
**Review of Special and Revolving
Funds of the Judiciary and the
Departments of the Attorney
General, Labor and Industrial
Relations, Land and Natural
Resources, Personnel Services,
Taxation, Transportation, and Public
Safety**

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 92-11
April 1992



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Review of Special and Revolving Funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety

Summary

In Act 240, SLH 1990, the Legislature directed the Auditor to evaluate most of the special and revolving funds in existence as of July 1, 1990, and to review legislation proposing new funds. Special and revolving funds are financing mechanisms created outside the general fund to support specific programs and activities. The Legislature voiced its concern about the growing number of these funds and their effect on the fiscal integrity of the State. Of approximately 140 existing funds specifically created by statute, 75 were created within the past eight years. This represents more than a 100 percent increase over all previous years.

Experts have questioned the benefits of special funds. As larger sums of money are set aside in this way and not lapsed to the general fund, there can be a cumulative effect on the overall financial condition of government. Special funds can give agencies full control of their unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. The experts say that special funds are likely to hamper budget administration.

From a legislative perspective, they are less desirable because they are not fully controlled by the appropriations process and thus lessen the Legislature's control of the budget.

This review was of 25 special and revolving funds within the Judiciary, and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety. The review of the fund in the Department of the Attorney General is due June 30, 1992. We have advanced the reviews of the remaining funds, which were due 1993 to 1995. In evaluating the funds, we used two criteria provided by Act 240—whether the fund continues to serve the purpose for which it was originally created and whether it reflects a clear link between the benefit sought and charges made upon the beneficiaries of the program. To this we added a third—that the fund demonstrate the capacity to be financially self-sustaining:

We recommended the repeal of 8 funds, the modification of 3 others, and the continuation of 13. We also recommended that 1 be allowed to sunset.

Recommendations and Response

Judiciary. Of the Judiciary's two funds, we recommended that both be continued but that unneeded cash be transferred from the Judiciary Driver Education and Training Fund to the general fund. The Judiciary concurs with our recommendation

to continue the Supreme Court Law Library Special Fund but believes it should be a revolving fund instead of a special fund.

Attorney General. We recommended that the Criminal Forfeiture Fund be allowed to sunset July 1, 1993 and the balance of the fund be transferred to the general fund. The department does not agree with our recommendation. It agrees that the fund cannot meet the criterion of linkage, but it believes that this criterion should not be applied to this fund.

Labor and Industrial Relations. Of the department's five funds, we recommended the repeal of one and the continuation of four. We recommended that one of the four be modified with unneeded cash transferred to the general fund. The department did not respond to our recommendations.

Land and Natural Resources. Of the department's seven funds, we recommended that five be repealed, one be continued, and one be continued but modified to transfer unneeded cash to the general fund. The department agreed with our recommendations to continue the one fund and the repeal of four funds. It agreed with our recommendation to continue the Special Land and Development Fund, but it does not agree with our recommendation that unneeded cash be transferred to the general fund. It believes that the cash must be retained to satisfy potential losses due to default of mortgages involving state lands. It did not agree with our recommendation to repeal the Industrial Park Special Fund, saying that more time is needed for the fund to fully operate as intended.

Personnel Services. We recommended that the Revolving Fund for In-Service Training Programs and Activities be repealed. The department does not agree with our recommendation. The department states that although the fund has been operated as an internal service account, it plans to make the revolving fund more self-sustaining in the future.

Taxation. We recommended the Tax Reserve Special Fund be continued. The department agreed with our recommendation.

Transportation. Of the department's six funds, we recommended the continuation of five and the repeal of one. The department made no comment on our recommendations.

Public Safety. We recommended the continuation of the department's two funds but the Corrections Division should make the Correctional Industries Revolving Fund self-sustaining. The department agrees that the program should be self-sustaining.

Budget and Finance. The department generally supports the departments' disagreements with our recommendations. It also disagrees with our recommendation to repeal the Special Premium Supplementation Fund of the Department of Labor and Industrial Relations. The department feels that uncertainties in the business climate may place more demands on this fund.

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 92-11
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Foreword

In Act 240, SLH 1990, the Legislature requested the Auditor to review, over a five year period, most special and revolving funds in existence as of July 1, 1990. This review is of those funds administered by the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety. The review of the fund within the Department of the Attorney General is due June 30, 1992. We have advanced the reviews of the remaining funds, which were due 1993 to 1995. The purpose of the review is to assess whether the special or revolving funds within the agencies should be continued, modified, or repealed. As required by the act, we have included our recommended legislation at the end of the report.

We wish to acknowledge the excellent cooperation extended by the officials and staff of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety.

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Chapter 1

Introduction

This is a report on our review of special and revolving funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety. The review comprises the fifth of a series directed by Act 240, Session Laws of Hawaii 1990, and scheduled over a five-year period. Our first report, No. 91-10, issued in February 1991, reviewed the special and revolving funds in the Department of Accounting and General Services, the Department of Agriculture, and the Department of Budget and Finance; the second report, No. 92-3, reviewed funds in the Housing Finance and Development Corporation and the Department of Business, Economic Development, and Tourism; our third report, No. 92-8, covered funds at the Departments of Commerce and Consumer Affairs, Education, Health, and Human Services. Our fourth report, No. 92-9 reviewed funds in the University of Hawaii. We also analyzed all special and revolving funds proposed during the 1991 and 1992 legislative sessions.

The Legislature in Act 240 expressed concern about maintaining the fiscal integrity of the State when fluctuations in the economy affect general fund revenues. Special and revolving funds receive their revenues without consideration of the State's overall financial condition. The Legislature felt it was fiscally prudent to request the Auditor to evaluate existing special and revolving funds and to review legislation proposing new ones.

Objectives of the Review

1. To evaluate the appropriateness of existing special and revolving funds of eight agencies.
2. To recommend whether the existing special and revolving funds should be continued, modified, or repealed.

Scope of the Review

Act 240 schedules the review of all special and revolving funds in existence as of July 1, 1990, except those in the Executive Office of the Governor and its agencies, the Office of the Lieutenant Governor, the Department of Hawaiian Home Lands, and the Office of Hawaiian Affairs. This review examines those funds directly administered by the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety.

In our review, we did not consider the value of a program, the quality of its management, or whether the program deserved to be continued. Our focus was on the appropriateness of special funding *as a means of financing the particular program or activity*.

Method of the Review

In evaluating the appropriateness of the special and revolving funds, we applied the same evaluation criteria developed for our first review of special and revolving funds (Report No. 91-10) and presented in Chapter 3 of this report. We researched the legislative history of each fund to determine its intent and purpose. We also reviewed, as appropriate, the administrative rules, financial audit reports, agency financial reports, and other documents. To gain an understanding of fund operations and the consequences of abolishing certain funds, we interviewed key fiscal and program personnel. The financial information shown for fiscal year 1990-91 are unaudited amounts obtained from the agencies.

Our work was performed from June 1991 through November 1991 in accordance with generally accepted government auditing standards.

Chapter 2

Background on Special and Revolving Funds

Section 37-62, *Hawaii Revised Statutes*, defines special funds as those “dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.” It defines revolving funds as those “from which is paid the cost of goods and services rendered or furnished to or by a state agency and which [are] replenished through charges made for the goods or services or through transfers from other accounts or funds.”

Special and revolving funds are therefore financing mechanisms created outside the general fund to provide ongoing support for specific activities or programs. While most special funds are designed to be self-sustaining, some receive regular subsidies from the general fund. Revolving funds are special funds that replenish themselves through charges to a specific group of users. Revolving funds are often established with an appropriation of seed money from the general fund.

Loss of Budgetary Control

From the perspective of those who manage special fund programs, such funds are highly desirable. They guarantee funding and have provided agencies with the flexibility to spend excess money without seeking legislative appropriations. From a legislative perspective, however, special funds are less desirable. They guarantee for a program a continuing source of revenue that is not fully controlled by the appropriations process.

Concerns about loss of budgetary control through the use of special funds are not new. A 1961 report on special funds in the 50 states noted that special fund activity had grown to such an extent that many governors and legislatures had “lost control of the planning of expenditures.”¹ Special funds led to (1) lack of an accurate accounting for state resources, (2) excess cash reserves held in special fund accounts, and (3) the practice of earmarking resources instead of budgeting for expenditures. The report called for a comprehensive statement on existing practices and criteria to help states eliminate unjustified special funds while maintaining those which are clearly legitimate. Needless special funds had undermined the authority of state legislatures, and the report recommended that such funds should be eliminated. If not eliminated, the funds should at least be included in the executive budget and appropriated by the legislature. In view of these concerns, many states in the early 1960s greatly reduced their reliance on special funding.

At the federal level, a report on revolving funds published in 1977 by the General Accounting Office noted similarly that congressional control over a program is lessened when the program is financed as a revolving fund. This is because revolving funds can expend moneys without congressional review. The report concluded that the public interest is best served when congressional control over activities is exercised through the appropriations process by regular reviews of, and direct actions on, programs and financing requirements. Departure from this standard should be permitted only when it can be shown “*that an activity cannot be successfully operated in the public interest within the appropriation process* (emphasis added).”²

Hawaii’s Budgetary Control Act of 1957

Some 35 years ago, the 28th Territorial Legislature enacted a law that placed “all special funds under legislative and executive budgetary control in the same manner as the general fund.”³ Act 320, *Session Laws of Hawaii 1957*, provided that transfers could be made from special funds to the general fund of moneys not spent beyond fiscal year requirements. Act 320 also requested from the Territorial Bureau of the Budget a study of all special and revolving funds.

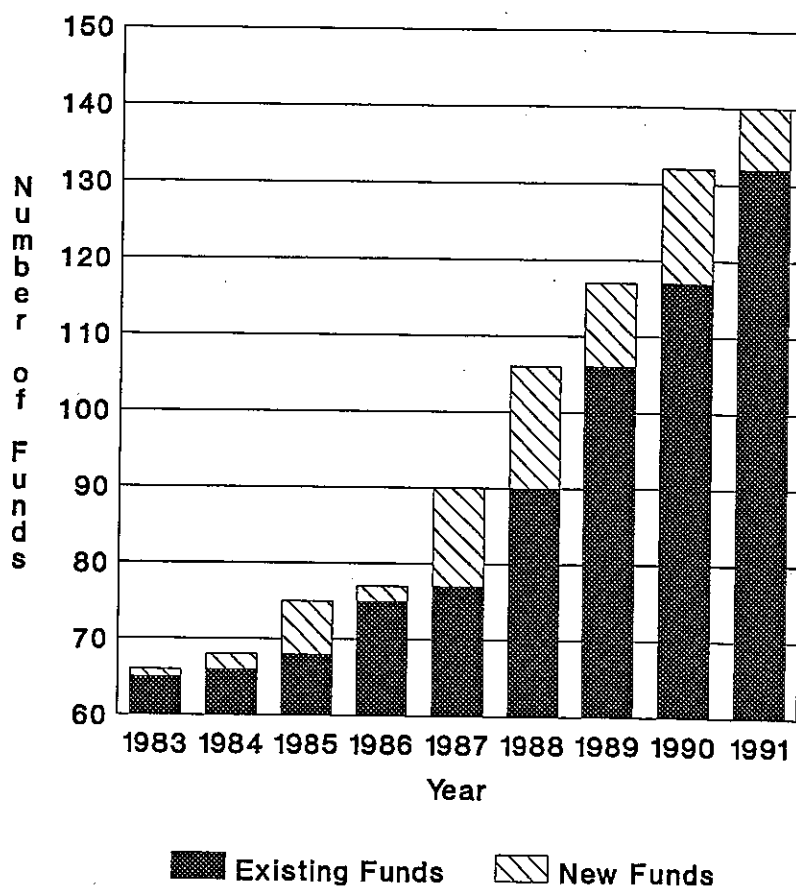
In 1959, the budget bureau contracted the Public Administration Service (PAS) to conduct the study.⁴ In addressing the use of special funds, the PAS report concluded that “the effects of special fund financing are such that the device should be avoided in all operations other than enterprises and peripheral functions.”⁵ Subsequently, the 1959 Territorial Legislature approved Act 265, which abolished many special funds and directed the affected programs to be budgeted through the general fund.

Recent Proliferation of Special Funds

The proliferation of special funds in recent years has again given rise to legislative concern. Over the last eight years 75 new special or revolving funds have been created by statute, representing a more than 100 percent increase over the previous years.⁶ See Figure 2.1.

The increasing number of special funds has a cumulative effect on the overall financial condition of the State. Special funds allow agencies to control their unappropriated cash reserves, provide a means to avoid the general fund expenditure ceiling, and over time erode the general fund.

Figure 2.1
Special and Revolving Funds Created Since 1983



Agency control of unappropriated cash reserves

Section 37-53, HRS, allows special fund programs to transfer excesses beyond fiscal year requirements to the general fund. Agencies, however, rarely use this provision, instead they allow cash reserves to accumulate in many special funds even after the legislative spending authorization has lapsed. Previously, these cash reserves were available to the agency for spending because of a budget proviso allowing the governor to approve increases in the expenditure ceilings of special funds.⁷ This practice, however, is not authorized for the fiscal biennium 1991-93 because the budget proviso was eliminated from the General Appropriations Act of 1991 (Act 296).⁸ As a result, even though a special fund program may have cash reserves, its spending cannot exceed its fiscal year appropriation.

Avoidance of the expenditure ceiling

A primary issue debated during the 1978 Constitutional Convention was whether to limit government expenditures, and if so, whether to limit only general fund expenditures or all state expenditures. It was argued then that placing a limit solely on general fund expenditures could have the effect of “shifting expenditures to special revenue funds, creating new special revenue funds (unless there is some constitutional restriction against their creation), or forcing those programs which are not self-sustaining to increase their own program revenues.”⁹ The amendment adopted by the convention and subsequently ratified by the electorate applied the ceiling only to general fund expenditures and did not include special funds. In the past two fiscal years the general fund expenditure ceiling has been exceeded and, as predicted in 1978, the number of special funds has increased markedly.

Erosion of the general fund through earmarking

In recent years especially, some special funds have been created by earmarking general fund appropriations. Earmarking is the practice of designating certain taxes or fees to support specific activities on a continuing basis. It is based on the premise that in certain circumstances government services should be paid for by those who directly benefit from them. Revenues are earmarked from certain taxes and diverted to special funds *before* funds are appropriated for general fund programs.

Hawaii’s 1989 Tax Review Commission voiced concerns in a study on special funds and their impact upon Hawaii’s overall financial condition. The commission criticized special funds created for specific programs or activities when there is no direct link between the sources of the revenues and the program. It cited, for example, the educational facilities improvement special fund, which earmarks a total of \$630 million in general revenues over seven years.¹⁰

A recent report by the National Conference of State Legislatures (NCSL), which discusses the dynamics of earmarking practices within the fifty states, noted that earmarking hinders budgetary control by legislatures because it automatically dedicates revenues to programs. When funding is automatic, programs do not undergo the same degree of legislative scrutiny exercised over general fund programs. Further, earmarking distorts the distribution of funds. It is often arbitrary, with little connection between the source of revenue and the service provided. The absence of this link can result in a special program having either deficits or reserves. In the event of shortfalls in general revenues, a special fund program can tie up funds that may be needed in other areas.¹¹

The primary consideration for lawmakers on this practice is how to weigh legislative control of the budget against administrative flexibility for the program. The NCSL report concludes that “earmarking is more likely to hamper than assist state budgetary design and management.”¹²

Chapter 3

Criteria for Reviewing Special and Revolving Funds

Act 240, *Session Laws of Hawaii 1990*, establishes two criteria to be used in reviewing whether a particular special or revolving fund should be continued, modified, or repealed. These criteria are the extent to which the fund:

1. Continues to serve the purpose for which it was originally created; and
2. Reflects a clear link between the benefit 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 which is removed from the normal budget and appropriations process.

In addition to the two criteria, the act allows other criteria to be applied. From our review of the public finance literature, we believe that a third criterion should be the extent to which the fund:

3. Demonstrates the capacity to be financially self-sustaining.

Fund Should Serve Original Purpose

The first criterion is to determine the extent to which the fund continues to serve the purpose for which it was originally created. Enabling legislation usually identifies the purpose for establishing a special or revolving fund. Our review will determine whether the purpose of the fund is still applicable.

Circumstances and conditions, which originally provided the rationale and need for the creation of a special or revolving fund, may have changed. In such a case, the fund may now be serving some purpose other than the purpose for which it was created. The Legislature may agree that the current purpose satisfies a current need. If so, it would be appropriate for the Legislature to decide whether the statutes should be amended to update the purpose of the fund or whether some other financing arrangements should be made.

Changed circumstances and conditions could also have the effect of negating the need for the fund and rendering it inactive. Such a situation would indicate strongly that the fund should be discontinued.

Fund Should Have Clear Link Between Benefits and Charges

The second criterion emphasizes that the fund should have a clear link between program benefits and program charges. The firmest example of this is when a program has the capacity to generate revenues, and the revenues, in turn, are used to support the program. This practice flows from the benefit theory of finance, which holds that those who benefit from the program should be the same persons to pay for the program. Special and revolving funds that operate under this theory are more defensible than those which do not.

As stated in the law, the criterion would challenge a fund which is used—not to link user benefits and user charges—but to serve primarily as a means to provide the program and its users with an automatic means of support. An example of such a fund is one which is financed through the earmarking of taxes that are not levied specifically on program beneficiaries but which are broadly based and fall generally on all taxpayers.

Fund Should Be Financially Self-Sustaining

Related to the second criterion is the concept that special or revolving funds should demonstrate the capacity to be financially self-sustaining. The most defensible fund is one which derives all of its revenues through fees or taxes on the specific users of the program and which can meet all of its expenditures through its own revenues.

In effect, a special or revolving fund earns its status by being self-sustaining. A fund which must rely on periodic infusions of general fund appropriations to make up for insufficient program revenues has less reason to be accorded special status. It could just as well be funded entirely through the general fund appropriations process.

The major precedent in Hawaii state government for applying the self-sustaining standard is in the exemption of certain general obligation bonds from the constitutional debt limit. Under the State Constitution, reimbursable general obligation bonds may be exempt from the debt limit to the extent that the particular special fund responsible for repayment is self-sustaining. If the special fund is fully self-sustaining—capable of meeting all of its operating costs as well as repaying the general fund for debt service—all of the bonds may be exempt from the debt limit. In essence, the debt limit exemption is “earned” when a fund can demonstrate its self-sustaining capacity.

Similarly, a fund should “earn” its status as a special or revolving fund through a demonstration that it has the capacity to meet all of its operating expenditures through its own program revenues.

Chapter 4

Department of Labor and Industrial Relations

This chapter presents our findings and recommendations on each of five special funds administered by the Department of Labor and Industrial Relations. The funds are discussed in alphabetical order. For each we make a recommendation on whether it should be continued, modified, or repealed; present the purpose of the fund; and give the basis for our recommendation. We do not evaluate the program or its management, nor do we assess whether the program should be continued. Our focus is on whether a special or revolving fund is an appropriate means of financing the program or activity.

Summary of Recommendations

Special Compensation Fund. Continue.

Special Fund for Disability Benefits. Continue but transfer unneeded cash to the general fund.

Special Premium Supplementation Fund. Repeal and budget through the general fund.

Special Unemployment Insurance Administration Fund. Continue.

Unemployment Compensation Fund. Continue.

Special Compensation Fund Section 386-151, HRS

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	5,533,447
Receipts		8,993,052
Expenditures		8,373,620
Ending Balance	\$	6,152,909

Recommendation: Continue.

This fund was created in 1937 to (1) enhance the employability of persons with pre-existing injuries, (2) reduce discrimination against persons with dependents, and (3) require employers to pay compensation only for the loss actually sustained in their employment. The fund continues to serve the purpose for which it was created. In addition, the fund now also compensates persons in cases of employer default, and provides benefits to injured persons who have more than one job. The

fund's receipts consist of charges made on self-insured employers and insurance carriers. The link between the benefits and user charges is direct because those supporting the fund are insured against liability for expenses relating to pre-existing injuries and benefit adjustments. The fund is also self-sustaining. This fund therefore meets all three criteria and should be continued.

**Special Fund for
Disability Benefits
Section 392-61, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	4,597,187
Receipts		412,534
Expenditures		28,581
Ending Balance	\$	4,981,140

Recommendation: Continue but transfer unneeded cash to the general fund.

This fund was created in 1969 to pay disability benefits to individuals who become disabled when unemployed and who subsequently become ineligible for unemployment benefits. It also pays benefits to persons who cannot otherwise receive temporary disability benefits because their employers have become bankrupt or failed to provide temporary disability insurance as required by law. The fund continues to serve its original purpose by making these disability benefits payments. The fund meets the second criterion of linkage between the benefits sought and the charges made upon the users. Employers who pay into the fund gain by being insured against liability claims of former employees who become disabled. The fund is self-sustaining—receipts exceeded expenditures by \$254,667 and \$383,953 in 1990 and 1991, respectively. There was a one-time assessment of employers in 1969 to get the fund started. The fund has since operated without assessments, relying principally on interest earned on the initial assessment to pay benefits. This fund meets all three criteria and should be continued. However, in light of the growing and substantial cash balance, unneeded cash should be transferred to the general fund.

**Special Premium
Supplementation
Fund
Section 393-41, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	2,064,458
Receipts		152,078
Expenditures		5,311
Ending Balance	\$	2,211,225

Recommendation: Repeal and budget through the general fund.

This fund was created in 1974 to enable employers with fewer than eight employees to receive supplements for premium payments for health insurance under certain conditions. In 1978 the fund was amended to extend health care insurance to workers whose employers were bankrupt or who were not in compliance with state law requiring prepaid health care insurance. The fund continues to serve the purpose for which it was created. It extends health care insurance to workers who do not have any or have insufficient health care insurance. However, there is little link between the benefits sought and the charges made on the users because there are few user charges. Receipts of the fund are principally from the interest earned on the general fund appropriation of seed money for the fund. Those who receive the benefit of the health care insurance sometimes pay into the fund. The fund should be repealed and the program budgeted through the general fund.

**Special
Unemployment
Insurance
Administration
Fund
Section 383-127, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	723,655
Receipts		45,754
Expenditures		373,352
Transfers		488,394*
Ending Balance	\$	884,421

*Transfers from Unemployment Compensation Fund

Recommendation: Continue.

The purpose of this fund was to enhance the administration of the unemployment insurance program. The fund was established in 1987 in response to reductions in federal administrative grants. The Legislature feared that federal cutbacks would compromise programs such as benefit payments and collection of delinquent unemployment compensation insurance contributions. The fund continues to serve its original purpose. Its principal source of funds is the transfer of all fines, penalties, and interest collected by the unemployment compensation fund on delinquent unemployment insurance contributions. The fund augments federal administrative grants and pays for expenses and obligations relating to administration of the program. There is a direct relationship between the benefits sought and the charges made upon the users. Employers who are assessed fines, penalties, and interest on delinquent unemployment compensation insurance assessments pay for the cost of administering the unemployment compensation insurance program. The fund is self-sustaining and requires no general fund support. This fund meets all three criteria and should be continued.

**Unemployment
Compensation
Fund
Section 383-121, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$ 365,227,372
Receipts	120,016,093
Expenditures	59,959,440
Transfers	(488,394)*
Ending Balance	\$ 424,795,631

*Transfer to Special Unemployment Insurance
Administration Fund

Recommendation: Continue.

Created in 1937, this fund was intended to provide temporary income to unemployed individuals as required by the federal Social Security and National Employment Acts. The fund continues to meet the purpose for which it was established. Employers are required to make contributions into the fund. The contributions are based on the amount of the employers' payroll and prior employee claims for unemployment compensation benefits. The program pays weekly benefits to unemployed individuals who meet the requirements of the unemployment insurance law for generally up to 26 weeks. The benefits sought and the charges made upon the users are directly linked. Employers paying into the fund receive up to a 5.4 percent tax credit applied against a mandated 6.2 percent federal unemployment compensation insurance payroll tax. The fund is self-sustaining and is financed primarily through payroll taxes on employers and interest earned from investments. Fines, penalties, and interest assessed on delinquent contributions are transferred to the Special Unemployment Administration Fund. The fund meets all three criteria and is required for federal approval of the state's unemployment compensation system. We therefore recommend that the fund be continued.

Chapter 5

Department of Land and Natural Resources

This chapter presents our findings and recommendations on each of seven special and revolving funds administered by the Department of Land and Natural Resources. The department has four special funds and three revolving funds. The funds are discussed in alphabetical order. For each we make a recommendation on whether it should be continued, modified, or repealed; present the purpose of the fund; and give the basis for our recommendation. We do not evaluate the program or its management, nor do we assess whether the program should be continued. Our focus is on whether a special or revolving fund is the appropriate means of financing the program or activity.

Summary of Recommendations

Development Revolving Fund. Repeal.

Industrial Park Special Fund. Repeal and budget through the general fund.

Land and Water Development Revolving Fund. Repeal.

Special Fund for Strip Mining Bond or Deposit Moneys Forfeited. Repeal.

Special Funds for Soil and Water Conservation Districts. Repeal.

Special Land and Development Fund. Continue but transfer unneeded cash to the general fund.

Wildlife Revolving Fund. Continue.

Development Revolving Fund Section 206-41, HRS

Recommendation: Repeal.

This fund was created in 1961 but was never activated. Its purpose was to support the development of public lands for residential housing and related purposes. The department has no plans to activate the fund. Since the fund has never served the purpose for which it was intended, we recommend that it be repealed.

**Industrial Park
Special Fund
Section 171-138, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	0
Receipts		3,658,649
Expenditures		0
Ending balance	\$	3,658,649

Recommendation: Repeal and budget through the general fund.

This fund was created in 1988 to support the planning, development, and maintenance of industrial parks established by the Department of Land and Natural Resources. Receipts are to be from lease rents and other assessments made of lessees of industrial parks and any appropriations to the fund. Sand Island Park is the first industrial park. Department personnel state it is the department's intent to develop an industrial park at Keehi Lagoon. So far there have been no expenditures from the fund, although the department says that receipts from industrial park tenants will be used for the development and maintenance of industrial parks. There has been no link so far between the benefits sought and the user charges since no monies have been expended. There were no financial projections or plans for the program so we were unable to determine if it would be self-sustaining. Since the fund is only accumulating cash and it is not operating as intended, we recommend that it be repealed and the industrial parks be budgeted through the general fund.

**Land and Water
Development
Revolving Fund
Section 174-22, HRS**

Recommendation: Repeal.

This fund was created in 1961 but is not active. There are no moneys in the fund. The purpose of this fund was to support water projects, especially irrigation projects developed by the Board of Land and Natural Resources. An amendment in 1987 added support of land projects. The department does not intend to use this fund as water development projects are being funded with capital improvement appropriations. Since this fund is no longer needed for the purpose for which it was created, we recommend that it be repealed.

**Special Fund for
Strip Mining Bond
or Deposit Moneys
Forfeited
Section 181-10, HRS**

Recommendation: Repeal.

This fund was established in 1957 but was never activated. The purpose of this fund was to support the reclamation of public lands that are strip mined. This fund was to receive and hold any moneys forfeited under

any bond or deposit from operators with permits to engage in strip mining, and the fund was to be used to restore and rehabilitate the lands covered by the permits. However, there has been no strip mining activity under state regulation. Since this fund has never served its original purpose, we recommend that it be repealed.

**Special Funds for
Soil and Water
Conservation
Districts
Section 180-17, HRS**

Recommendation: Repeal.

A special fund was created in 1965 for each soil and water conservation district. The department could establish such districts and arrange for the election of district directors. The purpose was to give each soil and water conservation district a special fund to keep the moneys it receives and to pay those expenses approved by the majority of its directors. The department has not established any special funds and has no plans to activate the funds. The districts are being supported by the general fund. Since these funds are no longer needed for the purpose for which they were established, we recommend their repeal.

**Special Land and
Development
Fund
Section 171-19, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	7,823,617
Receipts		2,222,299
Expenditures		1,271,476
Ending Balance	\$	8,774,440

Recommendation: Continue but transfer unneeded cash to the general fund.

Created in 1962, the purpose of this fund was to combine special land funds into one fund that would receive all proceeds from the sale, rental, and other proceeds of public lands. While staff who administer the fund are paid from general fund appropriations, the fund is to be used for certain other expenses related to the management of public lands. The fund continues to serve this purpose. Receipts include proceeds from leases and other rentals of public lands; sale of public lands; license fees for use of public lands and use of government water; and sale of wood, rock, and sand. There is a direct link between the benefits sought and the user charges as those who benefit from the use of public lands pay purchase prices, rents, or other fees. The fund is more than self-sustaining. The year-end cash balance is more than six times the 1991 expenditures. The fund meets all three criteria and should be continued. However, in light of the fund's sizable cash balance, unneeded cash should be transferred to the general fund.

**Wildlife Revolving
Fund
Section 183D-10.5,
HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	193,802
Receipts		109,781
Expenditures		106,961
Ending Balance	\$	196,622

Recommendation: Continue.

This fund was created in 1988 to support the department's wildlife and endangered species programs. A primary purpose of this fund was to provide matching state funds for federal grants available under the Pittman-Robertson Federal Aid in Wildlife Restoration Act. This fund continues to serve the purpose for which it was created. Receipts consist mostly of fees for hunting licenses, hunter education activities, game bird farmer licenses, and interest on investments. Most of the receipts are used for wildlife programs. There is a direct link between charges made on hunters and the benefits of having wildlife programs. The fund is also self-sustaining—expenditures are not allowed to exceed the funds available. The fund meets all three criteria and should be continued.

Chapter 6

Department of Transportation

This chapter presents our findings and recommendations on each of six special and revolving funds administered by the Department of Transportation. The department has five special funds and one revolving fund. The Special Fund for Deposit of Surplus Received from Sale of Freight on which Demurrage and Other Charges are Due is a clearing account and, therefore, is not included in this review. This review also excludes the Oahu Metropolitan Planning Organization (OMPO) Revolving Fund. It is also a clearing account used to pay certain operating expenses of OMPO which are then reimbursed to the fund by the federal government. The Transportation Use Special Fund was changed in 1990 and is now included in the Airport Revenue Fund which is reviewed here.

The funds are discussed in alphabetical order. For each we make a recommendation on whether it should be continued or repealed, present the purpose of the fund; and give the basis for our recommendation. We do not evaluate the program or its management, nor do we assess whether the program should be continued. Our focus is on whether a special or revolving fund is the appropriate means of financing the program or activity.

Summary of Recommendations

Airport Revenue Fund. Continue.

Boating Special Fund. Continue.

Harbor Special Funds. Continue.

Highway Advance Acquisition Revolving Fund. Repeal.

Special Fund for Deposit of Gross Revenues Derived from the Operation of the Ferry System. Repeal.

State Highway Fund. Continue.

**Airport Revenue
Fund
Section 248-8, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$ 280,375,010
Receipts	517,694,251
Expenditures	323,636,451
Transfer	(250,000,000)*
Ending Balance	\$ 224,332,810

*Transfer to State Highway Fund

Recommendation: Continue.

Established in 1945, this fund was intended to support the state airport system. The fund continues to serve its original purpose. Aviation fuel taxes, landing fees, rentals, and other charges are used to pay for the State's airport system. The linkage between the benefits and user charges is direct—users of the airport facilities pay fuel taxes and other user fees which are deposited into the fund. The fund is also self-sustaining and, therefore, meets all three criteria and should be continued.

**Boating Special
Fund
Section 248-8, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$ 5,010,000
Receipts	6,403,000
Expenditures	6,269,000
Ending Balance	\$ 5,144,000

Recommendation: Continue.

This fund was created in 1972 to support the statewide boating program. The fund continues to serve the purpose for which it was created. Receipts consisting of liquid fuel taxes, rental and slip fees, and other fees charged to small boat owners that are used to operate boating facilities and other program activities. The linkage between the benefits sought and the user charges is direct—small boat operators who use the State's small boat facilities and programs pay fuel taxes, rents, and other charges. As required by law, the fund is also self-sustaining. It meets all criteria and should be continued.

**Harbor Special
Funds**
Section 266-19, HRS

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	22,553,000
Receipts		42,669,000
Expenditures		37,708,000
Ending Balance	\$	27,514,000

Recommendation: Continue.

Two Harbor Special Funds are established under Section 266-19, HRS. They were established in 1941, to support the activities of the statewide system of commercial harbors and to account for the debt service requirements of revenue bonds issued for harbors facilities. The funds continue to serve the purposes for which they were created. All costs relating to commercial harbors are paid from these funds. The linkage between the benefits sought and the user charges is direct. Users of state commercial harbors pay fees that are deposited into the funds. As required by law, the funds are also self-sustaining. In fact, a recent rate increase has added to the funds' cash balance. The department has testified the increase is necessary for harbor improvements. The funds meet all three criteria and should be continued.

**Highway Advance
Acquisition
Revolving Fund**
Section 264-15, HRS

Recommendation: Repeal.

This fund was created in 1971 but is not active. The purpose of the fund was to give the department the flexibility to acquire land for state highways in anticipation of condemnation proceedings. However, lands for highway use are acquired through the State Highway Fund. Since this fund is not serving the purpose for which it was created, we recommend that it be repealed.

**Special Fund for
Deposit of Gross
Revenues Derived
from the
Operation of the
Ferry System**
Section 268-6, HRS

Recommendation: Repeal.

Created in 1965 to support a state ferry system, this fund has never been activated. According to department officials the fund should be repealed, and we concur.

**State Highway
Fund
Section 248-8, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	36,224,530
Receipts		89,760,350
Expenditures		100,507,645
Transfers		250,000,000*
Ending Balance	\$	275,477,235

*Transfer from the Airport Revenue Fund

Recommendation: Continue.

This fund was created in 1932 to support the administration, operation, maintenance, and construction of the state highway system. The fund continues to serve the purpose for which it was created. Motor vehicle fuel taxes and other fees related to the operation of motor vehicles are deposited into the fund and are used for the construction and operation of the highway system. The transfer from the Airport Revenue Fund was to help pay the cost of providing highway access to the airport. The linkage is direct—users who drive on the highways pay fuel taxes and other fees which are used to construct and operate the highway system. The fund is also self-sustaining. The fund meets all criteria and should be continued.

Chapter 7

Departments of the Attorney General, Personnel Services, Public Safety, Taxation, and the Judiciary

This chapter presents our findings and recommendations on each of seven special and revolving funds administered by the Departments of the Attorney General, Personnel Services, Public Safety, Taxation, and the Judiciary. The Correctional Industries Account was repealed and replaced with the Correctional Industries Revolving Fund which is reviewed here. The funds are discussed in alphabetical order by department. For each we make a recommendation on whether it should be continued, modified, or repealed; present the purpose of the fund; and give the basis for our recommendation. We do not evaluate the program or its management, nor do we assess whether the program should be continued. Our focus is on whether a special or revolving fund is the appropriate means of financing a program or activity.

Summary of Recommendations

Criminal Forfeiture Fund. Continue but allow to sunset and transfer balance to the general fund.

Revolving Fund for In-Service Training Programs and Activities. Repeal and budget through the general fund.

Revolving Funds for Correctional Facility Stores. Continue.

Correctional Industries Revolving Fund. Continue. However, the corrections division should make the fund self-sustaining.

Tax Reserve Special Fund. Continue.

Driver Education and Training Fund. Continue but transfer unneeded cash to the general fund.

Supreme Court Law Library Special Fund. Continue.

Department of the Attorney General Criminal Forfeiture Fund Section 712A-16, HRS

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	121,053
Receipts		336,470
Expenditures		49,240
Ending Balance	\$	408,283

Recommendation: Continue but allow to sunset and transfer balance to the general fund.

This fund was created in 1988 to account for one half of the net proceeds of all property forfeited for offenses for which forfeiture is provided by law. The other half is to be distributed to units of state and local governments responsible for the arrest and prosecution of the person forfeiting the property. The fund is to be used to pay (1) the expenses necessary to seize, maintain, or sell forfeited property, (2) awards for information leading to civil or criminal proceedings, (3) supplemental funds to state and county agencies for law enforcement purposes, and (4) the cost of training and education of law enforcement officers. The fund continues to serve the purpose for which it was created. Forfeited property and money are distributed to state and local governmental units. It is used for the education and training of law enforcement officers, including the staff of the Department of the Attorney General and the county prosecuting attorneys. However, there is no linkage since no charges are made of users. Receipts are from property subject to forfeiture and not from charges on those who benefit from the fund. The fund is self-sustaining since expenditures cannot exceed receipts. The fund has a sunset date of July 1, 1993. Since the fund does not meet the second criterion, we recommend that the fund be allowed to sunset, and that the state's share of forfeitures be deposited in the general fund.

**Department of
Personnel
Services
Revolving Fund
for In-Service
Training Programs
and Activities
Section 81-3, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	56,947
Receipts		246,135
Expenditures		262,143
Ending Balance	\$	40,940

Recommendation: Repeal and budget through the general fund.

This fund was created in 1978 to support the department's development and operation of in-service training programs and activities for government employees. The fund continues to serve the purpose for which it was created. There is a direct link between the benefits sought and the charges to users—the state agencies that benefit from participation in the training programs pay registration fees for the programs from their general fund appropriations. However, this fund is not self-sustaining. The training program is supported also by general fund appropriations. Most of administrative and operating costs are paid through general fund appropriations as well as payments from other agencies from their general fund appropriations. This fund does not meet the third criterion and should be repealed and training programs budgeted through the general fund.

**Department of
Public Safety
Revolving Funds
for Correctional
Facility Stores
Section 353-31, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	72,980
Receipts		1,020,531
Expenditures		933,748
Ending Balance	\$	159,763

Recommendation: Continue.

Three funds were created in 1976 to account for the purchase and sale of goods at stores in correctional facilities. The funds continue to serve the purpose for which they were created. Goods are purchased for the stores and are sold to inmates of the correctional facilities. The link between the benefits sought and the user charges is direct—inmates pay for the goods they purchase from the stores. The funds are also self-sustaining. Prices are established to provide a markup over cost and to enable the fund to replenish the stores' inventory. The funds meet all three criteria and should be continued.

**Department of
Public Safety
Correctional
Industries
Revolving Fund
Section 354D-10, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	361,766
Receipts		1,232,806
Expenditures		1,248,416
Ending Balance	\$	346,156

Recommendation: Continue. However, the corrections division should make the fund self-sustaining.

This fund was established in 1990 to replace the Correction Industries Account created in 1963. The purpose of the fund was to account for the correctional industries program of the corrections division. This program provides inmates with specific training skills in a workplace environment that would improve their employment prospects after release. The fund continues to serve the purpose for which it was created. Receipts from the sale of goods and services produced by inmates are used to support vocational training of inmates. The link between the benefits sought and the user charges is direct—inmates benefit from the training program and they pay for the training program by the sale of goods and services they produce. The program is not yet self-sustaining. Some general fund support has been required for administrative costs and the initial cost of capital equipment used in the program. We recommend that the fund be continued, but that the division develop plans to make the program self-sustaining.

**Department of
Taxation
Tax Reserve
Special Fund
Section 231-23, HRS**

Recommendation: Continue.

This fund was created in 1963 to facilitate the processing of tax receipts and payments of refunds for overpaid taxes. The fund is a holding account and maintains a balance of \$25,000 for operational purposes. Tax receipts in the amount of tax refunds due are transferred into this fund and refunds are then paid from this fund. The fund serves its intended purpose and should be continued.

**Judiciary
Driver Education
and Training Fund
Section 286G-2, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	1,332,805
Receipts		1,644,783
Expenditures		1,382,953
Ending Balance	\$	1,594,636

Recommendation: Continue but transfer unneeded cash to the general fund.

This fund was established in 1974 to support a driver education program within the Judiciary. Initially, receipts of the fund came only from a penalty assessment on every fine or bail forfeiture for moving violations. In 1987, additional revenues were derived from fees collected by the insurance commissioner from motor vehicle insurers. The fund continues to serve its original purpose—it supports the Judiciary's driver education program. There is a link between the benefits and user charges since persons enrolled in the driver education program have paid fines for moving violations. The fund is self-sustaining—it pays all costs of the program and has a year end balance that exceeds its 1991 expenditure requirements. We recommend that the fund be continued, but that unneeded cash be transferred to the general fund.

**Judiciary
Supreme Court
Law Library
Special Fund
Section 601-3.5, HRS**

FINANCIAL DATA FOR FY1990-91

Beginning Balance	\$	0
Receipts		7,518
Expenditures		692
Ending Balance	\$	6,826

Recommendation: Continue.

This fund was created in 1990 to account for all fines, fees, and other revenues derived from the operations of the Supreme Court Law Library. Moneys received are to be used to replace or repair lost or damaged books and other library materials and to support law library services. The fund is operating as intended. Fees and fines received have been used to replace library materials. There is a direct link between fees and fines for lost or damaged materials and the cost of replacing or repairing them. The fund is also self-sustaining. It meets all three criteria and should be continued.

Notes

Chapter 2

1. Hugh J. Reber, *State Special Funds: A Background Study of Criteria*, Griffenhagen-Kroege, Inc., San Francisco, California, 1961, p. i.
2. General Accounting Office of the United States, *Revolving Funds: Full Disclosure Needed for Better Congressional Control*, a report to the House Committee on the Budget, Washington, D.C. GA1.13:PAD-77-25, p. 86.
3. Act 320, SLH 1957.
4. The Public Administration Service, *Special Funds and Budget Administration in the Territory of Hawaii: A Survey Report*, Chicago, 1959.
5. Ibid., p. 18.
6. Based upon data collected from Ho'ike searches.
7. Section 263, Act 316, SLH 1989.
8. Memorandum to All Department Heads from Governor John Waihee, Subject: Fiscal Year 1992 Budget Execution Policies and Instructions, August 29, 1991.
9. Hawaii, Legislative Auditor, *Hawaii Constitutional Convention Studies, 1978, Article VI: Taxation and Finance*, Honolulu, Hawaii, 1978, pp. 20-21.
10. Marcia Y. Sakai, "Special Funds," *Tax Review Commission Working Papers and Consultant Studies*, Honolulu, Hawaii, v. 2, December 1989, pp. 31-40.
11. The National Conference of State Legislatures, *Earmarking State Taxes*, Second Edition, Denver, Colorado, 1990, pp. 13-16.
12. Ibid., p. 21.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this review on March 18, 1992 to the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety. Act 240 also requires that we submit a draft to the Department of Budget and Finance for its review. A copy of the transmittal letter to the Judiciary is included as Attachment 1. Similar letters were sent to the other departments. The responses of the Judiciary and the Departments of the Attorney General, Land and Natural Resources, Personnel Services, Taxation, Transportation, Public Safety, and Budget and Finance are included as Attachments 2, 3, 4, 5, 6, 7, 8, and 9, respectively. The Department of Labor and Industrial Relations did not respond.

The departments of Transportation, Public Safety, and Taxation had no comments on our recommendations. The Department of Public Safety noted that it had supported legislation on the self-sustainability of the Corrections Industry Revolving Fund. The Department of Taxation suggested a change in the description of the Tax Reserve Special Fund which we made in this report. The Judiciary concurs with our recommendation to continue the Supreme Court Law Library Special Fund but believes it should be a revolving fund instead of a special fund.

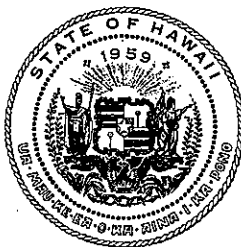
The Department of Land and Natural Resources concurs fully with five of our recommendations. While it agrees with our recommendation to continue the Special Land and Development Fund, it does not agree with our recommendation that unneeded cash be transferred to the general fund. It believes that the cash held in the fund is necessary to satisfy potential losses due to default of mortgages involving state lands. It does not concur with our recommendation to repeal the Industrial Park Special Fund and budget those activities through the general fund; it believes more time is needed for the fund to fully operate as intended.

The Department of the Attorney General does not agree with our recommendation that the Criminal Forfeiture Fund be allowed to sunset. While it agrees that the fund cannot meet the criterion of linkage, it believes that this criterion should not be applied to this fund.

The Department of Personnel Services does not agree with our recommendation to repeal the Revolving Fund for In-Service Training Programs and Activities. The department states that although the fund has been operated as an internal service account, it plans to make the revolving fund more self-sustaining in the future.

The Department of Budget and Finance generally supports the departments' disagreements with our recommendations. It also disagrees with our recommendation to repeal the Special Premium Supplementation Fund of the Department of Labor and Industrial Relations. The department feels that uncertainties in the business climate may place more demands on this fund.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813



ATTACHMENT 1

(808) 548-2450
FAX: (808) 548-2693

New numbers as of 12-01-91
(808) 587-0800
FAX: (808) 587-0830

March 18, 1992

C O P Y

The Honorable Herman T. F. Lum
Chief Justice of the Supreme Court
The Judiciary
Ali'iolani Hale
417 South King Street
Honolulu, Hawaii 96813

Dear Chief Justice Lum:

Enclosed are three copies, numbered 6 through 8, of our draft report, *Review of Special and Revolving Funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety*. The special and revolving funds relating to the Judiciary are in Chapter 7. We ask that you telephone us by Friday, March 20, 1992, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, April 20, 1992.

The Directors of the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, Public Safety, and Budget and Finance; the Governor; and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
Acting Auditor

Enclosures



ATTACHMENT 2.

The Supreme Court Law Library
The Judiciary • State of Hawaii

Ann S. Koto
State Law Librarian

Sandra Okubo
Technical Services Librarian

Irene Wong
Public Services Librarian

Judiciary Building 417 S. King Street Honolulu, Hawaii 96813
Office Location and Address for Parcels and Freight

Post Office Box 779 Honolulu, Hawaii 96808
Address for First Class Mail

April 6, 1992

RECEIVED

APR 8 10 58 AM '92

OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
Acting Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

The Supreme Court Law Library appreciates the opportunity to review and respond to the findings of your report on the Judiciary Supreme Court Law Library Special Fund.

We concur with, and appreciate, your recommendation to continue the fund. However, we would prefer that our special fund be changed to a revolving fund. Our efforts to amend the type of fund through the 1992 Hawaii State Legislature were not successful. It is our hope that this response will help to clarify our purpose to change the type of fund.

All special funds, pursuant to Section 37-51, Hawaii Revised Statutes, are placed under legislative and executive budgetary control which requires that any disbursements from a special fund must be made as part of a budgetary appropriation. This statutory provision does not provide for the immediate availability of these monies. In fact, there may be at least a year's delay from the time that monies are deposited in the fund until a budgetary appropriation can be made and approved.

The peculiar nature of law book publishing, where multi-volume sets, continuous supplementation and updating are the norm, requires that missing volumes be replaced as soon as possible. Publishers do not automatically stop sending supplementary material just because a volume is missing, and the Supreme Court Law Library continues to pay for these supplements. Also, one missing volume can seriously hamper patrons' research. Therefore, priority needs to be placed on immediacy - the ability to be able to replace missing volumes as soon as possible.

Ms. Marion M. Higa
April 6, 1992
Page Two

A revolving fund will allow the State Law Library System to have this immediate, regular, and self-sustaining source of revenue to purchase replacements. A revolving fund will better insure that library books and materials are replaced soon after they are reported as lost, damaged, or stolen. Once the library patron pays the applicable fine and it is deposited in a revolving fund, the money becomes immediately available to purchase the replacement. The State Law Library System will be in a better position to provide a comprehensive and current law collection that can be kept intact, and will also be better able to satisfy the purpose of the fund in a more efficient manner.

We hope that your office and the Legislature will consider these concerns.

Thank you for the opportunity to comment on this report.

Sincerely,



Ann S. Koto
State Law Librarian

cc: Dr. Irwin Tanaka
Administrative Director of Courts

ATTACHMENT 3

JOHN WAIHEE
GOVERNOR



WARREN PRICE, III
ATTORNEY GENERAL

CORINNE K. A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

April 16, 1992

Ms. Marion M. Higa
Acting Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

RECEIVED

APR 16 2 06 PM '92

OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Re: Review of Criminal Forfeiture Fund Pursuant to Act 240, Session Laws of Hawaii 1990

We have received and reviewed the draft report prepared by your office entitled "Review of Special and Revolving Funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety." We submit for inclusion in the final report the following comments regarding the recommendation that the Criminal Forfeiture Fund established by the Legislature pursuant to Section 712A-16, HRS, be allowed to "sunset."

HISTORY AND PURPOSE OF ASSET FORFEITURE

As we observed in our annual report submitted to the Legislature pursuant to Section 712A-16(6), HRS, for Fiscal Years 1990 and 1991, forfeiture has been used since ancient times to take property wrongfully used or acquired. The first American forfeiture statute dates to 1789 and all fifty states and the District of Columbia now have some type of forfeiture law in effect.

The primary benefit of forfeiture statutes enacted in recent times is that law enforcement is able to expand its efforts beyond convicting criminals, and thereby preventing them from reoffending, to depriving their organizations of profits and necessary working capital so that another criminal can not simply pick up where the convicted criminal left off. Even in the case of less sophisticated crimes and criminals, asset forfeiture provides an

additional means of deterrence and prevention, particularly where the convicted criminal is not or can not be incarcerated.

The second, and largely incidental, benefit of forfeiture laws is that forfeited property, or the proceeds of its sale, can be recycled back into the fight against crime. The use of asset forfeiture as a tool of prevention and deterrence will always outweigh its use as a revenue generating device because prevention and deterrence of crime is the primary goal of law enforcement. However, it is only fitting that, once property is forfeited, it be used to combat crime.

ASSET FORFEITURE UNDER STATE LAW

Prior to 1988, Hawaii forfeiture law was neither comprehensive nor uniform. Instead, forfeiture provisions were spread throughout the Hawaii Revised Statutes, (Chapters 329, 701, and 842, HRS), and law enforcement agencies found them too cumbersome to use. In addition, their use was often contingent upon the conclusion of lengthy criminal proceedings which were not always determinative of the underlying issues. These factors, taken together with the fact that proceeds were not clearly dedicated to law enforcement use, made the deterrent and economic return insufficient to warrant dedication of the resources necessary to actively pursue forfeitures.

As a result, state and local law enforcement agencies usually resorted to federal law to pursue forfeiture of assets uncovered in their investigations. In the "equitable sharing" program, a state or local law enforcement agency requests a federal investigative agency such as the Drug Enforcement Administration or the United States Attorney to "adopt" their seizure of a particular asset for federal forfeiture proceedings.

If the forfeiture is successful, the state or local agency receives an "equitable share" of the proceeds based on its contribution. Depending on the extent of involvement by other agencies and the cost of the federal proceeding, the state or local agency could receive up to 80% of the forfeiture proceeds. Under this system, there is no limit on the amount of forfeiture proceeds that may be retained by state or local agencies and no oversight by the Legislature.

In 1988 the Legislature established a single, comprehensive asset forfeiture law by enacting Chapter 712A, HRS. It provides for expeditious, administrative disposition of uncontested forfeitures while providing judicially enforced procedural and substantive rights to those who wish to contest forfeiture, especially innocent owners. More importantly, the

Legislature placed a ceiling of \$3,000,000 on the amount of forfeited property that may be retained for law enforcement purposes in any given year, with any excess going to the general fund. The Legislature also requires the Attorney General to annually report to the Legislature regarding proceedings under Chapter 712A, HRS.

In the first three years after enactment of Chapter 712A, HRS, state and local law enforcement agencies in Hawaii seized over \$3.1 million in assets used or acquired in connection with various criminal offenses. Although much of that property was still the subject of litigation at the close of Fiscal Year 1991, more than \$1.1 million had been forfeited as of that date. Of that amount, more than \$450,00 in cash and property has been distributed to state and local law enforcement agencies. These distributions have permitted law enforcement agencies to gain access to training, equipment, and programs that, in all likelihood, would not have been funded through the ordinary appropriations process.

BACKGROUND OF SPECIAL AND REVOLVING FUNDS

Your report discusses the background of special and revolving funds at some length in Chapter 2. The report notes that one of the principal shortcomings of special and revolving funds is a lack of budgetary control over funds which would ordinarily be subject to the appropriations process. In particular, the report observes that these funds provide a "guaranteed" source of funds for the agencies which manage them. This simply is not the case with the Criminal Forfeiture Fund.

As noted above, prior to the enactment of Chapter 712A, HRS, few forfeitures took place under state law because the difficulties of using the various laws and the absence of a financial return to law enforcement did not justify dedicating the resources necessary to pursue forfeitures on a regular basis. As a result, the existing laws did not provide a "guaranteed" source of funds ordinarily subject to the appropriations process.

Moreover, under prior as well as existing law, the amount of revenue generated by forfeitures depends largely on whether law enforcement is able to uncover a particular activity and seize assets used in connection or acquired as a result of it. Therefore, despite the fact that Chapter 712A, HRS, is easier to use, if these criminal acts are not uncovered, or if, as intended, they are significantly reduced by criminal prosecution and forfeiture of assets, this source of funds will not only not be "guaranteed" but may be reduced or even eliminated.

It is for these reasons that the Criminal Forfeiture Fund is not used to fund a "program" per se. Distributions are made to state and local law enforcement agencies as funds for a specific, one time use are needed and become available. No long term commitments can or should be made because there is no guarantee that the funds will continue to be available. If even this speculative return on the time and efforts invested by law enforcement is reduced by diverting the proceeds away from law enforcement, the law will fall into disuse, law enforcement agencies will resort to use of federal forfeiture laws, and legislative oversight will be lost.

REVIEW OF SPECIAL AND REVOLVING FUNDS PURSUANT TO ACT 240, SESSION LAWS OF HAWAII 1990

As your report notes, the Legislature adopted what became Act 240, Session Laws of Hawaii 1990, to determine whether existing and proposed special and revolving funds are justified and whether moneys appropriated from the general fund for these programs and revenues generated by programs funded by special or revolving funds should be deposited into the general fund. Both current and proposed funds are to be evaluated by two common criteria:

- (1) the extent to which the fund serves its intended purpose; and
- (2) the extent to which the fund reflects a clear link between the benefits sought and the 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 which is removed from the normal budget and appropriations process.

However, Act 240 specifically provides that these are not the exclusive criteria by which existing funds are to be analyzed. Inasmuch as proposed funds are also to be analyzed to determine the probable effects of the proposed fund and assess alternative forms of funding, it seems reasonable that the probable effects of repealing an existing fund and alternative sources of funding for the affected program should also be evaluated. Indeed, you state at page two of the report that key fiscal and program personnel were interviewed "[t]o gain an understanding of fund operations and the consequences of abolishing certain funds." However, you chose to consider as an additional criteria only whether the existing fund is financially self-sustaining.

Finally, it seems clear that the Legislature intended that no single criteria be deemed dispositive inasmuch as Act 240 directs the Auditor to evaluate the effectiveness and efficiency of the various funds and make recommendations to improve policies, procedures, and practices even where the Auditor recommends repeal. However, it appears from your report that even if two of the three criteria had been met, you mechanically recommended modification or repeal without making the recommendations regarding policies, procedures, and practices required by Act 240.

CRIMINAL FORFEITURE FUND

Although the task you were given may have been daunting, we are disappointed that your report not only applies an overly restrictive reading of the criteria specified by the Legislature in Act 240, but also devotes barely half a page to its discussion of the Criminal Forfeiture Fund. First, while the report acknowledges that the fund meets two of the three criteria you used, it fails to recognize that the fund could not possibly meet the third criteria because revenues deposited into the fund are obviously not going to be used for the benefit of the individuals from whom the property was forfeited. Indeed, the very purpose of forfeiture is to do the exact opposite.

Second, the report mechanically concludes that the fund should be allowed to "sunset" because the linkage criterion is not met without first assessing the probable effects of repeal or the availability of alternative funding for the purposes specified in Section 712A-16(4), HRS. As we noted above, if the fund is allowed to "sunset," law enforcement agencies will resort to the use of federal law and the Legislature will lose oversight of asset forfeiture at the state level. Moreover, repeal of the fund will not serve its intended purpose -- reacquisition of budgetary control -- because there will be no money for the Legislature to appropriate, the proceeds having gone directly to the respective agencies via "equitable sharing" of federal forfeiture proceeds.

Finally, the reference to fund revenues as being the "state's share of forfeitures" is rather curious inasmuch as the moneys in the fund are effectively held "in trust" by the attorney general for law enforcement agencies and have been expended almost entirely for the benefit of county police and prosecutors. In fact, the moneys expended on behalf of the State have been almost entirely for publication of legal notices and storage and maintenance of seized assets, costs for which the report fails to recommend alternate funding sources if the fund is repealed.

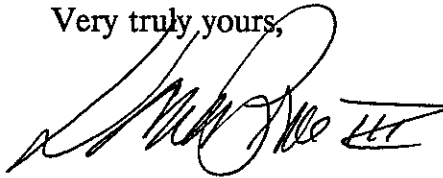
Ms. Marion Higa
April 16, 1992
Page 6

In conclusion, if the Criminal Forfeiture Fund is terminated with the intent that the money go to the general fund, this is simply not going to happen. Indeed, what will happen is that the county police and prosecutors will stop using the state statute altogether, so there will be no money to go to the general fund. The end result is that our state statute, one of the best in the nation and passed after years of debate, will be absolutely useless to fight crime and drug dealers in Hawaii. Without the incentive of receiving forfeiture assets and cash, the police and prosecutors will understandably return to using the federal statute.

We appreciate the opportunity to review and comment upon your report and hope that you will give the points we have raised some consideration before it is published in final form. The Criminal Forfeiture Fund is unique and unlike any other special or revolving fund in state government and we strongly submit this should be considered before your final conclusion is reached.

Please feel free to call me if you need additional information or clarification of our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Warren Price, III", with a stylized flourish at the end.

Warren Price, III
Attorney General

WP/ELB:csa
wppf/forfeitu

ATTACHMENT 4

JOHN WAIHEE
GOVERNOR OF HAWAII



WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

REF:FIS-SA

DEPUTIES
JOHN P. KEPPELER, II
DONA HANAKE
RAE M. LOUI

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621
HONOLULU, HAWAII 96809

April 7, 1992

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

Ms. Marion M. Higa
Acting Legislative Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

RECEIVED

APR 8 11 08 AM '92

OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Thank you for the opportunity to comment on the draft report, *Review of Special and Revolving Funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety.*

The Department of Land and Natural Resources (DLNR) has four special funds and three revolving funds. Our comments are listed in the same order as the funds are presented in Chapter 5.

1. **Development Revolving Fund, Section 206-41, HRS**

Auditor's Recommendation: Repeal

DLNR Comment: We concur.

2. **Industrial Park Special Fund, Section 171-138, HRS**

Auditor's Recommendation: Repeal and budget through general fund.

DLNR Comment: We do not concur with the Auditor's recommendation.

The fund has not been in existence long enough to accumulate sufficient funds for any land acquisition or construction activity. Presently, the fund has significant funds only for planning and design.

A master lease agreement for the development of the Sand Island Industrial Park is presently being negotiated. The Sand Island Business Association may undertake the development of the park as a private project. However, should this method prove unfeasible, the Industrial Park fund would be necessary as a source of funding.

Development of the Keehi Lagoon Industrial Park is on hold. The Keehi Lagoon area is presently under the jurisdiction of the Department of Transportation. Revenue generated from the Keehi Lagoon area has been pledged as support for revenue bonds. We are waiting for the removal of this liability before proceeding further.

The repeal of the fund and the funding of the program entirely through general funds will diminish the legislature's ability to identify the program as one serving a specific purpose. Our inclusion of the Industrial Park Special Fund in the Executive Budget beginning with the fiscal biennium 1993-95 will ensure the appropriate review and budgetary controls by the Executive and Legislative branches, and provide easy identification of the program's funding sources in relation to the cost of operating the program.

This department would like the opportunity to develop the program and operate the Industrial Park Special Fund on a self-sustaining basis; therefore, we request that any action to repeal the fund be deferred.

3. **Land and Water Development Revolving Fund, Section 174-22, HRS**

Auditor's Recommendation: Repeal

DLNR Comment: We concur.

4. **Special Fund for Strip Mining Bond or Deposit Moneys Forfeited, Section 181-10, HRS**

Auditor's Recommendation: Repeal

DLNR Comment: We concur.

5. **Special Funds for Soil and Water Conservation Districts, Section 180-17, HRS**

Auditor's Recommendation: Repeal

DLNR Comment: We concur.

6. **Special Land and Development Fund, Section 171-19, HRS**

Auditor's Recommendation: Continue but transfer unneeded cash to the general fund.

DLNR Comment: We agree with the recommendation to continue the fund but do not agree that funds should be transferred to the general fund.

Receipts into and expenditures out of the Special Land and Development Fund are the result of a variety of transactions, many of which cannot be predetermined. These transactions range from revenue received from the sale of public lands to funds spent for cleaning a State park following a hurricane. The number and type of transactions which occur during the year will determine the fund's resources and requirements and therefore the ending balance.

The DLNR does not dispute the observation by the Auditor that the fund balance has grown significantly over the past years. One specific use of the fund as specified in Section 171-21 of the Hawaii Revised Statutes is to satisfy holders of a security interest should a third-party mortgage default occur. The Land Board has approved of numerous mortgages involving State lands. The total potential liability of these mortgages far exceeds the current cash balance, and from a practical standpoint, the liability will always be greater than the cash available.

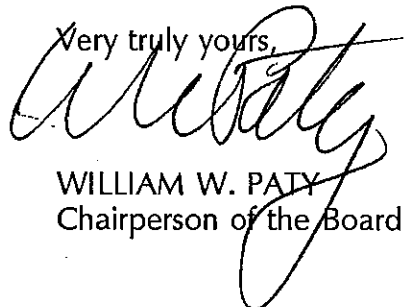
Another use of the fund is for the maintenance of State lands after natural disasters such as tidal waves, hurricanes and flash floods. Chapter 171-19(2) provides for this by way of Governor's approval should the needs exceed \$500,000.00.

7. **Wildlife Revolving Fund, Section 183D-10.5, HRS**

Auditor's Recommendation: Continue

DLNR Comment: We concur.

We appreciate the opportunity to review and comment on your report.

Very truly yours,

WILLIAM W. PATY
Chairperson of the Board

cc: Office of the Governor
The Honorable Yukio Takemoto,
Director of Finance

JOHN WAIHEE
GOVERNOR OF HAWAII



SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

April 20, 1992

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion Higa
Acting Legislative Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for the opportunity to review and respond to recommendations set forth in your draft report, "Review of Special and Revolving Funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Transportation, and Public Safety".

The Department of Personnel Services does not concur with the recommendation to repeal its Revolving Fund for In-Service Training Programs and Activities, Section 81-3, HRS. In general, I am in agreement with criterion number 3 that revolving funds should be self-sustaining. However, under Section 81-3, HRS, the Legislature in establishing a revolving fund for this department's in-service training programs and activities authorized the use of general fund appropriations.

Since its initial appropriation, it has not been necessary for this department to request additional general funds to support the revolving fund. Our revolving fund has operated as an internal service account for the funding, on a cost-reimbursement basis, of services provided by this department to the remaining 20 state departments and their agencies and programs.

Page 2

Our plan for the foreseeable future is to make our revolving fund more self-sustaining by charging a fee for all training programs as a more cost-effective method for meeting the diverse and heavy demand for training. Training programs will be developed based on demand.

While we are in agreement with the intent of the review, your favorable consideration of our comments will be sincerely appreciated.

Sincerely

A handwritten signature in dark ink, appearing to read 'Sharon Y. Miyashiro', written over the printed name.

SHARON Y. MIYASHIRO, Director
Department of Personnel Services

JOHN WAIHEE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

P.O. BOX 259
HONOLULU, HAWAII 96809

RICHARD F. KAHLE, JR.
DIRECTOR OF TAXATION

ALFRED C. LARDIZABAL
DEPUTY DIRECTOR

LLOYD I. UNEBASAMI
DEPUTY DIRECTOR

April 1, 1992

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
Acting Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for the opportunity to review and comment on your draft report on the tax reserve special fund.

We agree with the substance and recommendation of the report. However, we recommend that the portion underlined on the attached copy of the draft be amended for clarification:

"Tax receipts are transferred into this fund in the amount of tax refunds due, which are then paid from this fund."

The second sentence is deleted.

Should you have any questions, please call me or have your staff contact Marie Okamura, Tax Services and Processing Division Chief, at 587-1460.

Sincerely,

Richard F. Kahle, Jr.
Richard F. Kahle, Jr.
Director of Taxation

Attachment

**Department of
Taxation
Tax Reserve
Special Fund
Section 231-23, HRS**

Recommendation: Continue.

This fund was created in 1963 to facilitate the processing of tax receipts and payments of refunds for overpaid taxes. The fund is a holding account and maintains a balance of \$25,000 for operational purposes. Tax receipts are deposited into this fund and refunds are paid from this fund. Net tax receipts are then transferred to the general fund. The fund serves its intended purpose and should be continued.

JOHN WAIHEE
GOVERNOR

ATTACHMENT 7

REX D. JOHNSON
DIRECTOR

DEPUTY DIRECTORS
JOYCE T. OMINE
AL PANG
JEANNE K. SCHULTZ
CALVIN M. TSUDA



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OFFICE OF THE AUDITOR
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

PPB 12.7920 IN REPLY REFER TO:

March 20, 1992

TO: Ms. Marion M. Higa
Acting Auditor
Office of the Auditor

FROM: Rex D. Johnson
Director of Transportation *Rex*

SUBJECT: DEPARTMENT OF TRANSPORTATION'S COMMENTS AND
RECOMMENDATIONS ON DRAFT REPORT, "REVIEW OF
SPECIAL AND REVOLVING FUNDS OF THE JUDICIARY
AND THE DEPARTMENTS OF THE ATTORNEY GENERAL,
LABOR AND INDUSTRIAL RELATIONS, LAND AND
NATURAL RESOURCES, PERSONNEL SERVICES,
TAXATION, TRANSPORTATION, AND PUBLIC SAFETY"

We have no comments to offer regarding the subject report. Thank you for the opportunity to review the draft.

ATTACHMENT 8

JOHN WAIHEE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
677 Ala Moana Boulevard, Suite 1000
Honolulu, Hawaii 96813

GEORGE W. SUMNER
DIRECTOR

ROBERT C. VIDUYA
DEPUTY DIRECTOR

GEORGE IRANON
DEPUTY DIRECTOR

ERIC PENAROSA
DEPUTY DIRECTOR

April 8, 1992

No. 92-13957

TO: The Honorable Marion M. Higa, Acting Auditor
Office of the Auditor

FROM: 
George W. Sumner, Director

SUBJECT: REVIEW OF SPECIAL AND REVOLVING FUNDS

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OFF. OF THE AUDITOR
STATE OF HAWAII

We have reviewed your draft report, *Review of Special and Revolving Funds of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety*. The report is acceptable to us as it is written, and we have no comments to offer at this time.

Regarding the Correctional Industries Revolving Fund, we agree that the program shall be self-sustaining. A Bill was introduced in this year's Legislature that would provide funding for the program on an on-going basis. However, because the legislation was submitted just before the deadline for bill introduction, there was not enough time to assure sufficient discussion. Consequently, the Bill did not pass. We intend to submit this legislation next year through Executive Branch channels.

Thank you for the opportunity to review your draft.

CPS:TS:iec

JOHN WAIHEE
GOVERNOR



YUKIO TAKEMOTO
DIRECTOR

EUGENE S. IMAI
DEPUTY DIRECTOR

THOMAS I. YAMASHIRO
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII INC
HAWAII PUBLIC EMPLOYEES HEALTH FUND
HOUSING FINANCE AND DEVELOPMENT
CORPORATION
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
STATE CAPITOL
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL PLANNING AND POLICY
DEVELOPMENT DIVISION
INFORMATION AND COMMUNICATION
SERVICES DIVISION
TREASURY OPERATIONS DIVISION

Ref: DBFFIN/1361

April 20, 1992

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
Acting Legislative Auditor
465 So. King Street, Room 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for allowing the Department of Budget and Finance (B&F) to review and respond to the draft report, Review of Special and Revolving Fund of the Judiciary and the Departments of the Attorney General, Labor and Industrial Relations, Land and Natural Resources, Personnel Services, Taxation, Transportation, and Public Safety.

B&F concurs with the recommendations for the repeal of the following funds:

Department of Land and Natural Resources

- Development Revolving Fund.
- Land and Water Development Revolving Fund.
- Special Fund for Strip Mining Bond or Deposit Moneys Forfeited.
- Special Funds for Soil and Water Conservation Districts.

Department of Transportation

- Highway Advance Acquisition Revolving Fund
- Special Fund for Deposit of Gross Revenues Derived from the Operation of the Ferry System.

B&F supports the Departments of the Attorney General and Land and Natural Resources in their opposition to the recommendations to sunset or repeal the following funds:

Department of the Attorney General

- Criminal Forfeiture Fund, Section 712A-16

Department of Land and Natural Resources

- Industrial Park Special Fund, Section 171-138, HRS

as we believe that the Office of the Auditor (Auditor) did not conduct a comprehensive evaluation of the funds. As such, the

Ms. Marion Higa
April 20, 1992
Page 2

Auditor does not adequately assess the impact of the elimination of these funds or offer any recommendations to improve the affected policies, practices, and procedures as stipulated in Act 240, SLH 1990.

B&F also supports the Department of Personnel Services' opposition to the recommendation to repeal the Revolving Fund for In-Service Training Programs and Activities, Section 81-3, HRS. The Auditor's recommendation to repeal the fund is based on the fact that the fund does not meet the criterion of self-sufficiency since it receives general fund appropriations. However, when the fund was created by Act 48, SLH 1978, it was specifically stated that it would receive general fund appropriations to support program activities. As such, it was clear from its inception that the fund was not intended to be self-sustaining.

B&F does not concur with the repeal of the Department of Labor and Industrial Relations' Special Premium Supplementation Fund especially when uncertainties in the business climate and increasing numbers of bankruptcies suggest that more demands may be placed on this fund.

Further clarification as to how excessive funds are to be determined is necessary before a definitive assessment may be made of the recommendations relating to the Special Fund for Disability Benefits of the Department of Labor and Industrial Relations and the Industrial Park Special Fund of the Department of Land and Natural Resources. The report does not indicate that any assessment was made as to the impact the transfer of "unneeded funds" to the general fund would have on the programs themselves.

We appreciate the opportunity to comment on the report.

Sincerely,



YUKIO TAKEMOTO
Director of Finance

A BILL FOR AN ACT

RELATING TO SPECIAL AND REVOLVING FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Act 240, Session Laws of Hawaii 1990, directed
2 the office of the auditor to perform a comprehensive evaluation
3 of the State's special and revolving funds administered under
4 various agencies of the State to determine whether these funds
5 should be continued, modified, or repealed. Act 240 expressed
6 concern over the State's ability to maintain the integrity of the
7 state budgetary process during times of uncertainty or when
8 fluctuations in the economy affect general fund reserves.

9 Special and revolving funds receive and expend revenues
10 directly without regard to the State's overall fiscal condition;
11 thereby eliminating the normal role of the legislature in the
12 process of budgetary review. Act 240 declared that it was
13 fiscally prudent to examine the feasibility of maintaining,
14 modifying, or repealing these funds in light of the difficulties
15 the State may face during uncertain times in the future.

16 The purpose of this Act is to carry out the findings and
17 recommendations of the office of the auditor with respect to the
18 special and revolving funds administered under the department of
19 labor and industrial relations, the department of land and

1 natural resources, the department of transportation, the
2 department of the attorney general, the department of public
3 safety, and the department of the judiciary.

4 PART I. FUNDS ADMINISTERED UNDER THE

5 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

6 SECTION 2. Section 392-62, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[[]§392-62[]] Management of the fund. (a) The director
9 of finance shall be the treasurer and custodian of the special
10 fund for disability benefits and shall administer the fund in
11 accordance with the directions of the director of labor and
12 industrial relations. All moneys in the fund shall be held in
13 trust for the purposes of this part only and shall not be
14 expended, released, or appropriated or otherwise disposed of for
15 any other purpose. Moneys in the fund may be deposited in any
16 depository bank in which general funds of the State may be
17 deposited but [such] those moneys shall not be commingled with
18 other state funds and shall be maintained in separate accounts on
19 the books of the depository bank. [Such] The moneys shall be
20 secured by the depository bank to the same extent and in the same
21 manner as required by the general depository law of the State;
22 and collateral pledged for this purpose shall be kept separate

1 and distinct from any other collateral pledged to secure other
2 funds of the State. The director of finance shall be liable for
3 the performance of the director of finance's duties under this
4 section as provided in chapter 37.

5 (b) All unexpended and unencumbered moneys remaining on
6 balance with the fund at the close of each fiscal year which are
7 deemed, by the director of finance, to be in excess of the moneys
8 necessary to carry out the purposes of this chapter over the next
9 following fiscal year shall lapse to the credit of the state
10 general fund."

11 SECTION 3. Section 393-45, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) An employer who employs less than eight employees
14 entitled to coverage under this chapter and who provides coverage
15 to [such] those employees pursuant to section 393-7(a) shall be
16 entitled to premium supplementation [from the fund] if the
17 employer's share of the cost of providing [such] that coverage as
18 determined by sections 393-13 and 393-15 exceeds 1.5 per cent of
19 the total wages payable to such employees and if the amount of
20 [such] the excess is greater than five per cent of the employer's
21 income before taxes directly attributable to the business in
22 which such employees are employed."

SECTION 4. Section 393-48, Hawaii Revised Statutes, is amended to read as follows:

"§393-48 Prepaid health care benefits [to be paid from the premium supplementation fund; recovery]; source of funds; disposition of recovered benefits. Prepaid health care benefits shall be paid [from the premium supplementation fund] by the director out of appropriations made by the legislature to [an] any employee [who is] entitled to receive prepaid health care benefits but cannot receive [such] those benefits because of bankruptcy of the employee's employer or because the employee's employer is not in compliance with this chapter. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this part. Benefits paid [from the premium supplementation fund to such] to any employee under this part may be recovered from the employee's bankrupt or noncomplying employer. The director shall institute administrative and legal actions as provided in section 393-33 to effect recovery of [such] the benefits. All benefits, fines, and penalties recovered under this part shall be deposited to the credit of the state general fund."

SECTION 5. Sections 393-41, 393-42, 393-43, and 393-44, Hawaii Revised Statutes, are repealed.

1 ["§393-41] Establishment of special premium
2 supplementation fund. There is established in the treasury of
3 the State, separate and apart from all public moneys or funds of
4 the State, a special fund for premium supplementation which shall
5 be administered exclusively for the purposes of this chapter.
6 All premium supplementations payable under this part shall be
7 paid from the fund. The fund shall consist of (1) all money
8 appropriated by the State for the purposes of premium
9 supplementation under this part and (2) all fines and penalties
10 collected pursuant to this chapter.

11 [§393-42] Management of the fund. The director of finance
12 shall be the treasurer and custodian of the premium
13 supplementation fund and shall administer the fund in accordance
14 with the directions of the director of labor and industrial
15 relations. All moneys in the fund shall be held in trust for the
16 purposes of this part only and shall not be expended, released,
17 or appropriated or otherwise disposed of for any other purpose.
18 Moneys in the fund may be deposited in any depository bank in
19 which general funds of the State may be deposited but such moneys
20 shall not be commingled with other state funds and shall be
21 maintained in separate accounts on the books of the depository
22 bank. Such moneys shall be secured by the depository bank to the

1 same extent and in the same manner as required by the general
2 depositary law of the State; and collateral pledged for this
3 purpose shall be kept separate and distinct from any other
4 collateral pledged to secure other funds of the State. The
5 director of finance shall be liable for the performance of the
6 director of finance's duties under this section as provided in
7 chapter 37.

8 [§393-43] Disbursements from the fund. Expenditures of
9 moneys in the premium supplementation fund shall not be subject
10 to any provisions of law requiring specific appropriations or
11 other formal release by the state officers of money in their
12 custody. All payments from the fund shall be made upon warrants
13 drawn upon the director of finance by the comptroller of the
14 State supported by vouchers approved by the director.

15 [§393-44] Investment of moneys. With the approval of the
16 department the director of finance may, from time to time, invest
17 such moneys in the premium supplementation fund as are in excess
18 of the amount deemed necessary for the payment of benefits for a
19 reasonable future period. Such moneys may be invested in bonds
20 of any political or municipal corporation or subdivision of the
21 State, or any of the outstanding bonds of the State, or invested
22 in bonds or interest-bearing notes or obligations of the State

1 (including state director of finance's warrant notes issued
2 pursuant to chapter 40), or of the United States, or those for
3 which the faith and credit of the United States are pledged for
4 the payment of principal and interest, or in federal land bank
5 bonds or joint stock farm loan bonds. The investments shall at
6 all times be so made that all the assets of the fund shall always
7 be readily convertible into cash when needed for the payment of
8 benefits. The director of finance shall dispose of securities or
9 other properties belonging to the fund only under the direction
10 of the director of labor and industrial relations."]

11 PART II. FUNDS ADMINISTERED UNDER THE
12 DEPARTMENT OF LAND AND NATURAL RESOURCES

13 SECTION 6. Section 206-41, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§206-41 [Revolving fund. The director of finance shall
16 set up, out of any moneys appropriated for the purposes of this
17 chapter, a revolving fund to be known as the development
18 revolving fund.] Source of operating funds; disposition of
19 unencumbered funds. (a) All moneys to carry out the purposes of
20 this chapter shall be allocated by the legislature in accordance
21 with subsection (c) out of appropriations from the state general
22 fund. The department shall include in its budgetary request for

1 each upcoming fiscal period, the amounts necessary to effectuate
2 the purposes of this chapter.

3 **(b)** All unexpended balances of appropriations, allocations,
4 allotments, special revolving funds, or other funds heretofore
5 created and made available for the purposes of developing or
6 administering any project subject to this chapter shall be
7 transferred to the [development project revolving fund;] state
8 general fund; provided that any unexpended balances in any
9 special revolving fund or other funds created and made available,
10 in whole or in part, with federal funds, or with assistance from
11 the federal government, or for housing undertaken pursuant to a
12 contract between the federal government and the State or the
13 board of land and natural resources shall be segregated from
14 other funds and shall be deposited and maintained as required by
15 the federal government.

16 [In addition to the funds specified in the above paragraph,
17 there] **(c)** There is appropriated from the general revenues of
18 the State sufficient moneys as may be necessary, from time to
19 time, [to the development revolving fund,] with the approval of
20 the governor, for the purposes specified in this chapter,
21 provided that not more than \$1,000,000 may be expended, with the
22 approval of the governor, in land development for any one

1 project; and provided further that such sums as may be utilized
2 from time to time and which are reimbursed [to this fund] from
3 land sales shall be deposited into the general fund.

4 All moneys received by the board under or pursuant to this
5 chapter, including refunds, reimbursements, and revenues, shall
6 be deposited in the [revolving] state general fund, to the extent
7 permitted by federal law or regulation. Except as otherwise
8 provided by this chapter, the [revolving fund] funds appropriated
9 by the legislature may be expended by the board for any and all
10 of the purposes of this chapter, including, without prejudice to
11 the generality of the foregoing, the acquisition, clearance, and
12 improvement of property; the construction and reconstruction of
13 building sites; and the development and administration of
14 development projects and administration expenses. The provisions
15 of this section shall be subject to applicable federal law and
16 regulation, to any contract between the federal government and
17 the State or the board relating to development projects subject
18 to this chapter, and to the terms and conditions of contributions
19 or other assistance from the federal government."

20 SECTION 7. Section 171-138, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "[[]§171-138[[]] Industrial park [special fund.] program;

1 source of funds. (a) [There is established within the treasury
2 of the State the industrial park special fund. The proceeds of
3 the special fund] All moneys to carry out the purposes of this
4 part shall be allocated by the legislature out of appropriations
5 made from the state general fund. The department shall include
6 in its budgetary request for each upcoming fiscal period, the
7 amounts necessary to carry out the purposes of this part. All
8 appropriations made by the legislature shall be used for the
9 following purposes:

- 10 (1) Planning, design, improvement, construction, land
11 acquisition, and equipment necessary for the
12 development or maintenance of industrial parks;
- 13 (2) Constructing, operating, maintaining, and improving
14 infrastructure and other public or common facilities
15 within industrial parks; and
- 16 (3) Any other purpose deemed necessary by the board for the
17 purpose of planning, improving, developing, operating,
18 and maintaining industrial parks.

19 (b) The following receipts shall be deposited into the
20 [special] state general fund:

- 21 (1) [Appropriations by the legislature to the special fund;
- 22 (2)] Lease rents collected from eligible lessees of public

1 lands within industrial parks; and
2 [(3)] (2) Assessments collected from eligible lessees of
3 public lands within industrial parks which are charged
4 by the board pursuant to conditions in the leases[; and
5 (4) Interest earned or accrued on moneys in the special
6 fund]."

7 SECTION 8. Section 171-19, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) There is created in the department a special fund to
10 be designated as the "special land and development fund".
11 Subject to the provisions contained in the Hawaiian Homes
12 Commission Act of 1920, as amended, and in section 5(f) of the
13 Admission Act of 1959, [and except as provided under section
14 171-138 for the industrial park special fund,] all proceeds of
15 sale of public lands, including interest on deferred payments,
16 and all rents from leases, licenses, and permits derived from
17 public lands shall be set apart in the fund and shall be used
18 only as authorized by the legislature, except that, without prior
19 legislative authority, the board may use the fund for the
20 following purposes:

21 (1) To reimburse the general fund of the State for advances
22 made which are required to be reimbursed from the

1 proceeds derived from sales, leases, licenses, or
2 permits of public lands;

3 (2) For the maintenance of all lands under the control and
4 management of the board, including repairs or
5 improvements, thereon; provided that the department
6 shall not expend in excess of \$500,000 in any fiscal
7 year without the prior approval of the governor;

8 (3) To repurchase any land, including improvements, in the
9 exercise by the board of any right of repurchase
10 specifically reserved in any patent, deed, lease, or
11 other documents or as provided by law;

12 (4) For the payment of all appraisal fees; provided that
13 all fees reimbursed to the board shall be deposited in
14 the fund;

15 (5) For the payment of publication notices as required
16 under this chapter; provided that all or a portion of
17 the expenditures may be charged to the purchaser or
18 lessee of public lands or any interest therein under
19 rules adopted by the board;

20 (6) For the planning and construction of roads and trails
21 along state rights-of-way not to exceed \$5,000 in any
22 fiscal year; and

(7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60."

SECTION 9. Section 174-22, Hawaii Revised Statutes, is amended to read as follows:

"§174-22 Land and water development [revolving fund. There shall be a special fund to be known as the "land and water development revolving fund". Moneys in the revolving fund shall be expended] projects; source of funds; disposition of receipts.

All moneys necessary for administrative costs, engineering surveys, economic studies, plans, maps, and for other water projects or purposes of the board of land and natural resources[.] shall be allocated by the legislature out of appropriations made from the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of this chapter. In the event any moneys are expended [therefrom] for engineering surveys, economic studies, plans, and other expenses directly attributable to any land or water project, or for the establishment of any land or water project, the amount of the expenditures shall be reimbursed to the [revolving] state general fund from any funds received by the board for and on account of

1 the project."

2 SECTION 10. Section 181-10, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§181-10 Funds. All fees and fines collected under this
5 chapter and all moneys forfeited under any bond or deposit shall
6 be paid into the treasury of the State as general realizations.
7 [All moneys forfeited under any bond or deposit shall be held in
8 a special fund to be expended by the board of land and natural
9 resources for the purpose mentioned in section 181-5.]"

10 SECTION 11. Section 180-16, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§180-16 Budget. The department of land and natural
13 resources shall submit to the director of finance, annually the
14 budgetary estimates and information required by chapter 37, and
15 shall include therein estimates of the financial requirements of
16 the department. All contributions, moneys, and funds received by
17 any district shall be deposited to the credit of the state
18 general fund."

19 SECTION 12. Section 180-17, Hawaii Revised Statutes, is
20 repealed.

21 ["§180-17 Special funds. Any law to the contrary
22 notwithstanding, there shall be established in each soil and

1 water conservation district a special fund into which shall be
2 deposited all funds received by the district and out of which
3 shall be paid any and all expenses which may be approved by the
4 majority of directors of the district. The fund shall be
5 administered by the directors of the district and shall be free
6 from the control of any state officer except for periodic
7 audits."]

8 SECTION 13. Section 171-19, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§171-19 Special land and development fund. (a) There is
11 created in the department a special fund to be designated as the
12 "special land and development fund". Subject to the provisions
13 contained in the Hawaiian Homes Commission Act of 1920, as
14 amended, and in section 5(f) of the Admission Act of 1959, and
15 except as provided under section 171-138 for the industrial park
16 special fund, all proceeds of sale of public lands, including
17 interest on deferred payments, and all rents from leases,
18 licenses, and permits derived from public lands shall be set
19 apart in the fund and shall be used only as authorized by the
20 legislature, except that, without prior legislative authority,
21 the board may use the fund for the following purposes:

22 (1) To reimburse the general fund of the State for advances

1 made which are required to be reimbursed from the
2 proceeds derived from sales, leases, licenses, or
3 permits of public lands;

4 (2) For the maintenance of all lands under the control and
5 management of the board, including repairs or
6 improvements, thereon; provided that the department
7 shall not expend in excess of \$500,000 in any fiscal
8 year without the prior approval of the governor;

9 (3) To repurchase any land, including improvements, in the
10 exercise by the board of any right of repurchase
11 specifically reserved in any patent, deed, lease, or
12 other documents or as provided by law;

13 (4) For the payment of all appraisal fees; provided that
14 all fees reimbursed to the board shall be deposited in
15 the fund;

16 (5) For the payment of publication notices as required
17 under this chapter; provided that all or a portion of
18 the expenditures may be charged to the purchaser or
19 lessee of public lands or any interest therein under
20 rules adopted by the board;

21 (6) For the planning and construction of roads and trails
22 along state rights-of-way not to exceed \$5,000 in any

1 fiscal year; and

2 (7) For the payment to private land developers who have
3 contracted with the board for development of public
4 lands under section 171-60.

5 (b) Notwithstanding the above provisions, but subject to
6 the restrictions contained in section 5(f) of the Admission Act,
7 whenever the board sells remnants to abutting owners, the
8 proceeds therefrom including interest on deferred payments, shall
9 be deposited into the general fund; provided that such proceeds
10 shall be set apart to the appropriate fund where mandatory
11 federal requirements affecting federal funds so require.

12 (c) Notwithstanding the above limitations on use of the
13 proceeds of sale, where the board sells public lands including
14 the buildings thereon once used but no longer necessary for
15 school purposes at the recommendation and request of the board of
16 education, all net proceeds derived from the sales shall be used
17 for the acquisition of land or for the erection of buildings for
18 school purposes to the extent of an approved building plan in the
19 departmental school district wherein the sales occur. In the
20 absence of any school building program in the district or in the
21 event of any surplus remaining after the completion of buildings
22 constructed pursuant to the approved plan then the proceeds or

1 surplus shall be used in other departmental school districts in
2 the county wherein the sales occur.

3 (d) When use of the fund is authorized by the legislature
4 for the development of public lands for a particular project, to
5 be disposed of by sale, lease, license, or permit, the board may
6 pay from the fund the costs of the development, including the
7 costs of surveys, construction of roads, water lines, sewer
8 lines, and such other improvements as may be necessary for the
9 development of the lands; provided that the project shall meet
10 with the zoning and subdivision requirements of the appropriate
11 [county and city and] county government in which the lands are
12 located, except that plans and specifications for recreational
13 projects, including access roads therefor, shall not be required
14 to meet with such approval; and provided further that no such
15 development of public lands for disposal by sale, lease, license,
16 or permit shall be made unless appropriate roads, water lines,
17 and other improvements are installed which will make the land
18 usable for the purpose for which it is being disposed at the time
19 of disposition.

20 (e) All unexpended and unencumbered moneys remaining on
21 balance with the fund at the close of each fiscal year which are
22 deemed, by the director of finance, to be in excess of the moneys

1 necessary to carry out the purposes of this section over the next
2 following fiscal year shall lapse to the credit of the state
3 general fund."

4 PART III. FUNDS ADMINISTERED UNDER

5 THE DEPARTMENT OF TRANSPORTATION

6 SECTION 14. Section 264-15, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[[§264-15]] Highway advance acquisition [revolving fund.

9 There is established the "highway advance acquisition revolving
10 fund" which shall be administered by the director of

11 transportation.]; source of funds. The director may, with the
12 approval of the governor, expend [from the fund such sums] moneys
13 appropriated by the legislature as [are] may be necessary for the
14 acquisition of real property when the director determines [that
15 the]:

16 (1) The acquisition of the real property is necessary for a
17 state highway project [that is] authorized by the
18 legislature[, that funds];

19 (2) Funds previously authorized by the legislature are
20 inadequate [therefor and that]; and

21 (3) That any delay in the acquisition of such property
22 would unnecessarily increase the cost of the highway
23 project;

1 provided that the selected corridor and alignment of the project
2 shall have been approved by the governor. [Expenditures from the
3 fund shall be made on vouchers approved by the director or such
4 other officer as may be designated by the director.]

5 All moneys received from the rental, sale or lease of any
6 property acquired [through the use of this fund] under this
7 section shall be paid into the state general fund; provided that
8 whenever federal funds are involved in the acquisition of the
9 property, any money received from the sale, lease or rental of
10 such property shall be [credited to the account of] expended
11 toward the project for which the property was acquired.

12 [Sums expended from the fund for a particular highway
13 project shall be reimbursed or restored to the fund out of moneys
14 subsequently appropriated or made available for that project.
15 The director shall repay any loans made to the fund from the
16 general fund, any special fund and any other revolving fund as
17 soon as moneys become available therefor.

18 The director of transportation may make loans from time to
19 time from the state highway fund to the fund such sums of money
20 not otherwise appropriated or required to meet the obligations of
21 section 248-9 and 36-28.

1 The director of finance may make loans from the general,
2 special and revolving funds of the State for deposit into the
3 fund when the director of finance determines that there are
4 moneys in the general, special and revolving funds which are in
5 excess of the amounts necessary for meeting the immediate
6 requirements thereof, and that the action will not impede or
7 hamper the financial operations of the general, special or
8 revolving funds from which moneys are to be advanced or loaned.

9 Any loans made to the fund may provide for interest at a
10 rate not less than that which could have been realized had the
11 funds been invested in time certificates of deposit.]"

12 SECTION 15. Section 268-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§268-6 Bonds, certificates of issuance; terms and
15 conditions. (a) Any certificate or certificates providing for
16 the issuance of revenue bonds pursuant to this chapter shall
17 provide that the revenue bonds shall be redeemable before the
18 maturity thereof at the option of the department of
19 transportation at any time after five years from the date of such
20 bonds on such terms and conditions as the certificate or
21 certificates providing for the issuance of the bonds shall
22 prescribe, including the payment of premiums upon the redemption

1 thereof, and may contain covenants on behalf of the State to
2 protect and safeguard the security and rights of the holders
3 thereof authorized by chapter 39, part III, and, in addition
4 thereto, covenants as to, among other things:

5 (1) [Creating a special fund for the deposit of the gross
6 revenues derived from the operation of the ferry system
7 and any additions or betterments thereto or extensions
8 thereof, including the creating and maintenance of
9 funds for working capital to be used in the operation
10 of the ferry system and for renewals and replacements
11 to the system;

12 (2)] Subject to section 268-8, the establishment and
13 maintenance of adequate rates, rentals, and charges for
14 the services and facilities sold, furnished, or
15 supplied through the ferry system; and

16 [(3)] (2) Limitations upon the right to dispose of the ferry
17 system or any part thereof without providing for the
18 payment of revenue bonds issued pursuant to this
19 chapter[; and

20 (4) The appointment and qualification of trustees and
21 depositaries, either within or without the State, to
22 receive, hold, disburse, invest, and reinvest all or

1 any part of the income, revenues, receipts, and profits
2 derived by the department from the operation,
3 ownership, and management of the ferry system, provided
4 that all covenants in the certificate or certificates
5 shall be subject to review by the governor].

6 (b) All gross revenues derived from the operation of the
7 ferry system and any additions or extensions thereof shall be
8 deposited to the credit of the state general fund."

9 PART IV. FUNDS ADMINISTERED UNDER

10 THE DEPARTMENTS OF THE ATTORNEY GENERAL,

11 PERSONNEL SERVICES, PUBLIC SAFETY, AND THE JUDICIARY

12 SECTION 16. Section 712A-16, Hawaii Revised Statutes, is
13 amended by amending subsection (4) to read as follows:

14 "(4) There is established in the department of the attorney
15 general a revolving fund to be known as the criminal forfeiture
16 fund, hereinafter referred to as the "fund" in which shall be
17 deposited one-half of the proceeds of a forfeiture and any
18 penalties paid pursuant to section 712A-10(6). All moneys in the
19 fund shall be expended by the attorney general and are hereby
20 appropriated for the following purposes:

21 (a) The payment of any expenses necessary to seize, detain,
22 appraise, inventory, safeguard, maintain, advertise, or

1 sell property seized, detained, or forfeited pursuant
2 to this chapter or of any other necessary expenses
3 incident to the seizure, detention, or forfeiture of
4 such property and such contract services and payments
5 to reimburse any federal, state, or county agency for
6 any expenditures made to perform the foregoing
7 functions;

8 (b) The payment of awards for information or assistance
9 leading to a civil or criminal proceeding;

10 (c) The payment of supplemental sums to state and county
11 agencies for law enforcement purposes; and

12 (d) The payment of expenses arising in connection with
13 programs for training and education of law enforcement
14 officers.

15 Prior to July 1, 1993, the attorney general shall deposit to the
16 credit of the state general fund, all unencumbered and unexpended
17 moneys remaining in the criminal forfeiture fund established
18 under this subsection."

19 SECTION 17. Section 81-3, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§81-3 Financing of operations. Funds necessary for the
22 development and operation of in-service training programs and

1 activities shall be provided by general fund appropriations.
2 Additional revenues may be provided through the charging of fees
3 as may be necessary to conduct programs for participating
4 agencies [and shall be made part of a revolving fund]. The
5 proceeds of all fees collected under this chapter shall be
6 deposited to the credit of the state general fund."

7 SECTION 18. Section 354D-10, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§354D-10 Correctional industries revolving fund. (a)
10 There is created the correctional industries revolving fund to be
11 administered by the department. All moneys collected by the
12 department from the sale or disposition of goods and services
13 produced in accordance with this chapter shall be deposited into
14 the correctional industries revolving fund. The proceeds in the
15 correctional industries revolving fund shall be used for: the
16 purchase or lease of supplies, equipment, and machinery; the
17 construction, leasing, or renovating of buildings used to carry
18 out the purposes of this chapter; the salaries of personnel
19 necessary to administer the enterprises established in accordance
20 with this chapter; payment of inmates for work assignments; and
21 other necessary expenses; provided that the correctional
22 industries revolving fund shall not be maintained in excess of

1 the amount necessary to carry out the purposes of this chapter.

2 (b) The director shall perform actuarial evaluations of the
3 management and operation of the fund from time to time, as may be
4 necessary, to ensure that the fund is self-sufficient."

5 SECTION 19. Section 286G-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§286G-2 Driver education and training fund. There is
8 established in the state treasury a special fund to be known as
9 the driver education and training fund. All fines collected
10 pursuant to this chapter shall be deposited in the driver
11 education and training fund to be expended by the administrative
12 director of the courts for driver education and training programs
13 administered by the judiciary, subject to part III of chapter 37
14 to the extent that the same applies to appropriations for the
15 judiciary. All unexpended and unencumbered moneys remaining on
16 balance with the fund at the close of each fiscal year which are
17 deemed, by the director of finance, to be in excess of the moneys
18 necessary to carry out the purposes of this chapter over the next
19 following fiscal year shall lapse to the credit of the state
20 general fund."

21 SECTION 20. If any provision of this Act, or the
22 application thereof to any person or circumstance is held

1 invalid, the invalidity does not affect other provisions or
2 applications of the Act which can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 21. Statutory material to be repealed is bracketed.
6 New statutory material is underscored.

7 SECTION 22. This Act shall take effect on July 1, 1994;
8 provided that the director of labor and industrial relations, the
9 chairperson of the board of land and natural resources, the
10 director of transportation, the attorney general, the director of
11 public safety, and the director of the courts, shall transfer, to
12 the credit of the state general fund, all unexpended or
13 unencumbered balances remaining in any special or revolving fund
14 under their administrative jurisdiction that may be scheduled for
15 repeal under this Act, prior to June 30, 1994.

16

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INTRODUCED BY: _____

