

JAN 26 2022

A BILL FOR AN ACT

RELATING TO FRANCHISE TAX.

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

1 SECTION 1. Section 26-9, Hawaii Revised Statutes, is
2 amended by amending subsection (o) to read as follows:

3 "(o) Every person licensed under any chapter within the
4 jurisdiction of the department of commerce and consumer affairs
5 and every person licensed subject to chapter 485A or registered
6 under chapter 467B shall pay upon issuance of a license, permit,
7 certificate, or registration a fee and a subsequent annual fee
8 to be determined by the director and adjusted from time to time
9 to ensure that the proceeds, together with all other fines,
10 income, and penalties collected under this section, do not
11 surpass the annual operating costs of conducting compliance
12 resolution activities required under this section. The fees may
13 be collected biennially or pursuant to rules adopted under
14 chapter 91, and shall be deposited into the special fund
15 established under this subsection. Every filing pursuant to
16 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
17 initial filing and at each renewal period in which a renewal is
18 required, a fee that shall be prescribed by rules adopted under

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1 chapter 91, and that shall be deposited into the special fund
2 established under this subsection. Any unpaid fee shall be paid
3 by the licensed person, upon application for renewal,
4 restoration, reactivation, or reinstatement of a license, and by
5 the person responsible for the renewal, restoration,
6 reactivation, or reinstatement of a license, upon the
7 application for renewal, restoration, reactivation, or
8 reinstatement of the license. If the fees are not paid, the
9 director may deny renewal, restoration, reactivation, or
10 reinstatement of the license. The director may establish,
11 increase, decrease, or repeal the fees when necessary pursuant
12 to rules adopted under chapter 91. The director may also
13 increase or decrease the fees pursuant to section 92-28.

14 There is created in the state treasury a special fund to be
15 known as the compliance resolution fund to be expended by the
16 director's designated representatives as provided by this
17 subsection. Notwithstanding any law to the contrary, and as
18 provided by section 241-7, all revenues, fees, and fines
19 collected by the department shall be deposited into the
20 compliance resolution fund. Unencumbered balances existing on
21 June 30, 1999, in the cable television fund under chapter 440G,
22 the division of consumer advocacy fund under chapter 269, the

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1 financial institution examiners' revolving fund, section 412:2-
2 109, the special handling fund, section 414-13, and unencumbered
3 balances existing on June 30, 2002, in the insurance regulation
4 fund, section 431:2-215, shall be deposited into the compliance
5 resolution fund. This provision shall not apply to the drivers
6 education fund underwriters fee, sections 431:10C-115 and
7 431:10G-107, insurance premium taxes and revenues, revenues of
8 the workers' compensation special compensation fund, section
9 386-151, the captive insurance administrative fund, section
10 431:19-101.8, the insurance commissioner's education and
11 training fund, section 431:2-214, the medical malpractice
12 patients' compensation fund as administered under section 5 of
13 Act 232, Session Laws of Hawaii 1984, and fees collected for
14 deposit in the office of consumer protection restitution fund,
15 section 487-14, the real estate appraisers fund, section 466K-1,
16 the real estate recovery fund, section 467-16, the real estate
17 education fund, section 467-19, the contractors recovery fund,
18 section 444-26, the contractors education fund, section 444-29,
19 the condominium education trust fund, section 514B-71, and the
20 mortgage foreclosure dispute resolution special fund, section
21 667-86. Any law to the contrary notwithstanding, the director
22 may use the moneys in the fund to employ, without regard to

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chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

A separate special subaccount of the compliance resolution fund, to be known as the post-secondary education authorization special subaccount, shall be established for fees collected by the department of commerce and consumer affairs pursuant to chapter 305J. The special subaccount shall be governed by section 305J-19.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;

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(3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);

(4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or

(5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 235-119, Hawaii Revised Statutes, is amended to read as follows:

"§235-119 Taxes, state realizations. All income taxes shall be for the use of the State and shall be paid into the state treasury at such times as the director of finance shall direct[-]; provided that, if the total amount transferred from

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1 the revenues collected under chapter 241 to the compliance
2 resolution fund established pursuant to section 26-9(o) is less
3 than \$2,000,000 at the close of the fiscal year, an amount equal
4 to the difference between the total amount transferred from the
5 revenues collected under chapter 241 and \$2,000,000 shall be
6 distributed under this section to the compliance resolution fund
7 for that fiscal year. In no event shall the amount distributed
8 to the compliance resolution fund exceed \$2,000,000 in any
9 fiscal year."

10 SECTION 3. Section 241-7, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§241-7 Disposition of funds.** [~~All taxes collected under~~
13 ~~this chapter shall be state realizations; provided that, by June~~
14 ~~30]~~ From the revenues collected under this chapter each fiscal
15 year, the sum of \$2,000,000 shall be deposited with the director
16 of finance to the credit of the compliance resolution fund as
17 established pursuant to section 26-9(o) [~~7~~]; provided that, if
18 the total amount transferred from the revenues collected under
19 this chapter to the compliance resolution fund is less than
20 \$2,000,000 at the close of the fiscal year, the compliance
21 resolution fund shall be credited the difference from the
22 revenues collected under chapter 235 not to exceed \$2,000,000.

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1 Any revenues collected under this chapter in excess of
2 \$2,000,000 at the close of the fiscal year shall be deposited
3 into the general fund."

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: M. N. H.

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BY REQUEST

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Report Title:

Franchise Tax, Compliance Resolution Fund

Description:

Clarifies that the Compliance Resolution Fund is to receive \$2,000,000 of the revenues collected under chapter 241, Hawaii Revised Statutes, provided that, if the revenues collected are under \$2,000,000, the difference shall be from revenues collected under chapter 235, Hawaii Revised Statutes, not to exceed \$2,000,000. The excess revenues collected under chapter 241 shall be deposited into the general fund.

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 FRANCHISE TAX.

PURPOSE: To clarify that for each fiscal year the Compliance Resolution Fund (CRF) established in section 26-9(o), Hawaii Revised Statutes (HRS), shall receive \$2,000,000 from revenues collected by chapter 241, (HRS); provided that, if the total amount transferred to the CRF is less than \$2,000,000 at the end of the fiscal year, the CRF shall receive the difference from the revenues collected under chapter 235, HRS, not to exceed \$2,000,000. Any balance in the account for the revenues collected under chapter 241 in excess of \$2,000,000 at the end of the fiscal year shall be deposited into the general fund.

MEANS: Amend sections 26-9(o), 235-119, and 241-7, HRS.

JUSTIFICATION: Section 241-7, HRS, provides that, from the revenues collected under this chapter each fiscal year, \$2,000,000 shall be deposited to the credit of the compliance resolution fund established in section 26-9(o), HRS. Section 26-9(o) was intended to provide dedicated funding to the Department's Division of Financial Institutions (DFI) for regulation and oversight of banks and financial institutions. DFI has relied on this revenue stream for a portion of its budget for many years. With the recent establishment of several chapter 241 tax credits, the balance in the account that houses revenues and credits for that chapter varies significantly, sometimes resulting in a negative balance. This bill would ensure that the \$2,000,000 payment provided for in section 241-7 is credited to the compliance resolution fund and that revenues collected under chapter 235 will cover any shortfalls.

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Impact on the public: This bill will provide a stable source of income for the DFI to regulate, supervise, and examine financial institutions.

Impact on the department and other agencies: This bill will clarify the handling and application of revenues collected under chapter 241, HRS. The bill will clarify for the Departments of Budget and Finance and Taxation that revenues collected under chapter 235 shall be deposited to the credit of the compliance resolution fund for the purpose of funding any shortfalls should the revenues collected under chapter 241 be less than \$2,000,000.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: Department of Budget and Finance; Department of Taxation.

EFFECTIVE DATE: Upon approval.