
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.

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

1 **PART I. GENERAL PROVISIONS**

2 SECTION 1. The purpose of parts I and II of this Act is to
3 establish the operating budget for the fiscal biennium beginning
4 July 1, 2019, and ending June 30, 2021, for state executive
5 branch programs under the purview of the house of
6 representatives standing committee on intrastate commerce.

7 SECTION 2. DEFINITIONS. Unless otherwise clear from the
8 context, as used in parts I and II of this Act:

9 Abbreviations, where used to denote the expending agency or
10 a standing committee of the house of representatives, shall mean
11 the following:

12 CCA Department of commerce and consumer affairs

13 IAC House of representatives standing committee on
14 intrastate commerce

15 "Expending agency" means the executive department,
16 independent commission, bureau, office, board, or other
17 establishment of the state government (other than the



1 legislature, office of Hawaiian affairs, and judiciary), the
2 political subdivisions of the State, or any quasi-public
3 institution supported in whole or in part by state funds, which
4 is authorized to expend specified appropriations made by this
5 Act.

6 "Means of financing" or "MOF" means the source from which
7 funds are appropriated or authorized to be expended for the
8 programs and projects specified in this Act. All appropriations
9 are followed by letter symbols. These letter symbols, where
10 used, shall have the following meanings:

11 B Special funds

12 T Trust funds

13 "Position ceiling" means the maximum number of permanent
14 and temporary full-time equivalent positions authorized for a
15 particular program during a specified period or periods, as
16 denoted by an asterisk for permanent full-time equivalent
17 positions and a pound sign for temporary full-time equivalent
18 positions.

19 "Program ID" means the unique identifier for the specific
20 program and consists of the abbreviation for the organization



1 responsible for carrying out the program followed by the
2 organization number for the program.

3 **PART II. PROGRAM APPROPRIATIONS**

4 SECTION 3. APPROPRIATIONS. The following sums, or so much
5 thereof as may be sufficient to accomplish the purposes and
6 programs designated herein, are hereby appropriated or
7 authorized, as the case may be, from the means of financing
8 specified to the expending agency designated for the fiscal
9 biennium beginning July 1, 2019, and ending June 30, 2021. The
10 total expenditures and the number of positions in each fiscal
11 year of the biennium shall not exceed the sums and the number
12 indicated for each fiscal year, except as provided elsewhere in
13 this Act, or as provided by general law.



PROGRAM APPROPRIATIONS

ITEM NO	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2019-2020	M O F	FISCAL YEAR 2020-2021	M O F
1		IAC - INTRASTATE COMMERCE					
2	1.	CCA105 - PROFESSIONAL AND VOCATIONAL LICENSING					
3				61.00*		61.00*	
4				11.00#		11.00#	
5		OPERATING	CCA	7,483,138B		7,483,138B	
6				8.00*		8.00*	
7				5.00#		5.00#	
8			CCA	2,659,812T		2,659,812T	
9							



1 **PART III. STATUTORY PROVISIONS**

2 SECTION 4. Section 436B-15, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§436B-15 Fees and expenses.** (a) No applicant or
5 licensee shall be granted a license pursuant to the licensing
6 laws unless the appropriate fees have been paid. Unless
7 otherwise provided by law, the director shall establish the
8 amount for all fees and expenses by rules adopted pursuant to
9 chapter 91. The fees to be established by the director may
10 include but not be limited to an application fee, filing fee,
11 license fee, renewal fee, examination fee, and other reasonable
12 and necessary fees related to the department's administrative
13 costs. Unless otherwise provided by law, the fees shall be
14 deposited with the director to the credit of the compliance
15 resolution fund established pursuant to section 26-9(o).

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

19 (1) The total amount to be assessed of licensees regulated
20 under title 25 shall be calculated based on the
21 licensing authority's proposed fiscal year budget,



1 less funds in the professional and vocational
2 licensing division sub-account of the compliance
3 resolution fund on June 30 of the fiscal year
4 immediately preceding the fiscal year of the proposed
5 budget and less the licensing authority's anticipated
6 revenues;

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

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

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

19 "**§444-26 Contractors recovery fund; use of fund; person**
20 **injured; fees.** (a) The board is authorized to establish and
21 maintain a contractors recovery fund from which any person



1 injured by an act, representation, transaction, or conduct of a
2 duly licensed contractor, which is in violation of this chapter
3 or the rules adopted pursuant thereto, may recover by order of
4 the circuit court or district court of the judicial circuit
5 where the violation occurred, an amount of not more than \$12,500
6 per contract, regardless of the number of persons injured under
7 the contract, for damages sustained by the act, representation,
8 transaction, or conduct. Recovery from the fund shall be
9 limited to the actual damages suffered by the claimant,
10 including court costs and fees as set by law, and reasonable
11 attorney fees as determined by the court; provided that recovery
12 from the fund shall not be awarded to persons injured by an act,
13 representation, transaction, or conduct of a contractor whose
14 license was suspended, revoked, forfeited, terminated, or in an
15 inactive status at the time the claimant entered into the
16 contract with the contractor.

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



1 lessees' own private residences and owners or lessees of real
2 property who have contracted with a duly licensed contractor for
3 the construction of the owners' or lessees' own private
4 residences on the owners' or lessees' real property.

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

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

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

20 "[+]§444-29[+] **Management of fund.** (a) The sums received
21 by the contractors license board for deposit in the contractors



1 recovery fund shall be held by the contractors license board in
2 trust for carrying out the purposes of the contractors recovery
3 fund. The contractors license board, as trustee of the recovery
4 fund, shall be authorized to retain private legal counsel to
5 represent the board in any action which may result in collection
6 from the contractors recovery fund. These funds may be invested
7 and reinvested in the same manner as funds of the state
8 employees' retirement system, and the interest from these
9 investments shall be deposited to the credit of the contractors
10 education fund[~~, and which~~].

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



1 SECTION 7. Section 467-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§467-16 Real estate recovery fund; use of fund; fees.**

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

16 (b) When any person makes application for an original
17 license to practice as a real estate broker or salesperson the
18 person shall pay, in addition to the person's original license
19 fee, a real estate recovery fund fee as provided in rules
20 adopted by the director of commerce and consumer affairs
21 pursuant to chapter 91 for deposit in the real estate recovery



1 fund. If the commission does not issue the license, this fee
2 shall be returned to the applicant.

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

5 (1) Retain private legal counsel to represent the
6 commission in any action involving or which may result
7 in payment from the real estate recovery fund;

8 (2) Retain a certified public accountant for accounting
9 and auditing of the real estate recovery fund;

10 (3) Employ necessary personnel, not subject to chapter 76,
11 to assist the commission in exercising its powers and
12 duties with respect to the real estate recovery fund;
13 and

14 (4) Retain a consultant to recover and collect any
15 payments from the real estate recovery fund plus
16 interest from the judgment debtor.

17 (d) When the real estate recovery fund attains a funding
18 level of \$131,799 for each fiscal year, the commission shall
19 make a finding to adjust the real estate recovery fund fee or
20 may determine that payments of real estate recovery fund fees



1 shall cease. If the payments are ceased, they shall remain
2 ceased until the fund attains a funding level of \$131,799."

3 SECTION 8. Section 467-19, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§467-19 Management of fund.** (a) The sums received by
6 the real estate commission for deposit in the real estate
7 recovery fund shall be held by the commission in trust for
8 carrying out the purpose of the real estate recovery fund. The
9 real estate commission, as the trustee of the recovery fund,
10 shall be authorized to expend the funds to retain private legal
11 counsel to represent the commission in any action involving the
12 real estate recovery fund. These funds may be invested and
13 reinvested in the same manner as funds of the state employees'
14 retirement system, and the interest from these investments shall
15 be deposited to the credit of the real estate education fund,
16 and which shall be available to the commission for educational
17 purposes, which is hereby created. The real estate commission,
18 as trustee of the real estate education fund, may invest and
19 reinvest the real estate education fund in the same manner as
20 funds of the state employees' retirement system. The commission
21 for investment purposes, may combine the real estate education



1 and recovery funds and invest and reinvest the combined funds in
2 the same manner as funds of the state employees' retirement
3 system. The commission shall keep separate accounting records
4 for the two funds.

5 (b) Educational purposes as used in subsection (a) shall
6 include those purposes to promote the advancement of education
7 and research in the field of real estate for the benefit of the
8 public and those licensed under the provisions of this chapter
9 and the improvement and more efficient administration of the
10 real estate industry. The commission, in its discretion, may
11 use any and all moneys in the real estate education fund
12 consistent with the above. The commission and the director of
13 commerce and consumer affairs may also use moneys in the
14 education fund to employ necessary personnel, not subject to
15 chapter 76, to fully effectuate subsection (b) and carry out its
16 purpose.

17 (c) When the real estate education fund attains a funding
18 level of \$602,099 for each fiscal year, the commission shall
19 make a finding to adjust the amounts deposited into the real
20 estate education fund or cease depositing amounts into the real
21 estate education fund; provided further that the interest from



1 the investments of the real estate recovery fund shall be
2 deposited into the general fund. If the payments are ceased,
3 they shall remain ceased until the fund attains a funding level
4 of \$602,099."

5 SECTION 9. Section 514B-72, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§514B-72 Condominium education trust fund; payments by**
8 **associations and developers.** (a) Each project or association
9 with more than five units shall pay to the department of
10 commerce and consumer affairs:

11 (1) A condominium education trust fund fee within one year
12 after the recordation of the purchase of the first
13 unit or within thirty days of the association's first
14 meeting, and thereafter, on or before June 30 of every
15 odd-numbered year, as prescribed by rules adopted
16 pursuant to chapter 91; and

17 (2) Beginning with the July 1, 2015, biennium
18 registration, an additional annual condominium
19 education trust fund fee in an amount equal to the
20 product of \$1.50 times the number of condominium units
21 included in the registered project or association to



1 be dedicated to supporting mediation or voluntary
2 binding arbitration of condominium related disputes.
3 The additional condominium education trust fund fee
4 shall total \$3 per unit until the commission adopts
5 rules pursuant to chapter 91. On June 30 of every
6 odd-numbered year, any unexpended additional amounts
7 paid into the condominium education trust fund and
8 initially dedicated to supporting mediation or
9 voluntary binding arbitration of condominium related
10 disputes, as required by this paragraph, shall be used
11 for educational purposes as provided in section
12 514B-71(a)(1), (2), and (3).

13 (b) Each developer shall pay to the department of commerce
14 and consumer affairs the condominium education trust fund fee
15 for each unit in the project, as prescribed by rules adopted by
16 the director of commerce and consumer affairs pursuant to
17 chapter 91. The project shall not be registered and no
18 effective date for a developer's public report shall be issued
19 until the payment has been made.

20 (c) Payments of any fees required under this section shall
21 be due on or before the registration due date and shall be



1 nonrefundable. Failure to pay the required fee by the due date
2 shall result in a penalty assessment of ten per cent of the
3 amount due and the association shall not have standing to bring
4 any action to collect or to foreclose any lien for common
5 expenses or other assessments in any court of this State until
6 the amount due, including any penalty, is paid. Failure of an
7 association to pay a fee required under this section shall not
8 impair the validity of any claim of the association for common
9 expenses or other assessments, or prevent the association from
10 defending any action in any court of this State.

11 (d) The department of commerce and consumer affairs shall
12 allocate the fees collected under this section to the
13 condominium education trust fund established pursuant to section
14 514B-71. The fees collected pursuant to this section shall be
15 administratively and fiscally managed together as one
16 condominium education trust fund established by section 514B-71.

17 (e) When the condominium education trust fund attains a
18 funding level of \$607,819 in each fiscal year, the commission
19 shall make a finding to adjust the fees established by this
20 section or may determine that the collection of fees pursuant to
21 this section shall cease. If the payments are ceased, they



1 shall remain ceased until the fund attains a funding level of
2 \$607,819."

3 **PART IV. GENERAL PROVISIONS**

4 SECTION 10. If any portion of this Act or its application
5 to any person, entity, or circumstance is held to be invalid for
6 any reason, then the legislature declares that the remainder of
7 the Act and each and every other provision thereof shall not be
8 affected thereby. If any portion of a specific appropriation is
9 held to be invalid for any reason, the remaining portion shall
10 be expended to fulfill the objective of the appropriation to the
11 extent possible.

12 SECTION 11. If manifest clerical, typographical, or other
13 mechanical errors are found in part I or part II of this Act,
14 the governor may correct the errors.

15 SECTION 12. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 13. This Act shall take effect on July 1, 2019.



Report Title:

State Budget; DCCA; Professional and Vocational Licensing; CCA105; IAC; Contractors Recovery Fund; Real Estate Education Fund; Condominium Education Fund; Fees; Interest

Description:

Appropriates funds for Fiscal Biennium 2019-2021 for the professional and vocational licensing program of the Department of Commerce and Consumer Affairs, which is under the purview of the House of Representatives Standing Committee on Intrastate Commerce. 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 contractors recovery fund, contractors education fund, real estate recovery fund, real estate education fund, and condominium education fund if the funds attain a certain dollar amount. (HB1126 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

