

**ACT 48**

A Bill for an Act Relating to Tax Relief for Natural Disaster Losses and Amending Chapter 131E, Revised Laws of Hawaii 1955, as Amended.

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

**SECTION 1.** This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of facts constituting such urgency:

Chapter 131E, Revised Laws of Hawaii 1955, as amended, provides rehabilitative assistance by means of remission, refund or forgiveness of certain taxes to those suffering from certain natural disasters. To determine the amount of such remission, refund or forgiveness of taxes, chapter 131E provides for the creation of a natural disaster claims commission in the county where the natural disaster has occurred. The commission's responsibility is to ascertain the amount of the loss suffered by a claimant by determining the market value, before and after the date of the natural disaster, of the claimant's personal or real property damaged or destroyed by the disaster. Chapter 131E presently provides that the finding of the commission as to the amount of the loss is final, and it makes no provision for judicial appeal from such finding.

Honest and real differences of opinion as to the market value of the claimant's property before and after the date of the natural dis-

aster exist in many of the claims submitted to the commission under chapter 131E for losses suffered by various victims of recent natural disasters. It is in the public interest that all such differences be subject to judicial review and be fairly and quickly resolved.

This Act is, therefore, considered to be an urgency measure deemed necessary in the public interest.

**SECTION 2.** Chapter 131E, Revised Laws of Hawaii 1955, as amended, is hereby amended as follows:

a. Subsection (a) of section 131E-4 is amended to read:

“(a) In case of losses due to damage or destruction of real or personal property of a claimant resulting from a natural disaster and certified by the commission or adjudged by the court, 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 last sentence in the first paragraph of subsection (b) of section 131E-4 is deleted in its entirety.

c. Two new paragraphs are hereby inserted between the first and second paragraphs of subsection (b) of section 131E-4, to read:

“The finding of the commission shall be final, unless within 30 days after receipt of a copy of the commission’s certification to the director, the claimant files a notice of appeal to the circuit court in the county for which the commission was appointed. In all cases of such appeal, the commission and the director shall be notified of the pendency thereof by the clerk of the court. On appeal to the circuit court, the claimant shall be entitled to trial by jury. The right to trial by jury shall be deemed to be waived unless claimed within 10 days from the date the notice of appeal is filed. The court may, by proper rules, prescribe the procedure to be followed in such appeals, and shall give such appeals precedence over all other civil cases. Upon determination of the appeal, the court shall enter judgment as to the amount of the claimant’s loss, which judgment shall be final. The clerk of the court shall certify the judgment of the court to the director.

“The finding of the commission or the judgment of the court as to the amount of the loss suffered by the claimant shall be final for the purposes of chapters 117, 121 and 128, notwithstanding the provisions of section 121-5.”

d. The first two lines of subsection (c), section 131E-4 are amended to read:

“(c) Upon receipt of the certification from the commission or the clerk of the circuit court, the director shall”

e. After the word “certified” and before the word “is” in line 8 of subsection (c), section 131E-4, insert the words, “or adjudged.”

f. After the word “certified” and before the word “loss” in line 11 of subsection (c), section 131E-4, insert the words, “or adjudged.”

g. Section 131E-5 is amended to read:

**“Sec. 131-E. Review of claims, adjustment.** The amount of loss certified by the commission or adjudged by the court pursuant to section 131E-4 shall be subject to review by such commission or the

court 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, 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, within six months from the filing of the original claim, may file an amended claim with the commission, or with the court if an appeal is pending or the court has rendered a judgment, and the commission or the court shall receive 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 may be appealed by the claimant to the circuit court in the same manner as an appeal in the case of a determination of loss by the commission on the original claim. The judgment of the circuit court shall be final in all cases. In the event of any change in the amount of the certification or judgment furnished to the director, the commission or the clerk of the court shall notify the director of such adjustments, and the director shall make appropriate adjustments in the remitting, refunding, or forgiveness of taxes above provided, as the case may be; in case any adjustments are made, any tax refund which exceeds the amount of adjusted loss recoverable may be collected in the same manner as a tax due and payable under chapter 117, 121 or 128 as the case may be."

h. A new section is added to chapter 131E to be numbered and to read as follows:

**"Sec. 131E-5.1. Penalty, interest during appeal.** In every case where the commission's finding as to the amount of loss is less than the amount of the remittance, refund or forgiveness of taxes recovered by the claimant and such finding is appealed to the circuit court, no interest or penalty shall accrue upon such difference during the period of the appeal and until the final judgment of the court."

i. The first sentence in section 131E-7 is amended to read:

"No claimant shall recover against total losses certified by the commission or adjudged by the court, remittances, refunds or forgiveness of taxes in excess of \$10,000 for all taxes due under chapter 121, nor shall any claimant recover any remittances, refunds or forgiveness of taxes in excess of \$250,000 for all taxes due under chapter 117, nor shall any claimant recover remittances, refunds or forgiveness of taxes in excess of \$350,000 for all taxes due under chapters 117, 121 and 128."

j. The third sentence in section 131E-7 is amended to read:

"In no event shall any claimant recover through the foregoing taxes any amount whatsoever in excess of his losses certified by the commission or adjudged by the court, nor recover any amounts in excess of the limits set forth in this section; provided, 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 real property, trade, business or income derived on the island on which the losses were incurred."

SECTION 3. Notwithstanding the provisions of sections 2c and 2g of this Act, the victims of the Puna volcanic eruption of 1960 and the tsunami of 1960 may file notices of appeal in the circuit court from the certification or re-certification or determination on any amended claim made by the claims commission prior to the effective date of this Act, provided all such notices of appeal shall be filed on or before June 30, 1966.

SECTION 4. This Act shall take effect upon its approval.  
(Approved May 4, 1966.) S.B. 337.