
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:

1 **PART I. GENERAL PROVISIONS**

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

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

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

11 CCA Department of commerce and consumer affairs

12 "Expending agency" means the executive department,
13 independent commission, bureau, office, board, or other
14 establishment of the state government (other than the
15 legislature, office of Hawaiian affairs, and judiciary), the
16 political subdivisions of the State, or any quasi-public
17 institution supported in whole or in part by state funds, which



1 is authorized to expend specified appropriations made by this
2 Act.

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

- 8 B Special funds
- 9 P Other federal funds
- 10 T Trust funds

11 "Position ceiling" means the maximum number of permanent
12 and temporary full-time equivalent positions authorized for a
13 particular program during a specified period or periods, as
14 denoted by an asterisk for permanent full-time equivalent
15 positions and a pound sign for temporary full-time equivalent
16 positions.

17 "Program ID" means the unique identifier for the specific
18 program and consists of the abbreviation for the organization
19 responsible for carrying out the program followed by the
20 organization number for the program.



1 **PART II. PROGRAM APPROPRIATIONS**

2 SECTION 3. APPROPRIATIONS. The following sums, or so much

3 thereof as may be sufficient to accomplish the purposes and

4 programs designated herein, are hereby appropriated or

5 authorized, as the case may be, from the means of financing

6 specified to the expending agency designated for the fiscal

7 biennium beginning July 1, 2019, and ending June 30, 2021. The

8 total expenditures and the number of positions in each fiscal

9 year of the biennium shall not exceed the sums and the number

10 indicated for each fiscal year, except as provided elsewhere in

11 this Act, or as provided by general law.



PROGRAM APPROPRIATIONS

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2019-2020	M O F	FISCAL YEAR 2020-2021	M O F
1.	CCA102	CABLE TELEVISION		8.00*		8.00*	
	OPERATING		CCA	2,647,986B		2,647,986B	
			CCA		T		T
2.	CCA104	FINANCIAL SERVICES REGULATION		40.00*		40.00*	
	OPERATING		CCA	5,174,488B		5,174,488B	
			CCA	300,000T		300,000T	
3.	CCA105	PROFESSIONAL AND VOCATIONAL LICENSING		63.00*		63.00*	
	OPERATING		CCA	7,891,944B		7,891,944B	
				11.00#		11.00#	
				8.00*		8.00*	
			CCA	2,802,844T		2,802,844T	
4.	CCA106	INSURANCE REGULATORY SERVICES		95.00*		95.00*	
	OPERATING		CCA	21,360,950B		19,360,950B	
			CCA	200,000T		200,000T	
				6.00#		6.00#	
			CCA	250,000P		250,000P	



1 PART III. PROGRAM APPROPRIATION PROVISIONS

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

4 (1) The sum of \$40,000 or so much thereof as may be
5 necessary for fiscal year 2019-2020 and the same sum
6 or so much thereof as may be necessary for fiscal year
7 2020-2021 shall be expended on the maintenance and
8 software licensing costs of the financial services
9 regulation program's database and records management
10 system; and

11 (2) The sum of \$25,074 or so much thereof as may be
12 necessary for fiscal year 2019-2020 and the same sum
13 or so much thereof as may be necessary for fiscal year
14 2020-2021 shall be expended for fringe benefit costs
15 for collective bargaining and salary adjustments.

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

19 (1) The sum of \$300,000 or so much thereof as may be
20 necessary for fiscal year 2019-2020 and the same sum
21 or so much thereof as may be necessary for fiscal year



1 2020-2021 shall be expended for software licensing
2 costs to replace the professional and vocational
3 licensing division's applicant/licensee integrated
4 automated system; and

5 (2) The sum of \$108,806 or so much thereof as may be
6 necessary for fiscal year 2019-2020 and the same sum
7 or so much thereof as may be necessary for fiscal year
8 2020-2021 shall be expended for two full-time
9 equivalent (2.0 FTE) permanent positions to perform
10 work pertaining to Act 44, Session Laws of Hawaii
11 2018.

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

14 (1) The sum of \$2,500,000 or so much thereof as may be
15 necessary for fiscal year 2019-2020 and the sum of
16 \$500,000 or so much thereof as may be necessary for
17 fiscal year 2020-2021 shall be expended for
18 replacement of the Hawaii insurance data system and
19 corresponding licensing, maintenance, and independent
20 verification and validation costs; and



1 (2) The sum of \$417,736 or so much thereof as may be
 2 necessary for fiscal year 2019-2020 and the same sum
 3 or so much thereof as may be necessary for fiscal year
 4 2020-2021 shall be expended for fringe benefit costs
 5 for collective bargaining and salary adjustments.

6 PART IV. STATUTORY PROVISIONS

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

9 "§444-26 Contractors recovery fund; use of fund; person
 10 injured; fees. (a) The board is authorized to establish and
 11 maintain a contractors recovery fund from which any person
 12 injured by an act, representation, transaction, or conduct of a
 13 duly licensed contractor, which is in violation of this chapter
 14 or the rules adopted pursuant thereto, may recover by order of
 15 the circuit court or district court of the judicial circuit
 16 where the violation occurred, an amount of not more than \$12,500
 17 per contract, regardless of the number of persons injured under
 18 the contract, for damages sustained by the act, representation,
 19 transaction, or conduct. Recovery from the fund shall be
 20 limited to the actual damages suffered by the claimant,
 21 including court costs and fees as set by law, and reasonable



1 attorney fees as determined by the court; provided that recovery
2 from the fund shall not be awarded to persons injured by an act,
3 representation, transaction, or conduct of a contractor whose
4 license was suspended, revoked, forfeited, terminated, or in an
5 inactive status at the time the claimant entered into the
6 contract with the contractor.

7 (b) For purposes of this chapter, "person injured" or
8 "injured person" means and is limited to owners or lessees of
9 private residences, including condominium or cooperative units,
10 who have contracted with a duly licensed contractor for the
11 construction of improvements or alterations to the owners' or
12 lessees' own private residences and owners or lessees of real
13 property who have contracted with a duly licensed contractor for
14 the construction of the owners' or lessees' own private
15 residences on the owners' or lessees' real property.

16 (c) When any person applies for a contractors license, the
17 person shall pay, in addition to the person's original license
18 fee, a fee of \$150 for deposit in the contractors recovery fund,
19 and a fee for deposit in the contractors education fund as
20 provided in rules adopted by the director pursuant to chapter



1 91. In the event that the board does not issue the license,
2 these fees shall be returned to the applicant.

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

5 (1) Cease accepting payments made by renewing licensees;
6 or

7 (2) Develop a process to refund monies in excess of the
8 \$420,893 fund balance to licensees who paid into the
9 fund, and refund such monies.

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

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

14 "~~[+]~~ §444-29 ~~[+]~~ **Management of fund.** (a) The sums received
15 by the contractors license board for deposit in the contractors
16 recovery fund shall be held by the contractors license board in
17 trust for carrying out the purposes of the contractors recovery
18 fund. The contractors license board, as trustee of the recovery
19 fund, shall be authorized to retain private legal counsel to
20 represent the board in any action which may result in collection
21 from the contractors recovery fund. These funds may be invested



1 and reinvested in the same manner as funds of the state
2 employees' retirement system, and the interest from these
3 investments shall be deposited to the credit of the contractors
4 education fund[~~, and which~~].

5 (b) The contractors education fund, which is hereby
6 created, shall be available to the contractors license board for
7 educational purposes[~~, which is hereby created.~~]; provided that
8 when the contractors education fund attains a funding level of
9 \$15,315 in any fiscal year, the board shall either:

- 10 (1) Cease accepting payments made by renewing licensees;
- 11 or
- 12 (2) Develop a process to refund monies in excess of the
13 \$15,315 fund balance to licensees who paid into the
14 fund, and refund such monies.

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

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

19 1. By amending subsection (a) to read:

20 "(a) The commissioner shall establish and maintain a fund
21 that shall be known as the mortgage loan recovery fund from



1 which any person aggrieved by an act, representation,
 2 transaction, or conduct of a licensee involving fraud,
 3 misrepresentation, or deceit may recover, by order of the
 4 circuit court or district court of the county where the
 5 violation occurred, an amount of ten per cent of the residential
 6 mortgage loan, but not more than [~~\$25,000 per transaction,~~]
 7 \$150,000, including court costs and fees as set by law and
 8 reasonable attorney fees as determined by the court, for damages
 9 sustained by the fraud, misrepresentation, or deceit of a
 10 licensee."

11 2. By amending subsection (d) to read:

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



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

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

9 (1) Cease accepting payments made by renewing licensees;

10 or

11 (2) Develop a process to refund monies in excess of the
12 \$1,713,510 fund balance to licensees who paid into the
13 fund, and refund such monies.

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

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

18 "§467-16 Real estate recovery fund; use of fund; fees.

19 (a) The commission shall establish and maintain a trust fund
20 which shall be known as the real estate recovery fund from which
21 any person aggrieved by an act, representation, transaction, or



1 conduct of a duly licensed real estate broker, or real estate
2 salesperson, upon the grounds of fraud, misrepresentation, or
3 deceit, may recover upon the commission's settlement of a claim
4 or by order of the circuit court or district court of the county
5 where the violation occurred, an amount of not more than \$25,000
6 per transaction for damages sustained by the fraud,
7 misrepresentation, or deceit, including court costs and fees as
8 set by law, and reasonable attorney fees as determined by the
9 court.

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

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



- 1 (1) Retain private legal counsel to represent the
2 commission in any action involving or which may result
3 in payment from the real estate recovery fund;
- 4 (2) Retain a certified public accountant for accounting
5 and auditing of the real estate recovery fund;
- 6 (3) Employ necessary personnel, not subject to chapter 76,
7 to assist the commission in exercising its powers and
8 duties with respect to the real estate recovery fund;
9 and
- 10 (4) Retain a consultant to recover and collect any
11 payments from the real estate recovery fund plus
12 interest from the judgment debtor.
- 13 (d) When the real estate recovery fund attains a funding
14 level of \$481,799 in any fiscal year, the commission shall
15 either:
- 16 (1) Cease accepting payments made by renewing licensees;
17 or
- 18 (2) Develop a process to refund monies in excess of the
19 \$481,799 fund balance to licensees who paid into the
20 fund, and refund such monies.



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

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

5 "**§514B-72 Condominium education trust fund; payments by**
6 **associations and developers.** (a) Each project or association
7 with more than five units shall pay to the department of
8 commerce and consumer affairs:

9 (1) A condominium education trust fund fee within one year
10 after the recordation of the purchase of the first
11 unit or within thirty days of the association's first
12 meeting, and thereafter, on or before June 30 of every
13 odd-numbered year, as prescribed by rules adopted
14 pursuant to chapter 91; and

15 (2) Beginning with the July 1, 2015, biennium
16 registration, an additional annual condominium
17 education trust fund fee in an amount equal to the
18 product of \$1.50 times the number of condominium units
19 included in the registered project or association to
20 be dedicated to supporting mediation or voluntary
21 binding arbitration of condominium related disputes.



1 The additional condominium education trust fund fee
2 shall total \$3 per unit until the commission adopts
3 rules pursuant to chapter 91. On June 30 of every
4 odd-numbered year, any unexpended additional amounts
5 paid into the condominium education trust fund and
6 initially dedicated to supporting mediation or
7 voluntary binding arbitration of condominium related
8 disputes, as required by this paragraph, shall be used
9 for educational purposes as provided in section
10 514B-71(a)(1), (2), and (3).

11 (b) Each developer shall pay to the department of commerce
12 and consumer affairs the condominium education trust fund fee
13 for each unit in the project, as prescribed by rules adopted by
14 the director of commerce and consumer affairs pursuant to
15 chapter 91. The project shall not be registered and no
16 effective date for a developer's public report shall be issued
17 until the payment has been made.

18 (c) Payments of any fees required under this section shall
19 be due on or before the registration due date and shall be
20 nonrefundable [~~Failure~~] except as specified in subsection (e).
21 Unless acceptance of payments is ceased pursuant to subsection



1 (e), failure to pay the required fee by the due date shall
2 result in a penalty assessment of ten per cent of the amount due
3 and the association shall not have standing to bring any action
4 to collect or to foreclose any lien for common expenses or other
5 assessments in any court of this State until the amount due,
6 including any penalty, is paid. Failure of an association to
7 pay a fee required under this section shall not impair the
8 validity of any claim of the association for common expenses or
9 other assessments, or prevent the association from defending any
10 action in any court of this State.

11 (d) The department of commerce and consumer affairs shall
12 allocate the fees collected under this section to the
13 condominium education trust fund established pursuant to section
14 514B-71. The fees collected pursuant to this section shall be
15 administratively and fiscally managed together as one
16 condominium education trust fund established by section 514B-71.

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

20 (1) Cease accepting payments made by projects and
21 associations at each biennial registration; or



1 (2) Develop a process to refund monies in excess of the
2 \$1,819,971 fund balance to projects and associations
3 that paid into the fund at applicable biennial
4 registrations, and refund such monies.

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

7 **PART V. MISCELLANEOUS AND EFFECTIVE DATE**

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

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

20 (1) Civil service status, whether permanent or temporary;
21 and



1 (2) Salary, seniority (except as may be prescribed by
2 applicable collective bargaining agreement), retention
3 points, prior service credit, any vacation and sick
4 leave credits previously earned, and other rights,
5 benefits, and privileges, in accordance with state
6 personnel laws.

7 SECTION 15. If any portion of this Act or its application
8 to any person, entity, or circumstance is held to be invalid for
9 any reason, then the legislature declares that the remainder of
10 the Act and each and every other provision thereof shall not be
11 affected thereby. If any portion of a specific appropriation is
12 held to be invalid for any reason, the remaining portion shall
13 be expended to fulfill the objective of the appropriation to the
14 extent possible. To this end, the provisions of this Act are
15 severable.

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

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



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

2 provided that:

3 (1) Section 3 shall take effect on June 28, 2019; and

4 (2) Sections 7, 8, 10, 11, and 12 of this Act shall take
5 effect on July 1, 2020, and shall be repealed on June
6 30, 2022; provided further that sections 444-26, 444-
7 29, 467-11, 467-16, and 514B-72, Hawaii Revised
8 Statutes, shall be reenacted in the form in which it
9 read prior to the effective date of this Act.



Report Title:

DCCA; Operating Budget Special Funds; Fees

Description:

Establishes the operating budget for certain programs of the Department of Commerce and Consumer Affairs. Establishes or amends certain special fund ceilings and provides for suspension or refund of fees if the ceiling is exceeded. (SB812 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

