

STAND. COM. REP. NO.

733

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1729

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1729 entitled:

"A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS,"

begs leave to report as follows:

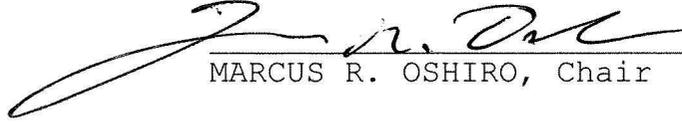
The purpose of this bill is to require payments of the amounts attributable to the interest on the principal of the general obligation bonds authorized and issued for the acquisition and renovation of the Old Federal Building for the Department of Commerce and Consumer Affairs (DCCA) be made out of the Compliance Resolution Fund.

DCCA testified in opposition to this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1729 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



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 SECTION 1. The legislature finds that the department of
2 commerce and consumer affairs is a self-sustaining department
3 whose operational costs are funded almost exclusively through
4 special funds. The legislature further finds this principle of
5 self-sustainment should be extended to apply to capital
6 expenditures as well as operational expense, especially during
7 these economically challenging times, during which the State
8 must make efforts to recover all costs for the operations of
9 special-funded departments.

10 In particular, the legislature finds that the State issued
11 general obligation bonds in 2002 to assist the department of
12 commerce and consumer affairs in the purchase of a new building.

13 The purpose of this Act is to require the department of
14 commerce and consumer affairs to be financially obligated to pay
15 all the interest on the principal on the general obligation
16 bonds issued for the purchase of the building for the
17 department.



1 SECTION 2. 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
19 chapter 91, and that shall be deposited into the special fund
20 established under this subsection. Any unpaid fee shall be paid
21 by the licensed person, upon application for renewal,
22 restoration, reactivation, or reinstatement of a license, and by



1 the person responsible for the renewal, restoration,
2 reactivation, or reinstatement of a license, upon the
3 application for renewal, restoration, reactivation, or
4 reinstatement of the license. If the fees are not paid, the
5 director may deny renewal, restoration, reactivation, or
6 reinstatement of the license. The director may establish,
7 increase, decrease, or repeal the fees when necessary pursuant
8 to rules adopted under chapter 91. The director may also
9 increase or decrease the fees pursuant to section 92-28.

10 There is created in the state treasury a special fund to be
11 known as the compliance resolution fund to be expended by the
12 director's designated representatives as provided by this
13 subsection. Notwithstanding any law to the contrary, all
14 revenues, fees, and fines collected by the department shall be
15 deposited into the compliance resolution fund. Unencumbered
16 balances existing on June 30, 1999, in the cable television fund
17 under chapter 440G, the division of consumer advocacy fund under
18 chapter 269, the financial institution examiners' revolving
19 fund, section 412:2-109, the special handling fund, section 414-
20 13, and unencumbered balances existing on June 30, 2002, in the
21 insurance regulation fund, section 431:2-215, shall be deposited
22 into the compliance resolution fund. This provision shall not



1 apply to the drivers education fund underwriters fee, section
2 431:10C-115, insurance premium taxes and revenues, revenues of
3 the workers' compensation special compensation fund, section
4 386-151, the captive insurance administrative fund, section
5 431:19-101.8, the insurance commissioner's education and
6 training fund, section 431:2-214, the medical malpractice
7 patients' compensation fund as administered under section 5 of
8 Act 232, Session Laws of Hawaii 1984, and fees collected for
9 deposit in the office of consumer protection restitution fund,
10 section 487-14, the real estate appraisers fund, section 466K-1,
11 the real estate recovery fund, section 467-16, the real estate
12 education fund, section 467-19, the contractors recovery fund,
13 section 444-26, the contractors education fund, section 444-29,
14 the condominium management education fund, section 514A-131, and
15 the condominium education trust fund, section 514B-71. Any law
16 to the contrary notwithstanding, the director may use the moneys
17 in the fund to employ, without regard to chapter 76, hearings
18 officers and attorneys. All other employees may be employed in
19 accordance with chapter 76. Any law to the contrary
20 notwithstanding, the moneys in the fund shall be used to fund
21 the operations of the department. The moneys in the fund may be



1 used to train personnel as the director deems necessary and for
2 any other activity related to compliance resolution.

3 Notwithstanding section 39-12, payments of the interest on
4 the principal of the general obligation bond or bonds authorized
5 and issued pursuant to Act 177, Session Laws of Hawaii 2002, for
6 the acquisition and renovation of the old federal building to be
7 occupied by the department of commerce and consumer affairs, and
8 included as part of program ID, general support-protection of
9 the consumer(CCA 191), shall be made out of the compliance
10 resolution fund.

11 Upon the effective date of this Act, the director shall be
12 obligated to reimburse the director of finance for all interest
13 payments on the bond or bonds made by the director of finance
14 prior to July 1, 2009. Subsequent to the effective date of this
15 Act, the director shall assume the obligation to make payments
16 on the several interest amounts as they mature.

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

20 (1) Any licensee or applicant under any chapter subject to
21 the jurisdiction of the department of commerce and
22 consumer affairs has complied with that chapter;



1 (2) Any person subject to chapter 485A has complied with
2 that chapter;

3 (3) Any person submitting any filing required by chapter
4 514E or section 485A-202(a)(26) has complied with
5 chapter 514E or section 485A-202(a)(26);

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

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

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

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

19 SECTION 3. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2009.

21

INTRODUCED BY:

Calvin K. Boy

JAN 28 2009



Report Title:

Old Federal Building Acquisition; Compliance Resolution Fund

Description:

Requires that payments of the amounts attributable to the interest on the principal of the general obligation bonds authorized and issued for the acquisition and renovation of the old federal building for the department of commerce and consumer affairs be made out of the compliance resolution fund.





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, March 19, 2009
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1729
RELATING TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, DAVID Y. IGE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, and I am the Director of Commerce and
Consumer Affairs ("DCCA" or the "Department"). The Department respectfully opposes
H.B. No. 1729.

Section 1 of the bill explains the rationale for requiring that the Department pay
the interest on the bonds issued to pay for the King Kalakaua Building ("KKB"), which
was purchased by the State in 2002:

The legislature finds that the department of commerce and
consumer affairs is a self-sustaining department whose operational costs
are funded almost exclusively through special funds. The legislature
further finds this principle of self-sustainment should be extended to apply
to capital expenditures as well as operational expense, especially during
these economically challenging times, during which the State must make

efforts to recover all costs for the operations of special-funded departments.

In particular, the legislature finds that the State issued general obligation bonds in 2002 to assist the department of commerce and consumer affairs in the purchase of a new building.

The purpose of this Act is to require the department of commerce and consumer affairs to be financially obligated to pay all the interest on the principal on the general obligation bonds issued for the purchase of the building for the department.

The Department agrees with much of the underlying principle expressed in section 1 of the bill, and agrees that it is reasonable, if the concept of self-funding is to be meaningful, that DCCA pay the capital costs associated with its operations.

However, we have three concerns with this particular proposal:

1. DCCA, arguably, has already paid for the KKB;
2. If DCCA has already paid for the KKB, the transfer of monies for this purpose may run afoul of the decision in *Hawai'i Insurers Council v. Lingle* (2008); and
3. Even if DCCA did not already pay for the building, the Department has not budgeted for the expense because it was not asked to pay the interest expense since it was first incurred, and paying for it suddenly in the manner proposed here will very seriously and adversely affect customer services thereby undermining the Legislature's purpose in establishing the Department as a self-funded agency.

DCCA, arguably, has already paid for the building

By way of Act 177, SLH 2002 (CCA-191, item 2A), the Legislature appropriated \$33 million for the acquisition and renovation of the old federal building (aka the United

States Post Office Custom House and Court House), now known as the King Kalakaua Building. The means of financing (MOF) was “C” funds (general obligation bond funds) and not “D” funds (general obligation bond funds with debt service costs to be paid from special funds). KKB houses all but two of DCCA’s divisions and the bulk of its employees.

H.B. No. 1729 proposes to require DCCA to pay all the interest on the principal on the GO bonds issued for the purchase of the building. Those familiar with the transaction’s history might argue that DCCA has already reimbursed the general fund for the entire cost of the transaction, and that this proposal amounts to DCCA paying twice for the same thing.

DCCA’s reimbursement arguably occurred when, simultaneous with the \$33 million CIP appropriation for the building in 2002, the Legislature sought to transfer the same amount out of the Compliance Resolution Fund (CRF) and into the general fund (Act 178, SLH 2002, section 39).

Governor Cayetano subsequently reduced the amount transferred to \$26 million, but, the next year, the Legislature more than made up the difference when it transferred another \$15 million (Act 178, SLH 2003, section 28) from the CRF. As a result, a total of \$41 million was transferred from the CRF to the general fund in calendar year 2003.

Neither the 2002 or 2003 transfer bills explicitly tied the CRF transfer to the building purchase. The subject of DCCA’s intention to pay for the building purchase, however, was discussed in letters from DCCA to legislative committees in 2001-02, and was mentioned later in legislative hearings. In addition, I have confirmed with former

DCCA director Kathy Matayoshi (1994-2002) that DCCA intended, and understood that the Legislature intended, that the 2002 transfer was for the purpose of reimbursing the general fund for the cost of the KKB.

Is it legal for the Department to make these payments under these circumstances?

The Department of the Attorney General is looking at the issue, but I believe that causing DCCA to pay the interest on the principal of the GO bonds may be illegal under the Supreme Court's decision in *Hawai'i Insurers Council v. Lingle* (2008) if its purpose is not DCCA-related. I further believe that a court would likely conclude that funds directed for the purpose of paying an expense denominated as the Department's building-related expenses would not be a legitimate DCCA-related expense if the Department has already paid those expenses.

At the same time, it is possible that the AG might also conclude that the legality of the transfer will depend in part on the source of the revenues used to pay the expense, and thus some cash reserves might be available for this purpose, while other cash reserves might not. If so, the Department's divisions may be affected unequally (a lot of one division's reserves might be available for transfer, while little/none of another division's reserves might be available).

Even if it is legal for DCCA to pay this expense, DCCA has not budgeted for it and cannot readily afford to suddenly assume this responsibility without some planning.

The Department is already experiencing reduced registration and license renewal revenues and expects that revenues will continue to fall for some time before they rise again.

Whether or not DCCA paid for the KKB, if the Department is caused to pay \$8.8 million for historic/current interest expenses as proposed in this measure, the Department will have an FY09 EOY cash balance of less than \$20 million, or approximately 5.4 months of reserve (based on Financial Plan numbers). This is significantly below the 9-month cash reserve that the Department targets.¹ Using more current and more likely FY09 expense projections, I believe that we are more likely to end the year at closer to \$27 million in cash reserves (approximately 7.7 months), which, while still well below the 9-month target, is less alarming.

If the Department pays \$8.8 million for historic/current interest payments, however, it will likely not be in a position to immediately assume additional future interest-related obligation. Using the Financial Plan projections again, incorporating the additional responsibility for future bond interest payments as currently included in this proposal would leave the Department with less than \$12 million (3.3 months) in cash reserves EOY FY10 and less than \$6 million (1.6 months) in FY11.

¹ A 9-month cash reserve target was established by the Department in 2003, and was significantly less than the 24-month and, later, the 18-month reserve target adopted by the prior Administration. The Department requires EOY cash reserves because it is responsible for addressing its own (1) cash flow, and (2) rainy day scenarios. Many of the Department's divisions do not receive any/significant revenues until well into the fiscal year (e.g., CATV: all revenues received in January/February; PVL/RICO: largest revenues received in December/June; DFI: revenues not received until the end of the fiscal year; and INS: assessments not usually received until the second half of the fiscal year). As such, the 9-month reserve target is a reasonable one, and it would be irresponsible financial planning on the Department's part if it were to voluntarily begin the year with cash reserves even approaching a 6-month level without simultaneously initiating plans to reduce service levels and, hence, expenses.

Additionally, the House version of the budget proposes to, among other things, transfer four programs (DBEDT's Economic Analysis Division, the High Technology Development Corporation, and the Small Business Regulatory Review Board, and DOA's Measurement Standards) to the Department. Three of the programs are not revenue generating and the fourth is currently not self-sustaining. Should those programs be transferred to the Department, the Department's future budgetary outlook would be in dire straits.

In light of departmental cash flow needs, the Department could not assume this additional responsibility and keep services at the existing levels.

Summary of the Department's position

In sum, the Department supports the principle of self-sufficiency that underpins the establishment of the CRF, and agrees that it is reasonable that the Department pay its own operation-related expenses. We submit, however, that we have already done that in this case, and that the effect of this proposal would be to cause the Department to pay a portion of those expenses twice. This would be wrong and, may be, illegal.

Thank you for the opportunity to testify, and I would be pleased to address any questions that you might have.