

JAN 25 2023

A BILL FOR AN ACT

RELATING TO THE DRUG AND ALCOHOL TOXICOLOGY TESTING LABORATORY.

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

1 SECTION 1. Act 196, Session Laws of Hawaii 2021,
2 established the state drug and alcohol toxicology testing
3 laboratory special fund to support a state drug and alcohol
4 toxicology testing laboratory; specified the moneys in the state
5 highway fund may be expended for the cost of establishing a
6 state drug and alcohol toxicology testing laboratory; required
7 that fines imposed on offenders convicted of certain offenses
8 involving operating a vehicle under the influence of an
9 intoxicant be deposited into the state drug and alcohol
10 toxicology testing laboratory special fund; and required the
11 department of health to submit reports to the legislature on
12 expenditures from the state drug and alcohol toxicology testing
13 laboratory special fund.

14 Act 119, Session Laws of Hawaii 2022, appropriated moneys
15 from the state highway fund to the state drug and alcohol
16 toxicology testing laboratory special fund for fiscal year 2022-
17 2023; and authorized the department of health to expend funds
18 from the state drug and alcohol toxicology testing laboratory

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1 special fund for the establishment of the state drug and alcohol
2 toxicology testing laboratory.

3 Act 120, Session Laws of Hawaii 2022, appropriated moneys
4 from the state highway fund to the state drug and alcohol
5 toxicology testing laboratory special fund for fiscal year 2021-
6 2022; and authorized the department of health to expend these
7 funds from the state drug and alcohol toxicology testing
8 laboratory special fund for the establishment of the state drug
9 and alcohol toxicology testing laboratory.

10 However, there is an immediate and urgent need for blood
11 alcohol testing and the department of health cannot fulfill
12 these services at this time. The city and county of Honolulu
13 emergency services department currently can conduct blood
14 alcohol testing for all counties and will be able to conduct
15 drug testing for impaired driving cases in the future if
16 provided the funding.

17 The purposes of this Act are to:

- 18 (1) Amend section 248-9, Hawaii Revised Statutes, to
19 specify that moneys in the state highway fund may be
20 expended for the cost of establishing and maintaining
21 a drug and alcohol toxicology testing laboratory;

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- 1 (2) Amend section 291E-8, Hawaii Revised Statutes, to
2 specify that moneys in the state drug and alcohol
3 toxicology testing laboratory special fund shall be
4 administered by the department of transportation and
5 expended by the department of health and/or the city
6 and county of Honolulu emergency services department
7 to support a drug and alcohol toxicology testing
8 laboratory;
- 9 (3) Amend references to the state drug and alcohol
10 toxicology testing laboratory special fund;
- 11 (4) Appropriate moneys from the state highway fund to the
12 drug and alcohol toxicology testing laboratory special
13 fund for fiscal years 2023-2024 and 2024-2025; and
- 14 (5) Authorize the department of health and/or the city and
15 county of Honolulu emergency services department to
16 expend funds from the drug and alcohol toxicology
17 testing laboratory special fund for the establishment
18 and maintenance of the drug and alcohol toxicology
19 testing laboratory.

20 SECTION 2. Section 248-9, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

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1 "(a) Moneys in the state highway fund may be expended for
2 the following purposes:

3 (1) To pay the costs of operation, maintenance, and repair
4 of the state highway system, including without
5 limitation, the cost of equipment and general
6 administrative overhead;

7 (2) To pay the costs of acquisition, including real
8 property and interests therein; planning; designing;
9 construction; and reconstruction of the state highway
10 system and bikeways, including without limitation, the
11 cost of equipment and general administrative overhead;

12 (3) To reimburse the general fund for interest on and
13 principal of general obligation bonds issued to
14 finance highway projects where the bonds are
15 designated to be reimbursable out of the state highway
16 fund;

17 (4) To pay the costs of construction, maintenance, and
18 repair of county roads; provided that none of the
19 funds expended on a county road or program shall be
20 federal funds when expenditure would cause a violation
21 of federal law or a federal grant agreement; and

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1 (5) To pay the cost of establishing and maintaining a
2 [~~state~~] drug and alcohol testing laboratory that is
3 intended to support the prosecution of offenses
4 relating to operation of a motor vehicle while under
5 the influence of an intoxicant."

6 SECTION 3. Section 291E-8, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~f~~]§291E-8[~~}]~~ [~~State-drug~~] Drug and alcohol toxicology
9 testing laboratory special fund; established. (a) There is
10 established in the state treasury a [~~state~~] drug and alcohol
11 toxicology testing laboratory special fund, into which shall be
12 deposited:

- 13 (1) All fines collected pursuant to sections [~~}]~~291E-
14 61(b)(2)(E) [~~}]~~, 291E-61.5(c)(2)(C), and 291E-62(c);
15 (2) Moneys appropriated by the legislature to the fund;
16 (3) Other grants and gifts made to the fund; and
17 (4) Any income and interest earned on the balance of the
18 fund.

19 (b) Moneys in the [~~state~~] drug and alcohol toxicology
20 testing laboratory special fund shall be administered by the
21 department of transportation and expended by the department of

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1 health and/or appropriated as a grant-in-aid to city and county
2 of Honolulu emergency services department to support a [state]
3 drug and alcohol toxicology testing laboratory."

4 SECTION 4. Section 291E-61, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) A person committing the offense of operating a
7 vehicle under the influence of an intoxicant shall be sentenced
8 without possibility of probation or suspension of sentence as
9 follows:

10 (1) Except as provided in paragraph (4), for the first
11 offense, or any offense not preceded within a ten-year
12 period by a conviction for an offense under this
13 section or section 291E-4(a):

14 (A) A fourteen-hour minimum substance abuse
15 rehabilitation program, including education and
16 counseling, or other comparable programs deemed
17 appropriate by the court;

18 (B) Revocation of license to operate a vehicle for no
19 less than one year and no more than eighteen
20 months;

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- 1 (C) Installation during the revocation period of an
2 ignition interlock device on all vehicles
3 operated by the person;
- 4 (D) Any one or more of the following:
- 5 (i) Seventy-two hours of community service work;
6 (ii) No less than forty-eight hours and no more
7 than five days of imprisonment; or
8 (iii) A fine of no less than \$250 and no more than
9 \$1,000;
- 10 (E) A surcharge of \$25 to be deposited into the
11 neurotrauma special fund; and
- 12 (F) A surcharge, if the court so orders, or up to \$25
13 to be deposited into the trauma system special
14 fund;
- 15 (2) For an offense that occurs within ten years of a prior
16 conviction for an offense under this section:
- 17 (A) A substance abuse program of at least thirty-six
18 hours, including education and counseling, or
19 other comparable programs deemed appropriate by
20 the court;

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- 1 (B) Revocation of license to operate a vehicle for no
2 less than two years and no more than three years;
- 3 (C) Installation during the revocation period of an
4 ignition interlock device on all vehicles
5 operated by the person;
- 6 (D) Either one of the following:
- 7 (i) No less than two hundred forty hours of
8 community service work; or
- 9 (ii) No less than five days and no more than
10 thirty days of imprisonment, of which at
11 least forty-eight hours shall be served
12 consecutively;
- 13 (E) A fine of no less than \$1,000 and no more than
14 \$3,000, to be deposited into the [~~state~~] drug and
15 alcohol toxicology testing laboratory special
16 fund;
- 17 (F) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund; and
- 19 (G) A surcharge of up to \$50, if the court so orders,
20 to be deposited into the trauma system special
21 fund;

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- 1 (3) In addition to a sentence imposed under paragraphs (1)
2 and (2), any person eighteen years of age or older who
3 is convicted under this section and who operated a
4 vehicle with a passenger, in or on the vehicle, who
5 was younger than fifteen years of age, shall be
6 sentenced to an additional mandatory fine of \$500 and
7 an additional mandatory term of imprisonment of forty-
8 eight hours; provided that the total term of
9 imprisonment for a person convicted under this
10 paragraph shall not exceed the maximum term of
11 imprisonment provided in paragraph (1) or (2), as
12 applicable. Notwithstanding paragraphs (1) and (2),
13 the revocation period for a person sentenced under
14 this paragraph shall be no less than two years;
- 15 (4) In addition to a sentence imposed under paragraph (1),
16 for a first offense under this section, or an offense
17 not preceded within a ten-year period by a conviction
18 for an offense, any person who is convicted under this
19 section and was a highly intoxicated driver at the
20 time of the subject incident shall be sentenced to an
21 additional mandatory term of imprisonment for forty-

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1 eight consecutive hours and an additional mandatory
2 revocation period of six months; provided that the
3 total term of imprisonment for a person convicted
4 under this paragraph shall not exceed the maximum term
5 of imprisonment provided in paragraph (1).

6 Notwithstanding paragraph (1), the revocation period
7 for a person sentenced under this paragraph shall be
8 no less than eighteen months;

9 (5) In addition to a sentence under paragraph (2), for an
10 offense that occurs within ten years of a prior
11 conviction for an offense under this section, any
12 person who is convicted under this section and was a
13 highly intoxicated driver at the time of the subject
14 incident shall be sentenced to an additional mandatory
15 term of imprisonment of ten consecutive days and an
16 additional mandatory revocation period of one year;
17 provided that the total term of imprisonment for a
18 person convicted under this paragraph shall not exceed
19 the maximum term of imprisonment provided in paragraph
20 (2), as applicable. Notwithstanding paragraph (2),

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1 the revocation period for a person sentenced under
2 this paragraph shall be no less than three years;
3 (6) A person sentenced pursuant to paragraph (1)(B) may
4 file a motion for early termination of the applicable
5 revocation period if the person:
6 (A) Was not sentenced to any additional mandatory
7 revocation period pursuant to paragraph (3) or
8 (4);
9 (B) Actually installed and maintained an ignition
10 interlock device on all vehicles operated by the
11 person for a continuous period of six months,
12 after which the person maintained the ignition
13 interlock device on all vehicles operated by the
14 person for a continuous period of three months
15 without violation;
16 (C) Includes with [~~their~~] the person's motion for
17 early termination a certified court abstract
18 establishing that [~~they were~~] the person was not
19 sentenced to any additional mandatory revocation
20 period pursuant to paragraph (3) or (4);

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1 (D) Includes with [~~their~~] the person's motion for
2 early termination a certified statement from the
3 director of transportation establishing that:

4 (i) The person installed and maintained an
5 ignition interlock device on all vehicles
6 operated by the person for a continuous
7 period of six months; and

8 (ii) After the six-month period, the person
9 maintained the ignition interlock device on
10 all vehicles operated by the person for a
11 continuous period of three months without
12 violation; and

13 (E) Has complied with all other sentencing
14 requirements.

15 Nothing in this paragraph shall require a court to
16 grant early termination of the revocation period if
17 the court finds that continued use of the ignition
18 interlock device will further the person's
19 rehabilitation or compliance with this section;

20 (7) If the person demonstrates to the court that the
21 person:

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- 1 (A) Does not own or have the use of a vehicle in
2 which the person can install an ignition
3 interlock device during the revocation period; or
4 (B) Is otherwise unable to drive during the
5 revocation period,
6 the person shall be prohibited from driving during the
7 period of applicable revocation provided in paragraphs
8 (1) to (5); provided that the person shall be
9 sentenced to the maximum license revocation period,
10 the court shall not issue an ignition interlock permit
11 pursuant to subsection (i), and the person shall be
12 subject to the penalties provided by section 291E-62
13 if the person drives during the applicable revocation
14 period; and
15 (8) For purposes of this subsection, "violation" means:
16 (A) Providing a sample of .04 or more grams of
17 alcohol per two hundred ten liters of breath when
18 starting the vehicle, unless a subsequent test
19 performed within ten minutes registers a breath
20 alcohol concentration lower than .02 and the

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1 digital image confirmed the same person provided
2 both samples;

3 (B) Providing a sample of .04 or more grams of
4 alcohol per two hundred ten liters of breath on a
5 rolling retest, unless a subsequent test
6 performed within ten minutes registers a breath
7 alcohol concentration lower than .02 and the
8 digital image confirms the same person provided
9 both samples;

10 (C) Failing to provide a rolling retest, unless an
11 acceptable test is performed within ten minutes;

12 (D) Violating section 291E-66; or

13 (E) Failing to provide a clear photo of the person
14 when the person blows into the ignition interlock
15 device."

16 SECTION 5. Section 291E-61.5, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:

18 "(c) For a conviction under this section, the sentence
19 shall be either:

20 (1) An indeterminate term of imprisonment of five years;

21 or

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- 1 (2) A term of probation of five years, with conditions to
2 include:
- 3 (A) Mandatory revocation of license to operate a
4 vehicle for a period no less than three years but
5 no more than five years, with mandatory
6 installation of an ignition interlock device in
7 all vehicles operated by the respondent during
8 the revocation period;
- 9 (B) No less than ten days imprisonment, of which at
10 least forty-eight hours shall be served
11 consecutively;
- 12 (C) A fine of no less than \$2,000 but no more than
13 \$5,000, to be deposited into the [state] drug and
14 alcohol toxicology testing laboratory special
15 fund;
- 16 (D) Referral to a certified substance abuse counselor
17 as provided in subsection (e);
- 18 (E) A surcharge of \$25 to be deposited into the
19 neurotrauma special fund; and

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1 (F) A surcharge of up to \$50 to be deposited into the
2 trauma system special fund if the court so
3 orders.

4 In addition to the foregoing, any vehicle owned and operated by
5 the person committing the offense shall be subject to forfeiture
6 pursuant to chapter 712A."

7 SECTION 6. Section 291E-62, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) Any person convicted of violating this section shall
10 be sentenced as follows without possibility of probation or
11 suspension of sentence:

12 (1) For a first offense, or any offense not preceded
13 within a ten-year period by conviction for an offense
14 under this section, section 291E-66, or section 291-
15 4.5 as that section was in effect on December 31,
16 2001:

17 (A) A term of imprisonment of no less than three
18 consecutive days and no more than thirty days;

19 (B) A fine of no less than \$250 and no more than
20 \$1,000, to be deposited into the [state] drug and

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1 alcohol toxicology testing laboratory special
2 fund; and

3 (C) Revocation of license and privilege to operate a
4 vehicle for an additional year;

5 (2) For an offense that occurs within ten years of a prior
6 conviction for an offense under this section, section
7 291E-66, or section 291-4.5 as that section was in
8 effect on December 1, 2001:

9 (A) Thirty days imprisonment;

10 (B) A \$1,000 fine, to be deposited into the [state]
11 drug and alcohol toxicology testing laboratory
12 special fund; and

13 (C) Revocation of license and privilege to operate a
14 vehicle for an additional two years;

15 (3) For an offense that occurs within ten years of two or
16 more prior convictions for offenses under this
17 section, section 291E-66, or section 291-4.5 as that
18 section was in effect on December 31, 2001, or any
19 combination thereof:

20 (A) No less than six months and no more than one year
21 imprisonment;

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1 (B) A \$2,000 fine, to be deposited into the [state]
2 drug and alcohol toxicology testing laboratory
3 special fund; and

4 (C) Permanent revocation of the person's license and
5 privilege to operate a vehicle; and

6 (4) In addition to a sentence imposed under paragraphs (1)
7 through (3), any person who is convicted under this
8 section and also convicted under section 291E-61 or
9 291E-61.5, for an offense based on the same incident
10 or arising from the same episode, shall be sentenced
11 to terms of imprisonment for both offenses, which
12 shall be served consecutively."

13 SECTION 7. Section 706-643, Hawaii Revised Statutes, is
14 amended by amending subsection (2) to read as follows:

15 "(2) All fines and other final payments received by a
16 clerk or other officer of a court shall be accounted for, with
17 the names of persons making payment, and the amount and date
18 thereof, being recorded. All such funds shall be deposited with
19 the director of finance to the credit of the general fund of the
20 State. With respect to fines and bail forfeitures that are
21 proceeds of the wildlife revolving fund under section 183D-10.5;

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1 fines that are proceeds of the [state] drug and alcohol
2 toxicology testing laboratory special fund under sections [~~291E-~~
3 ~~61(b)(2)(C),~~] 291E-61(b)(2)(E), 291E-61.5(c)(2)(C), and 291E-
4 62(c); and fines that are proceeds of the compliance resolution
5 fund under sections 26-9(o) and 431:2-410, the director of
6 finance shall transmit the fines and forfeitures to the
7 respective funds."

8 SECTION 8. There is appropriated out of the state highway
9 fund of the State of Hawaii, the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2023-2024 and \$
11 or so much as necessary for fiscal year 2024-2025 for deposit
12 into the drug and alcohol toxicology testing laboratory special
13 fund established by section 291E-8, Hawaii Revised Statutes.

14 The sum appropriated shall be administered by the
15 department of transportation and expended by the department of
16 health and/or appropriated as a grant-in-aid to the city and
17 county of Honolulu emergency services department for the
18 purposes of this Act.

19 SECTION 9. There is appropriated out of the drug and
20 alcohol toxicology testing laboratory special fund the sum of

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1 § or so much thereof as may be necessary for fiscal
2 year 2023-2024 and \$ or so much as necessary for
3 fiscal year 2024-2025 for the establishment and maintenance of a
4 drug and alcohol toxicology testing laboratory, including the
5 costs of laboratory instrumentation, facility renovation and
6 security upgrades, office furniture and supplies, laboratory
7 equipment, and other purposes that support a drug and alcohol
8 toxicology testing laboratory.

9 The sums appropriated shall be expended by the department
10 of health and/or appropriated as a grant-in-aid to the city and
11 county of Honolulu emergency services department for the
12 purposes of this Act.

13 SECTION 10. Any provision of this Act to the contrary
14 notwithstanding, the appropriation authorized under this Act
15 shall not lapse at the end of the fiscal year for which the
16 appropriation is made. Any unexpended and unencumbered balance
17 of the appropriation made in this Act as of the close of
18 business on June 30, 2025, shall lapse back to the credit of the
19 state highway fund.

20 SECTION 11. No later than thirty days prior to the
21 convening of each of the regular sessions of 2025 and 2026, the

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1 department of health and/or the city and county of Honolulu
2 emergency services department shall submit a report to the
3 legislature on the expenditures made from the drug and alcohol
4 toxicology testing laboratory special fund, including the
5 amounts expended and the purpose of each expenditure as it
6 relates to supporting the drug and alcohol toxicology testing
7 laboratory.

8 SECTION 12. The drug and alcohol toxicology testing
9 laboratory special fund established in section 291E-8, Hawaii
10 Revised Statutes, shall be abolished and repealed on June 30,
11 2028, and any unencumbered remaining balances shall lapse back
12 to the credit of the state highway fund.

13 SECTION 13. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 14. This Act shall take effect upon its approval.

16

17

18

INTRODUCED BY:



19

BY REQUEST

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Report Title:

Drug and Alcohol Toxicology Testing Laboratory; Special Fund; Appropriation

Description:

Makes an appropriation for the Department of Transportation Highways Division to deposit state highway funds to the drug and alcohol toxicology testing laboratory special fund in fiscal year 2023-2024 and fiscal year 2024-2025; authorizes the Department of Health and/or appropriate a grant-in-aid to the City and County of Honolulu Emergency Services Department to expend funds from the drug and alcohol toxicology testing laboratory special fund in fiscal year 2023-2024 and fiscal year 2024-2025; amends references to the state drug and alcohol toxicology testing laboratory special 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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JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO THE DRUG AND ALCOHOL TOXICOLOGY TESTING LABORATORY.

PURPOSE: To (1) amend section 248-9, Hawaii Revised Statutes (HRS), to specify that moneys in the state highway fund may be expended for the cost of establishing and maintaining a drug and alcohol toxicology testing laboratory;

(2) amend section 291E-8, HRS, to specify that moneys in the drug and alcohol toxicology testing laboratory special fund shall be administered by the Department of Transportation and expended by the Department of Health and/or appropriated as a grant-in-aid to the City and County of Honolulu Emergency Services Department to support a drug and alcohol toxicology testing laboratory;

(3) rename the state drug and alcohol toxicology testing laboratory special fund to the "drug and alcohol toxicology testing laboratory special fund" and amend references to the state drug and alcohol toxicology testing laboratory special fund to match the amended name;

(4) appropriate moneys from the state highway fund to the drug and alcohol toxicology testing laboratory special fund for fiscal years 2023-2024 and 2024-2025; and

(5) authorize the Department of Health and/or appropriate a grant-in-aid to the City and County of Honolulu Emergency Services Department to expend funds from the drug and alcohol toxicology testing laboratory special fund for the establishment and maintenance of the drug and alcohol testing laboratory.

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MEANS: Amend sections 248-9(a), 291E-8, 291E-61(b), 291E-61.5(c), 291E-62(c), and 706-643(2), Hawaii Revised Statutes.

JUSTIFICATION: Act 196, Session Laws of Hawaii 2021, established the state drug and alcohol toxicology testing laboratory special fund to support a state drug and alcohol toxicology testing laboratory; specified the moneys in the state highway fund may be expended for the cost of establishing a state drug and alcohol toxicology testing laboratory; required that fines imposed on offenders convicted of certain offenses involving operating a vehicle under the influence of an intoxicant be deposited into the state drug and alcohol toxicology testing laboratory special fund; and required the Department of Health to submit reports to the legislature on expenditures from the state drug and alcohol toxicology testing laboratory special fund.

Act 119 and Act 120, Session Laws of Hawaii 2022, appropriated moneys from the state highway fund to the state drug and alcohol toxicology testing laboratory special fund for fiscal years 2021-2022 and 2022-2023, respectively, and authorized the Department of Health to expend funds from the state drug and alcohol toxicology testing laboratory special fund for the establishment of the state drug and alcohol toxicology testing laboratory.

However, there is an immediate and urgent need for blood alcohol testing. Whereas the Department of Health will need years to establish a state lab, the City and County of Honolulu Emergency Services Department is able to readily conduct blood alcohol testing for all counties if the City is provided with funding to expand the City's lab and resources. The City's lab will be able to conduct drug testing for the impaired driving cases in the future and funding is needed to

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authorize the Honolulu Emergency Services Department to provide the testing.

To remedy these issues, the purpose of this bill is to add the City and County of Honolulu Emergency Services Department in the drug and alcohol toxicology testing laboratory special fund statute and authorizations. In addition, the bill will delete all "state" reference from the special fund name to allow for a county agency to oversee the laboratory.

Impact on the public: Blood alcohol testing is needed to support adjudication of impaired driving cases, which, in turn, keeps Hawaii's roadways safe from impaired drivers.

Impact on the department and other agencies: There are currently no other laboratories in Hawaii willing to conduct blood alcohol testing for impaired driving cases. This bill will provide the City and County of Honolulu Emergency Services Department the funding and resources necessary to conduct blood alcohol testing for all counties. Without this funding, the City and County of Honolulu Emergency Services Department will not be able to provide this service to neighbor island law enforcement agencies and prosecutors' offices.

GENERAL FUND: None.

OTHER FUNDS: State highway fund and state drug and alcohol toxicology testing laboratory special fund.

PPBS PROGRAM DESIGNATION: TRN 595.

OTHER AFFECTED AGENCIES: City and County of Honolulu Emergency Services Department, Department of Health, county police departments, Sheriff Division, and county prosecuting attorneys.

EFFECTIVE DATE: Upon approval.