SB 2760

Measure Title: RELATING TO ESCROW DEPOSITORIES.

Report Title: Escrow Depositories; Fees; Bonds

Description: Amends the fee structure for services provided by the Division of Financial Institutions of the Department of Commerce and Consumer Affairs for escrow depository regulation; amends fines for violations of escrow depository regulations; and adjusts bond requirements for escrow depositories.

Companion: HB2498

Package: Gov

Current Referral: CPN, WAM

Introducer(s): TSUTSUI (BR)

Sort by Date		**Status Text**
1/25/2012	S	Introduced.
1/25/2012	S	Passed First Reading.
1/25/2012	S	Referred to CPN, WAM.
1/27/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-03-12 9:00AM in conference room 229.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
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TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Friday, February 3, 2012
9:00 a.m.

TESTIMONY ON S.B. 2760
RELATING TO ESCROW DEPOSITORIES

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

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("DCCA") in support of Senate Bill No. 2760.

The Division of Financial Institutions ("DFI") in DCCA has the responsibility to ensure that customers of escrow depositories receive the services they contract for. To do this, DFI must review the financial condition of each escrow depository annually which includes a thorough analysis of the financial strength of each company. Currently, the fees are low and have not been reviewed or adjusted for the most part since 1987. While some of these increases or additional fees may seem high at first, an understanding of how low they've been for years, puts these new fees in a more reasonable light.

Because escrows by consumers are growing in size, the bonding requirements should more closely coincide with the escrow accounts amounts. Escrow companies hold funds in trust. To protect consumers against fraud and misuse of these funds, escrow companies must maintain fidelity bonds, capital bonds, and errors and omissions bonds. Because the required amounts of these bonds has also not been reviewed or adjusted over the past 20 years, the amounts of the bonds required have been raised to more accurately reflect today's escrow transaction amount.

The net capital bonds (Section 4, page 3) is a bond to meet the capital requirements of the company. In recognition that the bonding requirements are much higher than current requirements, DFI believes that a transitional period is reasonable to allow companies to find bonds or increase net capital to meet the requirements. Any licensee who holds a valid license as of July 1, 2012 will have to July 1, 2016 to meet the requirements.

The escrow depository bond (Section 5, page 3) is bond to be used to satisfy all judgments and decrees that may be recovered against the company. This bond requirement is tiered based on risk on the size of the company.

The fidelity bond is used to satisfy all judgments or decrees that may be recovered by consumers against directors, officers and employees who have access to money or negotiable securities or instruments. The bond requirement was adjusted to reflect the amount of fraud which may be perpetrated against a company over a period of time.

The errors and omissions insurance (Section 7, page 8) is a form of liability insurance that helps protect professional service companies and individuals from bearing the full cost of defending against a negligence claim made by a customer and damages awarded in a civil lawsuit. The coverage focuses on the alleged failure to perform the service. This requirement was adjusted to recognize that the size of the escrow transactions are larger than 1987 and an error would potentially be more than $100,000.

The proposed fees have been adjusted to reflect the time spent by staff to review each one of the requests. The current fee structure and the proposed fee structure is attached as Appendix A to my testimony.

The proposed annual renewal fee is the amount of fees DFI will use in its budget analysis to determine any funding needs. Currently, based on the proposed annual fee, DFI projects it will receive $80,000 in annual fees. Currently, DFI receives $3,050 in annual fees. The analysis for the renewal includes review of the financial statements, confirm that the company is in compliance with business registration laws, confirm that the owners of the company are still the same, confirm that the company has adequate capital and the appropriate bonds, and confirm that the company's offices are up-to-date.

Finally, the change to the administrative penalty section (Section 3, page 2) is suggested to allow DFI to penalize a company for violations of law. DFI has encountered several examples of violations of law where it could not exact a penalty as it could not prove the violation was willful. For example, several companies have relocated or closed offices without the approval of the Commissioner. Companies have admitted that they understood they needed prior approval by the Commissioner before relocating or closing an office, however, have argued that this is only a violation of the law, not a willful violation. We believe that these violations should be subject to penalty.

For all of these reasons, DFI supports Senate Bill No. 2760, and respectfully asks that the measure be passed.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

Appendix A

Statutory Section	Current fee	Proposed fee
449-4 Administrative Penalty	5000 per wilful violation	not more than $10,000 for each violation
449-5.5 Net Capital (or bond) - note effective 07.01.16	$50, 000	$250,000
449-9 ED bond	not less than $100,000	$100,000 for an escrow depository upon its initial licensure and for an escrow depository with average month-end escrow trust account balances of less than $500,000;
		$150,000 for an escrow depository with average month-end escrow trust account balances of at least $500,000 but less than $750,000;
		$200,000 for an escrow depository with average month-end escrow trust account balances of at least $750,000 but less than $1,000,000; and
		$250,000 for an escrow depository with average month-end escrow trust account balance of $1,000,000 or more
449-11 Fidelity bonds	not less than $25,000 & deductable of $5,000	not less than $250,000 & deductible of $10,000
449-12 Errors & ommissions insurance	not less than $100,000	not less than $250,000
449-14 Fees		
new application	$2,000	$2,000 + $60/hour over 80 hours of review; not more than $10,000.
establish a new branch office		$500
relocate an existing office or branch		$500

initial issuance and annual renewal of an escrow depository's license	$100	$ 500 for the initial license
initial issuance and annual renewal of a branch office license	$50	$100 for the initial license for each branch
reissuance of a license for the change in the business address of its office	$25	$100
reinstatement of a license that has lapsed		$1,000 for reinstatement of a license that has lapsed, plus $250 for each day that the license lapsed.
examination fee	$40	$60
renewal fees	$100 + $50 per branch	$5,000 for escrow trust account fiscal year-end balance of less than $5,000,000;
		$7,500 for escrow trust account fiscal year-end balance of at least $5,000,000 but less than $10,000,000 ;
		$10,000 for escrow trust account fiscal year-end balance of at least $10,000,000 but less than $25,000,000;
		$12,500 for escrow trust account fiscal year-end balance of at least $25,000,000 but less than $50,000,000; and
		$15,000 for escrow trust account fiscal year-end balance of $50,000,000 or more.