

ACT 79

S.B. NO. 884

A Bill for an Act Relating to Non-General Funds.

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

PART I

SECTION 1. Many unprecedented events have converged to create an economic, financial, and fiscal environment that threatens the very foundation of our national economy. Problems that arose in the national housing sector and sub-prime mortgage market last year have radiated from Wall Street to Main Street. Across the United States, the result has been increasing business bankruptcies and closures, lower consumer confidence and spending, and job losses and rising unemployment.

For state governments, the financial crisis and economic downturn have adversely impacted tax revenues and budgets. Most states, like Hawaii, rely on income and sales taxes as their main sources of revenues. The slowdown in employment and consumer spending has reduced state revenues nationwide at a time when operating costs continue to rise.

Hawaii is experiencing a severe contraction in its visitor, retail, and construction industries. As a consequence, the council on revenues has lowered its revenue projections five times during 2008 and, twice more during the first half of 2009. The cumulative effect of these successive reductions in revenue estimates for fiscal years 2008-2009, 2009-2010, and 2010-2011 is a substantial decrease in the amount of general funds that the State can expect in the immediate and near future. Given the level of spending and the anticipated rising cost of state operations, a \$2,100,000,000 general fund budget shortfall is projected by the end of fiscal year 2010-2011 if corrective action is not taken.

The legislature finds that due to the extraordinary fiscal crisis the State faces, non-general funds must be reviewed and scrutinized to determine if excess balances are available. The legislature further finds that transfers of excess balances are needed to help address the critical budget shortfall in fiscal biennium 2009-2011.

SECTION 2. Section 138-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§138-3]]~~ **Wireless enhanced 911 fund.** There is established outside the state treasury a special fund, to be known as the wireless enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section 138-4. ~~[Moneys paid into the fund are not general fund revenues of the State.]~~ The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service and for expenses of administering the fund. Any funds that accumulate in the wireless enhanced 911 fund shall be retained in the fund unless determined by the legislature to be in excess.”

SECTION 3. Section 342G-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any funds that accumulate in the deposit beverage container deposit special fund shall be retained in the fund unless determined by the ~~[auditor]~~ legislature to be in excess~~], after adjustments to the deposit beverage fee, pursuant to the management and financial audits conducted in accordance with section 342G-107].~~”

SECTION 4. The legislature determines that there is in the wireless enhanced 911 fund at least \$16,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the wireless enhanced 911 fund to the general fund the sum of \$16,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

PART II

SECTION 5. The legislature finds that section 37-53, Hawaii Revised Statutes, provides the governor nearly unlimited authority to transfer non-general funds to the general fund. Section 37-53 provides that:

At any time during a fiscal year, notwithstanding any other law to the contrary, any department may, with the approval of the governor or the director of finance if so delegated by the governor, transfer from any special fund relating to such department to the general revenues of the State all or any portion of moneys determined to be in excess of fiscal year requirements for such special fund, except for special funds under the control of the department of transportation relating to highways, airports, transportation use, and harbors activities, special funds under the control of the Hawaii health systems corporation or subaccounts under the control of its regional system boards, and special funds of the University of Hawaii. At any time the department of transportation, with the approval of the governor or the director of finance if so delegated by the governor, may transfer from any special fund under the control of the department of transportation, or from any account within any such special fund, to the general revenues of the State or to any other special fund under the control of the department of transportation all or any portion of moneys determined to be in excess of requirements for the ensuing twelve months determined as prescribed by rules adopted pursuant to chapter 91; provided that no such transfer shall be made which would cause a violation of federal law or federal grant agreements.

This part mandates the transfer of non-general funds to the general fund.

SECTION 6. The legislature determines that there is in the agricultural loan reserve fund at least \$500,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 7. The legislature determines that there is in the agricultural loan revolving fund at least \$5,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the agricultural loan revolving fund to the general fund the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 8. The legislature determines that there is in the state risk management revolving fund at least \$5,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the state risk management revolving fund to the general fund the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 9. The legislature determines that there is in the stadium special fund at least \$1,500,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 10. The legislature determines that there is in the medicaid investigations recovery fund at least \$1,500,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 11. The legislature determines that there is in the state identification revolving fund at least \$700,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 12. The legislature determines that there is in the hydrogen investment capital special fund at least \$2,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the hydrogen investment capital special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 13. The legislature determines that there is in the housing finance revolving fund at least \$20,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the housing finance revolving fund to the general fund the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 14. The legislature determines that there is in the compliance resolution fund at least \$3,300,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$3,300,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 15. The legislature determines that there is in the drug demand reduction assessments special fund at least \$1,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the drug demand reduction assessments special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 16. The legislature determines that there is in the Hawaii tobacco settlement special fund at least \$20,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the Hawaii tobacco settlement special fund to the general fund the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 17. The legislature determines that there is in the neurotrauma special fund at least \$750,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the neurotrauma special fund to the general fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 18. The legislature determines that there is in the emergency medical services special fund at least \$4,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the emergency medical services special fund to the general fund the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 19. The legislature determines that there is in the environmental management special fund at least \$2,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the environmental management special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 20. The legislature determines that there is in the judiciary computer system special fund at least \$1,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the judiciary computer system special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 21. The legislature determines that there is in the special fund for disability benefits at least \$7,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the special fund for disability benefits to the general fund the sum of \$7,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 22. The legislature determines that there is in the special land and development fund at least \$1,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 23. The legislature determines that there is in the dwelling unit revolving fund at least \$600,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 24. The legislature determines that there is in the University of Hawaii research and training revolving fund at least \$5,100,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the University of Hawaii research and training revolving fund to the general fund the sum of \$5,100,000 or so much thereof as may be necessary for fiscal year 2008-2009.

PART III

SECTION 25. The purpose of this part is to repeal the provisions that exempt certain special funds from assessments for central service and departmental administrative expenses.

SECTION 26. Section 21D-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The Hawaii legislative publications special fund shall not be subject to section [~~36-27, 36-30, or~~] 37-53.”

SECTION 27. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the pro-rated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Emergency and budget reserve fund under section 328L-3;
- (17) Public schools special fees and charges fund under section 302A-1130(f);
- (18) Sport fish special fund under section 187A-9.5;
- ~~(19) Neurotrauma special fund under section 321H-4;~~
- ~~(20) Deposit beverage container deposit special fund under section 342G-104;~~
- (21) (19) Glass advance disposal fee special fund established by section 342G-82;

- ~~[(22)]~~ (20) Center for nursing special fund under section 304A-2163;
- ~~[(23)]~~ (21) Passenger facility charge special fund established by section 261-5.5;
- ~~[(24)]~~ Solicitation of funds for charitable purposes special fund established by section 467B-15;
- ~~(25)~~ Land conservation fund established by section 173A-5;
- ~~[(26)]~~ (22) Court interpreting services revolving fund under section 607-1.5;
- ~~[(27)]~~ Trauma system special fund under section 321-22.5;
- ~~[(28)]~~ (23) Hawaii cancer research special fund;
- ~~[(29)]~~ (24) Community health centers special fund;
- ~~[(30)]~~ (25) Emergency medical services special fund; and
- ~~[(31)]~~ (26) Rental motor vehicle customer facility charge special fund established under section 261-5.6[.];

shall deduct five per cent of all receipts of all ~~[other]~~ special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 28. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special out-of-school time instructional program fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Funds of the employees’ retirement system created by section 88-109;
 - (9) Unemployment compensation fund established under section 383-121;
 - (10) Hawaii hurricane relief fund established under ~~[chapter 431P;]~~ section 431P-2;
 - (11) Convention enter^l enterprise special fund established under section 201B-8;
 - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
 - (13) Tourism special fund established under section 201B-11;
 - (14) Universal service fund established under chapter 269;
 - (15) Emergency and budget reserve fund under section 328L-3;
 - (16) Public schools special fees and charges fund under section 302A-1130(f);
 - (17) Sport fish special fund under section 187A-9.5;
 - ~~[(18)]~~ Neurotrauma special fund under section 321H-4;
 - ~~[(19)]~~ (18) Center for nursing special fund under section 304A-2163;

- [~~(20)~~] (19) Passenger facility charge special fund established by section 261-5.5;
- [~~(21)~~] (20) Court interpreting services revolving fund under section 607-1.5;
- ~~(22)~~¹ ~~Trauma system special fund under section 321-22.5;~~
- [~~(23)~~] (21) Hawaii cancer research special fund;
- [~~(24)~~] (22) Community health centers special fund;
- [~~(25)~~] (23) Emergency medical services special fund; and
- [~~(26)~~] (24) Rental motor vehicle customer facility charge special fund established under section 261-5.6,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

PART IV

SECTION 29. The purpose of this part is to provide for the temporary transfer into the general fund of interest earned on short-term investment or deposit of moneys of certain special funds, revolving funds, and special accounts.

This part does not require the temporary transfer of any fee or user charge collected from a beneficiary of a state service. It only provides for the temporary transfer of interest earned on the unexpended fee or charge. Thus, the legislature intends that this part be in conformance with state judicial interpretation concerning the proper use of the proceeds from a fee or user charge established by a state agency.

SECTION 30. (a) Notwithstanding any other law to the contrary, from July 1, 2009, until June 30, 2015, the director of finance may deposit into the general fund the interest earned on the short-term investment of moneys of the special funds, revolving funds, and special accounts listed in this section. For purposes of this section, “short-term investment” means an investment made by the director of finance in accordance with section 36-21, Hawaii Revised Statutes.

This subsection shall be applicable to the following special funds, revolving funds, and special accounts:

- (1) Tobacco enforcement special fund—section 28-15, Hawaii Revised Statutes;
- (2) Environmental response revolving fund—section 128D-2, Hawaii Revised Statutes;
- (3) Special land and development fund—section 171-19, Hawaii Revised Statutes;
- (4) Beach restoration special fund—section 171-156, Hawaii Revised Statutes;
- (5) Land conservation fund—section 173A-5, Hawaii Revised Statutes;
- (6) Dam and reservoir safety special fund—section 179D-25, Hawaii Revised Statutes;
- (7) State parks special fund—section 184-3.4, Hawaii Revised Statutes;
- (8) Firefighter’s contingency fund—section 185-4(d), Hawaii Revised Statutes;
- (9) Commercial fisheries special fund—section 189-2.4, Hawaii Revised Statutes;
- (10) Natural area reserve fund—section 195-9, Hawaii Revised Statutes;
- (11) Forest stewardship fund—section 195F-4, Hawaii Revised Statutes;

- (12) Housing finance revolving fund—section 201H-80, Hawaii Revised Statutes;
- (13) Rental assistance revolving fund—section 201H-123, Hawaii Revised Statutes;
- (14) Dwelling unit revolving fund—section 201H-191, Hawaii Revised Statutes;
- (15) Rental motor vehicle customer facility charge special fund—section 261-5.6, Hawaii Revised Statutes;
- (16) Education research and development revolving fund—section 302A-305, Hawaii Revised Statutes;
- (17) School bus fare revolving fund—section 302A-407.5, Hawaii Revised Statutes;
- (18) Hawaii teacher standards board special fund—section 302A-806, Hawaii Revised Statutes;
- (19) Textbook and instructional materials fee special account—section 302A-1130.6, Hawaii Revised Statutes;
- (20) After-school plus program revolving fund—section 302A-1149.5, Hawaii Revised Statutes;
- (21) Food distribution program revolving fund—section 302A-1315, Hawaii Revised Statutes;
- (22) Federal grants search, development, and application revolving fund—section 302A-1405, Hawaii Revised Statutes;
- (23) School-level minor repairs and maintenance special fund—section 302A-1504.5, Hawaii Revised Statutes;
- (24) Domestic violence and sexual assault special fund—section 321-1.3, Hawaii Revised Statutes;
- (25) Early intervention special fund—section 321-355, Hawaii Revised Statutes;
- (26) Public health nursing services special fund—section 321-432, Hawaii Revised Statutes;
- (27) Neurotrauma special fund—section 321H-4, Hawaii Revised Statutes;
- (28) State health planning and development special fund—section 323D-12.6, Hawaii Revised Statutes;
- (29) Hawaii tobacco settlement special fund—section 328L-2, Hawaii Revised Statutes;
- (30) Vital statistics improvement special fund—section 338-14.6, Hawaii Revised Statutes;
- (31) Wastewater treatment certification board special fund—section 340B-3.5, Hawaii Revised Statutes;
- (32) Deposit beverage container deposit special fund—section 342G-104, Hawaii Revised Statutes;
- (33) Leaking underground storage tank fund—section 342L-51, Hawaii Revised Statutes;
- (34) Correctional industries revolving fund—section 354D-10, Hawaii Revised Statutes;
- (35) Employment and training fund—section 383-128, Hawaii Revised Statutes;
- (36) Hoisting machine operators' certification revolving fund—section 396-20, Hawaii Revised Statutes;
- (37) Notaries public revolving fund—section 456-9.5, Hawaii Revised Statutes;
- (38) Solicitation of funds for charitable purposes special fund—section 467B-15, Hawaii Revised Statutes;

- (39) Bureau of conveyances special fund—section 502-8, Hawaii Revised Statutes;
- (40) Drug demand reduction assessments special fund—section 706-650, Hawaii Revised Statutes;
- (41) Criminal forfeiture fund—section 712A-16, Hawaii Revised Statutes;
- (42) Criminal history record improvement revolving fund—section 846-10.6, Hawaii Revised Statutes; and
- (43) State identification revolving fund—section 846-27, Hawaii Revised Statutes.

(b) Notwithstanding any other law to the contrary, from July 1, 2009, until June 30, 2015, the chief justice may transfer to the director of finance any interest earned on the short-term investment by the judiciary of moneys of the following special and revolving funds. Upon receipt, the director of finance shall deposit the moneys in the general fund.

The special and revolving funds, to which this subsection is applicable, shall be the following:

- (1) Supreme court law library revolving fund—section 601-3.5, Hawaii Revised Statutes; and
- (2) Judiciary computer system special fund—section 601-3.7, Hawaii Revised Statutes.

SECTION 31. Section 36-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of finance may invest any moneys of the State which in the director’s judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director’s judgment the action will not impede or hamper the necessary financial operations of the State in:

- (1) Any bonds or interest-bearing notes or obligations:
 - (A) Of the State (including state director of finance’s warrant notes issued pursuant to chapter 40);
 - (B) Of the United States;
 - (C) For which the faith and credit of the United States are pledged for the payment of principal and interest;
- (2) Federal Farm Credit System notes and bonds;
- (3) Federal Agricultural Mortgage Corporation notes and bonds;
- (4) Federal Home Loan Bank notes and bonds;
- (5) Federal Home Loan Mortgage Corporation bonds;
- (6) Federal National Mortgage Association notes and bonds;
- (7) Student Loan Marketing Association notes and bonds;
- (8) Tennessee Valley Authority notes and bonds;
- (9) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof or repurchase agreements fully collateralized by any such bonds or securities;
- (10) Securities of a money market mutual fund that is rated AAA, or its equivalent, by a nationally recognized rating agency or whose portfolio consists of securities that are rated as first tier securities by a nationally recognized statistical rating organization as provided in 17 Code of Federal Regulations ~~[section]~~ Section 270.2a-7;
- (11) Federally insured savings accounts;
- (12) Time certificates of deposit;
- (13) Certificates of deposit open account;

- (14) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
- (15) Student loan resource securities including:
 - (A) Student loan auction rate securities;
 - (B) Student loan asset-backed notes;
 - (C) Student loan program revenue notes and bonds; and
 - (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues; issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
- (16) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
- (17) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided that the investments are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that, except as provided by Act , Session Laws of Hawaii 2009, income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, "investment pool" means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation."

PART V

SECTION 32. 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 33. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 34. This Act shall take effect upon its approval; provided that:

- (1) Part I shall take effect on June 1, 2009;
- (2) Part II shall take effect on June 1, 2009;
- (3) Part III shall take effect on July 1, 2009, and shall be repealed on June 30, 2015; provided that sections 21D-5, 36-27, 36-30, 201-85, 304A-3005, 342D-82, and 261D-3, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2009; and
- (4) Part IV shall take effect on July 1, 2009, and shall be repealed on July 1, 2015; provided that section 36-21, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2009.

(Approved May 28, 2009.)

Note

- 1. So in original.