

COMMITTEE ON WAYS AND MEANS  
Senator Rosalyn H. Baker, Chair  
Senator Shan S. Tsutsui, Vice Chair

**Testimony Index**

Date: January 17, 2008  
Time: 1:30 PM  
Place: Conference Room 211

**Department of Commerce and Consumer Affairs**

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PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

I am Lawrence Reifurth, and I am the Director of the Department of Commerce and Consumer Affairs. I appreciate this opportunity to discuss the Department's supplemental budget request for fiscal year 2009 with the committee.

I, along with the department staff and our customers are all very appreciative of the confidence shown by the legislature a few years ago when it brought the entire department under the compliance resolution fund ("CRF" or the "Fund"), making this the only state department to be fully self-funding and fiscally self-sufficient.

Self-sufficiency notwithstanding, the Department's budget is scrutinized closely by the legislative money committees. I believe strongly in the value of that scrutiny. Your involvement helps ensure that our customers and the public can be confident that there is accountability and transparency in the Department's operations.

Toward that end, our responsibility is to provide you with an open book and the best possible revenue/expense projections. I am particularly proud of the steps that the Department has taken – with the encouragement of the legislative money committees – to move away from reliance on budgetary ceiling and worst case scenarios in the projection process, and to move instead toward best estimates.

With the legislature's encouragement and assistance, the Department has been able to reduce fees and assessments by almost \$22.9 million over the last two years (FY 06 & FY 07),

and expects to increase that amount by over \$10 million this fiscal year. As a result, we have been able to better align our revenues and expenses, while bringing the Department's operating reserves closer to our cash reserve goal of nine months (of budget ceiling). We will continue to closely monitor the CRF reserve level to ensure that we are operating with a reasonable reserve margin. I believe strongly that if we do not need to spend the money that our customers entrust us with, we should return it to them as soon as possible and not collect as much until it is necessary.

In the meantime, though, the main purpose of this portion of today's briefing is to discuss the Department's FY09 budget. Attached to my testimony are the program-specific testimonies in your prescribed format. The remainder of my testimony below is structured in the form of responses to the numbered questions posed in the committee's instructions.

1. Totals for Department FY08 budget with restrictions (where applicable) and emergency requests and FY09 proposed operating budget adjustments by means of financing (see attachment 1).

The Department's proposed FY09 operating budget is \$47,031,451 (\$44,742,833 special funds; \$2,288,618 trust funds) which includes operating budget adjustments of \$2,398,079 in special funds.

2. Identify any emergency requests (by title and amount) that your Department will be seeking for the current fiscal year (see attachment 2). If none, please indicate "none".

None.

3. Provide a summary of your FY09 proposed operating budget adjustments by Program ID (see attachments 3). This summary should provide the aggregate of adjustments by Program ID and means of financing.

The summary of the proposed operating budget adjustments by Program ID are listed in Attachment 3.

4. Provide a description of all FY09 proposed operating budget adjustments by Program ID (see attachment 4).

The Department is requesting 6.00 FTE permanent positions, 2.00 FTE temporary position and funding of \$2,398,079. The following positions are being requested for FY09: 1) two temporary exempt Investigator IVs (CCA 112) to expedite case processing and reduce caseloads to more manageable levels, 2) one permanent exempt Financial Institution Examiner III, two permanent exempt Money Transmitter Examiner IIIs and one Financial Institution Examiner II (CCA-104) for the money transmitter program adopted in 2006 by the Legislature (Act 153); 3) one permanent exempt Investigator IV (CCA-110) to focus on providing assistance with landlord-tenant matters; and 4) one permanent exempt Insurance Examiner II (CCA 106) to implement a market regulation and market conduct program approved last session by the Legislature. The Department is also proposing to increase the expenditure ceiling to cover language access costs (CCA 191), increases in building maintenance support services and electricity costs (CCA 191), increases in personal services on a fee (CCA 106) and the Economic Cadre program (CCA 111). Descriptions of all of the proposed operating budget adjustments by Program ID are listed in Attachment 4.

5. Provide a listing of all proposed FY09 capital improvements program projects (see attachment 5).

None.

6. Briefly discuss specific budget adjustments of concern for your agency.

Since the Department's proposed budget addresses concerns of the Department, the Legislature and the community, the Department believes that its budget requests are reasonable and does not have any concerns at this time.

7. Provide a summary of your department's request to the Department of Budget and Finance, the funding decisions made by the Department of Budget and Finance, and the funding decisions finalized by the Governor (see attachment 6).

The Department's proposed operating budget adjustments are summarized in Attachment 6.

8. Explain the process used to identify priorities (requests for additional operating and capital improvements program funding) for your Department including which category the requests for additional funding fall into: a. program initiatives of the Governor, b. certain unavoidable fixed costs and/or entitlements, or c. on-going critical programs which lack continued funding.

Our requests address current public needs for service or basic operational needs.

9. Discuss how requests for additional operating and capital improvements program funding were prioritized and discuss the manner in which community, departmental, and legislative input was gathered and utilized to determine priorities.

Community, departmental and legislative concerns were considered in developing and finalizing the Department's budget requests. This input was presented to me. Collectively, this formed the basis for the Department's budget request.

10. Briefly discuss which actions your Department has taken or is planning to take to reduce operating costs, and how those actions will translate into savings that may be reduced from your budget (see attachment 7). The Department continues to make more of its services available online and computerize more of its internal records keeping systems. Precise calculation of savings is difficult.

11. Identify all positions that are vacant as of December 1, 2007. For each of these positions please indicate if authority for your department to hire was or was not granted (see attachment 8).

As of December 1, 2007, the Department had 67 position vacancies. The Department has requested and received the Governor's approval to fill 51 of those positions. Recruitment is underway to varying degrees on each of those positions.

12. Provide a listing of all instances of your Department's expenditures exceeding the federal fund ceiling for FY08 (see attachment 9).

None.

13. Provide a listing of all budget appropriations transferred to another program ID and/or another Department in FY07 and FY08 (see attachment 10).

The department transferred no funds to other Departments or across program IDs in FY07 or FY08, to date.

14. Provide a listing of all deployed positions (see attachment 11).

None.

**Attachment 1**  
**Department-Wide Summary Information**  
**Totals for Proposed Department Budget Adjustments (by Method of Funding)**

FY08				
MOF	Act 213/07 Appropriation (a)	Restriction (b)	Emergency Request (c)	Total FY08 (a)+(b)+(c)
	B	45,002,854	-	-
T	2,288,618	-	-	2,288,618
				-
				-
Dept. Totals	47,291,472	-	-	47,291,472

FY09				
MOF	Act 213/07 Appropriation (d)	Reduction (e)	Addition (f)	Total FY09 (d)+(e)+(f)
	B	42,344,754	-	2,398,079
T	2,288,618		-	2,288,618
				-
				-
Dept. Totals	44,633,372	-	2,398,079	47,031,451

Please indicate restrictions and reductions as negative numbers, using brackets ( )

**Attachment 2**  
**Department-Wide Summary Information**  
**Fiscal Year 08 Proposed Emergency Requests**

<u>Program ID</u>	<u>MOF</u>	<u>Title of Emergency Requests</u>	<u>FTE</u>	<u>\$ Amount</u>
None.				
Dept. Totals by MOF			-	-



**Attachment 3**  
**Department-Wide Summary Information**  
**Fiscal Year 09 Proposed Budget Adjustments**

<u>Program ID</u>	<u>MOF</u>	<u>Program ID Title</u>	<u>Perm FTE</u>	<u>Temp FTE</u>	<u>\$ Amount</u>
CCA 104	B	Financial Institution Services	4.00	-	379,643
CCA 106	B	Insurance Regulatory Services	1.00	-	1,561,622
CCA 110	B	Office of Consumer Protection	1.00	-	64,321
CCA 111	B	Business Registration & Securities Regulation			65,000
CCA 112	B	Regulated Industries Complaints Office		2.00	128,643
CCA 191	B	General Support			198,850
Dept. Totals by MOF	B		6.00	2.00	2,398,079

**Attachment 4**  
**Fiscal Year 09 Proposed Budget Adjustments**

<u>Program I.D.</u>	<u>Description of Adjustment</u>	<u>Perm FTE</u>	<u>Temp FTE</u>	<u>\$ Amount</u>	<u>MOF</u>
CCA 104	CRF: Add 1.00 permanent exempt Financial Institution Examiner III, 2.00 permanent exempt Money Transmitter Examiner III, and 1.00 permanent Financial Institution Examiner II and funds for the Money Transmitter Program.	4.00		379,643	B
CCA 106	CRF: Increase expenditure ceiling for Personal Services on a Fee.			1,115,000	B
CCA 106	CIAF: Increase expenditure ceiling for Personal Services on a Fee.			355,000	B
CCA 106	CRF: Add 1.00 permanent exempt Insurance Examiner II and funds for market conduct.	1.00		91,622	B
CCA 110	CRF: Add 1.00 permanent exempt OCP Intake Investigator IV and funds.	1.00		64,321	B
CCA 111	CRF: Increase expenditure ceiling for Economic Cadre program.			65,000	B
CCA 191	CRF: Increase expenditure ceiling to cover estimated language access costs.			20,000	B
CCA 191	CRF: Increase expenditure ceiling to cover estimated electricity costs and maintenance fees for the King Kalakaua Building and the State Office Tower (8th & 9th floors).			178,850	B
CCA 112	CRF: Add 2.00 temporary exempt RI Investigator IV positions and funds.		2.00	128,643	B
	Totals	6.00	2.00	2,398,079	B

**Attachment 5**  
**FY09 Capital Improvements Program Summary**

<u>Priority</u>	<u>Project Title</u>	<u>FY09 \$ Amount</u>	<u>MOF</u>
1	None.		
2			
3			
4			



**Attachment 7**  
**Actions to Realize Savings**

<u>Program ID</u>	<u>MOF</u>	<u>Description of Action to Realize Savings</u>	<u>\$ Amount of Actual FY07 Savings</u>	<u>\$ Amount of Projected FY08 Savings</u>
		The Department continues to make more of its services available online and computerize more of its internal records keeping systems. Precise calculation of savings is difficult.		

**Attachment 8  
All Positions Vacant As of 12/1/07**

Date of Vacancy	Program I.D.	PositionTitle	Position Number	Exempt (Y/N)	Budgeted Amount 1/	Actual Salary Last Employee Paid	MOF	Program ID	Authority to Hire (Y/N)
07/18/03	CCA 103	Auditor (PU) IV	2787	N	\$ 42,144.00	\$ 37,464.00	B		Y
05/10/05	CCA 103	Auditor (PU) VII	2788	N	\$ 57,720.00	\$ 63,048.00	B		Y
02/01/07	CCA 103	Engineer (PU) IV	15009	N	\$ 49,332.00	\$ 49,332.00	B		Y
12/31/05	CCA 103	Research Statistician VI	15098	N	\$ 51,312.00	\$ 70,560.00	B		N
07/01/05	CCA 103	PU Rate Analyst V	15984	N	\$ 47,448.00	\$ 63,048.00	B		Y
06/09/04	CCA 103	Research Statistician V	21377	N	\$ 47,448.00	\$ 47,436.00	B		N
11/16/07	CCA 103	Clerk Typist III	21378	N	\$ 28,860.00	\$ 30,012.00	B		Y
02/16/07	CCA 103	Engineer (PU) IV	28849	N	\$ 47,448.00	\$ 47,448.00	B		Y
07/21/05	CCA 103	Auditor (PU) IV	28850	N	\$ 42,144.00	\$ 42,576.00	B		N
08/16/04	CCA 103	Auditor (PU) V	29265	N	\$ 47,448.00	\$ 49,344.00	B		Y
01/11/06	CCA 103	Economist VI	40834	N	\$ 57,720.00	\$ 55,764.00	B		N
10/01/04	CCA 104	Fin Inst Examiner IV	117	N	\$ 53,352.00	\$ 67,512.00	B		N
11/16/06	CCA 104	FIERF F I Compliance Examiner II	106294	Y	\$ 55,505.00	\$ 55,500.00	B		Y
07/01/06	CCA 104	Fin Inst Specialist	113140	Y	\$ 51,312.00	\$ 65,256.00	B		N
03/21/07	CCA 104	Clerk Typist II	118396	N	\$ 23,736.00	none	B		Y
08/28/07	CCA 104	CRF Fin Inst Examiner III	118658	Y	\$ 49,332.00	none	B		Y
08/28/07	CCA 104	CRF Fin Inst Examiner III	118659	Y	\$ 51,312.00	none	B		Y
04/01/06	CCA 105	Secretary II	33	N	\$ 29,976.00	\$ 32,616.00	B		Y
07/16/97	CCA 105	Reg Bds/Com Admin Asst III	3769	N	\$ 51,312.00	\$ 57,660.00	B		Y
02/16/07	CCA 105	Clerk IV	19618	N	\$ 29,976.00	\$ 29,976.00	B		N
02/21/07	CCA 105	Secretary II	22645	N	\$ 37,944.00	\$ 37,944.00	B		N
10/23/07	CCA 105	Reg Bds/Comm Admin Asst III	26925	N	\$ 73,032.00	\$ 75,948.00	B		Y
03/01/07	CCA 105	Licensing Examiner III	37188	N	\$ 47,448.00	\$ 47,448.00	B		N
09/01/07	CCA 105	Clerk V	43689	N	\$ 39,456.00	\$ 41,040.00	B		Y
11/17/07	CCA 105	Reg Bds/Comm Admin Asst I	43691	N	\$ 53,352.00	\$ 55,488.00	B		Y
09/01/07	CCA 105	PVL Secretary II	108008	Y	\$ 36,502.00	\$ 37,968.00	B		Y
11/07/07	CCA 105	CRF Program Specialist	110961	Y	\$ 49,332.00	\$ 51,300.00	B		Y
07/01/04	CCA 105	Condo Program Specialist	111434	Y	\$ 42,144.00	\$ 55,209.00	T		N
11/30/07	CCA 105	Secretary II, PVL	118828	Y	2/	none	B		N
11/30/07	CCA 105	Reg Bds/Comm Admin Asst II	118829	Y	2/	none	B		N
12/30/06	CCA 106	Insurance Program Specialsit	5909	N	\$ 67,536.00	\$ 67,536.00	B		Y
08/01/06	CCA 106	Investigator III	22241	N	\$ 42,144.00	\$ 45,840.00	B		Y

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Date of Vacancy	Program I.D.	Position Title	Position Number	Exempt (Y/N)	Budgeted Amount 1/	Actual Salary Last Employee Paid	MOF	Program ID	Authority to Hire (Y/N)
11/16/07	CCA 106	MV Investigator IV	102779	Y	\$ 45,606.00	\$ 47,436.00	B		Y
03/01/07	CCA 106	Forensic Investigator III	103231	Y	\$ 55,505.00	\$ 55,500.00	B		Y
06/16/06	CCA 106	CIAF Insurance Examiner III	108005	Y	\$ 62,400.00	\$ 69,360.00	B		Y
01/19/07	CCA 106	CRF Rate & Policy Analyst IV	110317	Y	\$ 46,575.00	\$ 46,572.00	B		Y
06/28/07	CCA 106	CIAF Insurance Examiner II	112456	Y	\$ 58,498.00	\$ 58,500.00	B		N
04/13/07	CCA 106	Insurance Grant Clerk	118390	Y	\$ -	none	B		Y
04/13/07	CCA 106	Insurance Grant Clerk	118391	Y	\$ -	none	B		Y
08/21/07	CCA 106	CRF Insurance Examiner II	118630	Y	\$ 47,448.00	none	B		Y
11/01/07	CCA 106	CRF EFT Clerk	118798	Y	\$ 28,860.00	none	B		Y
02/16/05	CCA 110	Clerk Typist II	23118	N	\$ 23,736.00	\$ 23,952.00	B		Y
03/01/05	CCA 110	Clerk Typist II	25359	N	\$ 23,736.00	\$ 26,940.00	B		Y
07/28/06	CCA 110	Clerk Typist II	43810	N	\$ 23,736.00	\$ 24,792.00	B		Y
08/16/04	CCA 110	CRF Staff Attorney IV	102262	Y	\$ 69,000.00	\$ 71,136.00	B		Y
06/16/03	CCA 111	Securities Examiner IV	14816	N	\$ 42,144.00	\$ 42,180.00	B		Y
06/16/06	CCA 111	Clerk Typist II	14817	N	\$ 23,736.00	\$ 25,764.00	B		Y
06/01/07	CCA 111	Business Registration Asst	34900	N	\$ 41,064.00	\$ 41,064.00	B		Y
06/16/06	CCA 111	Business Registration Asst	35708	N	\$ 31,212.00	\$ 39,672.00	B		N
10/27/04	CCA 111	Clerk Typist II	37454	N	\$ 23,736.00	\$ 21,096.00	B		Y
08/01/04	CCA 111	Clerk V	37710	N	\$ 27,768.00	\$ 30,012.00	B		Y
12/16/06	CCA 111	Clerk Typist II	40364	N	\$ 27,768.00	\$ 25,764.00	B		Y
07/03/06	CCA 111	Securities Examiner III	49514	N	\$ 38,952.00	\$ 39,156.00	B		Y
08/16/07	CCA 111	Clerk Typist II	49516	N	\$ 25,656.00	\$ 26,688.00	B		N
11/01/07	CCA 111	Clerk IV	49535	N	\$ 32,424.00	\$ 33,720.00	B		Y
10/21/00	CCA 111	Securities Examiner IV	54545	N	\$ 42,144.00	\$ 34,308.00	B		Y
09/08/07	CCA 111	Staff Attorney	101841	Y	\$ 79,178.00	\$ 82,344.00	B		Y
10/16/07	CCA 111	CRF Investigator IV	102086	Y	\$ 53,352.00	\$ 55,488.00	B		Y
06/15/07	CCA 111	Securities Education Asst	117393	Y	\$ 31,212.00	\$ 45,000.00	B		Y
04/02/07	CCA 112	Investigator IV	28312	N	\$ 51,312.00	\$ 51,312.00	B		Y
11/01/07	CCA 112	Staff Attorney I	101307	Y	\$ 60,237.00	\$ 62,652.00	B		N
03/01/06	CCA 112	R I Investigator IV	101319	Y	\$ 42,144.00	\$ 55,764.00	B		Y
04/16/05	CCA 112	Staff Attorney III	101720	Y	\$ 60,000.00	\$ 56,183.40	B		Y
07/23/07	CCA 112	Clerk Typist II	118553	N	\$ 28,860.00	none	B		Y
08/28/07	CCA 112	Clerk Typist II	118627	N	\$ 25,660.00	none	B		Y

**Attachment 8**  
**All Positions Vacant As of 12/1/07**

Date of Vacancy	Program I.D.	PositionTitle	Position Number	Exempt (Y/N)	Budgeted Amount 1/	Actual Salary Last Employee Paid	MOF	Program ID	Authority to Hire (Y/N)
11/19/07	CCA 191	Office Services Supervisor	13238	N	\$ 37,944.00	\$ 39,456.00	B		Y
08/29/07	CCA 191	Business Management Officer I	117842	N	\$ 70,000.00	\$ 63,840.00	B		Y

1/ Funds budgeted for FY08 in Act 213, SLH 2007 unless otherwise noted.

2/ Funds appropriated in Act 279, SLH 2007.









PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
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TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 03 01  
Program ID: CCA-102  
Program Title: Cable Television  
Page References in the Multi-Year Program and Financial Plan:

**1. Introduction:**

**a. Summary of program objectives.**

To foster the development of responsive and reliable cable television communications services for the people of Hawaii, by promoting the public interest in cable television franchises; regulate basic cable television rates and service to ensure compliance with applicable State and Federal law; expand the Statewide Institutional Network (INET); and continue the availability of Public, Education and Government (PEG) cable access.

Statutory reference: Chapter 440G, 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 establishes policies and standards for cable television communication services. It reviews applications submitted by cable television companies and conducts inspections, tests, and compliance reviews as applicable. It develops and coordinates with other State agencies the implementation of the INET. It monitors contractual requirements relating to PEG access on the cable television companies' cable systems. It receives and monitors the resolution of complaints and answers inquiries or provides information relating to cable communications.

**c. Explain how your program intends to meet its objectives in the upcoming fiscal biennium.**

The program intends to meet its objectives by: (1) contracting with financial consultants to conduct reviews of the cable operators and PEG access entities; (2) having the consultant update the franchise fee reviews for the cable operators; (3) in cooperation with the State Procurement Office (SPO) the Department is currently in the process of conducting a Request for Proposals (RFP) for the management of PEG access services in

all Counties; and (4) continue regularly scheduled meetings of the Cable Advisory Committee (CAC). Although the staff has achieved the program's objectives, the program continues to monitor and assess staffing requirements based on changes in workload.

**2. Program Performance Results:**

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

Cable regulation is dynamic as structural changes to the regulatory framework continue to evolve from Congress and the Federal Communications Commission (FCC). The program's compliance activities have ensured that cable operators' systems are reliable under applicable federal and state standards, and that subscriber complaints are resolved as quickly as possible. The program's rate regulation activities have ensured that basic service cable programming rates and related equipment and installation charges are in compliance with applicable federal laws and regulations. The CAC continues to provide input on cable matters at the request of the Director and cable operators. The program coordinated substantial benefits to subscribers for PEG access, to the State's INET, and plans for the continuation and expansion of these services.

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

The program helps to promote and protect the interests of Hawaii's consumers, making sure there is fairness in the marketplace. By monitoring the reliability of the cable operators' systems, the program fosters the development of reliable cable television communications services for the people of Hawaii. By reviewing the cable operators' rate filings, the program regulates basic service rates and ensures compliance with applicable state and federal law. The program's efforts to obtain INET connections to public facilities have resulted in expansion of the INET now throughout the whole state. The program continues to support PEG programming.

**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 program is measured by the following measures of effectiveness in the variance report:

- \* Percent of homes for which cable television is available in the state.
- \* Percent of compliance by cable television communications systems with State statutory and regulatory reporting requirements.
- \* Percent of complaints addressed within 30 days.

In addition to measures of effectiveness, the program also tracks issues including, but not limited to, the following:

- \* Timely response to subscriber complaints.
- \* Timely completion of franchise issuance, transfers and renewals.
- \* Timely response to INET requests.

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

Examples include:

- \* Implemented and continues to develop the statewide PEG access plan.
- \* Convenes regularly scheduled CAC meetings to advise the Director on cable matters at the Director's request.
- \* Completed the financial reviews of the franchise fee process for Oceanic Time Warner Cable of Hawaii.
- \* Completed an independent third party review of the four PEG access organizations serving each county.
- \* Currently conducting a RFP process for contracts between the Department of Commerce and Consumer Affairs (DCCA) and each PEG organization.
- \* Continued the expansion and upgrade of the statewide INET, including the submarine interconnections between the major islands of Hawaii, Maui, Oahu and Kauai.

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

None

**3. Problems and Issues:**

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

**i. Rate Regulation.**

While the State continues to regulate the rates for basic service, rates for other services were "deregulated" by the FCC in 1999. The FCC continues to address regulatory issues such as franchising of local telephone companies that are seeking to enter the video marketplace. The FCC's findings on issues such as this may affect local regulation.

**ii. Changing Technology.**

Technology and competition are changing the way traditional telephone and cable television services are provided. Telephone companies are designing and building "advanced telecommunication systems" that look and operate much like a cable system, while cable companies are installing and testing cable systems that can handle telephone and data services. In addition, Direct Broadcast Satellite (DBS) providers are also becoming more accessible to Hawaii consumers, resulting in additional competition for existing service providers.

**iii. Changing Nationwide Policies.**

Congress and the FCC have created an environment for competition between the telephone and cable industries. Competition between the telephone and cable industries is promoted by relaxation of past policies, such as allowing the telephone industry to provide video services and cable television companies to

provide advanced services such as internet access and other interactive services. With the growing presence of DBS providers such as Dishnetwork (Echostar) and DirecTV, consumers will have a choice of providers offering similar services who are regulated by different statutes and entities, both locally and nationally. The Department has actively advocated on behalf of the state for DBS service. Such an operator or competitor would provide video services that are indistinguishable from those provided by traditional cable operators, but that would be exempt from State regulation.

iv. Changing Local Policies.

The Hawaii Public Utilities Commission (PUC) approved an application from Time Warner Cable Information Services (TWCIS) LLC to provide Voice over Internet Protocol (VoIP) service. TWCIS continues to market their VoIP service and is gradually increasing their subscriber base for this service.

With the recent purchase of Verizon Hawaii by Hawaiian Telcom, the State anticipated an increase in competition between their cable and telephone companies. Hawaiian Telcom submitted an application for a cable television franchise that was accepted by the State in June 2006. Hawaiian Telcom continues to request extensions to their application, with the current application expiration date of January 31, 2008. This current expiration date is the result of Hawaiian Telcom's 15<sup>th</sup> request. Competition on the mainland between cable and telephone companies include offerings in voice, high-speed broadband, wireless/cellular, and video services.

v. State's INET.

The program continues to develop the State's institutional network in coordination with other governmental agencies and entities. The submarine, inter-island fiber connectivity along with on-island terrestrial fiber networks provides the State, Counties, University of Hawaii (UH), and the Department of Education (DOE) with significant financial and operational benefits. The program along with the UH, the DOE, the Information and Communication Services Division (ICSD) of the Department of Accounting and General Services (DAGS), and county governments continue to work collaboratively to enhance and upgrade the capabilities of the INET.

vi. PEG Access.

The program is concerned about the PEG entities' operational as well as facilities and equipment needs, particularly with respect to the future, as increased competition and Federal mandates may adversely affect the cable companies' revenues. If the cable companies' revenues decrease, so will the level of funding for the PEG entities. The statewide PEG access plan implemented by the Department addresses this as well as other issues affecting PEG access programming in Hawaii.

**b. Program change recommendations to remedy problems.**

**i. Changing Nationwide Policies**

The program continues to encourage other competitors of cable companies, such as DBS providers (e.g., Dishnetwork and DirectTV), to enter into the Hawaii market. The program also works to monitor the entry of other non-regulated competitors.

The program continues to monitor and engage in actions at the FCC and in Congress. Although new federal telecommunications legislation that was anticipated for 2005 and subsequently 2006 has not yet materialized, the program continues to follow this issue very closely.

**ii. Changing Local Policies**

The program continues to monitor the roll-out of the VoIP service by TWCIS, LLC. Since customers will receive one bill for cable television services and VoIP, the program will be developing a process to screen out which complaints to refer to the cable operators, as opposed to referral of the VoIP to other agencies.

**iii. State's INET.**

The program will continue to coordinate the inter-connection of sites to the INET.

**iv. PEG Access.**

The program would like to see the PEG access entities more reflective of community needs, continue to be open and transparent in their operations, and more timely in their responses to complaints. The program is requiring that the PEGs assess their self-sufficiency plans in light of the concern that franchise fees may diminish.

**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.**

As mentioned above, the greatest uncertainty for cable television regulation in the State lies in the changing technologies that are capable of delivering advanced services to our residents. Traditional wireline telephone companies, Direct Broadcast Satellite (DBS) providers such as DirecTV and Dishnetwork, as well as our current cable television companies all have the expertise and capability to deliver similar competitive products and services. Examples of these competitive services include video programming, high speed internet service, and the much anticipated Voice-over-IP (VoIP) service. Some of these services are regulated at the local level while some are regulated at the federal level or not at all.



As Congress, the FCC, and the courts deliberate this complex issue of regulation of advanced telecommunications services, the DCCA will continue to actively monitor and anticipate impacts to local regulation. The DCCA utilizes organizations such as the National Association of Telecommunications Officers and Advisors (NATOA) as well as consultants to keep abreast of the many technical and legal issues.

**4. Expenditures for FY09:**

**Provide the appropriation data, transfers, restrictions, available resources, and the estimated expenditures for FY09. 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)	(4.00)	-	-	-	-	(4.00)
Personal Services	375,972	13,935	-	-	-	389,907
Other Current	3,256,362	-	-	-	-	3,256,362
Equipment	-	-	-	-	-	-
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>3,632,334</b>	<b>13,935</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,646,269</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(4.00)	-	-	-	-	(4.00)
Special Funds	3,632,334	13,935	-	-	-	3,646,269
(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	(4.00)	-	(4.00)
				-
Personal Services	B	375,972		375,972
Other Current	B	856,362	-	856,362
Equipment	B	-	-	-
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>1,232,334</b>	<b>-</b>	<b>1,232,334</b>

- 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"):

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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 03 02

Program ID: CCA-103

Program Title: Consumer Advocate for Communication, Utilities and Transportation Services

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

**1. Introduction:**

**a. Summary of program objectives.**

Through advocacy, education, and long range planning, to ensure sustainable, reliable, safe, and quality communications, utility and transportation services at fair cost for Hawaii's consumers for the short and long term.

Statutory reference: Section 269-51, HRS.

**b. Description of program objectives.**

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

The Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate) represents the interests of utility, communication, and transportation service consumers before regulatory bodies such as the Public Utilities Commission (PUC), Federal Communications Commission (FCC), and other federal, state and local agencies. The program reviews requests for rate increases, capital improvement projects, energy integrated resource plans, issues regarding competition in the telecommunications and electric power industries, certificates for authority to operate, and other applications filed with regulatory bodies by utility and transportation companies. The Consumer Advocate also educates people about utility matters affecting them, how they can be wiser consumers, and how they can more fully participate in the regulatory process.

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

The program will actively participate in general rate applications, review general tariff

filings and non-rate applications filed by utility, communication and transportation companies to determine the reasonableness and need for such requests, monitor service quality standards and participate in investigations regarding service quality and operational integrity, participate in restructuring dockets and participate in rulemaking proceedings initiated by the regulatory agencies. The program will educate the consumers of utility and transportation services through its web site, newsletters, sponsored events, and attendance at trade-shows, fairs, and business and community meetings. The program will also monitor, and to the extent possible participate in, the anticipated debate and probable revision of our federal telecommunications law in Congress. There are unresolved issues regarding how to deal with emerging technologies (such as Voice over Internet Protocol) and their relationships to new and existing technologies, state/federal jurisdictional issues, and "public benefits" supported by traditional telecommunications rates such as universal service and emergency 911 services.

**2. Program Performance Results:**

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

During FY 2007, the Consumer Advocate's office reviewed twelve general rate increase applications, 183 motor carrier tariff change requests, and ninety-six non-rate applications. As a result of the review conducted by the Consumer Advocate's office and decisions subsequently issued by the PUC, consumers saved over \$52.1 million in FY 2007.

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

The mission of the Department of Commerce and Consumer Affairs is "to uphold fairness and public confidence in the marketplace, promote sound consumer practices, and increase knowledge, opportunity, and justice in our community." The analysis performed by the Consumer Advocate's analysts in matters before the regulatory bodies (e.g., PUC) furthers the mission of the Department by ensuring:

- Fairness in the rates charged to all consumers of a utility service;
- The maintenance of acceptable service standards;
- The provision of safe and reliable utility service to improve the quality of life for Hawaii's utility customers; and
- Promotion of the State's energy policy without compromising service quality.

These goals are also consistent with the Consumer Advocate's program objectives that are set forth in Item 1.a. above.

The Consumer Advocate's analysis of rate applications and tariff transmittals ensured that the rates charged for utility services were non-discriminatory and reflected reasonable costs of providing the services to all consumers.

The analysis of integrated resource planning, demand-side management and capital improvement applications ensured that utilities had the infrastructure and facilities needed to provide safe and reliable service to its customers, thereby fostering a high quality of life and the promotion of the State's economy. For example, electric service is essential to customers and their everyday existence, whether it be an individual resident or a large business. Consumers' heavy reliance on computer technology to perform many of our daily functions creates a greater need for reliable electric service. In addition, the Consumer Advocate's analysis in these matters helped to achieve the State's energy policy of reducing the State's dependence on fossil fuel without compromising service quality by supporting the use of renewable energy, where appropriate.

The analysis of certification applications ensured that affordable, safe and reliable utility service was provided to all consumers in a designated service area. This analysis is crucial to quality of life since utility services, by their nature, are essential services that may not be available to the consumer in a particular service area, but for the service offered by the applicant seeking certification from the PUC.

- 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 Consumer Advocate's office uses the planning, programming, and budgeting (PPB) Measures of Effectiveness to quantify money saved for consumers by actions taken by the office. For FYs 2006 and 2007, the total amount of consumer savings for those years was in excess of \$86.2 million.

However, the Consumer Advocate's office is also very active in many cases where the case outcomes have significant impacts on utility, communications and transportation consumers but cannot be directly measured or quantified through evaluation of rate increases or reductions. For these significant cases and rulemaking proceedings, the office examines whether the results as stated by the authority (usually the PUC) is consistent with the positions advocated by the Consumer Advocate. The measures are conducted on a case-by-case basis and are by their nature somewhat subjective when contrasted to the PPB Measures. Yet, each of these cases is important to the Consumer Advocate's office's understanding of its effectiveness.

The following is a summary of some of the larger proceedings and committees in which the Consumer Advocate has participated during FY 2006 and 2007:

i. ***Rate Cases***

a. ***Hawaii Electric Light Company's (HELCO) 2006 Test Year Rate Case***

On May 5, 2006, HELCO filed an application for approval of rate increases and revised rate schedules and rules. In particular, HELCO sought a general rate increase of approximately 9.24 per cent over revenues at present rates. In fiscal year 2006-2007, the Consumer Advocate, among other things, developed written testimonies, participated

in technical meetings, conducted employee interviews, and worked to resolve the issues outstanding in this docket. On April 4, 2007, the PUC issued an interim decision and order, approving a rate increase of approximately 7.58 per cent, an amount consistent with the recommendation of HELCO and the Consumer Advocate. The parties are awaiting a final disposition of this proceeding.

b. *Hawaiian Electric Company, Inc.'s (HECO) 2007 Test Year Rate Case*

On December 22, 2006, HECO filed an application for approval to increase its rates (net rate increase for consumers of 7.1 per cent) and to amend its rate schedules and rules. In fiscal year 2006-2007, the Consumer Advocate, among other things, participated in a public hearing, developed written testimonies, participated in technical meetings, conducted employee interviews, and worked to resolve the issues outstanding in this docket. On October 22, 2007, the PUC issued an interim decision and order, approving a rate increase of approximately 4.9 per cent, which was consistent with the recommendation of the parties. The parties are awaiting the final disposition of this proceeding.

c. *Young Brothers, Limited's (YB) 2007 Test Year Rate Case*

On December 15, 2006, YB filed an application requesting PUC approval of an average overall rate increase of 10.7 per cent for certain types of cargo (for its intrastate water carrier operations) and its revised rate schedules and rules. In fiscal year 2006-2007, the Consumer Advocate, among other things, participated in public hearings held Statewide, developed written testimonies, participated in technical meetings, conducted employee interviews, and worked to resolve the issues outstanding in this docket. On October 12, 2007, the PUC issued a decision and order approving a rate increase of approximately 7.5 per cent, an amount consistent with that recommended by the parties to the proceeding.

d. *Waikoloa Resort Utilities, Inc., dba West Hawaii Utility Company (WHUC)*

On December 29, 2007, WHUC filed an application seeking approval of general rate increases of \$1,594,313, or 52 per cent, over revenues at present rates for water service and \$1,107,089, or 132 per cent over revenues at present rates for sewer services. During fiscal year 2006-2007, the Consumer Advocate, among other things, participated in a public hearing, developed written testimonies, and worked to resolve the issues outstanding in this docket. This proceeding has not been completed. If the parties are able to resolve their differences and submit a settlement letter to the PUC for its consideration, the PUC will consider such filing and issue an interim decision and order. Thereafter, the parties will await final disposition of the proceeding.

e. *Maui Electric Company, Limited (MECO) 2007 Test Year Rate Case*

On February 23, 2007, MECO filed an application requesting approval of

rate increases and revised rate schedules and rules. Specifically, MECO requested approval of a general rate increase of approximately 5.3 per cent over revenues at present rates. In fiscal year 2006-2007, the Consumer Advocate, among other things, participated in public hearings, developed written testimonies, participated in technical meetings, conducted employee interviews, and worked to resolve the issues outstanding in this docket. The procedural steps for this proceeding have not been completed. If the parties are able to resolve their differences and submit a settlement letter to the PUC for its consideration, the PUC will consider such filing and issue an interim decision and order. Thereafter, the parties will await final disposition of the proceeding.

f. *Five water and wastewater utilities received streamlined rate review processes*

On June 28, 2006, Manele Water Resources, LLC applied for a certificate of public convenience and necessity (CPCN) to provide sewer service in the area of Manele-Hulopoe on the island of Lanai, and for approval of its rules, regulations, and rates. The PUC treated this application for CPCN as a *de facto* rate increase application.

From the end of October 2006 through the end of December 2006 four water and wastewater companies filed applications for general rate increase with the PUC: (1) Puhi Sewer and Water Company, Inc.; (2) Miller and Lieb Water Company, Inc., nka Hawaiian Beaches Water Company, Inc.; (3) Laie Water Company, Inc.; and (4) Launiupoko Water Company, LLC. During fiscal year 2006-2007, the Consumer Advocate participated in public hearings, developed written testimonies, and worked to resolve the issues in this docket.

ii. *Major Capitol Improvement Projects*

a. *HECO's Campbell Industrial Park Generating Unit*

In June 2005, HECO requested commission approval to commit approximately \$137,430,260 to build a 110 megawatt generating unit, the Campbell Industrial Park Generating Station. During fiscal year 2005-2006, the Consumer Advocate engaged in discovery and submitted testimonies to the PUC, stating that the Consumer Advocate does not oppose the commitment of funds for the new combustion turbine and construction of the associated generating facilities to meet the Company's service obligations, provided that HECO power the unit with ethanol or some other bio-fuel. During the week of December 11, 2006, the Consumer Advocate participated in an evidentiary hearing on the issues disputed by the parties to the proceeding. Immediately following the hearing, the Consumer Advocate prepared post hearing opening and reply briefs for the PUC. The PUC issued a decision and order on May 23, 2007, approving HECO's request to commit the funds to purchase and install the generating unit, among other things.

iii. *Generic and Other Proceedings*

- a. *PUC's investigation seeking to increase the maximum capacity of eligible customer-generators to more than 50 kW and the total rated generating capacity produced by eligible customer-generators to an amount above 0.5 per cent of peak demand*

Hawaii law provides the PUC with the authority to increase, but not decrease these two net energy metering thresholds. The Consumer Advocate participated in technical and other meetings convened by the parties to discuss the issues, prepared a statement of position, and conducted research on the issues. The parties (but not the sole participant) to this proceeding filed a settlement letter with the PUC recommending that the thresholds for the customer-generator be increased to 100 kW for HECO, HELCO, and MECO, and that the generating capacity be limited to 1 per cent of a utility's peak demand for all electric utilities. Moreover, to ensure that the thresholds received regular review by stakeholders, the parties agreed that these two net energy metering thresholds be examined in the electric utilities' integrated resource plans. The PUC has not yet rendered a decision on this settlement proposal.

- b. *PUC's investigation of Hawaii's Renewable Portfolio Standards (RPS) Law, Hawaii Revised Statutes (HRS) §§ 269-91 – 269-95, as amended by Act 162, Session Laws of Hawaii (SLH) 2006*

The PUC is required by HRS § 269-95, to implement a ratemaking structure by December 31, 2007 to provide the electric utilities with the incentive to meet the RPS. The PUC opened this docket to examine the ratemaking structure to be implemented. Many of the parties recommended to the PUC that the existing ratemaking structure used by the PUC for regulatory oversight can and should be used to provide the electric utilities with incentives and disincentives to meet the RPS. In addition, many of the parties stated that a renewable energy infrastructure surcharge should be considered as a means to promote renewable energy use by the electric utilities, and that additional tools, like renewable energy credits should be considered by the PUC in future proceedings. The parties are awaiting final disposition of this proceeding.

- c. *Hawaiian Telcom, Inc.'s Service Quality Docket*

In March 2006, the PUC conditionally approved the merger transaction transferring control over Hawaiian Telcom (then Verizon Hawaii, Inc.) and related assets from certain subsidiaries of Verizon Communications, Inc. to Hawaiian Telcom Communications, Inc. When it approved the merger transaction, the PUC stated that it recognized that such a transaction may negatively impact the quality of service being provided to the general public. Accordingly, the PUC planned to initiate an investigation regarding service quality levels and standards approximately six months after cutover from Verizon's systems. This service quality docket, opened on October 16, 2006, is that which the PUC anticipated it would open in its



decision and order approving the merger transaction.

During the fiscal year, the Consumer Advocate participated in numerous technical and other meetings convened by the parties, conducted extensive discovery, participated in evidentiary hearings, and prepared written statements of position. The procedural steps are nearly complete; thereafter, the parties will await a final decision and order from the PUC.

- d. *PUC's investigative docket examining the major power outages that occurred on October 15 and 16, 2006 on the islands of Oahu, Maui, and Hawaii.*

On Sunday, October 15, 2006, the State experienced a 6.7 magnitude earthquake west of the island of Hawaii, which initiated a series of events that resulted in island-wide power outages on Oahu and Maui and significant outages on the island of Hawaii. On October 23, 2006, the Consumer Advocate requested the PUC open an investigative docket to examine whether HECO, HELCO, and MECO (the "HECO Companies") acted reasonably and in the public interest prior to and during the outages.

During the fiscal year, the Consumer Advocate conducted extensive discovery, employee interviews, and field inspections, prepared a statement of position, and participated in numerous technical meetings and discussions convened by the parties. After completing this extensive review, the Consumer Advocate concluded that: (1) there are at least three main underlying causes that contributed or may have contributed to the Power Outages occurring and potentially lengthening the recovery duration; (2) the HECO Companies' activities and performance prior to and during the power outages were reasonable and in the public interest; (3) the island-wide power outages could not have been avoided on Maui and were understandable on Oahu; and (4) the HECO Companies should not be assessed penalties for these uncommon island-wide outages. Moreover, the Consumer Advocate recommended that the HECO Companies implement the following recommendations: (a) formalize their training programs for plant and system operators to include more formalized training, practiced simulation, certification, requalification and record keeping; (b) evaluate and pursue providing additional black start capability on HECO's system; and (c) develop and commence a long-term program to implement Supervisory Control and Data Acquisition (SCADA) control on HECO's existing distribution breakers, and the HECO Companies to implement a standard requiring SCADA control for all new distribution breakers that are installed on all three islands.

- e. *PUC's investigative dockets examining the proposed tariffs filed by HECO, HELCO, MECO, and KIUC governing distributed generation and other related matters*

From 2003 through 2006, the PUC conducted a generic proceeding for the purpose of establishing a framework and policy "to promote the development of a market structure that assures: (a) [Distributed Generation

("DG")] is available at the lowest feasible cost; (b) DG that is economical and reliable has an opportunity to come to fruition; and (c) DG that is not cost-effective does not enter the system." Decision and Order No. 22248, filed on January 27, 2006, in Docket No. 03-0371 at 12. The electric utilities were required to file tariffs governing distributed generation within six months of the filing of Decision and Order No. 22248 for its consideration. Instead of examining the interconnection and standby tariffs filed by the utilities in the generic DG docket, the PUC opened two new dockets to address these issues, citing the public concern expressed over the amount of the standby rates to be charged by the electric utilities and the methodologies by which such rates were derived.

iv. *Advocacy through Participation on Committees and Boards*

a. *Enhanced Wireless 911 Services*

The Consumer Advocate has been an active participant in the State's implementation of an order issued by the FCC mandating that enhanced 911 (E-911) services be provided by wireless telecommunication carriers. The passage of Act 159 in 2004 provided the framework to implement the State's wireless E-911 system to route emergency calls to emergency responders along with the wireless callers identification and location. Act 159 also established a Wireless Enhanced 911 Board that oversees the collection and distribution of money collected by the E-911 special fund. As a member of the board, the Executive Director of the Consumer Advocate has continued to be an active participant in the implementation of this system which is critical to the public safety of both Hawaii residents and visitors.

b. *Federal Communications Commission's Consumer Advisory Committee*

The Consumer Advocate's Executive Director was appointed to the FCC's Consumer Advisory Committee in May 2005 for a term to last through December 2006. This committee was formed to make recommendations to the FCC regarding consumer issues under its jurisdiction, including implementation of FCC rules and consumer participation in the rulemaking process, consumer protection and education, access to services by people with disabilities and by those in underserved areas and populations, and the impact of new and emerging technologies. As an active participant of the committee and three of its working groups, the Consumer Advocate is ensuring that the interests of Hawaii consumers are well represented before the FCC at this critical time when similar communications services are beginning to be offered by industries through different technologies and under various levels of regulatory oversight.

c. *One Call Center Advisory Committee*

The Executive Director of the DCA is also a member of the One Call Center Advisory Committee, which makes recommendations to the PUC

regarding the implementation of Chapter 269E, HRS (Act 141, SLH 2004). This advisory committee was integral in developing the request for proposals for a vendor to operate this “call-before-you-dig” system. The system, which was operational on January 1, 2006, is intended to reduce the risk of critical services being disrupted because utility systems were inadvertently damaged due to excavation work conducted in areas where the systems are placed in underground facilities. The Consumer Advocate is hopeful that this law will ensure greater public health and safety, and ultimately save excavators time and money.

d. *Hawaii Energy Policy Forum*

The University of Hawaii convened the Hawaii Energy Policy Forum in 2002 to help develop and promote a vision for Hawaii’s energy future. It is a collaborative effort that brings together interested stakeholders including representatives of electric utilities; oil and synthetic natural gas suppliers; environmental groups; the renewable energy industry; State legislature; federal, state, and county government agencies; the business community; and other major energy consumers. The Forum’s efforts focus on many different energy related issues, including social and cultural issues, energy conservation and efficiency, and regulatory reform. The Consumer Advocate believes that as an active participant in the forum it has and will continue to effectively represent consumers’ views as major policy issues are discussed and as proposals are developed and implemented.

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

The following represent some of the significant steps taken to improve the performance of the program.

- i. The office is continuing to explore different means by which to fill its position vacancies with qualified individuals despite perceived difficulties in competing with the compensation offered by utility companies. The office is considering hiring individuals who, with greater efforts to implement training programs for existing employees and new recruits, will be able to meet the varied, complex and numerous demands of Consumer Advocate employees. In addition, pursuant to direction in Act 143, SLH 2006 and Act 183, SLH 2007, the office is reorganizing the Consumer Advocate to increase the possibility of attracting viable, interested candidates. The office’s reorganization plan, which appropriately matches the job functions with the job classifications in order to attract and retain qualified candidates, was recently approved by the Department of Budget and Finance and the Department of Human Resources Development.
- ii. The Consumer Advocate is continuing the enhancement of its plan for consumer education and outreach. The Consumer Advocate has revamped its website, making it user-friendly and more valuable for consumers. Also, the website provides copies of the PUC’s order as well as tips and templates to help

consumers participate in utility public hearings. The Consumer Advocate publishes a quarterly newsletter to help educate consumers and update them on utility issues and trends. Our education specialist performs outreach activities at appropriate public trade and senior fairs and events as well as in other community venues. The education specialist will also be conducting public education and awareness seminars on pertinent utility issues, serving members of the public and business community with regards to specific utility issues and to ensure that the Consumer Advocate is aware of and able to effectively protect utility consumer interests.

- iii. The office continues to upgrade its computer and office equipment and utilize its network facilities to streamline work flow processes in order to enhance efficiencies and work productivity. The computer equipment also permits the evaluation of large quantities of data that is regularly supplied by the various utility, telecommunications and transportation companies. This permits the office's analysts to effectively challenge the assumptions and conclusions of the regulated companies on a timely basis. It also reduces duplication of effort and streamlines the processing of work within the office, thereby enhancing operational efficiency and productivity. These changes have resulted in a better utilization of existing resources within the Consumer Advocate's office.
- iv. The office continued the training from national experts of both new employees and veterans in the areas of telecommunications and electric regulation because of the potentially vast changes occurring in technology and regulation. The office also conducts an in-house training program designed to provide on-the job training that is directly related to a docketed matter before the PUC.
- v. The Consumer Advocate is collaborating with the PUC in the acquisition/development of a document management system that shares common information and processes but keeps separate information secure. The system's first phase is scheduled to be operational by mid-2007. The system will allow for better coordination between the Consumer Advocate and the PUC, make managing Consumer Advocate workflow much more efficient, and greatly improve public access to records filed with the Consumer Advocate and PUC.

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

None.

### 3. **Problems and Issues:**

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

The regulated utility, communication and transportation industries and the regulatory climate have undergone major shifts since the mid-1980's. First, there was a pervasive trend at the federal level to reduce economic regulation and overt consumer protection in

the telecommunications, electric power, and transportation industries.

Second, the regulated industries themselves, especially in telecommunications, are rapidly changing due to even more rapid advances in technology. Furthermore, changes in the industries' structure have occurred as federal agencies that regulate utilities continue to depart from traditional rate regulation of those industries. As a result, a greater burden of regulation has been placed upon the PUC and the Consumer Advocate's office to ensure that Hawaii's utilities, telecommunications and transportation companies provide reliable service at a reasonable cost.

Third, due to increased awareness regarding the significance of the energy industry on such issues as environmental and economic impacts, there has been increased interest in making modifications to the manner in which energy utility companies meet customer demand. Examples of such interest has taken form in the renewable portfolio standards and net energy metering. One of the main objectives of both the renewable portfolio standards and net energy metering is to increase the relative contribution of renewable resources to the production of energy meeting Hawaii's needs. The Consumer Advocate's office has been working to ensure that the utility companies strive to achieve the established renewable portfolio standards in a manner that will not result in undue increases in existing utility rates. The Consumer Advocate will also ensure through its active participation in the integrated resource planning process that the energy utility companies will continue to migrate towards greater reliance on renewable resources, which should reduce Hawaii's reliance on imported fossil fuels.

Finally, and most important, the number and complexity of the major filings (e.g., applications requesting rate adjustments and utility planning dockets) of the Hawaii utility, telecommunications and transportation companies have increased dramatically since 1989. Because of the need for the utility and telecommunication companies to improve their infrastructure and add capacity to meet customer demands, these trends will continue in the immediate future.

**b. Program change recommendations to remedy problems.**

The office will continue to prioritize its caseload to focus on projects with the greatest consumer impact. To that end, the office will carefully select and prioritize the issues to be addressed in each of the cases in which it participates in fiscal year 2008.

In addition, the office will continue to utilize teams made up of staff members, expert consultants and outside legal counsel to target the consumer issues that have the greatest impact on the ratepayers of utility, communication and transportation services in Hawaii. This will allow the continuity and consistency in positions taken by the Consumer Advocate in all related cases litigated before the regulatory agencies.

**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 federal telecommunications law may undergo some significant revisions in Congress in an attempt to deal with emerging technologies (such as Voice over Internet Protocol) and their relationships to new and existing technologies, state/federal jurisdictional issues, and "public benefits" supported by traditional telecommunications rates such as universal service and emergency 911 services. Not only will the Consumer Advocate be monitoring and trying to influence any changes to the law to best benefit Hawaii ratepayers, the ultimate outcome of any revisions could change the levels of resources the Consumer Advocate must commit to continue its effective work in the telecommunications arena (at the federal and/or state levels). Additionally, the PUC, under Act 95, SLH 2004, is reviewing alternative rate making structures to promote the development/implementation of renewable energy resources. A change in the rate making structure could alter the way the Consumer Advocate approaches its work regarding electric, and perhaps other, utilities.

These pending issues may eventually result in the need for additional consultant services. Finally, although no specific corrective measures or remedies have been established or planned, the program will adapt as necessary to continue protecting consumers' interests if any of the aforementioned changes do occur.

**4. Expenditures for FY08:**

**Provide the appropriation data, transfers, restrictions, available resources, and the estimated expenditures for FY0. 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)	(23.00)	-	-	-	-	(23.00)
Personal Services	1,757,179	21,755	-	-	-	1,778,934
Other Current	928,614	-	-	-	-	928,614
Equipment	20,000	-	-	-	-	20,000
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>2,705,793</b>	<b>21,755</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,727,548</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(23.00)	-	-	-	-	(23.00)
Special Funds	2,705,793	21,755	-	-	-	2,727,548
(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	(23.00)	-	(23.00)
				-
Personal Services	B	1,757,179		1,757,179
Other Current	B	928,614	-	928,614
Equipment	B	20,000	-	20,000
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>2,705,793</b>	<b>-</b>	<b>2,705,793</b>

a. Workload or program request:

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

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.



PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 03 03  
Program ID: CCA-104  
Program Title: Financial Institution Services  
Page References in the Multi-Year Program and Financial Plan:

**1. Introduction:**

**a. Summary of program objectives.**

To ensure the safety and soundness of state-chartered and state-licensed financial institutions by fairly administering applicable statutes and rules in order to protect the rights and funds of depositors, borrowers, consumers, and other members of the community, and to supervise escrow depositories.

Statutory reference: Chapters 412, 449, and 489D, 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 charters and licenses financial institutions and examines those financial institutions licensed and chartered in the State to ensure safe and sound financial conditions, business practices and compliance with applicable statutes and rules. The program also licenses and supervises escrow depositories and money transmitters (MTs) to ensure compliance with applicable statutes and rules.

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

The Division of Financial Institutions (DFI) has been short-staffed over the past several years. DFI has been able to fill some of its vacant positions, but continues to experience difficulty in filling vacancies on a timely basis. Key initiatives continue to be filling of the vacant positions and the implementation of intensive programs for training new employees and ensuring that existing employees continue to have current skills and abilities to deal with the changing legal, regulatory, economic and technological environment in which financial institutions and financial institution regulators operate.

**2. Program Performance Results:**

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

In FY 07, DFI devoted a significant amount of resources to implement Act 153, Session Laws of Hawaii 2006, (now Chapter 489D, HRS) which required DFI to license MTs by July 1, 2007. In addition to drafting and adopting rules, DFI finalized application, bond, and other forms and application processing procedures, and then devoted a substantial amount of time processing the applications that came in. Over 45% of the MT applications were received within 2 weeks of the July 1, 2007 licensing date, requiring DFI's licensing branch to work almost exclusively on these applications to be able to deem the applications complete by July 1 in order that the MTs could continue to operate while DFI completed processing of the applications. DFI also devoted resources to begin drafting its MT examination program.

Although DFI had projected an increase in applications in FY 07 due to the requirement to license MTs, the number of actual applications received significantly exceeded those projections. The variance over the projected number was due primarily to an increase in applications from financial institutions and escrow depositories to open, relocate, and close offices and for approval for various other activities and transactions. Despite this increase, DFI was able to process 89% of the applications in a timely manner

In FY 07, DFI was able to examine 88% of the financial institutions and escrow depositories, respond to 96% of written inquiries within 30 days, and renew 100% of the licenses in a timely manner (30-60 days depending on the type of license). In FY 07, DFI reviewed 79% of audited financial statements within 30 days of receipt, which was below DFI's planned level of 85%. This was in part due to the implementation of the new MT law which required DFI to create procedures and checklists before the audited financial statements could be reviewed. Developing these forms as well as the large volume and complexity of MT applications received resulted in some financial statements not being reviewed within 30 days of receipt.

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

The mission of the DCCA includes upholding "fairness and public confidence in the marketplace". The mission of DFI is to ensure the safety and soundness of Hawaii state-chartered financial institutions and to maintain public confidence in such institutions.

Through its on-site examinations, application review and processing, and off-site review of audited financial statements and other reports, DFI has and continues to devote significant resources to assisting and ensuring that financial institutions are operated in a safe and sound condition, and that financial institutions, escrow depositories, and MTs are in compliance with state and applicable federal laws such as those relating to privacy, money laundering and bank secrecy.

DFI has experienced a tremendous increase in workload due to the complexity of applications, complaints and inquiries it receives; the changing nature of the examinations it conducts to deal with new laws and regulations and the evolving nature of the financial services industry; and the new requirement to license MTs.

- 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 relative soundness of Hawaii's regulated financial institutions may be considered the best evidence of the effectiveness of DFI's programs.

DFI has historically measured its effectiveness based on the timeliness of conducting examinations, reviewing applications and audited financial statements, renewing licenses, and responding to inquiries.

In FY 06, performance results were satisfactory in all areas, with the exception of the review of annual audited financial statements in which only 47% of the audited statements were reviewed within 30 days of receipt due to the time needed to train newly hired staff to do the review and analysis. However, for most audited statements, the delay was not significant since 82% of the audited statements were reviewed within 35 days of receipt.

In FY 07, performance results were satisfactory in the areas of examinations, application processing, license renewals and responding to written inquiries. The review of annual audited financial statements improved significantly from 47% in FY 06 to 79% in FY 07.

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

In FY 07, DFI has continued its effort to fill its vacant positions. Although DFI was able to fill several of its vacancies, other vacancies were created when staff resigned. Due to the highly specialized nature of the work, it is often difficult to find qualified individuals willing to accept the level of compensation offered by DFI. DFI has generally hired staff at lower levels and then provided both extensive on-the-job and formal training (including on-line courses) through federal banking agency, regulatory agency association, and industry trade association programs. DFI has recently expanded its recruiting efforts to also seek experienced applicants exploring opportunities to expand their work experience in the financial services field and these efforts are continuing in FY 08.

Training of staff continues to be the key priority of DFI, not only for new examiners, but to also train all examiners to deal with new laws, rules, regulations, and changes in the financial services industry. DFI continues its efforts to prioritize and reassign work within both the examination and licensing areas where possible. In addition, DFI is evaluating its work processes and procedures and reviewing options to increase efficiencies.

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

None.

### 3. **Problems and Issues:**

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

Over the last decade, the financial services industry and the federal and state regulatory agencies that supervise and regulate the industry continue to undergo dramatic and unprecedented changes. Increased competitive pressures, both within the industry itself and from unregulated competitors; a volatile economy; dramatic advances in technology; a growing international market for financial services; and increased consumer pressures have all contributed to the dramatic and unprecedented changes.

The financial services industry also continues to undergo phenomenal changes in size, structure, delivery systems, products, geographic areas of operation, and increased dependence on technology.

Congress continues to pass legislation impacting the powers, operations, and structure of financial institutions. Congress passed the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to authorize interstate banking and branching; the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 to eliminate legal barriers to affiliations among banks and securities firms, insurance companies and other financial services companies and to establish federal standards for financial privacy; the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 to address terrorism in the aftermath of the September 11 tragedy; the Sarbanes-Oxley Act of 2002 to address corporate governance issues raised by the Enron and other corporate scandals; the Fair and Accurate Credit Transactions Act of 2003 to address issues related to credit reporting and to combat identity theft; and the Check Clearing for the 21<sup>st</sup> Century Act in 2003 to facilitate check truncation and electronic check exchanges.

In response to the passage of these laws and the adoption of implementing regulations by various federal agencies, DFI has had to submit legislation to change conflicting or inconsistent State laws relating to interstate banking and branching and foreign banking; adopt supervisory protocols and agreements with other state and federal banking agencies for the cooperation and coordination of regulatory activities; increase coordination and cooperation with other federal and state agencies that serve as the functional regulators of certain financial institution activities; and implement new examination procedures and enhance other program activities to ensure institutions are in compliance with the new laws and regulations.

Further legislation and regulation are expected at the federal level by both Congress and the federal banking agencies. Among issues that still must still be dealt with are implementing the Basel II capital accords for large internationally active banks and the revision of the Basel I capital standards for all other banks. Other issues include the reform of regulation of the Federal Home Loan Bank System and the government-sponsored housing agencies, security of sensitive consumer data, and increased supervision and regulation of the mortgage industry.

Homeland security continues to be a critical issue that will require DFI to work closely with the private sector and with law enforcement and other state and federal agencies to protect the financial sector. In July 2005, DFI signed a Memorandum of

Understanding (MOU) with the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and a Letter Agreement with the federal banking agencies to set forth the procedures for sharing information relating to compliance with the Bank Secrecy Act by Hawaii financial institutions. The MOU and the Letter Agreement provide for enhanced collaboration and information sharing that will allow FinCEN to better administer the Bank Secrecy Act while simultaneously assisting DFI to better fulfill its regulatory role. DFI is currently reviewing for possible signature a MOU with the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC). The OFAC MOU would facilitate the sharing of information between OFAC and DFI relating to violations of U.S. economic and trade sanctions.

The foregoing major federal initiatives, changes in the geopolitical and economic environments, as well as financial services industry changes in the structure and diversity of its business models, delivery systems, and products have had a major impact on financial institutions in Hawaii and made supervision and regulation of these organizations more sophisticated, complex, and specialized. In the past several years there had been increased consolidation in the industry as institutions struggled to comply with new laws and regulations, expansion of products and services, increased geographical diversity, and other competitive factors. More recently, DFI has seen an increase in the number of institutions and offices it regulates (two new state-chartered banks, the first since 1959, and an intra-Pacific bank branch opened in 2006), indicating an increased interest in forming de novo institutions and in commencing or expanding operations in Hawaii; however, recent events in the mortgage area have resulted in several institutions either pulling out of Hawaii or planning to significantly scale back their presence in Hawaii.

The licensing of money transmitters has increased DFI's workload. DFI has licensed 40 MTs with over 1,200 locations in Hawaii, resulting in increased applications, notices, inquiries, and audited financial statements filed with DFI. Examinations of the MTs, of which 27 are located out of state, will also need to be conducted.

To continue DFI's mission, DFI must evolve with changes in the industry it supervises as well as the changes in federal and state law. It faces the challenge of strengthening its operations and must maintain the independence and flexibility to address the current banking environment as well as deal effectively with problem financial institutions, privacy law compliance, terrorist/emergency contingency and business resumption planning, anti-money laundering laws and regulations, and other future challenges.

**b. Program change recommendations to remedy problems.**

The funding of DFI by special funds rather than general funds, consistent with model state supervision/regulatory practice and recommendations of the national association of state bank regulators (i.e., Conference of State Bank Supervisors - CSBS), provides DFI with an independent standing from which to implement, interpret and enforce appropriate and contemporary financial service specific industry regulation.

Increased staffing and other operating funds are needed to fully implement the MT licensing program. Although DFI has begun implementing the program, it has become clear, based on the number of MTs currently licensed and the number of locations from which they operate, the issues involved in the licensure of MTs, and the type of

examinations that will need to be conducted, that additional positions and funding are required to implement the MT licensing program without negatively affecting DFI's ability to fulfill its primary objective of ensuring the safety and soundness of state-chartered and licensed institutions.

DFI needs to continue to strengthen its operations and technology skills and equipment, improve and maintain the technical competence of its examiners, improve the efficient use of its resources, maintain its CSBS accreditation, and ensure that it has the maximum flexibility to meet the challenges imposed by the changing industry it regulates.

- 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 dramatic changes described above in the financial services industry (size, structure, delivery systems, products, geographic expanse), in the laws and rules impacting the industry, and in the geopolitical and economic environments all increase the complexity of the examinations DFI conducts, and the applications, complaints and inquiries that DFI receives. In addition, DFI's workload has increased because it now licenses money transmitters pursuant to Chapter 489D, HRS.

All of these factors require DFI to aggressively employ its resources to more effectively deal with these changes. Training of staff therefore continues to be one of DFI's highest priorities to ensure staff has the knowledge and skills to deal with the increasing complexity of DFI's workload. DFI's efforts to fill many of its vacant positions continued in FY 07, and are continuing in FY 08. The newly hired examiners need extensive on-the-job and formal training due to the highly specialized nature of the work.

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)	(29.00)	-	-	-	-	(29.00)
Personal Services	2,253,522	146,487	-	-	-	2,400,009
Other Current	324,759	-	-	-	-	324,759
Equipment	-	-	-	-	-	-
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>2,578,281</b>	<b>146,487</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,724,768</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(29.00)	-	-	-	-	(29.00)
Special Funds	2,578,281	146,487	-	-	-	2,724,768
(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:

	MOF	FY09 Apprn (Act 213/07)	Supplemental Request	Total FY09 Exec Supp Budget
(Position Count)	B	(29.00)	(4.00)	(33.00)
				-
Personal Services	B	2,253,522	319,693	2,573,215
Other Current	B	324,759	43,750	368,509
Equipment	B	-	16,200	16,200
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>2,578,281</b>	<b>379,643</b>	<b>2,957,924</b>

Provide the total position counts and funds requested.

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. Authorize 2.00 FTE exempt financial institution examiners, 2.00 FTE exempt money transmitter examiners, and funds of \$379,643 for personal services, other current expenses, and equipment.

Act 153, 2006 SLH required the DFI to license MTs by July 1, 2007, but did not provide any positions or funds to implement the program, in part because there were no reliable estimates of the number of MTs operating in Hawaii. DFI has begun implementing this new law using existing staff, but it has become clear, based on the number of MTs currently licensed, the issues involved in the licensure of MTs, and the type of examinations that will need to be conducted, that additional positions and funding are required to fully implement the MT licensing program without negatively affecting DFI's ability to fulfill its primary objective of ensuring the safety and soundness of state-chartered and licensed financial institutions.

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

#99001R Financial Institution Examiner III, Exempt	\$ 60,024
#99002R Money Transmitter Examiner III, Exempt	55,500
#99003R Money Transmitter Examiner III, Exempt	55,500
#99004R Financial Institution Examiner II, Exempt	55,500
Fringe benefits @ 41.13%	93,169
Total Personal Services	319,693



Total Other Current Expenses	43,750
Total Equipment	16,200
Total Request - MOF B	<u>\$379,643</u>

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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 03 04  
Program ID: CCA-105  
Program Title: Professional and Vocational Licensing  
Page References in the Multi-Year Program and Financial Plan:

**1. Introduction:**

**a. Summary of program objectives.**

To ensure that the individual is provided with professional, vocational, and personal services meeting acceptable standards of quality, equity and dependability by establishing and enforcing appropriate service standards; to regulate activities for the protection, welfare and safety of the participants as well as the public.

Statutory reference: Chapters 373, 421H, 436B, 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451D, 451J, 452, 453, 454, 455, 457, 457A, 457B, 457G, 458, 459, 460, 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K, 467, 467E, 468E, 468L, 468M, 471, 484, 514A, and 514E, 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 receives and processes applications, examines, licenses and renews licenses of individuals or businesses seeking to do business and provides other services to licensees, boards and commissions, and programs.

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

The program will continue to provide services to its clients and the public. We will seek to streamline and improve efficiency through advancing legislative proposals and rule amendments, and implementing them upon enactment, and through effective use of technology based processes.

**2. Program Performance Results:**

**a. Discuss the performance results achieved by the program in FY 07.**

In FY 2007, the program advanced two legislative proposals to streamline and provide more flexible licensing standards. These two proposals were enacted into law. We continued to seek new technology to improve services. We offered a 10% "customer appreciation credit (CAC) for online renewals.

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

Improvements in overall efficiency and additional licensing and fee flexibility benefit our clients and the public.

**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 effect of programs is measured by the following measures of effectiveness in our variance report:

	<u>FY 06-07</u>
No. of applications received	17,042
No. of applicants licensed	13,158
No. of licenses renewed	58,424
No. of update transaction for licensees	227,796
Total licensee population (all statuses)	303,237
% new licenses issued within 10-12 business days	93%
% renewals issued within 10-12 business days	90%
No. of condominium requests and educational offerings	60,262
No. of real estate requests and educational offerings	95,051

Although we continue to receive a positive flow of applications, licenses issued decreased in the areas of real estate, nursing, mental health counselors and dental. Economic conditions have engendered a decrease in real estate, nurses opted to delay licensing for cost savings, mental health counselor licensing requirements changed and licensing by credentialing for dentists was repealed. While there were decreases in real estate requests, the variance is not significant or a sign of negative indications. The decrease is due to the increased availability of real estate related educational material and real estate licensing information on the Real Estate Commission's website and other related internet resources. The decrease in the percentage of renewals processed in a timely manner was due to an increase in renewals and where renewals during the fiscal year involved posting of employment, insurance and bond information, which is more time consuming.

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

Continuation of streamlining requirements and procedures, information technology (IT) initiatives with current programs and introduction of new IT programs, and a focus on

improved customer service will improve licensing processes. We anticipate putting more information on-line to increase outreach efforts to condominium and real estate communities, and to provide more on-line filing where feasible.

- e. **Please identify all modifications to your program's performance measures and discuss the rationale for these modifications.**

None.

**3. Problems and Issues:**

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

On a FY basis, expenditures are currently matched by incoming revenues. The program has a sufficient reserve. The program will need to continue to closely monitor out year expenditures and revenues and the impact of the 25% customer appreciation credit implemented in FY 08, to ensure self sufficiency (with reserve).

- b. **Program change recommendations to remedy problems.**

The program will continue to maintain some level of vacancy savings provided services to its clients are maintained at its current level. On-line services will continue to be explored as a means to reduce operating costs.

- 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.**

Economic conditions have been favorable which have increased yearly revenues for the program to offset expenditures, even though slightly. Should there be a decrease in yearly revenues which subsequently fail to cover expenditures, the program's reserve will be negatively affected.

**4. Expenditures for FY08:**

	FY 08 Apprn (Act 213/07)	Collective Bargaining	Transfers	Restrictions	Ceiling Increase	Estimated Total Expenditure
(Position Count)	(60.00)	-		-	-	(60.00)
Personal Services	4,811,895	159,774		-	-	4,971,669
Other Current	2,557,162	-		-	100,000	2,657,162
Equipment	-	-		-	-	-
Leases	-	-		-	-	-
Motor Vehicles	-	-		-	-	-
<b>TOTAL</b>	<b>7,369,057</b>	<b>159,774</b>		<b>-</b>	<b>100,000</b>	<b>7,628,831</b>
(Position Count)	-	-		-	-	-
General Funds	-	-		-	-	-
(Position Count)	(55.00)	-		-	-	(55.00)
Special Funds	5,331,120	135,619		-	-	5,466,739
(Position Count)	(5.00)	-		-	-	(5.00)
Trust Funds	2,037,937	24,155		-	100,000	2,162,092
(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	(55.00)	-	(55.00)
				-
Personal Services	B	3,954,287	-	3,954,287
Other Current	B	1,118,833	-	1,118,833
Equipment	B	-	-	-
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>5,073,120</b>	<b>-</b>	<b>5,073,120</b>
(Position Count)	T	(5.00)	-	(5.00)
				-
Personal Services	T	857,608	-	857,608
Other Current	T	1,180,329	-	1,180,329
Equipment	T	-	-	-
Leases	T	-	-	-
Motor Vehicles	T	-	-	-
<b>TOTAL</b>	<b>T</b>	<b>2,037,937</b>	<b>-</b>	<b>2,037,937</b>

**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"):

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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 03 06

Program ID: CCA-106

Program Title: Insurance Services

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

**1. Introduction:**

**a. Summary of program objectives.**

To ensure that consumers are provided with insurance services meeting acceptable standards of quality, equity, and dependability at fair rates by establishing and enforcing appropriate service standards and fairly administering the Insurance Code.

Statutory Reference: Chapter 287, 386, 386A, 392, 393, 431, 431K, 431L, 431M, 431N, 431P, 432, 432C, 432D, 432E, 435C, 435E, 448D, 481R, 481X and 488, 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 regulates, examines, and licenses insurance entities doing business in the State, regulates, examines and monitors the financial condition of domestic insurers; examines and licenses sales producers and brokers; reviews policy rates & forms filings; receives and investigates complaints; administers appeals pursuant to the patients' bill of rights & responsibility act; regulates captive insurers and develops Hawaii as a captive insurance domicile; and prosecutes automobile insurance claims fraud.

The program is responsible for the regulatory oversight of the insurance industry. The major activities are:

- i. Review of insurance entities' financial operating and tax statements;
- ii. Field examinations of insurers, health maintenance organizations, rating organizations, mutual and fraternal benefit societies, advisory organizations, agencies, independent claims organizations, and guaranty associations;



- iii. Qualification examinations and licensing insurers, health maintenance organizations, and producers to transact insurance;
- iv. Review and evaluation of captive insurance application and business plan amendments, process initial and renewal licenses, planning and implementation of financial and operational surveillance and examinations, and promotion and development of Hawaii's captive insurance industry;
- v. Analysis of approval or disapproval of policies and rate filings;
- vi. Administration of the Hawaii Joint Underwriting Plan, including the development and promulgation of motor vehicle insurance rates;
- vii. Investigation of complaints by the public on alleged violations of insurance statutes and rules and other consumer request for assistance;
- viii. Regulatory surveillance for market conduct and financial condition of all insurers, health maintenance organizations, and mutual and fraternal benefit societies for compliance with insurance laws; and
- ix. Investigation of violations and enforcement of motor vehicle claims fraud law.

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

The program will strive to meet its statutory requirements and goals for its program activities and meet its objectives for each year in the biennium. Through proper personnel and case load management, the program will examine all insurers within the period required by statute, resolve all complaints filed against insurance licensees and all reported motor vehicle claims insurance fraud, review all insurance policy forms and premium rate filings within the statutory waiting time period, and fulfill the statutory mandated provisions of the insurance code.

**2. Program Performance Results:**

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

The program achieved its performance goal in FY 2007. Performance goals and results for FY 2007 were as follows:

	<u>FY 07 Results</u>
Complaints resolved within 90 days	99%
Financial examinations completed within statutory time requirement	100%
Rate and policy filings reviewed within statutory time requirement	90%
Resolve motor vehicle fraud cases in favor of the State	100%
Review and resolve captive insurance related issues within statutory mandate and program time requirements:	
Applications and business plan amendments...	100%
Triennial and organizational examinations.....	60%

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

The Division's objectives and the performance goals are measures to ensure that consumers are provided with insurance services meeting acceptable quality and standards. The results relate directly to the Department's objective of consumer protection.

**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 following are the program measures and performance results:

i. The Compliance and Enforcement Branch and Health Insurance Branch investigators resolved approximately 99% of consumer complaints (excluding cases referred for formal resolution by administrative hearing) within 90 days during the past two years. The complaints were alleged violations of insurance statutes and rules by insurance licensees. Resolving complaints from consumers may provide restitution to the consumer, could result in the insurance licensee paying a fine, and/or educate the consumer on the provisions in the insurance law applicable to the complaint. The Division received over 491 complaints and request for assistance in FY 2006-07. The Branch measures its performance based on number of complaints resolved and dollar amounts saved.

ii. The Financial Surveillance and Examination Branch conducted 100% of the examination of insurers within the statutory time frame in the past two years. Financial statements of twenty domestic insurers and eighteen risk retention groups are subject to in-depth analytical procedures on a quarterly basis and financial examinations are conducted at least once every five years. Analytical procedures and examinations of an insurance company's financial condition provide a means to detect early warning signs of trouble that may allow for the introduction of remedial measures and prevention of future insolvencies. Analytical and examination procedures are subject to an accreditation review by National Association of Insurance Commissioners. This process provides a measure of protection for the consumers and requires insurance companies to be in compliance with the insurance laws.

In addition to financial surveillance, the Branch also licenses or registers foreign insurers, risk purchasing groups and risk retention groups; reviews mergers, acquisitions and service contract provider submissions; reviews more than 6,000 quarterly and annual premium tax returns; and collects and processes more than \$90 million in premium taxes

iii. The Rates & Policy Analyst (RPA) Branch completed 90% of form and rate filing reviews within the statutory time requirements during the last two years. The requirement for the various lines of insurance are: 30 days for casualty, homeowners, property, inland marine, motor vehicle, surety, and title; 45 days

for credit life and credit disability; 61 days for Medicare Supplement; and 90 days for workers' compensation insurance. Reviewing rate filings and form filings protects consumers from unjustified premium rate increases or unjustified inclusion or exclusion of benefits. During the most recently completed year, approximately 6,300 forms and rate filings were analyzed.

- iv. In FY 2006-07 the Insurance Fraud Investigation Branch received 161 referrals and obtained indictments against 42 individuals. The branch obtained restitution totaling \$52,575, fines totaling \$11,445, payments in the amount of \$2,640 to the Crime Victim Compensation Fund, probation services fees in the amount of \$1,000 and community service totaling 570 hours.

In FY 2006-07, the Fraud Unit met with various insurance companies, the Hawaii Chapter of the Special Investigators Unit, the Hawaii Claims Manager's Association, National Insurance Crime Bureau, and a few public schools.

- v. The Captive Insurance Branch completed 100% of its review and evaluation of captive applications and business plan amendments within 30 days of receipt, and 60% of required FY 2006 organizational and triennial examinations. Backlog of required exams was substantially reduced in FY 2007 because of additional examination staff and more efficient management and supervision of examinations. Decrease in new licenses from 10 in FY 2006 to 6 in FY2007 is consistent with other captive domiciles and is attributable to general softening of commercial insurance market prices and increase in competition from other U.S. captive domiciles (to approximately 30 states). Recap of significant results include:

	FY 2006	FY 2007
Introductory Meetings	15	12
New Application Reviews	12	10
New Captive Licenses Issued	10	6
Active Licenses at Year End	160	165
Business Plan Changes	753	497
Triennial Examinations	59	48
Organizational Examinations	25	19
Special Examinations	0	1
Financial Filings Reviewed	1,361	1,548
Informational Briefings	35	40

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

Education and training were used as a means to increase productivity of the staff. The staff attends the Department of Human Resources Development (DHRD) offered classes and training conducted by other educational providers, including the National Association of Insurance Commissioners (NAIC). Our examiners, investigator, rate and policy analyst staff, staff attorneys and fraud unit staff attended classes and conferences offered by the NAIC for state insurance regulators.

The Division has automated operations for quicker processing and the operations and the use of the internet allowed for a cost effective manner to disseminate information.

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

None.

**3. Problems and Issues:**

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

- 1. **Financial Surveillance.**

In 2006, the Division underwent an accreditation review by the NAIC and retained its accreditation status for a full five-year term. The accreditation program requires states to have and maintain adequate statutory and administrative authority as well as sufficient resources to effectively regulate the financial solvency of insurance companies. Failure to meet these standards could result in loss of accreditation status or receive less than a full five-year accreditation status. Loss of accreditation status prevents other states from relying upon the analytical and examination work performed by the Hawaii Insurance Division.

Financial oversight, including analytical reviews of quarterly and annual statements and scheduled examinations of Hawaii's domestic insurers and risk retention groups must be conducted in accordance with procedures established by the NAIC.

In 2005, a statute change went into effect which allows examinations of domestic insurers and risk retention groups to be conducted at least once every five years instead of every three years. However, examinations may be performed as often as necessary to ensure effective surveillance.

The resources necessary to maintain the financial surveillance program and the NAIC accreditation are provided by the Division's Compliance Resolution Fund.

- 2. **Court Seizures of Insurance Entities**

- a. **HUI/UNICO in Liquidation, Inc.**

HUI/UNICO in Liquidation, Inc., is the successor entity to Hawaiian Insurance & Guaranty Co., Ltd. (HIG), Hawaiian Underwriters Insurance Co., Ltd. (HUI) and United National Insurance Co., Ltd. (UNICO). HIG, HUI, and UNICO offered property and casualty insurance to residents of Hawaii until 1992.

Following the devastation of Hurricane Iniki in September 1992 and the resulting claims for property damage, HIG, HUI, and UNICO began experiencing problems paying policyholder claims. The Circuit Court entered a seizure order directing the Insurance Commissioner to take possession and control of HIG, HUI, and UNICO. HUI/UNICO is in liquidation, running off its remaining claims.

The Liquidator assisted the State Attorney General in the prosecution of the former counsel of HUI/UNICO for the misappropriation of \$7.9 million from the estate. The Liquidator is also assisting the Attorney General in reviewing the past practices of other administrative personnel and independent contractors who were associated with the liquidation of HUI/UNICO. The recovery of all missing moneys is complete and a review of past billing practices has been undertaken. A civil suit for over billing has been settled with additional moneys returned to the estate. Continuous investigations are being conducted by the Liquidator and the Insurance Division to discover if there were any other fraudulent activities occurring while the former administrators were in control of the trust. The federal government has yet to state as to whether it will file a claim against the prior administrators of the trust.

b. Investors Equity Life (IEL).

The company was seized and ordered liquidated in 1994. Over \$20 million in policyholders' claims have been disbursed. The trust has won a lower court ruling in the federal district court in 2004. A judgment against ADM Investor Services (ADMIS) was filed in the 9<sup>th</sup> Circuit on June 30, 2005, and the federal appeal period ran on September 29, 2005. The federal court action on this matter is complete though there still is pending State court action.

c. Nene Insurance Inc.

This agency of an insurance general agent was seized and ordered liquidated in 1995.

Creditor claims forms were mailed, returned, and examined. The trust is currently finalizing and processing all claims' decisions. The trust has not received any appeals, as of yet, on any claims' decision. The federal government has issued a waiver releasing the trust from claims from the federal government. A final distribution will be made in the near future.

d. Pacific Group Medical Association (PGMA).

PGMA was seized and ordered liquidated in 1997. Distribution of \$8 million in assets was made in December 2002 to claimants. There are

plans to make a second distribution of approximately \$1.8 million once State and federal appeals in collateral cases are concluded.

The liquidator will not be able to close PGMA until appeals remaining in federal and State courts are decided. The State court has approved a payment by the trust to the federal government in regards to a claim. A final distribution will be made in the near future.

e. Hawaii Healthcare Alliance (HHA).

HHA was seized in 2000 and ordered liquidated in 2001. Asset recovery has been made and there is no litigation remaining. The federal government has yet to state as to whether it will file a claim against the trust.

f. HIH America Insurance Company of Hawaii (HIH).

HIH was seized and ordered liquidated in 2001. When seized in March 2001, HIH Hawaii owed an estimated \$26.8 million dollars in policy liability claims and claims expenses and owed another \$15 million in intercompany agreements (with its sister and parent companies also in liquidation in California and Australia) and other claims. HIH Hawaii had only \$22.2 million in assets at that time. Through the implementation of an effective case review and management of claims, HIH Hawaii's claims liability was reduced by \$5.5 million. At the same time, another \$2.8 million in outstanding premium was captured. Negotiations with HIH Hawaii's sister and parent companies collected another \$1 million and \$1.4 million, respectively. The California liquidator also agreed to pay off Hawaii creditors 100% first with any remaining moneys left over to pay for creditors in other states.

\$21.3 million was authorized to pay for workers compensation claims so that medical providers and injured workers could get immediate and timely financial relief. So far:

- a) All medical providers, claimants, and administrative/claims management vendors who had pre-seizure claims against HIH Hawaii have received 100% payment on their claims;
- b) 100% of workers compensation claims and claims expenses have been paid;
- c) The Hawaii Insurance Guaranty Association, the guaranty fund which paid claims for HIH Hawaii after HIH Hawaii went into liquidation, received 100% reimbursement in advance for policy claim payments and expenses;
- d) HIH Hawaii policyholders have received 100% of their unearned premium refunds; and

- e) Hawaii policyholders are projected to receive 100% of their retrospective premium refunds which are estimated to be \$1,638,261.

The federal government has yet to determine the trust's tax liability and has also yet to state as to whether it will file any claim against the trust.

- g. Hawaii Dental Health Plan (HDHP).

HDHP was seized and ordered liquidated in 2001. The claims period has closed and final distribution of assets will be made in the near future.

- h. Primeguard Insurance Company, Inc., A Risk Retention Group (PG-RRG)

PG-RRG is a captive insurance company that was initially granted its license in 1998, and placed into supervision on October 12, 2005 because of a potentially hazardous financial condition. It was subsequently placed into liquidation on December 19, 2005. The liquidation is currently in the claim filing process and once a determination is made, proceeds are anticipated to be distributed by the Liquidator pursuant to State court order

To avoid submitting to Hawaii jurisdiction and being liquidated, warranty companies which had Primeguard as an insurer filed for bankruptcy in the Colorado federal bankruptcy court in 2006. The Colorado federal court has yet to agree that the Hawaii circuit court has primary jurisdiction in this matter and State liquidation proceedings have been continued while jurisdictional issues are being litigated in Colorado. The goal of the Liquidator is to have the bankrupt warranty companies consolidated into the Hawaii insurer liquidation process where a single claim and distribution process may efficiently be applied.

- i. Hawaiian Insurance and Guaranty Company, Ltd. (HIG, Ltd)

On June 19, 1995, Vesta Fire Insurance Corporation acquired all of the issued and outstanding stock of HIG Ltd. from HUI/UNICO in Liquidation, Inc. HIG Ltd. wrote motor vehicle, homeowners and earthquake insurance in Hawaii and California.

HIG was placed into rehabilitation on June 30, 2006 and into liquidation on August 21, 2006 due to insolvency. At the time of the Liquidation Order, HIG Ltd. had assets of approximately \$17 million and liabilities of approximately \$30 million. Continuation of its business would be hazardous to its policyholders, creditors and the public.

The Liquidator was successful in completing the sale of HIG's Hawaii business to a mainland insurer who provided continued coverage for HIG Hawaii policy holders.

The Liquidator is pursuing the wrap up of HIG Ltd.'s other business and pursuing recovery of HIG Ltd.'s assets for its policyholders and creditors.

3. Captives.

Although the number of new captive licenses issued declined from 10 in FY 2006 to 6 in FY2007, the financial size of new licensees and backgrounds of their owners continue to be large and high quality. For FY 2006, Hawaii's 160 captives wrote US\$ 1.7 billion in premiums, and had US\$ 6.1 billion in total assets. Hawaii continues to attract new owners from the U.S. mainland and Japan. The captive industry continues to significantly contribute to Hawaii's economy with US\$ 1.1 billion being invested through financial institutions in Hawaii, employment of approximately 100 professionals and an estimated direct spending of US\$ 15 million for local captive services and meetings.

Despite the fact that increasing competition from other U.S. captive domiciles and general softening of the commercial insurance market has resulted in fewer new licensees in all captive jurisdictions, Hawaii should be able to attract and retain its share of new captive licensees as long as it continues to focus on maintaining an efficient regulatory environment that can prudently adapt to the dynamic needs of captive owners and also maintain the admiration and respect of its peers (i.e., other regulatory bodies) in the U.S. and abroad. Specialized training and education of captive examination staff, active participation in national and international regulatory and rule making bodies, and the effective utilization of the internet to disseminate and share relevant information in a timely manner with captive owners and promoters around the world will be keys to the continued development and success of Hawaii's captive industry.

4. Oversight of Operations Procedure and Practices Within the Insurance Industry.

In addition to the quinquennial financial examinations of insurance companies, the Division continues to monitor the activities of insurance agencies and other insurance entities throughout the State to ensure compliance with the Insurance Code. This area will remain important in 2007 to safeguard consumer interests and to maintain professionalism in the industry.

5. National Insurance Regulatory Issues.

Because the business of insurance is often conducted across state boundaries, it is imperative that coordination and consultation with other states be maintained on a regular basis. Of the more than 900 Property and Life insurance



companies licensed to do business in Hawaii, only 20 are domiciled in the State. Sharing of financial information on the activities of these companies, the exchange of ideas on regulatory initiatives and the availability of expert resources on virtually all matters is critical to the Division's ability to carry out its mandates. In the past the Division's participation in the proceedings of the National Association of Insurance Commissioners has effectively provided the necessary network and has also served as a forum for the communication of Hawaii's concerns.

6. Information Systems and Automation of Manual Operations.

The Division's Hawaii Insurance Division System (HIDS) is an integrated system with the licensing module at its core and subsystems to support the other functions of the Insurance Division. HIDS was developed to provide better management of the large volume of transactions handled by the Division. It has eliminated manual processes and allowed for the dissemination of information through the internet.

The Division recently completed its HIDS enhancement project which modified existing applications and developed a subsystem for the Financial Surveillance & Examination Branch. The subsystem allows for the electronic submittal and collection of premium tax returns and payments. With these modifications to HIDS, continued interfaces with the NAIC and the Hawaii Information Consortium (they provide the internet portal for the State of Hawaii's web site) databases can be built. These interfaces will continue to improve the efficiency of the Division and provide better services and information via the web to consumers and insurance licensees.

7. Effects of the Natural and Man-made Catastrophes.

The 2004 and 2005 hurricanes and major flooding due to storm surge on the mainland have significantly impacted the cost of property reinsurance that is purchased by insurers to ensure their financial solvency. We require that primary insurers use Hawaii experience, and not losses from other areas of the country, but we do not regulate reinsurance and it is a legitimate business expense of insurers.

We have been successful in attracting new insurers to Hawaii, who provide hurricane coverage. The new insurers provide added capacity and additional competition which should help mitigate some of the availability problem.

The events of 9-11 in 2001 continue to have a dramatic impact in the insurance market place concerning the availability and affordability of terrorism coverage. It took federal action in 2002 and 2005, with the passage of the Terrorism Risk Insurance Act (TRIA) and the 2005 Extension (TRIEA), to ease this problem. The 2007 Reauthorization of TRIA extends the program to 2014 and eliminates the requirement that the act was on behalf of any foreign person or foreign interest. The Comptroller General is required to further

study availability and affordability of insurance coverage for losses caused by attacks involving nuclear, biological, chemical or radiological materials and other specific market effects (i.e., group life).

**b. Program change recommendations to remedy problems.**

**1. Insurance Availability.**

The Division continues to work with the industry both locally and nationally to encourage new companies to enter the Hawaii market and to enhance opportunities for existing licensed carriers to expand their markets. For example, new companies began doing business in Hawaii last year, providing hurricane coverage among other coverages.

The Division successfully introduced a bill for contractor defect notification to help contractors with liability insurance. In 2004, the Division successfully introduced a bill to establish Hawaii as a port-of-entry for alien insurers desiring to do business in the United States. The Division continues to successfully market Hawaii as a world leader in the captive insurance market and will promote Hawaii, geographically and financially, as a port-of-entry.

The Division has also proposed a number of NAIC Model Acts which promote uniformity and reciprocity with other states. This makes Hawaii more appealing to companies who are doing business in other states with similar laws.

**2. Interstate Compacts to Promote Uniformity; Monitor Deregulation Activities.**

With Act 104, Session Laws of Hawaii (SLH) 2004, Hawaii became a member of the Interstate Insurance Compact Commission to establish uniform standards for products under the compact, i.e., annuity, life, long term care and disability income. The Division will continue to actively participate in Commission meetings and, in accordance with the compact by-laws, the Commission shall provide written notice of proposed product standards to the legislative committees prior to formal implementation.

The Division will monitor the activities of the NAIC committees addressing deregulation of commercial lines insurance rates, life insurance, disability insurance, long term care insurance, and speed to market of insurance products. The Division will seek to continue its participation as a member of the NAIC's Interstate Compact Implementation Task Force, Workers' Compensation Task Force and the Joint Personal Lines and Commercial Lines Property and Casualty Committee at interim and national meetings on a regular basis.

3. Federal Actions.

Following the events of September 11, 2001, coverage for acts of terrorism was excluded from commercial liability and property policies. On November 26, 2002, the Terrorism Risk Insurance Act of 2002 (TRIA) was signed into law and further modified by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). TRIA and TRIEA provided federal government backing for insurers if the country sustained another serious loss from an attack by foreign terrorists. The Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA) extends the program to 2014 and eliminates the requirement that the act was on behalf of any foreign person or foreign interest. The Rate & Policy Analysis (RPA) branch will be reviewing and approving policy endorsements and rate filings consistent with TRIPRA that will allow insurers to continue to make available terrorism coverage. The availability of terrorism coverage will be monitored and future Comptroller General reports will be reviewed.

- 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.**

As an integral part of the nationwide state-based insurance regulatory system, the Insurance Division is changing and streamlining its operations to more quickly respond to insurers' and consumers' needs. The Division is in the process of reviewing and, where appropriate, proposing for adoption proposed legislation affecting, among other things, insurers' market conduct, uniform regulatory standards, licensing of insurers and producers, life insurance, commercial and personal property and casualty insurance, surplus lines insurance, reinsurance, insurance fraud, insurance receiverships, financial surveillance of insurers, state and national insurance partnerships, and creating competitive insurance markets.

**4. Expenditures for FY08:**

	FY 08 Apprn (Act 213/07)	Collective Bargaining	Transfers	Restrictions	Ceiling Increase	Estimated Total Expenditure
(Position Count)	(80.00)	-	-	-	-	(80.00)
Personal Services	5,994,859	189,937		-	-	6,184,796
Other Current	6,115,949	-	-	-	-	6,115,949
Equipment	34,900	-	-	-	-	34,900
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>12,145,708</b>	<b>189,937</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>12,335,645</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(80.00)	-	-	-	-	(80.00)
Special Funds	11,945,708	189,937	-	-	-	12,135,645
(Position Count)	-	-	-	-	-	-
Trust Funds	200,000	-	-	-	-	200,000
(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	(80.00)	(1.00)	(81.00)
				-
Personal Services	B	5,994,859	91,622	6,086,481
Other Current	B	5,917,949	1,470,000	7,387,949
Equipment	B	32,900	-	32,900
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>11,945,708</b>	<b>1,561,622</b>	<b>13,507,330</b>
(Position Count)	T	-	-	-
				-
Personal Services	T	-	-	-
Other Current	T	200,000	-	200,000
Equipment	T	-	-	-
Leases	T	-	-	-
Motor Vehicles	T	-	-	-
<b>TOTAL</b>	<b>T</b>	<b>200,000</b>	<b>-</b>	<b>200,000</b>

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.

1. MOF B. Increase the expenditure ceiling for Compliance Resolution Fund by \$1,115,000 for personal services on fee basis:

Examinations. The increase in examination contractual costs is due to higher than anticipated chargeable rates by contracted examiners for required statutory examinations of domestic insurers. As the demand for CPAs is high, their rates have been higher than originally anticipated. In addition, additional work needs to be performed since the last examinations due to the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745), also known as the Public Company Accounting Reform and Investor Protection Act of 2002, and corporate governance requirements.

Health actuary. With the re-instatement of health insurance rate regulation via SB 12, SLH 2007 (Act 175), a contracted health actuary is required to assist with this rate regulation.

Computer consultant. Unforeseen need for computer consultant work on the interface with NAIC and enhancements to HIDS by restructuring producer licenses, ACH input, etc.

Computer program expert. Unforeseen need for a computer program expert for insurance fraud investigations. Critical evidence generated from various medical billing software programs is available only in electronic format. With the statute of limitations, expedient data recovery is crucial (e.g., enables timely interviews of witnesses). Rather than having the Insurance Fraud Investigation Branch (IFIB) purchase and expend time learning the various medical billing software, the contracted expert will extract and analyze the data from electronic files and, as needed, testify in court upon the request of the IFIB.

2. MOF B. Increase expenditure ceiling of the Captive Insurance Administrative Fund (CIAF) by \$355,000 for personal services on a fee basis.

Increasing the CIAF expenditure ceiling by \$355,000 is necessary to fund an increase in professional services on fees that will be paid to outside (non-Insurance Division staff) examiners for the examination of 5 risk retention captive insurance company licensees in FY 08. Although these outside/contract exam costs are ultimately passed along to licensees and deposited into the CIAF, the exam costs must first come from the expenditures of the Insurance Division's program budget.

The examinations of these 5 risk retention captives are part of the ongoing cycle of exams that the Insurance Commissioner is required to conduct pursuant to HRS 431:19-108, as well as to enable the Insurance Division to maintain its accreditation status with the NAIC. NAIC accreditation is important for Hawaii because it enables other states to rely upon Hawaii's regulatory environment to prudently regulate its captive licensees and Hawaii risk retention captives that insure risks located in other states.

The CIAF has a dedicated source of funding to support the proposed budget for the upcoming biennium. The CIAF collected in excess of \$2 million last year. Annual collections of captive taxes and fees will continue to be at least \$2 million per year. Captive owners understand and expect the Captive Insurance Administration Branch (CIAB) to use the premium taxes and fees they are assessed to pay for providing /maintaining a strong, fair and reputable regulatory environment and services that will help them meet their current and future risk financing objectives.

3. MOF B. Authorize (1.0) permanent exempt Insurance Examiner II position and funds. Act 227, SLH 2007 (Act 227), directs the Insurance Division to develop a baseline understanding of the marketplace using market analysis. In addition, it creates a process for the Insurance Division's market conduct actions, as well as interstate collaboration regarding nationally significant market concerns. Without an insurance examiner position to conduct and coordinate the market conduct examinations, the Insurance Division will not have the resources to meet the directives of Act 227.

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

See Item 5.a.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 FY 09:**

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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 04 01  
Program ID: CCA-110  
Program Title: Office of Consumer Protection  
Page References in the Multi-Year Program and Financial Plan:

**1. Introduction:**

**a. Summary of program objectives.**

To protect the public interest by investigating alleged violations of consumer protection laws, taking legal action to stop unfair or deceptive trade practices in the marketplace, and assisting in educating the public and businesses concerning their respective legal rights and obligations in the marketplace.

Statutory reference: Chapters 436M, 437D, 446E, 457G, 467B, 476, 477, 477E, 480, 480D, 481A, 481B, 481C, 481D, 481F, 481H, 481L, 481K, 481M, 481P, 486N, 487, 487A, 487J, 487N, 487R, and 521, 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 receives and investigates and prosecutes complaints regarding unfair or deceptive practices. Investigations are based upon both consumer complaints and staff-initiated inquiries. In addition, the program provides information regarding the rights and responsibilities of consumers and businesses and in the consumer law and landlord/tenant contexts.

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

Due to the large number of consumer complaints each year, the Office of Consumer Protection (OCP) has implemented an approach which offers consumers a variety of resources to complement the traditional enforcement model. For example, OCP has instituted procedures which facilitate more direct exchanges between consumers and the affected businesses. Early resolution of consumer complaints has facilitated the reallocation of resources to more complex enforcement matters.



**2. Program Performance Results:**

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

The number of consumers and businesses affected by OCP's actions continues to grow while the number of staff remains constant. The office has been able to fulfill its mission through selective investigation of cases, increased consumer outreach, and targeted consumer education.

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

The measures were designed to reflect the program's ability to impact large groups of consumers and businesses. In this regard, the measures reflect that the program's impact continues to grow.

- 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.**

Effectiveness is measured by four criteria: consumers affected by office action, businesses affected by investigations, amount of fines assessed in judgments, and the number of disputes handled through alternative dispute resolution. The number of known affected consumers and businesses remains high, although it is believed that the actual number is higher because many consumers' questions are answered using the division's internet website. It is expected that public use and demand for services through the Internet will continue to grow as more information is posted on the website.

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

At the present time, there are a number of small, isolated cases that, due to finite resources, are not being investigated by the office.

In addressing this challenge, OCP continues to work with the RICO Consumer Resource Center, to facilitate referrals to mediation, self-help, consumer education, and the like.

- e. Please identify all modifications to your program's performance measures and discuss the rationale for these modifications.**

None.

**3. Problems and Issues:**

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

OCP continues to be challenged by the task of handling a large number of cases with a small staff. While the "projects" model successfully enables the office to concentrate its enforcement efforts on specific cases or problems, there remain a large number of

consumer cases that must be closed with minimal investigation or forwarded to other jurisdictions for investigation. At the same time, new consumer issues are evolving that must be addressed by the staff.

Operation of the Landlord/Tenant Hotline continues to challenge the resources of OCP. Currently, approximately 10%-15% of each investigator's workday is devoted to Landlord/Tenant related matters.

**b. Program change recommendations to remedy problems.**

Continued collaboration with RICO's Consumer Resource Center, will provide the consumer with more options for resolution. OCP will be working with intake personnel to fashion criteria for referrals to mediation, self-help, consumer education, and the like.

It is hoped that increased recruitment of Landlord/Tenant volunteers will help to alleviate the workload of investigators, who currently must take time off from their investigations to attend to the needs of the Landlord/Tenant division.

If budgetary approval is forthcoming, OCP hopes to hire an additional investigator in order to better address the demands of the Landlord/Tenant hotline.

**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 complexity of certain cases coupled with OCP's limited resources has caused OCP to join other state and federal law enforcement agencies in combating consumer fraud. This multi-agency approach has enabled OCP to successfully prosecute cases that otherwise may not have been pursued. In view of this successful prosecution model, OCP anticipates that it will continue to partner with other governmental agencies in future consumer protection actions.

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)	(16.00)	-	-	-	-	(16.00)
Personal Services	1,398,374	39,957	-	-	-	1,438,331
Other Current	252,591	-	-	-	100,000	352,591
Equipment	-	-	-	-	-	-
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>1,650,965</b>	<b>39,957</b>	<b>-</b>	<b>-</b>	<b>100,000</b>	<b>1,790,922</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(16.00)	-	-	-	-	(16.00)
Special Funds	1,600,284	39,957	-	-	-	1,640,241
(Position Count)	-	-	-	-	-	-
Trust Funds	50,681	-	-	-	100,000	150,681
(Position Count)	-	-	-	-	-	-

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:

	MOF	FY09 Apprn (Act 213/07)	Supplemental Request	Total FY09 Exec Supp Budget
(Position Count)	B	(16.00)	(1.00)	(17.00)
				-
Personal Services	B	1,398,374	64,321	1,462,695
Other Current	B	201,910	-	201,910
Equipment	B	-	-	-
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>1,600,284</b>	<b>64,321</b>	<b>1,664,605</b>
(Position Count)	T	-	-	-
				-
Personal Services	T	-	-	-
Other Current	T	50,681	-	50,681
Equipment	T	-	-	-
Leases	T	-	-	-
Motor Vehicles	T	-	-	-
<b>TOTAL</b>	<b>T</b>	<b>50,681</b>	<b>-</b>	<b>50,681</b>

Provide the total position counts and funds requested.

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. Authorize 1.00 FTE permanent exempt investigator position and add funding +\$64,321 to cover personal services costs.

One of the core functions of the OCP is providing information to consumers regarding their rights and responsibilities as landlords and tenants. OCP investigators provide this valuable service to approximately 10,000 consumers each year. Each workday may yield more than twenty inquiries. There are occasions in which OCP investigators have had to work additional hours to make up for the time lost due to their time spent in the landlord tenant center. Recently it has become apparent that in order to adequately meet the demands of this service, it is necessary to retain the services of another investigator.

The new investigator will devote at least five hours per day to the operations of the landlord tenant center and ensure that all telephone inquiries receive a response on the same day. Current resources make it extremely difficult to

satisfy this demand. Also the new investigator will relieve the current investigative staff from some of their workload. One of the main objectives for enlisting the assistance of an additional investigator is to alleviate the demands that the landlord tenant center imposes on the work of OCP's investigators who are being diverted from their primary responsibility of investigating unfair or deceptive trade practices. Another investigator will free up at least 20% of the resources for general investigation that is now devoted to the landlord tenant function of OCP. On some occasions OCP's investigations of alleged unfair or deceptive trade practices have had to be delayed in order to address the needs of the hotline. Authorization of this investigator position will help to address the needs of callers to the hotline and will also provide additional resources to the division to help it fulfill its primary function of investigating unfair or deceptive trade practices

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

See Item 4.a.i.

- 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 Department of Budget and 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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, 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](http://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](http://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	-	-	-	-	-	-
<b>TOTAL</b>	<b>6,440,207</b>	<b>158,203</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>6,598,410</b>
(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	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>6,440,207</b>	<b>65,000</b>	<b>6,505,207</b>

**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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 04 04

Program ID: CCA-112

Program Title: Regulated Industries Complaints Office

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

**1. Introduction:**

**a. Summary of program objectives.**

To assist the general public by providing consumer education outreach activities, investigating complaints from the public and enforcing the licensing laws.

Statutory reference: Section 26-9(h), 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 receives, investigates and resolves complaints alleging licensing law violations against licensed and unlicensed persons or entities involving 45 different professional license types including contractors, real estate salespersons, motor vehicle dealers, physicians and architects.

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

The Regulated Industries Complaints Office (RICO) will continue to meet its objectives in the following ways:

**i. Consumer Education Outreach**

- 1) Continued publication and dissemination of informational brochures to the community, both in partnership with industry groups as well as directly;
- 2) Continued community outreach through different presentation formats such as Remodel It Right presentations, participation in homeowner



shows, and speaking to consumer and industry groups;

- 3) Continuation and improvement of the Licensing and Business Information Section which allows the public to acquire basic business, license and complaints information with one telephone call. Responses to the service have been extremely positive, not only because LBIS saves time for the business or consumer with the inquiry, but also due to the friendly, courteous and knowledgeable staff who field the high volume of telephone calls. Note that the information is also available online at Check Out a Business Online website, [http://www.hawaii.gov/dcca/areas/rico/business\\_online](http://www.hawaii.gov/dcca/areas/rico/business_online); and
- 4) Continuation and improvement of the administration of the State Certified Arbitration Program (SCAP), more commonly referred to as the Hawaii "Lemon Law" program. This program helps consumers who buy or lease new motor vehicles and have repeated problems in getting their vehicles repaired under the manufacturer's warranty and provides the consumer with an arbitration process to resolve a Lemon Law dispute with a manufacturer.

ii. Investigating Complaints and Enforcing Licensing Laws

- 1) Continuation and improvement of case investigation and processing which include the filing of formal disciplinary and injunctive actions, and post judgment activity;
- 2) Continuation and improvement of formal mediation programs;
- 3) Continuation and improvement of working relationships with other governmental and law enforcement entities; and
- 4) Continuation and improvement of proactive measures, particularly in the areas of unlicensed activity, such as conducting sweeps and spot checks and developing collaborative relationships with other law enforcement agencies.

**2. Program Performance Results:**

**a. Discuss the performance results achieved by the program in FY 07.**

FY 07 data reflects that 113,000 consumers and 3,098 businesses were affected by division action, and \$1,452,418 was assessed in fines.

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

The primary objectives of the program are (1) to provide information to consumers and businesses to help them make appropriate marketplace choices; (2) to assist consumers and businesses in resolving their complaints where appropriate; and (3) to investigate and enforce the state's licensing laws. The numbers provided in response to question 2a.

reflect the number of customers who received assistance from the division through education, complaints information, investigation or enforcement and the number of businesses that were investigated, as well as the amount of fines assessed in successful enforcement actions.

- 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.**

Program effectiveness is measured by the number of consumers affected by agency actions, the number of businesses affected, and dollar amount of fines assessed. The FY 07 number of affected consumers (113,000) is more than the number for FY 06 (106,000). The increase reflects the division's increased visibility. Number of businesses affected and fine amounts increased as well over FY 06 due to higher volume and internal procedures that boosted productivity.

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

i. Investigator and attorney training. As enforcement cases become more complex, refresher courses and training is critical. In-house and outsourced training of staff on a variety of topics will help enforcement staff with a variety of enforcement issues.

ii. DCCA webpages. As part of the department's web project, the division has two websites with consumer information. The RICO website provides information on a variety of topics, forms, links to relevant sites, and background material. The Business and Licensee complaints history website is also available online. It is hoped that continued enhancement of these websites will provide businesses and consumers with a greater variety of pertinent, timely information in a manner that does not require direct staff assistance.

- e. **Please identify all modifications to your program's performance measures and discuss the rationale for these modifications.**

None.

3. **Problems and Issues:**

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

The division has faced delays in case processing brought about by increased volume of cases of increasing complexity.

- b. **Program change recommendations to remedy problems.**

The division has adopted a number of internal measures to increase efficiency and efficacy. In addition, the department is seeking two additional investigator positions.

- 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.

See response to 3a. and 3b.

**4. Expenditures for FY 08:**

Provide the appropriation data, transfers, restrictions, available resources, and the estimated expenditures for FY 08. 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)	(65.00)	-	-	-	-	(65.00)
Personal Services	4,416,988	126,104	-	-	-	4,543,092
Other Current	836,059	-	-	-	-	836,059
Equipment	-	-	-	-	-	-
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>5,253,047</b>	<b>126,104</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,379,151</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(65.00)	-	-	-	-	(65.00)
Special Funds	5,253,047	126,104	-	-	-	5,379,151
(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 Request for FY 09:**

	MOF	FY09 Apprn (Act 213/07)	Supplemental Request	Total FY09 Exec Supp Budget
(Position Count)	B	(65.00)	-	(65.00)
				-
Personal Services	B	4,416,988	128,643	4,545,631
Other Current	B	836,059	-	836,059
Equipment	B		-	-
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>5,253,047</b>	<b>128,643</b>	<b>5,381,690</b>

**Provide the total position counts and funds requested.**

**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.**

Add two temporary exempt field investigator positions.

MOF B. +2 FTE (T), funding impact \$128,643.

Investigator caseloads have exceeded staff capacity recently and the program has explored and implemented a number of initiatives to minimize backlog and conduct proactive unlicensed activity investigations. However the caseloads for the entire program continue to be such that it is difficult for the program to respond swiftly to reports of unlicensed activity without creating a backlog in the processing of existing cases. This is especially true in the Kona office because of the large geographical area that the office is responsible for and the fact that investigators must travel in pairs for safety due to the isolated nature of many of the sites. The Honolulu position would be used primarily to increase the branch's ability to conduct proactive spot checks and investigations relating to unlicensed activity. Although most of the unlicensed activity investigations would occur on Oahu, the investigator would be tasked with participating in unlicensed activity investigations on the neighbor islands as well, either in response to specific tips or as part of larger island sweeps, either in collaboration with neighbor island investigators or independently.

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

See 5ai.

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 FY 08 as well as additional reductions due to the Department of Budget & Finance budget ceilings for FY 09. If no reduction is being proposed, please indicate "none".

None.

7. Capital Improvement Program (CIP) requests for FY 09:

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.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
SUPPLEMENTAL BUDGET REQUEST FOR FISCAL YEAR 2009

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION

JANUARY 17, 2008

TO THE HONORABLE ROSALYN H. BAKER, CHAIR  
AND MEMBERS OF THE COMMITTEE

Program Structure Number: 10 01 05  
Program ID: CCA-191  
Program Title: General Support  
Page References in the Multi-Year Program and Financial Plan:

**1. Introduction:**

**a. Summary of program objectives.**

To uphold fairness and public confidence in the marketplace, promote sound consumer practices, and increase knowledge, opportunity, and justice in our community by enhancing program effectiveness and efficiency.

Statutory reference: Section 26-9, 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 administers and provides support services to the Department of Commerce and Consumer Affairs. The program consists of: the Director's Office, which provides personnel and other miscellaneous support services; the Administrative Services Office, which provides fiscal, budget, clerical and other miscellaneous support services; the Information Systems and Communications Office, which provides information system services and support to all divisions; and the Office of Administrative Hearings, which conducts administrative hearings to resolve consumer complaints, tort claims against medical professions, appeals involving the State's procurement code, and claims under the Individuals with Disabilities in Education Act involving the State Department of Education.

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

This program will continue to manage the Department in an efficient and effective manner. Since July 1, 2000, the Department has been financially self-sufficient, relying almost exclusively on moneys deposited by its operating divisions into its compliance resolution fund, except for certain limited trust and special funds with dedicated purposes.

Careful planning and disciplined management of the Department's resources to ensure that departmental services are provided in the most cost-efficient manner possible is required. This program will provide the necessary guidance and develop the policies necessary to maintain solvent operations.

**2. Program Performance Results:**

**a. Discuss the performance results achieved by the program in FY 07.**

- The Department reduced customer fees and waived single-year assessments worth more than \$11 million, to reduce program surpluses and to reduce costs for businesses and consumers
- The Department continues to advance e-commerce initiatives. The Department is a state government leader in upgrading information technology and making these tools available to our clients and our employees. On-line services for our clients include the availability of applications for registration and licensing, laws and administrative rules of DCCA, educational publications; on-line checks if a business is registered and licensed and any complaint history, license renewals, annual filings of business registrations and e-mail ability direct to a DCCA program. If something is not yet available on-line, we are working to make it available.
- The Department completed a major upgrade to the Insurance Division's computer system ("HIDS"), which added various on-line services (license applications, rate filings, premium tax filings, continuing education course schedules, exam results, and address changes), reporting capabilities (statistical, management and operational), and fiscal features (centralized accounting and electronic payments).
- Internally, there has been a greater focus on security, particularly in the transmission of information via electronic means and in the use of portable laptops. Enhancements have been added to protect data along with the institution of policies to provide guidance to the public.
- The State Procurement Office determined that contracts for Public, Education and Government cable television services should be awarded via public procurement. As a result, the department began preparing a request for proposal(s), which it submitted to the public for comment in public informational meetings around the state.
- The Department enhanced performance standards for its Office of Administrative Hearings (OAH). In FY06-07, OAH handled 140 requests for impartial hearings under the Individuals with Disabilities in Education Act. Seventy-eight cases received hearings and written decisions were issued. In FY07 OAH, through the Medical Claims Conciliation Panel, also addressed 95 medical malpractice claims, involving 162 claimants and 231 respondents. MCCP itself heard 67 claims, involving 1115 claimants and 198 respondents, and had 26 claims resolved or closed without hearings.

- In FY07, no claims were filed under the Condominium Dispute Resolution (CDR) Pilot Program because the CDR Pilot Program under HRS 514A-121.5 was repealed and there were no filing under the Condominium Management Dispute Resolution Process Pilot Program.

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

The performance results listed above are reflective of the flexible and innovative manner in which this program and the entire department responds to the needs of its constituents and to changes in its operating environment. Reducing program fees demonstrates increased program efficiency, increases public confidence in the marketplace, and enhances program effectiveness and efficiency. Advancing e-commerce initiatives enhances program effectiveness and efficiency by increasing knowledge and opportunity to consumers. The Department's handling of IDEA cases and the expansion of the scope of the condominium dispute resolution program upholds fairness and public confidence, as the cases are heard by professional hearings officers. As a result, justice is increased in the community and program effectiveness and efficiency are enhanced.

**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.**

In addition to the program planning and budgeting (PPB) measures, the effectiveness of this program should be measured by how well and how openly the department functions and responds to issues and problems related to consumer protection and to the needs of the business community. As a special funded Department, the program should be judged on its ability to align department revenues and expenses to ensure that the Department's customers receive value for the fees charged.

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

The program has:

- Instituted an open-door policy where consumers and businesses are encouraged to discuss concerns or suggestions relating to other program performance, fee levels or program value;
- Initiated a speaker's program by which the director and program leaders are made available and encouraged to speak to consumer and business groups; and
- Directed that financial budgets be prepared using expected revenues and expenditures, rather than budget ceiling figures, and that projections be updated quarterly throughout the year.

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

None.



**3. Problems and Issues:**

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

Analysis of the Department's historical cash reserves evidenced the need to refine departmental budgeting practices, so as to better enable the alignment of the Department's revenues and expenditures. Realizing that, the department worked to improve services and return excess fees to its customers. As a result, fee cuts and assessment waivers implemented in FY04, FY05, FY06 and FY07 will total more than \$35 million.

In order to satisfy the needs of the Department's various programs, it is obvious that increased usage of the internet will better enable the programs to meet customer needs. The Hawai'i Business Express and Hawai'i Compliance Express initiatives have significantly facilitated public access to government services in Hawai'i. The Department continues to work closely with the state portal contractor to create and roll out more internet-based services.

**b. Program change recommendations to remedy problems.**

- Fee reductions and assessment waivers until Department reserves reach the target level;
- Improved budgeting techniques emphasizing repeated updating of current and subsequent year projections, rather than budget ceiling;
- Increased emphasis on investigator cross-divisional communication and training; and
- Continued emphasis on making as many systems as possible available over the internet.

**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.**

See response to 3a. and 3b. above.

**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)	(45.00)	-	-	-	-	(45.00)
Personal Services	3,939,964	107,845	-	-	-	4,047,809
Other Current	1,339,146	-	-	-	-	1,339,146
Equipment	236,970	-	-	-	-	236,970
Leases	-	-	-	-	-	-
Motor Vehicles	-	-	-	-	-	-
<b>TOTAL</b>	<b>5,516,080</b>	<b>107,845</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,623,925</b>
(Position Count)	-	-	-	-	-	-
General Funds	-	-	-	-	-	-
(Position Count)	(45.00)	-	-	-	-	(45.00)
Special Funds	5,516,080	107,845	-	-	-	5,623,925
(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:**

	MOF	FY09 Apprn (Act 213/07)	Supplemental Request	Total FY09 Exec Supp Budget
(Position Count)	B	(45.00)	-	(45.00)
				-
Personal Services	B	3,939,964	-	3,939,964
Other Current	B	1,339,046	198,850	1,537,896
Equipment	B	236,970	-	236,970
Leases	B	-	-	-
Motor Vehicles	B	-	-	-
<b>TOTAL</b>	<b>B</b>	<b>5,515,980</b>	<b>198,850</b>	<b>5,714,830</b>

**Provide the total position counts and funds requested.**

**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.**

1. MOF B. Add funding \$20,000 for language access.

This request will help enable the Department to comply with the Language Access Law (Part II of Chapter 371, Hawaii Revised Statutes), which was enacted by Act 290, Session Laws of Hawaii 2006. The Language Access law requires State agencies to take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient (LEP) persons through the notice and provision of oral or written language services. The Language Access law requires State agencies to provide: (1) competent, timely oral language services to LEP persons who seek to access services programs, or activities; and (2) written translations of vital documents to LEP persons who seek to access services, programs, or activities. The Department will have to contract for oral language services and written translations.

2. MOF B. Add funding \$178,850 for costs of building maintenance and electricity costs.

The Department of Accounting and General Services' estimates for building maintenance support for the King David Kalakaua Building (KKB) and the 8<sup>th</sup> and 9<sup>th</sup> floors of the Leiopapa A Kamehameha (State Office Tower) Building have increased by approximately \$160,500 for FY 09. In addition, the property management company estimates electricity costs for KKB will increase by \$18,350.

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

See 5i 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 Department of Budget and 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.