



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
Monday, February 25, 2019 at 2:30 p.m.

By

Jerris R. Hedges, MD, Dean

Kelley Withy, MD, Professor, Department of Complementary and Integrative Medicine
Hawai'i/Pacific Basin Area Health Education Center (AHEC) Director

John A Burns School of Medicine

And

Mary G. Boland, DrPH, RN, FAAN

Dean and Professor

School of Nursing & Dental Hygiene

And

Michael Bruno, PhD

Interim Vice Chancellor for Academic Affairs and Vice Chancellor for Research
University of Hawai'i at Mānoa

HB 1126 HD1 – RELATING TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chair Luke, Vice Chair Cullen and members of the committee:

Thank you for this opportunity to provide **comments and minor amending language** with respect to HB 1126 HD1 which establishes the operating budget for the Department of Commerce and Consumer Affairs. The bill also establishes criteria to determine the amounts to be assessed by the Professional and Vocational Licensing Division (PVL) for fees and expenses regulated under Title 25, HRS, based upon PVL's proposed fiscal year budget. The criteria of determining the fees assessed by PVL as contemplated by this bill will impact two assessments that are unrelated to PVL's fiscal year budget and which are not deposited into the compliance resolution fund.

One of the fees assessed by PVL is the physician workforce assessment pursuant to HRS §453-8.8. The fee of \$60 is assessed to each physician, surgeon and osteopathic physician upon renewal of their licenses, and is deposited into the John A. Burns School of Medicine (JABSOM) special fund. The purpose of the fee is to support ongoing assessment and planning, as well as the recruitment and retention of physicians, especially for the physician workforce serving in rural and medically underserved areas of the state. This modest license fee helps JABSOM implement interventions to recruit physicians and to identify ways to increase career satisfaction among practicing physicians so that they remain in practice. The work performed by JABSOM in assessing the physician workforce is a valuable tool in implementing initiatives to alleviate the physician shortage in Hawai'i. Nonstop efforts to recruit and retain physicians in our state, is a vital part of the process.

Specific activities that have been undertaken with the funds paid by the physicians upon relicensure include:

Continuing Medical Education for over 4,000 person-hours per year. Offerings include:

1. An annual Hawai'i Health Workforce Summit for 500 providers to learn about changes in healthcare, avoidance of "practice burn out", new advances in rural health, geriatrics and electronic health records;
2. Project ECHO, weekly remote telehealth sessions addressing endocrinology/diabetes, behavioral health, and geriatrics (monthly).

Recruitment of new physicians to Hawai'i. Physicians have found employment in Hawai'i based on job advertisements at www.ahec.hawaii.edu where all open positions in the state are advertised in collaboration with the Hawai'i Physician Recruiters group.

Support for activities to recruit students into health careers such as those at www.ahec.hawaii.edu.

Support for state efforts to get expanded federal designations of Health Professions Shortage Areas.

Support for 13 physicians to receive loan repayment for working in underserved areas.

Support for the Hawai'i Ho'okipa Program, a welcoming program for newly arriving providers to get them integrated into the community where they work.

Support training for medical students in rural areas.

Creation of a Rural Health Coordinator at University of Hawai'i that will work with all health students working in rural areas to increase opportunities and track the impact of the rural training programs.

The second of the fees assessed by PVL is the center for nursing fee pursuant to HRS §457-9.5. The fee of \$40 is assessed to each nurse licensee upon the issuance of a new license and at each license renewal period and is deposited into center for nursing special fund. The fee provides the funding needed to fulfill the legislative mandate to proactively address nursing workforce planning including assessments of the current nursing workforce supply (practicing nurses in Hawai'i) that is critical for healthcare planning and policy. The mission of the Center is to provide accurate nursing workforce data for planning, disseminate nursing knowledge to support excellence in practice and leadership development; promote a diverse workforce and advocate for sound health policy to serve the changing health care needs of the people of Hawai'i. To accomplish

its mission, The Center works closely with the Board of Nursing, public and private schools of nursing, state employers, and partners with the other health sciences professions in the state.

Specific outcomes and activities of the Center for Nursing include:

Educational capacity surveys with 100% Hawai'i schools of nursing participation.

Biennial nursing workforce supply surveys and reports, providing data by specialty, county, and academic progression. Nursing workforce supply surveys use a national model and are the most comprehensive survey of Hawai'i's nursing workforce available.

The only statewide electronic nursing resources clearinghouse at hawaiicenterfornursing.org

Partnering with large and small state health care organizations to support retention of nurses including developing the:

- First statewide Evidence Based Practice internship in the nation designed to improve health care delivery. EBP workshop now expanded to train clinical leaders and nursing faculty.
- First statewide new nurse residency program in the nation. Nurse residency programs improve workforce retention and facilitate new graduate nurses' transition to practice as a registered nurse.
- Maintains <https://hawaii.statecenternrc.org/>, the centralized web based clinical placement system for nursing student clinical placements for O'ahu and Kaua'i, providing clinical placement coordination and support for 80% of the nursing clinical learning in the state.
- Statewide Academic Progression in Nursing program that is a leader in the nation and will make Hawai'i the first state to achieve an 80% BS degree for entry into practice.
- Led a multi-discipline healthcare preceptor assessment whose findings supported the legislature's passing of Act 43, SLH 2018, related to Healthcare Preceptor Tax Credits.

Work with the Chamber of Commerce on O'ahu and Maui related to the Healthcare Workforce Initiatives including county, specialty, and setting nursing workforce supply and identification of current and needed programs to address gaps.

Assessment and identification of solutions related to clinical placement shortages for licensed practical and registered nursing students.

Support for statewide participation in healthcare and nursing leadership development, including support for neighbor island participants and engaging local and national speakers who are content experts on priority issues in Hawai'i.

Development of the in-person and online preceptor training and neighbor island behavioral health huis to support healthcare workforce pipeline in Hawai'i.

This modest license fee helps the Center for Nursing implement interventions to recruit physicians and to identify ways to increase career satisfaction among practicing physicians so that they remain in practice. The work performed by JABSOM in assessing the physician workforce is a valuable tool in implementing initiatives to alleviate the physician shortage in Hawai'i. Nonstop efforts to recruit and retain physicians in our state, is a vital part of the process.

It is essential that the physician and nursing workforce assessments remain in place so that JABSOM and HSCN can continue our efforts to address the doctor shortage, which is nearing 800 physicians, and retain a highly educated nursing workforce. However, the language of HB 1528 HD1 broadly refers to "fees and expenses regulated under title 25", which may be interpreted to include the physician workforce assessment and the nursing fees. **Therefore, we request a minor amendment to Section 4, subsection (b) beginning at page 5, line 16 of the bill as follows to clarify that the physician workforce and center for nursing assessments will not be subject to the criteria for establishing licensing fees and will remain in place:**

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

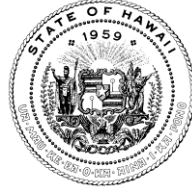
(1) The total amount or amounts to be assessed of licensees regulated under title 25 shall be calculated based on the licensing authority's proposed fiscal year budget, less funds in the professional and vocational licensing division sub-account of the compliance resolution fund on June 30 of the fiscal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

(3) The assessments shall bear a reasonable relationship to the costs of regulating the profession or vocation, including any administrative costs of the division; and

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

(5) This section shall not apply to the physician workforce assessment fee collected pursuant to HRS §453-8.8 and the center for nursing fee collected pursuant to HRS §457-9.5.

Thank you for this opportunity to testify.



LATE

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Monday, February 25, 2019
2:30 p.m.
State Capitol, Conference Room 308**

**On the following measure:
H.B. 1126, H.D. 1, RELATING TO THE DEPARTMENT
OF COMMERCE AND CONSUMER AFFAIRS**

Chair Luke and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs (DCCA or Department). H.B. 1126, H.D.1 relates to the base budget of the DCCA's Professional and Vocational Licensing Division (PVL), program ID CCA-105. The PVL's requests for fiscal biennium (FB) 2019-2021 are reflected in H.B. 1331.

The Department:

- (1) **Supports parts I and II of this bill**, which appropriate funds for the FB 2019-2021 operating budget of the PVL; and
- (2) **Opposes part III of this bill**, which: (a) establishes criteria to determine the amounts to be assessed for fees and expenses regulated under Hawaii Revised Statutes (HRS) title 25; and (b) provides for the reduction or cessation of fees or interest paid into the Contractors Recovery Fund,

Contractors Education Fund, Real Estate Recovery Fund, Real Estate Education Fund, and Condominium Education Fund if the funds attain a certain amount.

Testimony on Parts I and II

The Department supports parts I and II of this bill that make program appropriations for the PVL to carry out its duties. The PVL is responsible for implementing the licensing regulations of 51 different professions and vocations. Twenty-five licensing regulatory boards and commissions are administratively attached to the DCCA/PVL, as well as 26 licensing programs whose board duties and functions are vested in the DCCA Director.

The PVL provides staff support to licensing regulatory boards, commissions, and programs, handles applications and licenses, reviews and processes renewals, and maintains license records. The division provides guidance to properly implement licensing laws and administrative rules for the 51 professions and vocations.

Testimony on Part III

Title 25 Fees. Section 4 adds HRS section 436B-15(b) to require that fees regulated under HRS title 25 be calculated based upon the proposed fiscal year budget, less funds in the PVL's sub-account (S-305) as of June 30 of preceding fiscal year, and less the anticipated revenues. However, Hawaii Administrative Rules (HAR) chapter 53, entitled "Fee Relating to Boards and Commissions," already establishes the current fees for the PVL's 51 professions and vocations. This chapter provides notice to all applicants and licensees as to the fees they will be charged for their respective professions or vocations. Application and license fees are printed on original and renewal applications, as set forth in HAR chapter 53. The requirement that fees be calculated annually under proposed HRS section 436B-15(b) will no longer allow for timely amendments to HAR chapter 53, and the public, licensees, and staff will no longer have a point of reference for fees charged by the PVL. In turn, the PVL will need to change applications, update its websites, address deficiencies generated by the change in fees, and revise online renewal program parameters for each of its 51 professions and vocations each year.

In addition, section 4 caps all assessments made and collected and mandates that the total shall not exceed: (1) the special fund ceiling; and (2) a specified amount to be determined by the Legislature each fiscal year. As the PVL's professions and vocations renew every two or three years, the division's inability to charge fees for the biennial or triennial period will impair the currently smooth renewal process afforded PVL licensees.

Further, references to HRS title 25 in section 4 are inappropriate without further clarification, as title 25 includes areas other than those licensed by the PVL, such as the DCCA's Cable Television Division and Division of Financial Institutions, mortgage loan originators, and areas under the jurisdiction of the Department of Health (i.e., dietitians and genetic counselors).

The fact that section 4 would apply to all title 25 license fees is problematic because: (1) the formulary for fee assessments in H.D.1 is ill-suited for the numerous PVL-administered trust funds that are managed for the benefit of third parties; and (2) this is internally inconsistent with other sections of the bill that provide for different assessment formularies.

Contractors Recovery Fund (Trust). The Contractors Recovery Fund, established by HRS section 444-26 as a trust fund, is intended to provide recovery to "any person injured by an act, representation, transaction[,] or conduct of a duly licensed contractor," upon court order, in an amount that is not more than \$12,500 per contract. In addition, HRS section 444-34 limits fund payouts to \$25,000 per contractor. The fees for this fund are collected from all licensees upon issuance of any entity (firm/sole proprietor) license (\$150) and at renewal (\$10). Under HRS section 444-27, when the balance of the fund is less than \$250,000, the Board may assess every contractor a fee not to exceed \$500 annually for deposit.

Section 5 of H.D.1 provides that: (1) the Contractors Licensing Board (Board) attain and sustain a level of \$170,893 in the Contractors Recovery Fund; and (2) should the Board cease fees, the fees shall remain ceased until the fund reaches \$170,893.

The proposed language and fund balance of \$170,893 directly conflicts with HRS section 444-27, which establishes \$250,000 as the base balance in the fund. The

Legislature believed that \$250,000 was a safe balance to keep in the fund to enable the Board to pay claimants timely. The Legislature also provided the Board with the ability to assess every contractor, should the fund drop below \$250,000. Mandating the recovery fund balance to be \$170,893 will not provide a safe balance to pay for any person injured by any act, representation, transaction, or conduct of a duly licensed contractor, to pay for legal services associated with court proceedings in any recovery fund case, or to pay claimants timely.

Contractors Education Fund. Section 6 of H.D.1 provides that: (1) the Board attain and sustain a level of \$5,105 in the Contractors Education Fund; and (2) should the Board cease fees, the fees shall remain ceased until the fund reaches \$5,105. Subsection (b) also requires that the interest from the investments of the fund be deposited into the general fund.

As a general matter, the Department is concerned that HRS section 444-29 was not included in the original version of H.B. 1125. Accordingly, proper notice was not provided to the public or stakeholders that H.D. 1 would address and amend this section of chapter 444.

The Contractors Education Fund, established by HRS section 444-29, is funded by the interest of any investments or reinvestments in the same manner as funds of the Hawaii Employees' Retirement System for educational purposes. HAR section 16-77-101 establishes guidelines for the use of the fund for the consuming public, licensees, board members, and PVL staff, as well as for publications, media exposure, seminars, participation in national associations, classes, and any other educational purposes. The \$5,105 fund balance proposed in section 6 will not cover travel costs to the National Association of State Contractors Licensing Agencies annual meetings or costs to produce necessary print ads and/or television commercials.

The Department is especially concerned with the requirement that the interest from investments of the recovery fund be deposited into the general fund. The trust fund monies, which include the interest from investments of the recovery fund, belong to the licensees from whom this fund is derived. These trust fund monies should not be

deposited into the general fund to be used for any purpose other than for what is statutorily mandated.

Real Estate Recovery Fund. Section 7 of H.D.1 provides that: (1) the Real Estate Commission (Commission) attain and sustain a level of \$131,799 in the Real Estate Recovery Fund; and (2) should the Commission cease fees, the fees shall remain ceased until the fund reaches \$131,799. The Real Estate Recovery Fund, established by HRS section 467-16(a), is intended to provide recovery to persons “aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit[.]” The fees for this fund are collected from real estate licensees upon initial licensure. The statute establishes limits of \$25,000 per transaction and \$50,000 per licensee.

The proposed language and fund balance of \$131,799 directly conflicts with HRS section 467-17, which establishes \$350,000 as the base balance in the fund and mandates that the Department shall assess every real estate licensee an additional payment to the recovery fund, should the fund balance drop below \$350,000. The Legislature believed that \$350,000 was a safe balance to keep in the fund to enable the Commission to pay for a staff person to administer the fund, to pay for legal fees to protect the fund, and to pay claimants timely. As HRS section 467-17 requires the Department to assess a fee each time the fund drops below \$350,000, the fund will never obtain the \$131,799 that H.D. 1 proposes.

Further, mandating the recovery fund balance to be \$131,799 will not provide a safe balance to pay for any person injured by any act, representation, transaction, or conduct of a duly licensed real estate broker or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit, to pay for legal services associated with court proceedings in any recovery fund case, or to pay claimants timely. Since fees are collected only upon initial licensure, claimants will be made to wait for payment until sufficient funds are collected.

Real Estate Education Fund. Section 8 of H.D.1 provides that: (1) the Commission attain and sustain a level of \$602,099 in the Real Estate Education Fund;

and (2) should the Commission cease fees, the fees must remain ceased until the fund reaches \$602,099. Subsection (c) also requires that the interest from the investments of the real estate recovery fund be deposited into the general fund.

The Real Estate Education Fund is intended to “promote the advancement of education and research in the field of real estate for the benefit of the public and those licensed under this chapter and the improvement and more efficient administration of the real estate industry.” Specifically, the fund is used to cover: personnel costs to administer the program; conference travel costs to see the trends of the industry; legal fees; and costs to develop, publish, and distribute the quarterly real estate bulletin, as well as other publications and informational literature to all licensees, government officials, state libraries, and the public. In 2018, the fund expenditures totaled \$571,170. Therefore, the \$602,099 balance proposed in section 9 will provide only approximately \$31,000 over the fund’s annual expenditure and will leave no funding for additional initiatives.

As with the Contractors Education Fund, the Department has concerns with the proposed requirement that the interest from investments of the recovery fund be deposited into the general fund. The trust fund monies, which include the interest from investments of the recovery fund, belong to the licensees from whom this fund is derived. These trust fund monies should not be deposited into the general fund to be used for any purpose other than for what is statutorily mandated.

Condominium Education Trust Fund. Section 9 of H.D.1 provides that: (1) the Condominium Education Trust Fund attain and sustain a level of \$607,819; and (2) should the Commission cease fees, the fees shall remain ceased until the fund reaches \$607,819. The Condominium Education Trust Fund, established by HRS section 514B-71, is intended to finance or promote: (1) education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under HRS chapter 514B; (2) the improvement and more efficient administration of associations; (3) expeditious and inexpensive procedures for resolving association disputes; (4) support for mediation of condominium-related disputes; and (5) support for voluntary binding arbitration between

parties in condominium related disputes, pursuant to HRS chapter 514B. The fund derives its revenues from developers and associations. Expenditures (\$66,657) and encumbrances (\$1,162) are used to cover: personnel costs to administer the program, costs to develop interactive educational and research programs, seminars, and special meetings with those in the condominium community; costs to administer contracts and provide funding for alternative dispute resolution through programs such as the American Arbitration Association and other arbitration organizations; and costs to administer the registration and biennial re-registration of condominium associations, condominium managing agents, and condominium hotel operators.

In 2013, HRS section 514B-71 was amended (Act 187) to expand the use of the fund to provide support for mediation of condominium-related disputes. Act 187 also provides for an additional assessment related to this expanded function. This section was further revised through Act 196 (2018) to expand the use of the fund to cover voluntary binding arbitration and to amend the conditions that mandate mediation and exceptions to mandatory mediation. The recent increase in the revenues to the fund resulting from the changes in the law, coupled with the relatively modest volume of alternative dispute resolutions, has resulted in a higher fund balance. The Department hopes that payouts from the fund will increase as the mechanisms provided by Act 187 (2013) and Act 196 (2018) are utilized by the condominium community. Therefore, the Department questions the proposed fund level of \$607,819 and whether it will be sufficient, should more parties choose to use alternative dispute resolution or binding arbitration.

Thank you for the opportunity to testify on this bill.