THOMAS YAMACHIKA 3504

TAX FOUNDATION OF HAWAIʻI
126 Queen Street, Suite 304
Honolulu, Hawaiʻi 96813
Telephone: (808) 536-4587
Facsimile: (808) 536-4588
E-mail: tom@tfhawaii.org

Attorney for Plaintiff

Electronically Filed
FIRST CIRCUIT
1CCV-25-0001057
27-JUN-2025
11:56 AM
Dkt. 1 CMP

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

TAX FOUNDATION OF HAWAIʻI, a Hawaiʻi nonprofit corporation, Plaintiff, vs. STATE OF HAWAIʻI, Defendant.	CASE NO. _____ COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF; SUMMONS (Other Civil Action)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff TAX FOUNDATION OF HAWAIʻI, for its Complaint against Defendant STATE OF HAWAIʻI, alleges as follows.

1. This action seeks to enforce the constitutional and statutory provisions that provide control over expenditures of the state government and place their oversight in the hands of our elected Representatives and Senators.

2. Citizens elect and grant authority to legislators to pass laws for the public good and to monitor expenditures of public moneys. The Hawaii

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai`i.
Dated at Honolulu, Hawai`i 27-JUN-2025, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai`i

Constitution specifies systems and processes to make sure that proper oversight of public spending takes place through the appropriations process.

3. As the legislature recognized in section 37-52.3, HRS, it is possible for the appropriations process to be subverted by the creation and maintenance of special funds, and for constitutional restrictions on appropriations to be circumvented through the use of special funds.

4. This case shows one example of this subversion, although many other similar special funds can be found among the thousands of funds maintained by the government of the State of Hawai‘i.

PARTIES

5. Plaintiff TAX FOUNDATION OF HAWAI‘I (the **Foundation**) is a Hawai‘i nonprofit corporation with its principal office in the City and County of Honolulu, State of Hawai‘i. The Supreme Court of Hawai‘i has recognized the Foundation "based on its historical purpose as a governmental financial accountability watchdog." *Tax Foundation of Hawai‘i v. State,* 144 Hawai‘i 175, 202-03, 439 P.3d 127, 154-55 (2019).

6. Defendant STATE OF HAWAI‘I (**State**) is the government of the State of Hawai‘i as provided in the Constitution of the State of Hawai‘i.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this claim for declaratory relief because this action arises under HRS § 632-1 and HRS § 603-21.5(a)(3).

8. Venue is proper in this Court under HRS § 603-36(5) because the prohibited acts occurred and the claim for relief arose in this Circuit.

9. The Foundation is a taxpayer. Although the Foundation is a nonprofit organization recognized as tax-exempt for some purposes, the Foundation has paid General Excise Tax on its fundraising income as required by law, and thereby has contributed to the State's general fund. No less than five million dollars ($5,000,000) from the general fund was appropriated into the special fund being challenged herein.

FACTUAL BACKGROUND

10. Effective July 1, 2023, Act 134, SLH 2023 (**Act 134**), established the "Dam and Appurtenance Improvement or Removal Grant Program" (the **Dam Program**) and funded this program by an appropriation of $10 million of general revenues. The law thereby enacted was codified as section 179D-31, HRS.

11. The Dam Program, pursuant to section 179D-31(b), HRS, "shall provide funding to owners of private dams for plans, design, construction, and equipment to improve or remove deficient dams and appurtenances, as determined by the department." Section 179D-3, HRS, defines "department" for purposes of chapter 179D, HRS, as the Department of Land and Natural Resources (**DLNR**).

12. Effective July 1, 2024, Act 232, Session Laws of Hawaii 2024 (**Act 232)**, created the "Dam and Appurtenance Improvement or Removal Grant Program Special Fund" (the **Dam Special Fund**) by amending section 179D-31, HRS.

13. Act 232 also amended Act 134 to repeal the $10 million general fund appropriation contained therein. In its place, Act 232 appropriated $5

million of general fund money to the Dam Special Fund and then appropriated the $5 million from the Dam Special Fund for the DLNR to spend for the Dam Program.

14. The purpose of Act 232, as stated in its preamble, is explained thus:

> Act 134, Session Laws of Hawaii 2023 (Act 134), established and appropriated moneys for a dam and appurtenance improvement or removal grant program to financially assist owners of private dams and appurtenances to keep them properly maintained. Although Act 134 did appropriate $10,000,000 out of general revenues as one-time seeding for the grant program, it did not establish a special fund dedicated to receive grant program funding. A special fund is a critical receptacle for grant funds to be deposited into and remain available for the purposes of Act 134. This is especially important during the department of land and natural resources' (department) inaugural creation of the grant program, where administrative rulemaking to develop procedures and criteria to determine eligibility and priority of awarding grants would be established. The department anticipates that the $10,000,000 in seed funding appropriated for the grant program in Act 134 will lapse before the department can complete its rulemaking and establish its grant application criteria and processes. Thereafter, without the creation of the special fund, unused funds for the grant program will lapse and be returned to the general fund at the close of each fiscal year.
>
> The purpose of this Act is to establish a special fund to receive funds for the dam and appurtenance improvement or removal grant program and to reappropriate funds for the dam and appurtenance improvement or removal grant program.

15. Section 37-52.3, HRS, establishes criteria for the creation and maintenance of special funds. It provides:

> **§37-52.3 Criteria for the establishment and continuance of special funds.** Special funds shall be established only pursuant to an act of the legislature. The legislature, in establishing or reviewing a special fund to determine whether it should be continued, shall ensure that the special fund:
>
> (1) Serves a need, as demonstrated by:
>
> (A) The purpose of the program to be supported by the fund;

(B) The scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and

(C) An explanation of why the program cannot be implemented successfully under the general fund appropriation process;

(2) Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries or a clear link between the program and the sources of revenue, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;

(3) Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and

(4) Demonstrates the capacity to be financially self-sustaining.

16. Section 23-11, HRS, tasks the State Auditor with analyzing legislative bills that propose to establish new special or revolving funds, and requires that the Auditor deliver such analysis to the legislature no later than thirty days prior to the adjournment sine die of the legislature.

17. In February 2024, the Auditor published Report No. 24-03 which analyzed the Dam Special Fund among many other proposed special funds. In Report No. 24-03, at page 38, the Auditor concluded that the Dam Special Fund did not meet the requirements of section 37-52.3, HRS, in that it was not clear that the fund would be self-sustaining, and that there was no nexus or linkage between the Dam Program and continued support from legislative appropriations.

18. In the preamble of Act 232, the legislature expressly found that "private dam owners do not have the resources to conduct the necessary repairs or removal of their dams," and that "it is in the public's best interest for

the legislature to provide financial assistance to these private dam owners." Thus, the legislature recognized that the funding for dam repair or removal was not likely to come from private dam owners and would have to come from state coffers. In effect, the legislature itself acknowledged that the fund would not be self-sustaining, thus violating one of the criteria in section 37-52.3, HRS.

SUBVERSION OF CONSTITUTIONAL AND STATUTORY EXPENDITURE CONTROLS

19. The Constitution of the State of Hawaii provides safeguards against excessive and indiscriminate public spending, and provides for oversight of the expenditure of public money by the Hawaii Legislature.

20. Article VII, section 4 of the Constitution of the State of Hawaii provides: "No grant of public money or property shall be made except pursuant to standards provided by law."

21. Article VII, section 5 of the Constitution of the State of Hawaii provides: "No public money shall be expended except pursuant to appropriations made by law."

22. Article VII, section 9 of the Constitution of the State of Hawaii provides: "Notwithstanding any other provision to the contrary, the legislature shall establish a general fund expenditure ceiling which shall limit the rate of growth of general fund appropriations, excluding federal funds received by the general fund, to the estimated rate of growth of the State's economy as provided by law. No appropriations in excess of such ceiling shall be authorized during any legislative session unless the legislature shall, by a two-thirds vote of the members to which each house of the legislature is entitled,

set forth the dollar amount and the rate by which the ceiling will be exceeded and the reasons therefor."

23. Article VII, section 11 of the Constitution of the State of Hawaii provides: "All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods. No such appropriation shall be made for a period exceeding three years; provided that appropriations from the state educational facilities improvement special fund may be made for periods exceeding three years to allow for construction or acquisition of public school facilities."

24. The Legislature has established standards for a grant of public money to a special fund, including the Dam Special Fund. The applicable standards for a special fund are in section 37-52.3, HRS, and the Dam Special Fund violates those standards, as the State Auditor found. An appropriation of public money to the Dam Special Fund therefore violates Article VII, section 4 of the Constitution of the State of Hawaii, and the continued existence of the Dam Special Fund violates section 37-52.3, HRS.

25. Appropriation of public money to be spent by the Dam Special Fund allows the money to be spent irrespective of the expenditure ceiling in Article VII, section 9 of the Constitution of the State of Hawaii, and thereby subverts Article VII, section 9 of the Constitution.

26. The stated purpose and actual effect of the Dam Special Fund is for unused money in that fund to avoid lapse and reallocation to other State needs and priorities regardless of the length of time it has been in the fund.

The Dam Special Fund thereby subverts and contravenes Article VII, section 11 of the Constitution of the State of Hawaii.

27. If unused money in the Dam Special Fund cannot be reallocated to other State needs and priorities, money to fund those other needs and priorities will need to come from other sources, such as the taxpayers of Hawaii.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray for relief from this Court as follows:

1. For an order declaring that the Dam Special Fund is unconstitutional and void.

2. For an order abolishing the Dam Special Fund and requiring that any unencumbered balance in the fund lapse to the General Fund.

3. For such other and further relief as this Court deems proper.

DATED: Honolulu, Hawai‘i, June 27, 2025.

/s/ Thomas Yamachika
THOMAS YAMACHIKA
Attorney for Plaintiff
TAX FOUNDATION OF HAWAI‘I