

S.B. NO. 2871

JAN 23 2020

A BILL FOR AN ACT

RELATING TO PROFESSIONAL AND VOCATIONAL LICENSING TRUST FUNDS.

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

1 SECTION 1. Section 444-26, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§444-26 Contractors recovery fund; use of fund; person**
4 **injured; fees.** (a) The board is authorized to establish and
5 maintain a contractors recovery fund from which any person
6 injured by an act, representation, transaction, or conduct of a
7 duly licensed contractor, which is in violation of this chapter
8 or the rules adopted pursuant thereto, may recover by order of
9 the circuit court or district court of the judicial circuit
10 where the violation occurred, an amount of not more than \$12,500
11 per contract, regardless of the number of persons injured under
12 the contract, for damages sustained by the act, representation,
13 transaction, or conduct. Recovery from the fund shall be
14 limited to the actual damages suffered by the claimant,
15 including court costs and fees as set by law, and reasonable
16 attorney fees as determined by the court; provided that recovery
17 from the fund shall not be awarded to persons injured by an act,
18 representation, transaction, or conduct of a contractor whose

S .B. NO. 2871

1 license was suspended, revoked, forfeited, terminated, or in an
2 inactive status at the time the claimant entered into the
3 contract with the contractor.

4 (b) For purposes of this chapter, "person injured" or
5 "injured person" means and is limited to owners or lessees of
6 private residences, including condominium or cooperative units,
7 who have contracted with a duly licensed contractor for the
8 construction of improvements or alterations to the owners' or
9 lessees' own private residences and owners or lessees of real
10 property who have contracted with a duly licensed contractor for
11 the construction of the owners' or lessees' own private
12 residences on the owners' or lessees' real property.

13 (c) When any person applies for a contractors license, the
14 person shall pay, in addition to the person's original license
15 fee, a fee of \$150 for deposit in the contractors recovery fund,
16 and a fee for deposit in the contractors education fund as
17 provided in rules adopted by the director pursuant to chapter
18 91. In the event that the board does not issue the license,
19 these fees shall be returned to the applicant.

20 ~~[(d) When the contractors recovery fund attains a funding~~
21 ~~level of \$420,893 in any fiscal year, the board shall either:~~

22 ~~(1) Cease accepting payments made by renewing licenses;~~
23 ~~or~~

S .B. NO. 2871

1 ~~(2) Develop a process to refund monies in excess of the~~
2 ~~\$420,893 fund balance to licensees who paid into the~~
3 ~~fund, and refund such monies.~~

4 ~~If acceptance of payments is ceased, it shall remain ceased~~
5 ~~until the funding level falls below \$420,893.]"~~

6 SECTION 2. Section 444-29, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[+]~~**\$444-29**~~[+]~~ **Management of fund.** (a) The sums received
9 by the contractors license board for deposit in the contractors
10 recovery fund shall be held by the contractors license board in
11 trust for carrying out the purposes of the contractors recovery
12 fund. The contractors license board, as trustee of the recovery
13 fund, shall be authorized to retain private legal counsel to
14 represent the board in any action which may result in collection
15 from the contractors recovery fund. These funds may be invested
16 and reinvested in the same manner as funds of the state
17 employees' retirement system, and the interest from these
18 investments shall be deposited to the credit of the contractors
19 education fund.

20 (b) The contractors education fund, which is hereby
21 created, shall be available to the contractors license board for
22 educational purposes~~[-; provided that when the contractors~~

S .B. NO. 2871

1 ~~education fund attains a funding level of \$15,315 in any fiscal~~
2 ~~year, the board shall either:~~

3 ~~(1) Cease accepting payments made by renewing licenses;~~
4 ~~or~~

5 ~~(2) Develop a process to refund monies in excess of the~~
6 ~~\$15,315 fund balance to licensees who paid into the~~
7 ~~fund, and refund such monies.~~

8 ~~If acceptance of payments is ceased, it shall remain ceased~~
9 ~~until the funding level falls below \$15,315].~~

10 (c) Any law to the contrary notwithstanding, to maintain a
11 reasonable relation between the fees generated and the cost of
12 services rendered by the contractors recovery fund and the
13 contractors education fund, the board may make a finding that a
14 fee adjustment is appropriate and adjust the fees generated by
15 renewals accordingly."

16 SECTION 3. Section 467-11, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§467-11 Fees; original license and biennial renewals.**

19 (a) All fees for applications, registrations, certificates, and
20 any license prescribed by this chapter shall be deposited to the
21 credit of the compliance resolution fund established pursuant to
22 section 26-9(o), and all fees allocated to the real estate
23 education fund shall be as provided in rules adopted by the

S .B. NO. 2871

1 director of commerce and consumer affairs pursuant to chapter
2 91.

3 (b) The biennial renewal fee and completed renewal
4 application shall be submitted to the department of commerce and
5 consumer affairs on or before the commission-prescribed deadline
6 and prior to the expiration date of the license. All real
7 estate licenses expire on December 31 of an even-numbered year.
8 Failure, neglect, or refusal of any duly licensed real estate
9 broker or real estate salesperson to pay the biennial renewal
10 fee and to submit a completed renewal application shall
11 constitute a forfeiture of the license as of January 1 of the
12 subsequent odd-numbered year.

13 (c) The forfeited license of an individual real estate
14 broker or real estate salesperson may be restored upon
15 compliance with the licensing renewal requirements provided by
16 law; submission of a complete written application; payment of
17 all applicable renewal fees, penalty fees, compliance resolution
18 fund fees, and, if applicable, recovery fund assessments;
19 satisfaction of the applicable requirements in sections 467-8
20 and 467-9; submission of written documentation demonstrating
21 compliance with section 467-11.5; and, for individual licensees,
22 satisfaction of one of the following as applicable:

S .B. NO. 2871

1 (1) For a license forfeited for more than one year but
2 less than four years, the successful completion of the
3 commission-approved course or courses or passage of
4 the commission-approved examination; or

5 (2) For a license forfeited for more than four years but
6 less than five years, the successful passage of the
7 commission-approved examination.

8 (d) The license of any individual licensed as a real
9 estate broker or a real estate salesperson who fails to apply
10 for restoration of a forfeited license within five years from
11 the date of forfeiture shall be automatically terminated. Once
12 a license has been terminated pursuant to this section, the
13 individual may apply for a new salesperson license pursuant to
14 and subject to all applicable laws and rules in effect at the
15 time of application.

16 (e) The license of any real estate broker other than a
17 natural person that fails to apply for restoration of a
18 forfeited license within one year from the date of forfeiture,
19 shall be automatically terminated. Once a license has been
20 terminated pursuant to this section, the entity may apply for a
21 new license pursuant to and subject to all applicable laws and
22 rules in effect at the time of application.

S .B. NO. 2871

1 (f) A real estate broker or real estate salesperson may
2 place that person's license on an inactive status by filing an
3 application and setting forth information prescribed or required
4 by the commission; the license shall be renewed on or before the
5 commission-prescribed deadline prior to the expiration date of
6 the license by payment of the biennial renewal fee and
7 submission of a completed renewal application. A real estate
8 broker or real estate salesperson may reactivate that person's
9 inactive license by satisfying section 467-11.5, filing an
10 application setting forth any information as may be prescribed
11 or required by the commission, and paying the proper fee.

12 (g) The commission may refund any fee erroneously paid to
13 it under this section when the commission deems it just and
14 equitable.

15 ~~[(h) If the education fund balance attains a funding level~~
16 ~~of \$1,713,510 in any fiscal year, the commission shall either:~~

17 ~~(1) Cease accepting payments made by renewing licensees;~~

18 ~~or~~

19 ~~(2) Develop a process to refund monies in excess of the~~
20 ~~\$1,713,510 fund balance to licensees who paid into the~~
21 ~~fund, and refund such monies.~~

22 ~~If acceptance of payments is ceased, it shall remain ceased~~
23 ~~until the funding level falls below \$1,713,510.]"~~

S .B. NO. 2871

1 SECTION 4. 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
22 fund. If the commission does not issue the license, this fee
23 shall be returned to the applicant.

S .B. NO. 2871

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

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

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

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

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

15 ~~[(d) When the real estate recovery fund attains a funding~~
16 ~~level of \$481,799 in any fiscal year, the commission shall~~
17 ~~either:~~

18 ~~(1) Cease accepting payments made by renewing licensees;~~
19 ~~or~~

20 ~~(2) Develop a process to refund monies in excess of the~~
21 ~~\$481,799 fund balance to licensees who paid into the~~
22 ~~fund, and refund such monies.~~

S .B. NO. 2871

1 ~~If acceptance of payments is ceased, it shall remain ceased~~
2 ~~until the funding level falls below \$481,799.]"~~

3 SECTION 5. Section 467-19, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The sums received by the real estate commission for
6 deposit in the real estate recovery fund shall be held by the
7 commission in trust for carrying out the purpose of the real
8 estate recovery fund. The real estate commission, as the
9 trustee of the recovery fund, shall be authorized to expend the
10 funds to retain private legal counsel to represent the
11 commission in any action involving the real estate recovery
12 fund. These funds may be invested and reinvested in the same
13 manner as funds of the state employees retirement system, and
14 the interest from these investments shall be deposited to the
15 credit of the real estate education fund, and which shall be
16 available to the commission for educational purposes, which is
17 hereby created. The real estate commission, as trustee of the
18 real estate education fund, may invest and reinvest the real
19 estate education fund in the same manner as funds of the state
20 employees retirement system. Any law to the contrary
21 notwithstanding, the commission may make one or more findings
22 that a fee adjustment is appropriate and may adjust the fees
23 generated to regulate the fund balances of the real estate

S .B. NO. 2871

1 recovery fund and the real estate education fund to appropriate
2 levels. The commission for investment purposes, may combine the
3 real estate education and recovery funds and invest and reinvest
4 the combined funds in the same manner as funds of the state
5 employees retirement system. The commission shall keep separate
6 accounting records for the two funds."

7 SECTION 6. Section 514B-71, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) The commission shall use all moneys in the
10 condominium education trust fund for purposes consistent with
11 subsection (a). Any law to the contrary notwithstanding, the
12 commission may make a finding that a fee adjustment is
13 appropriate and adjust the fees paid by associations to regulate
14 the fund balance to an appropriate level."

15 SECTION 7. Section 514B-72, Hawaii Revised Statutes, is
16 amended to read as follows:

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

21 (1) A condominium education trust fund fee within one year
22 after the recordation of the purchase of the first
23 unit or within thirty days of the association's first

1 meeting, and thereafter, on or before June 30 of every
2 odd-numbered year, as prescribed by rules adopted
3 pursuant to chapter 91; and

4 (2) Beginning with the July 1, 2015, biennium
5 registration, an additional annual condominium
6 education trust fund fee in an amount equal to the
7 product of \$1.50 times the number of condominium units
8 included in the registered project or association to
9 be dedicated to supporting mediation or voluntary
10 binding arbitration of condominium related disputes.
11 The additional condominium education trust fund fee
12 shall total \$3 per unit until the commission adopts
13 rules pursuant to chapter 91. On June 30 of every
14 odd-numbered year, any unexpended additional amounts
15 paid into the condominium education trust fund and
16 initially dedicated to supporting mediation or
17 voluntary binding arbitration of condominium related
18 disputes, as required by this paragraph, shall be used
19 for educational purposes as provided in section 514B-
20 71(a)(1), (2), and (3).

21 (b) Each developer shall pay to the department of commerce
22 and consumer affairs the condominium education trust fund fee
23 for each unit in the project, as prescribed by rules adopted by

S .B. NO. 2871

1 the director of commerce and consumer affairs pursuant to
2 chapter 91. The project shall not be registered and no
3 effective date for a developer's public report shall be issued
4 until the payment has been made.

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

19 (d) The department of commerce and consumer affairs shall
20 allocate the fees collected under this section to the
21 condominium education trust fund established pursuant to section
22 514B-71. The fees collected pursuant to this section shall be

S .B. NO. 2871

Report Title:

Contractors Recovery Fund; Contractors Education Trust Fund; Real Estate Recovery Fund; Real Estate Education Trust Fund; Condominium Education Trust Fund; Professional and Vocational Licensing; Department of Commerce and Consumer Affairs; Chapter 444; Chapter 467; Chapter 514B

Description:

Allows the Contractors License Board and the Real Estate Commission to adjust, reduce, suspend, or cease collection of recovery fund and education fund fees when fund levels are adequate to carry out the statutory mandates for which the funds were created.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO PROFESSIONAL AND VOCATIONAL LICENSING TRUST FUNDS.

PURPOSE: To allow the Contractors License Board (Board) and the Real Estate Commission (Commission) to adjust, reduce, suspend, or cease collection of recovery fund and education fund fees when fund levels are adequate to carry out the statutory mandates for which the funds were created.

MEANS: Amend sections 444-26, 444-29, 467-11, 467-16, 467-19(a), 514B-71(b), and 514B-72, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Recently, the Board and Commission have been criticized for high balances in the Contractors Recovery Fund, Contractors Education Fund, Real Estate Recovery Fund, Real Estate Education Fund, and Condominium Education Trust Fund. The Board lacks statutory authority to make a finding that a fee adjustment is appropriate and to adjust the fees generated by renewals accordingly. Similarly, the Commission lacks statutory authority to make: (1) one or more findings that a fee adjustment is appropriate and to adjust the fees generated; and (2) a finding that a fee adjustment is appropriate and to adjust the fees paid by condominium associations. As a result, the Board and Commission are unable to regulate the fund balances of the Contractors Recovery Fund, Contractors Education Fund, Real Estate Recovery Fund, Real Estate Education Fund, and Condominium Education Trust Fund to appropriate levels.

This bill will give the Board and Commission statutory authority to adjust fees, should

SB. NO. 2871

either deem that fund amounts have exceeded the need to collect fees, and without needing to request fee reductions from the Governor through section 92-28, HRS.

Impact on the public: None.

Impact on the department and other agencies:

The amendments will enable the Board and Commission to review the fund balances, projected revenues, and program costs to determine if the funds can sustain the programs without adversely impacting the programs' operations or carrying out of their statutory mandates.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-105.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.