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WRITTEN ONLY

TESTIMONY BY SETH S. COLBY, Ph.D.
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2808

March 2, 2026
10:00 A.M.
Room 211 and Videoconference

RELATING TO THE BUDGET

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 2808 which establishes a defeasement trust fund to take all actions necessary to defease tax-exempt bonds to allow the private use of state facilities financed by tax-exempt bonds and appropriates general revenues to be deposited into the defeasement trust fund for the defeasement of certain tax-exempt bonds.

B&F notes that there is approximately \$3.22 billion of outstanding tax-exempt and tax-advantaged general obligation bonds that have funded thousands of projects across multiple series of bonds. The cost to defease the bonds includes depositing funds into an escrow account to cover all the outstanding principal and also the interest payments up to each bond series call date.

Thank you for your consideration of our comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:
S.B. NO. 2808, RELATING TO THE BUDGET.

BEFORE THE:
SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, March 2, 2026 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Ian Robertson, Deputy Attorney General

Chair Dela Cruz and Members of the Committee:

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

The purpose of this bill is to establish the defeasement trust fund to take all actions necessary to defease tax-exempt bonds to allow the private use of state facilities financed by tax-exempt bonds and to terminate that fund after the defeasement is complete.

Black's Law Dictionary (12th ed. 2024) defines "defeasance", in part, as "an annulment or abrogation." In the context of this bill, defeasance of a tax-exempt bond would contemplate retiring bonds, which would involve paying bond holders the par value of their bonds.

Defeasance of tax-exempt bonds to an extent that allows private use of State facilities that have been financed by tax-exempt bonds would likely require defeasance of **all** of the tax-exempt bonds that have been used to finance State facilities. The scope of such a defeasance would be significant.

Allowing the private use of State facilities that were financed by tax-exempt bonds may impact the tax-exempt status of the bonds. Section 103 of the Internal Revenue Code (26 U.S.C. section 103) provides in relevant part:

Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(b) Exceptions.--**Subsection (a) shall not apply to--**

(1) Private activity bond which is not a qualified bond.--Any private activity bond which is not a qualified bond (within the meaning of section 141).

Thus, a bond construed as a private activity bond will not be exempt from federal income tax.

Section 141 of the Internal revenue code (26 U.S.C. section 141) ("section 141") provides in relevant part:

"private activity bond" means any bond issued as part of an issue ... which meets ...**the private business use test** ... and ... the private security or payment test ... or which meets the private loan financing test[.]

(Emphases added). Accordingly, any amount of private business in a State facility that exceeds the limited thresholds permitted under these section 141 tests would potentially cause tax-exempt bonds issued to finance that facility to lose their tax-exempt status.

Assessing the specific impacts of a bond defeasance necessary to allow private activity in State facilities, evaluating the relevant bonds, and determining the cost of retiring those bonds would require consultation with qualified bond counsel.

We respectfully ask the Committee to consider our comments.