

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

November 7, 2008

Committee
Report No.

08-142

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on October 28, 2008, makes reference to County Communication No. 07-10, from the Council Chair, relating to matters pertaining to the Hawaii State Association of Counties (HSAC).

By correspondence dated October 6, 2008, Councilmember Joseph Pontanilla, HSAC Treasurer, transmitted correspondence dated September 29, 2008, from Mel Rapozo, HSAC President, requesting consideration of the following proposals for inclusion in the 2009 HSAC Legislative Package.

1. A proposed State bill entitled "A BILL FOR AN ACT RELATING TO PRODUCT BRANDING AND LABELING", and a justification sheet for the bill, submitted by the Hawaii County Council. The purpose of the proposed State bill is to provide information to consumers on product labels that indicate regions of Hawaii where produce is grown, to indicate countries of origin and percentages of each countries' portion of the product in the package and establish a minimum of 100 percent Hawaii grown product for a label to say "100%" Hawaiian and to increase the minimum percentage of Kona-grown coffee from 10 percent to 75 percent for any coffee blend using the label, "Kona Coffee Blend".
2. A proposed State bill entitled "A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES COMMISSION", and a justification sheet for the bill, submitted by the Hawaii County Council. The purpose of the proposed State bill is to increase the renewable energy portfolio standard of each electric utility company to 10 percent by 2010, 20 percent by 2015, 30 percent by 2020, and 60 percent by 2030; and to decouple compensation rates.

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3. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO HOUSING”, and a justification sheet for the bill, submitted by the Maui County Council. The purpose of the proposed State bill is to extend the 45-day window for a legislative body to approve, approve with modification, or disapprove an affordable housing project under Section 201H-38, Hawaii Revised Statutes, to 90 days.

4. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO PROCUREMENT”, and a justification sheet for the bill, submitted by the Maui County Council. The purpose of the proposed State bill is to remove the requirement for local governments to comply with rules adopted by the policy board and to place the decision-making power to use cooperative contracts within the discretion of local governments.

5. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS”, and a justification sheet for the bill, submitted by the Maui County Council. The purpose of the proposed State bill is to require the State to transfer a portion of the fines and forfeitures collected for uncontested traffic infractions to the county in which the violations occurred.

6. A proposed State concurrent resolution entitled “URGING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO ASSIST THE COUNTIES IN NEGOTIATING AGREEMENTS WITH PEG ACCESS ORGANIZATIONS FOR A PORTION OF CABLE FRANCHISE FEES”, submitted by the Honolulu City Council. The purpose of the proposed State concurrent resolution is to urge the Department of Commerce and Consumer Affairs to assist the counties in negotiating agreements with public, educational, and government (PEG) access organizations for a portion of cable franchise fees.

7. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS BY COUNTIES”, and a justification sheet for the bill, submitted by the Honolulu City Council. The purpose of the proposed State bill is to allow the counties to conduct criminal history record checks on taxicab drivers and applicants for taxicab driver’s certificates.

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8. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS”, and a justification sheet for the bill, submitted by the Honolulu City Council. The purpose of the proposed State bill is to require the State to transfer a portion of the fines and forfeitures collected for uncontested traffic infractions to the county in which the violations occurred.

By correspondence dated October 27, 2008, Councilmember Joseph Pontanilla, transmitted correspondence dated October 21, 2008, from Mel Rapozo, HSAC President, regarding the deletion of the proposed State bill submitted by the Maui County Council relating to traffic infractions because the proposed State bill relating to traffic infractions submitted by the Honolulu City Council has the correct effective date.

At its meeting, your Committee met with a Deputy Corporation Counsel.

Your Committee received public testimony from 17 individuals opposed to inclusion of the proposed State concurrent resolution in the 2009 HSAC Legislative Package. Three of the testifiers, including the President of Akaku: Maui Community Television, also submitted written testimony.

Your Committee noted that all four councils must unanimously approve each proposed State bill or resolution in order for the bill or resolution to be included in the 2009 HSAC Legislative Package.

Your Committee decided that the proposed State bills entitled “A BILL FOR AN ACT RELATING TO PRODUCT BRANDING AND LABELING” and “A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES COMMISSION”, respectively, need not be part of the HSAC Legislative Package, but would perhaps be more appropriately considered for inclusion in individual county packages.

Your Committee agreed that the proposed State bill submitted by the Maui County Council relating to traffic infractions need not be included in the HSAC Legislative Package, as it is a duplicate of the proposed State bill submitted by the Honolulu City Council.

Your Committee discussed the proposed State concurrent resolution. Your Committee noted that some Maui County residents may essentially be paying for public access television twice, once through the cable franchise fee on their cable bill, and again

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through real property taxes when the Council uses that tax revenue to pay *Akaku: Maui Community Television* for recording and cablecasting committee and Council meetings. Your Committee noted that the State Department of Commerce and Consumer Affairs is authorized to require up to 5 percent of revenue to be utilized for PEG access organizations, but currently requires only 3 percent. Your Committee concluded that it would be better to advocate for an increase in the percentage required, with a corresponding increase being allotted to governmental agencies, rather than to advocate for a portion of the existing fee.

Your Committee voted to recommend approval of the following proposed State bills, along with their corresponding justification sheets, for inclusion in the 2009 HSAC Legislative Package: “A BILL FOR AN ACT RELATING TO HOUSING”, “A BILL FOR AN ACT RELATING TO PROCUREMENT”, “A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS BY COUNTIES”, and “A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS”.

Your Policy Committee RECOMMENDS the following:

1. That the following proposals with their corresponding justification sheets, attached hereto, be APPROVED for inclusion in the 2009 HSAC Legislative Package:
 - a. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO HOUSING”;
 - b. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO PROCUREMENT”;
 - c. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS BY COUNTIES”;
and
 - d. A proposed State bill entitled “A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS”;
2. That a copy of this committee report be TRANSMITTED to the HSAC Executive Committee.

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Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

BILL KAUAKEA MEDEIROS Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

JUSTIFICATION SHEET

- PROPOSER:** Hawaii State Association of Counties
- TITLE:** A BILL FOR AN ACT RELATING TO HOUSING
- PURPOSE:** Extends the forty-five day window for a legislative body to approve, approve with modification, or disapprove an affordable housing project under Section 201H-38, Hawaii Revised Statutes, to ninety days.
- MEANS:** Amends Section 201H-38, Hawaii Revised Statutes.
- JUSTIFICATION:** With the authority granted to the county councils by Act 249 (2007) to modify affordable housing projects, extending the councils' review period to ninety days will produce projects that are better suited to the counties' respective needs while still providing an expedited process.
- The 45-day deadline is inadequate for a responsible review of a project, partly because a significant amount of time is consumed by the notice requirements under Chapter 92, HRS, for scheduling Council and committee meetings.
- Passage of this measure would reflect the Legislature's recognition of the scheduling and other limitations imposed on the councils by the Sunshine Law.
- This measure only addresses the councils' role in the approval process, which historically has not been the source of delays and increased costs for good affordable housing projects.

___ .B. NO. ___

A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. The forty-five day window for a
2 legislative body to approve, approve with modification, or
3 disapprove an affordable housing project is too short to have a
4 meaningful discussion of the project. Allowing ninety days will
5 provide an expedited review while allowing the legislative body
6 to do its due diligence in evaluating a project.

7 SECTION 2. Section 201H-38, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 " (a) The corporation may develop on behalf of the State or
10 with an eligible developer, or may assist under a government
11 assistance program in the development of, housing projects that
12 shall be exempt from all statutes, ordinances, charter
13 provisions, and rules of any government agency relating to
14 planning, zoning, construction standards for subdivisions,
15 development and improvement of land, and the construction of
16 dwelling units thereon; provided that:

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- 1 (1) The corporation finds the housing project is
2 consistent with the purpose and intent of this
3 chapter, and meets minimum requirements of health and
4 safety;
- 5 (2) The development of the proposed housing project does
6 not contravene any safety standards, tariffs, or rates
7 and fees approved by the public utilities commission
8 for public utilities or of the various boards of water
9 supply authorized under chapter 54;
- 10 (3) The legislative body of the county in which the
11 housing project is to be situated shall have approved
12 the project with or without modifications:
- 13 (A) The legislative body shall approve, approve with
14 modification, or disapprove the project by
15 resolution within [~~forty-five~~] ninety days after
16 the corporation has submitted the preliminary
17 plans and specifications for the project to the
18 legislative body. If on the [~~forty-sixth~~]
19 ninety-first day a project is not disapproved, it
20 shall be deemed approved by the legislative body;
- 21 (B) No action shall be prosecuted or maintained
22 against any county, its officials, or employees
23 on account of actions taken by them in reviewing,

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1 approving, modifying, or disapproving the plans
2 and specifications; and

3 (C) The final plans and specifications for the
4 project shall be deemed approved by the
5 legislative body if the final plans and
6 specifications do not substantially deviate from
7 the preliminary plans and specifications. The
8 final plans and specifications for the project
9 shall constitute the zoning, building,
10 construction, and subdivision standards for that
11 project. For purposes of sections 501-85 and
12 502-17, the executive director of the corporation
13 or the responsible county official may certify
14 maps and plans of lands connected with the
15 project as having complied with applicable laws
16 and ordinances relating to consolidation and
17 subdivision of lands, and the maps and plans
18 shall be accepted for registration or recordation
19 by the land court and registrar; and

20 (4) The land use commission shall approve, approve with
21 modification, or disapprove a boundary change within
22 forty-five days after the corporation has submitted a
23 petition to the commission as provided in section

____.B. NO. _____

1 205-4. If on the forty-sixth day the petition is not
2 disapproved, it shall be deemed approved by the
3 commission."

4 SECTION 3. Statutory material to be deleted is bracketed
5 and in strikethrough. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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8 INTRODUCED BY: _____

JUSTIFICATION SHEET

- PROPOSER:** Hawaii State Association of Counties
- TITLE:** A BILL FOR AN ACT RELATING TO PROCUREMENT
- PURPOSE:** To remove the requirement for local governments to comply with rules adopted by the policy board and to place the decision-making power to use cooperative contracts within the discretion of local governments.
- MEANS:** Amends §103D-802, Hawaii Revised Statutes (HRS), by deleting language pertaining to rules adopted by the policy board.
- JUSTIFICATION:** §103D-201 and §103D-202, HRS, establish a procurement policy board with the authority to adopt rules consistent with Chapter 103D. Chapter 103D is based on the Model Procurement Code. All states have adopted a version of the Model Procurement Code. Most states that allow cooperative purchasing do not have policy boards restricting a government's ability to participate in cooperative contracts.

Currently, local governments in the State of Hawaii are limited by the Hawaii Administrative Rules set by the policy board to choose whether to use cooperative contracts. This is true even if the cooperative contracts went through a competitive selection process similar to the laws and rules of the State of Hawaii. Consequently, local governments may not be able to enter into a cooperative contract that is the most cost-effective choice for itself or for its taxpayers.

Local governments are in the best position to assess their own needs and the needs of the people they serve. Therefore, local governments are also in the best position to make competent decisions as to whether to use a cooperative contract.

The amendment would merely provide local governments with another option when deciding whether to enter into a cooperative contract. There may be contracts, other than the cooperative contract, that have gone through Hawaii's procurement process and are still more cost efficient for local governments. The amendment gives local governments another choice.

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103D-802, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-802 Cooperative purchasing authorized.** A public
4 procurement unit may either participate in, sponsor, conduct, or
5 administer a cooperative purchasing agreement for the
6 procurement of goods, services, or construction with one or more
7 public procurement units, external procurement units, or
8 nonprofit private procurement units pursuant to [~~rules adopted~~
9 ~~by the policy board and~~] an agreement entered into between the
10 participants. The cooperative purchasing may include, but shall
11 not be limited to, joint or multi-party contracts between public
12 procurement units, and state public procurement unit
13 requirements contracts which are made available to local public
14 procurement units. Cooperative purchasing agreements may be
15 exempt from preferences pursuant to part X.

16 SECTION 2. Statutory material to be deleted is bracketed
17 and in strikethrough.

18 SECTION 3. This Act shall take effect upon its approval.

____.B. NO. _____

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INTRODUCED BY: _____

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JUSTIFICATION SHEET

PROPOSER: Hawaii State Association of Counties

TITLE: RELATING TO CRIMINAL HISTORY RECORD CHECKS BY COUNTIES

PURPOSE: To allow the counties to conduct criminal history record checks on taxicab drivers and applicants for taxicab driver's certificates.

MEANS: Amend section 846-2.7, Hawaii Revised Statutes by amending subsection (b).

JUSTIFICATION: Criminal history record checks are authorized to be conducted on individuals in sensitive positions in government agencies, government contractors, and government regulated businesses. The intent of conducting criminal history record checks in certain areas of employment is to protect vulnerable members of the public from harm that may be perpetrated by criminal offenders against them. These members of the public include children and the elderly.

The taxicab industry is part of the statewide transportation system and taxicab passengers, including children, the elderly, and tourists, reasonably expect that the drivers are trustworthy. Allowing the county agencies that regulate the taxicab industry to conduct criminal history record checks on drivers will ensure proper vetting of applicants for taxicab driver's certificates. This measure will increase the level of protection the public expects from potential criminal acts.

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS BY COUNTIES.

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

1 SECTION 1. Section 846-2.7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Criminal history record checks may be conducted by:

4 (1) The department of health on operators of adult foster
5 homes or developmental disabilities domiciliary homes
6 and their employees, as provided by section 333F-22;

7 (2) The department of health on prospective employees,
8 persons seeking to serve as providers, or
9 subcontractors in positions that place them in direct
10 contact with clients when providing non-witnessed
11 direct mental health services as provided by section
12 321-171.5;

13 (3) The department of health on all applicants for
14 licensure for, operators for, and prospective
15 employees, and volunteers at one or more of the
16 following: skilled nursing facility, intermediate
17 care facility, adult residential care home, expanded

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- 1 adult residential care homes, assisted living
2 facility, home health agency, hospice, adult day
3 health center, special treatment facility, therapeutic
4 living program, intermediate care facility for the
5 mentally retarded, hospital, rural health center and
6 rehabilitation agency, and, in the case of any of the
7 above-related facilities operating in a private
8 residence, on any adult living in the facility other
9 than the client as provided by section 321-15.2;
- 10 (4) The department of education on employees, prospective
11 employees, and teacher trainees in any public school
12 in positions that necessitate close proximity to
13 children as provided by section 302A-601.5;
- 14 (5) The counties on employees and prospective employees
15 who may be in positions that place them in close
16 proximity to children in recreation or child care
17 programs and services;
- 18 (6) The county liquor commissions on applicants for liquor
19 licenses as provided by section 281-53.5;
- 20 (7) The department of human services on operators and
21 employees of child caring institutions, child placing

____.B. NO. _____

- 1 organizations, and foster boarding homes as provided
2 by section 346-17;
- 3 (8) The department of human services on prospective
4 adoptive parents as established under section
5 346-19.7;
- 6 (9) The department of human services on applicants to
7 operate child care facilities, prospective employees
8 of the applicant, and new employees of the provider
9 after registration or licensure as provided by section
10 346-154;
- 11 (10) The department of human services on persons exempt
12 pursuant to section 346-152 to be eligible to provide
13 child care and receive child care subsidies as
14 provided by section 346-152.5;
- 15 (11) The department of human services on operators and
16 employees of home and community-based case management
17 agencies and operators and other adults, except for
18 adults in care, residing in foster family homes as
19 provided by section 346-335;
- 20 (12) The department of human services on staff members of
21 the Hawaii youth correctional facility as provided by
22 section 352-5.5;

____.B. NO. _____

- 1 (13) The department of human services on employees,
2 prospective employees, and volunteers of contracted
3 providers and subcontractors in positions that place
4 them in close proximity to youth when providing
5 services on behalf of the office or the Hawaii youth
6 correctional facility as provided by section 352D-4.3;
- 7 (14) The judiciary on employees and applicants at detention
8 and shelter facilities as provided by section 571-34;
- 9 (15) The department of public safety on employees and
10 prospective employees who are directly involved with
11 the treatment and care of persons committed to a
12 correctional facility or who possess police powers
13 including the power of arrest as provided by section
14 353C-5;
- 15 (16) The department of commerce and consumer affairs on
16 applicants for private detective or private guard
17 licensure as provided by section 463-9;
- 18 (17) Private schools and designated organizations on
19 employees and prospective employees who may be in
20 positions that necessitate close proximity to
21 children; provided that private schools and designated
22 organizations receive only indications of the states

____.B. NO. _____

- 1 from which the national criminal history record
2 information was provided as provided by section
3 302C-1;
- 4 (18) The public library system on employees and prospective
5 employees whose positions place them in close
6 proximity to children as provided by section 302A-
7 601.5;
- 8 (19) The State or any of its branches, political
9 subdivisions, or agencies on applicants and employees
10 holding a position that has the same type of contact
11 with children, dependent adults, or persons committed
12 to a correctional facility as other public employees
13 who hold positions that are authorized by law to
14 require criminal history record checks as a condition
15 of employment as provided by section 78-2.7;
- 16 (20) The department of human services on licensed adult day
17 care center operators, employees, new employees,
18 subcontracted service providers and their employees,
19 and adult volunteers as provided by section 346-97;
- 20 (21) The department of human services on purchase of
21 service contracted and subcontracted service providers
22 and their employees serving clients of the adult and

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1 community care services branch, as provided by section
2 346-97;

3 (22) The department of human services on foster grandparent
4 program, senior companion program, and respite
5 companion program participants as provided by section
6 346-97;

7 (23) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under Section 1915(c) of the Social
11 Security Act (42 U.S.C. §1396n(c)), as provided by
12 section 346-97; [and]

13 (24) The county agencies responsible for taxicab regulation
14 on taxicab drivers and applicants for taxicab driver's
15 certificates; and

16 [+24+] (25) Any other organization, entity, or the State,
17 its branches, political subdivisions, or agencies as
18 may be authorized by state law."

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 3. This Act shall take effect upon its approval.

22 INTRODUCED BY: _____

JUSTIFICATION SHEET

PROPOSER: Hawaii State Association of Counties

TITLE: RELATING TO TRAFFIC INFRACTIONS

PURPOSE: To require the State to transfer a portion of the fines and forfeitures collected for uncontested traffic infractions to the county in which the violations occurred.

MEANS: Create a new chapter, "Transmittal of Uncontested Traffic Fines and Forfeitures to Counties," and amend section 291C-171(a), Hawaii Revised Statutes.

JUSTIFICATION: While the counties are responsible for enforcement, revenues accruing from violations of the Statewide Traffic Code are paid solely to the State. Traffic citations are issued by police officers whose costs, including salaries, equipment, and administrative support, are funded by the counties. Allowing each county to receive the fines and forfeitures generated as a result of county enforcement of traffic laws is fair and will provide the counties a much-needed modicum of financial relief from the State. The measure specifically excludes those fines and forfeitures accruing from State-enforced violations, which do not involve the expenditure of County resources.

When traffic violations remain uncontested, there is no need to resort to the State courts. The burden on State-funded personnel and resources is, therefore, minimized. The bill seeks solely to have those fines and forfeitures paid by offenders without contest transferred to the county in which the infraction occurred.

Authorizing the counties to collect such fines and forfeitures would provide the counties with a dedicated revenue source and diversify the counties' revenue bases. As a result, the measure would help to stabilize the counties' budgets and promote the viability of the counties' public services, including the provision of traffic-safety improvements.

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A BILL FOR AN ACT

RELATING TO TRAFFIC INFRACTIONS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER .

5 TRANSMITTAL OF UNCONTESTED TRAFFIC FINES
6 AND FORFEITURES TO COUNTIES

7 § -1 Definitions. For purposes of this chapter, unless
8 the context clearly requires otherwise:

9 "Traffic infractions" means the same as defined under
10 section 291D-2.

11 "Uncontested traffic infraction" means a traffic infraction
12 for which the person noticed under section 291D-5 does not
13 contest the infraction. A person "does not contest" an
14 infraction if, in accordance with section 291D-6(b)(1), the
15 person admits the commission of the infraction without

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1 requesting a hearing to explain mitigating circumstances and
2 pays or remits bail forfeiture by mail within thirty days.

3 § -2 **Transmittal of fines and forfeitures.** (a) The state
4 director of finance shall transmit to each county not more than
5 thirty days after the end of each fiscal quarter ____ per cent of
6 all the fines and forfeitures collected for uncontested traffic
7 infractions committed in that county which are in excess of
8 amounts required by the State to pay the administrative costs of
9 the traffic violations bureau.

10 (b) Subsection (a) shall not apply to:

11 (1) Fines and forfeitures for violations that occur on
12 state off-street parking facilities, parks, airports,
13 and harbors that are subject to enforcement by the
14 State; and

15 (2) Fines and forfeitures that are required by law to be
16 paid into a special, revolving, or trust fund.

17 No county shall be entitled to any portion of the fines and
18 forfeitures described in this subsection."

19 SECTION 2. Section 291C-171, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) All fines and forfeitures collected upon conviction or
22 upon the forfeiture of bail of any person charged with a

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1 violation of any section or provision of the state traffic laws
2 and all assessments collected relating to the commission of
3 traffic infractions shall be paid to the director of finance of
4 the State.

5 The judiciary shall identify those uncontested traffic
6 infractions as defined in section -1. The disposition of
7 finances and forfeitures paid to the state director of finance
8 shall be subject to section -2."

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2009.

11 INTRODUCED BY: _____