
A BILL FOR AN ACT

RELATING TO DISASTER PREPAREDNESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that the State must have
3 a comprehensive emergency preparedness program to mitigate
4 hazards, enhance preparedness for major disasters, and
5 accelerate response and recovery when disaster strikes. The
6 goal is to enhance and fortify the State's ability to save lives
7 and protect property in the event of disaster.

8 The legislature initiated the civil defense preparedness
9 effort by enacting Act 5, Session Laws of Hawaii Sp. Sess. 2005,
10 to appropriate funds for natural disaster preparedness efforts,
11 including:

12 (1) Installing and maintaining new siren systems, updating
13 evacuation maps in telephone books, constructing
14 additional shelter space and retrofitting existing
15 public buildings that could serve as emergency
16 shelters, developing statewide residential safe room
17 design standards by January 1, 2006, providing around-
18 the-clock alert staff for the civil defense division



1 of the department of defense, and expanding public
2 education campaigns emphasizing the need for tsunami
3 and hurricane preparedness;

4 (2) Developing Hawaii public shelter and residential safe
5 room design criteria by January 1, 2006, and
6 facilitating impact resistance testing and
7 certification of safe room design using Hawaii
8 performance-based standards for enhanced hurricane
9 protection areas and essential government facilities
10 capable of withstanding a five hundred-year hurricane
11 event and providing continuity of government or
12 sheltering operations thereafter; and

13 (3) Matching federal hazard mitigation funds if these
14 funds become available for use in retrofitting public
15 buildings with hurricane protective measures.

16 Act 5 also amended the definition of "wind resistive devices" to
17 allow "safe rooms" to qualify for the loss mitigation grant
18 program.

19 According to the state civil defense agency, hazards and
20 disasters include hurricanes, flash floods, tsunamis,
21 earthquakes, volcanoes, subsidence of land or landslides; urban
22 fires, power failures, wild fires, hazardous material



1 situations, droughts, aircraft accidents, tornadoes and water
2 spouts, dam failures, radiological incidences, terrorism, and
3 civil disorders.

4 The duties and responsibilities of state and county civil
5 defense are expansive. Chapter 127, Hawaii Revised Statutes,
6 relating to disaster relief, defines "disaster relief" as:

7 the preparation for and the carrying out of all
8 emergency functions, other than functions for which
9 military forces are primarily responsible, to minimize
10 and repair injury and damage resulting from disasters
11 caused by fire, flood, tidal wave, volcanic eruption,
12 earthquake, or other natural causes, or by enemy
13 attack, sabotage, or other hostile action. These
14 functions include, without limitation, fire fighting
15 services, police services, medical and health
16 services, rescue, engineering, air raid warning
17 services, communications, radiological, chemical, and
18 other special weapons defense, evacuation of persons
19 from stricken areas, emergency welfare services,
20 emergency transportation, protection of important
21 installations, temporary restoration of public utility
22 services, and other functions related to civilian



1 protection, together with all other activities
2 necessary or incidental to the preparation for and
3 carrying out of the foregoing functions.

4 Chapter 128, Hawaii Revised Statutes, relating to civil
5 defense and emergency Act, provides for the defense of the State
6 from enemy attack, sabotage, and other hostile action to protect
7 the public health, safety, and welfare. The related defense
8 services include fire fighting services, police services,
9 medical and health services, rescue engineering, air raid
10 warning services, communications, radiological, chemical, and
11 other special weapons defense, evacuation of persons from
12 stricken or danger areas, or from security areas established by
13 or under the authority of the United States, emergency housing
14 and other emergency welfare services, emergency transportation,
15 protection of important installations, and other functions
16 related to civilian protection, together with all other
17 activities necessary or incidental to the preparation for and
18 carrying out of the foregoing functions.

19 The legislature further finds that current concerns and
20 challenges for the State civil defense are the lack of emergency
21 spaces throughout the State, evacuation of tourists and
22 residents, evacuation of the special needs population, special



1 needs emergency shelters, develop and maintenance of plans,
2 public awareness and involvement, and the avian flu pandemic.

3 The legislature further finds that emergency and disaster
4 preparedness basically involves continuous planning, effective
5 and efficient response including evacuation, training, and the
6 development of infrastructure and warning systems. To make this
7 happen, coordinated effort and planning are necessary over a
8 broad spectrum of public and private entities, including the
9 state, counties, federal government, national guard, law
10 enforcement, and hospitals. The aim is prevention, protection,
11 response, and recovery.

12 The purpose of this Act is to enhance the State's civil
13 defense responsiveness efforts to protect the public health,
14 safety, welfare, and property.

15 PART II

16 BUILDING CODE FOR STATE BUILDINGS

17 SECTION 2. State buildings must comply with county
18 building codes. The degree of hurricane protection afforded by
19 county building codes varies from county to county. For reasons
20 of public safety, state buildings need to conform to a uniform
21 standard to afford sufficient hurricane protection.



1 communities exacerbates the problem of siren gaps. Residents in
2 these new communities do not have the life and property saving
3 advantage of early warning sirens to alert them to natural or
4 man-made hazards such as tsunami and hurricane.

5 Many new residential communities have community facilities,
6 commonly known as community recreational centers, which can be
7 put to good use in emergencies if designed and constructed to
8 serve a dual purpose as emergency hurricane shelters.

9 The purpose of this Act is to:

- 10 (1) Require developers of new residential developments to
11 design and construct community facilities to meet
12 hurricane resistant criteria, and to install siren
13 warning systems; and
14 (2) Require developers of existing residential
15 developments to new install siren warning systems.

16 SECTION 5. Chapter 127, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 **"§127- Residential development projects; civil defense**
20 **preparedness.** (a) Beginning July 1, 2006, the developer of a
21 development or a residential project shall:



1 (1) Design and construct community facilities, if
2 community facilities are included, to meet at a
3 minimum, hurricane resistant criteria; and

4 (2) Install emergency siren systems within the development
5 or residential project.

6 This subsection shall include a new development or a new
7 residential project, as well as a development or residential
8 project in progress as of July 1, 2006.

9 (b) Beginning July 1, 2006, the developer of an existing
10 development or residential project shall install emergency siren
11 systems within the development or residential project.

12 (c) As used in this section:

13 "Community facilities" includes real and personal property,
14 and buildings, equipment, lands, and grounds for recreational or
15 social assemblies, for educational, health, or welfare purposes
16 and necessary or convenient utilities, when designed primarily
17 for the benefit and use of the occupants of the dwelling.

18 "Developer" and "development" shall have the same meaning
19 as in section 46-141.

20 "Hurricane resistant criteria" means wind speed values as
21 contained in the Uniform Building Code of 1997, as amended.



1 "§235- Wind resistive devices tax credit. (a) There
2 shall be allowed to each taxpayer, subject to the tax imposed by
3 this chapter, an income tax credit for the installation of a
4 wind resistive device, as defined in section 431:22-101, that
5 qualifies for a grant under section 431:22-104. The wind
6 resistive devices tax credit shall be in addition to any grant
7 awarded to the taxpayer under chapter 431:22. The credit shall
8 be deductible from the taxpayer's net income tax liability, if
9 any, imposed by this chapter for the taxable year in which the
10 credit is properly claimed.

11 (b) If the tax credit allowed under subsection (a) exceeds
12 the taxpayer's net income tax liability, the excess of credit
13 over liability shall be refunded to the taxpayer; provided that
14 no refunds or payment on account of the tax credit allowed by
15 this section shall be made for amounts less than \$1.

16 (c) All claims for tax credits under this section,
17 including any amended claims, must be filed on or before the end
18 of the twelfth month following the close of the taxable year for
19 which the credits may be claimed. Failure to comply with the
20 foregoing provision shall constitute a waiver of the right to
21 claim the credit.



1 that in its determination, the public utilities commission shall
2 consider:

3 (1) Whether a benefit exists that outweighs the costs of
4 placing the electric transmission system underground;

5 (2) Whether there is a governmental public policy
6 requiring the electric transmission system to be
7 placed, constructed, erected, or built underground,
8 and the governmental agency establishing the policy
9 commits funds for the additional costs of
10 undergrounding;

11 (3) Whether any governmental agency or other parties are
12 willing to pay for the additional costs of
13 undergrounding;

14 (4) The recommendation of the division of consumer
15 advocacy of the department of commerce and consumer
16 affairs, which shall be based on an evaluation of the
17 factors set forth under this subsection; and

18 (5) Any other relevant factors."

19 PART VI

20 NATIONAL GUARD DEPLOYMENT

21 SECTION 10. It has been reported that more than eighty-
22 eight per cent of the 3,000 member Hawaii national guard



1 division have been called to active duty since September 11,
2 2001, the highest ratio of reservists and National guard
3 soldiers of any state in the country. The legislature finds
4 that the disproportionately large deployment of Hawaii's citizen
5 soldiers has virtually gutted out the manpower and effectiveness
6 of the Hawaii national guard to respond to state emergencies.
7 The legislature further finds that if a tsunami or hurricane
8 were to hit Hawaii, there would be insufficient national guard
9 troops to assist in evacuation, relief, and protection of
10 property.

11 The governor, along with the President of the United
12 States, has statutory authority vested by reason of section
13 121-30, Hawaii Revised Statutes, to call the national guard to
14 active duty service.

15 The purpose of this Act is to clarify the governor's
16 authority to call the national guard to active service.

17 SECTION 11. Section 121-30, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§121-30 Order to active service[-]; governor's duty.** (a)
20 In case of war, insurrection, invasion, riot, or imminent danger
21 thereof, or any forcible obstruction to the execution of the
22 laws, or reasonable apprehension thereof, or for assistance to



1 civil authorities in disaster relief or civil defense, the
2 governor may order the national guard or other component of the
3 militia or any part thereof into active service. The governor
4 or the governor's designated representative also may order the
5 national guard into active service in nonemergency situations
6 for duty and training in addition to the drill and instruction
7 required by section 121-8.

8 (b) The governor shall not order the national guard or
9 other component of the militia or any part thereof into active
10 service pursuant to subsection (a) if, as a result, more than
11 per cent of the national guard would be in active service
12 at any one time.

13 (c) If, as a result of an order by the President of the
14 United States directing any members of the Hawaii national guard
15 to report to active service, the percentage under subsection (b)
16 would be exceeded, the governor, with the assistance of the
17 adjutant general, shall immediately:

18 (1) Advise the President of the United States, Secretary
19 of Defense, and Secretary of the Army of the
20 provisions of this section as well as the dire social,
21 economic, and civil defense consequences to the State
22 of the deployment; and



1 federally declared disaster to provide immediate disaster relief
2 to affected areas.

3 The purpose of this part is to allocate funds from the
4 2006-2007 fiscal year budget to establish an emergency supply
5 cache.

6 SECTION 13. Act 178, Session Laws of Hawaii 2005, is
7 amended by amending section 67 to read as follows:

8 "SECTION 67. Provided that of the general fund
9 appropriation for amelioration of physical disasters (DEF 110),
10 the sum of \$500,000 for fiscal year 2005-2006 and the sum of
11 [~~\$500,000~~] \$1,500,000 for fiscal year 2006-2007 shall be
12 expended for relief (\$500,000) and to establish an emergency
13 cache (\$1,000,000), from major disasters pursuant to chapter
14 127-11, Hawaii Revised Statutes; provided further that the
15 department of defense shall notify the legislature within five
16 business days of any expenditure of these funds by submitting a
17 report detailing the date, reason, and amount of the
18 expenditure; and provided further that any funds not expended
19 for this purpose shall be lapsed to the general fund."

20 PART VIII

21 PROFITEERING AND PRICE GOUGING



1 SECTION 14. The legislature finds that during emergencies
2 and major disasters, including, but not limited to, earthquakes,
3 fires, floods, or civil disturbances, some merchants may take
4 advantage of consumers by greatly increasing prices for
5 essential commodities and services. While the pricing of
6 commodities and services is best left to the marketplace under
7 ordinary conditions, when a declared state of disaster results
8 in abnormal disruptions of the market, the public interest
9 requires that excessive and unjustified increases in the prices
10 of essential commodities and services be prohibited and
11 punished. It is the intent of the legislature to protect the
12 public from excessive and unjustified increases in prices
13 charged during or after a declared state of disaster for
14 commodities and services that are vital and necessary for the
15 health, safety, and welfare of the public. The purpose of this
16 bill is to:

- 17 (1) Penalize any excessive increase in prices for any
18 essential commodities or services during a declared
19 state of disaster; and
20 (2) Allow any person to bring a qui tam action on behalf
21 of the State against those who excessively increase



1 prices for essential commodities or services during a
2 declared state of disaster.

3 SECTION 15. Section 209-1, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read as follows:

6 "Services" shall mean any work, labor, or services
7 furnished in connection with the sale or renovation of real or
8 personal property."

9 SECTION 16. Section 209-9, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§209-9 Rental or sale of essential commodities during a**
12 **state disaster; prohibition against price increases. (a)**

13 Whenever the governor declares a state disaster for the entire
14 State or any portion thereof, or when the State, or any portion
15 thereof, is the subject of a severe weather warning:

16 (1) There shall be prohibited any excessive increase in
17 the selling price of any commodity~~[7]~~ or service,
18 whether at the retail or wholesale level, in the area
19 that is the subject of the disaster declaration or the
20 severe weather warning~~[7-and]~~. It is prima facie
21 evidence that a price is an excessive increase if:

1 (A) The amount charged represents a gross disparity
2 between the price of the commodity or service
3 that is the subject of the offer or transaction
4 and the average price at which that commodity or
5 service was leased or sold or offered for lease
6 or sale in the usual course of business during
7 the thirty days immediately prior to a
8 declaration of a state of disaster, and the
9 increase in the amount charged is not
10 attributable to additional costs incurred in
11 connection with the lease or sale of that
12 commodity or service, or any national or
13 international trends; or

14 (B) The amount charged grossly exceeds the average
15 price at which the same or similar commodity or
16 service was readily obtainable in the trade area
17 during the thirty days immediately prior to a
18 declaration of a state of natural disaster, and
19 the increase is not attributable to additional
20 costs incurred in connection with the lease or
21 sale of that commodity or service, or any
22 national or international trends;

1 [~~(2)~~] (3) No landlord shall terminate any tenancy for a
2 residential dwelling unit in the area that is the
3 subject of a disaster declaration or a severe weather
4 warning, except for a breach of a material term of a
5 rental agreement or lease, or if the unit is unfit for
6 occupancy as defined in this chapter, provided that:

7 (A) Nothing in this chapter shall be construed to
8 extend a fixed term lease beyond its termination
9 date, except that a periodic tenancy for a
10 residential dwelling unit may be terminated by
11 the landlord upon forty-five days written notice:

12 (i) When the residential dwelling unit is sold
13 to a bona fide purchaser for value; or

14 (ii) When the landlord or an immediate family
15 member of the landlord will occupy the
16 residential dwelling unit; or

17 (B) Under a fixed term lease or a periodic tenancy,
18 upon forty-five days written notice, a landlord
19 may require a tenant or tenants to relocate
20 during the actual and continuous period of any
21 repair to render a residential dwelling unit fit
22 for occupancy provided that:

1 (i) Reoccupancy shall first be offered to the
2 same tenant or tenants upon completion of
3 the repair; and

4 (ii) The term of the fixed term lease or periodic
5 tenancy shall be extended by a period of
6 time equal to the duration of the repair;
7 and

8 (iii) It shall be the responsibility of the tenant
9 or tenants to find other accommodations
10 during the period of repair.

11 As used in this section, "breach of a material term" means
12 the failure of a party to perform an obligation under the rental
13 agreement which constitutes the consideration for entering into
14 the contract and includes the failure to make a timely payment
15 of rent. For the purpose of this subsection:

16 "Fixed term lease" means a lease for real property that
17 specifies its beginning date and its termination date as
18 calendar dates, or contains a formula for determining the
19 beginning and termination dates; and the application of the
20 formula as of the date of the agreement will produce a calendar
21 date for the beginning and termination of the lease.



1 "Periodic tenancy" means a tenancy wherein real property is
2 leased for an indefinite time with monthly or other periodic
3 rent reserved. A periodic tenancy may be created by express
4 agreement of the parties, or by implication upon the expiration
5 of a fixed term lease when neither landlord nor tenant provides
6 the other with written notice of termination and the tenant
7 retains possession of the premises for any period of time after
8 the expiration of the original term.

9 "Unfit for occupancy" means that a residential dwelling
10 unit has been damaged to the extent that the appropriate county
11 agency determines that the unit creates a dangerous or
12 unsanitary situation and is dangerous to the occupants or to the
13 neighborhood.

14 (b) Notwithstanding this section, any additional operating
15 expenses incurred by the seller or landlord because of the state
16 disaster, and which can be documented, may be passed on to the
17 consumer. In the case of a residential dwelling unit, if rent
18 increases are contained in a written instrument which was signed
19 by the tenant prior to the disaster declaration or severe
20 weather warning, the increases may take place pursuant to the
21 written instrument.



1 (c) The prohibitions under subsection (a) shall remain in
2 effect until twenty-four hours after the severe weather warning
3 is canceled by the National Weather Service; or in the event of
4 a disaster declaration, until the declaration is altered,
5 amended, revised, or revoked by the governor.

6 (d) In any action against a merchant, landlord, or other
7 business for violation of the price limitations in this section,
8 the defendant shall be deemed not to have violated this section
9 if the defendant proves all of the following:

10 (1) The violation of the price limitation was
11 unintentional;

12 (2) The defendant voluntarily rolled back prices to the
13 appropriate level upon discovering that this section
14 was or may have been violated; and

15 (3) The defendant has instituted a restitution program for
16 all consumers who may have paid excessive prices.

17 (e) Any violation of this section: ~~[shall]~~

18 (1) Shall constitute unfair methods of competition and
19 unfair and deceptive acts or practices in the conduct
20 of any trade or commerce under section 480-2 and shall
21 be subject to a civil penalty as provided in section
22 480-3.1. Each ~~[item sold]~~ sale of a commodity or



1 losses, which may not be fully compensated by insurance, as in
2 the 2004 Manoa flood disaster.

3 The purpose of this Act is to establish a disaster
4 assistance special fund to provide immediate relief to disaster
5 victims who are not eligible to receive funding from other
6 government disaster assistance programs or sources.

7 SECTION 18. Chapter 209, Hawaii Revised Statutes, is
8 amended by adding a new section to part III to be appropriately
9 designated and to read as follows:

10 **"§209- Residential disaster assistance special fund.**

11 (a) There is established within the state treasury a special
12 fund to be known as the residential disaster assistance special
13 fund. The special fund shall be administered and expended by
14 the department of business, economic development, and tourism in
15 accordance with this section.

16 (b) The department shall expend the special fund to
17 provide reimbursement to applicants who, as a result of a State
18 disaster:

19 (1) Incurred residential property losses; and

20 (2) Are not eligible for any other state or federal
21 government assistance program or loan.



1 (c) An applicant shall be eligible to receive compensation
2 for loss, resulting from a state disaster, under this section if
3 the applicant is a natural person and the owner of the damaged
4 dwelling; provided that an applicant may apply for compensation
5 for not more than one damaged dwelling.

6 (d) Compensation for loss to any one applicant under this
7 section shall not exceed \$. The department may expend
8 moneys from the fund without an appropriation by the
9 legislature. Any insurance proceeds received by the applicant
10 for a loss as a result of a natural disaster, as defined in
11 section 171-85, shall be deducted from the amount payable to the
12 applicant under this subsection if the applicant's compensation
13 from the special fund exceeds the applicant's insurance
14 compensation, if any. If the compensation from the special fund
15 is not more than the insurance compensation, the applicant shall
16 be entitled to compensation from the special fund in an amount
17 that does not exceed the difference between the amount of the
18 insurance compensation and the actual loss suffered.

19 (e) For purposes of calculating the amount of compensation
20 to each applicant, the department shall:



1 (1) Determine the amount of total potential compensation
2 based on all eligible applications resulting from a
3 single state disaster; and

4 (2) Make compensation to each applicant in the pro rata
5 proportion that the applicant's compensation bears to
6 the total available moneys appropriated under
7 subsection (f).

8 (f) The department shall establish procedures and a
9 deadline for filing an application after the occurrence of a
10 state disaster.

11 (g) The special fund shall consist of moneys appropriated
12 for deposit into the fund for purposes of this section; provided
13 that no unexpected or unencumbered moneys shall lapse into the
14 general fund."

15 SECTION 19. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$, or so
17 much thereof as may be necessary for fiscal year 2006-2007, for
18 deposit into the disaster assistance special fund under section
19 209- , Hawaii Revised Statutes.

20 The sum appropriated shall be expended by the department of
21 business, economic development, and tourism for the purposes of
22 this Act.

1 SECTION 20. This part, upon the approval of this Act,
2 shall apply retroactive to natural disasters occurring on or
3 after October 30, 2004.

4 PART X

5 EMERGENCY SHELTER SPACE APPROPRIATION

6 SECTION 21. The state civil defense agency estimates the
7 cost to retrofit public buildings, such as installation of wind
8 resistant screens and doors, and to create more emergency
9 shelter spaces in the State is \$35,000,000. The appropriation
10 contained in this part for \$4,000,000 would reduce the current
11 target shortfall of emergency shelter spaces by about 30,000, as
12 well as shore up public facilities to meet the requirements of
13 the special needs population.

14 The purpose of this part is to make an appropriation for
15 more emergency shelter space.

16 SECTION 22. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$4,000,000, or so
18 much thereof as may be necessary for fiscal year 2006-2007,
19 retrofit public buildings to increase the number of emergency
20 shelter spaces and to shore up public facilities to meet the
21 needs of special needs population groups.



1 much thereof as may be necessary for fiscal year 2006-2007, for
2 deposit into the loss mitigation grant fund, to supplement the
3 appropriation out of the hurricane reserve trust fund for fiscal
4 year 2006-2007, under section 12 of Act 5, Session Laws of
5 Hawaii Sp. Sess. 2005.

6 The sum appropriated shall be expended by the department of
7 defense for the purposes of this Act.

8 PART XII

9 CIVIL DEFENSE WARNING SIRENS APPROPRIATION

10 SECTION 25. The State civil defense will install new
11 warning sirens in existing gap areas and replace older sirens
12 throughout the State. The estimate for the total cost is
13 \$16,000,000, pro rated over a six-year period.

14 The purpose of this part is to make a capital improvements
15 appropriation to install new warning sirens in gap areas and to
16 replace older sirens throughout the State.

17 SECTION 26. The director of finance is authorized to issue
18 general obligation bonds in the sum of \$2,500,000, or so much
19 thereof as may be necessary, and the same sum, or so much
20 thereof as may be necessary, is appropriated for fiscal year
21 2006-2007, for the purpose of capital improvement projects to
22 install new civil defense warning sirens in gap areas and to



1 replace older sirens statewide, as part of a six-year
 2 incremental and pro-rated capital improvement project,
 3 specifically for plans, land acquisition, design, construction,
 4 replacement, and equipment relating to disaster warning systems
 5 and communication devices.

6 The sum appropriated for the capital project set forth in
 7 this section shall be expended by the department of accounting
 8 and general services for the purposes of this Act.

PART XIII

10 SECTION 27. In codifying this Act, the revisor of statutes
 11 shall substitute the appropriate section designations for the
 12 letter designations used in this Act.

13 SECTION 28. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 29. This Act shall take effect upon its approval;
 16 provided that sections 13, 19, 22, 24, and 26 shall take effect
 17 on July 1, 2006.

18

INTRODUCED BY: *Amaine J. Thomas*
Will Eyer
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SB2214

Report Title:

Disaster Preparedness; Civil Defense Package

Description:

Establishes hurricane resistant building code for state buildings; requires developers to install siren warning devices in developments; provides wind resistant devices income tax credit; establishes rebuttal presumption in favor of undergrounding utilities in tsunami-prone areas; clarifies governor's duties in deploying national guard; allocates funds from FY06 to establish emergency cache; prohibits profiteering and price gouging; creates residential disaster assistance special fund and makes appropriation; makes appropriations for emergency shelter spaces, loss mitigation grant program, and civil defense warning sirens.

