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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

Thursday, February 18, 2010
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1926, HOUSE DRAFT 1
RELATING TO THE DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT, AND TOURISM.**

WRITTEN ONLY

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (Department) **opposes**
House Bill No. 1926, H.D. 1, Relating to the Department of Business, Economic
Development, and Tourism. My name is Lawrence M. Reifurth, and I am the
Department's Director.

Among other things, the bill proposes to add, for a period of five years, a \$20
surcharge on most fees charged by the Department (fees charged for the purpose of
providing service to the Department's customers). In addition, the bill would annually
transfer \$2 million of the Department's customers' money located in the Compliance
Resolution Fund (CRF) to the Department of Business, Economic Development, and
Tourism (DBEDT).

Taking of Moneys (Annual Raid of \$2 Million)

The H.D. 1 version of the bill represents an improvement over the original version insofar as the original version proposed to divert \$2 million each year from the Division of Financial Institutions (DFI) CRF subaccount to DBEDT. H.D.1 replaces the specific designation of the DFI subaccount with a more general reference to the CRF. This provides the Department with more flexibility at the end of the year to determine from which subaccount the transfer might occur.

H.D. 1 also prohibits using moneys derived from regulatory fees as part of the \$2 million to be transferred into the general fund. The Department appreciates EBM's efforts to address some of the Department's earlier-stated concerns; unfortunately, the amendment will not significantly alter the revenue impact on the Department or the Department's customers, nor will it necessarily insulate the transfer from challenge under the December 2008 decision in *HIC v. Lingle*. The annual taking of \$2 million from the CRF amounts to an annual raid on the CRF.

\$20 Surcharge

The proposed \$20 surcharge, in essence, amounts to a tax increase on businesses. From a policy standpoint, the imposition of the proposed surcharge is inconsistent with the Department's long standing focus of reducing the cost of doing business in Hawaii. The Department understands the revenue picture and that principle must be balanced against the need for additional general fund revenues.

The proposal, however, turns the Department into a tax collector, and represents a significant variation on the agreement or understanding that was reached between the Department, the Legislature, and the Department's customers when the CRF was

established. It is not clear that there is any direct nexus between the proposed surcharge and the services provided by DBEDT.

Finally, it remains unclear how the surcharge is to be imposed on the various hourly examination fees charged by the Department. For example, a \$20 surcharge on what is now a \$40/hour examination may, if applied on top of the \$40/hour charge (increasing the charge to \$60/hour), significantly increase costs on affected institutions.

The Department urges the Committee to hold the bill.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 1926, H.D. 1

February 18, 2010

RELATING TO THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

House Bill No. 1926, H.D.1, establishes the Department of Business, Economic Development and Tourism Operation Special fund. House Bill No. 1926, H.D. 1, assesses an additional \$20 surcharge in addition to the various fees charged by the: Department of Commerce and Consumer Affairs; Public Utilities Commission; Department of Labor and Industrial Relations; and the Department of Taxation, and deposits the proceeds of the surcharge into the Department of Business, Economic Development and Tourism operation special fund beginning July 1, 2010 through June 30, 2015. House Bill No. 1926, H.D. 1, also authorizes the transfer of \$2 million from the Department of Commerce and Consumer Affairs' Compliance Resolution special fund for deposit into the Department of Business, Economic Development, and Tourism Operation special fund, provided that the moneys are not derived from regulatory fees and are derived from taxes, penalties, and other levies set statutorily.

As a matter of general policy, this department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether there is a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of the program and whether the fund will be self-sustaining.

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SUBJECT: MISCELLANEOUS, Surcharge fee on certain services

BILL NUMBER: HB 1926, HD-1

INTRODUCED BY: House Committee on Economic Revitalization, Business, and Military Affairs

BRIEF SUMMARY: Adds a new section to HRS chapter 92 to provide for the imposition of a temporary surcharge of \$20 in addition to any fee, if any, charged by the: (1) department of commerce and consumer affairs (DCCA) for: (a) the application, issuance, renewal of or re-issuance of a license, permit, or other authorization for a profession, business, or occupation; (b) examination or audit of a person engaged in a profession, business, or occupation; (c) filing, registration, or renewal of a corporate or other business document; (d) tax on insurance premiums; (2) public utilities commission (PUC) pertaining to the regulation of a public utility or filing of any document; (3) the department of labor and industrial relations (DLIR) pertaining to the regulation of a hoisting machine operator, blaster or pyrotechnics operator, safety and health professional, boiler installer or installation, and elevator mechanic or installation; (4) the department of taxation (DOTax) for the application, issuance, renewal, or re-issuance of a license, permit, certificate, or other authorization required under the following taxes: general excise; transient accommodations; rental motor vehicle and tour vehicle; liquor; cigarette and tobacco; liquid fuel; public service company; and banks and financial corporations.

The surcharge fee shall be imposed between July 1, 2010 and June 30, 2015 and shall be deposited into a newly created department of business, economic development, and tourism (DBEDT) operation special fund. Stipulates that no fee shall be imposed on: (1) any service for which no fee is charged; (2) any fine for a violation of a state law; (3) any fee for the dissemination or copying of a public record; or (4) any fee charged to a state, county, or federal agency.

Adds a new section to HRS chapter 201 to establish the department of business, economic development, and tourism operation special fund. Expenditures from the special fund shall be to pay for the operation of the department of business, economic development, and tourism, including the salary and fringe benefit costs of the department personnel.

Amends HRS section 26-9 to provide that by January 1, or as soon thereafter as possible, \$2,000,000 shall be deposited into the department of business, economic development, and tourism operation special fund provided that the moneys deposited shall not be derived from regulatory fees and shall be derived from taxes, penalties, and other levies.

This act shall be repealed on June 30, 2015 and HRS section 26-9(o) shall be reenacted in the form in which it read on the day before the effective date of this act.

EFFECTIVE DATE: July 1, 2010

STAFF COMMENTS: This measure proposes to impose a temporary surcharge of \$20 on certain fees or services charged by DCCA, PUC, DLIR, and DOTax between July 1, 2010 and June 30, 2015. The revenues derived from the surcharge are to be deposited into a newly created DBEDT operation special fund which, in turn, will be used to pay for the operation of DBEDT, including salary and fringe benefit costs of the department. The measure also diverts \$2 million of the compliance resolution fund to the DBEDT special fund. While the measure proposes to that revenues from the DBEDT special fund shall be used to pay for the operation of DBEDT, it is questionable whether the special fund would be the only source of funding for DBEDT as there is no provision to disconnect DBEDT from receiving funds from the state budgetary process. If the special fund is the sole source of funding for DBEDT, and if the revenues from the surcharge are insufficient, there is no doubt the surcharge amount will have to be increased to provide adequate funds to operate DBEDT resulting in an indirect "tax increase" to taxpayers.

It should also be noted that the proposed measure would add another special fund to the numerous other special funds. It should also be remembered that the State Auditor's report on special funds noted that: "Special funds give agencies full control of these unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. Many experts say that special funds are likely to hamper budget administration. And from a legislative perspective, they are less desirable because they are not fully controlled by the appropriation process."

Given the findings of the Auditor and the current financial crisis, it is quite clear that the creation of numerous special funds has eroded the integrity of state finances. It should be remembered that moneys in special funds are neither subject to the general fund expenditure limitation nor to the close scrutiny that general funds are subject to in the budgeting process. The use of special funds which fly under the radar will inevitably lead to a call for tax increases even though money abounds in these special funds. One only has to review the measures introduced each year which set up numerous new special funds or add new fees or charges the receipts of which are earmarked for special funds, to see the prolific establishment of special funds. Rather than create another special fund which will allow DBEDT to operate without financial scrutiny, lawmakers should repeal the numerous special funds and require these programs to compete for general funds like all other programs.

Digested 2/17/10

TESTIMONY BEFORE THE
HOUSE COMMITTEE ON FINANCE

Thursday, February 18, 2010
2:00 p.m.
Conference Room 308, State Capitol

H.B. NO. 1926 H.D.1

RELATING TO THE DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM

By Kevin Katsura
Associate General Counsel, Legal Department
Hawaiian Electric Company, Inc.

Chair Oshiro, Vice-Chair Lee, and Members of the Committee:

My name is Kevin Katsura providing written testimony in opposition to H.B. No. 1926 H.D.1 on behalf of Hawaiian Electric Company, Inc. and our subsidiary companies, Hawaii Electric Light Company, Inc. and Maui Electric Company, Ltd. (collectively, the Hawaiian Electric Companies).

The Hawaiian Electric Companies opposes this bill in that it imposes an added \$20 surcharge upon every fee charged by the Public Utilities Commission (PUC) other than to a telecommunications carrier that is the carrier of last resort.

The Hawaiian Electric Companies pay a public service company tax at a combined rate starting at 5.885% and topping off at 8.2%, depending on the individual utility's ratio of net income to gross income. In addition to the revenue taxes, the Hawaiian Electric Companies pay a 2.5% county franchise royalty tax and a 0.5% PUC fee.

Moreover, for fiscal year (FY) 2009, the PUC transferred over \$9 million of public utilities fees to the general fund.¹ For FY 2009 the PUC collected \$16.2 million in public utility fees, about twice the amount needed to fund the PUC and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate). By statute, in FY 2009, the PUC transferred \$9,338,759 to the general fund, representing its special fund excess balance.

Electricity is a necessity of modern living, and any increase in fees imbedded in our cost hurts the lower income consumer the most. Although this fee increase

¹ See PUC Special Fund Report Fiscal Year 2008-09, dated November 2009.

is proposed to be in effect for a limited period, until June 30, 2015, Hawaii consumers can ill-afford this additional cost in these tough economic times.

For these reasons, the Hawaiian Electric Companies respectfully oppose H.B. No. 1926 H.D.1. Thank you for the opportunity to provide testimony.



**Testimony to the House Committee on Finance
Thursday, February 18, 2010
2:00 p.m.
State Capitol - Conference Room 308
Agenda #2**

**RE: HOUSE BILL NO. 1926 HD1 RELATING TO THE DEPARTMENT OF
BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM**

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's concerns with HB 1926 HD1.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure imposes a surcharge on the fees charged by certain departments for certain business and commerce-related authorizations and services.

Although the Chamber understands the intent of this measure, we believe that this measure will have a difficult fiscal impact on small businesses, especially as they weather this tough economic storm.

Thank you for the opportunity to testify.