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

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Wednesday, February 20, 2019
4:00 p.m.
State Capitol, Conference Room 308**

**On the following measure:
H.B. 1528, H.D. 1, RELATING TO 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). The Department strongly opposes this bill, which: (1) 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 (CRF); (2) 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 CRF; (3) establishes criteria to determine the amounts to be assessed for fees and expenses regulated under Hawaii Revised Statutes (HRS) title 25, entitled "Professions and Occupations"; (4) 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 Trust Fund if the balances in the funds attain a certain dollar amount; (5) 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; and (6) authorizes the Director of the DCCA to reduce the fee if the amount exceeds the amount necessary to administer HRS chapter 440G.

The Department recognizes the authority of the legislative branch of government regarding budgetary oversight and recognizes the importance of accountability and transparency in the budget process. While the Department disagrees with the need and propriety of some of the revenue-slashing measures reflected in H.D. 1, the DCCA hopes that some of the more egregious consequences of H.D.1 are unintended and as such can be timely addressed.

Unlike other departments, the DCCA receives no general fund appropriations. Instead, the Department relies on fees paid by registrants and licensees and on fines assessed or ordered for violations. The DCCA's financial strategy is premised on ensuring that divisions have revenues to pay expenses and contribute equitably to departmental overhead costs, while maintaining sufficient reserves to address planned or unexpected contingencies.

In addition to revenues received to cover operating expenses, the Department receives revenues that are held in trust and paid to aggrieved consumers who have been victimized by licensee malfeasance, such as the Mortgage Loan Recovery Fund, Contractors Recovery Fund, and Real Estate Recovery Fund, or collected and passed onto other agencies for specific purposes, such as the Physician's Workforce Fund and the Center for Nursing Fee, or dedicated funds for condominium mediation and arbitration in the Condominium Education Trust Fund (Act 196, Session Laws of Hawaii 2018). Suspension of revenues for these funds will have a direct negative impact on the fund beneficiaries.

The Department offers the following comments regarding H.D.1:

DIVISION OF FINANCIAL INSTITUTIONS (H.D. 1: SECTIONS 1, 2, AND 7)

Section 1 of the draft amends HRS chapter 241, entitled "Taxation of Banks and Other Financial Corporations," by deleting the provision that requires transfer of \$2,000,000 of the taxes paid each fiscal year to the CRF to support the operations of the Division of Financial Institutions (DFI). Section 2 of H.D.1 provides for the DFI to

assess its licensees certain amounts, including any administrative costs of the division, but also paradoxically provides that the assessment shall not exceed its ceiling. As currently drafted, it appears that banks and other financial institutions will be paying the full amount of the tax provided for in HRS chapter 241, as well as the full amount of the costs to administer the DFI. In other words, the DFI's licensee population will be paying \$2,000,000 more than it currently pays.

Section 2's addition to HRS section 412:2-105(d) will likely change the landscape of the banking industry in Hawaii. Since the special assessment applies only to state-chartered banks, these banks will likely decide to either change to a national charter or close, as they will be unable to determine the assessment for financial planning purposes. When all of these banks change to a national charter, Hawaii will not have a state bank regulator, and banks will be regulated by national regulators. During the last financial crisis, four of six state-chartered banks were under enforcement orders. It was the Commissioner of Financial Institutions who convinced the national bank regulators to keep the state-chartered banks in operation, although the national bank regulator strongly suggested closure. Consequently, Hawaii was the only state with no bank closures. The Commissioner chose to assist the state-chartered banks to alleviate their financial crises.

The financial services industry runs on a cyclical cycle with the economy. When the economy is strong, the number of financial institution branches and licensed entities and individuals increases. In contrast, when the economy is showing signs of weakness, the numbers drop. Currently, the cycle is on a downward projection. In fiscal year (FY) 2019, the DFI witnessed a \$400,000 decrease in revenues as companies closed or decreased the number of branches to service the public. In FY 2021, the ending balance of \$1.7M will not be sufficient to cover expenses in Q1 and Q2. The DFI collects the majority of its revenue during the license renewal period, which is October to December of each year.

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
|-------------------------------------|---------------------|--------------------|--------------------|--------------------|---------------------|---------------------|
| Revenues | \$5,678,123 | \$4,787,705 | \$2,656,000 | \$2,658,000 | \$2,656,000 | 2,656,000 |
| Expenditures | \$4,231,480 | \$4,514,147 | \$5,096,803 | \$5,096,803 | \$5,096,803 | 5,096,803 |
| Overhead | \$643,137 | \$688,703 | \$688,703 | \$688,703 | \$688,703 | 688,703 |
| Net (if no revenue) | \$803,505 | -\$415,145 | -\$3,129,506 | -\$3,127,506 | -\$3,129,506 | -\$3,129,506 |
| | | | | | | |
| Ending balance from reserves | \$11,209,350 | \$8,006,500 | \$4,876,994 | \$1,749,488 | -\$1,380,018 | -\$4,509,524 |

Section 7 requires the DFI to cease payments into the Mortgage Loan Recovery Fund. HRS section 454F-41 established this trust fund to compensate consumers who suffered loss involving fraud, misrepresentation, or deceit by a mortgage loan originator (MLO) or mortgage loan originator company (MLOC). Although recovery is capped at \$25,000 per transaction, if an MLO defrauds a consumer for one year, the amount defrauded would be \$300,000 (\$25,000 x 12 monthly mortgage payments). Currently, the DFI is aware of claims totaling at least \$200,000 from consumers who are still going through the circuit court process.

Since 2014, the Commissioner of Financial Institutions has used the authority in HRS section 454F-41(d) to determine the Mortgage Loan Recovery Fund is sufficient to cover known claims. Accordingly, the Commissioner has stopped collecting payments into the fund for existing MLOs and MLOCs. Hawaii is seen as an attractive place to be an MLO or MLOC because of the high price of real estate. A mainland MLO would have to originate three to four mortgage loans to constitute one origination in Hawaii. Although the mainland MLOs are required to learn Hawaii’s laws, they are not fastidious in complying with those laws. Approximately 70% of the MLOs live on the mainland. Consequently, all new MLOs and MLOCs are required to pay into the Mortgage Loan Recovery Fund, as existing MLOs and MLOCs should not have to pay for the bad acts of MLOs who did not contribute to the recovery fund.

| | FY 2015 (actual) | FY 2016 (actual) | FY 2017 (actual) | FY 2018 (actual) |
|------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Appropriation ceiling | 220,000 | 220,000 | 220,000 | 110,000 |
| Beginning cash balance | 1,124,965 | 1,429,665 | 1,578,165 | 1,813,815 |
| Payments | \$304,700 | \$148,500 | \$235,650 | \$176,900 |

CABLE TELEVISION DIVISION (H.D. 1: SECTION 4)

If the Legislature's intent is to have the annual fees assessed to cable operators be more closely aligned with the Cable Television Division's (CATV) actual costs on an annual basis, and, in the short term, to reduce the CATV's reserve fund, the Department respectfully recommends that this be accomplished by the DCCA Director, who by statute and rule currently has the authority to accomplish this same result by adjusting the annual fee assessed through a decision and order. In this way, the Legislature's intent may be accomplished, any unintended consequences from substantially amending HRS chapter 440G will be avoided, and the Department will retain the ability under HRS chapter 440G to adjust assessments to address any substantial fluctuations in the cable providers' subscriber income or impacts from the significant changes proposed by the Federal Communications Commission (FCC) to substantially reduce the amount that may be assessed to cable operators. Absent this flexibility, any adjustments would need to be made by future statutory amendments. This would result in inefficiency and delay in the Department's ability to protect the State's interests and in maintaining critical benefits provided through the cable franchises awarded, including the State's institutional network (INET).

Proposed HRS section 440G-15(a) in section 4 seems to mistakenly attempt to reduce the cable franchise fee by 0.5% to the set percentage of 4.5% of subscriber income collected while creating a formula for the assessment of the annual fee under proposed subsection (b). However, both subsection (a) and subsection (b) use the same term "annual fee," creating a direct conflict between these two subsections that may preclude implementation of one or both provisions because both subsections would be setting the same "annual fee" in different ways and contain no conditions under which one or the other would apply to make both subsections capable of being implemented. If section 4 is attempting to set the amount of the cable franchise fee under subsection (a), this would result in decreasing by 0.5% the current cable franchise fee of 5% negotiated for under current cable franchise agreements and set forth in DCCA orders. If the intent is instead to reduce CATV's annual fee assessments from its current 1% to 0.5%, as further discussed below, the Department suggests that

this be accomplished by amending only HRS section 440G-15(a) by adding that the “annual fees set forth in this section shall not exceed 0.5% of the cable operator’s gross revenues for preceding calendar year.”

For the Committee’s information, the State annually assesses a provider that is issued a cable television franchise in the State a **cable franchise fee**, which amount is set by negotiation of the cable franchise agreement entered into upon issuance of the cable franchise. The **annual fee**, which is established by HRS section 440G-15 and Hawaii Administrative Rules (HAR) section 16-132-2, is currently set at 1% of the income received from subscribers for cable services rendered during the preceding calendar year, and is subject to increase or decrease by the DCCA Director upon determining that the annual fee is insufficient or exceeds the amount necessary, respectively, to cover the costs of administering HRS chapter 440G. Although the annual fee is separately set by statute and rule, the annual fee (currently set at 1%) that is paid to the State to fund the CATV is counted toward the total federal cap on franchise fees of 5% of the cable operator’s gross income for the preceding calendar year. Therefore, the annual fee is considered 1% of the current cable franchise fee.

If the Legislature’s intent in amending HRS section 440G-15(a) is to reduce the CATV’s carryover balance from the collection of annual fees, the DCCA already has the authority to immediately and administratively reduce the amount of the annual fees assessed without this legislation. In fact, based upon internal department-recommended guidelines and consistent with the DCCA’s past actions, the CATV had intended to develop a plan to reduce or suspend the collection of annual fees from cable operators, to be consistent with reserve guidelines while also being cognizant of the changing landscape of the cable industry.

However, in September 2018, the FCC indicated its intent to, and subsequently in fact did, propose new rules that could drastically reduce future cable franchise fee payments. Specifically, the FCC proposed new rules that would change how cable franchise fees are calculated. The new proposed rules would allow all cable-related, “in-kind” contributions (other than PEG capitals costs and build-out requirements) to be treated as part of the franchise fees subject to the federal 5% franchise fee cap. In-kind

contributions that could be deducted from cable franchise fee payments may be interpreted to include the fair market value of other franchise requirements, such as PEG channel capacity and INET connections. Thus, if adopted, these proposed rules could drastically reduce future franchise fee payments to the State by allowing cable operators to offset the value of all contributions to the State's INET (which constitutes much of the communications infrastructure for state and local government agencies and educational institutions) and for PEG cable channels and PEG services. The DCCA has submitted comments to the FCC on behalf of the State regarding the detrimental impacts of these proposed new rules. The FCC has not yet issued its decision; however, judicial appeal is expected if the new proposed rules are adopted.

If the new proposed rules are adopted by the FCC and upheld by the courts on appeal, it would likely substantially reduce the monies collected by the CATV, INET benefits for government agencies and educational institutions, and services funding for PEG organizations throughout the State. Due to the uncertainty created by the FCC's proposed action and its possible adverse impact on future collection of franchise fees, the CATV deferred its plan to reduce or suspend the collection of annual fees. Maintaining current franchise fee assessments in the form of the State's assessed cable franchise fees and annual fees until the final outcome of the proposed rules is determined and any impacts quantified would be the most prudent course of action for the State at this time. The current franchise fees and benefits are crucial to provide the State's communications network (i.e., INET), to administer HRS chapter 440G, and to support other important services for the public, including PEG access services and PBS Hawaii.

For the reasons set forth above, the Department strongly recommends that to implement the Legislature's intent, this committee amend H.D. 1 by deleting section 4 in its entirety and instead direct the DCCA Director to reduce annual fee assessments to 0.5% until reserves reach 24 months of budgeted expenses for the CATV, unless the FCC's new proposed rules are implemented. If the Committee desires to put its directive in statute, the Department recommends that the statute be amended only to insert language into HRS section 440G-15(a), as described above.

PROFESSIONAL AND VOCATIONAL LICENSING DIVISION (H.D. 1: SECTIONS 3, 5, 6, 8, 9, AND 10)

Section 3 adds a new subsection to 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 Professional and Vocational Licensing Division's (PVL) sub-account (S-305) as of June 30 of preceding fiscal year, and less the anticipated revenues. However, 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 3 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 3 are inappropriate without further clarification, as title 25 includes areas other than those licensed by the PVL, such as the CATV, the DFI, MLOs, and areas under the jurisdiction of the Department of Health (i.e., dietitians and genetic counselors).

The fact that section 3 of H.D.1 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.

Section 5 adds HRS section 444-26(d) to mandate 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 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 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.

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.

Section 6 adds HRS section 444-29(b) to mandate 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. 1528. 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.

Section 8 adds HRS section 467-16(d) to mandate 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.

Section 9 adds HRS section 467-19(c) to mandate 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.

Section 10 adds a new section to HRS 514B-72 that mandates 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.

The Department opposes H.D. 1 not only because it would make the CATV, DFI, and PVL fiscally unsustainable, but because the Department already has the flexibility to adjust fees as may be necessary from time to time under HRS section 92-28. HRS 92-28 provides a mechanism to decrease nontax revenues, with the approval of the Governor, by up to 50% when it is reasonable to do so. HRS section 92-28 states, in relevant part:

[T]he fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable[.]

Indeed, the Department has exercised this authority under HRS section 92-28 on a number of occasions. During those occasions, fees were reduced, and the effects of that decrease were closely monitored. When it became prudent to do so, fees were reinstated and nontax revenues restored to their original amounts. The implementation of this decrease and subsequent reinstatement of fees proved to be an efficient and responsible process created by the Legislature.

Finally, H.D. 1 appears to be based on the false premise that the reserve ceilings in the Department's operating funds and trust funds should be tied to the highest historical payout from the fund. While the Department acknowledges a reasonable correlation should exist between the funds' ceilings and the amount of the fund reserves, slashing the reserve amounts in the manner proposed in H.D. 1 will require

frequent and unpredictable fee adjustments that will artificially and significantly drive up the costs of administering each program.

For the foregoing reasons, the Department strongly opposes this bill and requests that it be held.

Presentation to The
Committee on Finance
February 20, 2019 at 4:00 P.M.
State Capitol Conference Room 308

Testimony in Opposition to House Bill 1528, HD 1

TO: The Honorable Sylvia Luke, Chair, Committee on Finance
The Honorable Ty J.K. Cullen, Vice Chair Committee on Finance
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing banks with branches in Hawaii.

This bill seeks to amend the current fee and assessment structure for state banks and may have the effect of increasing the fees and assessments for state banks. There are currently six state banks. They are First Hawaiian Bank, Bank of Hawaii, Central Pacific Bank, Territorial Savings Bank (that recently converted from a federal charter to a state charter), Finance Factors, and Ohana Pacific Bank.

The present fee and assessment structure for state banks consists of and expenses in connection with examination and an assessment outlined in section 412:105.2. For large banks, the assessment is capped at \$150,000 a year and \$100,000 for mid-sized banks. When the statute was enacted, the banks did not object. In addition, the banks pay franchise tax.

HD 1 creates a new fee provision based on a formula which is based on DFI's budget but this provision in HD 1 creates unknowns and thereby making it difficult to ascertain the fees to be paid from this third source (the other sources are the assessment under section 412:105.2 and franchise tax). Because of a new source of funding, HBA fears that this might result in a revenue increase borne by the local banks.

Thank you for the opportunity to submit this testimony on HB 1528, HD 1 and for the reasons set forth herein, we oppose this bill. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

LATE

Testimony Presented Before the
House Committee on Finance
Wednesday, February 20, 2019 at 4:00 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

Michael Bruno, PhD

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

HB 1528 HD1 – RELATING TO 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 1528 HD1, which addresses certain taxes and fees assessed by 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.

This change is related to two fees assessed by PVL. 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://hawaiistatecenternrc.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 Hawaii 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 hui 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 3, subsection (b) beginning at page 4, line 7 of the bill as follows to clarify that the physician workforce assessment and center for nursing 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.

HAMB

Hawaii Association of Mortgage Professionals
PO Box 1074, Honolulu, HI 96808

LATE

TO: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K.Cullen, Vice Chair
Members of the Committee on Finance

RE: Testimony HB1528 HD1– Wednesday Feb 20, 2019 – Room 308

I am Bobby Chow, the President of the Hawaii Association of Mortgage Professionals (HAMB). We are a trade association that represents the residential mortgage brokerage industry and are regulated by the Department of Financial Institutions (DFI) under the DCCA in Hawaii

We oppose HB 1528 HD1, as written, for the following reasons:

1. The elimination of a current \$2,000,000 annual funding to DCCA impacts approximately 40% of the existing revenue stream to DCCA and is highly likely to seriously disrupt operation of the department negatively impacting the regulated parties and the public.
2. The option of replacing the funds collected with varying annual assessment to financial entities to the sum of something like \$2,000,000 is a tangible increase in operating costs related to being a Hawaii based financial Institution.

We do recognize that the current fee and tax structure has resulted in substantial cumulative surpluses in the DCCA CRF operating account and in numerous special Recovery and Education fund accounts under DCCA control. We certainly support the sections of the bill to cap and control the overall size and continued collection of fees paid by the regulated entities. Some funds are as much as double the statutory caps and are a drain on the businesses that continue to add to the overages.

As to the DCCA's current surplus in the primary operating CRF account: We recommend that the committee strongly consider directing that the budgeting process for DCCA specifically include annual consideration of reserves in the CRF. It should make adjustment for the return of funds to the general fund when appropriate while maintaining operational balance. It is our understanding that this has been accomplished informally in several previous years. This would be much less disruptive than permanently underfunding the revenue stream to the department and the financial cost and uncertainty of the assessment process to the affected businesses.

LATE

HB-1528-HD-1

Submitted on: 2/19/2019 9:20:48 PM

Testimony for FIN on 2/20/2019 4:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|----------------------------------|---------------------------|---------------------------|
| Jay April | Akaku: Maui Community Television | Oppose | No |

Comments:

House Committee on Finance

February 20, 2019

4:00 PM

State Capitol, Conference Room 308

In consideration of

HB 1528 HD1

Relating to Department of Commerce and Consumer Affairs

Chair Luke, and Members of the Finance Committee:

Thank you for the opportunity to submit our comments on HB 1528 HD1. My name is **Jay April President and CEO of Akaku Maui Community Media**. We support the intent of the bill as it provides appropriation for the operation of DCCA Cable Television Division (DCCA-CATV), but we have concerns regarding Section 4 of the bill and vigorously **oppose** the measure as currently written. A likely unintended consequence will be to adversely affect a successful “cable franchise fee” funding mechanism that supports PEG access media, Hawaii Public Television, secondary and higher education media programs as well as Native Hawaiian programming across all islands. A distinction needs to be made between fees that are traditionally allocated and currently used for important community communication and civic engagement purposes such as these and “reserve fund” budgets which are of a different stripe entirely.

Section 440G-15, Hawaii Revised Statutes, Annual Fees, provides funding for the operations of DCCA-CATV as well as support for some of the best community media operations in the United States including those on neighbor islands where electronic news and information tends to be dominated by Oahu commercial stations. Section 4 of the bill amends Section 440G-15 by replacing the current franchise fee as determined by the Director of DCCA, to a 4.5 % franchise fee. Under the Federal Cable Act, the maximum franchise fee that may be assessed is 5% of cable service charge on a subscriber's cable bill. In best practice across the nation and in regions like ours where community media is robust, the 5% fee is an appropriate amount since cable franchise fees are used as "rent for public rights of way" to support PEG Access Community Media and Hawaii Public TV statewide. It is our understanding that DCCA uses less than 1% of franchise fees for cable TV regulatory purposes and that the remainder of that unused 1% helps to fund an important archive of Hawaiian language programming. Since marketplace forces are deficient and always will be in meeting the full spectrum of our community communications needs, these worthwhile uses of funds provide essential benefits to our people. The unintended consequences of the language in Section 4 could dramatically affect the PEG operations of Akaku Community Media in Maui County, Olelo Community Media serving the City and County of Honolulu as well as Na Leo TV serving the County of Hawaii, and Ho'ike TV for Kauai County and other entities receiving franchise fees such as Hawaii Public Broadcasting, DOE and UH.

PEG access and community media is where the principles of localism, diversity of viewpoint and true electronic democracy thrive in a non-commercial, free marketplace of ideas. This is a participatory, people's media unfiltered by corporate spin. It is as fundamental to our lives as local newspapers once were, perhaps even more so, since the pervasiveness of this fully local resource allows participation and communication between and among all ethnicities, allows all viewpoints and can provide value for all people irrespective of literacy and education levels. In its finest expression, in communities like ours in Hawaii, not only does it bring tolerance, cultural understanding and knowledge, but it brings government and life-long education closer to the people. Most importantly, it brings people closer to each other. Of all media, along with public broadcasting, local Public Access, Community Radio and Local Community Broadband efforts deserve the highest funding and development priority from federal and state governments. In her written testimony, the Director has referred to a proposed rulemaking at the Federal Communications Commission (a rulemaking opposed by the entire Hawaii congressional delegation by the way) which is a blatant attempt by the Trump FCC to strip away all local, non-corporate, non-commercial, community media and provide a windfall to a few cable TV giants. It would be a shame if as an unintended consequence this bill would help diminish the local "electronic commons" we desperately need to give meaningful voice to, and sustain, the cultural, civic and economic life and character of real people all across our beloved islands.

Akaku Maui Community Media respectfully requests that Section 4 of HB 1528 be

removed, and leave in place the current language that provides the Director of DCCA the authority to adjust the annual fee as stated in the Director's written testimony on this bill before the House Committee on Intrastate Commerce on February 12, 2019.

Mahalo Nui Loa



For the **House Finance Committee**

Wednesday, February 20, 2019 4:00 p.m.
State Capitol, Conference Room 430

On the following measure:

H.B. 1528, HD 1: RELATING TO COMMERCE AND CONSUMER AFFAIRS

Dear Chair Luke,

My name is Leslie Wilcox and I am the President and CEO of PBS Hawaii, a private, nonprofit 501(c)3 educational multimedia organization and the state's sole member of the national Public Broadcasting Service (PBS). We are the state's only locally owned statewide television station.

Via cable, broadcast and satellite, we present **PBS NewsHour, Washington Week in Review, Frontline** and other reliable news and information; **Sesame Street, Curious George, Daniel Tiger's Neighborhood** and other curriculum-rich shows for young children; **HIKI NŌ: The Nation's First Statewide Student News Network, Insights on PBS Hawaii, Na Mele: Traditions in Hawaiian Song** and other local programming; and national flagship shows **NOVA, Nature** and **Masterpiece Theatre**, as part of a diverse array of offerings in science, history and arts and culture. We have the largest broadcast footprint of any Hawaii television station, serving 25 of the 25 most financially disadvantaged communities in the state.

We are opposed to HB 1528 HD 1 at a time that the Federal Communications Commission is engaged in sweeping rule-making regarding the determination and collection of cable franchise fees. Any action taken by the FCC will have an impact in Hawaii, and State changes made to the franchise fee process while federal rule-making is underway could have unintended consequences.

On behalf of PBS Hawaii, I humbly ask that you place this proposal on hold until the FCC's proposed rules are adopted and undergo likely judicial review.

Thank you very much for this opportunity to submit testimony. Please let us know if we can provide further information.

Sincerely,

Leslie Wilcox
President and CEO
lwilcox@pbshawaii.org

**House Committee on Finance
February 20, 2019
4:00 PM
State Capitol, Conference Room 308**



**In consideration of
HB 1528 HD1
Relating to the Department of Commerce and Consumer Affairs**

Chair Luke, and Members of the Finance Committee.

Thank you for the opportunity to submit our comments on HB 1528 HD1. My name is Sanford Inouye, President, and CEO of `Ōlelo Community Media. While we support the intent of the bill as it provides appropriation for the operation of DCCA Cable Television Division (DCCA-CATV) for the fiscal biennium 2019-2021, we have concerns regarding Section 4 of the bill. As to a reserve fund under DCCA- CATV's budget we offer no comment at this time.

Section 440G-15, Hawai`i Revised Statutes, Annual Fees, provides funding for the operations of DCCA-CATV. Section 4 of the bill amends Section 440G-15 by replacing the current one percent (1%) subscriber fee as determined by the Director of DCCA, to a 4.5 % fee. Under the Federal Cable Act, the maximum subscriber fee (sometimes referred to as a franchise fee) that may be assessed is 5% of cable service charge on a subscriber cable bill. The cable subscriber charge is a fee paid directly by subscribers and is a pass-through for cable operators. It is not a tax of general application or public assessment. The remaining four percent (4%) of the five percent (5%) federal law subscriber fee cap is allocated to PEG access organizations (3%) and Hawaii Public Broadcasting (1%). Our concern is that the unintended consequences of Section 4 of HB 1528 HD1 could significantly affect the PEG operations of `Ōlelo Community Media serving the City and County of Honolulu as well as Na Leo TV serving the County of Hawai`i, Akaku Media Television for Maui County and Ho'ike TV for Kauai County and other entities receiving subscriber fees such as Hawai`i Public Broadcast and educational institutions - DOE and UH.

PEG access or community access media provides for and promotes true freedom of speech through noncommercial programming created by ordinary individuals with extraordinary commitment and dedication to sharing their stories to the public. It is these types of hyperlocal and government programming that `Ōlelo, Na Leo, Akaku and Ho'ike are able to provide together with resources to train individuals and organizations to create their unique stories. Because the subscriber fee is a service charge on a subscriber's cable bill, `Ōlelo, Na Leo, Akaku and `Ho'ike are working diligently and efficiently to make sure that cable subscribers throughout Hawai`i receive those diverse local non-commercial programming in all that we do.

We respectfully request that Section 4 of the bill be removed, and leave in place the current language in Section 440G-15, HRS that provides the Director of DCCA the authority to adjust the annual fee as stated in the Director's written testimony on this bill before the House Committee on Intrastate Commerce on February 12, 2019.

Again, thank you for the opportunity to present our comments on this bill.

HB-1528-HD-1

Submitted on: 2/20/2019 2:12:35 PM

Testimony for FIN on 2/20/2019 4:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|-----------------------------------|--------------------|--------------------|
| J Robertson | Ho'ike Kauai Community Television | Oppose | No |

Comments:

Hawaii State House of Representatives

House Committee on Finance

Representative Sylvia Luke, Chair,

Representative Ty J.K. Cullen, Vice-Chair

HB1528 HD 1 Relating to Commerce and Consumer Affairs

Chair, Vice-Chair and Committee members,

Aloha and Good Afternoon

I am J Robertson, Managing Director at Ho'ike: Kauai Community Television serving the Garden Island with Public Education and Government Access for our community. I would like to express my gratitude in allowing me to provide some brief comments on HB 1528 HD 1 that relates to the Cable Division of the Department of Commerce and Consumer Affairs.

Ho'ike has no position on dealing with any reserve funds accumulated by the Department of Commerce and Consumer Affairs, however, I wish to share my concerns on the potentially harmful ramifications of this proposed bill. There appears to be some mis-understanding on the cable Franchise Fees themselves. The Franchise Fee is assessed on the Cable Operator who passes the expense to their subscribers. No one other than a cable subscriber makes any contribution to the Franchise fee. It has clearly been identified over the years as not State funds nor General funds. This fee is an exclusive benefit for those subscribers in receiving hyper local programming including news and important government communications.

In accordance with HRS 440-G and as provided in the Cable Act the franchising authority (the Department of Commerce and Consumer Affairs) can assess 5% of



adjusted revenues for the use of the public rights of way in each jurisdiction. The residents of our island gain the benefit of 3% from our island only while the Hawaii's Public Broadcast System and the DCCA receive 1% each of the statewide fees. Hawaii's other PEG operations also receive 3% annually. It is important to note that none of this money belongs to the State and is not any part of the General Fund. This is a dedicated resource for the people of each island and paid for exclusively by the cable subscriber.

For more than 25 years Hawaii's Public, Education and Government Access organizations – 'Olelo on Oahu, Na Leo on Hawaii, Akaku on Molokai, Lanai and Maui and Ho'ike on Kauai

Your oversight should be focused on the DCCA and the 1% that they received each year. The proposal listed in Section 4 of HB 1528 HD 1 of allocating 4.5% in total to the DCCA would effectively eliminate the franchise fee assessment for each individual county and cause great harm to the people of each of our islands. It would also be contrary to the existing franchise agreements.

We join in asking that you remove Section 4 from the bill while maintaining the current version of Section 440G-15 that affords the Director of the DCCA the ability to adjust the annual fee as necessary.

Sincerely,

J S Robertson

J S Robertson, Managing Director

Ho'ike Kauai Community Television – February 20, 2019

**House Committee on Finance
February 20, 2019
4:00 p.m.
State Capitol, Conference Room 308**

LATE

**In consideration of
H.B. 1528 H.D. 1
Relating to Commerce and Consumer Affairs**

Chair Luke, and Members of the Committee,

Thank you for the opportunity to submit comments on H.B. 1528 H.D. 1. My name is Stacy Higa, President and CEO of Nā Leo TV. While we support the intent of the bill as it provides appropriation for the operation of DCCA Cable Television Division (DCCA-CATV) for the fiscal biennium 2019-2021, we have concerns regarding Section 4 of the bill. As to the reserve fund under DCCA-CATV's budget we offer no comment at this time.

Section 440G-15, Hawai'i Revised Statutes, Annual Fees, provides funding for the operations of DCCA-CATV. Section 4 of the bill amends Section 440G-15 by replacing the current one percent (1%) franchise fee, as determined by the Director of the DCCA, to a 4.5 % franchise fee. Under the Federal Cable Act, the maximum franchise fee that may be assessed is 5% of the cable service charge on a subscriber cable bill. The individual subscriber fee, which is paid directly by subscribers, goes to the cable operators even though it isn't a tax of general application or public assessment. The 5% federal law subscriber fee cap gives 4% of the fee to PEG access organizations and 1% to Hawai'i Public Broadcasting. The unintended consequences of this change could dramatically affect the PEG operations of Nā Leo TV (serving the County of Hawai'i), 'Ōlelo Community Media (serving the City and County of Honolulu), Akakū Maui Community Media (serving Maui County), and Ho'ike Kaua'i Community Television (serving Kaua'i County).

PEG access or community access media provides for and promotes true freedom of speech through non-commercial programming created by ordinary individuals with extraordinary commitment and dedication to share their stories to the public. It is these types of hyperlocal and government programming that all four PEG Organizations provide throughout our state. Because the franchise fee is a service charge on a subscriber's cable bill, Nā Leo, 'Ōlelo, Akakū and Ho'ike are working diligently and efficiently to make sure that cable subscribers throughout Hawai'i receive those diverse local non-commercial programming.

On behalf of Nā Leo TV, and all the subscribers that we represent on Hawai'i Island, we respectfully request that Section 4 of the bill be removed, and leave in place the current language that provides the Director of DCCA the authority to adjust the annual fee, as stated in the Director's written testimony on this bill before the House Committee on Intrastate Commerce on February 12, 2019.

Thank you for the opportunity to present our comments on this bill.

Stacy K. Higa



President & CEO
Nā Leo TV