot be transferred. Trust funds typically cannot be transferred to the general fund.
Is the fund used to obtain matching grants or moneys?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If yes, transferring of all or part of the money may hurt the State's ability to obtain more matching funds.
Conclusion: The fund falls within the Legislature's authority to transfer to the general fund.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

A BILL FOR AN ACT

RELATING TO STATE FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 23-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§~~23-11~~§~~ New special or revolving funds. (a) Within
4 five days after the deadline for the introduction of bills in
5 each legislative session, the clerks of each house of the
6 legislature shall transmit, to the ~~legislative~~ auditor for
7 analysis, copies of all legislative bills that were introduced
8 in their respective houses during that session that propose to
9 establish new special or revolving funds.

10 (b) The criteria to be used by the auditor in analyzing
11 each legislative bill shall include~~[-]~~ but not be limited to~~[-]~~
12 the extent to which the fund:

13 (1) ~~[Serves the purpose for which it is being created;]~~
14 Shows evidence of need by stating the program's
15 purpose, describing the scope, presenting financial
16 information on fees to be charged, sources of
17 projected revenue, and costs; and explains why the



.B. NO.

1 program cannot be implemented successfully under the
2 general fund appropriation process; and
3 (2) Reflects a clear link between the [~~benefit~~] benefits
4 sought and [~~changes~~] charges made upon the [~~users or~~
5 ~~beneficiaries of the program,~~] program users or
6 beneficiaries, or a clear link between the program and
7 the sources of revenue, as opposed to serving
8 primarily as a means to provide the program or users
9 with an automatic means of support [~~which~~] that is
10 removed from the normal budget and [~~appropriations~~]
11 appropriation process.

12 Each analysis shall set forth the probable effects of the
13 proposed fund and shall also assess alternative forms of
14 funding.

15 (c) No later than thirty days prior to the adjournment
16 sine die of each legislative session, the [~~legislative~~] auditor
17 shall submit the analysis of each transmitted legislative bill
18 to each house of the legislature."

19 SECTION 2. Section 23-12, Hawaii Revised Statutes, is
20 amended to read as follows:

.B. NO.

1 "§23-12 Review of special, revolving, and trust funds.

2 (a) The office of the [state] auditor shall report to the

3 legislature, at each regular session, a review of special,

4 revolving, and trust funds established to provide services

5 rendered by any state department or establishment to other state

6 departments or establishments or to any political subdivision of

7 the State. The review shall include but not be limited to:

8 (1) An evaluation of the original intent and purpose of

9 each fund, both as expressed by the legislature and as

10 understood by the expending agency;

11 (2) The degree to which each fund achieves the stated and

12 claimed purposes;

13 (3) An evaluation of performance standards established by

14 the agency; and

15 (4) A summary statement reflecting total fund transactions

16 in the preceding five fiscal years, including the fund

17 balance at the beginning of each fiscal year, total

18 deposits and withdrawals, amount of interest earned,

19 total expenditures made from the fund, and the ending

20 fund balance for each fiscal year.



.B. NO.

1 (b) Each special, revolving, and trust fund shall be
2 reviewed every five years as follows:

3 (1) Beginning 1994 and every five years thereafter, the
4 auditor shall submit a review of the special,
5 revolving, and trust funds of the department of
6 accounting and general services; the department of
7 agriculture; the department of budget and finance; and
8 the department of land and natural resources;

9 (2) Beginning 1995 and every five years thereafter, the
10 auditor shall submit a review of the special,
11 revolving, and trust funds of the department of the
12 attorney general; the department of business, economic
13 development, and tourism; and the University of Hawaii
14 system;

15 (3) Beginning 1996 and every five years thereafter, the
16 auditor shall submit a review of the special,
17 revolving, and trust funds within the judiciary and of
18 the department of commerce and consumer affairs; the
19 department of Hawaiian home lands; the department of
20 health; and the department of human services;



.B. NO.

1 (4) Beginning 1997 and every five years thereafter, the
2 auditor shall submit a review of the special,
3 revolving, and trust funds of the office of the
4 governor; the office of Hawaiian affairs; and the
5 department of education; [~~and~~]

6 (5) Beginning 1998 and every five years thereafter, the
7 auditor shall submit a review of the special,
8 revolving, and trust funds of the department of labor
9 and industrial relations; the department of taxation;
10 the department of human resources development; the
11 department of public safety; and all other moneys
12 expended in accordance with section 37-40[~~-~~]; and

13 (6) Beginning 2014 and every five years thereafter, the
14 auditor shall submit a review of the special,
15 revolving, and trust funds of the department of
16 transportation and the department of defense."

17 SECTION 3. Section 36-27, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Except as provided in this section, and
20 notwithstanding any other law to the contrary, from time to
21 time, the director of finance, for the purpose of defraying the



.B. NO.

1 prorated estimate of central service expenses of government in
2 relation to all special funds, except the:

- 3 (1) Special out-of-school time instructional program fund
4 under section 302A-1310;
- 5 (2) School cafeteria special funds of the department of
6 education;
- 7 (3) Special funds of the University of Hawaii;
- 8 (4) State educational facilities improvement special fund;
- 9 (5) Convention center enterprise special fund under
10 section 201B-8;
- 11 (6) Special funds established by section 206E-6;
- 12 (7) Housing loan program revenue bond special fund;
- 13 (8) Housing project bond special fund;
- 14 (9) Aloha Tower fund created by section 206J-17;
- 15 (10) Funds of the employees' retirement system created by
16 section 88-109;
- 17 (11) Unemployment compensation fund established under
18 section 383-121;
- 19 (12) Hawaii hurricane relief fund established under chapter
20 431P;



.B. NO.

- 1 (13) Hawaii health systems corporation special funds and
- 2 the subaccounts of its regional system boards;
- 3 (14) Tourism special fund established under section 201B-
- 4 11;
- 5 (15) Universal service fund established under section 269-
- 6 42;
- 7 (16) Emergency and budget reserve fund under section 328L-
- 8 3;
- 9 (17) Public schools special fees and charges fund under
- 10 section 302A-1130;
- 11 (18) Sport fish special fund under section 187A-9.5;
- 12 (19) Glass advance disposal fee established by section
- 13 342G-82;
- 14 (20) Center for nursing special fund under section 304A-
- 15 2163;
- 16 (21) Passenger facility charge special fund established by
- 17 section 261-5.5;
- 18 (22) Court interpreting services revolving fund under
- 19 section 607-1.5;
- 20 (23) Hawaii cancer research special fund;
- 21 (24) Community health centers special fund;



.B. NO.

1 ~~[(25) Emergency medical services special fund;~~
2 ~~(26)]~~ (25) Rental motor vehicle customer facility charge
3 special fund established under section 261-5.6; and
4 ~~[(27)]~~ (26) Shared services technology special fund under
5 section 27-43,
6 shall deduct five per cent of all receipts of all special funds,
7 which deduction shall be transferred to the general fund of the
8 State and become general realizations of the State. All
9 officers of the State and other persons having power to allocate
10 or disburse any special funds shall cooperate with the director
11 in effecting these transfers. To determine the proper revenue
12 base upon which the central service assessment is to be
13 calculated, the director shall adopt rules pursuant to chapter
14 91 for the purpose of suspending or limiting the application of
15 the central service assessment of any fund. No later than
16 twenty days prior to the convening of each regular session of
17 the legislature, the director shall report all central service
18 assessments made during the preceding fiscal year."

19 SECTION 4. Section 36-30, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Each special fund, except the:



.B. NO.

- 1 (1) Transportation use special fund established by section
- 2 261D-1;
- 3 (2) Special out-of-school time instructional program fund
- 4 under section 302A-1310;
- 5 (3) School cafeteria special funds of the department of
- 6 education;
- 7 (4) Special funds of the University of Hawaii;
- 8 (5) State educational facilities improvement special fund;
- 9 (6) Special funds established by section 206E-6;
- 10 (7) Aloha Tower fund created by section 206J-17;
- 11 (8) Funds of the employees' retirement system created by
- 12 section 88-109;
- 13 (9) Unemployment compensation fund established under
- 14 section 383-121;
- 15 (10) Hawaii hurricane relief fund established under section
- 16 431P-2;
- 17 (11) Convention center enterprise special fund established
- 18 under section 201B-8;
- 19 (12) Hawaii health systems corporation special funds and
- 20 the subaccounts of its regional system boards;



.B. NO.

- 1 (13) Tourism special fund established under section 201B-
- 2 11;
- 3 (14) Universal service fund established under section 269-
- 4 42;
- 5 (15) Emergency and budget reserve fund under section 328L-
- 6 3;
- 7 (16) Public schools special fees and charges fund under
- 8 section 302A-1130;
- 9 (17) Sport fish special fund under section 187A-9.5;
- 10 (18) Center for nursing special fund under section 304A-
- 11 2163;
- 12 (19) Passenger facility charge special fund established by
- 13 section 261-5.5;
- 14 (20) Court interpreting services revolving fund under
- 15 section 607-1.5;
- 16 (21) Hawaii cancer research special fund;
- 17 (22) Community health centers special fund;
- 18 ~~-(23) Emergency medical services special fund;~~
- 19 ~~-(24)]~~ (23) Rental motor vehicle customer facility charge
- 20 special fund established under section 261-5.6; and



.B. NO.

1 support that is removed from the normal budget and
2 appropriation process;

3 (3) Provides an appropriate means of financing for the
4 program or activity; and

5 (4) Demonstrates the capacity to be financially self-
6 sustaining."

7 SECTION 6. Section 37-52.4, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§37-52.4[+] **Criteria for the establishment and**
10 **continuance of revolving funds.** Revolving funds shall only be
11 established pursuant to an act of the legislature. The
12 legislature, in establishing or reviewing a revolving fund to
13 determine whether it should be continued, shall ensure that the
14 revolving fund:

15 (1) Serves the purpose for which it was originally
16 established;

17 (2) Reflects a clear nexus between the benefits sought and
18 charges made upon the ~~[users or beneficiaries of the~~
19 ~~program,]~~ program users or beneficiaries, or a clear
20 link between the program and the sources of revenue,
21 as opposed to serving primarily as a means to provide



.B. NO.

1 the program or users with an automatic means of
2 support that is removed from the normal budget and
3 appropriation process;

4 (3) Provides an appropriate means of financing for the
5 program or activity; and

6 (4) Demonstrates the capacity to be financially self-
7 sustaining."

8 SECTION 7. Section 37-62, Hawaii Revised Statutes, is
9 amended by amending the definitions of "revolving fund" and
10 "special funds" to read as follows:

11 ""Revolving fund" means a fund from which is paid the cost
12 of goods and services rendered or furnished to or by a state
13 agency and which is replenished through charges made for the
14 goods or services or through transfers from other accounts or
15 funds[-]; provided that the funds are used only when the means
16 of financing is essential to the successful operation of a
17 program or activity and there is a clear link between the
18 program or activity and the sources of revenue dedicated to its
19 support.

20 "Special funds" means funds [which] that are dedicated or
21 set aside by law for a specified object or purpose, but



.B. NO.

1 excluding revolving funds and trust funds[-]; provided that the
2 funds are used only when the means of financing is essential to
3 the successful operation of a program or activity and there is a
4 clear link between the program or activity and the sources of
5 revenue dedicated to its support."

6 SECTION 8. Section 195-6.5, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) There is established in the department, a natural
9 area partnership program to provide state funds on a two-for-one
10 basis with private funds for the management of private lands
11 that are dedicated to conservation. Payments shall be made from
12 the [~~natural area reserve~~] general fund with funds specifically
13 appropriated for this purpose."

14 SECTION 9. Section 195F-4, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) There is established a special fund within the state
17 treasury known as the forest stewardship fund which shall be
18 used as follows:

19 (1) Payments shall be made by the board pursuant to
20 agreements entered into with qualified landowners to
21 further the purposes of this chapter; and



.B. NO.

- 1 (2) Moneys collected from:
- 2 (A) The harvest of non-native forest products from
- 3 forest reserves;
- 4 (B) The harvest of native forest products from
- 5 degraded forests as defined in section 186-5.5,
- 6 within forest reserves;
- 7 (C) The sale of forest products found dead and lying
- 8 on the ground;
- 9 (D) The sale of tree seedlings from state nurseries;
- 10 (E) The sale of any other products or services, or
- 11 anything of value derived from forest reserves
- 12 not described above; or
- 13 (F) The imposition of fines or penalties for
- 14 violations of this chapter and chapters 183 and
- 15 185 or any rule adopted thereunder;
- 16 shall be used for: (i) replanting, managing, and
- 17 maintaining designated timber management areas; (ii)
- 18 enhancing the management of public forest reserves
- 19 with an emphasis on restoring degraded koa forests;
- 20 and (iii) developing environmental education and
- 21 training programs pertaining to sustainable forestry;



.B. NO.

1 provided that the activities described in clauses (ii)
2 and (iii) may not be funded unless the activities
3 described in approved management plans pertaining to
4 clause (i) are adequately funded[~~;-and~~
5 ~~(3) Moneys deposited into the fund as authorized by~~
6 ~~section 247-7 may also be used by the department to~~
7 ~~administer the program and manage the forest reserve~~
8 ~~system]."~~

9 SECTION 10. Section 245-15, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§245-15 **Disposition of revenues.** All moneys collected
12 pursuant to this chapter shall be paid into the state treasury
13 as state realizations to be kept and accounted for as provided
14 by law; provided that[~~7~~] of the moneys collected under the tax
15 imposed pursuant to:

16 (1) Section 245-3(a)(5), after September 30, 2006, and
17 prior to October 1, 2007, 1.0 cent per cigarette shall
18 be deposited to the credit of the Hawaii cancer
19 research special fund, established pursuant to section
20 304A-2168, for research and operating expenses and for
21 capital expenditures;



.B. NO.

- 1 (2) Section 245-3(a)(6), after September 30, 2007, and
2 prior to October 1, 2008:
- 3 (A) 1.5 cents per cigarette shall be deposited to the
4 credit of the Hawaii cancer research special
5 fund, established pursuant to section 304A-2168,
6 for research and operating expenses and for
7 capital expenditures;
- 8 (B) 0.25 cents per cigarette shall be deposited to
9 the credit of the trauma system special fund
10 established pursuant to section 321-22.5; and
- 11 (C) 0.25 cents per cigarette shall be deposited to
12 the credit of the emergency medical services
13 special fund established pursuant to section 321-
14 234;
- 15 (3) Section 245-3(a)(7), after September 30, 2008, and
16 prior to July 1, 2009:
- 17 (A) 2.0 cents per cigarette shall be deposited to the
18 credit of the Hawaii cancer research special
19 fund, established pursuant to section 304A-2168,
20 for research and operating expenses and for
21 capital expenditures;



.B. NO.

1 (B) 0.5 cents per cigarette shall be deposited to the
2 credit of the trauma system special fund
3 established pursuant to section 321-22.5;

4 (C) 0.25 cents per cigarette shall be deposited to
5 the credit of the community health centers
6 special fund established pursuant to section 321-
7 1.65; and

8 (D) 0.25 cents per cigarette shall be deposited to
9 the credit of the emergency medical services
10 special fund established pursuant to section 321-
11 234;

12 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
13 July 1, 2013:

14 (A) 2.0 cents per cigarette shall be deposited to the
15 credit of the Hawaii cancer research special
16 fund, established pursuant to section 304A-2168,
17 for research and operating expenses and for
18 capital expenditures;

19 (B) 0.75 cents per cigarette shall be deposited to
20 the credit of the trauma system special fund
21 established pursuant to section 321-22.5;



.B. NO.

- 1 (C) 0.75 cents per cigarette shall be deposited to
- 2 the credit of the community health centers
- 3 special fund established pursuant to section 321-
- 4 1.65; and
- 5 (D) 0.5 cents per cigarette shall be deposited to the
- 6 credit of the emergency medical services special
- 7 fund established pursuant to section 321-234; and
- 8 (5) Section 245-3(a)(11), after June 30, 2013, and
- 9 thereafter:
- 10 (A) 2.0 cents per cigarette shall be deposited to the
- 11 credit of the Hawaii cancer research special
- 12 fund, established pursuant to section 304A-2168,
- 13 for research and operating expenses and for
- 14 capital expenditures;
- 15 (B) 1.5 cents per cigarette shall be deposited to the
- 16 credit of the trauma system special fund
- 17 established pursuant to section 321-22.5; and
- 18 (C) 1.25 cents per cigarette shall be deposited to
- 19 the credit of the community health centers
- 20 special fund established pursuant to section 321-
- 21 1.65 [~~;~~ and



.B. NO.

1 ~~(D) 1.25 cents per cigarette shall be deposited to~~
2 ~~the credit of the emergency medical services~~
3 ~~special fund established pursuant to section 321-~~
4 ~~234].~~

5 The department shall provide an annual accounting of these
6 dispositions to the legislature."

7 SECTION 11. Section 247-7, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§247-7 Disposition of taxes.** All taxes collected under
10 this chapter shall be paid into the state treasury to the credit
11 of the general fund of the State, to be used and expended for
12 the purposes for which the general fund was created and exists
13 by law; provided that of the taxes collected each fiscal year[+

14 ~~(1) Ten per cent shall be paid into the land conservation~~
15 ~~fund established pursuant to section 173A-5;~~

16 ~~(2) Twenty-five], twenty-five per cent from July 1, 2009,~~
17 until June 30, 2012, and thirty per cent in each
18 fiscal year thereafter shall be paid into the rental
19 housing trust fund established by section 201H-202[+
20 and



.B. NO.

1 ~~(3) Twenty per cent from July 1, 2009, until June 30,~~
2 ~~2012, and twenty five per cent in each fiscal year~~
3 ~~thereafter shall be paid into the natural area reserve~~
4 ~~fund established by section 195-9; provided that the~~
5 ~~funds paid into the natural area reserve fund shall be~~
6 ~~annually disbursed by the department of land and~~
7 ~~natural resources in the following priority:~~
8 ~~(A) To natural area partnership and forest~~
9 ~~stewardship programs after joint consultation~~
10 ~~with the forest stewardship committee and the~~
11 ~~natural area reserves system commission;~~
12 ~~(B) Projects undertaken in accordance with watershed~~
13 ~~management plans pursuant to section 171-58 or~~
14 ~~watershed management plans negotiated with~~
15 ~~private landowners, and management of the natural~~
16 ~~area reserves system pursuant to section 195-3;~~
17 ~~and~~
18 ~~(C) The youth conservation corps established under~~
19 ~~chapter 193]."~~

20 SECTION 12. Section 249-31, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



.B. NO.

1 "(b) From each annual motor vehicle registration fee, the
2 director shall deposit \$40 into the state highway fund [~~and \$5~~
3 ~~into the emergency medical services special fund~~]."

4 SECTION 13. Section 302A-417, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The department may establish the requirements for the
7 position of traffic safety education specialist and may employ
8 at least one traffic safety education specialist for the
9 purposes of this section. [~~The traffic safety education~~
10 ~~specialist may be paid out of fees allocated to the director of~~
11 ~~commerce and consumer affairs from the special drivers education~~
12 ~~fund account pursuant to section 431:10C-115.~~]"

13 SECTION 14. Section 321-12.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**[+]{§321-12.5[+]} Certified forensic examination fees.**
16 [~~+]~~ The department of health, by rules adopted pursuant to
17 chapter 91, shall establish fees for application and
18 certification as certified forensic examiners, to be paid by the
19 applicant at the onset of the application process. The fees
20 shall cover the costs of training, examination, certification,
21 and monitoring.



.B. NO.

1 ~~[(b) All moneys collected as fees pursuant to subsection~~
 2 ~~(a) shall be deposited into the mental health and substance~~
 3 ~~abuse special fund established by section 334-15.~~

4 ~~(c) All funds deposited in the mental health and substance~~
 5 ~~abuse special fund pursuant to subsection (b) shall be used~~
 6 ~~exclusively to support the activities relating to the~~
 7 ~~application, training, certification, and monitoring of the~~
 8 ~~certified forensic examination program.]"~~

9 SECTION 15. Section 431:10C-115, Hawaii Revised Statutes,
 10 is amended to read as follows:

11 "**§431:10C-115 Drivers education fund underwriters fee.**

12 (a) The commissioner shall assess and levy upon each insurer,
 13 and self-insurer, a drivers education fund underwriters fee of
 14 ~~[\$3]~~ \$1 a year on each motor vehicle insured by each insurer or
 15 self-insurer. This fee is due and payable on an annual basis by
 16 means and at a time to be determined by the commissioner.

17 (b) The commissioner shall deposit the fees into a special
 18 drivers education fund account[-

19 ~~(c) The commissioner]~~ and shall allocate ~~[the fees~~
 20 ~~deposited for each fiscal year in the following manner:~~



B. NO.

1 ~~(1)~~ \$1 per registration [~~to the commissioner~~] to be
2 expended for the operation of the drivers education
3 program provided in section 286-128(d) [~~and~~
4 ~~(2)~~ \$2 per registration to the director of commerce and
5 consumer affairs for:
6 ~~(A)~~ The drivers education program administered by the
7 department of education for high school students,
8 and
9 ~~(B)~~ The traffic safety education program established
10 and administered by the department of education
11 pursuant to section ~~302A-417~~].
12 ~~(d)~~ (c) Motor vehicles insured under the joint
13 underwriting plan shall be excluded from the drivers education
14 fund assessment.
15 ~~(e)~~ (d) The commissioner shall adopt rules in accordance
16 with chapter 91 for the execution of this section and the
17 distribution of this fund."
18 SECTION 16. Section 173A-5, Hawaii Revised Statutes, is
19 repealed.

.B. NO.

1 ~~["§173A-5 Land conservation fund. (a) A land~~
2 ~~conservation fund, hereinafter called "fund", is hereby~~
3 ~~established.~~

4 ~~(b) The proceeds from the sale of any general obligation~~
5 ~~bonds authorized and issued for purposes of this chapter shall~~
6 ~~be deposited in or credited to the fund.~~

7 ~~(c) Any net proceeds or revenue from the operation,~~
8 ~~management, sale, lease, or other disposition of land or the~~
9 ~~improvements on the land acquired or constructed by the board~~
10 ~~under the provisions of this chapter shall also be deposited in~~
11 ~~or credited to the fund.~~

12 ~~(d) The appropriate percentage identified under section~~
13 ~~247-7 of all taxes imposed and collected under chapter 247 shall~~
14 ~~be deposited in or credited to the fund every fiscal year.~~

15 ~~(e) Moneys from any other private or public source may be~~
16 ~~deposited in or credited to the fund; provided that mandates,~~
17 ~~regulations, or conditions on these funds do not conflict with~~
18 ~~the use of the fund under this chapter. Moneys received as a~~
19 ~~deposit or private contribution shall be deposited, used, and~~
20 ~~accounted for in accordance with the conditions established by~~
21 ~~the agency or person making the contribution.~~



.B. NO.

1 ~~(f) The fund shall be administered and managed by the~~
2 ~~department.~~

3 ~~(g) The acquisition of interests or rights in land having~~
4 ~~value as a resource to the State for the preservation of the~~
5 ~~following shall constitute a public purpose for which public~~
6 ~~funds may be expended or advanced:~~

7 ~~(1) Watershed protection;~~

8 ~~(2) Coastal areas, beaches, and ocean access;~~

9 ~~(3) Habitat protection;~~

10 ~~(4) Cultural and historical sites;~~

11 ~~(5) Recreational and public hunting areas;~~

12 ~~(6) Parks;~~

13 ~~(7) Natural areas;~~

14 ~~(8) Agricultural production; and~~

15 ~~(9) Open spaces and scenic resources.~~

16 ~~(h) The fund shall be used for:~~

17 ~~(1) The acquisition of interests or rights in land having~~
18 ~~value as a resource to the State, whether in fee title~~
19 ~~or through the establishment of permanent conservation~~
20 ~~easements under chapter 198 or agricultural easements;~~



.B. NO.

- 1 ~~(2) The payment of any debt service on state financial~~
- 2 ~~instruments relating to the acquisition of interests~~
- 3 ~~or rights in land having value as a resource to the~~
- 4 ~~State;~~
- 5 ~~(3) Annual administration costs for the fund, not to~~
- 6 ~~exceed five per cent of annual fund revenues of the~~
- 7 ~~previous year;~~
- 8 ~~(4) Costs related to the operation, maintenance, and~~
- 9 ~~management of lands acquired by way of this fund that~~
- 10 ~~are necessary to protect, maintain, or restore~~
- 11 ~~resources at risk on these lands, or that provide for~~
- 12 ~~greater public access and enjoyment of these lands;~~
- 13 ~~provided that the costs related to the operation,~~
- 14 ~~maintenance, and management of lands acquired by way~~
- 15 ~~of this fund do not exceed five per cent of annual~~
- 16 ~~fund revenues of the previous year;~~
- 17 ~~(5) Invasive species control and mitigation by the~~
- 18 ~~invasive species council under chapter 194; and~~
- 19 ~~(6) Reforestation and sediment run-off mitigation.~~
- 20 ~~(i) Based on applications from state agencies, counties,~~
- 21 ~~and nonprofit land conservation organizations, the department,~~



.B. NO.

1 ~~in consultation with the senate president and speaker of the~~
2 ~~house of representatives, shall recommend to the board specific~~
3 ~~parcels of land to be acquired, restricted with conservation~~
4 ~~easements, or preserved in similar fashion. The board shall~~
5 ~~review the selections and approve or reject the selections~~
6 ~~according to the availability of moneys in the fund. To be~~
7 ~~eligible for grants from the fund, state and county agencies and~~
8 ~~nonprofit land conservation organizations shall submit~~
9 ~~applications to the department that contain:~~

- 10 ~~(1) Contact information for the project;~~
- 11 ~~(2) A description of the project;~~
- 12 ~~(3) The request for funding;~~
- 13 ~~(4) Cost estimates for acquisition of the interest in the~~
14 ~~land;~~
- 15 ~~(5) Location and characteristics of the land; and~~
- 16 ~~(6) Other similar, related, or relevant information as~~
17 ~~determined by the department.~~

18 ~~(j) For applications approved by the board, the board may~~
19 ~~acquire land having value as a resource to the State, pursuant~~
20 ~~to section 173A 4, or the board may award grants from the fund~~
21 ~~to the qualifying state or county agencies or nonprofit land~~



.B. NO.

1 ~~conservation organizations for the preservation of the real~~
2 ~~property. Where the recipient of a grant is a county agency or~~
3 ~~nonprofit land conservation organization, the board shall~~
4 ~~require additional matching funds of at least twenty five per~~
5 ~~cent of the total project costs. Matching funds may be in the~~
6 ~~form of:~~

7 ~~(1) Direct moneys;~~

8 ~~(2) A combination of public and private funds;~~

9 ~~(3) Land value donation;~~

10 ~~(4) In-kind contributions; or~~

11 ~~(5) Any combination of the above.~~

12 ~~(k) Evidence of the matching funds in subsection (j) shall~~
13 ~~be made available by the qualifying entities prior to~~
14 ~~distribution of the fund grant.~~

15 ~~(1) The board shall:~~

16 ~~(1) Track amounts disbursed from the fund;~~

17 ~~(2) Prepare and submit an annual report to the governor~~
18 ~~and the legislature at least twenty days prior to the~~
19 ~~convening of each regular session. The annual report~~
20 ~~shall include:~~



.B. NO.

- 1 ~~(A) A summary of all interests or rights in land~~
- 2 ~~acquired during the preceding fiscal year;~~
- 3 ~~(B) A summary of what value each newly acquired land~~
- 4 ~~has as a resource to the State;~~
- 5 ~~(C) Proposals for future land acquisitions, including~~
- 6 ~~a summary of the resource value that the land may~~
- 7 ~~possess;~~
- 8 ~~(D) A financial report for the preceding fiscal year;~~
- 9 ~~and~~
- 10 ~~(E) Objectives and budget projections for the~~
- 11 ~~following fiscal year; and~~
- 12 ~~(3) Make copies of the annual report available to the~~
- 13 ~~public."]~~

14 SECTION 17. Section 195-9, Hawaii Revised Statutes, is
15 repealed.

16 ~~["§195-9 Natural area reserve fund; heritage program;~~
17 ~~established. (a) There is hereby established in the state~~
18 ~~treasury a special fund known as the natural area reserve fund~~
19 ~~to implement the purposes of this chapter, including the~~
20 ~~identification, establishment, and management of natural area~~
21 ~~reserves, the acquisition of private lands for new natural area~~



.B. NO.

1 ~~reserves, the operation of the heritage program, and the~~
2 ~~provision of matching funds for the natural area partnership~~
3 ~~program. The fund shall be administered by the department.~~

4 ~~(b) The fund shall consist of moneys received from any~~
5 ~~public or private sources. The fund shall be held separate and~~
6 ~~apart from all other moneys, funds, and accounts in the state~~
7 ~~treasury, except that any moneys received from the federal~~
8 ~~government or from private contributions shall be deposited and~~
9 ~~accounted for in accordance with conditions established by the~~
10 ~~agencies or persons from whom the moneys are received.~~
11 ~~Investment earnings credited to the assets of the fund shall~~
12 ~~become a part of the assets of the fund. Any balance remaining~~
13 ~~in the fund at the end of any fiscal year shall be carried~~
14 ~~forward in the fund for the next fiscal year."]~~

15 SECTION 18. Section 304A-2253, Hawaii Revised Statutes, is
16 repealed.

17 [~~"§304A-2253 Research and training revolving fund. (a)~~
18 ~~There is established a University of Hawaii research and~~
19 ~~training revolving fund into which shall be deposited one~~
20 ~~hundred per cent of the total amount of indirect overhead~~
21 ~~revenues generated by the university from research and training~~



.B. NO.

1 ~~programs. The board of regents is authorized to expend one~~
2 ~~hundred per cent of the revenues deposited in the fund for:~~

- 3 ~~(1) Research and training purposes that may result in~~
4 ~~additional research and training grants and contracts;~~
- 5 ~~(2) Facilitating research and training at the university;~~
6 ~~and~~
- 7 ~~(3) Further deposit into the discoveries and inventions~~
8 ~~special fund.~~

9 ~~(b) The annual report required to be made for this~~
10 ~~revolving fund shall include but not be limited to a breakdown~~
11 ~~of travel expenses.~~

12 ~~(c) Notwithstanding sections 304A-107 and [304A-2174] to~~
13 ~~the contrary, the board of regents or its designee, may~~
14 ~~establish a separate account within the research and training~~
15 ~~revolving fund for the purpose of providing advance funding to~~
16 ~~meet reimbursable costs incurred in connection with federally~~
17 ~~financed research and training projects. Any reimbursement~~
18 ~~received as a result of providing advance funding shall be~~
19 ~~deposited into the research and training revolving fund to be~~
20 ~~used for the purpose of meeting reimbursable costs incurred in~~
21 ~~connection with federally financed projects.~~



.B. NO.

1 ~~(d) Revenues deposited into the fund shall not be used as~~
2 ~~a basis for reducing any current or future budget request or~~
3 ~~allotment to the university unless the university requests such~~
4 ~~a reduction."]~~

5 SECTION 19. Section 321-234, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§321-234 Emergency medical services special fund. (a)~~
8 ~~There is established within the state treasury a special fund to~~
9 ~~be known as the emergency medical services special fund to be~~
10 ~~administered and expended by the department.~~

11 ~~(b) The moneys in the special fund shall be used by the~~
12 ~~department for operating a state comprehensive emergency medical~~
13 ~~services system including enhanced and expanded services, and~~
14 ~~shall not be used to supplant funding for emergency medical~~
15 ~~services authorized prior to [July 1, 2004].~~

16 ~~(c) Fees remitted pursuant to section 249-31, cigarette~~
17 ~~tax revenues designated under section 245-15, interest and~~
18 ~~investment earnings attributable to the moneys in the special~~
19 ~~fund, legislative appropriations, and grants, donations, and~~
20 ~~contributions from private or public sources for the purposes of~~
21 ~~the fund, shall be deposited into the special fund.~~



.B. NO.

1 ~~(d) The department shall submit an annual report to the~~
2 ~~legislature no later than twenty days prior to the convening of~~
3 ~~each regular session that outlines the receipts of, and~~
4 ~~expenditures from, the special fund."]~~

5 SECTION 20. Section 334-15, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§334-15 Mental health and substance abuse special fund;~~
8 ~~established. (a) There is established a special fund to be~~
9 ~~known as the mental health and substance abuse special fund into~~
10 ~~which shall be deposited all revenues and other moneys collected~~
11 ~~from certification programs and treatment services rendered by~~
12 ~~the mental health and substance abuse programs operated by the~~
13 ~~State. Notwithstanding any other law to the contrary, the~~
14 ~~department is authorized to establish separate accounts within~~
15 ~~the special fund for depositing moneys received from~~
16 ~~certification programs and from each mental health and substance~~
17 ~~abuse program. Moneys deposited into the respective accounts of~~
18 ~~each program shall be used for the payment of the operating~~
19 ~~expenses of the respective program.~~

20 ~~(b) The director shall submit a report to the legislature,~~
21 ~~not later than twenty days prior to the convening of each~~



1 ~~regular session, which identifies for each account in the~~
2 ~~special fund, the account balance and ceiling increase, any~~
3 ~~transfers and expenditures made, and the purposes of the~~
4 ~~expenditures."]~~

5 SECTION 21. Any unexpended or unencumbered funds remaining
6 in the land conservation fund, natural area reserve fund,
7 University of Hawaii research and training revolving fund,
8 emergency medical services special fund, or the mental health
9 and substance abuse special fund as of the close of business on
10 June 30, 2013, shall be transferred to the general fund.

11 SECTION 22. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 23. This Act shall take effect on June 30, 2013;
14 provided that the amendments made to sections 36-27(a) and 36-
15 30(a), Hawaii Revised Statutes, by this Act shall not be
16 repealed when those sections are reenacted on June 30, 2015, by
17 section 34 of Act 79, Session Laws of Hawaii 2009.

18

INTRODUCED BY: _____

.B. NO.

Report Title:

Special Funds; Revolving Funds; Auditor

Description:

Amends criteria to be used by the auditor in analyzing legislative bills proposing to establish new special or revolving funds. Clarifies that a special or revolving fund to be established or continued shall reflect a clear nexus between benefits sought and charges made upon program users or beneficiaries or between the program and the sources of revenue. Requires the auditor to review special funds, as well as revolving and trust funds, of designated governmental entities. Beginning 2014 and every five years thereafter, requires the auditor to review the special, revolving, and trust funds of the DOT and DOD. Reduces from \$3 to \$1 the drivers education fund underwriters fee and repeals the \$2 of the fee allocated to the DOE drivers education program and traffic safety education program. Repeals the land conservation fund, natural area reserve fund, UH research and training revolving fund, emergency medical services special fund, and mental health and substance abuse special fund, and transfers balances to the general fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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Responses of the Affected Agencies

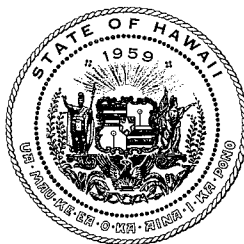
Comments on Agency Responses

On June 12, 2012, we transmitted numbered drafts of this report to the departments of Budget and Finance, Accounting and General Services, and the Attorney General. A copy of the transmittal letter to the Department of Budget and Finance is included as Attachment 1; similar letters were sent to the other departments. Both the departments of Budget and Finance and the Attorney General provided responses, included as Attachment 2 and Attachment 3, respectively. The Department of Accounting and General Services opted not to comment.

Overall, the Department of Budget and Finance agrees with our recommendations. However, it also asserts that we incorrectly state that non-general fund reports for the State Highway Fund and Harbors Special Fund were missing. But our report needs no correction because it reflects the situation at the time of our fieldwork. Following our exit conference, the department identified these two funds within files that bore no resemblance to the actual fund names—for instance, two files were labeled “State Operating Allotment” and another, “Revolving Funds.” The department’s response did not address why the statutory fund names were absent or why reports for other funds were non-existent. Therefore, our conclusion remains unchanged.

The Department of the Attorney General disagreed with our recommendation that a checklist be used in conducting analyses, asserted that a \$16 million fund transfer in 2009 was not precluded by a 2008 federal law, and disputed our conclusion that other fund transfers were prohibited by state law. However, we maintain that the use of a checklist could help to keep relevant laws from being overlooked. Regarding the \$16 million transfer, its timing is irrefutable—the transfer occurred a year after the federal act that precludes such transfers. Finally, we re-reviewed existing laws, and found no indication the doctrine of implied repeals was used to allow for transfers where prohibited by law. We added clarifying language to the text, but we stand by our report’s conclusions and recommendations.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

June 12, 2012

COPY

The Honorable Kalbert K. Young
Director
Department of Budget and Finance
No. 1 Capitol District Building
250 South Hotel Street
Honolulu, Hawaii 96813

Dear Mr. Young:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Study of the Transfer of Non-general Funds to the General Fund*. We ask that you telephone us by Friday, June 15, 2012, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, June 22, 2012.

The Department of the Attorney General, Department of Accounting and General Services, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Marion M. Higa'.

M. Higa
Marion M. Higa
State Auditor

Enclosures

NEIL ABERCROMBIE
GOVERNOR



KALBERT K. YOUNG
DIRECTOR

LUIS P. SALAVERIA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF ECONOMIC RECOVERY
AND REINVESTMENT (ARRA)

June 18, 2012

RECEIVED

2012 JUN 25 AM 9:17

OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

We appreciate the opportunity to review your draft report, Study of the Transfer of Non-General Funds to the General Fund.

In general, we agree with your recommendations. However, we would like to point out that your draft report incorrectly states (on Page 23, third paragraph) that the State Highway Fund and Harbors Special Fund reports were missing from the file of non-general fund reports.

Although these two funds were not clearly identified initially, non-general fund reports were on file that encompassed the two respective funds. This was pointed out to your staff via a series of e-mails (please refer to the attached e-mail exchange between our staff).

Thank you for the opportunity to review and respond to your report.

Aloha,

KALBERT K. YOUNG
Director of Finance

Attachment



RE: FW: Highways Fund 
Terri L Ohta to: Greg Wiles

06/06/2012 03:27 PM

From: Terri L Ohta/DBF/StateHiUS
To: Greg Wiles <gwiles@auditor.state.hi.us>

Hi Greg,
I contacted the various programs and have added their responses below in black font. I have not been able to get in touch with the DOE yet. Will try to get that to you soon.

During our meeting there was mention of a possible inappropriate transfer from a Federal Reimbursement Maximization Fund to the general fund. Are you able to tell me which Federal Reimbursement Maximization Fund that is? What is the legal authority (that establishes the fund)?
thank you,
terri

Greg Wiles

Terri, Many thanks for this - saved me from an e...

06/06/2012 08:12:45 AM

From: Greg Wiles <gwiles@auditor.state.hi.us>
To: "Terri.L.Ohta@hawaii.gov" <Terri.L.Ohta@hawaii.gov>
Date: 06/06/2012 08:12 AM
Subject: RE: FW: Highways Fund

Terri,

Many thanks for this – saved me from an embarrassing mistake. Can I trouble you regarding the other funds we found were missing?

These included:

DOT
Photo Enforcement Revolving Fund
Harbor Special Fund
Motorcycle and Motor Scooter Special Fund

These three reports are for the Harbor Special Fund:



NGF report - Dept of Transportation to the 2011 Legislature HArbors Special Funds.pdf

This report, the Highway Fund report, includes the data for both the Photo Enforcement Revolving Fund and the Motorcycle and Motor Scooter Special Fund.



NGF report - Dept of Transportation to the 2011 Legislature - HWY O&M funds.pdf

DOE

State Educational Facilities Improvement Special Fund

DBEDT

Kikala-Kēōkea Housing Revolving Fund - the funds in this account were being under-utilized and the fund balance was transferred to the general fund in FY 11 pursuant to Act 124, SLH 2011.

Those are the other funds we knew about, but couldn't find in the non-general fund reports filed in December 2010.

Thanks again,

Greg

Greg Wiles, Analyst, Office of the Auditor, (tel) 808-587-0831 (email) gwiles@auditor.state.hi.us

From: Terri.L.Ohta@hawaii.gov [mailto:Terri.L.Ohta@hawaii.gov]

Sent: Wednesday, June 06, 2012 7:40 AM

To: Greg Wiles

Subject: Re: FW: Highways Fund

Hi Greg,

Attached are files I pulled from the B&F website. They appear to be the Highways fund (non-general fund reports) that were submitted to the 2009, 2010, and 2011 Legislature. Hope that is helpful.

thank you,

terri

From: Greg Wiles <gwiles@auditor.state.hi.us>
To: "Terri.L.Ohta@hawaii.gov" <Terri.L.Ohta@hawaii.gov>
Date: 06/05/2012 03:27 PM
Subject: FW: Highways Fund

Terri,

Stan forwarded this to me. We looked at the non-general fund reports that were filed in December 2010 for the 2011 Legislature. The report for the Highways fund wasn't among the DOT reports.

I'm not 100 percent certain, but I think that also was the case for the December 2008 and 2009 filings as well.

Thanks again for all your help and alerting us to this.

Greg

Greg Wiles, Analyst, Office of the Auditor, (tel) 808-587-0831 (email) gwiles@auditor.state.hi.us

From: Stanley Kubota
Sent: Tuesday, June 05, 2012 7:02 AM
To: Greg Wiles
Subject: FW: Highways Fund

FYI

From: Terri.L.Ohta@hawaii.gov [mailto:Terri.L.Ohta@hawaii.gov]
Sent: Monday, June 04, 2012 2:21 PM
To: Stanley Kubota
Subject: Highways Fund

Hi Stan,

We found the attached non-general fund report (for submittal to the 2012 Legislature) for the Highways fund.

thank you,

Terri [attachment "DOC (18).PDF" deleted by Terri L Ohta/DBF/StateHiUS]

Report on Non-General Fund Information
for Submittal to the 2011 Legislature

Department: _____
 Prog ID(s): TRN 301-395
 Name of Fund: Revolving Funds
 Legal Authority: _____

Contact Name: Kendrick Au
 Phone: 587-1893
 Fund type (MOF): Special Funds
 Appropriation Acct. No. S-97-386-D to S-10-355-D

Intended Purpose:

Source of Revenues:

Current Program Activities/Allowable Expenses:

Purpose of Proposed Ceiling Increase (if applicable):

		Financial Data						
		FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
		(actual)	(actual)	(actual)	(estimated)	(estimated)	(estimated)	(estimated)
Appropriation Ceiling								
Beginning Cash Balance		26,645,315	25,939,523	25,098,983	25,107,866	22,580,935	22,580,935	22,580,935
Revenues		83,286	235,852	23,247,208				
Expenditures		26,047,673	24,377,616	23,238,325	26,020,756	31,622,923	31,651,866	31,610,123
Transfers								
List each by JV# and date								
Transfer to Increase Stores Acct			25,000					
Trfs for Debt Svc Reserve		25,258,595	23,276,224					
Amounts Held in Reserve per 7th Suppl Certificate					11,554,787			
Trfs for Debt Svc Reserve After Issuing 2010 Bonds					11,939,038	31,622,923	31,651,866	31,610,123
Net Total Transfers		25,258,595	23,301,224	0	23,493,825	31,622,923	31,651,866	31,610,123
Ending Cash Balance		25,939,523	25,098,983	25,107,866	22,580,935	22,580,935	22,580,935	22,580,935
Encumbrances		0	2,289	9,011				
Unencumbered Cash Balance		25,939,523	25,096,694	25,098,855	22,580,935	22,580,935	22,580,935	22,580,935
Additional Information:								
Amount Req. for Bond Conveyance								
Amount from Bond Proceeds								
Amount Held in CODs, Escrow Accounts, or Other Investments								

Report on Non-General Fund Information
for Submittal to the 2011 Legislature

Department: TRN
 Prog ID(s): TRN 301-395
 Name of Fund: State Operating Allotment
 Legal Authority: _____

Contact Name: Kendrick Au
 Phone: 587-1893
 Fund type (MOF) Special Funds
 Appropriation Act. No. S-87-055-D to S-10-397-D

Intended Purpose:

Source of Revenues:

Current Program Activities/Allowable Expenses:

Purpose of Proposed Ceiling Increase (if applicable):

	Financial Data						
	FY 2008 (actual)	FY 2009 (actual)	FY 2010 (actual)	FY 2011 (estimated)	FY 2012 (estimated)	FY 2013 (estimated)	FY 2014 (estimated)
Appropriation Ceiling	75,699,000	83,760,000	86,084,756	89,662,472	89,761,513	89,761,513	89,761,513
Beginning Cash Balance	133,961,544	129,717,982	119,486,130	90,120,941	83,397,198	59,380,942	47,237,942
Revenues	94,749,153	73,938,380	70,110,688	84,294,000	94,330,000	102,333,000	109,543,000
Expenditures	43,287,547	41,044,964	39,926,540	71,473,962	58,957,077	62,824,134	60,953,877
Transfers	8,989						
List each by JVF and date							
Loans Out to Fed CIP							
Trf to CIP Sch A	\$ 28,719,306	(1,605,000)					
Trf to DOT BUS Sch C	\$ 1,903,689	(28,719,306)					
JS 1125 9/11/07	\$ 699,708	(1,903,689)					
JS 1131 9/11/07	\$ 1,072,715	699,708					
Trf to DOT BUS Ref to Sch A		1,072,715					
Trf FY09 Increase Stores Acct JS0950		(1,578,018)	(1,540,337)				
Trf to Revolving Refer to Rev Bond Prnt Sched		(25,000)					
Trf to Revolving After Issuing 2010 Bonds		0					
FY09 Trf to Bond Funds for HMP JM1845		(16,735,000)					
Trf to State CIP Per Sch FY09 CIP Trf		(3,367,000)					
Trf to State CIP			(34,873,018)				
Trf to State CIP per FY10 Multi-Year			0	(15,000,000)	(15,000,000)	(20,000,000)	(20,000,000)
Reversion of Lapsed State CIP Funds FY09 JS1038		1,063,578					
Reversion of Lapsed State CIP Funds FY09 JS1039		792,396					
Trfs to Debt Svc Reserve		(23,276,224)	(23,165,694)				
Trfs to Debt Svc Reserve FY10 MultiYear				(11,939,036)	(31,622,923)	(31,651,866)	(31,610,123)
Other Transfer			29,711				
Loan Out to Federal CIP TIGER ARRA Pier 29				(9,312,745)	(12,766,256)		
Loans Out to Fed Operating Funds Appropriation Type A				(26,998)			
Repayment of FY10 Expenditures of Operating Funds Adv in FY10 to HMP				1,212,528			
Repayment of FY11 Expenditures of Operating Funds Adv in FY11 to HMP				150,224			
Repayment of Balance of \$16,735,000 FY10 State Operating Funds Advanced to HMP				15,372,248			
Net Total Transfers	(65,714,167)	(43,125,268)	(59,649,338)	(19,543,781)	(69,389,179)	(51,651,866)	(51,610,123)
Ending Cash Balance	129,717,982	119,486,130	90,120,941	83,397,198	59,380,942	47,237,942	44,216,942
Encumbrances	17,609,555	20,325,308	16,603,794				
Unencumbered Cash Balance	112,108,427	99,160,822	73,517,147	83,397,198	59,380,942	47,237,942	44,216,942
Additional Information:							
Amount Req. for Bond Conveyance							
Amount from Bond Proceeds			90,120,941				
Amount Held in CODs, Escrow Accounts, or Other Investments							

Report on Non-General Fund Information
for Submittal to the 2011 Legislature

Department: _____
 Prog ID(s): TRN 301-395
 Name of Fund: State CIP
 Legal Authority: _____

 Contact Name: Kendrick Au
 Phone: 587-1893
 Fund type (MOF): Special Funds
 Appropriation Acct. No. S-91-627-D to S-10-613-D

Intended Purpose:

Source of Revenues:

Current Program Activities/Allowable Expenses:

Purpose of Proposed Ceiling Increase (if applicable):

	Financial Data						
	FY 2008 (actual)	FY 2009 (actual)	FY 2010 (actual)	FY 2011 (estimated)	FY 2012 (estimated)	FY 2013 (estimated)	FY 2014 (estimated)
Appropriation Ceiling	25,565,000	15,000,000	30,000,000	15,000,000	15,000,000	20,000,000	20,000,000
Beginning Cash Balance	24,066,770	32,145,468	29,737,796	59,281,801	59,281,801	59,281,801	59,281,801
Revenues	1,500,000						
Expenditures	20,368,185	3,918,698	5,329,012	15,000,000	15,000,000	20,000,000	20,000,000
Transfers							
List each by JV# and date							
Trf from State Oper Allot							
FY08 Trf to CIP	28,719,306						
JS 1125 9/1/07	(699,708)						
JS 1131 9/1/07	(1,072,715)						
Trf fm State Operating to CIP Per Sch FY09 CIP Trf		3,367,000					
Reversion of Lapsed CIP Funds FY09 JS 1038		(1,063,578)					
Reversion of Lapsed CIP Funds FY09 JS 1039		(792,396)					
Trf fm State Operating to CIP per FY10 Multi-Year FY10 Trf to CIP				15,000,000	15,000,000	20,000,000	20,000,000
Net Total Transfers	26,946,883	1,511,026	34,873,018	15,000,000	15,000,000	20,000,000	20,000,000
Ending Cash Balance	32,145,468	29,737,796	59,281,801	59,281,801	59,281,801	59,281,801	59,281,801
Encumbrances	25,407,582	21,534,943	24,846,014				
Unencumbered Cash Balance	6,737,886	8,202,853	34,435,787	59,281,801	59,281,801	59,281,801	59,281,801

Additional Information:

Amount from Bond Proceeds							
Amount Held in CODs, Escrow Accounts, or Other Investments							

**Report on Non-General Fund Information
for Submittal to the 2011 Legislature**

Department: _____
 Prog ID(s): TRN 501-597
 Name of Fund: State Operating Allotment
 Legal Authority: HRS 243-4 HRS 249-31 HRS 249-33 ACT 223 SLH 1999

Contact Name: Jerry Sikorski
 Phone: 587-2256
 Fund type (MOF) Special Funds
 Appropriation Acct. No. S-10-321,010,020,026,029,032,035,036,039

Intended Purpose:

Source of Revenues:

Fuel Taxes, Vehicle Registration Fee, Motor Vehicle Weight, Rental Motor Vehicle Surcharge Tax, and other income.
 Current Program Activities/Allowable Expenses:
 Roadway - Design, ROW, Construction and Planning Programs.
 Purpose of Proposed Ceiling Increase (if applicable):

Financial Data							
	FY 2008 (actual)	FY 2009 (actual)	FY 2010 (actual)	FY 2011 (estimated)	FY 2012 (estimated)	FY 2013 (estimated)	FY 2014 (estimated)
Appropriation Ceiling	237,207,041	236,818,042	220,461,613	218,293,808	202,445,072	201,139,230	194,139,230
Beginning Cash Balance	167,820,497	161,346,935	148,558,961	99,008,082	131,219,840	136,097,343	144,519,656
Revenues	221,222,520	199,406,480	187,359,318	206,027,000	190,490,000	192,525,000	194,535,000
Expenditures	204,787,479	222,277,167	217,305,795	173,815,242	185,612,497	184,102,687	181,583,367
Transfers	(22,908,604)	10,082,713	(19,604,402)				
List each by JV# and date							
Net Total Transfers	(22,908,604)	10,082,713	(19,604,402)				
Ending Cash Balance	161,346,935	148,558,961	99,008,082	131,219,840	136,097,343	144,519,656	157,471,289
Encumbrances	141,502,182	134,643,050	128,681,533	145,779,085	147,965,771	150,185,258	152,438,037
Unencumbered Cash Balance	19,844,753	13,915,911	(29,673,452)	(14,559,245)	(11,868,429)	(5,665,602)	5,033,252

Additional Information:

Amount Req. for Bond Conveyance							
Amount from Bond Proceeds							
Amount Held in CODs, Escrow Accounts, or Other Investments							

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

June 22, 2012

RECEIVED

2012 JUN 22 PM 2:59

OFFICE OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawai'i 96813

Re: Study of the Transfer of Non-general Funds to the General Fund

Dear Ms. Higa:

Pursuant to your invitation to comment on your Study of the Transfer of Non-general Funds to the General Fund, the Department of the Attorney General respectfully submits the following comments to your recommendation that the Department of the Attorney General ("Department") should employ a more robust and methodical process of analyzing special and revolving funds for transfer of excess moneys to the general fund such as using a checklist similar to one that [the Auditor] developed.

While I appreciate the role of the Auditor in reviewing and commenting on agency's practices, I believe that you seriously misunderstand the role of the Attorney General in providing legal advice and, therefore, the analysis contained in your Report is flawed. Further, I note that your Report criticizes a specific instance in which you claim that our department gave inconsistent advice; however given the circumstances under which that advice was given, the checklist procedure that you recommend would not have made a difference.

Under section 28-3, Hawaii Revised Statutes: "The attorney general shall, when requested, give opinions upon questions of law submitted by the governor, the legislature, or its members, or the heads of any department." As I am sure you have discovered in your review of each of the 729 executive branch special accounts, providing the legal advice in light of the *Hawaii Insurers Council v. Linda Lingle, Governor, State of Hawai'i, et al.* decision, is a daunting task. While our department strives to provide the best legal analysis that it can, your recommendation fails to understand the context in which our advice has often been requested and provided. Often, the requests are made during the legislative session when a bill is being heard by a committee and questions are raised as to whether monies from a special fund can be transferred to the general fund. Sometimes, these questions are raised at the hearing itself, giving

no notice or opportunity for the attorney attending the hearing to research or consult with others in the office before providing a response. At other times requests are made by email or telephone message, again with a request for a quick response so that the legislature can make decisions on pending legislation. In the ideal situation, a written request would be submitted with a timeline that allows our Department to research and vet the advice through various deputies and committees within our office so that we can provide the best advice that we can.

According to your report, you stated that the legal review process used by the Attorney General needed a more systematic and structured approach and recommended the use of a checklist.

While a checklist is helpful, its use can only be relevant if there is sufficient time to process each item in a measured fashion. It is also not a substitute for analysis and decisionmaking. Johnson v. State, 662 P.2d 981 (Alaska.App. 1983). Your focus on a checklist as the solution to this matter disregards the notion of measured analysis, which takes time, and the experience of the deputy attorney general reviewing the propriety of such transfers. See In re Allen, 2007 WL 1747018 (Bkrcty.S.D.Tex. June 18, 2007)(A checklist by itself "ignores the fact that there is simply no substitute for a thoughtful, conscientious attorney reading the pleading and asking whether a pleading makes sense").

I do not believe that you appreciate the time constraints under which our legal analysis regarding the transfer of non-general funds to the general fund have been made, oftentimes with little opportunity to obtain knowledge of the actual administrative function that the funds support and how they have been operating. A legal analysis of a matter requires consideration of the relevant facts and the applicable laws. "Rhetoric is not a substitute for cogent legal analysis, which is, at a minimum, a discussion of the appropriate laws applied to the relevant facts." Dixon et al v. Metropolitan Atlantic Rapid Transit Authority et al, 242 Ga.App. 262, 529 S.E.2d 398 (2000).

I stand by my department's analysis of the matters presented for our legal advice.

You have indicated that transfers may have occurred in violation of federal law. In particular, you noted that Act 79, Session Laws of Hawaii ("SLH") 2009, authorized the Director of Finance to transfer \$16,000,000 from the Wireless Enhanced 911 Special Fund to the general fund. The 911 funds were transferred to the general fund on June 18, 2009. Your Report focuses on one out of many, many instances in which we have given advice on transfers of funds. While we gave that advice based on what appears to be in hindsight incomplete information, we do not think it changes the conclusion.

The Department of the Attorney General testified that under the federal New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, (911 Act), 911 fees are "obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee

or charge." The 911 fees were adopted by the Legislature through Act 159, SLH 2004, as codified in section 138-4, Hawaii Revised Statutes ("HRS"), with the use of such fees being limited for the intended purposes of the 911 Special Fund. The 911 Act appears to preclude any diversion of the 911 funds to other purposes which are not authorized by the state statute or regulation establishing those fees such as a transfer to the general fund. (Pub. L. No. 110-283, 122 Stat. 2622 (2008)).

The 911 Act became effective on July 23, 2008 and the transfer of 911 funds took place on June 18, 2009. No objection based on the 911 Act was made at the time regarding the transfer. Neither the Wireless Enhanced 911 Board nor the State was made aware of the prohibition on transfer in the 911 Act until 2010.

The Wireless Enhanced 911 Board, established by section 138-2, HRS, is responsible for the management of the 911 Special Fund. The Board was unaware of the 911 Act during the 2009 legislative session when Act 79 was being considered, and thus did not include mention of the 911 Act in its testimony opposing the transfer of the 911 funds to the general fund. It was not until the February 11, 2010 Board meeting when pending legislation affecting the 911 Special Fund was discussed that the Board first learned of the 911 Act through a subcontractor who mentioned that he thought federal law prohibited the use of 911 funds for other purposes. Until that February meeting, no one connected to the Board was aware of the 911 Act. Based on the facts before us, there is no evidence that the transfer was a willful and knowing violation of the law. We understand that other states have similarly transferred and used 911 funds for non-911 purposes.

In addition to our belief that there was no willful and knowing violation of the law, we believe an argument may be made that even though 911 funds were transferred to the general fund after the effective date of the 911 Act, July 23, 2008, because the 911 Act does not have retroactive application, it can be asserted that the 911 funds transferred on June 18, 2009 were funds collected prior to July 23, 2008, and therefore the transfer of those funds was not precluded by the 911 Act. The 911 Special Fund's balance as of June 30, 2008 was \$22,013,463.56. In the interim between June 30, 2008 and June 30, 2009, \$21,721,753.75 (including the \$16,000,000 at issue) was expended from the 911 Special Fund, leaving a balance of \$291,709.81 as of June 30, 2009 from the original June 30, 2008 balance.

Also, your Report states that transfers occurred even though prohibited by state law. Despite our explanation that the Legislature was permitted to take such actions under the doctrine of implied repeals, section 1-9, HRS, you make this incorrect conclusion.

Under the doctrine of implied repeals, if later legislative enactments and an "earlier statutory provision dealing with the same subject cannot be harmonized, the new provision should prevail as the latest declaration of the legislative will." In re Castro, 44 Haw. 455,461, 355 P.2d 46 (1960); see also section 1-9, HRS.

The Honorable Marion M. Higa

June 22, 2012

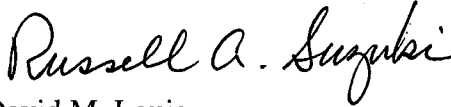
Page 4

In this instance, while you cited the Captive Insurance Administrative Fund and the Judiciary Computer System Special Fund as funds whose statutes provided that moneys in these funds shall not revert to the general fund, the Legislature's appropriation of such moneys out of these funds represents an implied repeal of the statutory provisions prohibiting the reversion of moneys to the general fund and represents a clear and explicit statement of the Legislature's will. I note that even the checklist you propose in your Report, the Non-general Fund Legal Checklist, provides that an implied repeal is a factor that can be used as a basis to allow a transfer.

In closing, I do acknowledge that the responsibility to conduct the legal analyses on this important issue should not rest on the shoulders of one particular deputy in my office. To this end I intend to institute training so that all deputies whose clients manage special funds are fully versed with the holding of the *Hawaii Insurers Council* case and can share the responsibilities of providing proper advice to the Legislature and state agencies when called upon to do so.

I hope you will take my comments into account and modify your Report. If you would like to discuss this matter further, I am more than willing to meet with you at your convenience.

Very truly yours,


for David M. Louie
Attorney General