

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2005

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 160

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 160, entitled " A Bill for an Act Relating to the Compliance Resolution Fund."

The principal purpose of this bill is to amend certain laws governing the funding of insurance regulation. Specifically, the bill revises the laws governing the authority of the Insurance Commissioner ("Commissioner") to assess insurers and the procedures for making those assessments.

This bill is objectionable because the Insurance Division ("Division") receives no general funds and is self-funded as a matter of law. Restricting the Division's funding and prohibiting the Division from maintaining cash reserves would severely limit the Insurance Commissioner's ability to fulfill his mandated duties and would place the public's interest at risk. Although the Legislature has directed that the Division be self-supporting, the bill undercuts that status.

As a self-supporting agency, the Division relies significantly on its annual assessment of the insurance industry to cover the shortfall between other revenues and expenses. The bill's formula for calculating the assessment is flawed because it severely restricts the Division's ability to maintain an end of year cash balance. The bill will significantly and adversely affect the Division's operations, particularly since the bill further requires that assessments not be made until prior year

cash balances can be determined and that insurers will have 60 days' notice of any assessments. Since other revenues are spread out throughout the year, the Division would not be able to pay its employees or enter into contracts for at least the first several months of the fiscal year.

In addition, the bill ignores the fundamental fact, reflected in the original decision that the Division should be self-funded, that the Division requires some flexibility in funding in order to protect the public interest. For example, the Commissioner has recently begun an investigation of allegations of an industry-wide conflict of interest and under-reporting of revenues. It is impossible to project how much the investigation will cost. Tying the Commissioner's hands by limiting his access to funds would curtail this critical activity. Under the bill, the Commissioner would not be able to adequately deal with contingencies, such as the industry-wide investigation or insurer rehabilitations and liquidations, much less be in a position to address emergencies such as Hurricane Iniki.

I concur with those who call for more transparency in the calculation of assessments and an explanation of how assessments are spent. The Insurance Division within the Department of Commerce and Consumer Affairs has proposed to provide the industry, in advance of each year, with a simple explanation of how it determines the amount of each year's assessment. Further it has offered an end of the year detailed accounting of the funds entrusted to it. That offer was rejected by industry officials. However, rather than affording increased transparency, this bill makes the process less transparent and less understandable.

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It is ironic that this bill was passed only after my Administration has already taken major steps to address the concerns that underlie the bill. Under my leadership, the Division reduced its industry assessments by 60% in the first year and made no assessment at all in the second year. The bill represents a complaint lodged against prior Administrations, but only now does the Legislature see fit to take action. For the purposes of advancing open, transparent government, the bill is the wrong action at the wrong time.

For the foregoing reasons, I am returning House Bill No. 160 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii