



NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
INTERIM DIRECTOR

**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of  
**RICHARD C. LIM**  
**Interim Director**

Department of Business, Economic Development, and Tourism

before the

**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS**

Thursday, February 10, 2011

8:00 a.m.

State Capitol, Conference Room 312

in consideration of

**HB 782**

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

Chair McKelvey, Vice Chair Choy, and members of the Committee. DBEDT supports the intent of HB782 to establish a special fund for DBEDT operations. This fund would be funded by surcharge revenues and \$2,000,000 from the compliance resolution fund of the Department of Commerce and Consumer Affairs. We defer to DCCA for comment on the impact of this bill to their budget.

We appreciate the Committee's efforts to provide DBEDT with a dedicated source of funding which will enable us to engage in more long term planning, which is crucial to economic development.

Thank you for the opportunity to present this testimony.



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

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EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION & BUSINESS

TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION, 2011

Thursday, February 10, 2011  
8:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 782 - RELATING TO THE DEPARTMENT OF  
BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs (Department) appreciates the opportunity to testify in opposition to House Bill No. 782, Relating to the Department of Business, Economic Development, and Tourism. My name is Everett Kaneshige, and I am the Department's Deputy Director. House Bill No. 782, proposes, among other things, to add, for a period of five years, a \$20 surcharge for the next four years, on every fee charged by the Department for the:

- (1) Application, issuance, or renewal of a license, permit, or other authorization for a profession, business, or occupation;
- (2) Examination or audit of a person engaged in a profession, business, or occupation;

- (3) Filing, registration, or renewal of a business document;
- (4) Application for, or registration of, a trade name, trademark, or service mark; or
- (5) Tax on insurance premiums.

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).

### **\$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.

**Transfer of \$2M from Compliance Resolution Fund**

Section 4 of the bill, as proposed, states "beginning July 1, 2011, and ending on June 30, 2015, the sum of \$2,000,000 from the CRF shall be deposited with the director of finance to the credit of DBEDT's operation special fund provided further that, for the same period shall not be derived from regulatory fees and shall instead be derived from taxes, penalties, and other levies set at statutorily prescribed rates or amounts."

The Department will need to evaluate this transfer along with several other transfers from the CRF that have been proposed in other bills before we can determine the total impact on the Department and whether the total proposed transfers would negatively impact the Department's ability to operate and provide services to businesses and the public.

Thank you, for the opportunity to provide testimony on this bill. I would be happy to answer any questions you may have.

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS  
Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice Chair

Thursday, February 10, 2011  
8:00 a.m.

### **HB 782**

Chair McKelvey, Vice Chair Choy, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. The 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 782, which would create a new special fund for the operation of the Department of Business, Economic Development and Tourism (DBEDT) to be funded by assessing a \$20.00 surcharge on various fees charged by the Department of Commerce and Consumer Affairs (DCCA), Public Utilities Commission, Department of Labor and Industrial Relations and the Department of Taxation. This bill would also require the transfer of \$2 million from the DCCA Compliance Resolution Fund (CRF) to the DBEDT special fund.

Hawaii Insurers Council opposes HB 782 on several grounds. First, as a matter of fundamental fiscal policy, the special fund proposed in this bill does not meet the statutory criteria set forth in Hawaii Revised Statutes §37-52.3 for the establishment of special funds. Specifically, §37-52.3 provides that the Legislature, in establishing special funds, is to ensure that such funds reflect "a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic

means of support that is removed from the normal budget and appropriation process.” The disproportionate and diverse impact of the \$20 surcharge proposed in HB 782 is so diverse and far ranging that it is difficult to discern any direct nexus to the users or beneficiaries of programs administered by DBEDT. Similarly, the transfer of \$2 million from the CRF into the proposed fund would appear to fall squarely in the category of “an automatic means of support that is removed from the normal budget and appropriation process.” The new special fund that would be created by HB 782 also fails to meet the additional criteria set forth in §37-52.3 of providing “an appropriate means of financing for the program or activity; and [demonstrating] the capacity to be financially self-sustaining.” Accordingly, the special fund proposed in this bill is fundamentally flawed and contrary to the statute governing the establishment of special funds.

The \$2 million transfer of funds from the CRF proposed in this bill is not only contrary to the statutory criteria for establishment of a special fund, it is also very likely unconstitutional. In Hawaii Insurers Council v. Lingle, 120 Hawai'i 51, 201 P.3d 564 (2008), the Hawaii Supreme Court held that the Legislature's transfer of regulatory assessments imposed by the insurance commissioner, which were deposited in the CRF, was unconstitutional under the separation of powers doctrine. The \$2 million transfer of funds from the CRF proposed in this bill would be subject to the same constitutional challenge as the legislation that the Hawaii Supreme Court declared unconstitutional in HIC v. Lingle. The proviso in HB 782 that the funds to be transferred shall not be derived from regulatory fees but from “taxes, penalties, and other levies set at statutorily prescribed rates or amounts” does not necessarily insulate this legislation from constitutional challenge. It does, however, impose a significant collection, accounting and budgeting burden on the DCCA in its administration of the CRF.

In fact, this proposed transfer of funds from the CRF is contrary to the intended purpose of the CRF, which is to fund the operations of the DCCA, and could 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. 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 \$20 surcharge proposed in HB 782 would have a disproportionate impact on the property and casualty insurance industry by imposing the surcharge on all insurance-related licensees, including insurers, agents, adjusters and bill reviewers, as well as imposing an additional \$20 surcharge on the "tax on insurance premiums." This \$20 surcharge would be on top of a new tax just imposed on the insurance industry. Act 59, 2010 (HB 1985, SD1, CD1) doubled all statutory fees for the insurance industry in a separate tax for four years. The property and casualty insurance industry in Hawaii 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 impose the additional expense of multiple \$20 surcharges contemplated in this bill would be grossly unfair to the insurance carriers doing business in this state and the consumers and businesses they serve who would ultimately bear this additional expense.

For the foregoing reasons Hawaii Insurers Council respectfully requests that HB 782 be held.

Thank you for the opportunity to testify.

TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION AND BUSINESS

Thursday, February 10, 2011  
8:00 a.m.

H.B. NO. 782  
RELATING TO THE DEPARTMENT OF BUSINESS, ECONOMIC  
DEVELOPMENT, AND TOURISM

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

Chair McKelvey, Vice-Chair Choy, and Members of the Committees:

My name is Kevin Katsura providing written testimony in opposition to H.B. No. 782 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 oppose the language found on page 3 that increases the filing fee a regulated public utility must pay for any documents filed with the Public Utilities Commission (PUC) other than to a telecommunications carrier that is the carrier of last resort.

The utilities already pay a public utility fee that is deposited into the public utilities commission special fund to fund the PUC and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate). For fiscal year (FY) 2010, the PUC collected \$20.3 million in public utility fees, more than twice the amount needed to fund the PUC and the Consumer Advocate. Then as required by statute, at the end of FY 2010, the PUC transferred to the general fund a total amount of \$15.8 million, representing its special fund excess balance of \$14.7 million plus central service assessments of \$1.1 million.

Electricity is a necessity of modern living, and increase in fees imbedded in our cost, hurts the lower income consumer the most. Although this fee increase 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 request that, should this bill move forward, it be amended by deleting the language increasing the PUC filing fee. Thank you for the opportunity to testify.