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Alison Powers
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TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Representative Robert N. Herkes, Chair
Representative Angus L.K. McKelvey, Vice Chair

Monday, March 17, 2008
3:30 p.m.

SB 3011, SD1

LATE TESTIMONY

Chair Herkes, Vice Chair McKelvey, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. 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 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council opposes SB 3011, SD1. This bill allows the Insurance Commissioner to assess the insurance industry 25% more than the insurance division's budget ceiling approved by the Legislature.

The insurance sub-account, which is part of the Compliance Resolution Fund, is 100% funded by the insurance industry for the purpose of its own regulation.

In 2006, Hawaii Insurers Council won in Circuit Court its lawsuit filed in 2004 against the State. In relevant part, on Count IX of the Declaratory Judgment, granting in part Hawaii Insurers Council's motion for summary judgment, the Court stated "the methods of calculation and amounts of at least a portion of the insurance division's assessments,

including those related to reserve margins, overhead of the DCCA and overhead of the DBF [Department of Budget and Finance], run afoul of the requirements of *Medeiros*¹.”

In addition to the Declaratory Judgment from First Circuit Court, Judge Ahn went further and issued a stay as requested by the State so as not to change the status quo. In her order dated January 23, 2006, she outlined certain requirements of the Insurance Division pending this case’s appeal. In relevant part, the Judge required the Insurance Division to “inform the Plaintiff (Hawaii Insurers Council) thirty days prior to any future assessment of:

- a. The amount in the insurance regulation sub-account of the Compliance Resolution Fund on June 30th of the prior fiscal year;
- b. How much money they project to receive for the insurance sub-account of the Compliance Resolution Fund from non-assessment sources for the fiscal year of that assessment; and
- c. What the Insurance Division proposes its budget to be for the fiscal year of that assessment.”

SB 3011, SD1 clearly violates the spirit of the Judge’s order in that requiring an accounting to the Hawaii Insurers Council by the Insurance Division is to ensure the assessments in their aggregate are not excessive.

This bill also attempts to overturn Count IX of the Declaratory Judgment, which says in part that the Insurance Division’s assessments for reserves runs afoul of the *Medeiros* case.

This bill usurps the Legislature’s authority to approve the budget ceiling, lends itself further to abuse, and violates Judge Ahn’s order while this case is pending a decision by the Intermediate Court of Appeals. In addition, we are awaiting the State Auditor’s

¹ *State v. Medeiros*, 89 Hawaii 361, 973 P.2d 736 (1999). Under *Medeiros*, the assessment must (1) apply to the direct beneficiary of a particular service, (2) be allocated directly to defraying the costs of providing the service, and (3) be reasonably proportionate to the benefit received. The Circuit Court ruled that the Insurance Division’s assessment did not meet this test.

report, mandated by Act 1, SSLH 2005, which requires the Auditor to conduct a financial and management audit of the insurance regulation sub-account of the Compliance Resolution Fund. This audit report was due prior to the convening of the 2008 legislative session.

Therefore, we ask that this bill be held.

Thank you for the opportunity to testify.