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EVERETT KANESHIGE
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TO THE HOUSE COMMITTEE ON
FINANCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Friday, February 25, 2011
12:30 p.m.

TESTIMONY ON HOUSE BILL NO. 560
RELATING TO FINANCE.

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

My name is Keali'i S. Lopez, and I am the Director of Commerce and Consumer Affairs ("DCCA" or the "Department"). The Department respectfully opposes H.B. No. 560.

The bill proposes to amend Section 26-9(o), Hawaii Revised Statutes, to require the DCCA to fund all interest payments on General Obligation ("GO") bonds issued on behalf of the DCCA and to annually collect funds from the Compliance Resolution Fund ("CRF") to pay the interest payments on the GO bonds beginning on July 1, 2011.

Since GO bonds were issued to pay for the King Kalakaua Building ("KKB"), which was purchased by the State in 2002, the Department assumes that the intent of H.B. No. 560 is to require the Department to be financially obligated to pay all the interest on the principal on the GO bonds issued for the purchase of KKB for the

Department. The Department further assumes that the rationale is based on the concept of self-funding as it applies to the capital expenditures as well as operational expenses of special-funded departments such as DCCA; that all costs should be funded exclusively through special funds.

While the Department agrees that it is reasonable, if the concept of self-funding is to be meaningful, that DCCA, in addition to operational costs, pays the capital costs associated with its operations, the department has two concerns with this particular proposal:

1. DCCA, arguably, has already paid for the KKB;
2. Even if DCCA did not already pay for the building, the Department has not budgeted funds for this purpose because this was not required of the Department when the expense was first incurred, and paying for it in the proposed manner will very seriously and adversely affect customer services and thereby undermine 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 was "C" funds (general obligation bond funds) rather than "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. 560 proposes to require DCCA to pay all the interest on the principal on the GO bonds issued for the purchase of the building. It is the DCCA's position that it 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 expense.

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 CRF and into the general fund (Act 178, SLH 2002, section 39).

Governor Cayetano subsequently reduced the proposed amount to be transferred to $26 million. However, the next year, the Legislature was successful in requiring the Department to transfer another $15 million (Act 178, SLH 2003, section 28) out of the CRF. As a result, a total of $41 million was transferred from the CRF to the general fund in calendar year 2003.

While neither of the 2002 or 2003 transfer bills explicitly tied the CRF transfer to the building purchase, former DCCA director Lawrence Reifurth, in his 2009 testimony indicated that the subject of DCCA's intention to pay for the building purchase was discussed in letters from DCCA to legislative committees in 2001-02, and was mentioned later in legislative hearings. In addition, I recently 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.

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

The Department continues to experience reduced registration and license renewal revenues and expects that revenues will continue to fall for some time before they rise again. The Department's total revenues are projected to be $4 million less in FY 2011 compared to FY 2010.[1]

Whether or not DCCA paid for the KKB, if the Department is required to pay the estimated $11.5 million[2] for historic/current interest expenses as proposed in this measure, the Department will have an FY11 EOY cash balance of approximately $17 million, or approximately 5.2 months of reserve[3]. This is significantly below the 9-month cash reserve that the Department needs in order to operate and provide the services the public needs.[4]

Additionally, if the Department pays $11.5 million for historic/current interest payments, it will likely not be in a position to assume additional future interest-related obligations. An $11.5 million transfer would leave the Department with less than $12 million (3.3 months) in cash reserves EOY FY12 and less than $6.5 million (1.8 months) in FY13.

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1 Based on the CRF Financial Plan numbers.
2 The Department's estimate is based on data provided by the Department of Budget and Finance in 2009 as current data is unavailable at this time.
3 Based on FY11 appropriation (Act 180, SLH 2010), which includes furlough restriction.
4 A 9-month cash reserve target was established by the Department which is significantly less than the 24-month and, the 18-month reserve targets adopted previously. 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 are not received until the end of the fiscal year; and INS: assessments are not usually received until the second half of the fiscal year). The 9-month reserve is reasonable. Any

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

Summary of the Department's position

The Department supports the principle of self-sufficiency which is the basis for the establishment of the CRF, and agrees that it is reasonable that the Department pay its own operation-related expenses. The Department is cognizant of the financial challenges facing our state, and is proactively taking steps to determine additional appropriate service payment options with other state departments for operations related services rendered to the DCCA. Additionally, the department has worked to right-size its fees over the past several years, which has resulted in reduced cash reserves. The department is concerned that the effect of this proposal would be to cause the Department to pay for KKB twice and result in significantly reducing the capacity and effectiveness of the Department to provide services.

We thank the House Committee on Finance for the opportunity to present testimony on this matter and respectfully request that this bill be held in this Committee.

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reduction in cash reserves will require corresponding reduction in service and enforcement levels in order to bring expenses into alignment with impacted reserves.

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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Friday, February 25, 2011
12:30 p.m.

HB 560

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 560, which would amend the statute governing operation of the Department of Commerce and Consumer Affairs (DCCA) to require that the Director of Finance transfer money from the Compliance Resolution Fund to retroactively and prospectively fund all interest payments on certain general obligation bonds issued for "infrastructure improvements." It is the apparent intent of this bill to require the DCCA to cover the cost of the State's acquisition of the King Kalakaua Building (KKB) which houses most of the DCCA's divisions and employees.

Hawaii Insurers Council opposes HB 560 on several grounds. First, as a matter of fundamental fairness and sound fiscal planning, there is strong evidence that the DCCA has already been assessed the cost of acquiring the KKB. On January 31, 2011 Keali'i Lopez, the interim director of the DCCA, provided testimony in opposition to HB 560 to the House Committee on Consumer Protection and Commerce. In her testimony Ms. Lopez reviewed the legislative history behind prior legislative appropriations for acquisition and renovation of the KKB, and corresponding transfers of $26 million and

$15 million from the compliance reservation fund (CRF), in fiscal years 2002 and 2003 respectively, to reimburse the general fund for the cost of acquiring the KKB. In her testimony, Ms. Lopez also noted that this prior transfer of funds was confirmed in letters from her predecessors, Lawrence Reifurth and Kathryn Matayoshi, to the Legislature to be for the express purpose of reimbursing the general fund for the cost of the KKB. Under these circumstances, the transfer of funds proposed in HB 560 amounts to a double payment by the DCCA for this expense.

The transfer of funds proposed in this bill is not only an improper double payment by the DCCA for the same expense, it also imposes an undue burden on the DCCA's current budget that it had not planned for. In her January 31, 2011 testimony, Ms. Lopez noted that the additional expense imposed by this bill would amount to an estimated $11.5 million transfer of funds from the CRF which would, in turn, reduce the DCCA's cash reserves to a point that it would be difficult for the Department to keep the services that it provides to the public at existing levels. This additional expense would be imposed at a time when, according to Ms. Lopez, the Department's total revenues are projected to be $4 million less than in the prior fiscal year.

Finally, it is important to note that an automatic transfer of funds from the CRF to cover the expense of acquiring the KKB is contrary to the intended purpose of the CRF which is to fund the operations of the DCCA. The additional financial burden imposed on the CRF by this bill would inevitably result in an increased assessment of fees by the DCCA to the consumers and businesses that it serves, including the insurance companies doing business in this state. In this regard, it is relevant to note that the property and casualty insurance industry already pays substantial government imposed fees and taxes, including the highest premium tax rate for property and casualty insurance in the nation. In addition to a very high premium tax, which goes into the state general fund, property and casualty insurers are also required to pay an annual assessment to the CRF, as well as underwriting the cost of the Workers' Compensation Special Compensation Fund, the Hawaii Joint Underwriting Plan, the Hawaii Property Insurance

Association and the Hawaii Insurance and Guaranty Association. Simply stated, the property and casualty insurance industry in Hawaii is already paying more than its fair share to regulate itself and support the operations of the DCCA. To unilaterally impose the additional expense contemplated in this bill would be grossly unfair to the DCCA and the consumers and businesses that its serves.

For the foregoing reasons Hawaii Insurers Council respectfully requests that HB 560 be held.

Thank you for the opportunity to testify.