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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Intrastate Commerce
Tuesday, February 12, 2019
9:45 a.m.
State Capitol, Conference Room 430**

**On the following measures:
H.B. 1126, RELATING TO THE DEPARTMENT
OF COMMERCE AND CONSUMER AFFAIRS
and
H.B. 1331, RELATING TO THE BUDGET OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

Chair Ohno 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). The Department supports H.B. 1126, which appropriates funds for the fiscal biennium (FB) 2019-2021 operating budget of the DCCA's Professional and Vocational Licensing Division (PVL or Division), program ID CCA-105, under the purview of this committee. The Department also supports H.B. 1331, which establishes additional amounts to be appropriated or authorized and positions for the FB 2019-2021 operating budget of the PVL.

As a housekeeping matter, in H.B. 1126, the Department requests correcting the MOF T (trust) amount on page 4, line 8 by replacing "2,649,812" with "2,659,812."

Functions

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.

The PVL continues to forge ahead with its initiatives to improve accessibility to licensing services and information, and to deregulate and streamline the licensing process without compromising consumer protection. The PVL is committed to working with licensees and the public to achieve the optimum balance between thoughtful and fair regulation and consumer protection. In these difficult economic times, the PVL is mindful of the strain on Hawaii's businesses and seeks to integrate licensing measures and procedures that will facilitate business. Ultimately, the PVL seeks to achieve and facilitate a fair marketplace for the State.

Sources of Revenue

The sources of revenues for the PVL's special funds and trust funds are comprised of application, license, examination, and renewal fees from the 51 professions and vocations under the jurisdiction of the Department. Due to a steady increase in the number and complexity of license types that have been brought within the PVL's jurisdiction, coupled with increases in operational costs and personnel fringe percentages, and the clear need for a replacement of its legacy IT system, the PVL forecasted that it was heading toward a serious revenue shortage. In response, the PVL conducted a review of its license fees, most of which had never been increased in the past 20 years, and determined that an increase of fee amounts was appropriate. Fee adjustments were formally implemented in 2016. As a result of its right-sizing of fees, the PVL has sufficient reserves to fund its IT replacement project and move

forward with plans to provide better customer service to its licensees and the general public.

Non-General Fund Balances

- PVL Special Fund: \$7,981.62
- Real Estate Recovery Fund: \$870,665
- Real Estate Education Fund: \$786,881
- Condominium Education Trust Fund: \$2,184,889
- Contractors Recovery Fund: \$922,593
- Contractors Education Fund: \$560,524
- Real Estate Appraisers Fund: \$3,890

Base Budget for Fiscal Year (FY) 2019

- Special fund: \$7,237,383
- Trust funds: \$2,619,887

Number of Positions

- Special fund: 72 positions (61 permanent, 11 temporary)
- Trust funds: 13 positions (8 permanent, 5 temporary)

Number of Vacancies

- Special fund: 16 positions (11 permanent civil service, 4 temporary service, 1 temporary exempt-included)
- Trust fund: 1 position (permanent civil service exempt-included)

The PVL is actively recruiting to fill vacancies.

Requests for FB 2019-2021

The PVL is requesting an appropriation out of the Compliance Resolution Fund of:

- \$300,000 for FY 2019-2020 and \$300,000 for FY 2020-2021 to fund software licensing costs to replace the PVL's applicant/licensee integrated automated system (ALIAS); and
- \$108,806 for FY 2019-2020 and \$108,806 for FY 2020-2021 to fund two full-time equivalent (2.00 FTE) permanent positions that will perform work

pertaining to Act 044, Session Laws of Hawaii 2018 (physician licensure by endorsement).

Expenditures

By way of background, the Division's expenditure appropriation consists of operating and personnel expenses that are expended from the following accounts:

- **Compliance Resolution Fund (S-305):** The PVL's expenditures consist of operating and personnel expenses, equipment, and overhead. (The projected FY 2019 amount is \$853,092.) Operational expenses include, but are not limited to: travel and per diem expenses for neighbor island board members to attend meetings; machinery and equipment; personal services contracts for accounting services for the cemetery program; and scanning services to convert licensing record files into searchable electronic files. The PVL's largest expense is personnel expenses for approximately 70 employees who carry out statutory mandates to license the 51 areas under the PVL's jurisdiction, as well as personal service contracts. PVL encumbrances (\$1,043,284) are attributed to the replacement of its antiquated ALIAS system, maintenance and licensing fees to use the Salesforce platform as recommended by the Department of Enterprise Technology Services, and personal service contracts as described above.
- **Real Estate Recovery Fund (T-904):** The Real Estate Recovery Fund, established by Hawaii Revised Statutes (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. HRS section 467-17 provides that should the remaining fund drop less than \$350,000, the Department shall assess each licensee an additional payment for deposit into the fund. While the Department has never assessed this additional fee, the fund has dipped very close to \$350,000 on prior occasions. Expenditures (\$70,542) and encumbrances (\$5,695) are predominantly used to pay for legal fees

provided by a vendor who is contracted to represent the Real Estate Commission in recovery claims, at a rate of \$100.00 per hour, which has not increased for over 20 years.

- **Real Estate Education Fund (T-905):** The Real Estate Education Fund, established by HRS section 467-19(b), 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 the provisions of this chapter and the improvement and more efficient administration of the real estate industry.” The fees for this fund are collected upon initial licensure and include biennial renewal fees for schools, providers, courses, and instructors. The interest due from the real estate recovery fund is also deposited into this fund. Expenditures (\$571,170) and encumbrances (\$30,929) are 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. The “Condorama” informational sessions were conducted twice in 2018 at the Capitol and open to all interested parties.
- **Condominium Education Trust (T-906):** 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.

- **Contractors' Recovery Fund (T-908):** The Contractors' Recovery Fund, established by HRS section 444-26, 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-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 444-27, when the balance of the fund is less than \$250,000, the Contractors License Board (Board) may assess every contractor a fee not to exceed \$500 annually for deposit. In 1995, the balance dipped below this figure, and the Board assessed every entity licensee a \$50 assessment fee. Expenditures (\$39,446) and encumbrances (\$1,990) are used to cover legal fees for board representation and court proceedings in its administration of the fund, and any court order directing payment from the fund. The Board's legal fees are

provided by a vendor who is contracted to represent the Board in recovery claims, at a rate of \$100.00 per hour, which has not increased for over 20 years.

- **Contractors Education Fund (T-909):** 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. Hawaii Administrative Rules section 16-77-101 establishes guidelines for 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 purpose. Expenditures (\$5000) and encumbrances (\$0) are used to cover: national association dues (National Association of State Contractors Licensing Agencies); travel expenses for board members and staff to attend special board meetings on Oahu and national meetings to network with other contractor licensing agencies and discuss unlicensed activity and enforcement trends; and costs to publish educational materials.

Reserve Amount

The PVL projects a balance of \$7,932,414 in reserves. The division anticipates its reserves and revenues will cover its requested appropriation to fund its requests for the next biennium. In addition, anticipated future expenditures, including replacing the air conditioning system of King Kalākaua Building, repairing structural damage and roofing damage caused by Hurricane Lane, and developing a department-wide document management system, will require use of these reserves.

Thank you for the opportunity to testify on these bills.