

EXECUTIVE CHAMBERS

HONOLULU

June 24, 2002

ORIGINAL

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2907

Honorable Members
Twenty-First 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, Senate Bill No. 2907, entitled "A Bill for an Act Relating to Taxation."

The purpose of Senate Bill No. 2907 is to encourage tourism and stimulate employment by providing tax credits equal to one hundred percent of the cost of constructing attractions and educational facilities, including a world-class aquarium and marine science and mammal facility at the Ko Olina Resort and Marina. The tax credit is a non-refundable, carry-forward tax credit, up to \$75 million, for the private development at the Ko Olina Resort.

OBJECTIONS. When tax credits are given to stimulate the economy, other taxpayers are being asked to sacrifice and shoulder the burden of taxation in the meantime. It is, therefore, imperative that government remain fiscally responsible and target tax incentives to create reasonably foreseeable economic growth. For example, the high technology tax credits were used as an incentive in developing a new industry in Hawaii. However, there is no shortage of resort developments in Hawaii.

This bill does not achieve its stated purpose, does little to ensure that additional economic growth would be created, is difficult to administer, and contains vague language that leaves it open to misinterpretation.

The bill specifies that the tax credits will be available only to a single business enterprise or an exclusive group of taxpayers. This means the tax credits would not benefit the tourism industry as a whole and leaves the bill's stated

purpose unfulfilled.

It provides little promise of additional economic benefits for taxpayers because many of the businesses involved here were already committed to building their developments.

The Marriott Corporation, for example, has informed me that it will build its 750 time share unit project at Ko Olina regardless of my decision on Senate Bill No. 2907. Prior to September 11, 2001, several Ko Olina developers publicly announced their intent to build projects at the site. Some are currently being built.

It should be kept in mind that the Ko Olina landowners did not buy their respective properties just to allow it to lie idle. Developers buy land to develop and build projects. The longer they wait, the greater the cost. Timing is the key to successful developments. Today, interest rates are at an all-time low. Moreover, the State already allows a ten percent tax credit for new hotel construction or renovation of existing hotels. In addition, there are other recently enacted tax credits for which Ko Olina developers may be eligible. Under these circumstances, it makes little sense to provide what amounts to a "super" tax credit for what will amount to another resort development.

Although the bill states that the developers eligible for the tax credits provided in this bill shall not be eligible for other hotel and construction tax credits, I am advised by the State Department of Taxation that the proposed aquarium may already be eligible to qualify for the high technology tax credit under Act 221, Session Laws of Hawaii 2001, as an ocean sciences technology project.

Furthermore, these tax credits would provide a minimal return to the taxpayers on such a costly investment. This bill is expected to cost taxpayers \$75 million over ten years. Additionally, the tax credits may be sold or transferred to

partners or members who have tax liabilities to offset, but who have not necessarily contributed any cash to the Ko Olina development project. This feature makes it very likely that there will be claims for the maximum allowable credit of \$7.5 million each year, beginning in 2004.

A unique characteristic of this bill also adds to the creation of a "super" tax credit. Traditionally, tax credits have been used to offset income taxes. Under this bill, qualified taxpayers could use the credit to also offset against other types of taxes (i.e. use, public service company, insurance premium, financial institutions, general excise, and transient accommodations) or any other combination thereof. It has the effect of relieving the taxpayer of any tax responsibility.

In return for its subsidy of the proposed facilities, the State would receive one-half of the taxable income received from the aquarium 17 years after the credit is first claimed. However, the State may not realize any revenues in year 17 because the bill does not require that the project be completed and operational. The bill only requires a taxpayer to "be developing" the project.

Finally, the bill is vague in its language in some areas, leaving it open to misinterpretation. For example, there is no definition for "world-class" in describing the type of aquarium it proposes to build. The bill does not define "attractions" as used in the definition of "qualified costs." "Attractions" could mean facilities that the drafters of this bill never contemplated would qualify for the tax credits, such as a water park, an amusement park, or a shopping center. The definition of "qualified costs" includes costs of constructing other facilities, allowing the taxpayer to receive "reimbursement" of these other costs through this credit mechanism.

It must be kept in mind that approximately five years

ago, the State enacted a \$2 billion tax cut, effective over a six-year period, and one of the biggest tax cuts of its kind in the nation. Since then the State enacted a host of generous tax credits and incentives such as Act 221, which were designed to encourage investment and develop new industries. Last year, I approved the homeowner's tax credit for new home purchase or renovation of existing homes. This tax credit will entitle qualified homebuyers and owners to a maximum tax credit of \$10,000.

Cumulatively, these tax credits, waivers, and reductions have helped Hawaii's economy withstand the downturn caused by the September 11, 2001, terrorist attacks -- reflected in part by Hawaii's low unemployment rate of 4.4 percent compared to 6 percent for the nation.

At the same time, however, this multitude of tax cuts, credits and incentives have reduced state tax revenues, causing the severe reduction in state services and budget cuts now reflected in the supplemental appropriations bill, House Bill No. 1800 (State Budget bill).

On its face, the Ko Olina proposal embodied in the bill seems innovative and bold. There are, however, too many unanswered questions and too many ambiguities to justify approval.

For the foregoing reasons, I am returning Senate Bill No. 2907 without my approval.

Respectfully,



BENJAMIN J. CAYETANO
Governor of Hawaii

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P R O C L A M A T I O N


WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 2907, entitled "A Bill for an Act Relating to Taxation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2907 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2907 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 24th day
of June, 2002.


BENJAMIN J. CAYETANO
Governor of Hawaii