Dam Special Fund

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Over the years, we at the Foundation have been constantly complaining about special funds. Special funds are like little bank accounts, opened for a particular purpose, which the administering department can spend, with limited legislative oversight, if the funds are spent for the purpose of the fund. Most tax collections go into, and most state spending comes out of, the General Fund. General Fund spending is subject to expenditure controls specified in the Hawaii Constitution. For example, the constitution specifies an expenditure ceiling, the fund is subject to clearly defined legislative oversight, and appropriations out of the fund are supposed to expire after three years so the legislatures in future years have some say over what happens to our tax money. The expenditure controls apply to the General Fund and don't explicitly apply to special funds.

If you think that means that special funds can be used to get around the expenditure controls, many of our legislators and bureaucrats would agree with you. That's why we have thousands of special funds on the books today.

The Dam Special Fund is just one example.

In Act 134 of 2023, our lawmakers enacted a "Dam and Appurtenance Improvement or Removal Grant Program" (let's call it the Dam Program) and funded this program by an appropriation of $10 million of general revenues. The Dam Program is to provide funding to owners of private dams for plans, design, construction, and equipment to improve or remove deficient dams and appurtenances. So far, so good.

But the very next year, the Department of Land and Natural Resources (DLNR), which administers the Dam Program, complained that it needed a special fund. So, it introduced, and lawmakers enacted, a bill that provided for what we call the Dam Special Fund. The bill became Act 232 of 2024. Act 232's preamble sums it up:

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.

DLNR obviously felt bothered by the prospect of having the appropriated funds lapse (lapsing is one of the constitutional expenditure controls mentioned earlier) and wanted a special fund as a workaround. But using a special fund in this way is not legitimate.

According to section 37-52.3, HRS, which provides standards to keep or create a special fund, special funds need to be self-sustaining. So, it's fine to have a Hanauma Bay special fund that is fed by entry fees and concession commissions and that is used to maintain the park. But the Dam Special Fund has no income other than legislative appropriations. The repairs contemplated by the Dam Program are being done in a state program because the owners can't fund the repairs themselves. It violates the standards, which is what the Legislative Auditor found in Report No. 24-03 (page 38).

Dear lawmakers and bureaucrats, constitutional rules are not made to be broken. Our state budget already is in chaos, and adding more workarounds and sleight of hand will not make things better!