H.B. NO. 3111

A BILL FOR AN ACT

RELATING TO PRICE GOUGING DURING EMERGENCIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that it has become necessary to take additional measures to ensure that the public and government agencies are not subjected to unfair price increases for services, rentals, and contracts following state disasters. The purpose of this bill is to strengthen the provisions in chapter 209, Hawaii Revised Statutes, to prevent price gouging and unfair business practices by clarifying that the prohibition against price increases also applies to services, rental, and construction or repair contracts and clarify that certain contracting practices with government agencies are deemed unfair methods of competition and unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2, Hawaii Revised Statutes.

SECTION 2. Chapter 209, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§209-___ Contracts for goods or services for response to or recovery of any state disaster.** (a) Whenever the governor

declares a state disaster for the entire state or any portion thereof, the provisions of section 209-9 shall also apply to any construction, repair, service, or rental under any contract entered into by any person, business, or non-governmental entity with any county or state government entity for any state disaster, in response to any state disaster, or for any recovery from any state disaster.

(b) All charges or costs under any contract subject to this section shall be consistent with local, state, and where applicable, federal equipment or other rate schedules. Any charge greater than twenty per cent of any federal equipment or other rate schedule shall be presumed to be inconsistent with local and state charges and a violation of this section.

(c) Any violation of this section shall constitute unfair methods of competition and unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each day of such violation prohibited by this section shall constitute a separate violation."

SECTION 3. Section 209-1, Hawaii Revised Statutes, is amended by amending the definition of "commodity" to read as follows:

1 ""Commodity" means any good or service necessary for the
2 health, safety, and welfare of the people of Hawaii; provided
3 that this term shall include, but not be limited to:
4 (1) Materials;
5 (2) Merchandise;
6 (3) Supplies;
7 (4) Equipment;
8 (5) Resources; [~~and~~]
9 (6) Rentals;
10 (7) Construction or repair contracts; and
11 [~~(6)~~] (8) Other articles of commerce that shall include,
12 without limitation, the following:
13 (A) Food;
14 (B) Water;
15 (C) Ice;
16 (D) Chemicals;
17 (E) Petroleum products;
18 (F) Construction materials; or
19 (G) Residential dwellings."
20 SECTION 4. Section 209-9, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "**§209-9 Rental or sale of essential commodities during a**
2 **state disaster; prohibition against price increases.** (a)
3 Whenever the governor declares a state disaster for the entire
4 State or any portion thereof, or when the State, or any portion
5 thereof, is the subject of a severe weather warning:
6 (1) There shall be prohibited any increase in the selling
7 price or rental price of any commodity, whether at the
8 retail or wholesale level, in the area that is the
9 subject of the disaster declaration or the severe
10 weather warning; and
11 (2) No landlord shall terminate any tenancy for a
12 residential dwelling unit in the area that is the
13 subject of a disaster declaration or a severe weather
14 warning, except for a breach of a material term of a
15 rental agreement or lease, or if the unit is unfit for
16 occupancy as defined in this chapter, provided that:
17 (A) Nothing in this chapter shall be construed to
18 extend a fixed term lease beyond its termination
19 date, except that a periodic tenancy for a
20 residential dwelling unit may be terminated by
21 the landlord upon forty-five days written notice:

(i) When the residential dwelling unit is sold to a bona fide purchaser for value; or

(ii) When the landlord or an immediate family member of the landlord will occupy the residential dwelling unit; or

(B) Under a fixed term lease or a periodic tenancy, upon forty-five days written notice, a landlord may require a tenant or tenants to relocate during the actual and continuous period of any repair to render a residential dwelling unit fit for occupancy provided that:

(i) Reoccupancy shall first be offered to the same tenant or tenants upon completion of the repair; and

(ii) The term of the fixed term lease or periodic tenancy shall be extended by a period of time equal to the duration of the repair; and

(iii) It shall be the responsibility of the tenant or tenants to find other accommodations during the period of repair.

As used in this section, "breach of a material term" means the failure of a party to perform an obligation under the rental agreement which constitutes the consideration for entering into the contract and includes the failure to make a timely payment of rent. For the purpose of this subsection:

"Fixed term lease" means a lease for real property that specifies its beginning date and its termination date as calendar dates, or contains a formula for determining the beginning and termination dates; and the application of the formula as of the date of the agreement will produce a calendar date for the beginning and termination of the lease.

"Periodic tenancy" means a tenancy wherein real property is leased for an indefinite time with monthly or other periodic rent reserved. A periodic tenancy may be created by express agreement of the parties, or by implication upon the expiration of a fixed term lease when neither landlord nor tenant provides the other with written notice of termination and the tenant retains possession of the premises for any period of time after the expiration of the original term.

"Unfit for occupancy" means that a residential dwelling unit has been damaged to the extent that the appropriate county agency determines that the unit creates a dangerous or

unsanitary situation and is dangerous to the occupants or to the neighborhood.

(b) Notwithstanding this section, any additional operating expenses incurred by the seller, merchant, contractor, rental agent, business, or landlord because of the state disaster, and which can be documented, may be passed on to the consumer. In the case of a residential dwelling unit, if rent increases are contained in a written instrument which was signed by the tenant prior to the disaster declaration or severe weather warning, the increases may take place pursuant to the written instrument.

(c) The prohibitions under subsection (a) shall remain in effect until twenty-four hours after the severe weather warning is canceled by the National Weather Service; or in the event of a disaster declaration, until the declaration is altered, amended, revised, or revoked by the governor.

(d) In any action against a seller, merchant, contractor, rental agent, business, or landlord[~~, or other business~~] for violation of the price limitations in this section, the defendant shall be deemed not to have violated this section if the defendant proves all of the following:

(1) The violation of the price limitation was unintentional;

(2) The defendant voluntarily rolled back prices to the appropriate level upon discovering that this section was or may have been violated; and

(3) The defendant has instituted a restitution program for all consumers who may have paid excessive prices.

(e) Any violation of this section shall constitute unfair methods of competition and unfair and deceptive acts or practices in the conduct of any trade [+]or[+] commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each item sold <u>or each day of any contract or any item rented</u> at a price that is prohibited by this section shall constitute a separate violation."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3111

Report Title:
Price Gouging; Emergencies; Contracts and Services

Description:
Prohibits price gouging and unfair business practices during a declared State disaster by clarifying that price increases on services, rentals, and construction or repair contracts during disasters are illegal.

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JUSTIFICATION SHEET

DEPARTMENT: Defense

TITLE: A BILL FOR AN ACT RELATING TO PRICE GOUGING DURING EMERGENCIES.

PURPOSE: To strengthen the provisions in chapter 209, Hawaii Revised Statutes (HRS), to prevent price gouging and unfair business practices by clarifying that the prohibition against price increases also applies to services, rental, and construction or repair contracts and clarify that certain contracting practices with government agencies are deemed unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2, HRS.

MEANS: Add a new section to chapter 209 and amend sections 209-1 and 209-9, HRS.

JUSTIFICATION: Victims of emergencies or disasters have often become victimized a second time by opportunists who engage in price gouging of needed commodities and services. If strong measures to control law and order are not in place before a disaster or emergency occurs, price gouging will occur which may contribute to civil unrest and cause unnecessary hardships in disaster impacted communities.

Impact on the public: Prevention of price gouging would contribute to obtaining a fair price for needed commodities that may be available in disaster areas in limited quantities.

Impact on the department and other agencies: Bill would lend to a more stable environment during an emergency or disaster. It will also provide government agencies a fair price for commodities and services needed in rendering emergency response activities, relief operations, and disaster assistance.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

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OTHER AFFECTED AGENCIES: All state and county departments and agencies.

EFFECTIVE DATE: Upon approval.