

ACT 235

S.B. NO. 1729

A Bill for an Act Relating to Tourism.

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

SECTION 1. The tourism industry plays a large role in the health of Hawaii's economy. Consequently, the State's growth is strongly correlated to the rate of economic expansion in U.S. and international tourist markets. The legislature finds that an increase in funding is necessary to preserve and strengthen the tourism industry.

The legislature further finds that investment in tourism is critical to ensure that Hawaii maintains a successful and sustainable tourism industry. The Hawaii tourism authority recently completed the Hawaii tourism strategic plan: 2005-2015, with assistance from industry, government, and the community. The plan broadened the roles and responsibilities of the Hawaii tourism authority by identifying the Hawaii tourism authority as the lead or support in all nine strategic initiatives and in the overall management of the tourism special fund. One of the critical programs implements a safety and security budget. These moneys would be used to pay for existing programs such as the visitor assistance program and the implementation of the aloha aina patrol. It is imperative that the Hawaii tourism authority be given additional resources to effectively and efficiently implement its programs. This would mean an increased focus in areas such as safety and security, workforce development, and communications.

The Hawaii tourism authority provides funding for various visitor assistance programs. Moneys for these programs are derived in part from the transient accommodations tax. With the dedicated source of funding established under this Act for safety and security programs, the Hawaii tourism authority will have the latitude to fund existing programs or establish new ones, such as the aloha aina patrol, which will operate under the jurisdiction of each respective county. The Hawaii tourism

authority has received numerous awards for its support of visitor safety programs and hopes to improve its efforts in this area.

The legislature further finds that increasing the percentage the Hawaii tourism authority receives from the transient accommodations tax is necessary to ensure funding for other areas as well. State parks and trail systems are in critical need of upgrade and maintenance. An increase in the percentage that the Hawaii tourism authority receives from the transient accommodations tax will ensure a dedicated source of revenue for state parks and the statewide trails and access program to benefit residents and visitors alike, and an increase in revenues for the general fund will assist in supporting programs such as education, health, and infrastructure.

Act 156, Session Laws of Hawaii 1998, created the Hawaii tourism authority to establish, among other things, a mechanism for funding tourism. Act 156 specified that 37.9 per cent of the transient accommodations tax was to be earmarked to create a tourism special fund to fund tourism activities by the Hawaii tourism authority.

Act 250, Session Laws of Hawaii 2002 (Act 250), reduced the percentage of transient accommodations tax revenues from 37.9 per cent to 32.6 per cent. Act 250 also established the transient accommodations tax trust fund (trust fund) to serve as a holding account for transient accommodations tax revenues to supplement shortfalls in the tourism special fund. All investment earnings from moneys in the trust fund are credited to the general fund. However, these moneys could have been used instead to accumulate reserves in the trust fund.

The purpose of this Act is to support tourism-related activities and improve management of the Hawaii tourism authority by, among other things:

- (1) Adding the executive director of the Hawaii state foundation on culture and the arts as an ex officio nonvoting member of the board of directors of the Hawaii tourism authority;
- (2) Providing that all ex officio members of the HTA board are nonvoting;
- (3) Allowing the executive director of the Hawaii tourism authority to provide for the appointment of officers, agents, and employees, subject to the approval of the board, prescribing their duties and qualifications, and fixing their salaries; provided that there is no anticipated revenue shortfall in the tourism special fund and that funds have been appropriated by the legislature and allotted as provided by law;
- (4) Placing the convention center enterprise special fund and the tourism special fund outside the state treasury;
- (5) Allowing moneys in the convention center enterprise special fund and the tourism special fund to be placed in interest-bearing accounts and invested, subject to certain limitations;
- (6) Increasing the allocation of transient accommodations tax revenue deposited in the tourism special fund;
- (7) Repealing the transient accommodations tax trust fund; and
- (8) Revising the current allocation of transient accommodations tax revenue for the state parks special fund and the special land and development fund.

SECTION 2. Section 184-3.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the state treasury a fund to be known as the state parks special fund, into which shall be deposited:

- (1) All proceeds collected by the state parks programs involving park user fees, any leases or concession agreements, the sale of any article purchased from the department to benefit the state parks programs, or

any gifts or contributions; provided that proceeds derived from the operation of Iolani Palace shall be used to supplement its educational and interpretive programs; and

- (2) Transient accommodations tax revenues pursuant to section ~~[237D-6.5(b)(2);]~~ 237D-6.5; provided that these moneys shall be expended in response to a master plan developed in coordination with the Hawaii tourism authority.”

SECTION 3. Section 198D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The trail and access program shall use funding for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department from the following sources:

- (1) A portion of the highway fuel taxes collected under chapter 243;
- (2) Federal government grants;
- (3) Private contributions;
- (4) Fees, established pursuant to administrative rules and charged by the department for the commercial and other use of trails and trail accesses under the jurisdiction of the department; and
- (5) Transient accommodations tax revenues pursuant to section ~~[237D-6.5(b)(2);]~~ 237D-6.5.”

SECTION 4. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall be headed by a policy-making board of directors which consists of twelve public, voting members, ~~[one ex officio voting member,]~~ and ~~[two]~~ four ex officio nonvoting members; provided that:

- (1) Twelve public, voting members shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (2) The twelve public, voting members shall be composed of at least one representative each from the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; the remaining public members shall be appointed at-large;
- (3) Of the twelve public, voting members, three shall be appointed by the governor from a list of three names submitted for each appointment by the president of the senate, and three shall be appointed by the governor from a list of three names submitted for each appointment by the speaker of the house of representatives; provided that if fewer than three names are submitted for each appointment, the governor may disregard the list;
- (4) At least six of the twelve public, voting members shall have knowledge, experience, and expertise in the area of visitor industry management, marketing, promotion, transportation, retail, entertainment, or visitor attractions, and at least one shall have knowledge, experience, and expertise in the area of Hawaiian cultural practices; provided that no more than three members shall represent, be employed by, or be under contract to any sector of the industry represented on the board;
- (5) The governor shall make appointments to ensure the fulfillment of all requirements; provided that any appointments made after July 1, 2002, shall be made to fulfill the requirements in place when the appointments are made;

- (6) The director of business, economic development, and tourism, or a designated representative, shall be an ex officio ~~[voting]~~ nonvoting member;
- (7) The director of transportation, or a designated representative, shall be an ex officio nonvoting member; ~~[and]~~
- (8) The chairperson of the board of land and natural resources, or a designated representative, shall be an ex officio nonvoting member~~[-]; and~~
- (9) The executive director of the state foundation on culture and the arts, or a designated representative, shall be an ex officio nonvoting member.'

SECTION 5. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter; provided that the authority may enter into contracts and agreements for a period of up to five years, subject to the availability of funds; and provided further that the authority may enter into agreements for the use of the convention center facility for a period of up to ten years;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Unless otherwise provided in this chapter, adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its executive director represent the authority in communications with the governor and with the legislature;
- (7) Through its executive director ~~[appoint]~~, provide for the appointment of officers, agents, and employees, ~~[prescribe]~~ subject to the approval of the board, prescribing their duties and qualifications, and ~~[fix]~~ fixing their salaries, without regard to chapters 76 and 78¹ if there is no anticipated revenue shortfall in the tourism special fund and funds have been appropriated by the legislature and allotted as provided by law;
- (8) Through its executive director purchase supplies, equipment, or furniture;
- (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
- (10) Engage the services of qualified persons to implement the State’s tourism marketing plan or portions thereof as determined by the authority;
- (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (13) Contract for or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source, including any revenues or proceeds arising from the operation or use of the convention center;
- (14) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State and its natural resources infrastructure; provided that the authority shall support the efforts of other state and county departments or agencies to manage, improve,

- and protect Hawaii's natural environment and areas frequented by visitors;
- (15) Have a permanent, strong focus on marketing and promotion;
 - (16) Conduct market development-related research as necessary;
 - (17) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
 - (18) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
 - (19) Market and promote sports-related activities and events;
 - (20) Coordinate the development of new products with the counties and other public sectors and private sectors, including the development of sports, culture, health and wellness, education, technology, agriculture, and nature tourism;
 - (21) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
 - (22) Encourage the development of tourism educational, training, and career counseling programs;
 - (23) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary;
 - (24) Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility without regard to chapter 91;
 - (25) Notwithstanding the provisions of chapter 171, acquire, lease as lessee or lessor, own, rent, hold, and dispose of the convention center facility in the exercise of its powers and the performance of its duties under this chapter; and
 - (26) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effectuate, either directly or through developers, a convention center facility."

SECTION 6. Section 201B-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201B-8**~~]]~~ **Convention center enterprise special fund.** (a) There is established ~~[in the state treasury]~~ the convention center enterprise special fund, into which shall be deposited:

- (1) A portion of the revenues from the transient accommodations tax, as provided by section 237D-6.5;
 - (2) All revenues or moneys derived from the operations of the convention center to include all revenues from the food and beverage service, all revenues from the parking facilities or from any concession, and all revenues from the sale of souvenirs, logo items, or any other items offered for purchase at 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 convention center facility; and
 - (4) Appropriations by the legislature, including any transfers from the tourism special fund established under section 201B-11 for marketing the facility pursuant to section ~~[[~~201B-7(a)(7)~~]]~~.
- (b) Moneys in the convention center enterprise special fund shall be used by the authority for the payment of any and all debt service relating to the convention

center, any expense arising from any and all use, operation, maintenance, alteration, improvement, or any unforeseen or unplanned repairs of the convention center, including without limitation the food and beverage service and parking service provided at the convention center facility, the sale of souvenirs, logo items, or other items, for any future major repair, maintenance, and improvement of the convention center facility as a commercial enterprise or as a world class facility for conventions, entertainment, or public events, and for marketing the facility pursuant to section [[201B-7(a)(7)[]].

(c) Moneys in the convention center enterprise special fund may be:

- (1) Placed in interest-bearing accounts; provided that the depository in which the money is deposited furnishes security as provided in section 38-3; or
- (2) Otherwise invested by the authority until such time as the moneys may be needed; provided that the authority shall limit its investments to those listed in section 36-21.

All interest accruing from investment of the moneys shall be credited to the convention center enterprise special fund.”

SECTION 7. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established [~~in the state treasury~~] the tourism special fund, into which shall be deposited:

- (1) A portion of the revenues from any transient accommodations tax, as provided by section 237D-6.5;
- (2) Appropriations by the legislature to the tourism special fund;
- (3) Gifts, grants, and other funds accepted by the authority; and
- (4) All interest and revenues or receipts derived by the authority from any project or project agreements.

(b) ~~Moneys in the tourism special fund may be [placed in interest-bearing accounts or otherwise invested by the authority until such time as the moneys may be needed.];~~

- (1) Placed in interest-bearing accounts; provided that the depository in which the money is deposited furnishes security as provided in section 38-3; or
- (2) Otherwise invested by the authority until such time as the moneys may be needed; provided that the authority shall limit its investments to those listed in section 36-21.

All interest accruing from the investment of these moneys shall be credited to the tourism special fund.”

SECTION 8. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues collected under this chapter shall be distributed as follows[;], with the excess revenues to be deposited into the general fund:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund established under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$31,000,000 in any calendar year, revenues collected in excess of \$31,000,000 shall be deposited into the general fund;
- (2) [~~32.6~~] 34.2 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section

201B-11 for tourism promotion and visitor industry research; provided that beginning on July 1, 2002:

(A) ~~[If the amount of revenues deposited into the tourism special fund exceeds \$62,292,000 in any fiscal year, of]~~ Of the first \$1,000,000 in revenues deposited ~~[in excess of \$62,292,000]:~~

(i) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and

(ii) Ten per cent shall be deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;

~~[provided that the total amount deposited into the state parks special fund and to the special land and development fund for the Hawaii statewide trail and access program shall not exceed \$1,000,000 in any fiscal year;]~~

provided that of the 34.2 per cent, 0.5 per cent shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; and

(3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent[; and

~~(4) 5.3 per cent of the revenues collected under this chapter shall be deposited into the transient accommodations tax trust fund established under section 237D-5.5.].~~

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 9. Section 237D-5.5, Hawaii Revised Statutes, is repealed.

SECTION 10. Upon repeal of the transient accommodations tax trust fund by section 9 of this Act, any remaining moneys in the fund shall be transferred to the general fund.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Statutory material to be repealed is bracketed and stricken.³ New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2005; provided that sections 8 and 9 shall take effect on July 1, 2007.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. Prior to amendment “;” appeared here.
2. Sentence should not be underscored.
3. Edited pursuant to HRS §23G-16.5.