

## ACT 178

H.B. NO. 2827

A Bill for an Act Relating to the State Finances.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§28-   Litigation deposits trust fund.** (a) There is created in the state treasury the litigation deposits trust fund. There shall be deposited into this fund all moneys received through any civil action in which the State is a party where the settlement amount is \$100,000 or higher, except for those actions involving departments able to procure their own legal services as provided for by section 28-8.3 and where no other state statute or court order specifically provides for the deposit of moneys received through the action.

(b) The fund shall be administered by the department of the attorney general. The department shall maintain accounting records of fund moneys, including subsidiary records of individual litigation deposits and disbursements thereof. Moneys in the fund may be separated into subsidiary accounts; provided that one subsidiary account shall not be commingled with moneys from another account except for deposit or investment purposes under subsection (d).

(c) Disbursements from each account maintained under subsection (b) may include attorney’s fees and other necessary expenses that the department determines to be reasonable and directly related to prosecution of the civil action for which the account is maintained; provided that in the case of moneys deposited as a result of recoveries by an agency to which a non-general fund applies, the moneys shall be held and disbursed intact for deposit to the credit of the non-general fund. Money deposited in the fund pursuant to an order of the court shall be disbursed in accordance with the order of the court. Any residual funds remaining in an account shall be transferred to the respective non-general or general fund with which the civil

action is associated no later than thirty days after the civil action for which the account is maintained is closed and all costs of that civil action have been paid, unless otherwise provided for by statute.

(d) Moneys in the fund may be invested by the department in securities as provided by section 36-21. Investment earnings shall be deposited in the general fund.

(e) The department shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on:

- (1) The transactions, by subsidiary account, that take place in the fund for each fiscal year; and
- (2) A summary of the collections made in any amount on behalf of other departments and agencies specifying the appropriate number of transactions and amount collected for each department and agency."

SECTION 2. Chapter 37, part III, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§37- Criteria for the establishment and continuance of special funds.** Special funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a special fund to determine whether it should be continued, shall ensure that the special fund:

- (1) Serves the purpose for which it was originally established;
- (2) 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;
- (3) Provides an appropriate means of financing for the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining.

**§37- Criteria for the establishment and continuance of revolving funds.** Revolving funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a revolving fund to determine whether it should be continued, shall ensure that the revolving fund:

- (1) Serves the purpose for which it was originally established;
- (2) 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;
- (3) Provides an appropriate means of financing for the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining.

**§37- Criteria for the establishment and continuance of administratively established accounts and funds.** Any department or agency that administratively establishes any new account or fund shall, within thirty working days of its establishment, transmit a report to the legislature. The report to the legislature shall include:

- (1) The justification for the establishment of the account or fund; and
- (2) The sources of revenue for the fund.

Each department or agency shall, at least twenty days prior to the convening of each regular session, submit a report to the legislature. The report shall include:

- (1) A list of all administratively established accounts or funds; and
- (2) All revenues, expenditures, encumbrances, and ending balances of each account or fund.”

SECTION 3. Section 328L-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The legislature may make appropriations from the fund for the following purposes:

- (1) To maintain levels of programs determined to be essential to [the] public health, safety, [and] welfare[;], and education;
- (2) To provide for counter cyclical economic and employment programs in periods of economic downturn;
- (3) To restore facilities destroyed or damaged or services disrupted by disaster in any county; and
- (4) To meet other emergencies when declared by the governor or determined to be urgent by the legislature.

Any act making appropriations from the emergency and budget reserve fund shall include a declaration of findings and purposes setting forth the purposes, the amounts, and the reasons why the appropriations are necessary and shall require a two-thirds majority vote of each house of the legislature.”

## PART II

SECTION 4. The legislature finds that the auditor conducted an update of its 1992 *Loss of Budgetary Control: A Summary Report of the Review of Special and Revolving Funds* (report no. 92-14). Report no. 92-14 provided an overview of five reports issued in 1991 and 1992 that reviewed all special and revolving funds in existence as of July 1, 1990, of sixteen state departments, the University of Hawaii, and the judiciary. This update examined all special and revolving funds created since July 1, 1990, that are administered by, or are administratively attached to, the same eighteen agencies. The update also included a review of significant operational changes for those funds reviewed in the auditor’s 1991 and 1992 reports on the same matter.

Since July 1, 1990, seventy-one special and revolving funds have been repealed or discontinued. However, according to the auditor’s July, 2001, update of report no. 92-14, a majority (one hundred six out of one hundred sixty-six) of the special and revolving funds previously reviewed were still in existence as of July 1, 1999. The auditor also found that few of the one hundred six special and revolving funds have undergone significant changes since they were last reviewed. The auditor also found thirty-one special and revolving funds previously reviewed in 1991 and 1992, which were in existence as of July 1, 1999, still did not meet all established criteria. The fiscal year 1999-2000 ending cash balance of these thirty-one funds totaled approximately \$77,400,000.

The auditor also found that one hundred thirty-two special and revolving funds have been statutorily or administratively created since July 1, 1990, but twenty-five of these funds have since been repealed or discontinued. The aggregate cash balance of the special and revolving funds created after July 1, 1990, and still in existence as of June 30, 2000, totaled approximately \$220,000,000. However, the auditor found that thirty-eight of these special and revolving funds did not meet all criteria of a special or revolving fund and held over \$19,000,000 outside the general fund.

Despite the proliferation of special and revolving funds, the legislature believes that there are many methods available to the legislature to strengthen its control over non-general funds.

The purpose of this part is to reclassify, repeal, or discontinue certain revolving and special funds following the recommendations of the auditor.

SECTION 5. Section 302A-806, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-806 Hawaii teacher standards board [revolving] special fund.** There is established within the state treasury a [revolving] special fund to be known as the Hawaii teacher standards board [revolving] special fund, into which shall be deposited all moneys received by the board in the form of appropriations, fees, fines, grants, donations, or revenues regardless of their source. The [revolving] special fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred.”

SECTION 6. Section 304-8.86, Hawaii Revised Statutes, is amended to read as follows:

**“[E]§304-8.86[ ] University of Hawaii workers’ compensation and unemployment insurance compensation [revolving] trust fund.** There is established a University of Hawaii workers’ compensation and unemployment insurance compensation [revolving] trust fund into which shall be deposited all revenues derived from assessments for workers’ compensation costs and unemployment insurance compensation costs against the [revolving fund]<sup>1</sup> payroll of University of Hawaii employees. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the administration of the university’s workers’ compensation and unemployment insurance compensation programs, including benefits payments, claims administration, settlements, insurance premiums, and legal fees.”

SECTION 7. Section 81-3, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 201G-325, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 201G-342, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 201G-421, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 206E-109, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 304-8.85, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 346E-15, Hawaii Revised Statutes, is repealed.

### PART III

SECTION 14. The legislature determines that there is in the agricultural loan reserve fund at least \$1,800,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$1,800,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 15. The legislature determines that there is in the agricultural loan revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July

1, 2002, the director of finance is authorized to transfer from the agricultural loan revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 16. The legislature determines that there is in the animal quarantine special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the animal quarantine special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 17. The legislature determines that there is in the pesticide use revolving fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the pesticide use revolving fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 18. The legislature determines that there is in the stadium special fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 19. The legislature determines that there is in the state motor pool revolving fund at least \$600,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 20. The legislature determines that there is in the state parking revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state parking revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 21. The legislature determines that there is in the cigarette tax stamp enforcement special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the cigarette tax stamp enforcement special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 22. The legislature determines that there is in the medicaid investigations recovery fund at least \$800,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$800,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 23. The legislature determines that there is in the litigation settlement fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the litigation settlement fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 24. The legislature determines that there is in the state identification revolving fund at least \$600,000 in excess of the requirements of the fund. On

July 1, 2002, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 25. The legislature determines that there is in the dwelling unit revolving fund at least \$23,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of ~~\$23,000,000~~ \$12,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 26. The legislature determines that there is in the fee simple residential revolving fund at least \$300,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the fee simple residential revolving fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 27. The legislature determines that there is in the foreign-trade zones special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the foreign trade zones special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 28. The legislature determines that there is in the Hawaii capital loan revolving fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii capital loan revolving fund to the general fund the sum of ~~\$4,000,000~~ \$2,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 29. The legislature determines that there is in the Hawaii community development revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii community development revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 30. The legislature determines that there is in the Hawaii innovation development fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii innovation development fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 31. The legislature determines that there is in the high technology special fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the high technology special fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 32. The legislature determines that there is in the homes revolving fund at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the homes revolving fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 33. The legislature determines that there is in the housing finance revolving fund at least \$5,000,000 in excess of the requirements of the fund. On July

1, 2002, the director of finance is authorized to transfer from the housing finance revolving fund to the general fund the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 34. The legislature determines that there is in the housing for elders revolving fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the housing for elders revolving fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 35. The legislature determines that there is in the petroleum products control fund at least \$115,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the petroleum products control fund to the general fund the sum of \$115,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 36. The legislature determines that there is in the rental assistance revolving fund at least \$6,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the rental assistance revolving fund to the general fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 37. The legislature determines that there is in the state disaster revolving loan fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state disaster revolving loan fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 38. The legislature determines that there is in the natural energy laboratory of Hawaii authority special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the natural energy laboratory of Hawaii authority special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 39. The legislature determines that there is in the compliance resolution fund at least \$33,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$33,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 40. The legislature determines that there is in the insurance regulation fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the insurance regulation fund to the general fund the sum of \$2,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003. On December 1, 2002, the director of finance is authorized to transfer from the insurance regulation fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 41. The legislature determines that there is in the use of school facilities for recreational and community purposes fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the use of school facilities for recreational and community purposes

fund to the general fund the sum of \$1,000,000 \$0<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 42. The legislature determines that there is in the human resource development special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the human resource development special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 43. The legislature determines that there is in the environmental response revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the environmental response revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 44. The legislature determines that there is in the Hawaii tobacco settlement special fund at least \$1,200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii tobacco settlement special fund to the general fund the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 45. The legislature determines that there is in the driver education and training fund at least \$700,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the driver education and training fund to the general fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 46. The legislature determines that there is in the judiciary computer system special fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the judiciary computer system special fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 47. The legislature determines that there is in the judiciary spouse and child abuse special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the judiciary spouse and child abuse special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 48. The legislature determines that there is in the boiler and elevator safety revolving fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the boiler and elevator safety revolving fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 49. The legislature determines that there is in the occupational safety and health training and assistance fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the occupational safety and health training and assistance fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 50. The legislature determines that there is in the state parks special fund at least \$250,000 in excess of the requirements of the fund. On July 1,



2002, the director of finance is authorized to transfer from the state parks special fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 51. The legislature determines that there is in the natural area reserve fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the natural area reserve fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 52. The legislature determines that there is in the beach restoration special fund at least \$50,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the beach restoration special fund to the general fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 53. The legislature determines that there is in the bureau of conveyances special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the bureau of conveyances special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 54. The legislature determines that there is in the commercial fisheries special fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the commercial fisheries special fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 55. The legislature determines that there is in the special land and development fund at least \$9,150,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of ~~\$9,150,000~~ \$7,150,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 56. The legislature determines that there is in the controlled substance registration revolving fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the controlled substance registration revolving fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 57. The legislature determines that there is in the Halawa correctional facility inmate store fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Halawa correctional facility inmate store fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 58. The legislature determines that there is in the Oahu community correctional center inmate store fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Oahu community correctional center inmate store fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

**SECTION 59.** The legislature determines that there is in the Waiawa correctional facility inmate store fund at least \$60,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Waiawa correctional facility inmate store fund to the general fund the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2002-2003.

**SECTION 60.** The legislature determines that there is in the state highway fund at least \$22,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state highway fund to the general fund the sum of \$22,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

**PART IV**

**SECTION 61.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

**SECTION 62.** This Act shall take effect on June 30, 2002.

(Approved June 25, 2002.)

**Notes**

1. No strike through.
2. Item vetoed, replaced, and initialed "BJC".
3. Edited pursuant to HRS §23G-16.5.