



GOV. MSG. NO. 798

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB36 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB36 HD1 SD2 CD1

A BILL FOR AN ACT
RELATING TO HEALTH.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 36

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 36, entitled "A Bill for an Act Relating to Health."

The purpose of this bill is to expand the use of the Environmental Health Education Fund by renaming it the "Sanitation and Environmental Health Special Fund," and increasing the amount that does not lapse on an annual basis into the general fund from \$300,000 to \$2,445,000.

This bill is objectionable because it would erode general fund revenues in the midst of a serious State budget crisis by increasing the amount retained in the special fund at the end of the fiscal year. Traditionally, amounts that are not spent during the fiscal year are in excess of the program's annual funding requirements and, therefore, should be reviewed and reallocated based on statewide priorities.

Most of the money in this special account is collected from fees imposed on food establishments to obtain a food permit. The fund has no limit on the amount it may collect each year. Moneys in the fund should be used to conduct sanitation inspections and excess amounts should be returned to the general fund that benefits all residents.

Although the stated purpose of this bill is to broaden the scope of the environmental health fund to cover sanitation, the bill in its current form does not accomplish this purpose.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 36
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The bill renames the fund without clarifying the purposes of the fund, as set forth in section 321-11 of Hawaii Revised Statutes. Last minute amendments by the Legislature to this bill resulted in inconsistent and conflicting language in sections 321-27 and 321-11 of Hawaii Revised Statutes. Due to the discrepancies in the bill language, enactment would create confusion as to the fund's actual and permissible uses.

For the foregoing reasons, I am returning House Bill No. 36 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that section 37-52.3,
2 Hawaii Revised Statutes, requires a special fund to reflect a
3 clear nexus between the benefits sought and the charges made
4 upon the users or beneficiaries of the program, as opposed to
5 serving primarily as a means of providing the program or users
6 with an automatic means of support that is removed from the
7 normal budget and appropriations process.

8 The legislature further finds that there is a need to
9 clarify the nexus between the benefits sought and charges made
10 on the users and beneficiaries of the environmental health
11 education fund. The fund is the depository of fees collected by
12 the department of health for permits, licenses, inspections,
13 various certificates, variances, investigations, and reviews
14 respecting:

15 (1) Certain occupations, practices, and persons that the
16 department deems necessary to regulate for public
17 health or safety reasons under section 321-13, Hawaii
18 Revised Statutes, including clinical laboratory



1 directors, scientists, specialists, and technicians;
2 cytotechnologists; tattoo artists; and environmental
3 health professionals; and

4 (2) Facilities seeking licensure or certification, except
5 certain types of health care facilities, including
6 hospitals, nursing homes, freestanding outpatient
7 surgical facilities, care centers, laboratories, and
8 special treatment centers, as provided in section 321-
9 11.5, Hawaii Revised Statutes.

10 Section 321-27, Hawaii Revised Statutes, requires the
11 department of health to expend the moneys in the environmental
12 health education fund to enhance the capacity of the
13 environmental health programs.

14 The legislature further finds that over ninety per cent of
15 the fees deposited into the environmental health education fund
16 are collected by the sanitation branch of the department of
17 health's environmental health services division. The sanitation
18 branch is charged with implementing programs related to:

- 19 (1) Food protection;
- 20 (2) The regulation of barber shops, beauty parlors,
21 massage parlors, tattoo shops, mortuaries, public
22 swimming pools, and public laundries;



- 1 (3) The inspection of tenement houses, lodging houses,
- 2 boarding houses, and hotels;
- 3 (4) The licensing of tattoo artists and embalmers; and
- 4 (5) Enforcing the sanitation requirements for hospitals
- 5 and medical facilities.

6 While the legislature recognizes the importance of
7 providing a dedicated source of funding for environmental health
8 education activities, the legislature acknowledges that, in this
9 case, the fees collected must more directly benefit the fee
10 payers.

11 The purpose of this Act is to:

- 12 (1) Change the name of the environmental health education
- 13 fund to the sanitation and environmental health
- 14 special fund; and
- 15 (2) Allow the use of fund money for sanitation program
- 16 activities.

17 SECTION 2. Section 321-11.5, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) Other than the fees collected under subsection (b),
20 all other fees collected under this section and section 321-15
21 shall be deposited into the sanitation and environmental health
22 [~~education~~] special fund established under section 321-27."



1 SECTION 3. Section 321-15, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Every person holding a license to practice any
4 occupation specified in section 321-13(a)(1) shall reregister
5 with the department of health every other year in accordance
6 with the rules of the department, before February 1 except where
7 superseded by federal law, and shall pay a reregistration fee.
8 The failure, neglect, or refusal of any person holding such a
9 license to reregister or pay the reregistration fee, after
10 thirty days of delinquency, shall constitute a forfeiture of the
11 person's license; provided that the license shall be restored
12 upon written application therefor together with a payment of all
13 delinquent fees and an additional late reregistration fee that
14 may be established by the director of health. All fees
15 collected pursuant to this section shall be deposited into the
16 sanitation and environmental health [~~education~~] special fund
17 established under section 321-27."

18 SECTION 4. Section 321-27, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~§321-27~~ [~~Environmental~~] Sanitation and environmental
21 health [~~education~~] special fund. (a) There is established
22 within the department of health [~~an~~] the sanitation and



1 environmental health [~~education~~] special fund, into which shall
2 be deposited all moneys collected from fees for permits,
3 licenses, inspections, various certificates, variances,
4 investigations, and reviews, pursuant to sections 321-11.5(c)
5 and 321-15.

6 (b) Moneys in the fund shall be expended by the department
7 [~~for the purpose of enhancing~~] to partially fund the operating
8 costs of program activities and functions authorized pursuant to
9 section 321-11 to enhance the capacity of sanitation and
10 environmental health programs to:

- 11 (1) Improve public outreach efforts and consultations to
12 regulated businesses and industries [~~regulated~~];
- 13 (2) Educate the public, staff, regulated businesses, and
14 industries [~~regulated thereunder~~];
- 15 (3) Plan for future growth and expansion to meet emerging
16 needs; and
- 17 (4) Provide training opportunities to ensure the
18 maintenance of professional competence among
19 sanitation and environmental health staff and
20 administrators[-

21 ~~Not~~]; provided that for environmental health programs, not
22 more than \$90,000 of the fund may be [~~utilized~~] used during any



1 fiscal year for fund administration, including the hiring of not
2 more than two full-time equivalent personnel, and the purchase
3 of office and electronic equipment.

4 (c) Any amount in the fund in excess of [~~\$300,000~~]
5 \$2,445,000 on June 30 of each year shall be deposited into the
6 general fund.

7 (d) The department of health shall submit a report to the
8 legislature concerning the status of the sanitation and
9 environmental health [~~education~~] special fund, including [~~but~~
10 ~~not limited to, the~~]:

11 (1) The amount of moneys taken in by and expended from the
12 fund [~~]~~; and [~~the~~]

13 (2) The sources of receipts and uses of expenditures,
14 not less than twenty days prior to the convening of each regular
15 session."

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on July 1, 2009.

