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

**Before the  
House Committee on Finance  
Thursday, March 31, 2022  
2:30 p.m.  
Via Videoconference**

**On the following measure:  
S.B. 3075, S.D. 2, H.D. 1, RELATING TO FRANCHISE TAX**

Chair Luke and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department supports this administration bill.

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

The Department suggests three amendments to the bill.

1. Delete Section 2 of the bill, page 6, lines 1 to 15.

Explanation: To address the concerns in the Committee Report related to the constitutional issue of the single subject-title discrepancy. With the deletion of

the reference to HRS, Chapter 235, the measure now meets the single subject-title requirement.

2. Replace the language in Section 3, page 6, line 16 to page 7, line 4 with the language in Section 3 of S.B. 3075, S.D. 2 as follows:

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

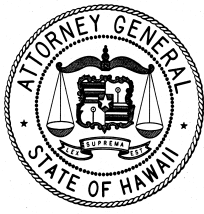
"§241-7 Disposition of funds. ~~[All taxes collected under this chapter shall be state realizations; provided that, by June 30 of]~~ From the revenues collected under this chapter each fiscal year, the sum of \$2,000,000 shall be deposited with the director of finance to the credit of the compliance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

3. Change the effective date of the bill to on approval to allow the Department to receive its share of the franchise tax by June 30.

The Department notes that the revenues received from the franchise tax provides a stable source of income for the DFI. 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), HRS was intended to provide dedicated funding to the DFI for regulation and oversight of banks and financial institutions. DFI has relied on this revenue stream for a portion of its budget since Act 028 (SLH 2001). With the recent establishment of several chapter 241, HRS, 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 HRS section 241-7 is credited to the compliance resolution fund and if the franchise tax is insufficient to comply with HRS section 241-7, that revenues collected under chapter 235 will cover any shortfalls.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill with the amendments.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3075, S.D. 2, H.D. 1, RELATING TO FRANCHISE TAX.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Thursday, March 31, 2022                      **TIME:** 2:30 p.m.

**LOCATION:** State Capitol, Room 308 and Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Tammy Kaneshiro, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill clarifies 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 income tax revenues collected under chapter 235, HRS, not to exceed \$2,000,000. Any balance in the account for the revenues collected under chapter 241, HRS, in excess of \$2,000,000 at the end of the fiscal year shall be deposited into the general fund.

Article III, section 14 of the Hawaii Constitution provides, in relevant part, that "[n]o law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title." This bill is entitled "A BILL FOR AN ACT RELATING TO FRANCHISE TAX." We understand a concern has been raised in previous testimony from the Tax Foundation that there may be a subject-title issue with this bill, specifically with respect to the proposed amendment to section 235-119, HRS, contained in section 2 of the bill. We also understand that the Department of Commerce and Consumer Affairs (DCCA) is now proposing certain amendments to the bill, including the removal of section 2 of the bill, as a way to address the potential subject-title issue. While we believe the bill as currently drafted would withstand a subject-title challenge because the proposed amendments are connected and related to the franchise tax, the

Department of the Attorney General does not have any legal concerns with the amendments proposed by the DCCA.

Thank you for the opportunity to offer these comments.

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

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To: The Honorable Sylvia Luke, Chair;  
The Honorable Kyle T. Yamashita, Vice Chair;  
and Members of the House Committee on Finance

From: Isaac W. Choy, Director  
Department of Taxation

Date: Thursday, March 31, 2022  
Time: 2:30 P.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 3075, S.D. 2, H.D. 1, Relating to Franchise Tax**

The Department of Taxation (Department) supports S.B. 3075, S.D. 2, H.D. 1, an Administration measure, and offers the following comments for your consideration.

S.B. 3075, S.D. 2, H.D. 1, ensures the Compliance Resolution Fund receives \$2 million per year, whether from franchise tax collections or income tax collections. Currently, the Compliance Resolution Fund is funded exclusively through franchise tax collections up to a total of \$2 million per fiscal year. S.B. 3075, S.D. 2, H.D. 1, provides that income tax collections will be used to ensure \$2 million is deposited into the fund if franchise tax collections are insufficient. H.D. 1 has a defective effective date of July 1, 2050 and Section 2 of the bill applies to taxable years beginning after December 31, 2021.

The Department notes that this measure only impacts the disposition of tax revenue and not substantive tax law. Thus, it is not appropriate to apply the amendments to taxable years. Since this impacts the budget, the Department suggests making this measure effective upon approval or on a specified date.

Thank you for the opportunity to provide testimony in support of this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FRANCHISE, INCOME, Earmark Tax Collections for Compliance Resolution Fund

BILL NUMBER: SB 3075 HD 1

INTRODUCED BY: House Committee on Consumer Protection & Commerce

EXECUTIVE SUMMARY: Ensures that the \$2,000,000 franchise tax payment is credited in full to the compliance resolution fund for use by the division of financial institutions. Specifies that if franchise tax collections are insufficient, the difference will be derived from income tax collections. Clarifies that franchise tax revenues in excess of \$2,000,000 shall be deposited into the general fund. Effective 7/1/2050. We are concerned that the bill is defective because it violates the single subject rule.

SYNOPSIS: Amends section 235-119, HRS, in the Income Tax Law and section 241-7, HRS, in the Franchise Tax Law to so provide.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Commerce and Consumer Affairs and designated CCA-01 (22).

At present, section 241-7, HRS, provides for an earmark of \$2 million annually to the Compliance Resolution Fund to defray the costs of regulating financial institutions. In its justification sheet to accompany the bill, DCCA complains that recent tax credits added to the Franchise Tax Law have dampened Franchise Tax collections, resulting in DCCA not getting their \$2 million on occasion. Because DCCA has been relying on that annual \$2 million, it wants a fallback if collections are short, and the fallback would be tapping into the income tax collections.

The bill in its present form appears to violate the Hawaii Constitution's single subject requirement because it is entitled "Relating to Franchise Tax" but also affects the Hawaii Net Income Tax. The report of the Senate Ways and Means Committee reflects this concern:

Your Committee finds that Article III, section 14, of the Hawaii State Constitution provides that "[e]ach law shall embrace but one subject, which shall be expressed in its title." A title must include a distinct reference to the subject matter to which it relates and also cover only one subject. Thus, the scope of the title cannot be narrower than the scope of the subject matter of the bill. Your Committee notes that the title of this measure is "A Bill for an Act Relating to Franchise Tax." In the context of this measure, the term "franchise tax" refers to the franchise tax imposed on banks and other financial corporations pursuant to Chapter 241, Hawaii Revised Statutes. Your Committee also finds that the intent of this measure is to address a shortfall in the \$2,000,000 earmarked from the franchise tax collections to be deposited into the compliance resolution fund.

Accordingly, the measure requires the deposit of income tax revenues, collected pursuant to Chapter 235, Hawaii Revised Statutes, into the compliance resolution fund to make up the shortfall. Your Committee notes concerns that, by amending the income tax law, the contents of this measure may exceed the scope of its title.

Senate Stand. Comm. Rep. No. 2711 (2022).

As a policy matter, the circumstances surrounding this bill show how government finance is like pressing a balloon. The legislature enacts tax credits in furtherance of social policy. Credits reduce tax collections. The departments or agencies that previously had received such tax collections now don't get them, and they complain. What to do next?

Special funds, such as the Compliance Resolution Fund at issue here, are pots of money that exist for a specific purpose, and largely bypass the legislative appropriation process. The existence of hundreds of these special funds has often confounded those who seek answers to simple questions like "How much money does the State have?"

Our Legislature is supposed to be the steward of all state moneys, but special funds make it very easy to lose track of where the money is and how it is being spent. Departments are supposed to tell the Legislature if they have special funds and how much is in them, but they don't always. Recently, in Report No. 20-01, the State Auditor took DBEDT to task for failing to report \$6.5 million in non-general fund moneys. DBEDT's response? Just that they'll "take corrective action." Not even a "Whoops! We screwed up and promise to do better next time!" This followed closely on the heels of Report No. 19-16, where the Auditor found that \$1.04 million in non-general fund moneys administered by the Attorney General wasn't reported. That department responded that they "shall establish procedures to assure required reports are issued." Is it any wonder that it's getting harder and harder to follow the money and rein in government spending?

In its justification sheet in support of this bill, DCCA states, "This bill will provide a stable source of income for the DFI to regulate, supervise, and examine financial institutions." So why can't that money be appropriated as opposed to screwing up tax collections by earmarking them? The unstated answer to this question appears to be, "We want this money without going through the troublesome appropriation process where the legislature scrutinizes what we do."

We have news for you, DCCA. The Legislature is *supposed* to oversee and scrutinize what every executive agency, including DCCA, does. It's their job to see that taxpayer money is well spent. That is one of their key functions and the appropriations process is the way they do it.

The moral of the story is that special funds are often used to obfuscate and confuse, to put a smokescreen between those who spend the money and those who are charged with making sure the money is well spent. Let's do all of ourselves a favor and get rid of the special funds we don't really need, and make sure that the operations of the ones we do need are transparent and accountable.

Digested: 3/28/2022



# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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March 31, 2022

Rep. Sylvia Luke, Chair  
Rep. Kyle T. Yamashita, Vice Chair  
and members of the House Committee on Finance  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **S.B. 3075, S.D. 2, H.D. 1 (Franchise Tax)**  
**Hearing Date/Time: Thursday, March 31, 2022, 2:30 p.m.**

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **supports the intent** of this Bill.

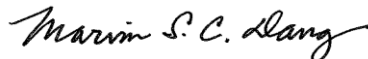
This Bill (a) ensures that the \$2,000,000 franchise tax payment is credited in full to the compliance resolution fund for use by the division of financial institutions; (b) specifies that if franchise tax collections are insufficient, the difference will be derived from income tax collections; and (c) clarifies that franchise tax revenues in excess of \$2,000,000 shall be deposited into the general fund.

This Bill is necessary for the operations of the Division of Financial Institutions (“Division”) of the Department of Commerce and Consumer Affairs. With the funding mechanism provided in this Bill, the Division will have a stable and reliable source of income from HRS Chapters 241 and 235 so that the Division can regulate, supervise, and examine financial institutions and other companies.

The Division is submitting testimony with various proposed amendments to this Bill.

**We respectfully ask that your Committee “pass” this Bill with the amendments proposed by the Division.**

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)