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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Commerce and Consumer Protection  
Monday, February 10, 2020  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
H.B. 2324, H.D. 1, RELATING TO STATE SERVICE FEES**

Chair Takumi 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 provides comments on the H.D. 1 version of this administration bill.

The purpose of this bill is to ensure that all fees assessed by or through the DCCA can be adjusted by the governor pursuant to the authority set forth in Hawaii Revised Statutes (HRS) section 92-28. The current law sets forth a laundry list of HRS chapters, some of which cover DCCA fees. Although section 92-28 captures most chapters within the DCCA's jurisdiction, it inadvertently does not include a few sections. The original version of this bill would replace the laundry list of DCCA laws with a blanket reference to all fees collected by the DCCA.

The Department understands that H.D. 1 intends to accomplish the same objective as the original bill—namely, to provide that all DCCA fees are eligible for adjustment if approved by the governor. The DCCA further understands that H.D. 1

means to differentiate DCCA fees that are already eligible for adjustment by the governor under the current law from the remainder of fees within the DCCA's jurisdiction, and to authorize the governor to only approve decreases for the newly added fees.

The Department is concerned that H.D. 1 inadvertently does not reflect the intent of the prior committee to make all DCCA fees eligible for adjustment by the governor.

Specifically, H.D. 1 states, in pertinent part:

§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the 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; provided that:

(1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and **extend only to the following**: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 436H, 437, 437B, 438, 439, 440, 440E, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 455, 456, 457, 457A, 457B, 457G, 458, 459, 460J, 461, 461J, 462A, 463, 463E, 464, 465, 465D, 466, 466D, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 472, 482, 482E, 484, 485A, 501, 502, 505, 514B, 514E, 572, 574, and 846 (part II) and any board, commission, program, or entity created pursuant to title 25 and assigned to the department of commerce and consumer affairs or placed within the department for administrative purposes;

(2) The authority to decrease all fees or nontax revenues collected by the department of commerce and consumer affairs and any board, commission, program, or entity created pursuant to title 25 and assigned to the department of commerce and consumer affairs or placed within the department for administrative purposes shall be subject to the approval of the governor;

(Emphasis added.) The “extend only to the following” language in subsection (1) is limiting language that, even when read in conjunction with subsection (2), still limits the types of fees that the governor can adjust to those enumerated in subsection (1). In

that sense, H.D. 1 does not accomplish what it intends to do. Accordingly, the Department recommends revising this measure to either: (a) return to its original form; or (b) or include in subsection (1) references to those laws that are not presently captured in subsection (1). For ease of reference, the Department suggests amending subsection (1) to reference titles 23, 24, and 26, in addition to the existing reference to title 25.

In addition, because subsection (2) in H.D. 1 is drafted as a new sentence, it cannot be construed as a continuation of subsection (1) and instead creates a new, standalone requirement that the authority to decrease fees shall be subject to the approval of the governor. As currently drafted, this subsection neither adds to nor expands the governor's authority under subsection (1); it merely creates a requirement that the governor approve all fee decreases. While the Department does not oppose having the governor review and approve all proposed fee decreases, it is concerned about the unintended consequences associated with the addition of subsection (2).

The Department believes H.D. 1 does not effectuate the original purpose of this administration bill: to capture all existing and future DCCA fees and thereby avoid the need to amend section 92-28(1) whenever the Department's jurisdiction changes. By reverting to the incomplete itemization in section 92-28(1) of statutory chapters subject to the DCCA's authority to increase or decrease its fees, H.D. 1 both fails to capture all the fees that the Department collects and retains the unwieldy itemization of statutory chapters in section 92-28(1).

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this bill with amendments that reflect the original version and intent of this administration bill.