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TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND
AFFORDABLE HOUSING

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Wednesday, January 30, 2008
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2111 – RELATING TO LOSS MITIGATION.

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department appreciates the intent of S. B. 2111, which would replace the loss mitigation grant program with a hurricane retrofit tax credit. However, the Department prefers the administration bill S. B. 3013, because that bill authorizes the Director of Taxation to obtain the Insurance Division review and approval of applications for the tax credit thereby relieving the Department of Taxation from this administrative burden.

We thank this Committee for this opportunity to testify and ask that this bill be held and that S. B. 3013 be approved.

L E G I S L A T I V E

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SUBJECT: INCOME, Tax credit for wind resistive devices

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

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 evidenced 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 possess 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

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SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION & AFFORDABLE HOUSING

TESTIMONY REGARDING SB 2111 RELATING TO LOSS MITIGATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: JANUARY 30, 2008

TIME: 9:00AM

ROOM: 229

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

The Department of Taxation (Department) supports the intent of this measure; however prefers the mechanics of the Administration measure, SB 3013.

I. PROVIDING INCENTIVES TO REDUCE LOSSES IS IMPORTANT.

The Department very much supports the intent of 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 noncommercial 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 SB 3013.

The Department strongly prefers the approach taken in SB 3013 for the following reasons:

DEFINITION OF NONCOMMERCIAL DWELLING—Noncommercial dwelling should be defined in the statute. Does it apply only to principal residences, vacation homes, owners of apartment buildings, or condominium or homeowners associations? Does it include garages not attached to a residence? The legislation needs to provide more guidance on what types of buildings qualify for this credit.

APPROVAL OF INSURANCE COMMISSIONER—This legislation does not provide for involvement of the Insurance Commissioner, but rather includes language that books, equipment, and personnel be transferred to the Department of Taxation. 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 SB 3013 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. The Department prefers the consultation approach provided in SB 3013, rather than the transfer of duties as contemplated by this bill.

APPROPRIATION—The Department very much appreciates the appropriation of resources contained in this measure to carry out the intent of this measure. Specific appropriations will assist with funding this program to make it efficient and well managed for taxpayers.

III. REVENUE IMPACT

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

Testimony of Gerald Peters
and The Hawaii Lumber Products Association

(CPH) Senate Committee on Consumer Protection and Affordable Housing
Wednesday January 30, 2008. Room 229. 9:00 am
RE: SENATE BILL 2111 -- RELATING TO LOSS MITIGATION

Chair Kokubun, Vice Chair Ige, and Members;

My name is Gerald Peters. I am testifying on behalf of The Hawaii Lumber Products Association, as well as myself as an individual, in strong opposition to this legislation which in my opinion will almost completely derail 13 years of Legislative, State and County Civil Defense, and private sector work on loss mitigation, and should be held.

The current program is not broken and does not need to be fixed other than to be re-authorized and then properly brought to the public's attention and given time for the ebb and flow of disaster preparedness awareness in the public's mind via the media.

The bill herein is not a fix, nor an improvement for, or in the public interest and consumer protection. It is all downside, except for lessening the insurance division's middle bureaucracy's work load and need to report to and work with lawmakers each year on this subject.

I believe this policy change will become a death sentence for individual citizen responsibility to be ready for "when, not if" the next hurricane, and even for the next tropical storm. The non refundable tax credit approach discriminates against the poorer and older members of society who will lose the financial ability and incentive to take action to protect their houses and condos. While other coastal states like Florida are taking global warming seriously and ramping up cash grant based programs and awareness, Hawaii, under this bill, would instead move backwards.

This bill as written will basically give up on loss mitigation and essentially throw away well over a million dollars invested in the current loss mitigation program, including the \$640,000 feasibility study mandated 76-0 by the 2000 Legislature, and the \$450,000 nearly complete UH/Civil Defense/Private sector joint venture In-Residence/Community Center Safe room testing facility at Diamond Head crater—thus setting back State Civil Defense's formalized priority to address the serious shortage in shelter capacity.

It helps only the rich or well to do with tax liability and plenty of disposable cash. And, even the well to do would prefer not having to lay out and then waiting for the average \$1000 grant.

It hurts the fixed income and poor and even the so called house rich/cash poor vast middle and upper middle class. It is not a refundable tax credit, so the poor and elderly cannot use the tax credit since many or most have no state tax liability. Our seniors usually have the oldest and weakest plantation type houses which can be helped/strengthened with the devices approved in the program, but who are dropping hurricane insurance coverage in droves because it cost \$1000 to \$1500 a year for single wall now.

So under this bill, seniors and poor get hurt by both the insurance companies and now the State too, and we could face a calamity of immense proportions like Katrina where many older people/extended families under one roof lose their lives, are injured, lose their houses and have no insurance, nor place to stay. This risk is not necessary nor advisable. It is not well considered in depth; it is simpler and cheaper and safer to merely re-authorize.

It was proven in Kauai with their tax credit for safe rooms that Hawaii homeowners do not respond to tax credits for disaster preparedness investment... only two or three people I am told took advantage of the credit program there in several years.

It derails State Civil Defense's job/problem number one: Shortage of shelter spaces for the general public, visitors and special needs people numbering over 100,000 space short which the current program addresses, particularly through the safe room component.

It threatens to scuttle and waste the \$450,000 being spent as we speak to launch the Pacific Basin's first and only disaster preparedness safe room testing facility at Diamond Head Crater, a product of the Disaster Emergency Preparedness (Override) Act of 2005— a joint venture co-operative of the UH School of Civil Engineering, State Civil Defense, the private sector including my assn HLPAA, Building Industry Assn of Hawaii, Structural Engineers Assn of Hawaii, and major private sector companies such as Simpson Strong Tie Company, and Weyerhaeuser Lumber Company, and many others.

Rewriting all the technical and administrative rules from scratch under the tax department means another long and arduous delay. It is well known that people in general have "Disaster Amnesia" between storms, earthquakes, and other mother nature or hurricane or flood insurance debacles in the news. And, if a hurricane hits this year, right in the middle of trying to kick this program from DCCA to the Tax Division, then 1)unlike currently, the state will not be able to gear up; 2)there is no telling what the revenue impact will be; and, 3)the media and the public will be asking why was this done?

It appears that this proposed legislation serves only to help the Insurance Division bail out of the program responsibility and the need to work each year on re authorization of funding. The current program's wording to "spend \$6 million over three years" means that the time is running out this coming July 2, despite the Insurance Division spending half of that time trying to get the program started. The Ins Div has only introduced this bill and its companion and we are being warned that if this bill doesn't pass, then the program gets suspended just in time for this coming hurricane season, unless another re-authorization passes, which might then face a veto? How can we play chicken with the public safety and moreover with the public's money? The hurricane relief fund and its millions of dollars of annual interest is the public's—not the State's.

Fortunately, Senator Taniguchi, the original architect of the loss mitigation laws, has introduced this session SB 2783 to re-authorize/extend the program.....AND, add earthquake loss mitigation devices.

In big picture summary: First, the Insurance Division does a woeful job of public awareness inactivity on the program (only two ads in 30 months) after delaying the start for nearly half of the authorized time line, and after creating a nightmarish 41 pages of rules...then says the

program is a failure because only 300 people took advantage of it last year (I don't know the numbers...I have heard they say it is about 150 people plus one condo association with 140 houses), but don't know what the Oct 06 through present time start up totals are. Florida also has a grant program, copied originally from Hawaii's, but with a \$250 million funding level and up to \$5000 grants/50% match to enable people with hurricane connectors to afford window/glass protection and improved roofing. Florida had 1100 takers the first year, then put on public information fairs and got 72,000 requests for inspections.

To conclude my view: This bill will basically freeze the people out of their own money left in the hurricane relief fund by proposing an unattractive tax credit approach; changing horses in the middle of the stream which took 10 years to get to flow. This bill pulls the rug out from under the people without even giving them a reasonable and fair chance to know about and take advantage of the current program.

Thank you for your patience and consideration of this testimony to hold this bill and please consider SB2783 as the only sensible and safe course of action.

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