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 and II 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 and II of this Act:

Abbreviations, where used to denote the expending agency or a standing committee of the house of representatives, shall mean the following:

CCA Department of commerce and consumer affairs

IAC House of representatives standing committee on intrastate commerce

"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
cpolitical 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
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

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PART III. STATUTORY PROVISIONS

SECTION 4. Section 436B-15, Hawaii Revised Statutes, is amended to read as follows:

"§436B-15 Fees and expenses. (a) No applicant or licensee shall be granted a license pursuant to the licensing laws unless the appropriate fees have been paid. Unless otherwise provided by law, the director shall establish the amount for all fees and expenses by rules adopted pursuant to chapter 91. The fees to be established by the director may include but not be limited to an application fee, filing fee, license fee, renewal fee, examination fee, and other reasonable and necessary fees related to the department's administrative costs. Unless otherwise provided by law, the fees shall be deposited with the director to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(b) The amount to be assessed for fees and expenses regulated under title 25 shall be determined and assessed as provided below:

(1) The total amount to be assessed of licensees regulated under title 25 shall be calculated based on the licensing authority's proposed fiscal year budget.
less funds in the professional and vocational licensing division sub-account of the compliance resolution fund on June 30 of the fiscal year immediately preceding the fiscal year of the proposed budget and less the licensing authority's anticipated revenues;

(2) The assessments shall bear a reasonable relationship to the costs of regulating the profession or vocation, including any administrative costs of the division; and

(3) The sum total of all assessments made and collected shall not exceed the special fund ceiling or ceilings related to the fund that are established by the legislature; provided that the total assessments for all professions and vocations in any one fiscal year shall not exceed $__________.

SECTION 5. 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 $170,893 for each fiscal year, the board shall make a finding to adjust the fees generated by renewals or may determine that payments made by renewing licensees shall cease. If the payments are ceased, they shall remain ceased until the fund attains a funding level of $170,893."

SECTION 6. 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 $5,105 for each fiscal year, the board shall make a finding to adjust the amounts deposited into the fund or cease depositing amounts into the fund; provided further that the interest from the investments of the contractors recovery fund shall be deposited into the general fund. If the payments are ceased, they shall remain ceased until the fund attains a funding level of $5,105."

HB1126 HD1 LRB 19-1211-1.doc
SECTION 7. 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, misrepresentation, 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 $131,799 for each fiscal year, the commission shall make a finding to adjust the real estate recovery fund fee or may determine that payments of real estate recovery fund fees...
shall cease. If the payments are ceased, they shall remain ceased until the fund attains a funding level of $131,799."

SECTION 8. Section 467-19, Hawaii Revised Statutes, is amended to read as follows:

"§467-19 Management of fund. (a) The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate recovery fund. The real estate commission, as the trustee of the recovery fund, shall be authorized to expend the funds to retain private legal counsel to represent the commission in any action involving the real estate 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 real estate education fund, and which shall be available to the commission for educational purposes, which is hereby created. The real estate commission, as trustee of the real estate education fund, may invest and reinvest the real estate education fund in the same manner as funds of the state employees' retirement system. The commission for investment purposes, may combine the real estate education
and recovery funds and invest and reinvest the combined funds in the same manner as funds of the state employees' retirement system. The commission shall keep separate accounting records for the two funds.

(b) Educational purposes as used in subsection (a) shall include those purposes to promote the advancement of education and research in the field of real estate for the benefit of the public and those licensed under the provisions of this chapter and the improvement and more efficient administration of the real estate industry. The commission, in its discretion, may use any and all moneys in the real estate education fund consistent with the above. The commission and the director of commerce and consumer affairs may also use moneys in the education fund to employ necessary personnel, not subject to chapter 76, to fully effectuate subsection (b) and carry out its purpose.

(c) When the real estate education fund attains a funding level of $602,099 for each fiscal year, the commission shall make a finding to adjust the amounts deposited into the real estate education fund or cease depositing amounts into the real estate education fund; provided further that the interest from
the investments of the real estate recovery fund shall be
deposited into the general fund. If the payments are ceased,
they shall remain ceased until the fund attains a funding level
of $602,099."

SECTION 9. 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 consumer 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 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 $607,819 in each fiscal year, the commission shall make a finding to adjust the fees established by this section or may determine that the collection of fees pursuant to this section shall cease. If the payments are ceased, they
shall remain ceased until the fund attains a funding level of
$607,819."

PART IV. GENERAL PROVISIONS

SECTION 10. 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 objective of the appropriation to the extent possible.

SECTION 11. If manifest clerical, typographical, or other mechanical errors are found in part I or part II of this Act, the governor may correct the errors.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2019.
Report Title:
State Budget; DCCA; Professional and Vocational Licensing; CCA105; IAC; Contractors Recovery Fund; Real Estate Education Fund; Condominium Education Fund; Fees; Interest

Description:
Appropriates funds for Fiscal Biennium 2019-2021 for the professional and vocational licensing program of the Department of Commerce and Consumer Affairs, which is under the purview of the House of Representatives Standing Committee on Intrastate Commerce. Establishes criteria to determine the amounts to be assessed for fees and expenses regulated under Title 25, HRS. Provides for the reduction or cessation of fees or interest paid into the contractors recovery fund, contractors education fund, real estate recovery fund, real estate education fund, and condominium education fund if the funds attain a certain dollar amount. (HB1126 HD1)

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