

**SB 1343**



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TO THE SENATE COMMITTEE ON  
WAYS AND MEANS

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

Thursday, February 26, 2009  
9:00 a.m.

**COMMENTS ON SENATE BILL NO. 1343, S.D. 1  
RELATING TO FEES AND OTHER ASSESSMENTS**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, SHAN S. TSUTSUI, VICE  
CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify **in opposition** to Senate Bill No. 1343, S.D. 1, Relating to Fees and Other Assessments. My name is Lawrence M. Reifurth, and I am the Department's Director. Senate Bill No. 1343, S.D. 1, proposes to codify the fees assessed by the Department and a handful of other state departments and agencies and, in so doing, removes the authority of the Department and those other agencies from setting fees pursuant to chapter 91 rulemaking.

The Department appreciates the context in which this measure arises. We understand the state's current financial situation, and the reduced number of

options that decision makers have after the Supreme Court's ruling in the *Hawai'i Insurers Council v. Lingle* case.

The Department nevertheless opposes this bill on the following grounds:

- (1) As a matter of principle, and for as long as our customers are charged fees for departmental services on top of taxes already paid, the Department opposes the transfer of its funds to the general fund;
  - (2) Establishing fees and assessments via statute, rather than by rule, reduces the Department's flexibility and, hence, our ability to respond to changing economic circumstances; and
  - (3) The bill takes a one-size-fits-all approach in setting fees for vastly different programs and activities, which does not reflect the costs and value of services rendered, resulting in an inequitable situation where some fee payers will be subsidizing other fee payers.
- (1) The Department opposes the transfer of monies from the Compliance Resolution Fund to the general fund.**

The genesis of this bill appears to rest in a legislative reaction to the Supreme Court's decision in *HIC v. Lingle*, where the Court held that the Legislature had violated the separation of powers doctrine. Presumably, this proposal reflects the Legislature's interest in avoiding the separation of powers problem if, in the future, it again wishes to transfer special funds of the sort addressed in the *HIC* case. As such, the proposal here appears to reflect a legislative determination that it may need to again transfer funds from the

Department's Compliance Resolution Fund ("CRF") and other special funds to the general fund, and that it wishes to position itself to be able to do so without running afoul of the separation of powers doctrine.

Without understating, or failing to appreciate the severity of the State's current financial condition, the Department has a long-standing objection to the practice of transferring money from the CRF to the general fund which it restates here. The CRF has become the financing vehicle by which the Department has been assured of sufficient funds and its customers are thereby assured of sufficient service. The CRF amounts to an implicit promise to the Department's customers, including hundreds of thousands of licensees and hundreds of thousands of business registrants, that if they paid more for the Department's services (including an amount for protection against those among them who violated the laws) in the form of fees (on top of the taxes that they already paid), that those monies would be segregated from the general fund, and put to their exclusive use.

To the extent that this proposal presages or makes possible the future transfer of additional CRF funds to the general fund, the Department objects. In addition, the Department objects to the extent that any future transfer of funds would leave the Department in a position that it is not able to fulfill its promise to its customers related to improved service.

- (2) Determining the amount of a fee or assessment by statute, rather than by rule, reduces the Department's flexibility and, hence, our ability to respond to changing economic circumstances.**

Addressing the proposal on its own merits, and without regard to its apparent underlying intent, the Department nevertheless objects to restricting the flexibility inherent in allowing fees or assessments to be set by rule. The Department's fees authorized and assessed under section 26-9(o), HRS, which are expressly affected by this proposal, are a case in point.

When the CRF was established, section 26-9(o), HRS, set a single fee to apply for all licenses and renewals at \$10 (ten dollars). The Legislature subsequently amended the law to provide the Department with the ability to determine and assess fees by rule. While the Department could, conceivably, approach the Legislature every time that it determined that cost changes required a change in any one of the hundreds of fees set under the authority of section 26-9(o), the Legislature, too, appears to have valued the flexibility associated with setting fees via the rulemaking process. In fact, in its committee report<sup>1</sup> on H.B. No. 2511-82, which was enacted as Act 60<sup>2</sup>, Session Laws of Hawaii 1982, the House Committee on Consumer Protection and Commerce indicated that it added a provision to allow the Director to "adjust the amount of the assessed fee when necessary to reflect the status of the fund and to **avoid statutory revision every time an adjustment is necessary.**" (emphasis added) In addition to increased flexibility, the rulemaking process provides multiple levels of review and significant opportunity for public involvement.

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<sup>1</sup> Stand. Com. Rep. No. 303-82, 1982.

**(3) One-size-fits-all approach to setting fees will result in an inequitable situation where some fee payers will be subsidizing other fee payers.**

Currently, the Department, to the greatest extent practical, sets its fees at a level that maintains a reasonable relationship between the revenues derived from the fees and the cost or value of services rendered. Additionally, since 2003, the Legislature has expressed an interest in how the Department's expenditures are aligned with its special fund revenue collections, and has required reports on that issue, including a discussion on the Department's plans to lower fees to appropriate levels. The Department has submitted those reports to the Legislature.

However, the bill would create a one-size-fits-all fee for every person (e.g., accountants, contractors, doctors, escrow companies, insurance producers, money transmitters, etc.) licensed by the Department. The bill amends section 26-9(o), HRS, by establishing a single fee to be applied to every person licensed by the Department for a license, permit, certificate, or registration. The bill also establishes a single annual fee.

The proposal does not consider the differences in costs associated with the various licensing programs. This will result in an inequitable situation where some licensees will be paying more than what it costs for the Department to administer that licensing program and other licensees paying less than the costs associated with administering their licensing programs.

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<sup>2</sup> Act 60, SLH 1982, established a special fund for compliance resolution. By way of Act 322, SLH 1993, the special fund was named the Compliance Resolution Fund.

Based on the foregoing, the Department respectfully urges the Committee to hold the bill. Thank you for the opportunity to comment on the Department's concerns with regard to Senate Bill No. 1343, S.D. 1.



# **UNIVERSITY OF HAWAII SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
Senate Committee on Ways and Means  
February 26, 2009 at 9:00am

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawai'i

### **SB 1343 SD1 – RELATING TO FEES AND OTHER ASSESSMENTS**

Chair Kim, Vice Chair Tsutsui and Members of the Committee:

The University of Hawaii opposes sections 15 through 18 of the bill which would replace administratively established with statutory fees and remove our authority to establish fees for certain special and revolving funds.

These special and revolving funds include numerous programs, facilities and services such as many different noncredit educational programs with differing costs, use of various university facilities by outside organizations, food services, transportation services, counseling and guidance, laboratory animal services and many others. Each semester, the demand and need for courses, programs and services at the University changes. The necessity to establish and revise fees related to the many programs and services only through statute would be impractical and unwieldy and would likely result in fees that are not commensurate with costs and expenses.

Thank you for the opportunity to submit this testimony.



Linda Lingle  
GOVERNOR



KAREN SEDDON  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**

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IN REPLY REFER TO

Statement of  
**Karen Seddon**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON WAYS AND MEANS**

February 26, 2009 9:00 a.m.  
Room 016, State Capitol

In consideration of  
**S.B. 1343, S.D. 1**  
**RELATING TO FEES AND OTHER ASSESSMENTS.**

The Hawaii Housing Finance and Development Corporation (HHFDC) **opposes** S.B. 1343, S.D. 1 as it applies to its own authority to establish and revise fees and charges via administrative rulemaking pursuant to Chapter 91, Hawaii Revised Statutes. As a special-funded agency, the ability to establish and revise fees and service charges through the administrative rulemaking process will ensure that administrative expenses are covered and a larger portion of the HHFDC's special funds are devoted to housing finance and development assistance..

S.B. 1343, S.D. 1 would establish statutory fees for several HHFDC housing financing and development programs, which, from the effective date thereafter, could only be amended while the Legislature is in session. Because of this limitation, as time goes on it will be difficult to ensure that the fees charged are timely and appropriate.

Thank you for the opportunity to provide written comments in opposition to this bill.