

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION

JANUARY 18, 2008

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 04 03

Program ID: CCA-111

Program Title: Business Registration

Page References in the Multi-Year Program and Financial Plan:

1. Introduction:

a. Summary of program objectives.

To ensure that business registration information is fully and accurately maintained regarding the officers and general organization of businesses by providing for the registration of corporations, partnerships, limited liability companies, trade names, trademarks, and service marks, and to ensure compliance with and enforcement of securities-related statutes as well as other statutes administered by the Business Registration Division.

Statutory reference: Chapters 414, 414D, 415A, 417E, 419, 421, 421C, 421I, 423, 424, 425, 425E, 428, 482, 482E, 485, and 519, HRS.

b. Description of program objectives.

Present your summary of objectives and activities as discussed in the Multi-Year Program and Financial Plan.

The program maintains Hawaii's business registry for public access by processing and storing the registration of corporations, limited liability companies, partnerships, trade names, trademarks, and service marks, and administers and enforces Hawaii's securities and franchise laws. The program also runs several business centers that offer point-of-service assistance and information to help facilitate, coordinate and simplify the application process for State business, tax and employer registrations. In addition, the program registers securities, broker-dealers, securities salespersons, investment advisers, investment adviser representatives, investment companies and franchise offerings for State securities and franchise law purposes. It conducts regular examinations of all broker-dealers, securities salespersons, investment advisers, and investment adviser representatives in Hawaii for compliance with the State securities laws, investigates potential violations of Hawaii securities and franchise laws and initiates administrative actions to protect investors against violators. The program also provides free investor

education information, presentations and seminars and education outreach projects, including participation in fairs and shows, to the community.

c. Explain how your program intends to meet its objectives in the upcoming supplemental year.

The Division intends to meet its Program objectives within the upcoming fiscal year by continuing modifications and development of new applications to the state's internet portal, *www.ehawaii.gov*, through which business registration document filings can be made. These changes will improve document filing efficiency, shorten response times with electronic filers and improve public access by providing document retrieval through the internet.

Along with its Business Action Centers on Oahu and Maui, the Division is in the process of establishing a temporary new business center in Hilo this year which it intends to convert to a permanent office in the future. The expansion and outreach will offer the public more locations to receive assistance in filing with the State which increases the number and accuracy of filings.

The Division will continue with ongoing recruitment to fill additional authorized securities examiner and investigator positions to increase the number of field examinations and investigations currently being conducted. The additional personnel will also enable more efficient management of the workload.

The Division will also continue to train securities compliance and enforcement professionals to ensure that Hawaii state regulators are as advanced as regulators from other states. The growing complexity and sophistication of the securities industry and securities fraud require continued training programs in order to maintain and improve effectiveness. Training also improves efficiency and provides a level of investor protection currently available in other states. The Division is looking to increase its aggressive pursuit of securities violators and to stay abreast of evolving fraud trends. To do this, the Division will focus training on cyber fraud matters and witness preparation for its attorneys. In addition, the Division has implemented more extensive benchmarking for examinations, registration and enforcement matters. The Division will also be working to improve management of its enforcement cases by reorganizing the division and increasing case oversight.

2. Program Performance Results:

a. Discuss the performance results achieved by the program in FY07.

Processing times for corporation, partnership, trade name, and other documents registration decreased even though there was an increase in the number of filings. Backlogs for annual filings have decreased dramatically due to internal systems upgrades that have automated more of the processing. This automation has allowed the Division to direct more resources to public assistance and upgrading other areas of the system. The Division expects to continue to improve efficiencies through the implementation and upgrading of online document filing technology through the state's internet portal partner at *ehawaii.gov*. Hawaii's online registration system was recognized as the best system by

the International Association of Commercial Administrators this year.

	Avg. number of days to process business registration documents	Number of online Annual Filings (July - June)	Number of online New Business Filings (July - June)
FY 2006	5	35,058	12,766
FY 2007	3	38,342	13,081

The Business Action Center (BAC) has served nearly 16,000 customers over the counter or via phone, e-mail, fax and Live Chat in FY07. It helped process approximately 8,000 filings. Through 24 outreach sessions that included presentations on filing and licensing requirements for start-up businesses and entrepreneurs on Oahu and Maui, BAC spoke to approximately 350 new businesses owners. In FY07, BAC expanded its services to Maui. The further expansion to the Big Island in FY08 will increase the number of people BAC will serve.

Securities enforcement cases continue to increase in complexity and sophistication. In FY07, the Division took action in two of its largest cases in its history, one of which was the first case to come out of a year long sweep of senior "free lunches" conducted by the U.S. Securities Exchange Commission. In addition, the Division submitted an amicus brief to the Hawaii Supreme Court on securities matters, the recent outcome of which supported the Division's position, and the Division has spent the year re-writing all securities rules in order to support the new law which will become effective on July 1, 2008. To continue to support these large cases and other important legal matters like brief writing and rule-making, the Division has placed an emphasis on efficiency and reengineering of internal processes. The branch developed more internal training for its investigators and established a quicker process to bring final cases to judgment. In addition, an effort has been made to actively resolve older cases by completing pending investigations and promptly bringing a cause of action where appropriate. To increase reporting of fraud to our offices, the Division created a new toll-free number to make reporting easier.

The investor education area of the Securities branch outreached to 60,000 people in Hawaii over the last 12 months. In addition to participating in fairs, presentations and other events, the investor education area also revised and updated all its materials and created a new approach to target outreach to all the islands of Hawaii with the greatest impact possible. It also worked with the AARP to conduct a study of the investing habits of Hawaii seniors so that it could target its materials appropriately and its efforts subsequently increased reporting to our scam line by 1600%.

- b. Explain how these results relate to the program's objectives and department's mission.**

The objective of the business registry is to become one of the fastest, most efficient, customer-oriented business registries in the country. The average days to process corporation, partnership, trade name and other business documents provides an indication of processing timeliness. Currently, documents filed for expedited handling are taking 1 business day to process; documents filed for regular handling are taking approximately 2 business days to process.

The objective of the BAC is to be a responsive, accessible and helpful point-of-service business center for business registration and licensing and to assist as many businesses as possible. The measure of customers served indicates the reach of the BAC to serve those who wish to conduct business in the State and the expansion of the offices to the neighbor islands makes the BAC accessible to more people in Hawaii.

The objectives of the Division's securities industry regulatory program is to be more effective and efficient in regulating the securities industry through (1) consistent review of applications, (2) more on-sight inspection of the books and records of licensed broker dealers and investment advisers in Hawaii, (3) training to ensure that the professional staff is current with the increasingly complex securities products, (4) aggressive action towards securities violators, (5) active monitoring and appropriate participation in the legal cases and rule making relevant to securities matters, (6) more efficient investigations and enforcement actions, (7) efficient outreach to the community to help protect citizens against fraud and to educate them as to where to report fraud.

The average days to process applications for dealers and salespersons provides an indication of the timeliness within which these applications are reviewed and approved. Securities compliance continues to process registration applications with a short backlog and within 15 to 30 days.

The average age of cases in investigation and pending legal action indicates the timeliness of resolving cases once the Division receives complaints. The average age of cases pending in investigation dropped from 485 days in FY06 to 432 days in FY07. The average age of cases pending in the legal section increased from 493 days in FY06 to 527 days in FY07 due to the action taken in several large and complex cases. A more detailed review of the caseload indicates that more perpetrators of investment fraud are using multiple accounts and depositories through which illegally obtained funds must be traced in order to build effective enforcement cases. The overall average days of cases pending in the branch in total dropped slightly from 488 in FY06 to 479 in FY07. The timely resolution of cases is directly related to the goals of the Division to effectively take action against violators.

- c. **Explain how the effectiveness of the program is measured (i.e.: outcomes, measures of effectiveness, benchmarks, etc.) and discuss the performance results achieved during the past two years.**

The business documents registration program is measured using the average days to process corporation, partnership, limited liability company, trade name, trademark, service mark and other documents. The business registry's use of this measure provides an indication of processing timeliness. The average performance measure during FY07 increased in efficiency from the previous year despite an increase in filings. The

increased filings slowed processing time but that was entirely offset by efficiencies provided by the re-engineering of processing policies and procedures and application of new technologies. The average number of days for processing standard applications in FY07 dropped to 3 days from 5 days in FY06. The Division expects continued abridged processing time as additional improvements are made to the information systems that support the branch.

The securities compliance program is measured using the average days to process applications of broker/dealers, salespersons, investment advisers and investment adviser representatives. These measures indicate the timeliness of processing. The measure of effectiveness for the processing of all the applications listed above remained consistent during FY07 from the previous year.

The securities enforcement program is measured using the average age of cases in investigation, the average age of cases in the legal section and the average age of cases in enforcement. These three measures indicate the timeliness of cases from the time of complaint to resolution. The average age of cases in the investigation section and cases in enforcement in total have decreased slightly while the average age of cases pending in the legal section has increased slightly. Several large cases and the increased complexity of cases have increased the time needed to resolve cases in the legal section. The increased time needed for cases, however, has been significantly offset by the expert training of staff and reengineered internal procedures that have improved efficiency.

d. Discuss actions taken by the program to improve its performance results.

As mentioned previously, the business document registration program is continuing modifications and development of new applications to the state's internet portal, *ehawaii.gov*, through which document filings can be made. These changes will continue to improve document filing efficiency and shorten response times with electronic filers. A new initiative will allow the public to retrieve documents on the internet which will improve customer access to documents and increase staff availability to do other work and process other document requests.

The Business Action Center (BAC) is working on expanding business centers to the neighbor islands to increase the number and areas served by BAC.

The securities compliance program is continuing with on going recruitment to fill additional authorized securities examiner positions. Filling the positions will improve workload distribution. The program also uses the latest technology available to receive and process applications and is also training staff to maintain its proficiency with new and more complex securities. These efforts keep the staff current and the processing time down.

The securities enforcement program is also actively recruiting to fill an investigator position. Filling the position will improve workload distribution. In addition, the program continues to implement a comprehensive training program designed to raise the level of technical proficiency and effectiveness of the enforcement staff. National offsite training provided to professional regulators is critical to the staff's ability to stay current with securities fraud trends. The training helps the staff understand increasingly complex

securities and schemes of securities fraud. Training also includes co-sponsored seminars in conjunction with the other states through the North American Securities Administrators Association (NASAA), other regulatory agencies, and law enforcement agencies. The Division is also looking to reorganize its structure to increase case management oversight by senior management.

The Division is actively working on a comprehensive investor education program. The program is aimed at raising the level of awareness of investment fraud and to increase protection of Hawaii investors against securities fraud and abuse. It is also aimed at raising the level of awareness of our securities compliance and securities enforcement activities so that more people will use the securities compliance services and will be encouraged to actively report fraud to our securities enforcement team. The Division is looking to improve public access by upgrading its website and the resources available in multi-media forums.

e. Identify all modifications to your program's performance measures and discuss the rationale for these modifications.

We recommend including a measurement of effectiveness for the BAC that measures the number of customers served. We also recommend removing the two new measures: total dollar amount of penalties imposed and total dollar amount of fines collected. Those numbers are unpredictable and are not a useful or accurate measure of performance since they turn on the nature of the cases reported to the Division – a factor outside of the Division's control.

3. Problems and Issues:

a. Discussion of problems and issues encountered, if any.

The number of documents received by the Division for business registration filing continues to increase. Public demand for information from the Division with respect to registration and the public documents maintained by registration continue to strain the staff. There is a related increase in public demand for assistance with State filings to start and maintain businesses

With respect to securities, the cases involving securities law violations are increasing in complexity and sophistication requiring more training to keep staff adequately equipped to deal with the trends. With increased technology and increased access to information through the internet, the fraud cases are developing at a quicker pace, have the potential for larger scale impact and increase the difficulty of locating perpetrators. These securities cases are in need of more direct supervision and management and the Division is looking to reorganize to address this management need.

In addition, there is an increased need to teach investors about the new complex schemes, ways to protect themselves, basic financial literacy and where they can find assistance and where they should report fraud. Outreach and raising awareness not only improve the ability of the public to protect itself but also encourage the public to report fraud to our securities branch. Without awareness and without the public reporting fraud, the securities enforcement branch could not enforce the laws and assist the public in

regulating the securities industry.

b. Program change recommendations to remedy problems.

In order for the Division to meet its growing registration and licensing demands, the Division needs to continue upgrading its information systems. The web-based documents management information systems implemented to meet the current and future projected needs of the Division utilizing the latest documents processing and record keeping technology will require ongoing maintenance and future enhancements to accommodate changes through legislation aimed at modernizing the business law. In addition, the improvements include making documents available on the internet to increase public access to the registry and improve customer satisfaction. Additionally, with the increase in identity fraud, the Division will need to put extra resources into redacting private but unnecessary information from its publicly viewed database.

In order to increase the areas and the number of customers served and to improve the ease of access to assistance, the Division needs to continue to expand the Business Action Center locations and the investor education outreach. For the BAC, the Division intends to establish a temporary presence in Hilo. For securities enforcement, the Division intends to continue to train staff to remain current on the increasingly complex securities fraud trends and also reorganize its structure so that there is increased case management and oversight.

For investor education, the Division intends to expand its outreach efforts to more locations, coordinate campaigns for investor outreach focused on certain segments of the population like seniors and students and partner with community centers, colleges, business organizations and other civic centers to increase the impact of our outreach.

None of the program changes recommended will require the increase or imposition of any new fees.

c. Identify any program issues or problems that have affected or will affect the implementation of the program, and the corrective measures or remedies established or planned.

The need to redact personal information from Business Document Registration's databases will require extensive fiscal and man power resources. In addition, with public access of documents online, the number of inquiries and purchases of documents are expected to increase, putting new burdens on the staff and resources. The nature and complexity of the cases being handled by the Securities Compliance Branch and Securities Enforcement Branch have been increasing each year due to proliferation of information and ease of communication over the internet. These issues are increasing the need for more case management and oversight. In addition, the Division's commitment to improving our information systems, such as our processing and recording system for business registration documents, online registration of businesses and use of a computerized Case Management System (CMS) for tracking securities investigations, assist the staff to more efficiently process the anticipated increases in workload.

4. Expenditures for FY08:

Provide the appropriation data, transfers, restrictions, available resources, and the estimated expenditures for FY08. For new Program I.D.'s, please present the data as best as can be determined.

	FY 08 Apprn (Act 213/07)	Collective Bargaining	Transfers	Restrictions	Ceiling Increase	Estimated Total Expenditure
(Position Count)	(75.00)	-	-	-	-	(75.00)
Personal Services	4,917,227	158,203	-	-	-	5,075,430
Other Current	1,517,555	-	-	-	-	1,517,555
Equipment	5,425	-	-	-	-	5,425
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
TOTAL	6,440,207	158,203	-	-	-	6,598,410
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(75.00)	-	-	-	-	(75.00)
Special Funds	6,440,207	158,203	-	-	-	6,598,410
(Position Count)	-	-	-	-	-	-
Trust Funds	-	-	-	-	-	-
(Position Count)	-	-	-	-	-	-
Other Funds	-	-	-	-	-	-

a. Explain all transfers within the program I.D. and the impact on the program.

None.

b. Explain all transfers between program I.D.'s and the impact on the program.

None.

c. Explain all restrictions and the impact on the program.

As applicable, provide a description of the impact of the transfers that have occurred within the program I.D. between the various cost elements, transfers occurring between different program I.D.'s, and restrictions imposed.

None.

5. Supplemental Budget Requests for FY09:

Provide the total position counts and funds requested.

	MOF	FY09 Apprn (Act 213/07)	Supplemental Request	Total FY09 Exec Supp Budget
(Position Count)	B	(75.00)	-	(75.00)
				-
Personal Services	B	4,917,227		4,917,227
Other Current	B	1,517,555	65,000	1,582,555
Equipment	B	5,425	-	5,425
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
TOTAL	B	6,440,207	65,000	6,505,207

a. Workload or program request:

For each program package or item requested within the Program I.D., provide the following (if no request is being made, indicate “none”):

i. A description of the request, the reasons for the request, and the desired outcomes or the objectives to be accomplished by the proposed program.

MOF B. Add funding +\$65,000 to support a new economic education program called Economic Cadre. This program is part of an investor education program to promote financial literacy for students. The program is meant to increase economic education for students throughout the State by training select teachers to promote and advocate the integration of economics throughout the school community – integrating economics into any class subject, extra curricular activities and the community at large. It provides training workshops, curriculum for the teachers to implement in classes, online support and mentorship. The program is a two-year program expected to increase economic literacy of an estimated 1,200 students. The increase in the budget is only requested for the second year of the program.

ii. A listing/description of the positions requested, and funding requirements by cost category and source of funding.

See i. above.

iii. For all lump sum requests, please provide a detailed breakout indicating specific purposes for all planned expenditures.

None.

- b. For all position count reductions, please specify whether the positions were filled or vacant.**

None.

- 6. Program restrictions:
Identify restrictions carried over from FY08 as well as additional reductions due to the Department of Budget & Finance budget ceilings for FY09. If no reduction is being proposed, please indicate "none".**

None.

- 7. Capital Improvement Program (CIP) requests for FY09:
CIP data for all projects within the agency being heard shall be combined into a single appendix in the department's testimony (if no request is being made, please indicate "none").**

None

- 8. Proposed lapses of CIP projects:
Any CIP project identified for lapse shall include the following (if no lapses are being proposed, please indicate "none"):**

None.