

**ACT 29**

S.B. NO. 812

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. GENERAL PROVISIONS**

SECTION 1. The purpose of parts I, II, and III of this Act is to establish the operating budget for the fiscal biennium beginning July 1, 2019, and ending June 30, 2021, for state executive branch programs under the purview of the house of representatives standing committee on intrastate commerce.

SECTION 2. DEFINITIONS. Unless otherwise clear from the context, as used in parts I, II, and III of this Act:

Abbreviations, where used to denote the expending agency, shall mean the following:

CCA      Department of commerce and consumer affairs

“Expending agency” means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, office of Hawaiian affairs, and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act.

“Means of financing” or “MOF” means the source from which funds are appropriated or authorized to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. These letter symbols, where used, shall have the following meanings:

- B Special funds
- P Other federal funds
- T Trust funds

“Position ceiling” means the maximum number of permanent and temporary full-time equivalent positions authorized for a particular program during a specified period or periods, as denoted by an asterisk for permanent full-time equivalent positions and a pound sign for temporary full-time equivalent positions.

“Program ID” means the unique identifier for the specific program and consists of the abbreviation for the organization responsible for carrying out the program followed by the organization number for the program.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agency designated for the fiscal biennium beginning July 1, 2019, and ending June 30, 2021. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS					
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2019-2020 F	FISCAL M YEAR O 2020-2021 F
1.	CCA102	CABLE TELEVISION			
		OPERATING	CCA	8.00 * 2,647,986 B	8.00 * 2,647,986 B
			CCA	T	T
2.	CCA104	FINANCIAL SERVICES REGULATION			
		OPERATING	CCA	40.00 * 5,174,488 B	40.00 * 5,174,488 B
			CCA	300,000 T	300,000 T
3.	CCA105	PROFESSIONAL AND VOCATIONAL LICENSING			
		OPERATING	CCA	63.00 * 11.00 # 7,891,944 B	63.00 * 11.00 # 7,891,944 B
			CCA	8.00 * 5.00 # 2,802,844 T	8.00 * 5.00 # 2,802,844 T

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR	FISCAL YEAR
				2019-2020	2020-2021
4.	CCA106	INSURANCE REGULATORY SERVICES			
			95.00 *	95.00 *	
			1.00 #	1.00 #	
	OPERATING		21,360,950 B	19,360,950 B	
		CCA	200,000 T	200,000 T	
			6.00 #	6.00 #	
		CCA	250,000 P	250,000 P	

PART III. PROGRAM APPROPRIATION PROVISIONS

SECTION 4. Provided that of the special fund appropriations for financial services regulation (CCA104):

- (1) The sum of \$40,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 shall be expended on the maintenance and software licensing costs of the financial services regulation program's database and records management system; and
- (2) The sum of \$25,074 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 shall be expended for fringe benefit costs for collective bargaining and salary adjustments.

SECTION 5. Provided that of the special fund appropriations for the professional and vocational licensing division (CCA105):

- (1) The sum of \$300,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 shall be expended for software licensing costs to replace the professional and vocational licensing division's applicant/licensee integrated automated system; and
- (2) The sum of \$108,806 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 shall be expended for two full-time equivalent (2.0 FTE) permanent positions to perform work pertaining to Act 44, Session Laws of Hawaii 2018.

SECTION 6. Provided that of the special fund appropriations for insurance regulatory services (CCA106):

- (1) The sum of \$2,500,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2020-2021 shall be expended for replacement of the Hawaii insurance data system and corresponding licensing, maintenance, and independent verification and validation costs; and
- (2) The sum of \$417,736 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 shall be expended for fringe benefit costs for collective bargaining and salary adjustments.

## PART IV. STATUTORY PROVISIONS

SECTION 7. Section 444-26, Hawaii Revised Statutes, is amended to read as follows:

**“§444-26 Contractors recovery fund; use of fund; person injured; fees.**

(a) The board is authorized to establish and maintain a contractors recovery fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor, which is in violation of this chapter or the rules adopted pursuant thereto, may recover by order of the circuit court or district court of the judicial circuit where the violation occurred, an amount of not more than \$12,500 per contract, regardless of the number of persons injured under the contract, for damages sustained by the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court; provided that recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was suspended, revoked, forfeited, terminated, or in an inactive status at the time the claimant entered into the contract with the contractor.

(b) For purposes of this chapter, “person injured” or “injured person” means and is limited to owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to the owners’ or lessees’ own private residences and owners or lessees of real property who have contracted with a duly licensed contractor for the construction of the owners’ or lessees’ own private residences on the owners’ or lessees’ real property.

(c) When any person applies for a contractors license, the person shall pay, in addition to the person’s original license fee, a fee of \$150 for deposit in the contractors recovery fund, and a fee for deposit in the contractors education fund as provided in rules adopted by the director pursuant to chapter 91. In the event that the board does not issue the license, these fees shall be returned to the applicant.

(d) When the contractors recovery fund attains a funding level of \$420,893 in any fiscal year, the board shall either:

- (1) Cease accepting payments made by renewing licensees; or
- (2) Develop a process to refund monies in excess of the \$420,893 fund balance to licensees who paid into the fund, and refund such monies.

If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$420,893.”

SECTION 8. Section 444-29, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§444-29]]~~ Management of fund.**

~~(a) The sums received by the contractors license board for deposit in the contractors recovery fund shall be held by the contractors license board in trust for carrying out the purposes of the contractors recovery fund. The contractors license board, as trustee of the recovery fund, shall be authorized to retain private legal counsel to represent the board in any action which may result in collection from the contractors recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees’ retirement system, and the interest from these investments shall be deposited to the credit of the contractors education fund[, and which].~~

~~(b) The contractors education fund, which is hereby created, shall be available to the contractors license board for educational purposes[, which is~~

~~hereby created.]; provided that when the contractors education fund attains a funding level of \$15,315 in any fiscal year, the board shall either:~~

- ~~(1) Cease accepting payments made by renewing licensees; or~~
- ~~(2) Develop a process to refund monies in excess of the \$15,315 fund balance to licensees who paid into the fund, and refund such monies.~~

~~If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$15,315.”~~

SECTION 9. Section 454F-41, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The commissioner shall establish and maintain a fund that shall be known as the mortgage loan recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a licensee involving fraud, misrepresentation, or deceit may recover, by order of the circuit court or district court of the county where the violation occurred, an amount of ten per cent of the residential mortgage loan, but not more than \$25,000 per transaction, \$150,000, including court costs and fees as set by law and reasonable attorney fees as determined by the court, for damages sustained by the fraud, misrepresentation, or deceit of a licensee.”

2. By amending subsection (d) to read:

“(d) When the mortgage loan recovery fund attains a funding level of \$750,000, the commissioner may make a finding to adjust the fees ~~[generated by renewals]~~ payable to the fund or may determine that payments made by ~~[renewing]~~ licensees shall cease. If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$750,000. If the funding level falls below \$250,000 after the first five years of the establishment of the fund, the commissioner may adjust the fees to a reasonable level for the purpose of attaining a funding level of \$750,000.”

SECTION 10. Section 467-11, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) If ~~[beginning on July 1, 1987,]~~ the education fund balance ~~[at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on renewal contributions and the commission shall review and consider a reduction in the amount of license fees.]~~ attains a funding level of \$1,713,510 in any fiscal year, the commission shall either:

- (1) Cease accepting payments made by renewing licensees; or
- (2) Develop a process to refund monies in excess of the \$1,713,510 fund balance to licensees who paid into the fund, and refund such monies.

If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$1,713,510.”

SECTION 11. Section 467-16, Hawaii Revised Statutes, is amended to read as follows:

“**§467-16 Real estate recovery fund; use of fund; fees.** (a) The commission shall establish and maintain a trust fund which shall be known as the real estate recovery fund from which any person 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, may recover upon the commission’s settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction for damages sustained by the fraud, misrep-

resentation, or deceit, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

(b) When any person makes application for an original license to practice as a real estate broker or salesperson the person shall pay, in addition to the person's original license fee, a real estate recovery fund fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

(c) The commission, as the trustee of the real estate recovery fund, shall be authorized to expend the funds to:

- (1) Retain private legal counsel to represent the commission in any action involving or which may result in payment from the real estate recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the real estate recovery fund;
- (3) Employ necessary personnel, not subject to chapter 76, to assist the commission in exercising its powers and duties with respect to the real estate recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the real estate recovery fund plus interest from the judgment debtor.

(d) When the real estate recovery fund attains a funding level of \$481,799 in any fiscal year, the commission shall either:

- (1) Cease accepting payments made by renewing licensees; or
- (2) Develop a process to refund monies in excess of the \$481,799 fund balance to licensees who paid into the fund, and refund such monies.

If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$481,799."

SECTION 12. Section 514B-72, Hawaii Revised Statutes, is amended to read as follows:

**"§514B-72 Condominium education trust fund; payments by associations and developers.** (a) Each project or association with more than five units shall pay to the department of commerce and consumer affairs:

- (1) A condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association's first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91; and
- (2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).

(b) Each developer shall pay to the department of commerce and consumer affairs the condominium education trust fund fee for each unit in the project, as prescribed by rules adopted by the director of commerce and con-

sumer affairs pursuant to chapter 91. The project shall not be registered and no effective date for a developer's public report shall be issued until the payment has been made.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable~~[- Failure]~~ except as specified in subsection (e). Unless acceptance of payments is ceased pursuant to subsection (e), failure to pay the required fee by the due date shall result in a penalty assessment of ten per cent of the amount due and the association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

(d) The department of commerce and consumer affairs shall allocate the fees collected under this section to the condominium education trust fund established pursuant to section 514B-71. The fees collected pursuant to this section shall be administratively and fiscally managed together as one condominium education trust fund established by section 514B-71.

(e) When the condominium education trust fund attains a funding level of \$1,819,971 in any fiscal year, the commission shall either:

- (1) Cease accepting payments made by projects and associations at each biennial registration; or
- (2) Develop a process to refund monies in excess of the \$1,819,971 fund balance to projects and associations that paid into the fund at applicable biennial registrations, and refund such monies.

If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$1,819,971."

## PART V. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 13. Notwithstanding any law to the contrary, provided that the funds appropriated in this Act may be transferred with the approval of the governor to the General Appropriations Act of 2019 (House Bill No. 2, H.D. 1, S.D. 1, C.D. 1),<sup>1</sup> for program execution and expenditure.

SECTION 14. Provided that, notwithstanding any provision contained in the General Appropriations Act of 2019 that appropriates funds and establishes position ceilings, the positions authorized in section 3 shall be in addition to the positions authorized for that program under the General Appropriations Act of 2019; provided further that any incumbent employee shall retain the employee's:

- (1) Civil service status, whether permanent or temporary; and
- (2) Salary, seniority (except as may be prescribed by applicable collective bargaining agreement), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws.

SECTION 15. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the

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objective of the appropriation to the extent possible. To this end, the provisions of this Act are severable.

SECTION 16. If manifest clerical, typographical, or other mechanical errors are found in part I, part II, or part III of this Act, the governor may correct the errors.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on July 1, 2019; provided that:

- (1) Section 3 shall take effect on June 28, 2019; and
- (2) Sections 7, 8, 10, 11, and 12 of this Act shall take effect on July 1, 2020, and shall be repealed on June 30, 2022; provided further that sections 444-26, 444-29, 467-11, 467-16, and 514B-72, Hawaii Revised Statutes, shall be reenacted in the form in which it read prior to the effective date of this Act.

(Approved April 26, 2019.)

### Note

1. Act 5.