

SB 884

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

SENATE COMMITTEE ON WAYS AND MEANS
S.B. 884, S.D. 1, RELATING TO NON-GENERAL FUNDS

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

March 5, 2009
10:20 A.M.

1 **Department's Position:** The Department opposes the bill in its current S.D. 1 draft form. The
2 Department supports the previous draft of this measure, which authorized the transfer of \$10 million
3 from the DBC special fund, which is consistent with current executive budget priorities.

4 **Fiscal Implications:** Unspecified transfer of deposit beverage container special funds to the general
5 fund.

6 **Purpose and Justification:** The purpose of this measure is to address the budget shortfall by
7 transferring a now unspecified amount from the deposit beverage container (DBC) special fund.

8 The Department believes the previous version of this bill that specified a transfer amount of \$10
9 million is the right approach to improve the general fund.

10 Thank you for the opportunity to testify on this measure.

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**Written Testimony of David Thorp
Director, Government Affairs
American Beverage Association**

**Before the Senate Committee on Ways and Means
Subject: S.B. 884, SD 1 - Relating to Non-General Funds**

March 5, 2009 -- 10:20 a.m.

Good morning, Chair Kim, Vice Chair Tsutsui, and Members of the Committee. Thank you for the opportunity to testify on S.B. 884, SD 1, which seeks to transfer funds from the deposit beverage container special fund to the general fund and authorizes the Administration to set reasonable deposit beverage container fee.

On behalf of our Hawaii member companies, the Coca-Cola Bottling Company of Hawaii and The Pepsi Bottling Group of Hawaii, the American Beverage Association (ABA) opposes the transfer of deposit beverage container deposit special funds to the general fund but supports the intent of the current draft to delete the existing one-cent handling fee.

We offer the following amendments for your consideration:

* HRS 342G-107 requires the Auditor to submit an audit report of the program including the amount of unredeemed refund value and recommendations to the Legislature and Department of Health. The determination of whether to increase the handling fee should continue to be based on the Auditor's recommendations.

* The beverage industry has some concerns regarding allowing the Governor to set reasonable deposit beverage container fees and suggests that the "reasonable" fee should be set at an amount not in excess of the revenue needed – in addition to the unclaimed five-cent deposits – to run the deposit program. The "reasonable" fee set by the governor should not be a revenue-generator for the State; rather, it should support programs directly related to the deposit system as well as the development and implementation of programs that seek a more comprehensive and economical way to address waste and litter, that do not rely solely on the beverage industry, and that would provide for a transition to such comprehensive and more effective programs.

American Beverage Association

The American Beverage Association is the trade association representing the non-alcoholic beverage industry. Founded in 1919, ABA represents hundreds of beverage producers, distributors, franchise companies and supporting businesses that employ more than 217,000 people across the country. The beverage companies throughout Hawaii directly employ over 500 workers and indirectly impact the jobs of thousands of other across the state.

ABA members offer consumers myriad brands, flavors and packaging choices and a full range of drink options including soft drinks, diet soft drinks, ready-to-drink teas, bottled waters, water beverages, 100 percent juice, juice drinks, sports drinks and energy drinks.

Beverage Container Deposit Law's 5-cent deposit and 1-cent fee

S.B. 884, SD 1 seeks to transfer an unspecified amount from the deposit beverage container deposit special fund to the state's general fund. Hawaii's Beverage Container Deposit Law imposes a five-cent refund value and a one-cent deposit fee on beverage containers.

Hawaii Act 176 (the 2002 deposit law) impacts beverage containers made of glass, metal, PET, and HDPE containing 68 ounces or less of "beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks..., soda, or noncarbonated water, and all nonalcoholic drinks in liquid form..." Wine and spirits as well as concentrates, flavorings, medicines, nutritional supplements, powders, milk, and dairy-derived products are exempt.

According to Act 176, revenues from the five-cent refund value and one-cent deposit fee are for payment of refunds and handling fees; administrative, audit, and compliance activities by the state; recycling education and demonstration projects; market development for recyclables; subsidies for handling and transporting beverage container materials to end-users; and periodic management and financial audits of the program.

S.B. 884, SD 1 is a hidden tax on consumers

Hawaii consumers have been paying the five-cent refund value and one-cent deposit fee (tax) for several years and have been led to believe that the unclaimed refund value and the deposit fee (tax) are to be used for running the deposit program and other specific environmental programs.

The many millions of dollars currently in the deposit special fund should be used for its stated purposes of the deposit program.

Re-evaluate the deposit program or provide refunds for Hawaii consumers and businesses

Hawaii's deposit program costs consumers and businesses tens of millions of dollars every year to address about two percent of the waste stream and about 9% of all litter. We need to pursue a better way to address waste and litter that is more convenient and efficient than the deposit program – a way that consumers, businesses, and lawmakers can support, such as comprehensive recycling. In fact, the revenue from this discriminatory tax imposed only on beverage consumers could be used to fund the transition to better recycling programs in Hawaii that would provide convenient recycling access to all residents and businesses for all recyclables – not just the small fraction contributed by beverage containers.

We encourage the Committee to omit the proposed transfer of funds from the deposit beverage container deposit special fund from SB 884 SD1 and respectfully suggest that the Legislature immediately lower or eliminate the one-cent deposit fee (tax) and take further steps to pursue a more comprehensive and economical way to address waste and litter. Thank you for the opportunity to provide comments.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 884, S.D. 1

March 5, 2009

RELATING TO NON-GENERAL FUNDS

The original version of Senate Bill No. 884 allowed the Legislature to determine the excess funds in the Wireless Enhanced 911 Fund and the Deposit Beverage Container Deposit Special Fund and authorized the Director of Finance to transfer \$9 million from the Wireless Enhanced 911 Fund and \$10 million from the Deposit Beverage Container Deposit Special Fund to the general fund in Fiscal Year 2010. S.D. 1 deletes the transfer from the Wireless Enhanced 911 Fund, changes the amount of the transfer from the Deposit Beverage Container Deposit Special Fund from \$10 million to an unspecified amount, and changes the deposit beverage container fee from 1 or 1.5 cents per container to an amount set by the Governor.

We object to the changes proposed by S.D. 1. Transfers from both funds are needed to assist in addressing the severe budget shortfall facing the State and ensuring that the State is operating within a balanced budget. When the Fiscal Biennium 2009-11 Executive Budget was submitted, we had projected general fund balances of \$42.5 million, \$39.0 million and \$100.5 million at the end of Fiscal Year 2009, Fiscal Year 2010 and Fiscal Year 2011, respectively. To achieve these balances, we counted on transferring \$45 million from these two special funds. Since then, the amount of excess funds available from these special funds has been adjusted due to revised program requirements. In addition, in January, the Council

on Revenues reduced its general fund revenue projections by \$650 million over the three-year period from Fiscal Year 2009 to Fiscal Year 2011. Thus, it is even more critical that these transfers are authorized.

Furthermore, by changing the deposit beverage container fee from one imposed by statute to one imposed administratively, transfers from the fund may not be permissible as were the administrative fees in the Hawaii Insurers Council case that were determined to be unconstitutional.

The beverage container deposit program has been very successful for several reasons. Most importantly it has increased the recycle rate substantially in our county. Before the program our recycling rate was around 20%. Since the program was initiated the rate has climbed to over 70%. Our records show that the number to people recycling has increased steadily over the last four years. We see this trend continuing into the future.

The HI5 program has also provided income to many families that helps put food on the table. The number of customers we have who not only bring their own containers but also collect from others is large. Many of these people collect from parks, bars and restaurants, social events, and the like. They are helping to keep our island clean and free of litter while supporting their families. Any disruption to the program would impact many more people than just those of us directly involved in the business of recycling.

SB 884 proposes actions that we feel will be very detrimental to the program. The current HI5 fee structure just barely provides for viable redemption center operations. Operators depend upon the handling fees to keep the doors open. The value of the commodities in recent months has dropped so low that income no longer covers processing and shipping cost. We expect this situation to improve later this year but now is not the time to rock the boat. SB 884 would rock the boat.

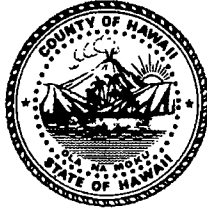
Our community can't afford to lose the redemption and recycling infrastructure that has developed over the last several years. Keeping Maui litter-free is too important.

Tom Reed

President

Aloha Recycling

William P. Kenoi
Mayor



Lono A. Tyson
Director

Ivan M. Torigoe
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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March 3, 2009

The Honorable Donna Mercado Kim, Chair
and Members of the Senate
Committee on Ways and Means
Hawai'i State Capitol
Honolulu, Hawai'i 96813

HEARING DATE: March 5, 2009

HEARING TIME: 10:20 a.m.

HEARING LOCATION: Conference Room 211

Re: Oppose Senate Bill 884

Dear Senator Kim and Members of the House Ways and Means Committee,

Thank you for the opportunity to present testimony on Senate Bill (SB) 884. The County of Hawai'i (County) Department of Environmental Management is opposed to the sections of the Bill that seek to remove funds from the Deposit Beverage Container (DBC) Special Fund and allow the Governor to set "reasonable" deposit beverage container fees.

The County's HI5 program has grown considerably since its inception in 2005. The public has become accustomed to redeeming their HI5 containers at the nineteen (19) certified redemption centers on the island. To continue this program, "adequate" funding is needed. The HI5 program is an essential part of our overall Solid Waste Management Program. We are concerned the program funding will be depleted and services on the Big Island discontinued if the monies in the DBC Special Fund are not available through transfer or by the Governor setting too low of a DBC fee.

There are approximately eighty (80) jobs with six different companies in the County of Hawai'i dependent on HI5 activities. Without adequate funding in the DBC Special Fund, these jobs will likely be lost and the Big Island economy could further suffer during this time of economic crisis.

All of the County's redemption centers depend on the money in the DBC Special Fund available at all times for reimbursement of handling fees. It should be noted that State of Hawaii Department of Health (DOH) representative Larry Lau stated on 2/20/09 to KHON News, that there needs to be about four (4) to five (5) million dollars readily available to pay

HI5 deposit and handling fees. Should the DBC Special Fund be depleted, there will likely not be enough funds to cover these necessary expenses.

In addition, ten (10) redemption centers at County operated transfer stations are partially funded through a special grant from the DBC Special Fund. This funding makes redemption centers possible in rural locations where there would otherwise be no redemption services available.

The County has an agreement with DOH to assist the State in overseeing the HI5 program on the Big Island. Two Recycling Specialist positions are funded solely with monies from the DBC Special Fund. The County also receives additional funds from the DBC Special Fund for recycling education and recycling projects.

The County is putting our DBC Special Funds to good use. As you may know, we had a 90% HI5 redemption rate for FY07-08, the highest in the State. This is evidence that the program is working and the County would like to see DBC funding continued at it's current or higher level.

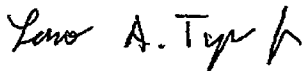
HRS 342G-104 clearly states that DBC Special Funds shall be used for recycling program expenses such as: reimbursement and payment of fees; funding redemption center infrastructure improvements; recycling education and demonstration projects; promoting recyclable market development activities; and personnel. Our recycling programs are dependent on funding for all of these activities.

Recycling is particularly dependent on DBC Special Fund support, since the more effective it is, the more landfill and tipping fee revenue are reduced. Tipping fees are used to pay for our County's Recycling programs. Additionally, in a weak recyclable commodities market, municipalities tend to have to subsidize recycling programs more, thus making recycling more expensive for counties such as Hawai'i. These points emphasize the financial vulnerability of recycling programs, and the need to preserve the DBC Special Fund

Transfer of deposit beverage container fees from the DBC Special Fund to the State's General Fund could be interpreted as unconstitutional under the separation of powers doctrine as shown by *Hawaii Insurers Council v Lingle*, Hi. Sup. Ct. No. 27840 (December 18, 2008). Additionally, the DBC Special Fund is among the special funds exempted by law from 5% contribution to General Fund for central service expenses of government related to special funds, under HRS section 36-27(20).

While the County of Hawai'i understands that we are facing challenging economic times, removing money from the HI5 Special Fund is not the solution. On behalf of the County of Hawai'i, please accept my respectful opposition to SB 884.

Best Regards and Aloha,



Lono Tyson
DIRECTOR

cc: Mayor William Kenoi

The Arc of Hilo

1099 Waianuenue Avenue Hilo, Hawaii 96720-2019 Ph: (808) 935-8534 Fax: (808) 961-0148

February 27, 2009

The Honorable Senator David Y. Ige, Chair
And Members of the Committee on Health
The Honorable Rosalyn H. Baker, Chair
And Members of the Committee on Commerce & Consumer Protection
Hawaii State Legislature
State Capitol
Honolulu, Hawaii 96813

RE: OPPOSE SENATE BILL 884 Relating to Non-General Funds

Aloha Senator Ige, Senator Baker and Members of the Committees:

The Arc of Hilo, a 501(c)(3) Non-Profit respectfully and strongly opposes SB 884.

Since the inception of the "HI 5 Program" in late 2004, The Arc of Hilo has operated Certified Redemption Centers island-wide at transfer stations on Hawaii island to earn revenue to support much needed services and employment for our island's disabled community. This is especially significant when considering the current economic and employment conditions and its impact on non-profits. The Arc currently operates ten centers.

SB 884 proposes that funds in the Deposit Beverage Container Special Fund determined to be in excess will be transferred to the general fund for fiscal year 2009-2010 for the purpose of assisting to balance the state's budget.

This is gross misjudgment in the application of the intended use of fees charged to our state's citizens on behalf of the Bottle Deposit Law and amounts to the community's popular worse concern coming true, that the Bottle Deposit Law was an additional tax in disguise.

Transferring surplus funds before services to the community and concerns of Certified Redemption Centers are properly addressed are premature and risk compromising the fund in the long run. It is critical to ensure that laws maintain their integrity; their purposes should not be modified in such a way that it does not appropriately address the purpose of its intent. Compromising the integrity of a law breeds discontentment and distrust from the community and only serves to diminish the community's confidence in legislative issues.

Any surplus money in the Deposit Beverage Container Special Fund should be used to directly to improve Certified Redemption Centers and the associated recycling experience for the community! Funds that may seemingly be “surplus” in the Deposit Beverage Container Fund has not had the chance to be allocated for improved services to the community and disbursements to Certified Redemption Centers.

Recently handling fees for glass containers to Certified Redemption Centers on the Big Island were reduced 33 1/3 %. The Department of Health determined that utilizing glass on island is not of a high enough recycling value as it is not remanufacturing. This reduction in handling fees is having a very significant impact on our operations. Surplus funds could be used to make up the 33 1/3 % deficit in handling fees for glass containers that are used on island for “low value” recycling that do not meet the Department of Health’s definition of “high value” recycling.

Recycling on the Big Island and in the State of Hawaii is ever growing. This self-funded program will be comprised if such a significant transfer of fund takes place. We ask that committee members reject the proposal to compromise the Deposit Beverage Container Fund by allowing amounts determined to be surplus transferred to the general fund.

Mahalo for the opportunity to address our concerns on SB 884.

Aloha,



Debra Cabarloc, Chief Administrative and Operating Officer
The Arc of Hilo