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Recommendation

To the Department of the Attorney General: Employ a more robust and methodical process of analyzing special and revolving funds for transfer of excess moneys to the general fund such as using a checklist similar to one that we developed.

Status of Recommendation

Closed

Program in Place: Follow-up on Recommendation Made in Report No. 12-04, *Study of the Transfer of Non-General Funds to the General Fund*

Report No. 15-03, April 2015

The Department of the Attorney General's process for determining the propriety of transfers of non-general funds to the general fund is strengthened through training and a checklist.

Legislative Request

To ensure accountability over audit recommendations, the 2008 Legislature amended the Auditor's governing statute to require follow-up reporting on recommendations made in various audit reports. The purpose of this change was to apprise the Legislature of recommendations not implemented by audited agencies. Section 23-7.5, Hawai'i Revised Statutes (HRS), now requires the Auditor to report to the Legislature on each audit recommendation more than one year old that has not been implemented by an audited agency.

Background on Report No. 12-04

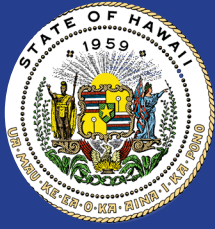
Report 12-04, *Study of the Transfer of Non-General Funds to the General Fund*, was released in July 2012. The study was prompted by the 2011 Legislature, which requested through House Concurrent Resolution No. 166 the Auditor to look at the appropriateness of transferring non-general funds, including special and revolving funds, to the general fund, and to determine the source of the moneys and whether they are used for a public purpose. The resolution noted that while some non-general funds are easily defined and legally transferable to the general fund as a way of providing financial relief to the State, many are difficult to define, thus making transfers problematic.

The Legislature has a variety of ways to obtain money from non-general funds. Over the past decade, the Legislature has authorized the transfer of \$412 million from non-general funds to the general fund in order to address billions of dollars in projected budget shortfalls.

Our 2012 study covered several categories of funds. The *general fund* is the fund into which state taxes and non-tax revenues are deposited. A *non-general fund*, while not statutorily defined in Chapter 37, HRS, entitled *Budget*, refers to a range of funds that are set aside for special purposes. Examples of non-general funds include special funds, revolving funds, and trust funds.

The ability of the Legislature to transfer, or "raid," special and revolving funds was weakened in light of the Hawai'i Supreme Court decision in *Hawai'i Insurers Council v. Linda Lingle, Governor, State of Hawai'i, et al.* The case centered on two transfers to the State's general fund from the Compliance Resolution Fund in 2002 and 2003, totaling \$3.5 million. The Compliance Resolution Fund is used to cover the Department of Commerce and Consumer Affairs' Insurance Division's budget through the collection of assessments, fines, penalties, and fees from insurers. An industry group, the Hawai'i Insurers Council, filed a lawsuit asserting that the transfers converted the insurance assessments into an illegal and unconstitutional tax. In coming to its decision, the Hawai'i Supreme Court applied a three-pronged test for determining whether an assessment is a regulatory fee—to be expended for the regulation or benefit of the parties upon whom the assessment is imposed—or a tax, to be used for general public purposes. In December 2008, the court ruled that the Legislature violated the separation of powers doctrine in an unconstitutional raid, and ordered the Legislature to return \$3.5 million to the Compliance Resolution Fund.

We found that the Department of the Attorney General plays a key role in the Legislature's fund transfer process by conducting legal reviews of proposed fund transfers. The department is called upon by the House Committee on Finance and Senate Committee on Ways and Means to assess whether the decision in *Hawai'i Insurers Council* as mentioned above applies to certain funds



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The Issue

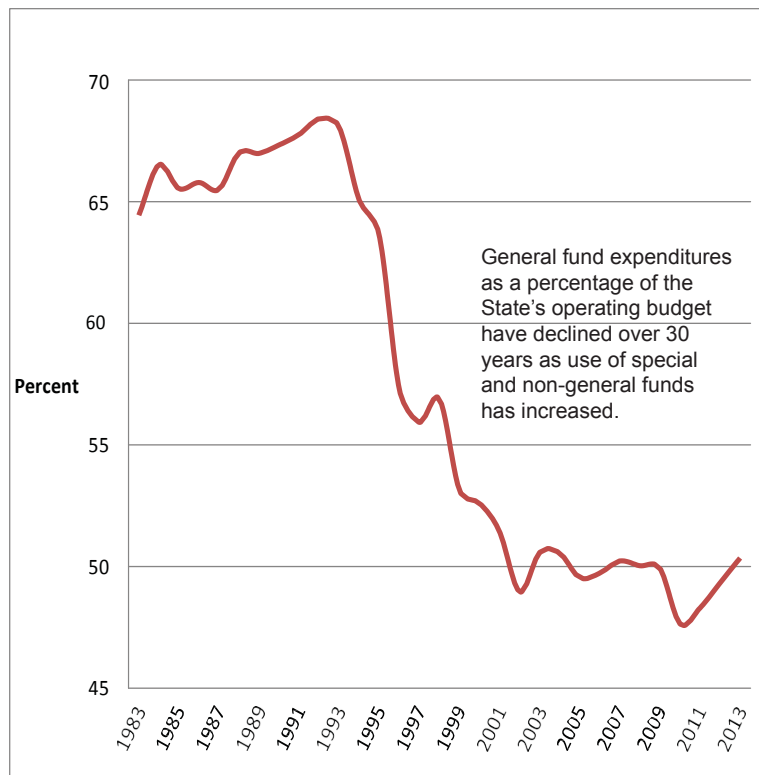
Non-general funds, such as special, revolving, and trust funds, exist outside the State's primary operating source, the general fund. Over the past 30 years, the number of non-general funds and the amount of money within them have substantially increased. In FY2011, non-general funds accounted for a little more than half of the State's \$10.2 billion operating budget, up from one-third in 1992. This proliferation of non-general funds has hampered the Legislature's ability to direct general fund spending.

- At least 729 non-general funds and accounts held an estimated unencumbered cash balance of \$2.47 billion in FY2012.
- Between 1980 and 2010, the number of special and revolving funds more than tripled, to 313 funds.
- Fund raids authorized by the Legislature in FY2009, FY2010, and FY2011 totaled \$161 million.

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<http://auditor.hawaii.gov/>

identified for possible transfer. A legal review of special and revolving funds is triggered when the Legislature has sought to transfer moneys from such funds. However, in 2012 we found that the legal review process conducted by the attorney general was not as robust or complete as necessary, resulting in transfers that may have violated federal and state laws.

General Fund Portion of State Operating Budget



Recommendation to the Department of the Attorney General

Report No.12-04 recommended that the Department of the Attorney General employ a more robust and methodical process of analyzing special and revolving funds for transfer of excess moneys to the general fund, such as using a checklist similar to one that we developed.

Recommendation Implemented

We found that the department has developed a non-general fund checklist to help determine the propriety of transfers from a non-general fund to the general fund. The checklist is posted on the department's intranet website, and is available as a reference to all department deputies. On February 27, 2013, the department conducted department-wide training for deputies whose clients administer non-general funds to familiarize them with the checklist. The training was attended by 41 department deputies. The department reported that no legislative bills to transfer moneys from non-general funds to the general fund were introduced during the 2014 legislative session, so it did not conduct a training session that year.

We determined that the Department of the Attorney General has fully implemented our recommendation and have deemed it **closed**.