
A BILL FOR AN ACT

RELATING TO COMMERCE AND CONSUMER AFFAIRS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 241-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§241-7 Disposition of funds.** All taxes collected under
4 this chapter shall be state realizations [~~; provided that, by~~
5 ~~June 30 of each fiscal year, the sum of \$2,000,000 shall be~~
6 ~~deposited with the director of finance to the credit of the~~
7 ~~compliance resolution fund as established pursuant to section~~
8 ~~26-9(e)] ."~~

9 SECTION 2. Section 412:2-105, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§412:2-105 Fees [~~-~~]; expenses; assessments.** (a) The
12 commissioner shall charge any financial institution examined by
13 the commissioner or the commissioner's staff, an amount for
14 travel, per diem, mileage, and other reasonable expenses
15 incurred in connection with the examination.

16 (b) The commissioner shall bill the affected financial
17 institution for expenses as soon as feasible after the close of



1 the examination. The affected financial institution shall pay
2 the division within thirty days following the billing. All such
3 payments shall be deposited to the compliance resolution fund
4 established pursuant to section 26-9(o). All disputes relating
5 to these billings between the affected financial institution and
6 the commissioner shall be resolved in accordance with the
7 procedures for contested cases under chapter 91.

8 (c) A Hawaii financial institution that fails to make a
9 payment required by this section shall be subject to an
10 administrative fine of not more than \$250 per day for each day
11 it is in violation of this section, which fine, together with
12 the amount due under this section, may be recovered pursuant to
13 section 412:2-611, and shall be deposited into the compliance
14 resolution fund established pursuant to section 26-9(o).

15 (d) The amount or amounts to be assessed for fees and
16 expenses regulated under this chapter shall be determined and
17 assessed as provided below:

18 (1) The total amount or amounts to be assessed of
19 financial institutions regulated under this chapter
20 shall be calculated based on the division's proposed
21 fiscal year budget, less funds credited to the



1 division in the compliance resolution fund on June 30
2 of the fiscal year immediately preceding the fiscal
3 year of the proposed budget and less the division's
4 anticipated revenues;

5 (2) The assessments shall bear a reasonable relationship
6 to the costs of regulating the financial institutions,
7 including any administrative costs of the division;
8 and

9 (3) The sum total of all assessments made and collected
10 shall not exceed any ceiling established by the
11 legislature; provided that the total assessments for
12 all financial institutions in any one fiscal year
13 shall not exceed \$ _____ for each fiscal year."

14 SECTION 3. Section 436B-15, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§436B-15 Fees and expenses.** (a) No applicant or
17 licensee shall be granted a license pursuant to the licensing
18 laws unless the appropriate fees have been paid. Unless
19 otherwise provided by law, the director shall establish the
20 amount for all fees and expenses by rules adopted pursuant to
21 chapter 91. The fees to be established by the director may



1 include but not be limited to an application fee, filing fee,
2 license fee, renewal fee, examination fee, and other reasonable
3 and necessary fees related to the department's administrative
4 costs. Unless otherwise provided by law, the fees shall be
5 deposited with the director to the credit of the compliance
6 resolution fund established pursuant to section 26-9(o).

7 (b) The amount to be assessed for fees and expenses
8 regulated under title 25 shall be determined and assessed as
9 provided below:

10 (1) The total amount or amounts to be assessed of
11 licensees regulated under title 25 shall be calculated
12 based on the licensing authority's proposed fiscal
13 year budget, less funds in the professional and
14 vocational licensing division sub-account of the
15 compliance resolution fund on June 30 of the fiscal
16 year immediately preceding the fiscal year of the
17 proposed budget and less the licensing authority's
18 anticipated revenues;

19 (3) The assessments shall bear a reasonable relationship
20 to the costs of regulating the profession or vocation,



1 including any administrative costs of the division;
2 and
3 (4) The sum total of all assessments made and collected
4 shall not exceed the special fund ceiling or ceilings
5 related to the fund that are established by the
6 legislature; provided that the total assessments for
7 all professions and vocations in any one fiscal year
8 shall not exceed \$ _____ for each fiscal year."

9 SECTION 4. Section 440G-15, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§440G-15 Annual fees.** (a) Each cable operator shall pay
12 an annual fee [~~to be determined by the director.~~] of 4.5 per
13 cent of the income received from subscribers for cable services
14 rendered during the preceding year; provided that:

15 (1) The annual fee shall be paid by the cable operator to
16 the department before February 1 of each year;

17 (2) The director may decrease the amount of the annual fee
18 by decision and order if the director determines that
19 the existing annual fee exceeds the amount necessary
20 to cover the costs of administering this chapter; and



1 (3) The fees [~~se~~] collected under this section shall be
2 deposited into the compliance resolution fund
3 established under section 26-9(o).

4 [~~(b) The director shall adjust the fees assessed under~~
5 ~~this section, as necessary from time to time, pursuant to rules~~
6 ~~adopted in accordance with chapter 91.~~]

7 (b) The amount of the annual fee to be assessed for each
8 cable operator regulated under this chapter shall be determined
9 as follows:

10 (1) The total amount to be assessed of cable operators
11 shall be calculated based on the director's proposed
12 fiscal year budget, less funds in the cable operators
13 subaccount of the compliance resolution fund on June
14 30 of the fiscal year immediately preceding the fiscal
15 year of the proposed budget and less the
16 commissioner's anticipated revenues;

17 (2) The assessments shall bear a reasonable relationship
18 to the costs of regulating cable operators, including
19 any administrative costs of the division; and

20 (3) The sum total of all assessments made and collected
21 shall not exceed the special fund ceiling or ceilings



1 related to the fund that are established by the
 2 legislature; provided that the total assessments for
 3 all cable operators in any one fiscal year shall not
 4 exceed \$ for each fiscal year.

5 (c) For the purposes of this section, "income received
 6 from subscribers for cable services" means revenues derived from
 7 the supplying of regular subscriber service and shall include
 8 installation fees, disconnect and reconnect fees, and fees for
 9 regular cable benefits. It shall not include per-program or
 10 per-channel charges, leased channel revenues, advertising
 11 revenues, and other income derived from the cable system."

12 SECTION 5. Section 444-26, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 **"§444-26 Contractors recovery fund; use of fund; person**
 15 **injured; fees.** (a) The board is authorized to establish and
 16 maintain a contractors recovery fund from which any person
 17 injured by an act, representation, transaction, or conduct of a
 18 duly licensed contractor, which is in violation of this chapter
 19 or the rules adopted pursuant thereto, may recover by order of
 20 the circuit court or district court of the judicial circuit
 21 where the violation occurred, an amount of not more than \$12,500



1 per contract, regardless of the number of persons injured under
2 the contract, for damages sustained by the act, representation,
3 transaction, or conduct. Recovery from the fund shall be
4 limited to the actual damages suffered by the claimant,
5 including court costs and fees as set by law, and reasonable
6 attorney fees as determined by the court; provided that recovery
7 from the fund shall not be awarded to persons injured by an act,
8 representation, transaction, or conduct of a contractor whose
9 license was suspended, revoked, forfeited, terminated, or in an
10 inactive status at the time the claimant entered into the
11 contract with the contractor.

12 (b) For purposes of this chapter, "person injured" or
13 "injured person" means and is limited to owners or lessees of
14 private residences, including condominium or cooperative units,
15 who have contracted with a duly licensed contractor for the
16 construction of improvements or alterations to the owners' or
17 lessees' own private residences and owners or lessees of real
18 property who have contracted with a duly licensed contractor for
19 the construction of the owners' or lessees' own private
20 residences on the owners' or lessees' real property.



1 (c) When any person applies for a contractors license, the
2 person shall pay, in addition to the person's original license
3 fee, a fee of \$150 for deposit in the contractors recovery fund,
4 and a fee for deposit in the contractors education fund as
5 provided in rules adopted by the director pursuant to chapter
6 91. In the event that the board does not issue the license,
7 these fees shall be returned to the applicant.

8 (d) When the contractors recovery fund attains a funding
9 level of \$170,893 for each fiscal year, the board shall make a
10 finding to adjust the fees generated by renewals or may
11 determine that payments made by renewing licensees shall cease.
12 If the payments are ceased, they shall remain ceased until the
13 fund attains a funding level of \$170,893."

14 SECTION 6. Section 444-29, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§444-29[+] **Management of fund.** (a) The sums received
17 by the contractors license board for deposit in the contractors
18 recovery fund shall be held by the contractors license board in
19 trust for carrying out the purposes of the contractors recovery
20 fund. The contractors license board, as trustee of the recovery
21 fund, shall be authorized to retain private legal counsel to



1 represent the board in any action which may result in collection
2 from the contractors recovery fund. These funds may be invested
3 and reinvested in the same manner as funds of the state
4 employees' retirement system, and the interest from these
5 investments shall be deposited to the credit of the contractors
6 education fund[~~, and which~~].

7 (b) The contractors education fund, which is hereby
8 created, shall be available to the contractors license board for
9 educational purposes[~~, which is hereby created.~~]; provided that
10 when the contractors education fund attains a funding level of
11 \$5,105, the board shall make a finding to adjust the amounts
12 deposited into the fund or cease depositing amounts into the
13 fund; provided further that the interest from the investments of
14 the contractors recovery fund shall be deposited into the
15 general fund. If the payments are ceased, they shall remain
16 ceased until the fund attains a funding level of \$5,105."

17 SECTION 7. Section 454F-41, Hawaii Revised Statutes, is
18 amended by amending subsection (d) to read as follows:

19 "(d) When the mortgage loan recovery fund attains a
20 funding level of \$750,000, the commissioner [~~may~~] shall either
21 make a finding to adjust the fees generated by renewals or [~~may~~]



1 determine that payments made by renewing licensees shall cease.
2 If the funding level falls below \$250,000 after the first five
3 years of the establishment of the fund, the commissioner may
4 adjust the fees to a reasonable level for the purpose of
5 attaining a funding level of \$750,000. If the payments are
6 ceased, they shall remain ceased until the funding level falls
7 below \$750,000 in a fiscal year."

8 SECTION 8. Section 467-16, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§467-16 Real estate recovery fund; use of fund; fees.**

11 (a) The commission shall establish and maintain a trust fund
12 which shall be known as the real estate recovery fund from which
13 any person aggrieved by an act, representation, transaction, or
14 conduct of a duly licensed real estate broker, or real estate
15 salesperson, upon the grounds of fraud, misrepresentation, or
16 deceit, may recover upon the commission's settlement of a claim
17 or by order of the circuit court or district court of the county
18 where the violation occurred, an amount of not more than \$25,000
19 per transaction for damages sustained by the fraud,
20 misrepresentation, or deceit, including court costs and fees as



1 set by law, and reasonable attorney fees as determined by the
2 court.

3 (b) When any person makes application for an original
4 license to practice as a real estate broker or salesperson the
5 person shall pay, in addition to the person's original license
6 fee, a real estate recovery fund fee as provided in rules
7 adopted by the director of commerce and consumer affairs
8 pursuant to chapter 91 for deposit in the real estate recovery
9 fund. If the commission does not issue the license, this fee
10 shall be returned to the applicant.

11 (c) The commission, as the trustee of the real estate
12 recovery fund, shall be authorized to expend the funds to:

- 13 (1) Retain private legal counsel to represent the
14 commission in any action involving or which may result
15 in payment from the real estate recovery fund;
- 16 (2) Retain a certified public accountant for accounting
17 and auditing of the real estate recovery fund;
- 18 (3) Employ necessary personnel, not subject to chapter 76,
19 to assist the commission in exercising its powers and
20 duties with respect to the real estate recovery fund;
21 and



1 (4) Retain a consultant to recover and collect any
2 payments from the real estate recovery fund plus
3 interest from the judgment debtor.

4 (d) When the real estate recovery fund attains a funding
5 level of \$131,799 for each fiscal year, the commission shall
6 make a finding to adjust the real estate recovery fund fee or
7 may determine that payments of real estate recovery fund fees
8 shall cease. If the payments are ceased, they shall remain
9 ceased until the fund attains a funding level of \$131,799."

10 SECTION 9. Section 467-19, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§467-19 Management of fund.** (a) The sums received by
13 the real estate commission for deposit in the real estate
14 recovery fund shall be held by the commission in trust for
15 carrying out the purpose of the real estate recovery fund. The
16 real estate commission, as the trustee of the recovery fund,
17 shall be authorized to expend the funds to retain private legal
18 counsel to represent the commission in any action involving the
19 real estate recovery fund. These funds may be invested and
20 reinvested in the same manner as funds of the state employees'
21 retirement system, and the interest from these investments shall



1 be deposited to the credit of the real estate education fund,
2 and which shall be available to the commission for educational
3 purposes, which is hereby created. The real estate commission,
4 as trustee of the real estate education fund, may invest and
5 reinvest the real estate education fund in the same manner as
6 funds of the state employees' retirement system. The commission
7 for investment purposes, may combine the real estate education
8 and recovery funds and invest and reinvest the combined funds in
9 the same manner as funds of the state employees' retirement
10 system. The commission shall keep separate accounting records
11 for the two funds.

12 (b) Educational purposes as used in subsection (a) shall
13 include those purposes to promote the advancement of education
14 and research in the field of real estate for the benefit of the
15 public and those licensed under the provisions of this chapter
16 and the improvement and more efficient administration of the
17 real estate industry. The commission, in its discretion, may
18 use any and all moneys in the real estate education fund
19 consistent with the above. The commission and the director of
20 commerce and consumer affairs may also use moneys in the
21 education fund to employ necessary personnel, not subject to



1 chapter 76, to fully effectuate subsection (b) and carry out its
2 purpose.

3 (c) When the real estate education fund attains a funding
4 level of \$602,099 for a fiscal year, the commission shall make a
5 finding to adjust the amounts deposited into the real estate
6 education fund or cease depositing amounts into the real estate
7 education fund; provided further that the interest from the
8 investments of the real estate recovery fund shall be deposited
9 into the general fund. If the payments are ceased, they shall
10 remain ceased until the fund attains a funding level of
11 \$602,099."

12 SECTION 10. Section 514B-72, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§514B-72 Condominium education trust fund; payments by**
15 **associations and developers.** (a) Each project or association
16 with more than five units shall pay to the department of
17 commerce and consumer affairs:

18 (1) A condominium education trust fund fee within one year
19 after the recordation of the purchase of the first
20 unit or within thirty days of the association's first
21 meeting, and thereafter, on or before June 30 of every



1 odd-numbered year, as prescribed by rules adopted
2 pursuant to chapter 91; and

3 (2) Beginning with the July 1, 2015, biennium
4 registration, an additional annual condominium
5 education trust fund fee in an amount equal to the
6 product of \$1.50 times the number of condominium units
7 included in the registered project or association to
8 be dedicated to supporting mediation or voluntary
9 binding arbitration of condominium related disputes.
10 The additional condominium education trust fund fee
11 shall total \$3 per unit until the commission adopts
12 rules pursuant to chapter 91. On June 30 of every
13 odd-numbered year, any unexpended additional amounts
14 paid into the condominium education trust fund and
15 initially dedicated to supporting mediation or
16 voluntary binding arbitration of condominium related
17 disputes, as required by this paragraph, shall be used
18 for educational purposes as provided in section
19 514B-71(a)(1), (2), and (3).

20 (b) Each developer shall pay to the department of commerce
21 and consumer affairs the condominium education trust fund fee



1 for each unit in the project, as prescribed by rules adopted by
2 the director of commerce and consumer affairs pursuant to
3 chapter 91. The project shall not be registered and no
4 effective date for a developer's public report shall be issued
5 until the payment has been made.

6 (c) Payments of any fees required under this section shall
7 be due on or before the registration due date and shall be
8 nonrefundable. Failure to pay the required fee by the due date
9 shall result in a penalty assessment of ten per cent of the
10 amount due and the association shall not have standing to bring
11 any action to collect or to foreclose any lien for common
12 expenses or other assessments in any court of this State until
13 the amount due, including any penalty, is paid. Failure of an
14 association to pay a fee required under this section shall not
15 impair the validity of any claim of the association for common
16 expenses or other assessments, or prevent the association from
17 defending any action in any court of this State.

18 (d) The department of commerce and consumer affairs shall
19 allocate the fees collected under this section to the
20 condominium education trust fund established pursuant to section
21 514B-71. The fees collected pursuant to this section shall be



1 administratively and fiscally managed together as one
2 condominium education trust fund established by section 514B-71.

3 (e) When the condominium education trust fund attains a
4 funding level of \$607,819 for each fiscal year, the commission
5 shall make a finding to adjust the fees established by this
6 section or may determine that the collection of fees pursuant to
7 this section shall cease. If the payments are ceased, they
8 shall remain ceased until the fund attains a funding level of
9 \$607,819."

10 SECTION 11. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect on July 1, 2019.



Report Title:

DCCA; Special Funds; Fees

Description:

Repeals the existing statutory requirement that \$2,000,000 of certain taxes collected on bank and financial corporations be deposited to the compliance resolution fund. Requires adjustments to fees and assessments collected by the Division of Financial Institutions based on the amount of moneys credited to the division in the compliance resolution fund. Establishes criteria to determine the amounts to be assessed for fees and expenses regulated under title 25, HRS. Provides for the reduction or cessation of fees or interest paid into the mortgage loan recovery fund, contractors recovery fund, contractors education fund, real estate recovery fund, real estate education fund, and condominium education fund if the balance in the funds attain a certain dollar amount. Sets the annual fee assessed on cable operators at 4.5% of the income received from subscribers for cable services rendered during the preceding calendar year. Authorizes the Director of the Department of Commerce and Consumer Affairs to reduce the fee if the amount exceeds the amount necessary to administer chapter 440G, HRS. (HB1528 HD1)

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