

OVERVIEW

Review of Revolving Funds, Trust Funds, and Trust Accounts for the Departments of the Attorney General and Business, Economic Development & Tourism, and the University of Hawai'i

Report No. 09-11, December 2009

Summary

Section 23-12, Hawai'i Revised Statutes, requires the State Auditor to review all existing revolving and trust funds every five years. The review is to include a five-year financial summary for each fund or account, an evaluation of the original intent and purpose of each fund or account, and a determination of the degree to which each fund or account achieves its stated and claimed purpose. The reviews are scheduled so that the funds administered by each state department will be reviewed once every five years. This is our fourth review of the revolving and trust funds, and trust accounts of the Departments of the Attorney General and Business, Economic Development & Tourism, and the University of Hawai'i.

Revolving funds are often established with an appropriation of seed money from the general fund. Revolving funds must demonstrate the capacity to be self-sustaining. Activities financed by revolving funds include loan programs that are initially established by general fund seed moneys and then replenished through the repayment of loans. *Trust funds* invoke a fiduciary responsibility of state government to care for and use the assets held for the benefit of those with a vested interest in the assets. A pension fund is an example of a trust fund. *Trust accounts* are typically separate holding or clearing accounts for state agencies. A trust account is often used as an accounting device to credit or charge agencies or projects for payroll or other costs.

Of the 89 funds and accounts we reviewed this year, 54 were revolving funds, 18 were trust funds, and 17 were trust accounts. We used criteria developed by the Legislature as well as criteria developed by our office from a review of public finance and accounting literature. These funds must continue to serve the purpose for which they were created and not require continuing general fund appropriations. In addition, a revolving fund must reflect a linkage between benefits sought and charges made upon users and also be an appropriate financial mechanism for the program or operation. A trust fund must also meet the statutory definition of a trust fund. For each fund, we present a five-year financial summary, the purpose of the fund, and conclusions about its use. We do not present any conclusions about the effectiveness of the program, its management, or whether the program should be continued.

Responses

We transmitted a draft of this review to the Departments of the Attorney General and Business, Economic Development & Tourism, and the University of Hawai'i.

The Department of the Attorney General disagrees with our conclusion that the Antitrust Trust Fund does not meet the definition of a trust fund but does not provide a logical



explanation for its position. Moneys in the fund are used to support antitrust law enforcement programs and are not held for any specific persons or classes of persons with a vested beneficial interest or equitable ownership, even though these programs may benefit the public at large. The department also disagrees with our conclusion that the Criminal Forfeiture Revolving Fund does not meet all four criteria of a revolving fund, as there is no direct linkage between the benefits sought and the charges made upon users of the program. The department stated the fund meets the linkage criteria as the program is funded by criminal forfeitures, which are really charges assessed on the criminals, who are “users” of the criminal justice system. However, criminals whose property is seized received no benefits from this program.

The Department of Business, Economic Development & Tourism disagrees with our conclusion that the Hawai‘i Community-Based Economic Development (CBED) Revolving Fund is not self-sustaining and that the grant and technical assistance programs do not demonstrate a direct link between benefits sought and user charges as there are no user fees or charges. The department explains in detail why the fund is self-sufficient and that administrative fees *can* be charged on grants and loans. However, in a questionnaire completed as part of our review, the department stated “the CBED Revolving Fund is not financially self-sustaining. Administrative expenses and salaries are funded from General Funds.” The department also disagrees with our conclusion and recommendation regarding the Brownfields Cleanup Revolving Loan Fund. This is perplexing as we draw no conclusions and make no recommendations regarding this fund due to the lack of financial activity during the five-year period under review, which ended June 30, 2009.

The department also disagrees with several findings related to funds administered by the Hawai‘i Housing Finance and Development Corporation (HHFDC). For two funds, the department disputes our conclusions that the funds do not meet all the respective criteria as their programs at least meet legislative intent. However, in addition to meeting legislative intent, the funds must meet other criteria, including the fund-type definition. Revolving funds must have a clear link between benefits sought and charges made upon users, and trust funds must have a designated person or classes of persons with a vested beneficial interest. The failure of these funds to meet these criteria is unaddressed in the department’s response.

The department further identifies six additional funds administered by HHFDC that it states should not have been included in our review as they are special funds, not revolving funds as reported by us. However, each of these funds is classified as a revolving fund within the State’s general ledger system and is therefore included in our review. Additionally, even if these *administratively* established funds were truly special funds, our finding that they were improperly established still applies as state laws require that revolving funds *and* special funds can be established only by an act of the Legislature.

The University of Hawai‘i did not disagree with any of our findings. The university submitted details of the corrective actions it plans to take which appear to be appropriate.

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