

ACT 173

An Act Providing for the Relief of Persons Suffering Property Damage Due to Natural Disasters and Making Appropriation Therefor.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Definitions.** As used in this Act:

(a) "Commission" means the natural disaster claims commission of a county wherein a taxpayer resides, established pursuant to the provisions of this Act.

(b) "Natural disaster" means any unfortunate, sudden, and extraordinary damages caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon or earthquake declared by the governor pursuant to section 2 of this Act to have caused losses and suffering of such character and magnitude as to require and justify rehabilitative assistance from the State.

(c) "Director" means the director of taxation.

(d) "Tax benefit" means the product of the income tax rate of the State or federal tax law of the claimant times the amount of deduction allowed for the particular natural disaster by the commission or the federal internal revenue service, as the context so requires.

SECTION 2. **Governor's determination.** Upon the occurrence of a natural disaster, the governor may make a determination as to whether a natural disaster has occurred and thereafter may declare a natural disaster for the entire State or any portion thereof. In making this determination the governor shall consider whether the effect on the health and living standards of a substantial number of persons and the effect on the economy of the State are of such a nature, as to warrant assistance from the State government.

SECTION 3. Whenever, pursuant to section 2 of this Act, the governor has declared that a natural disaster has occurred, there shall be established in each county affected, a natural disaster claims commission as defined in subsection (a) of section 1, whose duties shall be to receive, process and pass upon the application for tax relief by certification as provided for in this Act. The commissions shall be composed of three members each who may be residents of the county for which the commission is formed. At least one of the members of the commission shall be a qualified appraiser. The members of the commission shall be appointed by the governor. No person shall sit as a member of a commission for a particular disaster in which he has any interest, directly or indirectly, in any type of claim, or who is related to any claimant by affinity or consanguinity within the third degree or who is employed by, is an agent of, or is connected in business with any one or more of the claimants. The commission shall continue in existence until all losses within the particular county are fully determined and certified. The members of the commission shall elect their chairman and shall serve without pay, but shall be reimbursed by the State for any reasonable and necessary

expense incurred in the course of their duties as such commissioners. The members of the commission shall have the power to administer oaths or affirmations with respect to any matter falling within the scope of the duties of the commission. Each commission established pursuant to this section shall be placed within the department of taxation for supervision.

SECTION 4. (a) In case of losses due to the damage or destruction of real or personal property of a claimant resulting from a natural disaster and certified by the commission, the director is authorized to remit, refund or forgive the taxes hereafter mentioned, due or to become due from the claimant suffering such losses, in the manner provided in subsections (b) and (c) of this section.

(b) The claimant shall, on or before December 31, of the year in which the disaster occurred or such other date as may be prescribed by the commission, but not to exceed six months from the date of occurrence of the natural disaster, file a claim, under oath with such commission setting forth the amount of his losses. The commission shall thereupon investigate the claim and determine the total loss suffered by reason of the damage or destruction of the real or personal property based on the market value on the date of such natural disaster. The total loss shall be determined by taking the difference between the market value immediately prior to the date of the natural disaster and the market value immediately after the date of the natural disaster. The losses to be certified to the director of taxation from the total losses recognized by the commission shall be computed by the commission as follows: (1) deduct all insurance benefits received or to be received by the claimant by reason of the damage or destruction of the property as a result of the natural disaster; (2) deduct the portion of the losses resulting from insurable property in excess of \$100,000; (3) deduct tax benefits from the federal internal revenue service, and (4) deduct any other recoveries. The balance remaining after the foregoing deductions have been deducted from the total losses recognized shall be the loss certified to the director of taxation. The finding of the commission as to the amount of such loss shall be final for chapters 117, 121 and 128, Revised Laws of Hawaii 1955, as amended, notwithstanding the provisions of section 121-5 of said chapter 121.

Whenever the market value for the purpose of the total losses of any real property is determined under this subsection, the market value utilized as the value of the property immediately after the disaster shall be prima facie evidence of the value of such real property as of the time immediately after the natural disaster whenever said real property is thereafter condemned, exchanged or purchased by the State or any of its political subdivisions.

(c) Upon receipt of the certification of losses from the commission, the director shall remit or refund from the current general revenues of the State or forgive, for a period not to exceed 5 years commencing January 1 of the year in which the disaster occurred, (1) all real property taxes for that year and thereafter as provided above, due and payable by the claimant on account of any real property under the provisions of chapter 128 and (2) all taxes due under the provisions of chapter 117, Revised Laws of Hawaii 1955, as amended, from the claimant on account of any trade or business conducted by the claimant on the island on which the losses were incurred for the year in which the disaster occurred, and thereafter as provided above, until the amount of the loss certified is recovered up to the limits provided

in section 7 of this Act or until the expiration of said 5 year period, whichever shall first occur.

SECTION 5. A claim filed and certified by the commission pursuant to section 4 above shall be subject to review by such commission in the event substantial and new evidence should show more accurately the amount of losses suffered from damage by destruction of real or personal property resulting from the natural disaster provided, however, that any such substantial and new evidence shall only be acceptable if applicable as of the date the losses were incurred. In such event, the taxpayer shall have the right to file an amended claim within 6 months from the filing of the original claim and the commission shall have authority to hold hearings to require further proof of the amount of the loss initially claimed by the taxpayer. The determination of the loss by the commission on the amended claim shall be final. In the event of any change in the amount of the certification furnished to the director, the commission shall notify the director of such adjustments, and appropriate adjustments in the remitting, refunding, or forgiveness of taxes above provided for shall be made by the director, as the case may be; in case any adjustments are made, any tax refunded which exceeds the amount of adjusted loss recoverable may be collected in the same manner as a tax due and payable under chapters 117, 121 or 128 as the case may be.

SECTION 6. The University of Hawaii or its designated representatives are hereby directed to establish standards or formulas which will, as equitably as possible, establish the amount of losses sustained by persons filing claims for crop damage due to a natural disaster. All persons filing claims for crop loss shall make available to the University of Hawaii or its designated agents all information deemed necessary by said University or its agents to establish such standards or formulas. The commission shall adopt the standards or formulas established by the University of Hawaii or its designated representatives and shall apply such standards or formulas in processing and certifying the claims of persons suffering crop loss. The commission shall not certify any claims of crop loss of any person who refuses to make available such information.

SECTION 7. No claimant shall recover remittances, refunds or forgiveness of taxes in excess of \$500,000 for all taxes due under chapters 117, 121 and 128, Revised Laws of Hawaii 1955 against the total losses certified by the commission; nor shall any claimant recover in excess of \$350,000 for all taxes due under chapters 117 and 128, nor shall any claimant recover in excess of \$250,000 for all taxes due under chapter 117. In no event shall any claimant recover any amount whatsoever in excess of his losses certified by the commission through the foregoing taxes, nor recover any amounts in excess of the limits set forth in this section; provided however, that he may use any one or more of the foregoing taxes as a basis for his remittance, refund or forgiveness of the taxes so long as it does not exceed any of the limits as herein set forth, and the taxes became due for trade, business or income derived on the island on which the losses were incurred.

SECTION 8. The original claimant may be an individual or a legal entity recognized as a separate entity under chapter 121, Revised Laws of Hawaii 1955 by the director of taxation. The tax relief authorized by this Act shall not be applicable to transferees, heirs or assignees of a claimant unless such transferees, heirs or assignees are either the spouse or children of the original claimant.

SECTION 9. For the purpose of subparagraph (2) of subsection (b) of section 4, the term "insurable property" shall refer to such real or personal property on which a claimant may be able to secure insurance to protect himself against losses from such natural disasters as defined herein from an insurance company organized under the laws of the State of Hawaii or any other state of the United States or any province of Canada and authorized to do business in the State of Hawaii.

SECTION 10. Notwithstanding section 2 of this Act, the commissions authorized by section 3 of this Act are hereby established for purposes of this section. The victims of the Puna volcanic eruption of 1960 and the tsunami of 1960 are hereby declared eligible for the tax relief provided by this Act and shall not be subject to the limitation on insurable property as set forth in subsection 4(b)(2). A single commission shall receive the claims of the foregoing disasters for a period of six months from the effective date of this Act notwithstanding the provisions of Section 4(b). For purposes of sections 4 and 5 of this Act the volcanic eruption of 1960 and the tsunami of 1960 shall be considered as a single natural disaster.

SECTION 11. There is hereby appropriated from the general revenues of the State not otherwise appropriated, the sum of \$25,000 or so much thereof as may be necessary, for any commission established pursuant to section 10 of this Act for the purpose of reimbursement of expenses incurred by said commission. The governor of this State is authorized to use his contingency fund when necessary for use by any commission established during the future occurrence of any natural disaster.

SECTION 12. If any section, subsection, paragraph, sentence, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decisions shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have approved this Act and each section, subsection, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 13. This Act shall take effect upon its approval.

(Approved July 10, 1961.) **S.B. 461.**
