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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Monday, February 4, 2008
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 3091 – RELATING TO LOSS MITIGATION

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department strongly supports this Administration bill.

The purpose of this bill is to replace the loss mitigation grant program with a hurricane retrofit tax credit.

The concept of this program was to reduce potential loss from hurricane or other wind damage by giving individuals an incentive to retrofit their property with wind resistive devices. However, the present money grant program to homeowners who install wind resistive devices to help protect their homes from hurricane or other wind damage is seldom used. Apparently the present money grant isn't providing a sufficient incentive to homeowners or is too cumbersome for easy use. Since the public is more familiar with the tax credit concept and would be able to claim this credit as part of their tax return, we believe that changing the grant program to a tax credit program would make obtaining the benefit easier and thereby achieve the ultimate goal of lessening the economic impact of hurricane or other wind damage.

For your information, the loss mitigation grant program has awarded 271 grants for a total payout of $388,259 from September 1, 2006 to February 1, 2008. It should be noted that the Department has undertaken significant efforts to promote the loss mitigation grant program. These include newspaper advertisements and articles, interviews on television, radio promotion, public education events conducted with the Structural Engineers Association of Hawaii and the Building Industry Association, a flyer distributed to customers by Zephyr and HECO, a payroll stub announcement to State workers, a letter to licensed contractors, and co-sponsoring of a handbook on disaster preparedness and loss mitigation techniques. These are in addition to promotional efforts undertaken by the private sector. Thus, we think the program has been well promoted.

It is true that this bill does not address other perils such as earthquake risk. We point out that legislation along these lines must await development on the engineering front. There is currently an ongoing FEMA-UH study on earthquake mitigation techniques that is due out in the summer of 2008. This study will pioneer earthquake mitigation for Hawaii construction. Until we see that study and know what techniques are contemplated, we cannot recommend legislation along those lines. We believe that the first step is to establish a tax credit for wind mitigation and then add one for earthquake and possible other mitigation as the engineering in the area is developed.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TESTIMONY REGARDING HB 3091
RELATING TO LOSS MITIGATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 4, 2008
TIME: 2:00PM
ROOM: 325

This legislation, among other things, provides a nonrefundable income tax credit for the installation of wind-resistive devices.

The Department of Taxation (Department) **supports this Lingle-Aiona Administration.**

I. PROVIDING INCENTIVES TO REDUCE LOSSES IS IMPORTANT.

The Department very much supports this measure and the pursuits by the Insurance Commissioner in providing incentives to the insurance and other loss mitigation industry participants by encouraging homeowners to purchase devices that will prevent property loss during events, such as natural disasters. Natural disasters are unpredictable events. For homes and other structures, the best time to make improvements to these structures is when construction is occurring. This legislation will encourage homebuilders to make improvements to reduce the devastation that can occur during natural disasters.

II. THE DEPARTMENT PREFERS HB 3091 FOR THE FOLLOWING REASONS.

The Department strongly prefers the approach taken in this legislation, compared to other similar bills proposed this session, for the following reasons:

DETERMINATION OF APPROPRIATE DEVICES—This legislation allows the Department to make rules, which have the force and effect of law, without effect to Chapter 91. This allows flexibility to allow credits based upon technological or other advances in the loss mitigation wind resistive device industry.

APPROVAL OF INSURANCE COMMISSIONER—The Department is not an expert in which devices are most appropriate. The Department would rather defer to experts, such as the Insurance Commissioner. Provisions are provided in HB 3091 to allow the Insurance Commissioner to review applications for the credit to ensure proper approval of credits. The Department partners with other state agencies to issue other types of credits, depending upon the expertise involved.

III. REVENUE IMPACT

This legislation will result in a revenue loss of approximately $4 million per year.

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TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax credit for wind resistive devices

BILL NUMBER: SB 3013/HB 3091 (Identical); SB 2111; HB 2125 (Identical)

CPH 1/30 CPH 1/30

INTRODUCED BY: SB 3013 by Hanabusa by request; HB by Say by request; SB 2111 by Chun Oakland; HB 2125 by Mizuno

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim an income tax credit of 35% of the costs incurred for the purchase and installation of a wind resistive device in a non commercial or non-condominium residential dwelling located in the state; applicable to tax years beginning after December 31, 2008.

SB 3013/HB 3091 further provide that the credit may only be claimed for the devices that are described by the director of taxation in the technical specifications issued by the director for the program; provided that they are not subject to HRS chapter 91. The director of taxation may exclude from the tax credit devices that were installed due to a building code requirement. Allows the director of taxation to require the applications from taxpayers to qualify wind resistant devices to be first reviewed and approved by the insurance commissioner. Permits the insurance commissioner to rely on representation from an inspector or licensed contractor that the director of taxation's technical specifications have been met.

SB 2111/HB 2125 specifies that the description, specifications, guidelines, and requirements for the devices shall be further developed and determined solely by the director of taxation.

Credits in excess of a taxpayer's income tax liability shall be applied to subsequent tax liability until exhausted. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof of the claim for the credit. Claims for the credit shall be on forms provided by the department of taxation.

Defines "wind resistive device" for purposes of the measures. SB 2111/HB 2125 further defines "net income tax liability" for purposes of the measure.

Repeals Article 22 of HRS chapter 431 on December 31, 2008 (SB 3013/HB 3091) or January 1, 2009 (SB 2111/HB 2125). SB 2111/HB 2125 further provides that any unencumbered funds remaining in the loss mitigation grant fund shall lapse into the Hawaii hurricane relief fund and also provides that to the extent requested by the department of taxation, all items related to wind resistive devices pursuant to HRS section 431-22 shall be transferred from the insurance commissioner to the department of taxation. Also provides for the transfer of existing personnel to other state positions. These provisions take effect on January 1, 2009.

SB 3013/HB 3091 appropriates $500,000 out of the loss mitigation grant fund for fiscal 2009 to enable the loss mitigation grant program to continue until the tax credit becomes available. All remaining moneys in the fund after moneys are appropriated shall be transferred to the hurricane reserve trust fund.

SB 2111/HB 2125 appropriates an unspecified amount of general funds for fiscal 2009 to allow the department of taxation to contract the services of a consulting engineer and to fund a public awareness program.

EFFECTIVE DATE: July 1, 2008; and as noted in the measure

STAFF COMMENTS: SB 3013/HB 3091 is an administration measure submitted by the department of commerce and consumer affairs CCA-10(08). The legislature by Act 179, SLH 2002, established a loss mitigation grant program as a pilot program to encourage the installation of wind resistive devices. The grants were made available for 35% of the cost of such devices and their installation with a maximum total reimbursement of $2,100 per dwelling, subject to availability of funds.

These measures propose to replace the loss mitigation grant program with an income tax credit for the purchase and installation of wind resistive devices. The justification sheet submitted by the administration states that the present program is rarely used and does not appear to be a sufficient incentive. While the loss mitigation grant program did not encourage taxpayers to install wind resistive devices, it is questionable whether the income tax credit will be a sufficient incentive to encourage the purchase and installation of such devices.

It should also be noted that the adoption of this measure would increase the responsibilities of the director of taxation as the director must develop the technical specifications, qualify and certify the wind resistive devices, a duty formerly under the care of the insurance commissioner. It should be remembered that the tax system exists to raise revenue to operate government. Utilizing the tax system to encourage or discourage specific behaviors is a poor and inefficient use of the tax system. These measures border on the ridiculous as evidence by SB 2111/HB 2125 which would allow the tax director to hire an engineering consultant to conduct a public awareness campaign. The department has been saddled with all sorts of evaluation requirements to qualify taxpayers for this or that benefit for having undertaken some sort of activity or behavior. The department does not possess the various expertise required and thus, must incur additional costs to administer the law. This must come to a stop. If lawmakers wish to subsidize or reward residents for undertaking these activities, then they should lodge the subsidy program in a department that possesses the expertise to evaluate whether or not the person has met the standard that deserve the public subsidy.

Further, it is ironic that lawmakers believe that taxpayers need subsidies to retrofit their facilities to be wind resistive while at the same time refuse to provide tax relief for the taxpayers. Could it be perhaps that taxpayers are already stretched thin by Hawaii's high tax burden that there is little, if any, money left over to make these improvements? If lawmakers put more money back into the hands of taxpayers, allowing taxpayers to make these choices, government would not have to undertake these inane programs.

Digested 1/29/08