EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2021

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith HB862 HD2 SD2 CD1, without my approval and with the statement of objections relating to the measure.

HB862 HD2 SD2 CD1 RELATING TO STATE GOVERNMENT.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2021

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 862

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 862, entitled "A Bill for an Act Relating to State Government."

The purposes of this bill are to effect a number of changes to the Pacific International Space Center for Exploration Systems (PISCES); the Transient Accommodations Tax (TAT); and the Hawaii Tourism Authority (HTA). Specifically, this bill:

1. Transfers PISCES from the Department of Business, Economic Development, and Tourism (DBEDT) and places it within the University of Hawaii at Hilo for administrative purposes only, and transfers the balance of moneys in its special fund accordingly;
2. Abolishes the Office of Aerospace Development, the Aerospace Advisory Committee, and the Unmanned Aerial Systems Test Site Advisory Board within DBEDT and transfers the Challenger Center Program and its funds held in the Office of Aerospace Development to the Department of Education;
3. Repeals TAT funding for the counties, the Tourism Special Fund (within HTA), the Special Land and Development Fund, the State Parks Fund, and the trails and access program (all within the Department of Land and Natural Resources), reverting to the general fund amounts that otherwise would have been funded;
4. Authorizes the counties to establish their own TAT charge with a cap of three percent of all gross rental value taxable thereunder;
5. Amends TAT funding of the Hawaii Convention Center Enterprise Special

Fund from $16.5 million to $11 million, but maintains the Tourism Emergency Fund at $5 million;

6. Repeals HTA's Tourism Special Fund (TSF), along with conforming amendments repealing funding reliant on, or wording in other statutes referring to, the TSF (including certain Central Services expense payment exemptions, the Turtle Bay Conservation Easement special fund, and HTA CEO and employee salaries);
7. Repeals HTA's market development-related research authority;
8. Repeals HTA's exemption from chapter 103D (the procurement code), Hawaii Revised Statutes (HRS); and
9. Appropriates $60 million in moneys from the Coronavirus State and Local Receovery Funds (SLFRF) under the American Rescue Plan Act of 2021 (ARPA) (see comments below) for HTA for fiscal year 2021-2022, to be expended by DBEDT.

This bill is objectionable because it ends dedicated funding from TAT for HTA and substantially reduces funding for the Hawaii Convention Center (HCC) at a time when both need current funding levels to be maintained and fails to appropriate sufficient and suitable fundings for the operation of HTA and HCC.

A second, equally important objection is a repeal of HTA's special fund as well as its portion of the TAT, replaced by significantly lower, one-time SLFRF funding. It not only undermines the purpose of the TAT (to provide dedicated funding from visitors to mitigate their impacts on the community), but it also hinders HTA's current efforts in destination management to strike a more sustainable balance between needed tourism revenue and tourism's community impacts. The lack of a special fund appropriation for the operation of HTA in this bill or in House Bill No. 200, entitled "A Bill for an Act Relating to the State Budget," the General Appropriations Act of 2021, approved as Act 88, is objectionable because the SLFRF funds appropriation cannot and does not take the place of an appropriation of special funds. The recent Treasury rules define the SLFRF funds as federal grants, subjecting them to federal grant requirements that include extensive reporting requirements and adherence to strict procurement procedures. These federal requirements would hinder and prove inefficient for HTA operations, including its ability to participate in cooperative advertising with the tourism industry domestically and internationally and to conduct its grant and other discretionary funding programs for numerous sponsored events, including community events like the Merrie Monarch Festival.

A special fund appropriation for HTA operations is necessary for HTA to respond to shifting circumstances as the State emerges from the restrictions imposed by COVID-19. The repeal of special funds for HTA operations in this bill is objectionable because the operation of the HTA in this critical time of recovery offers an opportunity to reinvent the tourism industry in Hawai'i and requires the appropriations from its special fund, rather than the restrictive SLFRF funds. Although the numbers of domestic visitors have rebounded much faster than anticipated, international visitors still account for only a small percentage of pre-COVID-19 levels. HTA needs to help Hawai'i re-capture its share of international visitors as health conditions improve abroad. Like convention visitors, international visitors are vital to developing a more sustainable tourist industry based on quality, not quantity, of visitors. HTA needs to have the flexibility the special fund appropriations provide to continue its efforts to rebrand the industry and make it more sustainable. Accordingly, repeal of HTA's special fund at this critical time is ill-advised. It also is unclear if the SLFRF funds can be used to support an appeal to foreign markets.

The cuts to HCC funding in this bill will restrict its ability to attract additional events to the State and fulfill its mission. Inadequate funding is objectionable because it does not provide complete support for a robust schedule to maximize an HCC calendar of activities. Without the special funds appropriation, the HCC is unable to book conventions beyond the scope that the amount of the SLFRF funds appropriation accommodates. With the easing of COVID-19 restrictions domestically and in Canada and Europe, there is increased demand to hold conventions in Hawaiʻi. Re-establishing convention activity in Hawaiʻi is vital to developing a more sustainable tourist industry based on quality, not quantity, of visitors. Therefore, the cuts to HCC funding are objectionable. In addition, at minimum, the HCC operation would need an appropriation of $54,069,594 out of the convention center enterprise special fund for fiscal year 2021-2022 and the same sum for fiscal year 2022-2023.

Furthermore, the repeal of HTA's special fund and cuts in appropriations for both HTA and HCC were predicated in part on dire revenue forecasts that have since been revised upward and have thus relieved much of the pressure to repeal special funds and restrict funding to the very enterprises that will generate future revenue for the State. The year-to-year funding contemplated in this bill and House Bill No. 200 as related to the fundings for HTA and HCC would not allow long-term planning, multi-year contract savings for the operations of HTA and HCC, and execution of a strategic plan.

The bill is also objectionable because it repeals HTA's procurement exemption. Sustaining HTA's current exemption from the Hawaii Procurement Code (chapter 103D, HRS) is essential to continue to provide the flexibility necessary for HTA to respond timely and quickly to the complex contracting requirements encountered by HTA every day. The operation of HTA, particularly during this challenging time, is reliant on its ability to contract rapidly and efficiently with an increasing variety of contractors throughout the world, who provide unique services, cultural events and other opportunities in a competitive world market. The Hawaii Procurement Code is ill-adapted to the exigencies of today's tourism market, and the procurement protocols already in place at HTA provide many of the same legal protections without the administrative and logistical delay.

The bill also is objectionable because it fails to cite to chapter 231, HRS, and the authorities for the administration of taxes provided therein. Without reference to chapter 231, HRS, the county directors of finance are unable to, among other things, (1) impose penalties under sections 231-34 to 231-41, HRS, for violations such as failure to file returns and failure to pay tax; (2) impose interest on underpaid amounts under section 231-39, HRS; and (3) subpoena records under section 231-7, HRS. Moreover, while the bill seeks to provide authority to the counties to levy, assess, and collect transient accommodations tax upon adoption of a county ordinance and in accordance with section 46- , HRS, the bill also provides that the tax shall be levied, assessed, and collected as provided in "this section." By failing to reference the "chapter," and limiting the counties' authority for the administration of the tax to "this section," it does not appear that the counties will be able to administer the tax because the new section created by the bill does not provide for how the new county transient accommodation tax is to be levied, assessed, and collected.

This bill is also objectionable because it is inefficient to create an entirely new set of tax collection systems for each county. Additionally, if dedicated funding from the TAT to the counties is to be preserved, this bill creates a gap for counties from existing TAT resources while new systems are being implemented. Previously, the Legislature has granted the State the authority to assist the counties with tax collection administration, for example, with county surcharges. The Legislature did not grant the State this authority in this bill.

This bill is also objectionable because there is no funding for PISCES in House Bill No. 200. PISCES is an on-going program to help diversify Hawaii's economy through applied research, workforce development, and economic development initiatives in the space exploration field. Funding PISCES will ensure continued emphasis in this high potential field.

Additionally, there is no provision to transfer contracts, equipment, and other essential functions from DBEDT to the University of Hawaii – Hilo for PISCES.

This bill is also objectionable because the funding for the Challenger Center Program in House Bill No. 200 changes the means of funding to unspecified federal funds. It is the Department of Education's (DOE) understanding that the source of federal funds for the Challenger Center Program is federal Elementary and Secondary School Emergency Relief Funds (ESSER). According to guidance issued by the United States Department of Education, state legislatures do not have the ability to limit a local education agency's use of funds appropriated through the CARES Act or ARPA.[1] For federal purposes, the DOE is considered both a State Education Agency, as well as a Local Education Agency.

For the foregoing reasons, I am returning House Bill No. 862 without my approval.

Respectfully,

David Y. Ige

DAVID Y. IGE
Governor of Hawaiʻi

[1] *Frequently Asked Questions – Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs*, U.S. Department of Education, May 26, 2021, at 15.
https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf