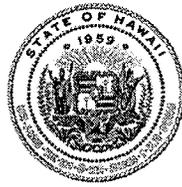


**HB 1728**



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TO THE SENATE COMMITTEE ON  
WAYS AND MEANS

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

Friday, April 3, 2009  
9:45 a.m.

**COMMENTS ON HOUSE BILL NO. 1728, H.D. 1, S.D. 1  
RELATING TO FEES**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, SHAN S. TSUTSUI, VICE  
CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment **in opposition** to House Bill No. 1728, H.D. 1, S.D. 1, Relating to Fees. My name is Lawrence M. Reifurth, and I am the Department's Director. House Bill No. 1728, H.D. 1, S.D. 1, proposes to codify the fees assessed by the Department and a handful of other state departments and agencies and, in so doing, removes the authority of the Department and those other agencies from setting fees pursuant to chapter 91 rulemaking.

The Department appreciates the context in which this measure arises. We understand the state's current financial situation, and the reduced number of options

that decision makers have after the Supreme Court's ruling in the *Hawai'i Insurers Council v. Lingle* case.

The Department nevertheless opposes this bill on the following grounds:

- (1) As a matter of principle, and for as long as our customers are charged fees for departmental services on top of taxes already paid, the Department opposes the transfer of its customers' funds to the general fund;
  - (2) Establishing fees and assessments via statute, rather than by rule, reduces the Department's flexibility and, hence, our ability to respond to changing economic circumstances; and
  - (3) The bill takes a one-size-fits-all approach in setting fees for vastly different programs and activities, which does not reflect the costs and value of services rendered, resulting in an inequitable situation where some fee payers will be subsidizing other fee payers.
- (1) The Department opposes the transfer of monies from the Compliance Resolution Fund to the general fund.**

The genesis of this bill appears to rest in a legislative reaction to the Supreme Court's decision in *HIC v. Lingle*, where the Court held that the Legislature had violated the separation of powers doctrine. Presumably, this proposal reflects the Legislature's interest in avoiding the separation of powers problem if, in the future, it again wishes to transfer special funds of the sort addressed in the *HIC* case. As such, the proposal here appears to reflect a legislative determination that it may need to again transfer funds from the Department's Compliance Resolution Fund ("CRF") and other special

funds to the general fund, and that it wishes to position itself to be able to do so without running afoul of the separation of powers doctrine.

Without understating, or failing to appreciate the severity of the State's current financial condition, the Department has a long-standing objection to the practice of transferring money from the CRF to the general fund which it restates here. The CRF has become the financing vehicle by which the Department has been assured of sufficient funds and its customers are thereby assured of sufficient service. The CRF amounts to an implicit promise to the Department's customers, including hundreds of thousands of licensees and hundreds of thousands of business registrants, that if they paid more for the Department's services (including an amount for protection against those among them who violated the laws) in the form of fees (on top of the taxes that they already paid), that those monies would be segregated from the general fund, and put to their exclusive use.

To the extent that this proposal presages or makes possible the future transfer of additional CRF funds to the general fund, the Department objects. In addition, the Department objects to the extent that any future transfer of funds would leave the Department in a position that it is not able to fulfill its promise to its customers related to improved service.

- (2) Determining the amount of a fee or assessment by statute, rather than by rule, reduces the Department's flexibility and, hence, our ability to respond to changing economic circumstances.**

Addressing the proposal on its own merits, and without regard to its apparent underlying intent, the Department nevertheless objects to restricting the flexibility inherent in allowing fees or assessments to be set by rule. The Department's fees

authorized and assessed under section 26-9(o), HRS, which are expressly affected by this proposal, are a case in point.

When the CRF was established, section 26-9(o), HRS, set a single fee to apply for all licenses and renewals at \$10 (ten dollars). The Legislature subsequently amended the law to provide the Department with the ability to determine and assess fees by rule. While the Department could, conceivably, approach the Legislature every time that it determined that cost changes required a change in any one of the hundreds of fees set under the authority of section 26-9(o), the Legislature, too, appears to have valued the flexibility associated with setting fees via the rulemaking process. In fact, in its committee report<sup>1</sup> on H.B. No. 2511-82, which was enacted as Act 60<sup>2</sup>, Session Laws of Hawaii 1982, the House Committee on Consumer Protection and Commerce indicated that it added a provision to allow the Director to “adjust the amount of the assessed fee when necessary to reflect the status of the fund and to **avoid statutory revision every time an adjustment is necessary.**” (emphasis added) In addition to increased flexibility, the rulemaking process provides multiple levels of review and significant opportunity for public involvement.

**(3) One-size-fits-all approach to setting fees will result in an inequitable situation where some fee payers will be subsidizing other fee payers.**

Currently, the Department, to the greatest extent practical, sets its fees at a level that maintains a reasonable relationship between the revenues derived from the fees and the cost or value of services rendered. Additionally, since 2003, the Legislature has

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<sup>1</sup> Stand. Com. Rep. No. 303-82, 1982.

<sup>2</sup> Act 60, SLH 1982, established a special fund for compliance resolution. By way of Act 322, SLH 1993, the special fund was named the Compliance Resolution Fund.

expressed an interest in how the Department's expenditures are aligned with its special fund revenue collections, and has required reports on that issue, including a discussion on the Department's plans to lower fees to appropriate levels. The Department has submitted those reports to the Legislature.

However, the bill would create a one-size-fits-all fee for every person (e.g., accountants, contractors, doctors, escrow companies, money transmitters, etc.) licensed by the Department. The bill amends section 26-9(o), HRS, by establishing a single fee to be applied to every person licensed by the Department for a license, permit, certificate, or registration. The bill also establishes a single annual fee.

The proposal does not consider the differences in costs associated with the various licensing programs. This will result in an inequitable situation where some licensees will be paying more than what it costs for the Department to administer that licensing program and other licensees paying less than the costs associated with administering their licensing programs.

Based on the foregoing, the Department respectfully urges the Committee to hold the bill. Thank you for the opportunity to comment on the Department's concerns with regard to the bill.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Comments Provided to the  
Senate Committee on Ways and Means

April 3, 2009 at 9:45am

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawai'i

HB 1728 HD1 SD1 – RELATING TO FEES

Chair Kim, Vice Chair Tsutsui and Members of the Committee:

The University of Hawaii opposes sections 15 through 18 of the bill which would replace administratively established with statutory fees and remove our authority to establish fees for certain special and revolving funds.

These special and revolving funds include numerous programs, facilities and services such as many different noncredit educational programs with differing costs, use of various university facilities by outside organizations, food services, transportation services, counseling and guidance, laboratory animal services and many others. Each semester, the demand and need for courses, programs and services at the University changes. The necessity to establish and revise fees related to the many programs and services only through statute would be impractical and unwieldy and would likely result in fees that are not commensurate with costs and expenses.

Thank you for the opportunity to comment on this bill.

Honorable Donna Mercado Kim, Chair  
Committee on Ways and Means  
Hawaii State Senate

Hearing: April 3, 2009

Re: HB 1728, SD1 – Relating to Fees

Chair Kim and Honorable Committee Members:

My name is Michael Oh and I am the chairman of the legislative committee for Catrala-Hawaii. Catrala's membership consists of the major u-drive companies in Hawaii and the many businesses which support the industry.

Catrala offers comments relating to the CFC fee portion of this bill relating to common-facility-charges for u-drive vehicles at public airports.

Per the existing law CFC fees are adjusted by the DOT to collect necessary revenues to meet expenses and CIP projects authorized by the Legislature. Further, given FAA guidelines and the special fund purposes into which CFC fees are deposited, the monies can be used only for specific purposes.

In view of the foregoing, it does not appear changing the existing law is necessary since the Legislature does approve all expenditures and FAA guidelines and the special fund guidelines restrict the use of such funds.

Thank you for allowing us to testify.