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 HDI SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB36 HDI SD2 CD1 A BILL FOR AN ACT RELATING TO HEALTH.

Sincerely,

LINDA LINGLE
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.
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,

LINDA LINGLE
Governor of Hawaii
A BILL FOR AN ACT

RELATING TO HEALTH.

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

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

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

(1) Certain occupations, practices, and persons that the department deems necessary to regulate for public health or safety reasons under section 321-13, Hawaii Revised Statutes, including clinical laboratory
directors, scientists, specialists, and technicians; cytotechnologists; tattoo artists; and environmental health professionals; and

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

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

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

(1) Food protection;

(2) The regulation of barber shops, beauty parlors, massage parlors, tattoo shops, mortuaries, public swimming pools, and public laundries;
(3) The inspection of tenement houses, lodging houses, boarding houses, and hotels;
(4) The licensing of tattoo artists and embalmers; and
(5) Enforcing the sanitation requirements for hospitals and medical facilities.

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

The purpose of this Act is to:

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

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

"(c) Other than the fees collected under subsection (b), all other fees collected under this section and section 321-15 shall be deposited into the sanitation and environmental health [education] special fund established under section 321-27."
SECTION 3. Section 321-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

"§321-27 [Environmental] Sanitation and environmental health [education] special fund. (a) There is established within the department of health [an] the sanitation and
environmental health [education] special fund, into which shall be deposited all moneys collected from fees for permits, licenses, inspections, various certificates, variances, investigations, and reviews, pursuant to sections 321-11.5(c) and 321-15.

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

(1) Improve public outreach efforts and consultations to regulated businesses and industries [regulated];

(2) Educate the public, staff, regulated businesses, and industries [regulated thereunder];

(3) Plan for future growth and expansion to meet emerging needs; and

(4) Provide training opportunities to ensure the maintenance of professional competence among sanitation and environmental health staff and administrators[; provided that for environmental health programs, not more than $90,000 of the fund may be [utilized] used during any
fiscal year for fund administration, including the hiring of not
more than two full-time equivalent personnel, and the purchase
of office and electronic equipment.

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

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

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

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

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

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