CONFERENCE COMMITTEE REPORTS

Conf. Com. Rep. No. 1-80 on H.B. No. 1494

The purpose of H.B. No. 1494, H.D. 1, S.D. 2 is to amend Section 78-1, Hawaii Revised Statutes, to allow nationals and permanent resident aliens to be employed as appointive officers (other than as department head, first assistant, first deputy, second assistant or second deputy to a department head) in the executive branch of the State or county governments. However, a non-citizen who is appointed to office under Section 78-1 must diligently seek citizenship upon becoming eligible to apply for United States citizenship in order to continue his employment.

Your Committee finds, however, that H.B. No. 1494, H.D. 1, S.D. 2 in its present form contains a technical error in that the bill follows the wording of Section 78-1 before the section was amended by Act 211, Session Laws of Hawaii 1977, and Act 101, Session Laws of Hawaii 1978. Your Committee further notes that the bill proposes to limit the application of subsection (a) of Section 78-1 to elective officers. As drafted, however, subsection (a) does not fully conform to the Ramseyer method of drafting, since the words "their appointment" have been deleted without bracketing and new words "assumption of office" have been added without underscoring.

Accordingly, your Committee upon further consideration has made the following amendments to H.B. No. 1494, H.D. 1, S.D. 2:

(1) Subsection (a) of Section 78-1 has been further amended by reinserting the words "their appointment" in brackets immediately after the word "preceding" and before the word "assumption" in lines 9 and 10, page 1, of the bill and the words "assumption of office" have been underscored.

(2) In order to reflect the changes made to Section 78-1 by Act 211, Session Laws of Hawaii 1977, and Act 101, Session Laws of Hawaii 1978, the existing provisions of Section 78-1, other than subsection (a) thereof, as indicated in the 1979 Supplement of the Hawaii Revised Statutes, have been substituted for the provisions designated as subsections (c) through (f) of H.B. No. 1494, H.D. 1, S.D. 2. Appropriate changes in subsection designations have been made to the substituted provisions to reflect the addition of a new subsection (b). Also, the substitution of the words "more often" for the word "oftener" is reflected in subsection (d).

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1494, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1494, H.D. 1, S.D. 2, C.D. 1.

Representatives Stanley, Kunimura and Marumoto,
Managers on the part of the House.

Senators O'Connor, Toyofuku and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 2-80 on S.B. No. 1703

The purpose of this bill is to specify procedures to be followed upon submission of proposed constitutional amendments or revisions to the public for voter ratification.

Of primary concern to your Committee in considering this bill was the importance of educating the public of the pros and cons of each amendment or revision prior to its submission at an election.

This bill, as amended, provides that each proposed constitutional amendment will be submitted to the voters in the form of a question embracing a single subject which will require a "yes" or "no" vote for ratification.

The manner of voter education has also been specified to require the Constitutional Convention to make available for public inspection the full text of any proposed amendment for revision at every public library, office of the county clerk, and the office of the chief election officer, as well as at every polling place on election day.

The Constitutional Convention shall also provide for a program of voter education to include, but not be limited to, an informational booklet prepared by the Legislative

Reference Bureau of the pros and cons of each amendment and its known fiscal impact. At least thirty days prior to the submission of a proposed amendment or revision, each registered voter shall be provided such an informational booklet.

Your Committee on Conference has amended this bill to conform to the language of S.B. No. 578, passed by the Legislature during the 1979 Session. Senate Bill No. 578 proposes an amendment to Article XVII, Section 2, to increase the requirement for ratifying an amendment to the State Constitution from at least 35 per cent to at least 50 per cent of the total votes cast at the election. Accordingly, S.B. No. 1703, S.D. 1, H.D. 1, C.D. 1, has been amended to reflect this change.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1703, S.D. 1, H.D. 1, C.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1703, S.D. 1, H.D. 1, C.D. 2.

Representatives D. Yamada, Dods, Honda, Larsen, Masutani and Medeiros,
Managers on the part of the House.

Senators O'Connor, Campbell and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 3-80 on S.B. No. 1703

The purpose of this bill is to specify procedures to be followed upon submission of proposed constitutional amendments or revisions to the public for voter ratification.

Of primary concern to your Committee in considering this bill was the importance of educating the public of the pros and cons of each amendment or revision prior to its submission at an election.

This bill provides that each proposed constitutional amendment will be submitted to the voters in the form of a question embracing a single subject which will require a "yes" or "no" vote for ratification.

The manner of publicizing the amendment or revision has also been specified to require the Constitutional Convention to make available for public inspection the full text of any proposed amendment for revision at every public library, office of the county clerk, and the office of the chief election officer, as well as at every polling place on election day.

The Constitutional Convention shall also be responsible for a program of voter education to inform the public of the proposed amendments or revision. While S.B. No. 1703, S.D. 1, H.D. 1, C.D. 2, outlined a basic program of voter education your Committee has deleted such specific references and has instead required that the convention follow the procedures as provided by law. This change has been made by your Committee as it was its decision that the Constitution should provide the broad authority to give the Convention the power to provide for a voter education program and that the statutes should fill in the details of that program.

Your Committee on Conference has further amended this bill to conform to the language of S.B. No. 578, passed by the Legislature during the 1979 Session. Senate Bill No. 578 proposes an amendment to Article XVII, Section 2, to increase the requirement for ratifying an amendment to the State Constitution from at least 35 per cent to at least 50 per cent of the total votes cast at the election. Accordingly, S.B. No. 1703, S.D. 1, H.D. 1, C.D. 2, has been amended to reflect this change.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1703, S.D. 1, H.D. 1, C.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1703, S.D. 1, H.D. 1, C.D. 3.

Representatives D. Yamada, Dods, Honda, Larsen, Masutani and Medeiros,
Managers on the part of the House.

Senators O'Connor, Campbell and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 4-80 on H.B. No. 159

The purpose of this bill is to provide for the representation of dental hygienists on the Board of Dental Examiners.

Under present law, the nine member board is composed of seven dentists (one each from the counties of Hawaii, Kauai and Maui, and four from the City and County of Honolulu), and two lay persons.

Your Committee feels that it is in the best interests of the dental hygiene profession and the dental health care system in general to provide for the representation of dental hygienists on the board that regulates them.

This bill would increase the membership of the board to eleven by adding another dentist from the City and County of Honolulu and a dental hygienist.

Your Committee has amended the bill to correct an internal inconsistency.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 159, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 159, H.D. 1, S.D. 2, C.D. 1.

Representatives Blair, Shito, Baker, Larsen and Ikeda,
Managers on the part of the House.

Senators Cobb, Carpenter and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 5-80 on H.B. No. 1986-80

The purpose of this bill is to clarify certain provisions of Chapter 294, Hawaii Revised Statutes, relating to the operation of the Hawaii No-Fault Law.

This bill amends four areas of Hawaii's No-Fault Law which have in the past caused uncertainties in application.

First, Section 294-2(10)(c), Hawaii Revised Statutes, is amended to clarify the amount of no-fault monthly earnings loss benefits. Presently, there is some confusion whether or not an insurance carrier need pay any benefits to a claimant who is earning $800 per month even though that claimant is suffering a monthly earning loss as a result of a motor vehicle accident. This bill makes clear that lost wage benefits are to be paid in that situation and in any situation where there is a monthly wage loss up to the $800 limit.

Second, Section 294-10(b) and (c), Hawaii Revised Statutes, are amended by this bill to facilitate the commissioner's calculation of the medical-rehabilitative threshold figure. Present law refers to the date to be utilized in an inconsistent manner, thereby making ambiguous the basis used in such calculation. This bill would simplify this basis by including only those no-fault benefits paid or reserved.

Third, Section 294-39(a), Hawaii Revised Statutes, is amended to close what has been a loophole in the penalty provisions of the Penal Code. Your Committee finds that the intent of the legislature in the passage of the no-fault law was to impose a mandatory fine of at least $100 per violation of Chapter 294. Judicial interpretation, however, has added the option of the suspension of such fine. This bill would re-establish the minimum mandatory fine as well as provide additional mandatory penalties for multiple offenders. Section 805-13(c), Hawaii Revised Statutes, is also amended to conform with these penalty provisions.

Fourth, a new section is added to Chapter 294 to provide the commissioner with exclusive jurisdiction over contested no-fault claims not in excess of $5,000. Present law is silent as to the commissioner's authority in this area. Your Committee agrees with the testimony presented by the Department of Regulatory Agencies that the commissioner should be authorized to conduct such hearings and that such hearings be pursuant to the Administrative Procedures Act.

Your Committee feels that these amendments are in furtherance of the stated purposes of Hawaii's No-Fault Law and will clarify various uncertainties that have arisen since its inception.

Your Committee has made a technical, non-substantive change.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1986-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1986-80, S.D. 1, C.D. 1.

Representatives Blair, Shito, Garcia, Uechi and Ikeda,
Managers on the part of the House.

Senators Cobb, O'Connor and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 6-80 on S.B. No. 2134-80

The purpose of this bill is to enable the consumers of this State to obtain a cost-savings when having a prescription filled. Under this bill, a pharmacist may substitute an equivalent drug product under a prescription which prescribes a trade or brand name drug product. Before substituting for a brand or trade name product, the pharmacist is required to choose an approved generic drug which costs less than the drug ordered. The pharmacist is also required to inform the consumer on 1) the availability of substitution, 2) the price difference between the drug prescribed and the drug substituted, and 3) his or her right to refuse.

This bill also provides for the establishment of a drug product selection board which will be responsible for developing a safe drug formulary of equivalent drug products for the purpose of substitution. The board will be composed of persons in the community with expertise in medicine, public health and pharmaceutical practice, to be appointed by the governor with the advice and consent of the Senate. The Director of Health or his designated representative is included in the Board's membership as the seventh member. Your Committee recognizes the heavy schedule imposed on the Director of Health, and realizes that the Director may not always be able to attend the board's meetings, therefore, he may appoint a representative in his place. However, because of the importance of this board, it is your Committee's intent that insofar as practicable, the Director should appoint the same person to serve as his representative on all occasions when the Director is unable to attend meetings, and that the representative should have the requisite expertise to be an effective member of the Board.

Under this bill, the board is placed under the Department of Health for administrative purposes only. Since the Department of Health is administratively responsible for the generic drug product selection board, the bill also requires the Department to provide for distribution and revisions of the formulary to all dispensers and prescribers licensed in this State and to other appropriate individuals. The Department is further required to provide the public with information on generic drug substitution as provided by this bill, and to monitor the effects of this bill.

A posting requirement is included in the bill to require every pharmacy to post a sign informing the public of the availability of substitution. It is the intent of your Committee that such a sign on substitution be posted in any physician's office in which a pharmacy is in operation.

Further, it is your Committee's intent that prescriptions obtained from any commissioned medical, dental, osteopathic, veterinary, or podiatry officer in the United States Army, Navy, Marine Corps, or public health service, be exempt from the provisions of this bill. We find that this group of prescribers may be unaware of Hawaii's substitution law and their intent in prescribing a particular drug product may be thwarted if substitution occurred.

In deliberating over this bill, your Committee finds that emphasis should be placed on the importance of educating the public on the subject of generic drug products, as well as its availability. To this end, we find that it is incumbent upon physicians to inform their patients on the topic of generic drug equivalents.

Your Committee upon further consideration has made the following amendments to S.B. No. 2134-80, H.D. 1:

(1) To give the responsibility of choosing substitution to the consumer, the provision permitting pharmacists to substitute is changed to require the pharmacist to:

(A) Offer to the consumer substitutable and lower cost equivalent drug products from the formulary adopted by the drug product selection board;

(B) Inform the consumer of the retail price difference between the brand name drug product and the substitutable drug product; and

(C) Inform the consumer on his or her right to refuse substitution.

The dispenser shall substitute if the consumer consents, and shall not substitute if the consumer refuses. Subsection (d) on page 3 is deleted because its requirements have been included in the above amendment.

(2) The specification for staggered terms of the members of the Generic Drug Product Selection Board is replaced with reference to section 26-34, Hawaii Revised Statutes. This section appropriately provides for the appointment and length of terms of initial and subsequent members on all boards and commissions within the state government.

(3) The appointment of the chairman of the Board is placed within the responsibility of the Board.

(4) To ensure that a quality drug formulary is adopted as soon as possible, the adoption date is changed to January 1, 1981.

(5) In order to conform with the amendment to the bill requiring pharmacists to inform consumers regarding substitution, the sign required to be posted in every pharmacy is changed to read: "HAWAII LAW REQUIRES THAT LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG PRODUCTS BE OFFERED TO THE CONSUMER. CONSULT YOUR PHYSICIAN AND PHARMACIST CONCERNING THE AVAILABILITY OF THE LEAST EXPENSIVE DRUG PRODUCT FOR YOUR USE."

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2134-80, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2134-80, H.D. 1, C.D. 1.

Representatives Blair, Aki, Kobayashi, Segawa, Shito, Ikeda and Lacy,
Managers on the part of the House.

Senators Carpenter, Campbell, Cobb and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 7-80 on S.B. No. 1944-80

The purpose of this bill is to provide for judiciary security personnel similar to the capitol security force.

Your Committee has amended this bill to conform its language to that of section 28-11.5, Hawaii Revised Statutes, which provides for the law enforcement officers employed by the attorney general's office. These officers, among other duties, provide security for the capitol. Your Committee has further amended this bill to specifically reference section 28-11.5 stating that the judiciary law enforcement officers shall have power similar to officers employed under section 28-11.5.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1944-80, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1944-80, S.D. 1, H.D. 2, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Cobb and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 8-80 on S.B. No. 2071-80

The purpose of this bill is to increase the jurisdictional amount in the small claims division of the district court from $600 to $1,000. This increase is necessitated by recent inflation and is in keeping with the purpose of the small claims court to handle relatively small disputes.

Your Committee amended the bill by removing the deletion contained in the equitable

relief section, lines 20-22, at page 2. This deletion was relevant to the bill in its original form, but is no longer relevant to the bill as amended.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2071-80, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2071-80, S.D. 2, H.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Medeiros and Uechi,
Managers on the part of the House.

Senators O'Connor, Cobb and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 9-80 on S.B. No. 2120-80

The purpose of this bill is to amend section 577-22, Hawaii Revised Statutes, so that both sexes - rather than females only - are included in this section, which prohibits unmarried minors from frequenting any premises where compensation is paid to or for dancing partners. Pursuant to this purpose, all references to either gender in this section, including its title, have been replaced with sex-neutral language.

Your Committee on Conference has made a technical amendment to this bill to delete an unnecessary word from this section.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2120-80, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2120-80, H.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 10-80 on S.B. No. 10-80 on S.B. No. 2156-80

The purpose of this bill is to bring Hawaii's Uniform Controlled Substances Act, Chapter 329, Hawaii Revised Statutes, into conformity with a recent amendment to the federal Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 9881). Chapter 329 is based upon the federal act.

In 1978, Congress added a section to the federal act to provide for the forfeiture of all monies, negotiable instruments, securities, and other things of value traceable to any intended or completed exchange for controlled substances in violation of the controlled substances act. This allows law enforcement agencies to follow the money or the proceeds traceable to an illegal exchange even if it changes form.

The House amendment to the Senate bill would move the burden of proof to the State to prove by a preponderance of the evidence that the person subject to forfeiture knew of the illegal nature of the property he acquired. The Senate bill as drafted conforms to the federal act which puts the burden on the person subject to forfeiture to show that he did not know of the property's illegal nature. Your Committee has decided to retain the original Senate version of the bill.

The bill has also been amended to tie the forfeiture procedure into the Penal Code's section 701-119. Nonsubstantive, technical changes have also been made to this bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2156-80, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2156-80, H.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Chong and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 11-80 on S.B. No. 2869-80

The purpose of this bill is to amend Section 621-9, Hawaii Revised Statutes, relating to witness expenses and budgetary procedure, to include expenses for the return of criminal defendants, defendants in Chapter 704 proceedings, or post-conviction petitioners.

Under present practice, some expenses relating to defendants are processed through the courts. A more appropriate method is to remove the courts from having to cover such expenses and have the State bear all costs of the extradition procedure. This also relieves the court from the financial burden of such expenses.

Your Committee has amended S.B. No. 2869, S.D. 3, H.D. 1 as follows:

(1) SECTION 2 has been added repealing Section 704-419, Hawaii Revised Statutes, relating to expense for the return of defendants under Chapter 704, "Penal Responsibility and Fitness to Proceed."

(2) Chapter 704 expenses will now be charged to the State under Section 621-9(6) by addition of the words "or in a proceeding under Chapter 704" to line 9, page 2, and "court or" to line 16, and deletion of the exception for Section 704-419 in line 8. The "court or public prosecutor or the attorney general" shall certify expenses to the State.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2869-80, S.D. 3, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2869-80, S.D. 3, H.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Medeiros and Uechi,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 12-80 on H.B. No. 2443-80

The purpose of this bill is to raise the maximum interest rates a credit union can assess on its loans from one per cent per month to eighteen per cent a year.

Your Committee finds that the present twelve per cent per annum loan rate ceiling on interest chargeable has caused credit unions to lose their competitive position in attracting the savings of account holders. Credit unions have in the past usually paid a higher rate of interest to their savings account holders than that paid by banks and savings and loans. Your Committee finds that the twelve per cent interest rate maximum has put a ceiling on the earnings of a credit union and has in turn limited the amount of interest paid on savings accounts.

Your Committee feels that credit unions provide a valuable service to their members and require the relief provided by this bill to continue to provide such service. While in agreement with the intent of the bill, your Commitee has amended the bill by reorganizing the authority of the bank examiner to increase the interest rates above the eighteen per cent rate if certain conditions occur into a separate section under Chapter 410.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2443-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2443-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Shito, Dods, Lee and Ikeda,
Managers on the part of the House.

Senators Cobb, Kuroda, Yim and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 13-80 on H.B. No. 2368-80

The purpose of this bill is to add a new part to Chapter 281, Hawaii Revised Statutes, to provide for price affirmation for alcoholic beverages, excluding beer and wine, thereby resulting in lower prices initially to wholesalers and ultimately to the consumer.

This new section provides that suppliers must sell alcoholic beverages, excluding beer and wine, to wholesalers at the lowest price they sell to any other buyer in other states. It requires that suppliers file annual price lists for the beverages they sell, with the liquor commission.

Your Committee has amended the bill to provide that the bill be effective upon its approval for a period to expire June 30, 1982.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2368-80, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2368-80, H.D. 1, S.D. 2, C.D. 1.

Representatives Blair, Shito, Dods, Larsen and Ikeda,
Managers on the part of the House.

Senators Cobb, Kuroda, Yim and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 14-80 on H.B. No. 2321-80

The purpose of this bill is to amend Chapter 468J, Hawaii Revised Statutes, relating to Travel Agencies.

This bill would extend the expiration of Chapter 468J under the sunset review system until December 31, 1981, delete the present bonding requirements, and establish a travel agency recovery fund for the benefit of aggrieved consumers and which is funded by all travel agents and sales representatives by $50 per year assessments. Consumers will be allowed to recover for damages up to $10,000 per person against the fund.

While in accord with the intent of the bill, your Committee has made several amendments:

(1) Chapter 468J will be allowed to sunset and a new chapter will be enacted effective January 1, 1981.

(2) A fee differential for travel agents and sales representatives has been made to reflect the traditional difference in assessments between the two.

(3) The minimum amount allowable in the recovery fund before further assessments are made has been reduced to $30,000.

(4) Licensing requirements has been deleted and registration required instead.

(5) The maximum amount recoverable on the account of any one travel agency or sales representative has been reduced to $10,000.

It is the intent of your Committee that this new chapter not be subject to the sunset review cycle. Your Committee feels that this plan will best aid consumers who have been damaged by travel agents or sales representatives.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2321-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2321-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Shito, Baker, Masutani and Ikeda,
Managers on the part of the House.

Senators Cobb, Carpenter and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 15-80 on H.B. No. 1993-80

The purpose of this bill is to repeal Act 76, Session Laws of Hawaii 1979, and postpone the repeal of Chapter 443, Hawaii Revised Statutes until December 31, 1986.

This bill would reenact Chapter 443, relating to Collection agencies, previously allowed to expire by Act 76 which also enacted a new Chapter 443A to take effect January 1, 1981.

Your Committee has amended the bill to allow Chapter 443 to expire and allow the enactment of Chapter 443A. Accordingly, your Committee has also amended Section 443A-1(5) to delete any reference to a board of collection agencies.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1993-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1993-80, S.D. 1, C.D. 1.

Representatives Blair, Shito, Masutani, Baker and Ikeda,
Managers on the part of the House.

Senators Cobb, Ushijima and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 16-80 on H.B. No. 1991-80

The purpose of this bill is to make various amendments to Chapter 452, Hawaii Revised Statutes, which regulates the massage industry.

The bill (1) amends chapter 452, Hawaii Revised Statutes, to make changes in terminology; (2) requires that massage therapists and massage establishments be "licensed" instead of "certificated" and that "out-call massage services" be licensed under this chapter; (3) requires that the department of regulatory agencies employ an executive secretary and clerical help to assist the board; (4) provides that a person convicted of a felony or a misdemeanor involving moral turpitude may be denied a license; (5) deletes provisions for officers and specifies that a chairperson shall be elected; (6) increases and separates the various fees; and (7) provides penalties for knowingly employing unlicensed persons to perform massage services.

While in agreement with the intent of the bill, your Committee has made several changes:

(1) The authorization for the Department of Regulatory Agencies to acquire additional staffing has been deleted.

(2) Conviction of a crime involving moral turpitude as grounds for refusing to issue or renew a license has been deleted.

(3) The fees for both licensing and renewal of licenses for out-call services and massage establishments has been raised from $50 to $100.

(4) The grace period for license renewal has been reduced from three years to 12 months.

(5) Section 452-22 has been repealed.

(6) The misdemeanor penalty section of 452-19 has been amended to be consistent with Section 701-107(3) of the Penal Code.

(7) Deletes references to "chairperson."

Your Committee on Conference is in accord with the intent and purpose of H.B. 1991-80, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1991-80, H.D. 1, S.D. 2, C.D. 1.

Representatives Blair, Shito, Baker, Masutani and Ikeda,
Managers on the part of the House.

Senators Cobb, Campbell and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 17-80 on H.B. No. 452

The purpose of this bill is to regulate and monitor the installation and use of burglar and holdup alarm systems.

This bill places this regulatory responsibility with the Director of Regulatory Agencies who is directed to establish requirements and procedures relating to licensure. This bill also would require a $10,000 surety bond to be obtained by each licensee, require

an automatic shut-off device for all audible alarm systems sold, require record keeping, establish penalties, and introduce the industry into the sunset review cycle.

Upon further review, your Committee feels that extensive regulation, bonding and other requirements will drive up the cost of doing business for alarm business and effectively prevent smaller companies from competing. Your Committee feels that there is value in allowing as many competitors as possible participate in this growing field. Accordingly, your Committee has amended the bill to provide for registration of alarm businesses with the chiefs of police of the various counties and a requirement of a $1,000 bond. Additionally, an assessment of $200 for each false alarm in excess of four per year is established, and other procedural matters have been provided for. Your Committee finds that false alarms caused by faulty or inadequate alarm systems result in major costs of police manpower, time and wages and are therefore an inefficient use of police services. Your Committee is in agreement with the intent of this bill to reduce the magnitude of this problem.

This bill would also retain the requirement that automatic shut-off devices be attached to audible alarm systems. Your Committee has also placed this regulation plan under Chapter 445 as a new Part.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 452, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 452, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Shito, Dods, Uechi and Ikeda,
Managers on the part of the House.

Senators Cobb, Ushijima and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 18-80 on H.B. No. 1873-80

The purpose of this bill is to clarify the appellate procedure relating to waiver decisions by the family court in criminal proceedings.

At present, a waiver decision made by a family court is appealable immediately as a final order. This right to file a notice of appeal upon the order can result, and has resulted, in extreme delays between the time of the charge and the time of trial.

This bill denies appeals of waiver until the trial on the charge or charges in the Circuit Court has been completed. That is, a waiver decision will be appealable only after the trial on the charge or charges for which the person was waived. The waiver decision issuing from the family court will no longer be deemed a "final order" for the purposes of appeal.

Upon consideration, however, your Committee has amended this bill by making a technical change. The appeal of waiver provision, your Committee feels, should be placed in a section of Chapter 571, Hawaii Revised Statutes, pertaining to family courts other than in section 571-22, which deals with discretionary waiver of jurisdiction. This amendment was felt to be necessary for the sake of clarity.

Your Committee is cognizant of the interrelationship between H.B. No. 2930-80, S.D. No. 1851-80, and this bill. All of these bills touch generally upon juveniles in the family court, and more specifically address themselves to the issue of waiver of family court jurisdiction to the circuit court. Because three related bills are under consideration by the Legislature at this time, care must be taken to ensure against confusion or error.

Therefore, the Revisor of Statutes is instructed to appropriately coordinate the respective legislative disparities which may exist, and to deal carefully with H.B. No. 2930-80, S.B. No. 1851-80, and this bill, H.B. No. 1873-80. To that end, he is instructed to achieve the logical organization and appropriate designation of the subject matters covered by the three bills in conjunction with each other.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1873-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1873-80, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura,
Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Cobb and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 19-80 on H.B. No. 2161-80

The purpose of this bill is to amend the Hawaii Revised Statutes' election laws which pertain to the filling of vacancies in political offices and candidacies. Amendments are required to conform the procedures and deadlines for filling such vacancies with the presently existing election schedules and demands.

The major changes to the election laws are as follows:

(1) Section 11-118. The language addressing the submission of a substitute candidate's name by the political party committee after the submission deadline has been deleted. The deletion was necessary, as other sections in the Hawaii Revised Statutes cover such contingencies.

In addition, language is deleted which establishes a twenty-day deadline before the general election for filling a vacancy, which results in a consistent thirty-day deadline for filling vacancies in primary, special primary, special, general, and special general election.

(2) Section 17-3. The Governor may now appoint a person to fill a vacancy in a State Senate seat who shall be of the same nonpartisanship as the person being succeeded.

Clearer delineations of procedures to be followed to fill vacancies in Senate seats are also set forth by time periods as follows:

(a) time period of ten days before the close of filing for electin nominations;

(b) time between the ten day mark and the thirtieth day before the primary;

(c) time between the thirty day mark and the thirtieth day before the general; and

(d) the thirty-day time period between the above-noted mark and the election itself.

The effect of this amendment is to extend the original ten-day period before the general election to thirty days, when vacancies occurring will result in gubernatorial appointments, rather than having resolution through the election process. The forty-day period hereby established (ten days before and thirty days after the close of the filing date) allows for the extension of time for filing nomination papers in the event of vacancies occurring within that period, and up to thirty days before the primary. Another ramification of this amendment is that sufficient time for the preparation of ballots that reflect the addition of candidates filling the vacancy is now afforded.

(3) Section 17-6. Wherever "general election" appears, it is preceded by the phrase "special election held in conjunction with the". This distinction is necessary because the Board of Education members are elected in a separate, special general election held without a primary election.

As in the Senate vacancies situation, a vacancy occurring in the Board's membership whose term does not expire until the second subsequent special election can be filled at the election if it occurs before the thirty-day time period preceding the special election. Following the thirty-day measurement, any vacancy is to be filled by appointment of the Governor. This thirty-day time period affords election clerks adequate time in which to prepare ballots with the names of the vacancy candidates.

(4) Section 17-7. Changes which parallel those made in section 17-3, relating to Board of Education members, are made. These include the special election-general election dis tinction, and the requirements of residency restrictions. The same thirty-day deadline preceding the special election before which time nominations may be filed in order to fill vacancies is also made applicable to the Office of Hawaiian Affairs board membership. This thirty-day cut-off period replaces the former ten-day period, which

rendered preparation of ballots which contained the vacancy candidates' names virtually impossible.

Your Committee, upon further consideration, has amended H.B. No. 2161-80, H.D. 1, S.D. 1, by making technical, non-substantive changes.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2161-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2161-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Aki, Honda, Larsen and Medeiros,
Managers on the part of the House.

Senators O'Connor, Kuroda and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 20-80 on H.B. No. 2162-80

The purpose of this bill is to revise sections of Chapter 15, Hawaii Revised Statutes, which deal with absentee voting.

The intent of these revisions is to improve the absentee voting procedures which presently exist, with an eye toward increasing voter participation in our elections, while ensuring voter security and confidentiality. Your Committee feels that these goals can be accomplished by dealing with the absentee voting chapter in full rather than in separate pieces of legislation.

Your Committee, upon further consideration, has amended H.B. No. 2162-80, H.D. 1, S.D. 1, by removing the provision allowing for any voter over the age of 65 to be eligible for absentee ballots. Such a provision assumes that all voters over the age of 65 can be categorized as a special class in need of different treatment merely by virtue of their age. Many voters over the age of 65 are capable of voting at a polling place, and the requirement that such persons shall be entitled to vote by absentee ballot is patronizing. Your Committee has, instead, included the term "infirmity" to the reasons for allowing absentee ballots to those confined to the home by reason of such infirmity.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2162 -80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2162-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Larsen, Aki and Medeiros,
Managers on the part of the House.

Senators O'Connor, Kuroda and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 21-80 on H.B. No. 2324-80

The purpose of this bill is to provide more adequate protection for the victims of spouse abuse and other types of domestic violence, by amending the law reqarding temporary retraining orders so as to make it more effective.

In order to accomplish the goal set forth above, this bill allows the family court to extend the effective period of the temporary restraining order for mulitiple thirty-day periods if such extension is necessary to prevent violence or a recurrence of violence.

In addition, the Senate version explicitly authorizes a police officer to arrest a person violating a restraining order on probable cause, whether or not such violation occurred in or out of the arresting officer's presence. Upon further consideration, however, your Committee has amended H.B. No. 2324-80, H.D. 1, S.D. 1, to remove the provision for arrests by police officers for violations of restraining orders, as S.B. No. 2870-80, S.D. 1, H.D. 1, which has passed both Houses, and which amends section 803-5, Hawaii Revised Statutes, will permit police officers to arrest upon probable cause persons committing a misdemeanor, whether or not such misdemeanor has been committed in the officer's presence.

Technical, non-substantive amendments have also been made to H.B. No. 2324-80, H.D. 1, S.D. 1.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2324-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2324-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Baker, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 22-80 on H.B. No. 2669-80

The purpose of this bill is to provide statutory authority for subpoena power in impartial hearings which relate to special education for handicapped children.

This bill requires the Department of Education to adopt rules and regulations, conforming to the requirements of Federal statutes or regulations, which pertain to impartial hearings regarding the education of handicapped children. The bill sets forth several specific requirements which must be included in the rules and regulations to be promulgated by the Department of Education. In addition, the bill affords either party to such an impartial hearing the right to subpoena and compel the attendance of witnesses at the hearing, with enforcement of the subpoena provided by the circuit courts.

Your Committee had amended H.B. No. 2669-80, H.D. 1, S.D. 1, by removing the provision for appeal by the aggrieved party, pursuant to both the applicable Federal law, and Chapter 91 of the Hawaii Revised Statutes, which is the State's Administrative Procedures Act. Your Committee feels that the existing law, both Federal and state, is clear and governs appeals adequately. To specifically state that such avenues of appeal are available for aggrieved parties would neither add to nor clarify the appeal provisions of 20 U.S.C. 1401, et seq, The Education of Handicapped Act, or of section 91-14, Hawaii Revised Statutes.

At present, under section 91-1(2), a person is defined so as to specifically exclude agencies. And under section 91-14, only a person aggrieved by an agency ruling can appeal to the State courts. In essence, under the Hawaii Administrative Procedures Act, aggrieved parties other than agencies can appeal agency decisions to the State courts; thus, the Department of Education is clearly precluded from appealing pursuant to Chapter 91 because it is not a "person" as defined under Chapter 91.

Under the Federal law, 20 U.S.C. 1415(c) and (d), it appears that both persons and agencies can appeal a decision of a hearings officer, either to the State court or in the District Court of the United States. The Education of Handicapped Act, and 45 C.F.R. 121 a., et seq, which is the implementing Federal regulation for the Education of the Handicapped Act, provided that an impartial due process hearing be conducted by the Department of Education to decide issues concerning the provision of free appropriate public education for handicapped children, and also allow for any party aggrieved by the findings and decision of the hearings officer to bring a civil action in the State or Federal courts.

However, the First Circuit Court has ruled that notwithstanding the language of the Federal law, an agency or, more specifically, the Department of Education, cannot appeal to the Circuit Court, as the Department of Education is not a "person" within the meaning of Chapter 91. The First Circuit Court's ruling indicates that an agency, or the Department of Education, can only appeal as provided for in the Federal law, and that the appeal as provided for in the Federal law is further circumscribed by the State law governing administrative proceedings.

To attempt to legislate in an area already addressed by Federal and State statutes and judicial fiat may only result in further confusion.

Nonsubstantive technical changes have been made to this bill to correct typographical errors.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2669-80, H.D. 1, S.D. 1, C.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 266980, H.D. 1, S.D. 1, C.D. 2.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 23-80 on H.B. No. 2826-80

The purpose of this bill is to clarify existing law relating to the liability of animal owners, and to provide for absolute liability as well as exceptions to liability.

The bill seeks to alleviate the problem by adding two new sections to Chapter 663, Hawaii Revised Statutes, the first of which circumscribes absolute liability of animal owners, by specifying instances in which liability shall attach to the owner or harborer of an animal causing either personal or property damage to another person, and by setting forth exceptions to such liability. The second new section provides for exemption from civil liability when the injury or damages are incurred upon the premises of the animal owner.

The bill further seeks to provide for remedies for victims of animal attacks by deleting the existing language in section 142-74, Hawaii Revised Statutes, and by providing instead that owners whose animals proximately cause personal injury or injury or damage to property shall either confine or destroy the animal. This requirement does not preclude the imposition of civil liability for damages under the new sections of Chapter 633. In addition, a new cause of action for the seizure and destruction of the animal is set forth in cases where an animal is not property confined or destroyed pursuant to court order, and where such animal causes further damage.

Your Committee, upon further consideration, has amended H.B. No. 2826-80, H.D. 1, S.D. 1, by separating the two concepts encompassed within the scope of the bill. The issue of liability of owners of all animals, including dogs, should be considered separately. S.B. No. 250180, S.D. 1, H.D. 1, addresses the problem of tort liability of animal owners, and the recovery of damages by the victims suffering personal injury or property damage caused by animals. Therefore, the provisions setting forth such tort liability in new sections under Chapter 633 have been removed.

The second concept is an equitable remedy that serves to protect the community through a new cause of action for the removal or destruction of dogs who have injured people. In order to safeguard the people from dogs who have shown that they are dangerous, it is important that judicial relief be provided to ensure protection from such animals. This remedy does not foreclose existing common law remedies, such as abatement of a nuisance, but sets forth guidelines which assist the courts in determining when factors warrant affirmative action against a dog owner whose animal has proven to be dangerous to other persons.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2826-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2826-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Aki, Honda, Larsen and Medeiros,
Managers on the part of the House.

Senators O'Connor, Kuroda and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 24-80 on H.B. No. 2929-80

The purpose of this bill is to establish mandatory minimum sentences for repeat offenders who commit certain class B and C felonies.

Under present law, a mandatory minimum sentence of imprisonment is imposed only when a person is convicted twice or more for murder, kidnapping, assault in the first degree, sodomy in the first degree, rape in the first degree, burglary in the first degree, robbery in the first degree, promoting a dangerous drug in the first and second degree, and promoting a harmful drug in the first degree. This bill would impose a minimum mandatory sentence of imprisonment in cases involving subsequent convictions for burglary in the second degree, theft in the first degree, firearm violations, and other class B and C felonies involving violence, force, or the threat thereof. This bill allows a court, upon written opinion, to set a lesser minimum if "strong mitigating

circumstances warrant such action."

In addition, this bill provides that any person convicted of one of the offenses in subsection (a) shall receive a mandatory minimum sentence of five years if that person has one prior conviction enumerated in either subsection (a) or (b), and ten years if the person has a total of more than one offense in these two subsections. Similarly, any person convicted of one of the crimes enumerated in subsection (b) shall receive a mandatory minimum sentence of three years for one prior conviction in either subsection (a) or (b), and five years for a total of more than one prior conviction in these subsections.

Upon further consideration, your Committee on Conference has amended H.B. No. 2929-80, H.D. 1, S.D. 1 by including, in subsection (b), the offense of robbery in the second degree, which is section 708-841, Hawaii Revised Statutes. The offense of robbery in the second degree is a class B felony involving violence or the threat thereof; therefore, its inclusion is consistent with the purpose of this bill.

Minor, non-substantive changes have also been made by your Committee.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2929-80, H.D. 1, S.D. 1, as amended herein, and recommends it pass Final Reading in the form attached hereto as H.B. No. 2929-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Cobb and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 25-80 on H.B. No. 2930-80

The purpose of this bill is to provide for automatic waiver of family court jurisdiction over juveniles in specific cases.

Under existing law, the family court is vested with the discretion of waiving, to the Circuit Court, juveniles sixteen years of age or older who are alleged to have committed an offense which would be a felony if the juvenile were an adult. This bill sets forth criteria for an automatic waiver to the Circuit Court if the charge involved is of felonious nature, and if the juvenile has a history of prior adjudications warranting treatment as an adult.

This bill provides for an automatic waiver of jurisdiction in cases where (1) the juvenile has had a class A felony adjudication which involves force or violence or the threat of force or violence, or (2) the juvenile had two more felony adjudications within the last five years. The waiver, in such circumstances, would be mandatory on the part of the family court.

Upon further consideration, your Committee has amended H.B. No. 2930-80, H.D. 1, S.D. 1, by requiring automatic waiver in three different cases. Therefore, in addition to the two above-noted situations, your Committee has included cases where the juvenile has had one or more felony and two or more misdemeanor adjudications in the last three years. Your Committee feels that automatic waiver provisions should apply to those juveniles who can be classified as prior offenders, and should apply in cases where the prior adjudications were of such a nature or if the amount of the prior adjudications warrant a waiver.

In addition, your Committee believes that in cases of automatic waiver, proper reference must be made to the attendant prohibitions and requirements which exist in section 571-22. Where a juvenile is automatically waived pursuant to the provisions of this bill, the juvenile should be subject to the jurisdiction of a court of competent criminal jurisdiction, and any family court jurisdiction over the said juvenile should terminate. The prohibition against filing a petition in the family court in the event of acquittal or other discharge should also be applicable in automatic waiver cases.

Your Committee is cognizant of the fact that the Juvenile Justice System bill, S.B. No. 1851-80 contemplates amendments to the section dealing with waiver of jurisdiction of the family court in cases involving juveniles. However, the proposed amendments therein do not delineate a provision for automatic waiver in circumscribed cases, which is the specific intent of this bill. Therefore, your Committee makes special note of

the interrelationship of this bill and the provisions for waiver of jurisdiction in S.B. No. 1851-80.

The two bills are neither mutually exclusive nor contingent upon the other for their operation. Rather, both provisions address different types of procedures for waiver; in one instance, waiver rests upon the discretion of the family court. In the other instance, the family court, when enumerated factors are met, must waive its jurisdiction over the minor.

Furthermore, H.B. No. 2930-80, which pertains to appeals of waivers of jurisdiction, is intended to be applicable to both S.B. No. 1851-80, and this bill. Therefore, the Revisor of Statutes is instructed to appropriately coordinate the respective disparaties which may exist because three separate bills which contain provisions related to each other are under consideration by the Legislature at the same time. To this end, he is instructed to obtain the logical organization and appropriate designation of the subject matters covered by H.B. No. 2930-80 and S.B. No. 1851-80 in conjunction with the treatment of this bill.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2930-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2930-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Cobb and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 26-80 on H.B. No. 1911-80

The purpose of this bill is to correct errors, clarify language, and correct references by amending or repealing various portions of the Hawaii Revised Statutes (H.R.S.).

Your Committee has reviewed the bill and emphasizes that it contains no substantive amendments or changes to the statutes. All of the changes listed in the bill are of a technical or clerical nature.

Upon consideration, however, your Committee has amended this bill to make further technical changes as follows:

(1) Section 12. Your Committee has amended Section 286-56.5 by deleting the words "foreign or", as the word "foreign" was deleted in 1979, and the word "or" is therefore unnecessary.

(2) Section 13. Your Committee has further amended Section 286-201 by deleting the word "or contract carrier by motor vehicle", as they had been deleted in 1979.

(3) Section 39. Your Committee has deleted the underscoring of the word "section", as it is unnecessary.

Your Committee wishes to commend the Revisor of Statutes for his painstaking and meticulous work with regard to the corrections necessary to the H.R.S.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1911-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1911-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Carpenter and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 27-80 on H.B. No. 2091-80

The purpose of this bill is to permit minor victims testifying in a Family Court criminal proceeding to be accompanied by their parents, guardians or at least one other adult.

Under this bill, a victim of or witness to an alleged violation called to testify in any proceeding initiated pursuant to section 571-11(1) or 571-11(2), has the right to have a parent, guardian, or one other person present. Your Committee feels that where an alleged crime has been committed by a juvenile, and the testimony of a minor victim is required in a hearing, the minor victim is especially vulnerable, not only because of his or her age, but also because the perpetrator of the crime may live in the same neighborhood or attend the same school and the victim must face him without the support of an adult, while the offender can have legal counsel, parents, and other persons present.

However, your Committee feels that the credibility of a minor witness who is not a victim may be affected adversely when a parent is present, because he or she may be hesitant to testify truthfully with respect to the involvement in the crime. Furthermore, present policy already permits a witness to have his or her parents present during the proceedings, at the discretion of the Family Court.

Therefore, your Committee upon further consideration has amended H.B. No. 2091-80, H.D. 1, S.D. 1, by deleting the language which would specifically require a minor witness to have his or her parents, guardians, or another adult present at the Family Court hearing for which the testimony of the minor witness is required.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2091-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2091-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Machida and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 28-80 on H.B. No. 1915-80

The purpose of this bill is to clarify the sentencing provisions of the various firearms provisions contained in Chapter 134, Hawaii Revised Statutes, by conforming the penalty provisions with the language contained in the Penal Code.

At present, reference to the penalty provision of the Penal Code when sentencing those convicted of firearms violations has cast doubt upon the sentencing provision contained within Chapter 134. As originally enacted, Chapter 134 contains sections which were intended to require a minimum two-year and a maximum five-year sentence of imprisonment without probation. In light of the conflicting provisions in the Penal Code, however, the courts have been construing violations of the firearms sections as class C felonies, and have been sentencing convicted defendants to imprisonment for up to five years with no minimum term of imprisonment, thereby nullifying the intent of Chapter 134.

In the interests of clarity and conformity, then, your Committee has amended this bill by removing the mandatory minimum sentences provided for in sections 134-7, 134-9, and 134-10. Because the indeterminate sentences mandated by sections 706-606 and 706-660 of the Hawaii Revised Statutes (Penal Code provisions) have been deemed by judicial fiat to control, the conflicting mandatory minimum sentences have been deleted and replaced with language setting forth penalties which are consistent with the Penal Code.

As to section 134-8, your Committee has concluded that retention of a mandatory maximum, without probation, is desirable. The nature of the prohibited weapons and related devices being of the type produced basically for the destruction of life and limb, are such that mandating a sentence of imprisonment is not unwarranted.

Your Committee, upon further consideration, has amended H.B. No. 1915-80, H.D. 1, S.D. 1, to remove from the scope of section 134-7 those who have been convicted of the use or possession of drugs, unless such conviction is a felony. Your Committee believes that sales of illegal drugs are of sufficient seriousness to warrant being covered under the section prohibiting ownership or possession of firearms by persons convicted of such sales. But the mere use or possession of prohibited drugs, unless the amount used or possessed constitutes a felony, do not warrant prosecution.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1915-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading

in the form attached hereto as H.B. No. 1915-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Mizuguchi and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 29-80 on H.B. No. 2241-80

As amended, the purpose of this bill is to expand the protection afforded and remedies available to a spouse who is the victim of spouse abuse or another non-felonious offense against the person committed by the other spouse.

As amended, this bill does the following:

(1) Creates a new section in Chapter 709, Hawaii Revised Statutes, which allows a spouse against whose person a non-felonious offense has been committed by the other spouse to petition the family court for a summons to issue forthwith. This section also establishes a penalty for a petitioning spouse who knowingly makes a false statement which he or she does not believe to be true in a proceeding pursuant to this section.

(2) Amends section 709-906, Hawaii Revised Statutes, to authorize a police officer to arrest a perpetrator of spouse abuse, with or without a warrant, whether or not the offense was committed in the officer's presence, if the officer has reasonable grounds to believe that the alleged offender has physically abused the victim spouse and that the person arrested is guilty.

(3) Further amends section 709-906, Hawaii Revised Statutes, to authorize the police officer to take certain follow-up measures whether or not physical harm has occurred in the officer's presence. These measures include making inquiry to ascertain the probability of a recurrence of violence; ordering the alleged abuser to leave the premises for a three hour cooling-off period; and, upon failure of the alleged abuser to obey the order, to make an arrest. Current law provides that the above steps may be taken only when physical harm did not occur in the officer's presence. The amendment to this section authorizes these measures regardless of whether the officer witnessed the physical harm, and therefore provides the officer with additional flexibility of response.

Your Committee on Conference, decided to keep spouse abuse and related offenses within the family court's exclusive jurisdiction, subject to waiver. H.B. No. 2241-80, H.D. 1, gave the district courts concurrent jurisdiction over both the offense of spouse abuse and the application for a temporary restraining order under Chapter 585, Hawaii Revised Statutes. Important factors in this decision were recognition of the fully public nature of district court proceedings and the expertise of the family court in dealing with this subject matter. However, your Committee is concerned that family court administrative policies may be diverting an inordinate number of petitions for summonses to counseling, and respectfully recommends that the court review its policy to ensure that the remedy the law creates not be vitiated by undue reluctance to employ it.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2241-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2241-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Campbell and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 30-80 on H.B. No. 2175-80

The purpose of this bill is to conform Hawaii's name registration law to the mandate of Burch v. Jech, 466 F. Supp. 714 (1979).

Under present Hawaii law, a legitimate child must take its father's name or a hyphenated version of its father's and mother's names in either order, but cannot take its mother's name alone. A legitimated child must take its father's or its mother's name, but cannot take a hyphenated combination thereof. An illegitimate child must take its mother's name and no other name.

In Burch, the court held that parents have a constitutional right to give their children any name they choose and that, to the extent that this right is infringed by Hawaii law, the law is unconstitutional. The court also held that the State can require the name of a child to be registered in any way it desires. 466 F. Supp., at 720.

Thus, this bill amends Hawaii law to require registration of children's names in the same manner as required by present law, but leaves parents free to confer any name they desire on their children. If the conferred name is different from the name under which the child must be registered, the child's conferred name is also required to be registered.

In Burch, Alena Jech and Adolf Befurt wanted to name their child Adrian Jebef. Under the law as amended by this bill, the father or mother of the child would report his birth to the registrar of births within three months of birth as required under section 574-4. The child would be registered under the name "Adrian Befurt" as required by section 574-2 and his conferred name of "Adrian Jebef" as required by section 574-4.

This bill also permits adoptive parents, upon their request, to have the name of a consenting natural parent delete shown on a supplemental birth certificate.

Your Committee has amended H.B. No. 2175-80, S.D. 2, as follows:

1. The word "recorded" on page 2, line 13, has been changed to "registered" to clarify that the conferred name of a child should also be recorded. This provides for cross-referencing under the child's name as registered pursuant to section 574-2 and the conferred name.

2. The phrase "with the consent of the non-custodial parent" has been added to page 3, line 1, to make it clear that a non-custodial parent must agree to a name change in the case where the child has not been adopted.

3. The words "reported to the registrar of births" have been substituted for "the department of health." This makes it clear that the registrar of births should be notified of a name change and provide for recording such information; not to issue a new birth certificate but simply to provide one repository for tracing names.

4. Section 338-20(b), page 5, lines 18 - 20, and section 578-14, page 7, lines 5-6, have been amended to clarify the wording but not change the intent.

5. Minor typographical errors have also been corrected.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2175-80, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2175-80, S.D. 2, C.D. 1.

Representatives D. Yamada, Aki, Honda, Larsen and Medeiros,
Managers on the part of the House.

Senators O'Connor, Mizuguchi and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 31-80 on H.B. No. 2532-80

The purpose of this bill is to permit the statue, to be entitled "The Spirit of Liliuokalani", to be permanently emplaced and displayed at the State Capitol complex. Under existing statutes and in the opinion of the Attorney General, new works of art acquired under Section 103-8 cannot be installed in a completed structure. This bill, as enabling legislation, would permit such an installation at the State Capitol. The effect of this bill is to specify the emplacement and location of the Liliuokalani statue at the present location of the Liberty Bell at the intersection of the centerlines of the Capitol and of the mall between the Capitol and Iolani Palace.

Your Committee upon further consideration has made an amendment to H.B. No. 2532-80, S.D. 1, such that no specific location of the Liliuokalani statue be mandated. Your Committee agreed that the final decision for emplacement and location should be within the responsibility of the original Queen Liliuokalani Sculpture Jury. In selecting, directing, and advising the sculptress, Ms. Marianna Pineda, this Jury recommended several possible sites, all deemed appropriate in terms of how the statue would be shaped and emplaced and where it would be most compatible in its immediate environs. Furthermore, if the Jury were to choose the present location of the Liberty Bell, then the Departments of Land and Natural Resources and Accounting and General Services must be able to find a most appropriate and suitable permanent emplacement and location of the Liberty Bell.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2532-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2532-80, S.D. 1, C.D. 1.

Representatives Say, Takamine, Toguchi and Anderson,
Managers on the part of the House.

Senators Campbell, Abercrombie, Kuroda and Ajifu,
Managers on the part of the Senate.

Conf. Com. Rep. No. 32-80 on S.B. No. 2914-80

The purpose of this bill is to amend the provisions of the workers' compensation law related to the physical and vocational rehabilitation of injured employees who become permanently disabled in order to improve the delivery of rehabilitation services to such employees and to provide incentives for participation in rehabilitation programs.

The bill establishes a new rehabilitation unit within the department of labor and industrial relations that will be responsible for:

1. referring injured employees for rehabilitation after it fosters, reviews, and approves plans specifically developed for them;

2. coordinating and enforcing the implementation of such plans; and

3. regulating providers of rehabilitation services.

The bill will also provide incentives for participation by permitting an employee undergoing rehabilitation to receive temporary total disability compensation, at least to a point where the sum of wages earned during the rehabilitation period and his compensation reaches the level of his average weekly wages at the time of injury.

This measure should improve the administration of the Workers' Compensation Law and benefit disabled workers by providing a more effective means to attempt the rehabilitation of the many workers who become disabled through industrial accidents.

Your Committee upon further consideration has made the following amendment to S.B. No. 2914-80, S.D. 2, H.D. 2. Section 3 in H.D. 2 which appropriates moneys for this program has been deleted on the understanding that a sufficient appropriation for this program will be included in the supplemental appropriations bill (H.B. No. 1912-80). Because of the deletion of Section 3, Sections 4 and 5 have been renumbered Sections 3 and 4, respectively.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2914-80, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2914-80, S.D. 2, H.D. 2, C.D. 1.

Representatives Takamine, Andrews, de Heer, Ige, Kunimura, Sakamoto, Silva, Ikeda and Lacy,
Managers on the part of the House.

Senators Cayetano, Chong, Hara, Toyofuku, Yamasaki, Ajifu and Soares,
Managers on the part of the Senate.

Conf. Com. Rep. No. 33-80 on H.B. No. 2058-80

The purpose of this bill is to make uniform the procedures relating to the sale of real property in probate and guardianship proceedings, to ensure that all such sales are in the best interests of the decedent's or protected person's estate, and to facilitate and clarify the handling of, and the fees charged in, probate matters.

This bill amends section 531-29 to conform with the present practice regarding those selling real property of the estate. A new section is added to Chapter 531, which permits a personal representative or guardian to petition the court for authorization to sell real property of the estate when the will of the decedent does not so authorize. The court may so order if it feels that such action is in the best interests of the estate. Section 560: 3-719 is amended to provide a new scale for compensation of personal representatives to provide a degree of certainty to the court and the representatives as to their fees. In addition, fees for auditors, investment advisors and other specialty representatives are set by a new section.

A simplified method of conveying land is added to section 560: 3-901, thus clarifying that the probate court's order of distribution can itself act as the document conveying realty to the heirs or devisees.

At present, 25 percent of the estates under $30,000 are handled in informal proceedings by family members; therefore, to continue this cost-efficient practice, which eliminates the requirement of attorneys, the maximum limit of the value of the estate for informal probate is raised from $30,000 to $40,000 in section 560: 3-303.

Your Committee, upon further consideration, has amended H.B. No. 2058-80, H.D. 1, S.D. 1, by making technical, non-substantive amendments to correct typographical errors.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2058-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2058-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 34-80 on H.B. No. 1919-80

The purpose of this bill is to amend section 706-667, Hawaii Revised Statutes, to provide for different maximum terms of imprisonment for young adult defendants for the different degrees of felonies included in the Penal Code.

At present, the young adult defendant provision of the law recognizes no difference between an individual who commits rape or sodomy and an individual who steals an automobile. A standard term of imprisonment for four years has been set in cases where persons, meeting the criteria set forth for qualification as a young adult defendant, regardless of the class of felony involved.

Your Committee feels that an individual who commits a crime of armed robbery, kidnapping, or rape presents a much greater threat to the community than an individual who commits the theft of an automobile. Accordingly, your Committee feels that the establishment of a more equitable and just structure, through the creation of sentencing categories which conform the severity of the felony with the severity of the penalty, is necessary.

Because over one-fourth of the prison population falls within the age limits encompassed in the definition of a "young adult defendant", and more than 80% of these prison inmates have been convicted of class A and B offenses, it was deemed wise to restrict the special consideration to those young adult defendants who would profit. Therefore, consideration as a young adult defendant has been limited so as to exclude multiple offenders.

Your Committee, upon further consideration, has amended H.B. No. 1919-80, S.D. 1, by providing for four years as opposed to three years as a maximum term of imprisonment for those sentenced under the young adult defendant provisions. Although entitled to special consideration because of their age, and because of the adequacy of the shorter term of imprisonment, your Committee feels that the commission of a felony, albeit

a class C felony, should be treated so as to impress upon the violator that deviant behavior will not be glossed over. And because such special term is always subject to the setting of a minimum term by the Hawaii paroling authority, a four year maximum for a class C felony is not unreasonable.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1919-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1919-80, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 35-80 on H.B. No. 1985-80

The purpose of this bill is to amend the corporation statutes to eliminate unnecessary regulation, duties, and paperwork for both corporations and the Department of Regulatory Agencies.

Major changes made by this bill include:

(1) Non-profit corporations are required to have at least three directors regardless of the number of members. Other provisions of the bill conform non-profit corporation requirements to those of corporations for profit.

(2) The required filing of an officers' affidavit and supplemental affidavit has been deleted. The significant information formerly contained in the affidavit has been incorporated into revised requirements for articles of incorporation.

(3) Information requirements for the annual corporation exhibit have been amended to eliminate unnecessarily detailed financial information.

Your Committee agrees with the underlying premise that unnecessary regulation and redundant or insignificant informational filings which have proven to be burdens on both the Department of Regulatory Agencies and corporations themselves, should be eliminated. In accord with this decision, your Committee has amended the bill to provide that extensions of authorized capital stock, if desired, be specifically noted in the articles. Without such declaration, each increase in authorized capital stock would require an amendment to the articles.

Your Committee has also made several minor, non-substantive changes in order to make the terms of the bill consistent.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1985-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1985-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Shito, Garcia, Nakamura and Ikeda,
Managers on the part of the House.

Senators O'Connor, Cobb and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 36-80 on H.B. No. 2359-80

The purpose of this bill is to eliminate unnecessary regulation and simplify the administration of and compliance with the partnership law.

Present law contains several provisions that experience has shown to contain unnecessary requirements which unduly complicate the administration of partnerships.

First, Section 425-8, Hawaii Revised Statutes, presently requires a partnership to file a statement with the Department of Regulatory Agencies within 30 days after a partner is admitted, withdraws, or dies. Administration of this requirement has proven to be burdensome and not commensurate with the benefits of regulation provided and

has therefore been deleted. An annual statement, however, will retain the listing of names of any partner admitted, withdrawn or who has died during the year under Section 425-1.

Second, all references to acknowledgements by notary publics have been deleted in order to streamline preparation and checking of documents. All documents need only be certified and penalties have been provided for falsification.

Third, a new provision has been added allowing the reservation of a partnership name. Under present law, this cannot be done which sometimes forces applicants to refile their documents of partnership when it is found that their chosen name is unavailable. Fees for such reservations shall be the same as those paid for the reservation of a corporate name.

Fourth, several clarifications are made by the bill to the present partnership law. A distinction has been made between a dissolution and a termination by requiring that a statement of dissolution be filed only when the business is not carried on by the same partnership even though a technical dissolution may have occured through a change in partners. This bill also clarifies uncertainties in present law by specifically allowing partnerships themselves to be the partners and providing that a partnership is dissolved upon the retirement, death or incapacity of the sole remaining general partner even though the limited partners desire to continue the partnership. Other non-substantive changes have been made by the bill.

Your Committee has made a technical, non-substantive change.

Your Committee feels that the changes proposed by this bill will lessen unnecessary government regulation of partnerships and streamline the registration of partnerships and other aspects of partnership law.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2359-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2359-80, S.D. 1, C.D. 1.

Representatives Blair, Shito, Nakamura, Uechi and Ikeda,
Managers on the part of the House.

Senators O'Connor, Cobb and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 37-80 on S.B. No. 1516

The purpose of this bill is to regulate time sharing in the State of Hawaii.

In its resolution of the several issues involved in this bill, your Conference Committee has taken note of the growth of time sharing over the past several years, both in the State of Hawaii and in other tourist destination areas. Your Committee is aware that time sharing has generated controversy among the various interested parties, including the governments of the State and of the several counties, persons in the time share industry, and residents most directly affected by the growth of time sharing and its potential for expansion.

Simply stated, those who favor time sharing see it as a continuing stimulus to the economy of the State through the creation of additional jobs for residents of Hawaii and expenditures by time share participants. Opponents challenge the conclusion that time sharing constitutes an economic advantage to the State, and consider it to be disruptive, particularly within areas where permanent residents live. The opponents would prefer the strict limitation or prohibition of time sharing, while its proponents favor enabling legislation to establish definite guidelines and procedures for its statutory regulation.

Your Committee concludes that it is necessary and timely for time sharing to be placed under strict governmental regulation if the interests of the State, the time sharing industry, the purchasers of time share units and above all, the people of Hawaii, are to be served. Accordingly, it is the intention of your Committee that careful regulatory oversight of time sharing in the State of Hawaii be provided.

The following are some of the more significant areas of regulation addressed in this measure:

Sec. -3 Taxation. Provides for reliable and efficient administration of real property and excise taxes.

Sec. -4 County authority. This mandate will be particularly helpful in efforts to clarify hotel, resort and transient vacation rental areas. The counties do not presently zone for the less traditional forms of transient visitor accommodations, and should address this in the near future.

Sec. -5 Geographic limitations. Provides a general prohibition, except as specifically allowed in the enumerated subsections. The first exemption is a "grandfather" provision to avoid any retroactive effect of this section.

The second exemption subsection provides for two exemptions from the prohibitory language. First, time sharing and transient vacation rentals are allowed in hotels. Second, time sharing and transient vacation rentals are allowed where designated for hotel use, resort use, or transient vacation rentals use, pursuant to county authority under Section 46-4, Hawaii Revised Statutes, or where the county, by its legislative process, designates hotel, transient vacation rental or resort use.

It is the clear intention of your conferees that time sharing and transient vacation rental use are identical uses of land, without regard to ownership, and that both uses of land should be addressed in a coequal manner by the counties. Your conferees further note that county land use decisions are not based on ownership, but on the use of the land in question. As such, time sharing and transient vacation rentals should be either permitted or prohibited on an equal basis within an area deemed appropriate by the county.

Your Committee further notes several areas of non-enforcement of their own zoning ordinances by some of the counties. In this regard, it is not the present character of the neighborhood, but its intended use by the county that is also important. The legislature intends by this Act that the counties will be guided by the notion that time sharing and transient vacation rentals should not be permitted where the life styles of the permanent residents will be disrupted in an unreasonable manner. Any zoning code is only as good as its enforcement by a county.

In its review of time sharing and transient vacation rentals, your conferees concluded that several of the counties have not used their zoning authority on these less formal and traditional types of transient visitor accommodations. The problems caused by this shortcoming in the county zoning ordinances are clearly demonstrated in the case of County of Maui vs. Puamana Management Corporation (Civil No. 3474-78), presently on appeal to the Supreme Court of the State of Hawaii.

Your conferees elected not to pre-judge where in an appropriate area time sharing and transient vacation rentals should be allowed or prohibited, but to leave that decision to each county as a logical part of its zoning or designation functions. Your Committee expects that the counties will act expeditiously to clarify the propriety of these uses under the zoning ordinances.

Sec. -6 Time sharing in projects. Provides that time sharing must be explicitly and prominently authorized in project instruments before such a use can commence in a project. Such authorization shall be by a unanimous vote of the unit owners. In projects which presently contain time sharing use, the project instruments will determine the restrictions, if any, to be imposed.

Sec. -7 Maintenance charges. In recognition that time sharing may result in more intensive use of buildings or projects and their common elements, your Committee has provided that higher maintenance fees, up to a maximum of an additional fifty percent, may be assessed against time share units and transient vacation rental units located in the same building as private residential units. This proviso will more equitably distribute maintenance costs, and should have the collateral effect of discouraging the mixed use of buildings.

Sec. -8 Mutual right to cancel. Provides a cooling-off-period of five calendar days after the execution of the contract or the receipt of the mandatory disclosure statement, whichever is the latter. It is hoped that this will remove some of the incentive to use high pressure sales techniques.

Sec. -9 Disclosure statement. Provides for the disclosure of pertinent information to prospective purchasers.

Sec. -10 Filing required; developer, sales agent, acquisition agent and plan manager. Provides for filing of the disclosure statement with the director. It also requires the filing of certain information by the acquisition agent, sales agent and plan manager and requires those persons to be bonded.

Sec. -11 Prohibited practices. Your Committee has defined and prohibited undesirable marketing practices such as beach and street solicitation on a Statewide basis.

Your Committee believes that these provisions will help to reduce the actual and perceived problems of time sharing without unduly retarding the industry.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1516, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1516, S.D. 1, H.D. 1, C.D. 1.

Representatives Blair, Aki, Larsen, Masutani, Shito and Ikeda,
Managers on the part of the House.

Senators Cobb, Carpenter and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 39-80 on S.B. No. 2202-80

The purpose of this bill is to provide standards for the establishment of new licensing procedures for radiation therapy technologists. Under present law, radiation therapy technologists are included under the licensing of radiation technologists. Your Committee finds that delineation of these two groups is in accord with present differences in medical education, training, and practice. This bill further provides for standards to assure that proper education and training has been obtained by all radiation therapy technologists prior to obtaining a license.

Under this bill, the Board of Radiation Technology is permitted to administer separate licensing exams for radiation therapy technologists and diagnostic technologists.

The terminology "cobalt 60 or electrons" has been included in the definitions section of this bill in preference to "ionizing radiation". The bill also includes this terminology throughout the bill with reference to this type of radiation. Your Committee recognizes that "ionizing radiation" would encompass a wide range of technologists working in nuclear medicine.

There is presently no state regulation or licensing provision for nuclear medicine technologists, and the existing law is inadequate to cover this broadened definition. Although "cobalt 60 or electrons" is included within the definition of ionizing radiation and does relate to nuclear medicine, it is a narrower definition that relates directly to the method of treatment used by radiation therapy technologists.

Your Committee upon further consideration has made the following amendment to S.B. No. 2202-80, S.D. 2, H.D. 1.

(1) "X-rays" has been added to line 5, page 2 to correct an inadvertent omission.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2202-80, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2202-80, S.D. 2, H.D. 1, C.D. 1.

Representatives Blair, Aki, Larsen, Masutani, Shito and Ikeda,
Managers on the part of the House.

Senators Cobb, Carpenter and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 40-80 on S.B. No. 2693-80 (Majority)

The purpose of this bill is to:

1) Dissolve the Hawaii Foundation for History and the Humanities, transferring its functional responsibilities:

a) For ethnohistorical, humanities, and cultural program activities to the State Foundation on Culture and the Arts;

b) For the Hawaii Historic Places Review Board activities to the Department of Land and Natural Resources;

2) Add to the qualifications required for the position of director of the State Foundation on Culture and the Arts; and

3) Specify the minimum information required in the State Foundation on Culture and the Arts' annual reports.

Your Committee upon further consideration has made the following amendments to S.B. No. 2693-80, S.D. 2, H.D. 1:

1) Added language in paragraph 9-3(6) (in Section 3 of the bill), under the duties of the State Foundation, which will allow the chairman to administer funds allocated by grant, gift, or bequest, and to hold, as well as accept, disburse, and allocate these funds. Paragraph 9-3(12) has been deleted because the preceeding amendment makes it unnecessary.

2) Redrafted paragraph 9-3(10) to remove the subparagraphs and delete redundant language. The activities of promoting and encouraging programs in ethnohistory, the humanities, and cultural activities are already specified as part of the duties of the State Foundation under other portions of section 9-3.

3) Amended what was subparagraph (C) of paragraph 9-3(10) which creates a depository for ethnohistorical and cultural studies and materials. The language substituted is the same language used in S.B. No. 2693-80, S.D. 2, which provides for placing these materials in public archives, libraries, and other suitable institutions and maintaining a register of the materials.

4) Deleted section 6 of the bill. Your Committee does not believe that exempt position employees should automatically become civil service employees.

5) Changed the number of persons to be appointed to each category of the Historic Places Review Board from two to one. Your Committee was concerned that requiring the appointment of two persons in each of the specified categories would restrict the Governor's flexibility in nominating members of the Board. Your Committee believes the Governor should have an opportunity to appoint persons from the general community to serve on this Board.

6) Deleted subsection 6E- (2)(G) of section 10 of the bill which provided for an executive secretary for the Hawaii Historic Places Review Board. The Review Board already has funds provided in the budget for a secretary to carry out its work, and any further assistance can be provided by the Department of Land and Natural Resources. Additionally, the labeling of the subdivisions in the proposed new section has been changed to conform to recommended drafting style.

7) Amended Section 10 of the bill to provide that present members appointed prior to January 1, 1974 shall serve until January 1, 1982, and present members appointed after January 1, 1974 shall serve until January 1, 1984. The language of the amendment also allows members whose terms may be in conflict with Section 26-34, Hawaii Revised Statutes, to continue service.

Your Committee on Conference has also made style changes which do not change the meaning of the bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2693-80, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2693-80, S.D. 2, H.D. 1, C.D. 1.

Representatives Kawakami, Say, Hagino, Takamine and Marumoto,
Managers on the part of the House.

Senators Campbell, Cayetano, Abercrombie, Hara, Kawasaki, Yamasaki, Ajifu and Yee,
Managers on the part of the Senate.
(Senator Hara did not concur.)

Conf. Com. Rep. No. 41-80 on S.B. No. 1960-80

The purpose of this bill is to provide for reduced premium rates for operators of motorcycles, motor scooters or similar vehicles, who have completed a safe driving course that is approved by the Motor Vehicle Insurance Commissioner.

The intent of this legislation is to give relief from the rising cost of insurance, to operators of motorcycles, motor scooters, or similar vehicles, who demonstrate a concern for traffic safety. Your Committee upon further consideration finds that an additional incentive should be given to operators of motorcycles, motor scooters, or similar vehicles, who provide for an additional safety measure.

Accordingly, your Committee has made the following amendments to S.B. No. 1960-80, S.D. 1, H.D. 1.

(1) A new section was added which provides that an insurer may reduce a premium by ten per cent if an insured wears an approved safety helmet during the operation of his vehicle. If the insurer provides for this discount, the insurer will also be allowed to provide for a surcharge to an insured in an amount equal to the discount if an insured does not wear a safety helmet during the operation of the insured's vehicle.

If an insured elects to obtain a discount by the use of a safety helmet, then the insured is required to wear the helmet during the operation of the insured vehicle. A violation of this provision would subject a person to the general penalty provision that is provided for in Section 294-39, Hawaii Revised Statutes.

(2) Section (m) of the bill has been amended by substituting the Director of Transportation for the Motor Vehicle Insurance Commissioner. The Director of Transportation is also given the responsibility of approving the safety helmets provided for in the preceding amendment. Your Committee was informed that the Director of Transportation rather than the Motor Vehicle Insurance Commissioner has the expertise and experience to implement the amendments provided for in this bill.

(3) Section 294-35.5 of the Hawaii Revised Statutes has been amended to provide that all fees derived, from motorcycles, motor scooters, or similar vehicles, from the "drivers' education fund underwriter's fee" shall be expended by the Department of Transportation for a driver education program for operators of motorcycles, motor scooters, or similar vehicles.

(4) Changed references to the Director of the Department of Transportation to the Director of Transportation.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1960-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1960-80, S.D. 1, H.D. 1, C.D. 1.

Representatives Blair, Garcia, Masutani, Shito and Ikeda,
Managers on the part of the House.

Senators Cobb, Chong and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 42-80 on S.B. No. 2501-80

As proposed by the House, the purpose of this bill is to amend Chapter 142, Hawaii Revised Statutes, to provide for the liability of dog owners only for property damage in one section, and personal injury in a second section. The House version of the bill also provides a procedure for destruction of a particularly dangerous dog which has had his "second bite."

Your Committee has decided to completely redraft this bill to cover liability of animal owners in general by amending Chapter 663. As amended, this bill conforms closely to the Senate draft of H.B. No. 2826-80, H.D. 1, S.D. 1.

SECTION 1 of this bill, as amended by your Committee, sets forth the problems the bill seeks to remedy. First, Hawaii case law requires an injured plaintiff to prove that the animal owner knew of the dangerous propensities of his animal before the plaintiff

can recover. This generally allows an animal its "first bite." Second, Hawaii case law allows even a plaintiff who was trespassing on the owner's property to recover. Farrior v. Payton, 57 Haw. 620 (1977).

This bill reverses the "first bite" doctrine and disallows recovery to an injured trespasser. The bill also provides for absolute liability in the case of damage done by a particularly wild or dangerous animal, but sets out exceptions to any civil liability in certain cases.

SECTION 2 of this bill, as amended by your Committee, sets out the general rule of liability of an animal owner for damage done to a person "regardless of the animal owner's or harborer's lack of scienter of the vicious or dangerous propensities of the animal." The section reverses Farrior v. Payton, supra, and abrogates the common law. It does not create strict liability. It merely eliminates scienter as a matter of proof for a plaintiff or lack of scienter as a defense for a defendant. The common law otherwise applies.

SECTION 2 also defines the absolute or strict liability situation of animal owner liability. Absolute liability occurs when damage is done by "an animal which is known by its species or nature to be dangerous, wild, or vicious". Examples of such feral animals would be lions, bulls, boa constrictors, etc. Dogs are not included in this category since dogs are not generally of a known vicious nature. An example of absolute liability would be a situation where an owner had a feral animal on a defective leash. If the leash were to break and the animal injured someone, the owner would be liable even though he did his best to restrain the animal, unless one of the statutory exceptions applied.

SECTION 3 of this bill, as amended by your Committee, sets out exceptions to any civil liability, which includes absolute liability. The first exception involves injury to a person who has intentionally or knowingly entered or remained unlawfully on an animal owner's premises. This reverses the holding in Farrior which states that a property owner owes the same duty of care to a trespasser that he owes to a person legally on his property. A child wandering onto a property without intent to trespass who is injured may still recover. Also, an attack by an animal on a trespasser which goes beyond the bounds permitted in Chapter 703 may subject a property owner to criminal liability.

The second exception applies to situations where an animal causes damage as a proximate result of being teased, tormented, or otherwise abused without the negligence, direction, or involvement of its owner. The abuse must be proximately related to the action of the animal and not a result of the owner's negligently permitting the animal to be in an abusive situation, or the owner's abuse, or abuse directed by the owner.

The third exception applies to use of an animal for protection of person or property, etc., as set out in Chapter 703 of the Penal Code.

These exceptions are not intended to be exclusive as far as common law liability is concerned. In fact, they are probably included in the common law already. These exceptions are the ones your Committee feels are most important. The exceptions are exclusive as far as absolute liability is concerned since the liability is absolute unless an exception is provided. Note that an exception to liability is provided where there is adequate posting (see definition of "enter or remain unlawfully").

The House section of the bill referring to destruction of dogs that have had "two bites" has been deleted and will be addressed in H.B. No. 2826-80.

Your Committee feels that this bill provides for needed statutory law in the area of animal owner liability while maintaining flexibility in all parts.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2501-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2501-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Aki, Honda, Larsen and Medeiros,
Managers on the part of the House.

Senators O'Connor, Machida and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 43-80 on H.B. No. 2286-80

The purpose of this bill is to provide for the regulation of residences serving persons with developmental disabilities.

Your Committee recognizes that deinstitutionalization of the developmentally disabled is an important goal. Thus, it is essential that suitable housing be made available in the community.

Your Committee upon further consideration has made the following amendments to H.B. No. 2286-80, H.D. 1, S.D. 1:

(1) Added a new SECTION 1 which clarifies state policy regarding the development of suitable housing in the community for the developmentally disabled.

(2) Added a new SECTION 2 requiring the state planning and advisory council to encourage the adoption of ordinances in each political subdivision permitting the development of housing for this group.

(3) Made other nonsubstantive, technical amendments.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2286-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2286-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Lee, Ushijima and Lacy,
Managers on the part of the House.

Senators Carpenter, Abercrombie and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 44-80 on S.B. No. 118

The purpose of this bill is to make various amendments to Chapter 26H, Hawaii Revised Statutes, relating to the statutory regulation of certain professional and occupational boards and commissions.

The bill has been amended to change the policies section of the present law, Section 26H-2, concerning professional and vocational regulation, to recast the emphasis of three policies contained in that section.

The first policy amended currently states that "Even where regulation of professions and vocations is reasonably necessary to protect consumers, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted." The policy has been amended to state "Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on professions or vocations should be retained or adopted."

The second policy amended currently states that "Professional and vocational regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who because of a variety of circumstances may be at a disadvantage in choosing or relying on the provider of the service;". The policy has been amended to state "Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service;".

The third policy amended currently states that "evidence of abuses by providers of the service shall be accorded great weight in determining whether government supervision is desirable." The policy has been amended to state that "evidence of abuses by providers of the service shall be accorded great weight in determining whether government regulation is desirable."

The amended bill also amends Section 26H-5. Section 26H-5 requires the Legislative Auditor to evaluate each board, commission, and regulatory program up for repeal under the Sunset Law, and requires that if the Auditor finds that the Chapter should be reenacted or modified, that the Auditor evaluate the effectiveness and efficiency of the regulatory program and make appropriate recommendations to improve policies, procedures, and practices. This provision has been expanded to require the Auditor

to evaluate the program and make recommendations even if the Auditor finds that the program should not be reenacted. Additionally, the section has been amended to require that if the Auditor receives written comments from the board, commission, or Department of Regulatory Agencies, that those comments be appended to the evaluation report to be submitted to the Legislature.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 118, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 118, S.D. 2, H.D. 1, C.D. 1.

Representatives Blair, Crozier, Fukunaga, Garcia, Ige, Shito, Uechi, Ikeda and Sutton,
Managers on the part of the House.

Senators Cobb, Yim and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 45-80 on H.B. No. 1782-80

The purpose of this bill is to update Chapter 478, Hawaii Revised Statutes, to reflect the realities of the present lending market. Section 1 of the bill specifically and explicitly overrides the provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 (H.R. 4986), which was recently enacted by Congress.

Section 2 of the bill amends Chapter 478, Hawaii Revised Statutes by adding three new sections, which are exemptions. The first new exemption provides that there will be no ceiling on interest rates for liens on residential real property loans, except for those made prior to the federal suspension on December 28, 1979, of the State's usury ceiling.

The second new exemption deals with certain contracts which may have been covered in Part B of the federal act and which are addressed because of the override provision of Section 1. The third new exemption covers loans by ERISA approved retirement plans.

A fourth provision repeals the three new exemptions on March 30, 1983. However, the override of the federal preemption is not repealed.

Your Committee, upon further consideration, has made substantial amendments to H.B. 1782-80, H.D. 2, S.D. 1. The provision overriding the Depository Institutions Deregulation and Monetary Control Act of 1980 (H.R. 4986) has been retained. This will allow Hawaii to formulate its own response to the future needs of our State. It is neither wise nor appropriate to allow the State usury laws to be determined by policy makers in Washington, D.C.

Your Committee has consolidated all of the exemptions to the usury law. Sections 478-9 and 478-10 have been deleted and their provisions added to 478-8.

The proposed section 478-8 (e)(1) provides, that there shall be no statutory limit to interest rates on indebtedness secured by a first mortgage lien on real property or a first lien on stock in a residential cooperative housing corporation, if agreed to or incurred after the effective date of this proposal. The phrase "first mortgage lien" is used to make clear that we are not referring to liens that may become senior to the first mortgage. For example, a mechanic's or materialman's lien or certain tax liens may become a first lien. "First mortgage lien" is not used in the context of cooperative housing because those liens are not mortgage liens.

Your Committee has included agreements of sale, in 478-8(e)(2) because this method of sale is popular in Hawaii and may be the only method of sale in troubled economic times. So long as the rate of interest is clearly stated, a vendor under an agreement of sale will not have a restricted interest rate.

Proposed subsection (f) exempts employee welfare benefit trust funds or retirement plans approved by the United States Labor Department and Internal Revenue Service. The same exemption is granted to loans made by the State retirement system. Proposed subsection (g) exempts loans made by certain lenders to the agricultural and livestock industry. The provisions of (f) and (g) will expire at the end of June 1985 and commitments made prior to that date are covered if the loan is made by June 30, 1987.

Section 3 of the bill adds a new provision to Chapter 478 specifically limiting the rate of interest chargeable under a credit card agreement to 18% per year. Your Committee feels that there is no present need to ammend interest rates in this area.

In Section 5 of the bill, your Committee has amended Chapter 506, Hawaii Revised Statutes, by adding a new section dealing with the right of a mortgagor to repair or replace collateral which is damaged or destroyed by fire or natural disaster.

Section 8 is a very important part of the bill. Your Committee feels that parties to existing commitments and contracts should be reassured that the rate of interest on their debt will not be increased, or allowed to rise to higher rates than would otherwise be permitted, because of this legislative action.

Your Committee is concerned that some will interpret the new law to permit higher limits on existing loans with a floating interest rate. Such agreements usually provide that the interest rate shall not rise above the maximum permitted by law. For interest rates agreed to prior to the effective date of this bill, except as governed by the federal preemption, the maximum permissible rate at the time of the agreement shall continue to be the maximum permitted.

Your Committee understands that there were loan commitments entered into when the usury ceiling was twelve percent which provided that the interest rate be determined at a later time. Generally, the interest rate was to be fixed shortly before the funding of the permanent individual loan, based on the prevailing rate or some floating rate. Your Committee does not intend to retroactively affect these commitments which were entered into prior to the effective date of this bill. The legal limits existing at the time of the commitment will control, as if expressly incorporated. The usury ceiling of twelve percent shall control and be read into a commitment entered into prior to the effective date of this bill, unless the federal preemption permitted a higher rate at the time the commitment was made.

Your Committee agrees that interest rate ceilings are a matter of importance to all segments of the State's economy and population and should be a matter of continuing concern to the legislature. Your Committee therefore declares that it is the legislature's intention that the application and effect of this bill be reviewed and monitored continuously.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1782-80, H.D. 2, S.D.1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1782-80, H.D. 2, S.D. 1, C.D. 1.

Representatives Blair, Shito, Aki, Masutani, Kobayashi and Medeiros,
Managers on the part of the House.

Senators Cobb, Kuroda, Yim and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 46-80 on H.B. No. 501

The purposes of this bill are to allow an individual to gain access to personal records which pertain to that person, and which are maintained by state or county agencies, to allow persons who are the subjects of personal records to amend or correct such records when they are neither accurate, timely, nor complete, and to secure the confidentiality of personal records. To effectuate these purposes, the bill adds a new chapter to the Hawaii Revised Statutes.

Article I, Section 6 of the Constitution of the State of Hawaii reads as follows:

RIGHT OF PRIVACY

"Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The Legislature shall take affirmative steps to implement this right."

This broad statement constitutes a commendable premise. And yet, as succinctly stated by the Legislative Reference Bureau in its initial analysis of Article I, Section 6:

"It is unclear what legislation will be necessary under this mandate since it is unclear what the right of privacy encompasses." (From "Constitutional Amendment Information Sheets" published by the Legislative Reference Bureau.)

This is precisely why privacy is one of the most difficult concepts for the Legislature or the courts to address. The concept of privacy is, as it must be, a nebulous one. To constrict the parameters of privacy with burdensome legislation would have a stifling effect upon the free exchange of information and ideas; and yet, some protections must be afforded.

Your Committee was confronted with a two-pronged problem when addressing the right to privacy as perceived by the Constitutional Convention of 1978. As did the National Conference of Commissioners on Uniform State Laws, your Committee recognized that both freedom of information, which involves public access to public records, and information practices, which involves the confidentiality of personal records, must be carefully balanced as two conflicting interests. Nevertheless, because the two interests are of import, neither can be summarily dismissed; they must both be accorded their proper place in any legislation on the right of privacy.

In an effort to attain this delicate balancing, your Committee has drafted this bill to fulfill the intent of the amendment of the Constitution. A genuine attempt herein has been made to enact a law dealing with the right of privacy, and affecting the relationship between the government and individuals which will effectively coordinate public access to public records, while maintaining the confidentiality of personal records.

The following is a summary of the contents of the bill, with a brief synopsis of the functions of the separate sections:

(1) Section -1. Definitions. Definitions which specifically apply to this chapter are set forth.

(2) Section -2. Individual's access to own personal records. This section delineates a person's right to access to records which pertain to himself or herself, and the duties of the agency which keeps the records.

(3) Section -3. Exemptions and limitations on individual access. This section sets forth the type of information to which access is not required, and deals primarily with records on criminal activity.

(4) Section -4. Limitations on public access to personal record. This section outlines the primary prohibition against disclosure of personal records to persons other than to whom the records pertain, but exempts such limitation when authorized by the subject of the information or the record, when the information is collected and maintained specifically to create a public record, when the disclosure is expressly authorized by statute, and when there is a showing of compelling circumstances affecting health or safety of any person. This limitation is not intended to affect access to personal records when the individual to whom the records pertain specifically authorizes the disclosure of such information to others. In such instance, the disclosure is not in violation of this chapter nor is it prohibited. Thus, when a person desirous of obtaining insurance authorizes an agent to examine his or her records, which are maintained by an agency, such authorization will not prohibit the insurance agent from gaining access to records, medical, traffic, and otherwise, which specifically pertain to that individual.

(5) Section -5. Limitations on disclosure of personal record to other agencies. This section delineates guidelines for agencies maintaining records on individuals when making disclosures to other agencies. Thus, if the disclosure is in line with the purpose for which the information was collected, if the disclosure is consistent with the conditions of use and disclosure under which the information was given, if the disclosure appears to be consistent with the requesting agency's performance of duties, if the disclosure is to the archives, if the disclosure is to a federal agency, or to a foreign government and authorized by treaty or statute, for law enforcement investigative purposes, if the disclosure is to the legislature or committees within the Legislature, if the disclosure is ordered by court, or if the disclosure is to officials of a department or agency of the federal government for specific purposes, then such disclosure is permitted.

Therefore, an office, such as the legislative auditor, would clearly have access to records maintained by other agencies, if their investigation and request for disclosure are in keeping with the performance of its duties and functions as circumscribed by statute.

(6) Section -6. Access to personal record; initial procedure. This section outlines the agency's duty upon a request from an individual to gain access to his or

her personal record, within a specific time period, subject to extensions.

(7) Section -7. Copies. This section permits the agency maintaining the records to charge, within reasonable limits, the costs for duplication or transcription of records.

(8) Section -8. Right to correct personal record; initial procedure. This section sets forth an individual's right to make corrections of factual errors in his or her personal record, and the procedure by which such correction is to be made.

(9) Section -9. Access and correction; review procedure. This section delineates the procedure which an agency must follow when a request for review of its refusal to allow access to or correction of a record is submitted.

(10) Section -10. Rules and regulations. This section provides that each agency adopt, pursuant to chapter 91, Hawaii Revised Statutes, rules which establish the procedures to implement or administer the fair information practices act.

(11) Section -11. Civil actions and remedies. This section provides that certain causes of action may be brought for agency failure to comply with any of the provisions under the fair information practices act.

(12) Section -12. Violations; disciplinary action against employees. This section provides for disciplinary action, including suspension or dismissal, for any intentional or knowing violation of this chapter by an employee or the agency.

(13) Section -13. Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. This section reiterates that when disclosure is ordered by judicial or administrative order, or when statute, administrative rule, rules of court, judicial decision, or other law authorizes access, then disclosure need not be withheld.

(14) Severability clause.

Upon further consideration, your Committee has amended this bill by deleting two provisions; one dealing with agency disclosure of information claimed incorrect, and the other dealing with corrected personal records. Your Committee feels that the administrative burdens imposed on agencies by these two provisions would be unduly restrictive and prohibitive. The requirements that persons to whom information has been disclosed also be furnished information as to the reasons for not correcting or amending as requested by the subject of the record, and that sources of and prior recipients of information about an individual be furnished information pertaining to amendments or corrections, would detract from the agency's original role. The agency's functions would be sorely disrupted, and the time-consuming process of notifying sources or recipients may well prevent the agency from fulfilling its major tasks.

Your Committee is well aware that the right to correct and amend personal records, and the right to ensure that such records are disclosed with the proper information to the proper requesting agencies or persons, are interests which must be given full protection. To achieve a proper balance which will not unduly burden an agency, however, is difficult. The modifications made by your Committee were made, though, with the knowledge that the National Conference of Commissioners are to meet during the summer of 1980; and in their exhaustive study of the problems presented by the right to personal access and the right to confidentiality of personal records, solutions may be forthcoming.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 501, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 501, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Dods, Garcia, Honda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Mizuguchi and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 47-80 on H.B. No. 1871-80

The purpose of this bill is to amend Section 408-15(a), Hawaii Revised Statutes, to

include industrial loan companies within the usury exemptions of Chapter 478.

Under the present Section 408-15(a), it is unclear as to whether or not industrial loan companies can avail themselves of the exemptions to usury of Chapter 478.

Based on testimony presented to the respective House and Senate committees of your conferees, your Committee agrees that the reasons for exemptions to usury may apply to an industrial loan company, and where such a company can come within the terms of an exemption to Chapter 478, that company should be exempt.

While in accord with the intent of the bill, your Committee has amended the language of the bill to better effectuate its purpose.

Your Committee has also added a new section to the bill to correct a drafting error in S.B. No. 1441, S.D. 1, H.D. 1. In subsection 408-15(1)(F) of that bill, the word "not" was inadvertently inserted. This amendment corrects that error.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1871-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1871-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Shito, Lee, Nakamura and Medeiros,
Managers on the part of the House.

Senators Cobb, Kuroda, Yim and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 48-80 on H.B. No. 1925-80

The purpose of this bill is to raise the maximum rate of interest chargeable on loans made under Chapter 408, Hawaii Revised Statutes, relating to Industrial Loan Companies.

This bill would increase the rates on advance interest (block) loans as follows:

12% has been increased to 14%
9% has been increased to 10.5%
6% has been increased to 7%
3% has been increased to 4%

The ceiling on simple interest loans has also been raised to 24%. All of the aforementioned increases in interest rates are authorized by the bill for a period to expire July 1, 1983.

Your Committee feels that present economic conditions justify an increase in interest rates allowable by industrial loan companies. Your Committee agrees that in order to allow industrial loan companies to maintain the flow of funds which borrowers need and demand, relief from existing interest ceilings is justified by present economic conditions for both simple interest and advance interest loans.

Your Committee has amended the bill to extend the period during which the increases will be effective until July 1, 1985, in order to provide ample time to determine whether future developments warrant a decrease in the maximum rates set by this bill. Your Committee recognizes that the increases in rates agreed upon may be reviewed sooner than 1985 if economic conditions and experience with the new maximum rates warrant such review.

Your Committee has also made technical amendments which do not alter the intent of the bill.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1925-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1925-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Shito, Lee, Nakamura and Medeiros,
Managers on the part of the House.

Senators Cobb, Kuroda, Yim and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 49-80 on H.B. No. 2357-80

The purpose of this bill is to permanently place the Hawaii Criminal Justice Information Data Center within the Department of the Attorney General for administrative purposes, effective July 1, 1981, and to provide guidance as to the purpose of this data center.

At present, the Data Center is attached to the Judiciary for administrative purposes, pursuant to Chapter 846, Hawaii Revised Statutes.

This bill represents an attempt to implement the findings of a study conducted by the State Law Enforcement Planning Agency and the Statistical Analysis Center, which recommended that the Data Center be permanently placed within the Department of the Attorney General. It was determined that the environment provided in the Department of the Attorney General, which is the primary law enforcement agency in the State, would be conducive for the maintenance of the high level of operations and cooperation with the criminal justice agencies throughout the State, while at the same time providing sound administrative support.

Upon further consideration, your Committee has amended H.B. No. 2357-80, S.D. 2, by removing the specific requirements that (1) the Data Center assist the battle against crime through the providing of information to agencies, and that (2) the Data Center disseminate to the Governor, the Legislature, and the heads of authorized criminal justice agencies, statistical analyses of both of the criminal and the juvenile justice system. The Data Center was established for the collection storage, dissemination, and analysis of criminal history record information, and is authorized to release such information to criminal justice agencies. This authority and summary of duties is contained in the purpose clause under section 846- . To further circumscribe existing duties would be redundant.

In addition, your Committee finds that juvenile data is not maintained by the Data Center, and the requirement that statistical analyses on the juvenile justice system be disseminated to certain specified persons would impose an undue burden upon the Data Center; one that it cannot possibly fulfill.

Finally, your Committee, after consideration, has further amended this bill by removing the requirement that the Data Center prepare an accurate account of the resources required for the operation of the criminal justice system and examine the overall performance of those system. The Data Center is equipped to disseminate and analyze the statistics which it maintains, but is not equipped to analyze the performance of the agencies from which the information is received. Futhermore, an account of required resources necessary for the operation of the various criminal justice system's agencies is provided for when each agency's budget is submitted. The Data Center is not capable of determining what resources are necessary for the operational success of each agency.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2357-80, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2357-80, S.D. 2, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Kawasaki and Soares,
Managers on the part of the Senate.

Conf. Com. Rep. No. 50-80 on S.B. No. 3146-80

The purpose of this bill is to amend Chapter 11, Part XII, Subpart B to further clarify and refine the State's campaign spending law.

Two major changes to the present law were proposed in the Senate version of this bill. Both of these changes were, however, deleted by the House.

Your Committee on Conference discussed at great length the two proposals and has agreed on the following changes to the present law:

In Section 11-204 of the Senate version, a person who contributed more than $2,000 to a candidate would be guilty of a misdemeanor, while the candidate who received over $2,000 from the person would be required to turn over the excess to the Hawaii election campaign fund.

Your Committee discussed the purpose of the campaign spending law which is primarily to disclose pertinent information to the public relating to a candidate's funding and expenditures during an election campaign. The law is basically a reporting provision.

To better achieve this purpose, Section 11-204 has been redrafted to provide that a candidate shall return all sums over $2,000 from a contributor back to the contributor. If the contributor cannot be found, the money shall be turned over to the Hawaii election campaign fund. No candidate will be penalized for the unknowing receipt of funds over $2,000 from a person. A candidate who knowingly thwarts the intent of the law will, however, be subject to the penalty provisions in Section 11-208.

The second major change to the law proposed by the Senate pertained to Section 11-218 which would have increased public funding for candidates for the offices of state senator, state representative, county council member, prosecuting attorney, board of education and all other elective offices. The increase would have raised the level of funding from $100 per election period for these offices to twenty per cent of the expenditure limit for each respective office.

This proposed increase would require an appropriation of well over $1,000,000 from general fund revenues to fund all races in the 1980 election.

Your Committee, on review of this proposal, considered this sum excessive for this year and has decided to forego the proposed increase at this time with the intention of increasing public funding for all offices in the near future.

A further amendment to the bill appears on page 14, line 15 by the addition of the word "special" to section 11-209. This word clarifies this section which pertains to campaign expenditures to include special elections as being prescribed election periods during which expenditure limits may be applied.

Non-substantive, technical changes have also been made to this bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 3146-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 3146-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Aki, Holt, Honda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Machida, Mizuguchi, Ushijima, George and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 51-80 on H.B. No. 1775-80

The purpose of this bill, H.B. No. 1775-80, H.D. 2, S.D. 1, is to conform the actions and land use decision-making by the State Land Use Commission with the Hawaii State Planning Act (Chapter 226, Hawaii Revised Statutes; also referred to as the Hawaii State Plan) by establishing permanent statewide land use management policies to guide the Commission.

Section 2 of the bill (S.D. 1) repeals the following sections of the Hawaii Revised Statutes: (1) Section 205-16, which requires that upon enactment of the (Hawaii) State Plan, amendments to any land use district boundary and other actions of the Land Use Commission shall conform to the State Plan; (2) Section 205-16.1, which sets forth and adopts interim statewide land use policies to be observed and complied with by the Land Use Commission from June 2, 1975, until two years after the effective date of the enactment of the Hawaii State Plan; and (3) Section 205-16.2, which provides that the interim statewide land use guidance policies in section 205-16.1 shall be in effect from June 2, 1975, until two years after the effective date of the enactment of the State Plan.

These repealed sections of the Hawaii Revised Statutes are replaced in S.D. 1 of the bill by provisions which, among other things, require any district boundary amendment and any other action by the Land Use Commission to conform to "applicable provisions" in the Hawaii State Planning Act and provides "new" or amended statewide land use management policies, of a permanent nature, to guide the Land Use Commission in lieu of the statewide land use policies in section 205-16.1, Hawaii Revised Statutes, which are scheduled to expire in May, 1980 (two years after the effective date of the enactment of the Hawaii State Plan).

H.B. No. 1775-80, H.D. 2, S.D. 1 further provides that where the Land Use Commission finds that "substantial injustice and inequity will result, or where a public purpose is to be served by not complying," the Commission need not comply with the statewide land use management policies set forth in Section 1 of the bill.

Your Committee has amended Section 1 of H.B. No. 1775-80, H.D. 2, S.D. 1, in the following major respects:

(1) Section 205- (purpose and findings) has been amended to include a statement that the interim statewide land use management policies contained in the bill are to implement Article IX, Sections 6 and 8, and Article XI, Sections 1 and 3 of the Hawaii State Constitution.

(2) Section 205- , relating to statewide land use management policies, has been amended to adopt said policies until the adoption of state functional plans as provided in Chapter 226 rather than to adopt these policies as permanent policies to guide the Land Use Commission.

The purpose of this amendment is to have the statewide land use management policies serve as interim policies until the adoption of the state functional plans pursuant to the Hawaii State Planning Act (Chapter 226, Hawaii Revised Statutes). Your Committee believes it is premature to enact permanent land use management policies at this time because such policies may possibly conflict with the functional plans which have not yet been adopted and may need to be amended as these plans are adopted.

(3) Section 205- , relating to statewide land use management policies, has also been amended to provide that the Land Use Commission shall comply with said policies, "except where it finds that substantial injustice and inequity will result or where a public facility or project has been approved by the legislature." This language replaces the following language in S.D. 1: "except when it finds that substantial injustice and inequity will result, or where a public purpose is to be served by not complying."

Your Committee, finds that this amendment is advisable because the term "public purpose" is not defined and is susceptible to an over-broad construction or application. Accordingly, the phrase "where a public purpose is to be served by not complying" has been replaced by the clearer and more restrictive phrase "where a public facility or project has been approved by the legislature."

(4) Section 205- , relating to statewide land use management policies for reclassifying lands, has been amended by making major organizational and substantive revisions. S.D. 1 provided specific policies only for the urban district and overall policies for any district boundary amendment.

S.D. 1, as amended, now sets forth specific policies for the urban, agriculture, conservation, and rural districts as well as overall policies applicable to any district boundary amendments made by the Land Use Commission (including to urban districts). These specific policies have, in part, been derived from the policies and priorities set forth in H.D. 2 of the bill and the policies set forth in S.D. 1. Your Committee believes that said specific policies will provide needed and clearer guidance to the Land Use Commission in its actions, including any amendments it makes to land use district boundaries.

The following are the significant amendments made to S.D. 1 with respect to the statewide land use management policies:

(a) For the urban district:

1) Section 205- (b)(1)(A) of S.D. 1, relating to the urban district, has been redesignated section (b)(1), and amended by adding language which requires that lands be reclassified to the urban district only as necessary to accommodate urban growth and development, where "it is demonstrated that" such growth and development is consistent with the current population and economic projections of the department of planning and economic development. Additionally, the phrase "or are not being developed" has been deleted from p. 5, lines 1-2 of S.D. 1.

2) Section 205- (b)(1)(B) of S.D. 1, relating to public services and facilities, has been redesignated section(b)(2), and amended to read as follows: "Lands shall be reclassified to the urban district only when there is adequate existing public services and facilities, or when such additional services and facilities as are necessary can be provided by the appropriate public agencies or by the petitioner with the concurrence of the appropriate public agencies."

3) Section 205- (b)(1)(C) of S.D. 1 has been redesignated section (b)(3), and the word "contiguous" has been substituted for the word "adjacent" on p. 5, line 12 of S.D. 1. The following wording has also been deleted from this section: "provided that lands may be reclassified to the urban district if they constitute all or part of a self-contained urban center."

Your Committee made said deletion in order to avoid scattered urban development which could possibly result if lands are allowed to be reclassifed to the urban district "if they constitute all or part of a self-contained urban center," particularly since the term "self-contained urban center" is ambiguous and is therefore subject to varying interpretations. It is not your Committee's intention, however, to preclude the development of new towns.

4) Section 205- (b)(1)(D) of S.D. 1, relating to significant adverse impacts caused by any district boundary amendment, has been redesignated section (f)(4), and now applies to any land use boundary amendment. The following phrase: "unless such impacts are outweighed by public needs or public benefits resulting from such reclassification" has been deleted from this section.

Your Committee finds that this amendment is advisable because the terms "public needs" and "public benefit" are susceptible to over-broad construction or application and because said terms provide insufficient guidance to the Land Use Commission in making district boundary amendments.

5) A new section, designated as section (b)(4), has been added to the list of policies relating to the urban district, and reads as follows: "Lands shall be reclassified to the urban district for resort development purposes, only when the buildings and structures of the resort development are required to be set back from the upper reaches of the wash of the waves and provide public access for the recreational use of the shoreline."

Your Committee finds that this new section (b)(4) was derived from page 19, lines 11 through 15, of the priority section of H.D. 2 of the bill. Although the 100-yard shoreline setback provision contained in H.D. 2 has been deleted from S.D. 1, as amended, your Committee intends that the Land Use Commission require, and directs the Commission to require, any development or structure to be set back a reasonable distance from the shoreline in order to preserve and protect coastal resources, including but not limited to scenic and recreational resources, and to help implement the coastal zone management objectives and policies of Chapter 205A, Hawaii Revised Statutes.

6) Section 205- (3)(B) of S.D. 1, relating to housing for gap-group and low-income households has been redesignated as section (b)(5), and has been added to the list of policies for the urban district, and reads in a slightly modified version as follows: "Preference shall be given to land use amendment petitions that will provide for housing development plans that include a commitment to build for and market to gap-group and low-income households a reasonable percentage of the total housing units planned for the development."

(b) For the agriculture district:

1) Section 205- (2)(G), relating in part to agricultural lands, has been redesignated section (c)(2) and amended to read as follows: "Lands classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be maintained in the agricultural district."

The purpose of this amendment, among other things, is to implement in part, Article XI, Section 3 of the Hawaii State Constitution which reads as follows: "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Your Committee intends that the Agriculture Lands of Importance to the State of Hawaii system, "adopted" to serve as guidelines by the Board of Agriculture, continue to be used by the Land Use Commission--in addition to the Land Study Bureau's Detailed Land Classification system--in its land use decision-making in order to further implement Article XI, Section 3 of the Hawaii State Constitution through the Commission's conservation and protection of agricultural lands classified as prime, unique, and other important agricultural lands under said system. Your Committee also intends that the counties and/or the appropriate state agency review and modify, as appropriate, the Agricultural Lands of Importance to the State of Hawaii system, and adopt said system, pursuant to Chapter 91, Hawaii Revised Statutes, prior to the convening of the Regular

Session of 1981. Your Committee believes that the Agricultural Lands of Importance to the State of Hawaii system should be adopted pursuant to Chapter 91, Hawaii Revised Statutes, because said system is currently being considered as a replacement for the Land Study Bureau's Detailed Land Classification system.

2) Two new sections, designated as sections 205- (c)(3) and (c)(4), have been added to ensure the long-term viability of any existing agricultural operation and to protect any such operation from a reduction in water supply which will jeopardize said operation, and to enable the Land Use Commission to give preference to the reclassification into the agricultural district of any lands that are presently in agricultural use or have economic potential for agricultural or aquacultural use.

(c) For the conservation district:

1) A new section, designated as section 205- (d)(1), has been added to guide the Land Use Commission with respect to district boundary amendments relating to the conservation district.

(d) For the rural district:

1) Section 205- (2)(I) of S.D. 1, relating to the classification of lands into the rural district, has been redesignated section (e)(1), and to read in a slightly modified version as follows: "Lands shall be classified into the rural district only when the proposed uses of such lands are consistent with section 205-2."

2) Two new sections, designated as sections 205- (e)(2) and (e)(3), have been added to further guide the Land Use Commission in its decision-making with respect to district boundary amendments relating to the rural district. These new sections read as follows:

(A) "Lands shall be reclassified to the rural district only as necessary to accommodate rural uses as defined in this chapter, where it is demonstrated that the reserve areas of vacant or underdeveloped lands in the rural and urban districts are insufficient to accomodate the proposed increase in such uses;" and

(B) "Lands shall be reclassified to the rural district only when there is adequate existing public services and facilities, or when such additional services and facilities as are necessary can be provided by the appropriate public agencies or by the petitioners with the concurrence of the appropriate public agencies."

(e) For any district boundary amendment:

1) Section 205- (2)(B), has been redesignated as section (f)(1) and has been amended, by deleting the reference to the Hawaii State Plan and functional plans so as to read as follows: "Consider the general plan and the applicable development plan of the county."

2) Section 205- (2)(A), relating to cumulative impacts of any district boundary amendment, has been redesignated as section (f)(2), and amended to require that specific findings with respect to any economic, physical, and social impact be set forth by the Land Use Commission, so as to ensure that the Commission assesses such impacts.

3) Section 205- (2)(C), relating to a determination that the proposed uses of lands to be reclassified are compatible with the uses of the lands of the contiguous and surrounding areas, has been redesignated as section (f)(3), and amended to require that the basis of such a finding or determination be set forth by the Land Use Commission.

4) Four new sections, designated as sections 205- (f)(4), (5), (6), and (7), have been added to further guide the Land Use Commission in making any district boundary amendment. These sections respectively set forth policies which:

(A) Prohibit the reclassification of any land, where such classification will have significant adverse impacts upon the resources of the area and the State.

(B) Restrict to recreational use all existing recreational areas and all recreational areas which have been or are in the process of being partially or fully funded by any public agency.

(C) Prohibit any new development which would cause the drafting

of water resources of an area to exceed levels of sustainable yield or significantly diminish the recharge capacity of any ground water area designated pursuant to Chapter 177, Hawaii Revised Statutes.

(D) Require the Land Use Commission to comply with the coastal zone management objectives and policies of Chapter 205A, Hawaii Revised Statutes.

5) Section 205- (b)(4)--on page 9 of S.D. 1--has been redesignated as section 205- (f)(8), and has been amended to read as follows: "On petition by any person or any state or county agency delineated in section 205-4(a), and on appropriate notice and hearing thereon, and good cause being shown therefor, the commission shall restore to its former classification any land which has been reclassified to a higher use but which higher use has been abandoned or has not been implemented within a reasonable period."

(5) The following sections in S.D. 1 have been deleted: Sections 205- (2)(D), (E), (F), and (H) and sections 205- (3)(A), (B), and (D) are deleted because your Committee finds that said sections are either ambiguous, do not provide specific or useful guidance to the Land Use Commission, or have been substantially incorporated into the new policies which have been added to Section 1 of the bill.

(6) Numerous technical amendments of a non-substantive nature have also been made by your Committee.

In summary, the overall orientation of S.D. 1, as amended, is to set forth more specific policies to guide the actions and land use decision-making by the Land Use Commission until the adoption of the functional plans as provided in Chapter 226, Hawaii Revised Statutes, in order to help implement the intent of the Hawaii State Planning Act and Article IX, Sections 6 and 8, and Article XI, Sections 1 and 3 of the Hawaii State Constitution.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1775-80, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1775-80, H.D. 2, S.D. 1, C.D. 1.

Representatives Kiyabu, Andrews, Fukunaga, Kawakami, Kunimura, Larsen, Silva, Takitani, Toguchi, Medeiros and Narvaes,
Managers on the part of the House.

Senators Yim, Yamasaki and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 52-80 on S.B. No. 2877-80

The purpose of this bill is to further update the sexual offenses section of the Penal Code.

As originally drafted, this bill completely revised the entire sexual offenses section of the Penal Code. Although your Committee is not in accord with all the suggested changes of the original bill, this bill incorporates several of the changes.

The bill redefines "sexual intercourse" to broaden its meaning. Now, penetration of any part of a person's body or an object into the genital opening constitutes sexual intercourse.

The definition of "female" is deleted since it only applied to rape before the definition of rape was "de-sexed." Now the definition of "female" is superfluous.

The definition of "forcible compulsion" is amended to delete the requirement of earnest resistance, fear of immediate death or serious physical bodily injury or fear of immediately being kidnapped. Absolute urgency and the need to "fight to the death" are deleted.

Section 707-740 relating to prompt complaint is amended to extend the period to make a sexual offense complaint from one to three months. This is done as a matter of fairness and to avoid injustice where a delay of longer than one month occurs.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2877-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2877-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 53-80 on S.B. No. 1831-80

The purpose of this bill is to clarify statutory grounds regarding sentences of imprisonment.

After much discussion, your Committee has decided to retain all but two of the existing grounds for withholding of a sentence of imprisonment. Ground 2 which weighs favorably that a defendant did not contemplate that his conduct would cause serious harm is deleted. Ground 6 relating to the fact that the defendant compensated the victim is deleted.

Your Committee has amended Ground 10 by adding the words "a program of restitution or probationary program or both" which allows the court to weigh favorably a defendant's likelihood of responding affirmatively to such programs.

Your Committee decided to leave a great deal of discretion with the trial court to allow for the greatest possible leeway in dealing effectively with convicted persons.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1831-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1831-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Lee, Masutani, Nakamura, Ikeda, Medeiros and Honda,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 54-80 on S.B. No. 1003

The purpose of this bill is to amend Section 46-4, Hawaii Revised Statutes, to allow the counties to phase out certain nonconforming uses.

Your Committee has amended this bill by providing for the amortization of noncorming uses in commercial, industrial, resort, and apartment zoned areas only. Such amortization, however, shall not apply to any existing building or premises used for residential (single family or duplex) or agricultural uses.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1003, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1003, S.D. 1, H.D. 1, C.D. 1.

Representatives Kiyabu, Dods, Hashimoto, Kawakami, Sakamoto, Silva, Stanley, Uwaine, Anderson and Marumoto,
Managers on the part of the House.

Senators Ushijima, Kuroda and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 55-80 on H.B. No. 2634-80

The purpose of this bill is to amend the State's Compensation Law and Collective Bargaining Law to authorize a reduction in the number of steps within the existing salary ranges for white-collar and blue-collar public employees.

Under the current state Compensation Law, blue-collar public employees are subject to a five-step salary structure (each succeeding step in the salary structure signifies a higher compensation rate than the previous step), and white- collar public employees are subject to a ten-step salary structure. The number of steps in both instances is fixed by statute and this number can not be changed by negotiation between the public employer

and the bargaining unit; these steps were established before the enactment of the State's public employee Collective Bargaining Law.

Upon passage of the Collective Bargaining Law in 1970, salary rates for public employees became negotiable, and salary increases for public employees were effected with each negotiated contract. The costs of these negotiated pay increases in addition to statutory incremental step advancements granted to public employees eventually became an enormous financial burden to the State. Therefore, effective July 1, 1976, the legislature prohibited the granting of step advancements to public employees in any fiscal year that a negotiated increase in the salary schedule of any bargaining unit is effected.

Your Committee finds that the combination of the foregoing influences -- the prohibition of step advancements in any fiscal year that a pay increase is effected, yet pay increases being regularly negotiated and effected under collective bargaining -- has rendered the original concept of incremental step advancement functionally obsolete. Your Committee agrees with the provisions of this Act:

(1) This bill deletes the obsolete pay rates set forth in current salary schedules for blue-collar and white-collar public employees. These pay rates are obsolete because they were established before enactment of the Collective Bargaining Law, and these rates have been changed through the negotiation and renegotiation of public employee contracts which supersede statutes.

(2) This measure amends the Compensation Law to reflect the current practice of establishing pay rates for public employees. Under this bill, public employees subject to the Collective Bargaining Law ("included" employees), shall negotiate pay rates; in the case of public employees who are not subject to the Collective Bargaining Law ("excluded" employees), pay rates shall be adjusted under chapter 89C, which permits the chief executives of each civil service jurisdiction to adjust, among other things, the compensation rates of excluded employees.

(3) Notwithstanding item (1) and (2) above, this bill retains the grid characteristics of the salary structure for blue-collar and white-collar employees by setting parameters for a five-step, fifteen-grade, blue-collar salary structure; and a ten-step, thirty-one-range, white-collar salary structure, thereby preserving legislative purview of public employee compensation.

(4) With the deletion of obsolete pay rates; the establishment of statutory parameters for setting compensation rates of blue-collar and white-collar public employees; and the retention of the grid characteristics of the compensation schedules, this bill further provides that a "model conversion plan" to reduce the number of steps in the public employee Compensation Law shall be subject to negotiations between the public employer and the exclusive representatives of the appropriate bargaining units at the latter's option (in the case of excluded employees, the conversion shall be subject to chapter 89C). If the exclusive representative exercises the option to negotiate a model conversion plan, the plan must be agreed to on or before December 31, 1980. This affords the parties to negotiations sufficient time to conduct the next round of negotiations on wages during 1981. If a model conversion plan is not agreed to by the foregoing date, negotiations shall be based on the existing five-step and ten-step ranges, as the case may be.

Your Committee further finds that any model conversion plan agreed to between the employers and the exclusive representative shall provide, among other things:

(1) that the objective of the plan is to reduce the number of steps within each salary range to a specific number;

(2) that the agreement shall not be terminated until the reduction to the specified number of steps is achieved; nor shall the agreement be modified except by written mutual agreement of the parties;

(3) that effective July 1, 1981, at least one step shall be deleted each fiscal year;

(4) that all negotiations on wages, to be effective July 1, 1981 and subsequently, shall be based exclusively on the model conversion plan;

(5) that all employees shall be paid in accordance with the rates negotiated for the steps on the revised salary schedule within their applicable salary ranges;

(6) that the agreement shall not preclude the payment of a bonus or conversion differential if it is not to be considered as an adjustment to an employee's basic pay rate.

Section 5, subsection (e) of this bill further provides that, except for white-collar managerial positions, if a model conversion plan is not developed for included employees in a collective bargaining unit, no conversion plan shall be developed for excluded employees who are under the same compensation plan as the employees included in that collective bargaining unit.

Your Committee notes that this bill also amends other pertinent provisions of the Collective Bargaining Law and Compensation Law to conform to the intent and purpose of this Act.

After due consideration, your Committee has amended this bill to achieve consistency in the use of the terms "pay range," "salary range," "salary structure," and "pay schedule" throughout this measure. Your Committee has also made other technical, nonsubstantive amendments to this bill.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2634-80, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2634-80, H.D. 2, S.D. 2, C.D. 1.

Representatives Stanley, Morioka, Dods, Hashimoto, Inaba, Kunimura, Nakamura and Medeiros,
Managers on the part of the House.

Senators Cayetano, Kawasaki, Toyofuku, Yamasaki, Ajifu and Anderson,
Managers on the part of the Senate.

Conf. Com. Rep. No. 56-80 on S.B. No. 1832-80

The purpose of this bill is to amend Section 845-3, Hawaii Revised Statutes, to clarify when an individual shall be subject to career criminal prosecution.

Your Committee finds that this is a vital amendment because originally, according to existing law, if a career criminal unit cannot prosecute a career criminal case due to insufficient resources or case overload, a regular deputy cannot be assigned to the task.

Upon consideration of the House and Senate versions of the bill, your Committee has adopted the following compromise amendments to the House draft:

(1) Categories 2 and 4 have been deleted;

(2) Categories 3 and 5 have been renumbered 2 and 3, respectively, and Categories 6 through 13 have been renumbered 4 through 11; and

(3) Career criminal prosecution is mandated for categories 1, 2, or 3 and is optional for categories 4 through 11.

The bill also amends Category 11 which will be renumbered Category 9 to clarify that "recurring or ongoing" criminal activity is intended.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1832-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1832-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 57-80 on S.B. No. 2581-80

The purpose of this bill is to provide an effective means for businesses, which have rented personal property to others, to obtain speedy and rightful return of their property while respecting the rights of persons who have leased the property.

The bill sets out three levels of court jurisdiction. Small claims court shall have

non-exclusive jurisdiction in cases where the rented property is worth $500 or less and the amount claimed due does not exceed $600. District court shall have jurisdiction in cases where the value of the rented property does not exceed $5,000. Circuit court has jurisdiction where the value of the rented property is $5,000 or more.

At each court level, under the House version of the bill, the court may issue an order to show cause, upon filing of a proper complaint by the lessor, requiring the defendant to return the leased property to the plaintiff or produce the property at court. Under existing law, the owner must file a claim in circuit court, prove rightful ownership of the property, and execute upon an order issuing from the court. This bill simplifies the existing process.

Your Committee has amended the bill to provide for a three-tier procedure at court. If the defendant does not produce the property at trial, the court may find the defendant in contempt and order the sheriff to produce the property at a subsequent hearing. This procedure clearly sets out the lessor's remedies to the point of recovering the property.

Your Committee has further amended this bill to retain the Senate provision for penal sanctions to make failure to return leased property a petty misdemeanor.

Your Committee has also added a second state of mind for culpability that being of "intentionally" as well as knowingly keeping the property 14 days past the return date.

This bill also increases the jurisdictional limit of small claims court to $1,000 in conformity with S.B. No. 2071-80.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2581-80, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2581-80, H.D. 1, C.D. 1.

Representatives D. Yamada, Baker, Honda, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 58-80 on H.B. No. 1758

The purpose of this Act is to transfer certain programs and organizational segments among the existing 17 departments of the Executive Branch of the state government without altering the basic organizational structures of these departments. This reassignment of programs and organizational segments would:

(1) comply with requirements of the Hawaii State Constitution;

(2) improve the efficiency and effectiveness of the operations of the Executive Branch;

(3) improve the delivery of services to the people;

(4) fix responsibility and accountability for successfully carrying out programs, policies, and priorities of the administration;

(5) improve responsiveness to the needs of the people of Hawaii;

(6) group programs more homogeneously to more closely relate them with the stated mission of associated departments; and

(7) enable administratively assigned boards and commissions to have more voice in formulating policies and priorities.

Since the last major reorganization of the state government in 1959, the State has experienced changes in societal attitudes, values, and emphasis, as well as rapid developments in technology. These changes have produced new issues requiring new programs and new approaches for their resolution.

The state government has sought to meet these new issues and to implement new programs and approaches within the framework of its present structure. However, programs which essentially are intended to meet common needs have been dispersed among several

agencies, and they have not received the coordination they require. Further, Article V, Section 6, of the Hawaii State Constitution mandates that all executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties, shall be grouped within the principal departments according to common purposes and related functions.

This Act therefore provides for the orderly transfer of programs, organizational segments, personnel, funds, records, and equipment from the Governor's Office and among the existing 17 departments of the Executive Branch of the state government. It is not intended to increase, decrease, or otherwise change the statutory powers of departments and agencies unless specifically expressed. Where commissions, boards, agencies, or offices are transferred for administrative purposes it is intended that the statutory mission and purpose of the commission, board, agency, or office not be modified or changed in any way by the department or director acting in an administrative role as provided for in Hawaii Revised Statutes 26-35.

Your Committee has agreed to the following amendments:

(a) Transfer the Office of Public Defender, for administrative purposes to Budget and Finance.

(b) The Commission on the Handicapped, Environmental Quality Commission and Office of Environmental Quality, for administrative purposes to the Department of Health.

(c) Transfer Factory-Built Housing Program to the Department of Regulatory Agencies.

(d) The Bureau of Conveyances remains with the Department of Land and Natural Resources.

(e) In the transfer of Western Interstate Commission for Higher Education, for administrative purposes, reference program number UOH 905.

(f) Transfer the Marine Affairs Coordinator to the Department of Planning and Economic Development for administrative purposes.

All of the above transfers were done as in each of these cases, the succeeding department has more expertise and more closely related functions, duties and responsibilities to the programs than the preceding department or office.

Your Committee further agrees for the purpose of clarification, to the following technical amendments:

(a) Deletion of Section 1 in its entirety, and deletion of the words "short title" in the heading under Part I.

(b) Renumbering the remaining sections of this Act to conform to the deletion of Section 1.

(c) Amendments of Section 4 (to be renumbered Section 3) to provide that the succeeding department will have the same rights and obligations as the former department with respect to the program being transferred.

(d) Amendment of Section 5 (to be renumbered Section 4) to read:

"The transfer of programs and organizational segments listed in Part II of this Act shall include all personnel, the major portion of whose functions and duties is in the transferred programs and organization segments."

(e) Amendment of Section 6 (to be renumbered Section 5) to provide for the transfer of all the program's records, equipment, appropriations, authorizations and other property from the former to the succeeding department.

(f) Amendment of Section 8 (to be renumbered Section 7) by deletion of the word "functions" and insertion of the word "programs" in line 13; deletion of the word "a" and insertion of the word "another" in line 14; and deletion of the phrase "establised by this Act" in line 15.

(g) Amendment of Section 10 (to be renumbered Section 9) by deletion of the

word "department" in line 17, page 12, and line 1, page 13; and deletion of the word "thereof" on line 10 and insertion of the words "of a department."

(h) Amendment of Section 12 (to be renumbered Section 11) by deletion of the phrase "and for that purpose may renumber the sections contained in this Act, in Chapter 26 or in other chapters of the Hawaii Revised Statutes on the effective date of this Act" in lines 6 through 9.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1758, H.D. 2, S.D. 3, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1758, H.D. 2, S.D. 3, C.D. 1.

Representatives Stanley, Crozier, de Heer, Kiyabu, Kunimura, Say, Silva, Takitani, Lacy and Marumoto,
Managers on the part of the House.

Senators Cayetano, Kawasaki, Yamasaki and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 59-80 on H.B. No. 2723-80

The purpose of this bill is to expand the housing loan program established under Act 50, Session Laws of Hawaii 1979, to provide that authorized funds may be used to finance construction and permanent mortgages secured by rental housing projects and to authorize the issuance of revenue bonds for that purpose.

Your Committee has amended H.B. 2723-80, H.D. 2, S.D. 2 by requiring that an eligible project loan be federally insured or guaranteed. This ensures that strict standards in existing federal programs are applied to the rental projects to be funded under the Hula Mae program. Similarly, this bill has been amended to provide that the Hawaii Housing Authority shall, consistent with the requirements of federal insuring or guaranteeing agencies, establish restrictions on prepayment of project loans and transfer of ownership. Rather than formulating its own set of rules as proposed by the Senate draft, the authority shall follow stringent federal guidelines already established in this area. Federally insured or guaranteed projects are restricted from prepayment of project loans for twenty years. Moreover, whenever ownership is transferred within the twenty year period, subsequent owners are still governed by the federal regulations.

Section 12 of the bill has been deleted because the subject court case has already been settled. Your Committee has also made minor language changes to clarify the bill's provisions without affecting the substance of the bill.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2723-80, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2723-80, H.D. 2, S.D. 2, C.D. 1.

Representatives Shito, Aki, Baker, Kobayashi, Segawa and Lacy,
Managers on the part of the House.

Senators Cayetano, Abercrombie, Young and Soares,
Managers on the part of the Senate.

Conf. Com. Rep. No. 60-80 on S.B. No. 2977-80

The purpose of this bill is to authorize the chief executives of the State and counties and the chief justice of the supreme court to develop an appropriate pay structure for excluded managerial positions covered under chapter 77 (Compensation Law) in accordance with chapter 89C (relating to employees excluded from collective bargaining).

Presently, all public employees covered under chapter 77 are subject to the pay structures therein. For employees covered by collective bargaining ("included" employees), the pay rates in those structures are established through negotiations. For employees not covered by collective bargaining ("excluded" employees), the pay rates in those structures are established by the chief executives of the State and counties and the chief justice of the supreme court under chapter 89C.

Your Committee finds that for salary-setting purposes, excluded employees are divided into two groups: (1) non-managerial employees whose work is closely related to, and

in some cases, identical to, that of included employees; and (2) managerial employees whose work is different in its essential nature from that of excluded nonmanagerial employees and included employees. Your Committee believes that managerial employees are unique by virtue of their responsibility to recommend and implement policies, and to conduct programs; therefore, these employees warrant salary schedules with different pay structure characteristics. Your Committee further finds that the establishment of such a pay structure will enchance career management service. This bill permits the chief executives of the State and counties and the chief justice of the supreme court to establish pay structures, including the number of salary ranges and the number of steps in each range, for excluded managerial employees, in accordance with chapter 89C.

Additionally, this bill deletes the obsolete pay rates set forth in current salary schedules for white-collar public employees. These pay rates are obsolete because they were established before enactment of the Collective Bargaining Law, and these rates have been changed through the negotiation and renegotiation of public employee contracts which supersede statutes. Furthermore, the deletion of these obsolete white- collar pay rates is necessary to accomplish the intent and purpose of this Act.

After due consideration, your Committee has amended this bill to further clarify its intent relative to the use of the terms "salary structures" and "schedules" throughout this Act:

(1) On page 2, line 20, the term "Compensation plan" is replaced with the term "Salary structures and schedules".

(2) On page 2, Line 22, the word "schedules" is replaced with the word "structures".

(3) On page 10, line 5, the word "schedule" is replaced with the word "structure".

Your committee has also made a technical, nonsubstantive amendment to this bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2977-80, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2977-80, S.D. 2, H.D. 2, C.D. 1.

Representatives Stanley, Morioka, Dods, Hashimoto, Inaba, Kunimura, Nakamura and Medeiros,
Managers on the part of the House.

Senators Cayetano, Kawasaki, Toyofuku, Yamasaki, Ajifu and Soares,
Managers on the part of the Senate.

Conf. Com. Rep. No. 61-80 on H.B. No. 2029-80

The purpose of this bill is to increase the principal amount of revenue bonds which may be issued by the Hawaii Housing Authority for housing loan programs as established by Act 50, Session Laws of Hawaii 1979. This bill also expands the group eligible for Hula Mae loans by raising income limits, excluding business deductions from consideration as income, and excluding outstanding liabilities from consideration as assets.

Upon further consideration, your Committee has made the following amendments to H.B. No. 2029-80, H.D. 2, S.D. 2:

1. Income limits for families applying for eligible loans have been set at a level not to exceed one hundred twenty-five percent of the adjusted median income in the State as most recently published by the United States Department of Health, Education and Welfare. However, the adjusted household income for a family of one shall not exceed one hundred percent of such median income. This exception for the single individual was made because current income limits provide for a difference of only $1,250 between a one-person family and a two-person family. Your Committee feels that the single person family has enjoyed an unfair advantage until now; however, your Committee does not intend to penalize those individuals who have already applied for loans by lowering the income limits to the extent that S.D. 2 of this bill proposed.

2. Twenty-five percent of a down payment for property to be financed by an eligible loan shall not be considered in the determination of the eligible borrower's assets.

It has been brought to the attention of your Committee that lending institutions have

been setting aside Hula Mae funds for specific developers constructing homes in the Hula Mae price range. Because loan applications were not being submitted fast enough, lending institutions sought arrangements with developers to better assure that the loans would be made. While your Committee feels that the intent of the Hula Mae program was to serve eligible Hawaii residents on a first-come first-served basis, your Committee recognizes that lending institutions may need to make "developer commitments" in these times of economic uncertainty. Your Committee does not wish to set percentages for Hula Mae funds that may be used for "walk-in" loans or for "developer commitments," believing that the Hawaii Housing Authority should use its discretion in monitoring this new program and preventing abuses. The Authority should consider a specific time limit within which allocations for developers and for "walk-in" loans should be used. After that time the lending institutions should be able to transfer unused allocations to areas where the demand for funds is greatest.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2029-80, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2029-80, H.D. 2, S.D. 2, C.D. 1.

Representatives Shito, Aki, Ige, Kobayashi, Segawa, Ushijima and Lacy,
Managers on the part of the House.

Senators Cayetano, Yamasaki and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 62-80 on H.B. No. 2944-80

The purpose of this bill is to clarify various functions of the Department of Health in providing and contracting for emergency medical services; to limit the use of emergency medical vehicles for emergency purposes only; to permit other organizations with appropriate expertise to provide training and technical assistance; and to provide for equitable reimbursement of contractual services.

There has been considerable discussion over the use of the words "shall" or "may" in section 2 of this bill. Your Committee feels that the mandatory provision does not provide flexibility to the Department of Health in negotiating for a contract but the permissive provision puts the counties in a vulnerable position and may jeopardize the counties in continuing to provide emergency medical services. However, the intent of your Committee is to retain the present level of services being provided by the counties under their existing programs and for the department of health to continue to contract with the counties.

Your Committee upon further consideration has made the following amendments to H.B. No. 2944-80, H.D. 2, S.D. 2:

(1) In Section 1 of the bill the word prehospital is changed to prehospitalization.

(2) Section 2, page 2, lines 9-11 are deleted. This provision would have limited the use of emergency medical vehicles to only emergency situations. In view of those situations where an emergency ambulance has been used for transporting patients for non-emergency purposes, thereby preventing such vehicles from responding to emergencies, your Committee recommends that this provision limiting the use of emergency medical vehicles be made a part of the Rules and Regulations governing emergency medical services.

(3) Sections 3 and 4 of the bill are amended by:

(a) including the words "negotiate and enter into" when entering into contractual services for training and technical assistance. This is to permit the contracting parties flexibility for negotiating the terms of the contract;

(b) rewording those provisions relating to consultation with the Advisory Committee;

(c) deleting those words which permit contracting with organizations with expertise other than medical organizations, thereby reverting to the existing law.

(4) Section 5 is deleted. This section provided for reimbursement of contractual services on a quarterly basis. The concerns expressed by this section provide for contractors to be treated equitably and to be reimbursed in a timely manner. Presently there are provisions within the State Statutes for reimbursement to contractors, therefore

this section has been deleted. However, your Committee feels that the Statute requiring the State to reimburse contractors within sixty days should be applicable to all contracts, including contracts with the counties.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2944-80, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2944-80, H.D. 2, S.D. 2, C.D. 1.

Representatives Segawa, Ige, Kobayashi, Silva, Takitani and Lacy,
Managers on the part of the House.

Senators Cayetano, Carpenter, Kawasaki and Ajifu,
Managers on the part of the Senate.

Conf. Com. Rep. No. 63-80 on H.B. No. 2172-80

The purpose of this bill is to increase the penalty for the illegal importation and harboring of prohibited animals in Hawaii and to provide immunity from penalty for persons who voluntarily surrender such animals.

Your Committee strongly believes the penalty or punishment should be commensurate with the crime committed. Chapter 706-640, Hawaii Revised Statutes, Authorized Fine, provides a fine of $1,000 when a person has been convicted of a misdemeanor. Your Committee believes that the penalty imposed for this instance is sufficient and adequate for deterrent purposes.

Therefore, your Committee has amended this bill to provide a more reasonable penalty for the importation and harboring of live snakes from a fine of not more than $5,000 and a mandatory one-year prison term, to a $1,000 fine or imprisonment not to exceed one year.

Your Committee also finds that the present procedure, provided for under the provisions of Chapter 150A, Hawaii Revised Statutes, Authority For Declaration, is adequate and proper. Therefore, the bill has also been amended by deleting the requirement that the Department of Transportation shall distribute a copy of the list of prohibited plants and animals to each passenger on every aircraft and water vessel arriving in this State, and to inform each passenger of the penalty for importing prohibited plants or animals.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2172-80, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2172-80, S.D. 1, C.D. 1.

Representatives Uechi, Inaba, Toguchi and Anderson,
Managers on the part of the House.

Senators Machida, Hara and Ajifu,
Managers on the part of the Senate.

Conf. Com. Rep. No. 64-80 on H.B. No. 2672-80

The purpose of this bill is to amend the law relating to school bus contracts by (1) deleting the provision limiting the increase in compensation by a maximum of five per cent of the previous year; (2) providing, instead, that the compensation under an extended contract may be increased by a reasonable amount for unanticipated inflationary increases in the cost of fuel; (3) requiring the contractor to prepare data to justify the increase of compensation under an extended contract during renegotiation; and (4) permitting the State and a contractor to enter into renegotiation for payments of fixed costs when a school is temporarily closed due to an unexpected disruption.

Your Committee has amended H.B. No. 2672-80, H.D. 1, S.D. 2, to retain the present statutory provision which allows a contractor's compensation to be increased by an amount not to exceed five per cent of the previous year's compensation for each year the contract with the State is extended. Your Committee agrees that the inflationary increases in cost to operate school buses exceed the current statutory limit of five per cent. However, while the five per cent is considered insufficient under current economic conditions, your Committee believes the cost of fuel is the cause for this insufficiency at this time.

Accordingly, your Committee has further amended this bill to provide that in addition

to any such increase in compensation, the contractor's rate of compensation may be increased by a reasonable amount for unanticipated inflationary increases in the cost of fuel. This adjustment is intended to provide a degree of relief to the contractor for fuel costs, which due to current world market conditions, often cannot be calculated with much certainty. Thus, where increases in the cost of fuel are unanticipated and otherwise not accounted for in the compensation to the contractor, the parties may negotiate an adjustment for a reasonable amount to account for such increases.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2672-80, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2672-80, H.D. 1, S.D. 2, C.D. 1.

Representatives Lunasco, Dods, Inaba, Say and Marumoto,
Managers on the part of the House.

Senators Cayetano, Campbell, Abercrombie, Kawasaki, Anderson and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 65-80 on S.B. No. 2006-80

The purpose of this bill is to prohibit the parking, placing, erecting, or storing of any structure within any right-of-way of any state highway, except by permit.

Section 264-6, Hawaii Revised Statutes, presently prohibits the disturbing or breaking up of the right-of-way of any State highway. Section 1 of this bill amends Section 264-6 by adding language prohibiting the placing, erecting, leaving, or storing of any structure, vehicle, equipment or other object within the right-of-way of any State highway except as allowed by permits issued by the Director of Transportation.

Section 2 of the bill amends Section 264-7, Hawaii Revised Statutes, which provides for the issuance of the permits required under Section 264-6. The amendment provides that when a contract is awarded for the construction, maintenance, or repair of the right-of-way of any State highway which involves any activity enumerated in Section 264-6, the Director of Transportation shall issue the required permit and waive any permit fees.

Your Committee upon further consideration has amended the bill in the following manner:

(1) By deleting the reference to Section 291C-77(c) in the proposed new paragraph (2) of Section 264-6. Section 291C-77(c) has been judicially determined to be unconstitutional.

(2) By adding a reconstruction contract as a type of contract which would qualify for the exemption from permit fees under Section 264-7.

(3) By deleting the phrase "the right-of-way" in line 16, page 2 of the bill and by adding the phrase "or federal aid highway project" after the word "highway" on line 17, page 2 of the bill (line 16, page 2 of the bill as amended). The purpose of the change is to broaden the scope of contracts which qualify for the exemption of the permit fee.

(4) By making other style and non-substantive amendments.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2006-80, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2006-80, H.D. 1, C.D. 1.

Representatives Dods, D. Yamada, Honda, Stanley and Medeiros,
Managers on the part of the House.

Senators Mizuguchi, Yim and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 66-80 on H.B. No. 2059-80

The purpose of this bill is to implement Article I, Section 11, of the Constitution of the State of Hawaii as proposed by the Hawaii Constitutional Convention of 1978 and

ratified by the voters on November 7, 1978, which pertains to the grand jury counsel and grand jury proceedings.

Article I, Section 11, reads as follows:

"Section 11. Whenever a grand jury is impaneled, there shall be an independent counsel appointed as provided by law to advise the members of the grand jury regarding matters brought before it. Independent counsel shall be selected from among those persons licensed to practice law by the supreme court of the State and shall not be a public employee. The term and compensation for independent counsel shall be as provided by law."

Attention is called to Standing Committee Report Nos. 837-80 and 554-80, which reflect the views of the Judiciary Committees of the Senate and the House of Representatives respectively.

Your Committee on Conference has affected only two changes to H.B. No. 2059-80, S.D. 2. These are:

(1) SECTION 2 respecting appointment and removal of the grand jury counsel, H.B. No. 2059-80, S.D. 2, provided that,

"the state supreme court shall appoint grand jury counsel for the four judicial circuits ..."

We changed to provide that,

"the state supreme court shall appoint one or more grand jury counsel for the four judicial circuits ..."

The reason for this change is to allow the appointment of back-up grand jury counsel so that in the event of disqualifications a substitute grand jury counsel will be readily available to take its place thereby avoiding unnecessary delay.

(2) SECTION 7 respecting disqualification of grand jury counsel. While H.B. No. 2059-80, S.D. 2, allowed the prosecutor to petition the chief justice to disqualify the grand jury counsel, change was affected to require such petition to be addressed to the court.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2059-80, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2059-80, S.D. 2, C.D. 1.

Representatives D. Yamada, Baker, Uechi and Medeiros,
Managers on the part of the House.

Senators O'Connor, Cayetano, Chong, Kawasaki, Carroll and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 67-80 on S.B. No. 2302-80

The purpose of this bill is to establish a temporary commission to study and review Hawaii's workers' compensation law and to prepare a report of findings and recommendations in consonance with the basic objectives of workers' compensation law, with a special emphasis on ways of reducing or stabilizing costs while maintaining benefits at existing levels, or ideally, providing increased benefits or reduced employer costs. The commission will submit a preliminary report to the governor and the legislature prior to the 1981 legislative session, and a final report, within ten days after the convening of the 1982 legislative session. This bill provides that the commission shall cease to exist ninety days after the submission of its final report.

This bill provides for a commission of nine members. Six commission members are to be appointed by the governor. With regard to the labor sector, one member shall represent Hawaii's public employee unions, one member shall represent Hawaii's non-public construction employee unions, and one member shall represent Hawaii's non-public general trades employee unions.

Your Committee upon further consideration has made the following amendment to S.B. No. 2302-80, S.D. 2, H.D. 2. Section 8 in H.D. 2 which appropriates moneys

for this commission has been deleted on the understanding that a sufficient appropriation for this commission will be included in the supplemental appropriations bill (H.B. No. 1912-80). Because of the deletion of Section 8, Section 9 has been renumbered to Section 8.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2302-80, S.D. 2, H.D. 2, C.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2302-80, S.D. 2, H.D. 2, C.D. 1.

Representatives Takamine, de Heer, Nakamura, Silva and Marumoto,
Managers on the part of the House.

Senators Cayetano, Toyofuku, Yamasaki and Ajifu,
Managers on the part of the Senate.

Conf. Com. Rep. No. 68-80 on H.B. No. 2071-80

The purpose of this bill is to require the department of social services and housing to license independent group residences in accordance with federal regulations.

Your Committee has amended the bill to eliminate redundant language in Section 2.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2071-80, H.D. 1, S.D. 1, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2071-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Lee, Aki, Baker, Ige and Sutton,
Managers on the part of the House.

Senators Cayetano, Carpenter, Toyofuku, Yamasaki, Ajifu and Soares,
Managers on the part of the Senate.

Conf. Com. Rep. No. 69-80 on S.B. No. 2665-80

The purpose of this bill is to establish a community residential treatment system to provide alternatives to institutional settings for mental health patients. The alternatives under the system are varied to meet the different degrees of the mental health conditions of patients.

Your Committee has amended S.B. No. 2665-80, S.D. 2, H.D. 2, by deleting provisions requiring the director of health to establish an advisory committee to screen all systems proposals and to make recommendations as to approval. Your Committee believes that it is necessary to give the director of health flexibility in accomplishing the stated goals of this proposed Act. Deletion of this section does not preclude the director from establishing an advisory panel upon the director's own initiative, however, the bill as amended would not mandate the establishment of such a panel.

Amendments have also been made deleting Section 3 and Section 4 of S.B. No. 2665-80, S.D. 2, H.D. 2, which would appropriate funds for implementation of the Act and which would designate the department of health as the expending agency. Instead, an appropriation for the program established under this Act will be included in the supplemental appropriations bill (H.B. No. 1912-80). Because of the deletion of Sections 3 and 4, Section 5 has been renumbered as Section 3.

Your Committee on Conference is in accord with the intent purpose of S.B. No. 2665-80, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2665-80, S.D. 2, H.D. 2, C.D. 1.

Representatives Segawa, Baker, Ige, Kobayashi, Lee and Lacy,
Managers on the part of the House.

Senators Cayetano, Soares and Carpenter,
Managers on the part of the Senate.

Conf. Com. Rep. No. 70-80 on S.B. No. 3012-80

The purpose of this bill is to amend Chapter 97, Hawaii Revised Statutes, relating to lobbyists to reduce the unnecessarily large number of lobbyists presently registered and to make changes which will simplify the administration and enforcement of the law regulating lobbyists.

As amended by your Committee, this bill resolves differences in the Senate and House drafts by:

(1) adopting the House version of Subsection 97-1(4), the current law, excluding "salary" from the definition of expenditure;

(2) compromising on the spending minimum for purposes of defining a lobbyist by settling on $275, $25 less than the House version and $25 more than the Senate's;

(3) adopting the House version of Section 97(a)(2) so as not to require a filer that is an association to describe whom it represents;

(4) adopting the Senate version of Subsections 97-3(c)(1), 97-3(c)(3) and 97-3(c)(4) with respect to use of the word "lobbyist" rather than "filer";

(5) adopting the Senate version of Subsections 97-2(b)(3) and 97-3(c)(5) which require the lobbyist to report the subject areas lobbied on;

(6) adopting the House version by deleting Subsection 97-3(c)(6) of the Senate draft which would have required the reporting of the lobbyist's pay, by whom it is paid, and the amount paid for expenses; and

(7) deleting Subsection 97-3(a)(3) of the House version and amending the definition of lobbyist in Subsection 97-1(6)(B) to accomplish substantially the same purpose.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 3012-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 3012-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Aki, Honda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Machida, Mizuguchi and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 71-80 on H.B. No. 1684

The purpose of this bill is to allow the department of social services and housing to recover various social service, medical, and burial payments from the estate of a deceased recipient.

Your Committee upon further consideration has made the following amendments to H.B. No. 1684, H.D. 1, S.D. 2:

(1) Retains the language that "the claim shall be allowed" in subsection (a) of section 346-37, Hawaii Revised Statutes.

(2) Clarifies that undue burial payments may also be sought in Section 1.

(3) Made technical nonsubstantive amendments.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1684, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1684, H.D. 1, S.D. 2, C.D. 1.

Representatives Lee, Honda, Kobayashi, Segawa, D. Yamada and Lacy,
Managers on the part of the House.

Senators Cayetano, Toyofuku and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 72-80 on S.B. No. 2744-80

The purposes of this bill are to amend Chapter 704 to require that an insanity defense be submitted to a jury and disallow post-commitment or post-conditional release motions based upon factual grounds.

Specifically, this bill amends Section 704-407 to limit motions for terminating a penal proceeding, during a defendant's inability to proceed to legal claims, e.g., defective indictment, etc. Factual grounds that relate to proof of the charge against the defendant or possible defenses must await trial. Any factual defense that is truly compelling should be brought to the attention of the prosecution whose job it is to do justice, not merely to obtain a conviction.

This bill amends Section 704-408 to require that the insanity defense be submitted to the jury or trier of fact at the trial. One trial is required by the provision. It is the intent of your Committee to eliminate the possiblity of bifurcated trials on the insanity defense. All factual issues, including insanity, shall be heard at one trial. Your Committee feels that the validity of an insanity claim should be subject to community scrutiny that a jury, or even a judge as a fact-finder at trial, provides.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2744-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2744-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Ikeda, Medeiros and Nakamura,
Managers on the part of the House.

Senators O'Connor, Mizuguchi and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 73-80 on H.B. No. 1494

The purpose of H.B. No. 1494, H.D. 1, S.D. 2, C.D. 1, is to amend section 78-1, Hawaii Revised Statutes, to allow nationals and permanent resident aliens to be employed as officers in the executive branch of state and county governments.

Under section 78-1, noncitizens may be employed in state and county government positions, other than in elective or appointive offices. H.B. No. 1494, H.D. 1, S.D. 2, C.D. 1, liberalizes these restrictions by allowing noncitizens to be employed in appointive government positions, with the exception of a department head, first assistant, first deputy, second assistant or second deputy to a department head. However, this bill requires a noncitizen who is employed by the government in an appointive position to actively seek citizenship upon becoming eligible to do so.

Your Committee is aware of the landmark Supreme Court case, Sugarman v. Dougall, 413 U.S. 634 (1973), which held that a state may constitutionally require citizenship as a prerequisite to holding "state elective or important nonelective executive, legislative, and judicial positions, for officers who participate directly in the formulation, execution, or review of broad public policy." 413 U.S. at 647.

In Foley v. Connelie, 435 U.S. 291 (1978), the Supreme Court further defined what government positions could be reserved exclusively for citizens. The Court found that the position of a police officer was one that required the direct execution of broad public policy which under Sugarman could properly be restricted to citizens.

". . . it is because this country entrusts many of its most important policy responsibilities to these officers, the discretionary exercise of which can often more immediately affect the lives of citizens than even the ballot of a voter or the choice of a legislator. In sum, then, it represents the choice, and rights of the people to be governed by their citizen peers. To effectuate this result, we must necessarily examine each position in question to determine whether it involves discretionary decision making, or execution of policy, which substantially affects members of the political community." 435 U.S. at 296.

Accordingly, your Committee has endeavored to amend section 78-1 to withstand constitutional challenge, while restricting the appointment of noncitizens to government positions only in instances where the noncitizen is diligently seeking citizenship.

Your Committee has amended subsection (b) of the bill to require a one-year residency

requirement for all department heads and their first and second deputies and assistants and to delete the three-year residency requirement for all other appointive offices.

This amendment has been made to conform this subsection with Article V, Section 6 of the Hawaii State Constitution as amended in 1978 which reads in pertinent part:

"Every officer appointed under the provisions of this section shall be a citizen of the United States and shall have been a resident of this State for at least one year immediately preceding that person's appointment, except that this residency requirement shall not apply to the president of the University of Hawaii."

As amended, your Committee believes that this bill strikes an excellent balance between the need for qualified persons in appointive government positions and the need for persons very familiar with local problems in the highest policy-making positions. Durational residency and citizenship are required for the highest elected and appointed positions, but neither are required for all other appointive positions.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1494, H.D. 1, S.D. 2, C.D. 1 as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1494, H.D. 1, S.D. 2, C.D. 2.

Representatives Stanley, Kunimura and Marumoto,
Managers on the part of the House.

Senators O'Connor, Toyofuku and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 74-80 on H.B. No. 687

The purpose of this bill is to revise sections 281-1, 281-41 and 281-57, Hawaii Revised Statutes, which provide for the transfer of liquor licenses and the procedures relative to such transfer.

Your Committee upon further consideration has made the following amendments to H.B. No. 687, H.D. 1, S.D. 1:

(1) A new section 1 has been inserted adding to section 281-1 H.R.S. a definition of "standard bar" which excludes establishments licensed to sell liquor for consumption on the premises in which (a) a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission regulations; or (b) live or recorded music is played and in which facilities for dancing by the patrons are provided; or (c) employees or entertainers consume non-alcoholic beverages while in the company of patrons or sit with patrons.

(2) Section 1 of H.B. No. 687, H.D. 1, S.D. 1, amending H.R.S. section 281-41 has been renumbered section 2 and has been amended by:

(a) adding language providing that no class 5 (dispensers') or class 12 (hotel) license issued to a standard bar as defined in section 281-1 shall be transferable to any premise other than a standard bar, and that such license shall be subject to revocation if the licensed premise is not retained as a standard bar, except upon written application to the commission by the licensee and/or the proposed transferee, subject to sections 281-51 to 281-60.

Under present law, the procedural requirements for an application to transfer a liquor license are not as stringent as the requirements for obtaining a new license. Specifically, applicants for transfers need only publish one notice of the liquor commission hearing and need not notify the property owners or lessees in the vicinity. Your Committee finds that certain transfers may be objectionable to those who reside or transact business in the vicinity of the proposed licensed premises, and finds that this amendment will provide an opportunity for those persons to make their objections heard. Further, it is not the intent of your Committee to place an undue burden on those transferees or licensees whose purpose is to retain a standard bar or whose purpose is to convert an existing premise which is other than a standard bar to a standard bar. Therefore, the mailing requirements of this bill would <u>not</u> apply to such transferees or licensees.

(b) amending H.R.S. 281-41 so as to require that where a license is held by a limited partnership, the commission shall be notified in writing <u>prior to</u> the admission or withdrawal of a limited partner for the purpose of allowing the commission to make

a determination as to the fitness and propriety of the new limited partner. The statute presently requires that such notice be provided within thirty days of the change. This amendment will allow the liquor commission to prevent the addmission of an unfit or improper partner before it takes place rather than taking action after the fact as is the case under the present law. This amendment makes this part consistent with the Senate draft provision, retained in this conference draft, that prior notice be given to the commission in the event of the transfer of more than 25 per cent of the capital stock of a corporate license.

(3) A new section 3 has been added to require that in meeting the existing notice requirement under H.R.S. 281-57 that notice be sent to not less than two-thirds of the owners or lessees of real estate situated within five hundred feet from the premises for which a license is being sought, the applicant shall mail a notice to not less than three-fourths of the owners or lessees of real estate situated within a distance of one hundred feet therefrom. The purpose of this amendment is to assure that priority is given to notifying those property owners and lessees in closest proximity to the proposed premises, who will be most affected by any change in the use to which the premises are put.

(4) A new section 4 has been added providing that if any portion of this Act or its application to any person or circumstance is held invalid for any reason, the remainder of the Act shall not be affected thereby.

(5) Sections 2 and 3 of the Senate draft have been renumbered 5 and 6 respectively.

Various corresponding clerical and technical changes have been made throughout the bill.

Your Committee on Conference is in accord with the intent and purposes of H.B. No. 687, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 687, H.D. 1, S.D. 1, C.D. 1.

Representatives Blair, Dods, Masutani, Shito and Ikeda,
Managers on the part of the House.

Senators Cobb, Kuroda, Yim and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 75-80 on S.B. No. 3145-80

The purpose of this bill is to amend section 480-23, Hawaii Revised Statutes, relating to the granting of immunity from prosecution in antitrust cases so as to render the same consistent with the witness immunity provisions generally applicable under chapter 621C.

The present law pertaining to immunity from prosecution in antitrust proceedings is susceptible to the possible, and originally unintended interpretation that it is an automatic grant of immunity arising with the obtaining of issuance of subpoena of any witness by the attorney general or other government attorney in enforcement of the antitrust provisions of chapter 480. The administrative practice in the application of section 480-23 has been for the attorney general to question witnesses under subpoena with immunity arising only when the witnesses exercise their privilege against self-incrimination and upon the issuance of an order by an appropriate court compelling testimony and extending immunity from prosecution. Apparently, the absence of language specifically describing this aspect of the operation of the immunity law has generated argument that the immunity under section 480-23 is automatic. Accordingly, a function of this bill is to clarify this supposed ambiguity.

This clarification of the present provisions relating to immunity from prosecution is prospective and should not influence the construction of the existing provisions one way or the other with reference to proceedings involving a witness subpoenaed to testify or produce a record, document, or other object prior to the enactment of this bill. Furthermore, although the provisions of this bill as amended applies to proceedings pursuant to both section 480-18 and section 28-2.5, Hawaii Revised Statutes, your Committee recognizes that these statutory sections provide different investigative procedures, and therefore, it is not the intent of this legislation to alter these procedures or to limit the attorney general in antitrust investigations to any one investigative method. However, it is the intent of this legislation to provide one procedure for granting a witness immunity in antitrust investigations.

Senate Bill No. 3145-80 in the form of H.D. 1 had deleted the use immunity provision previously included in S.D. 1. Your Committee on Conference has reinstated the use immunity provision on the reasoning that the immunity provision relating to antitrust laws should be consistent with the general immunity provisions of chapter 621C.

We have, however, provided that the immunity order issued by the court should "specify the type of immunity being granted," that is, whether it is "use" or "transactional," and "contain appropriate explanation of the scope of protection from prosecution being afforded thereby." We note that by subsection 480-23.1(c) such order "may be issued prior to the assertion of privilege against self-incrimination." As such, we concluded that the explanation of the immunity should be contained in the order.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 3145-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 3145-80, S.D. 1, H.D. 1, C.D. 1.

Representatives Blair, Honda, Shito, D. Yamada and Ikeda,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 76-80 on S.B. No. 870

The purpose of this bill is to improve the Hawaii Water Carrier Act, Chapter 271G, Hawaii Revised Statutes.

This bill makes minor changes to the procedure in filing for rate changes and increases the penalties for violations of the water carrier law.

Your Committee upon further consideration has made the following amendments to S.B. No. 870, S.D. 2, H.D. 1.

A new provision has been added to the file and suspend system that will require the commission to act within six months from the date of ordering a hearing. If the commission fails to act, the proposed changes may go into effect. At any hearing involving a change in a tariff or rule, regulation, or practice, the burden of proof shall be on the carrier to show that the proposed change is just and reasonable.

Your Committee has added a new subsection, 271G-17(e) which allows the commission to authorize temporary increases in rates, fares, and charges after public notice. The commission is required to order the carrier to keep an accurate account for each shipper of all amounts received by reason of such increase. Upon conclusion of the hearing and decision, the commission may order the carrier to refund with interest that portion of increased rates deemed not justified. This distribution to the affected shippers is without further judicial or administrative proceedings and without claim by the shipper.

Your Committee has increased the penalty provisions for violations of the water carrier law to a maximum of $5,000.

Your Committee deleted section 271G-14(e). This deletion will enable the commission to examine the expenses paid to affiliates. In addition the commission will have the authority to require the carrier to obtain approval from the commission before leasing vessel equipment or towing equipment from another corporation.

A new provision under 271G-23(a) requires that the carrier justify the reasonableness of its dealing with corporate affiliates and the burden of proof shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing.

Your Committee has amended the bill to permit the carrier to file for a tariff change for fuel surcharges based on a 30 day notice. The 45 day notice is retained for all other changes in tariffs.

Finally, your Committee has amended the bill by deleting language in Section 271G-23(b) which was incorrectly included in the section.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 870, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading

in the form attached hereto as S.B. No. 870, S.D. 2, H.D. 1, C.D. 1.

Representatives Blair, Garcia, Larsen, Masutani, Nakamura and Ikeda,
Managers on the part of the House.

Senators Mizuguchi, Chong and George,
Managers on the part of the Senate.

Conf. Com. Rep. No. 77-80 on H.B. No. 25

The purpose of this bill is to provide enabling legislation for the issuance of special purpose revenue bonds for not-for- profit corporations which provide health care facilities to the general public. The enabling legislation is necessary to implement the State's authority to issue special purpose revenue bonds under Article VII, section 12, of the Constitution of the State of Hawaii. This bill further provides for: 1) access to financial records of the corporations using proceeds from special purpose revenue bonds by the department of budget and finance, and requires public disclosure of those records; 2) corporations using these proceeds must estimate and disclose benefits derived from the use of such special purpose revenue bond proceeds; and 3) a sunset provision prohibiting the issuance of special purpose revenue bonds after June 30, 1983.

Under this bill, non profit corporations providing health care facilities will be able to obtain lower cost construction funds, as a result of the State's issuance of special purpose revenue bonds. It is hoped that the general public will benefit from passage of this Act by receiving the same level of health care at a reduced price.

Your Committee has made the following amendments to H.B. 25, H.D. 1, S.D. 3:

(1) Page 6, line 10; requires the approval of the Governor to enter into and carry out a project agreement.

(2) Page 9, line 5; adds the words "and administering" after implementing.

(3) Page 12, lines 19, 20; delete from those costs which may be included in determining the cost of any project: legal, accounting, consulting, and other special service fees.

(4) Page 30, line 4; change the expiration date from June 30, 1983 to June 30, 1986.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 25, H.D. 1, S.D. 3, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 25, H.D. 1, S.D. 3, C.D. 1.

Representatives Segawa, Hashimoto, Ige, Kobayashi, Shito and Sutton,
Managers on the part of the House.

Senators Cayetano, Carpenter, Kawasaki, Yamasaki and Ajifu,
Managers on the part of the Senate.

Conf. Com. Rep. No. 78-80 on H.B. No. 2647-80

The purpose of this bill is to clarify the statutes relating to limitations imposed upon vehicle load weight and size, to specify the fees to be charged for permits for non-conforming vehicles, to specify the minimum fines based on excess weight and dimension which may be imposed on violators of the restrictive statutes, and to permit motor carrier safety officers to have the same authority as police officers in enforcement of vehicle and vehicle load limitations.

Your Committee upon further consideration has amended the imposition of minimum fines charged to violators of the restrictions from mandatory to discretionary.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2647-80, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2647-80, H.D. 2, S.D. 2, C.D. 1.

Representatives Dods, Blair, de Heer, Takamine and Ikeda,
Managers on the part of the House.

Senators Cayetano, Mizuguchi, Kawasaki and Soares,
Managers on the part of the Senate.

Conf. Com. Rep. No. 79-80 on H.B. No. 2558-80

The purpose of this bill is to limit the availability of bail for persons charged with criminal offenses under certain specific conditions.

Section 804-3, Hawaii Revised Statutes, already denies pre-trial bail in the case of an offense punishable by life imprisonment not subject to parole "when the proof is evident or the presumption great." Both the House and Senate Committees received testimony expressing the view that pre-trial denial of bail violates the presumption of innocence of an accused person and that bail should only relate to the probability that a defendant will appear when required. Issues regarding equal protection, due process, and the "constitutional right" to bail were also raised.

Based upon such testimony, even the existing law with the "capital offense" exception might be of questionable constitutionality. However, your Committee's research indicates that both pre-trial and post-conviction denial of bail is not unconstitutional. Lincoln v. Fukuoka, 61 Haw. _____ (No. 7728, February 7, 1980), Lincoln v. Chang, F. Supp. _____ (D. Haw., April 8, 1980), Robertson v. Connecticut, 501 F.2d 305 (2d Cir. 1974), United States v. Fields, 466 F.2d 229 (2d Cir. 1972), Hamilton v. New York, 421 F.2d 908 (6th Cir. 1970), Mastrian v. Hedman, 326 F.2d 708 (8th Cir. 1964), Parker v. Roth, 278 N.W. 2d 106 (Neb. 1979), Gallie v. Wainwright, 362 So. 2d 936 (Fla. 2978), Gold v. Shapiro, 403 N.Y.S. 2d 906 (N.Y. App. 2978), Randel v. Mumanert, 474 P. 2d 826 (Ariz. 1970), State v. Ganett, 493 P.2d 1232 (Ariz. App. 1972), Ex Parte Smith, 548 S.W. 2d 410 (Tex. Cir. App. 1977), Ex Parte Miles, 474 S.W. 2d 224 (Tex. Cir. App. 1971), Scott v. Ryan, 548 P.2d 235 (Utah 1976), See also Durken, "The Right to Bail; A Historical Inquiry", 42 Alb. L. Rev. 33 (1977).

These cases stand for the proposition that there is no constitutional right to pre-trial bail in all cases, and there is definitely no constitutional right to bail after conviction and pending appeal. Parker v. Roth, supra, discusses the entire history of bail from its roots in England to the Bill of Rights and points out that the Eighth Amendment to the Constitution of the United States does not guarantee bail in all cases, but only guarantees "no excessive bail" in cases where the law allows bail.

The Hawaii State Constitution, Article I, section 9, follows the language of the Eighth Amendment. In Hawaii, the right to bail in all cases, except where the punishment can be life imprisonment without parole, is only guaranteed by statute, specifically section 804-3, Hawaii Revised Statutes, which the legislature is free to change. Such legislative changes have been made in several states, notably Arizona, Michigan, Nebraska, Texas, Utah, and the District of Columbia.

The constitutionality of section 804-3 as it exists today cannot be questioned in light of Lincoln v. Fukuoka, supra, and Lincoln v. Chang, supra. In the former case, the Hawaii Supreme Court rejected in a one-page order, citing no authority, a habeas corpus petition attacking pre-trial denial of bail as set out in section 804-3. In the latter case, the local federal district court rejected Mr. Lincoln's federal habeas corpus petition, which he filed after being rejected by the Hawaii Supreme Court, again attacking the constitutionality of section 804-3. The federal decision cites Stack v. Boyle, 342 U.S. 1 (1951) and Carlson v. Landon, 342 U.S. 524 (1952), as being ambiguous on the subject of a "right" to bail and goes on to uphold the constitutionality of section 804-3.

SECTION 1 of this bill sets out the purpose of the bill which is to restrict the use of bail due to its past abuse and in an effort to increase the deterrent effect of punishment.

SECTION 2 of this bill defines what offenses are bailable. The "capital offense" exception of existing law is retained and two additional exceptions are added (1) where the charge is for a "serious crime" (see definition below) and the defendant has been previously convicted of a serious crime within the ten-year period immediately preceding the charge against him, or (2) the defendant is already on bail on a felony charge. These exceptions are aimed at repeat offenders. (Note, denial of bail to a defendant on probation or suspended sentence is covered by section 706-626.)

For all exceptions, bail cannot be denied unless the "proof is evident or the presumption

great" on the charge against the defendant. Your Committee feels that is appropriate as a matter of fairness and is encouraged by the fact that existing Hawaii case law construes this requirement, giving guidelines to the trial court. See Bates v. Hawkins, 52 Haw. 463 (1970), Bates v. Ogata, 52 Haw. 573 (1971), and Sakamoto v. Chang, 56 Haw. 447 (1975). Such a requirement exists in every other similar statute reviewed.

"Serious crime" is defined as a class A or B felony, except forgery in the first degree and failing to render aid. All class A or B felonies, with the two exceptions noted, involve harm to a person on the threat of harm, or the use of a weapon, or serious drug offenses. Burglary in the first degree in a dwelling involves a serious possibility of harm to people if a burglar is discovered. Failure to render aid does involve harm to a person, but the wide range of possible harm makes inclusion of the offense inappropriate. The bill allows the prosecutor to move to deny bail pre-trial at any time if he can show the applicability of any exception.

SECTION 3 of the bill defines the "right" to pre-trial bail as existing for all offenses with the exceptions discussed above. The bill has been amended by your Committee to allow bail as a matter of right after conviction of a misdemeanor, petty misdemeanor or violation and to allow bail in the discretion of the court after a felony conviction. Except, no bail after conviction and prior to sentencing shall be allowed where bail was not available or revoked prior to conviction, and no bail shall be allowed pending appeal of a felony conviction. Thus, although a court may have the discretion prior to sentencing to release a defendant convicted of a felony, who was on bail prior to conviction, once the defendant is sentenced to imprisonment, no further bail is possible.

SECTION 4 of this bill amends present law to allow a court to deny bail in the enumerated circumstances, rather than merely set conditions. There is little question of the court's power to impose such conditions and, your Committee believes, to deny bail if it can be shown by sufficient evidence that such conditions will not be met even if imposed. The amendment also makes it clear that the court can deny bail if a condition of bail is breached.

There is no constitutional right to bail; it is a statutory right and always has been. The abuse of the bail system, the danger posed by repeat offenders, and the need for swift, effective punishment upon conviction (which is also an excellent deterrent for others) have resulted in this bill.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2558-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2558-80, H.D. 1, S.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 80-80 on S.B. No. 1161

The purpose of this bill is to provide statutory guidelines for the awarding of attorneys' fees to compensate parties in civil litigation who have been victimized by the frivolous claims of the opposing party in the course of litigation and thereby incurring unnecessary attorneys' fees.

Present law reflects the rule prevalent in the United States whereby each party in litigation is required to absorb their own attorney's fees. The rationale of the American Rule is that if faced with the risk of being required to pay the attorney's fees of the opposing parties if he should fail to prevail in the litigation, people of limited means may be prompted to forego the pursuit of their rights.

The law in England has followed a contrary course of development. The rule in Britain is that the prevailing party is awarded attorney's fees. Its rationale is that parties in litigation would be more precise in their claims and defenses if required to consider that if they failed to prevail, the losing parties will be required to pay the attorney's fees incurred by the prevailing parties.

Your Committee on Conference has taken a middle course between the American and the British rules. We acknowledge the basic unfairness of the American rule. However,

as expressed in Standing Committee Report No. 824-80 by the Judiciary Committee of the House of Representatives, we do not feel that allowing attorney's fees to the prevailing party is necessarily the answer, as, more often than not, the result of litigation is a relative thing. As amended in the form of C.D. 1, S.B. No. 1161 reflects the position that parties in litigation should be allowed attorney's fees where they have been victimized by the frivolous claims of the opposing party which have required them to incur unnecessary attorney's fees.

As amended S.B. No. 1161 allows for the award of attorney's fees only where (1) the court finds in writing that (2) all of the claims of the party were completely frivolous because (3) such claims are totally unsupported by the facts and the law in such civil cases.

Your Committee believes that this criteria for the award of attorney's fees will allow for such award only where the opposing party has clearly raised unsupportable claims.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1161, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1161, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Dods, Garcia, Honda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Campbell and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 81-80 on S.B. No. 1827-80

The purpose of this bill is to codify the rules of evidence in Hawaii's courts.

For background development of the Hawaii Rules of Evidence to date, reference is made to the following:

(1) House Special Committee Report No. 4 (February 8, 1980);

(2) Senate Special Committee Report No. 2 (February 5, 1980);

(3) Senate Judiciary Committee Standing Committee Report No. 713-80 (February 11, 1980); and

(4) House Committee on Judiciary Standing Committee Report No. 712-80 (March 24, 1980).

Your Committee on Conference calls attention to observations made by Professor Stephen A. Salzburg in a lecture on the Federal Rules of Evidence delivered at the Cleveland-Marshall College of Law on October 25, 1978:

"Prior to the adoption of the Federal Rules of Evidence, every practicing lawyer knew that when he or she walked into a courtroom, having by lot drawn one particular judge, that the judge's own set of evidence rules was likely to be employed. The same lawyer knew that when chance assigned another judge to a case, a different set of evidence rules well might be employed. Lawyers learned to play whatever game each trial judge established. Trial judges often established rules of thumb for their courts because they had no other rules to guide them . . . .

"Some time ago Justice Robert Jackson commented that '[t]he rights of clients, like the liberties of our people are only those which some lawyer can make good in a courtroom.' What was wrong with evidence law prior to the Federal Rules was that no lawyer could be sure what set of rules would be employed in a courtroom and whether he could vindicate his client's rights or his client's liberties before a particular judge. Admittedly, this argument easily can be overstated; in some jurisdictions judges may have ruled more uniformly than in others. Virtually every lawyer to whom I have spoken, however, is able to point in his or her jurisdiction to peculiar doctrines and sui generis rules of thumb that were developed by individual judges, and that were different from those of their colleagues on the bench.

. . .

"There is something terribly wrong with a single system that allows cases to be tried

differently in different courtrooms, so that different rules govern the way in which the evidence that is necessary to resolve the case will be presented . . . . Yet, that was precisely the situation in courtroom after courtroom prior to the adoption of the Federal Rules. Different sets of evidence rules were employed, and different sets of evidence rules can produce different outcomes. Although it is probably true that no one ever will be able to demonstrate the extent to which the different rules actually did produce disparate results, it also is true that no one ever will be able to deny the real possibility that the percentage was more than de minimus.

"What the Federal Rules of Evidence establish is that the words "Equal Justice Under Law," chiseled in stone on the front of the Supreme Court Building, are now to be chiseled into everyday reality in every federal trial court in the nation. No longer will there be two, three or ten sets of evidence rules depending on the number of judges that happen to sit on a given bench. To the extent that we can do it and make it work, there will be one set of evidence rules that will be applied uniformly throughout the United States. I have already pointed out the practical benefits of such a rule. The symbolic benefits are equally important. Litigants, rich or poor, wise or unwise, represented by retained counsel or by appointed lawyers, all will know that the same evidence rules apply to each of them. This is no small step in the march toward equal justice.

"Now it is true that rules do not do justice; men and women do justice. But the thrust of American law this century is to recognize that men and women do justice largely by rules, and the Federal Rules of Evidence are a landmark step toward further recognition of that fact. What is most encouraging is that the federal bench, which may at this point be as fine a bench as we have ever had, despite the political nature of judicial appointments, has for the most part welcomed the Rules. Their symbolic quality has not been lost on most federal judges. The notion of equal treatment is a powerful one, and one which they seem pleased to share." Salzburg, "The Federal Rules of Evidence and the Quality of Practice in Federal Courts," 27 Cleveland State Law Review, 173 at 189-190 (1978).

It is your Committee's hope that S.B. No. 1827-80 will edge Hawaii substantially closer to equal treatment and equal justice.

We note that while the main purpose of the Evidence Code is to better obtain equal justice, it will prove to be of extreme usefulness to the practitioner. As observed by Professor Salzburg:

". . . [N]o matter how well a lawyer prepares, in many situations points of evidence law will arise during trial and will not have been anticipated. When that happens, the lawyer needs to be able to research the point quickly, or at least to fall back on a body of law that is readily accessible. The Federal Rules of Evidence is such a body of law. The fact that a lawyer can have the Rules present in the courtroom means that often he or she need not rely on ten or more volumes of the Wigmore treatise as authority for an evidence point. Easy access to "the law" is an enormous advantage of the Rules. Judges obviously are similarly advantaged . . . ." 27 Cleveland State Law Review, at 184.

Your Committee on Conference reports on the resolution of the differences between the respective houses as follows:

(1) Section 503(d)(6) previously included in S.B. No. 1827-80, S.D. 1, H.D. 1, has been deleted. This subsection would have denied the lawyer-client privilege of Section 503 to communications "between a public officer or agency and its lawyers unless the communication covers a pending investigation, claim, or action."

The deletion of this subsection allows the lawyer-client privilege to extend between a public officer or agency and its lawyers in the same manner as all other lawyer-client relationships under Section 503.

We understand that Subsection 503(d)(6) originated from the draft forwarded by the Commission on Uniform Laws. Research indicates that Oklahoma is the only state that has adopted the provision in the codification of its rules of evidence. We have so far been unable to fathom the precise rationale for Subsection 503(d)(6), except that it is ostensibly to enhance the public's right to openness and full disclosure by public officials.

We have studied the objections raised by the Attorney General and other government attorneys to the enactment of Subsection 503(d)(6) and find the arguments there submitted

Further, although a government attorney's employ is in the public interest, for some, such as legislative attorneys, such employment is clearly partisan. Here, partisanship is essential to the multi-party makeup of our form of democracy. If a legislative attorney is consulted by a legislator, must matters revealed to him remain confidential or are such matters potentially subject to disclosure? May a legislator speak freely to legislative counsel, or must he risk the possibility that anything he may say may be resurrected at some future time to haunt or mock him? If a legislator should seek the research of a very delicate or controversial measure by legislative counsel, may counsel be required to divulge this? Does a legislative attorney have the right to divulge matters of partisan legislative strategy?

These problems are only a few raised by proposed Subsection 503(d)(6). Further analysis may reveal others. It appears to your Committee that proposed Subsection 503(d)(6) has been submitted without adequate analysis as to its operational effect upon the professional responsibility of government attorneys imposed upon all lawyers generally by the rules of the Supreme Court. It is your Committee's conclusion that the enactment of the Code of Evidence should not be stalled pending their solution. It may be that the experience of Oklahoma and that of other states which may adopt provisions in the nature of Subsection 503(d) (6) will shed light on appropriate solutions to these problems. That will be the proper time to consider the enactment of an appropriate amendment to Subsection 503(d).

Your Committee has not taken lightly the argument that the purpose of proposed Subsection 503(d) (6) is to enhance the public's right to openness in government. In this connection, Standing Committee Report No. 22-80 had previously expressed the concern that the attorney-client privilege should not "shield a public officer's incompetence, inefficiency and the like . . . ."

However, subsequent research has revealed that such concern would be amply covered despite the deletion of Subsection 503(d)(6). This is because "the government attorney's client" is indeed the government, and the privilege is exercisable by a client's employee only to advance the client's (government's) interest. Put in another way, the public employee will not be permitted under Section 503 to exercise the privilege personally in derogation of the government's interest.

Statements made to an attorney by one as an agent of a client, although privileged as between the client and the attorney, are not privileged as between the agent and the attorney; and, in an action involving the right of the agent, the attorney may, with the consent of the client, testify as to the previous communications of the agent. Bingham v. Walk, 27 N.E. 483 (1891).

Thus, a government attorney would have the duty to disclose upon legislative inquiry matters that may have been disclosed to him by a public officer that reveal inefficiency, conflicting interests, fraud, and other mischief against governmental interests.

Finally, the attorney general has argued strenuously that the existence of the attorney-client privilege in the relationship between government attorneys and public officers and employees does not, and will not, diminish the public's right to openness achieved particularly over the last several years by Hawaii's sunshine law. We have not obtained specific or adequate demonstration to the contrary in the testimonies we have so far received on this bill or in the research conducted by our staff. As such, it is your Committee's conclusion that the public can obtain adequate access to information essential to improvement of our society's laws and governmental operations without erosion of the responsibility of government attorneys respecting their professional duty of confidentiality.

(2) Subsections 504(d)(1) and 504.1(d)(1). Rules 504 and 504.1 establish privileges to physician-patient and psychologist-client relationships, respectively. Subsection (d) (1) under each of these rules prevents the application of the privilege to communications relevant to proceedings to hospitalize for mental illness or substance abuse.

The changes made to each subsection by S.B. No. 1827-80, S.D. 1, H.D. 1, prevents application of the privilege also to proceedings for the discharge or release from hospitalization for mental illness or substance abuse. We agree that this is a beneficial change.

An additional change to subsection 504.1(d)(1) which was not made to subsection 504(d) (1) involves the deletion of the language at the end of the sentence: "if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization."

It is our conclusion that these words do not add to or delete from the intended operation of Subsection 504.1(d)(6) and are superfluous.

to be similarly vague and somewhat short on analysis.

However, your Committee on Conference has concluded that Subsection 503(d)(6) will raise, if enacted, very substantial problems addressed to the essential function of government attorneys with respect to their professional duties. This is because the professional conduct of attorneys is regulated by the Code of Professional Responsibility appended to the Rules of the Supreme Court of the State of Hawaii. An essential precept in such Code is the requirement upon all attorneys that they must preserve the "confidences and secrets of one who has employed or sought to employ them."

More particularly, Canon EC 4-1 of the Code of Professional Responsibility reads as follows:

"EC 4-1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance."

As stated, the confidentiality of matters discussed between attorneys and their clients is thought to be essential to "the proper functioning of the legal system" because the lawyer must be "fully informed of all the facts" if he is to be able to fulfill his professional obligation, and such degree of information will not be availed unless a client feels "free to discuss whatever he wishes with his lawyer . . . ." There is, of course, a limit even to that freedom in that a lawyer would be obligated to reveal a client's intention to commit a crime. See Disciplinary Rule 4-101.

Although it is clear that proposed Subsection 503(d)(6) would extend the lawyer-client privilege to that limited situation where pending investigation, claim or litigation is involved, it harbors complex problems where the privilege is not available. This is because Canon EC 4-1 is implemented by Disciplinary Rule 4-101 which would require attorneys who fail to preserve the confidences of their clients to be appropriately disciplined. However, such discipline would not apply where the disclosure of confidence is "permitted . . . by law." Subsection 503(d)(6) would seemingly provide the "law" by which disclosure of confidential matters by government attorneys would be "permitted." And, such permitted disclosure would extend very broadly, confined only by confidentiality preserved for pending investigation, claim or action.

We find this operational effect of proposed Subsection 503(d)(6) which would relax the professional responsibility of government attorneys to be extremely problematic. For example, the location of many contemplated public projects are kept secret by public agencies until such time when their disclosure would no longer tend to prompt premature or unwarranted speculation. A government attorney consulted during the preliminary stages would not be involved in a pending investigation, claim or litigation. Should he have the right to disclose such confidential matters? And, if he should disclose, is proposed Subsection 503(d)(6) intended to allow him to make such disclosure without the sanction of professional discipline?

Under the normal operation of the attorney-client privilege and Canon EC 4-1, a client or a client's employee can feel confident that matters revealed to the client's attorney will remain confidential to protect the client's interest within the broad range of the attorney's scope of employment. This is so whether the subject matter of the attorney's endeavor is in pending litigation, or whether the attorney's inquiry is in response to consultation upon matters as to which litigation may be only remote.

If, under proposed Subsection 503(d)(6), a matter was not as yet under investigation or in litigation, does a government attorney have the right to reveal matters that are certain to generate litigation and result in substantial loss to the public? May he reveal technical flaws in statutes, regulations or procedures which may be generally unknown to the public and private attorneys and which, if revealed before they are corrected, may cause widespread financial loss or personal hardship? If such unwarranted disclosure was made, is proposed Subsection 503(d)(6) intended to shield the government lawyer from being punished for such indiscretion?

(3) Subsection 505(a). Rule 505 extends privilege to spouses. A major change was made to this rule as fully explained by the Judiciary Committee of the House of Representatives in Standing Committee Report No. 22-80. We adopt the changed language for the intent there stated.

(4) Rule 603.1. Rule 603.1 disqualifies anyone incapable of expressing himself or unable to tell the truth from being a witness. The language of S.B. No. 1827-80, S.D. 1, H.D. 1 made it discretionary upon the court to qualify or disqualify a witness for such reasons. We have concluded that the mandatory language previously found in S.B. No. 1827-80, S.D. 1 is more appropriate. By such reversion in language, it is the intent that when the question is properly appealed, the appellate court should review the record to determine whether the trial court has erred in its determination and that the question so raised on appeal should not be determined based on whether the trial court had abused its discretion. It was concluded that a witness is either qualified or disqualified, and it is not a matter of degrees.

(5) Rule 613(b). This rule governs the admissibility of extrinsic evidence of a prior inconsistent statement.

The first change effected by S.B. No. 1827-80, S.D. 1, H.D. 1 allows such evidence to be admitted both in direct and cross-examination of a witness.

The second change required the witness to be "afforded an opportunity to explain or to deny the statement" after the circumstances of the statement have been brought to the witness' attention.

We adopted the first change, having included that the use of prior inconsistent statements should not be confined to cross-examinations but should be opened up to direct examinations as well.

In S.B. No. 1827-80, S.D. 1, H.D. 1, C.D. 1, we modified the bill to require only that the witness be "asked whether he made the statement" after the circumstance of the statement has been brought to the witness' attention.

It was concluded that requiring that the witness be afforded an opportunity to explain the prior inconsistent statement may take the wind out of trial strategy where the trial lawyer may find it more effective to allow the occurrence of the prior inconsistent statement to sit unexplained in the jurors' minds. No doubt, the opposing counsel may very well ask the witness to explain. However, it was thought that the rules of evidence should not intrude upon trial strategy.

Your Committee on Conference has received the commentary to the Hawaii Rules of Evidence submitted by Professor Addison Bowman of the University of Hawaii School of Law. We attach such commentary to the bill and forward the same to the Revisor of Statutes with the instruction to review, correct, print, and report on the commentary as directed in section 16 of this bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1827-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1827-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Blair, Honda, Nakamura and Ikeda,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 82-80 on S.B. No. 2329-80

The purpose of this bill is to clarify and update obsolete wording and to expand upon the exclusions from eligibility for deferred acceptance of guilty (DAG) pleas in Section 853-4, Hawaii Revised Statutes.

The bill as drafted by your Committee includes the following new exceptions to DAG pleas:

(1) A firearm was used in the commission of the offense charged;

(2) The charge is distribution of a dangerous, harmful, or detrimental drug to a minor;

(3) The defendant is charged with a felony and has been previously granted a DAG plea;

(4) The defendant is charged with a misdemeanor and has been previously granted a DAG plea for which the period of deferral has not yet expired; and

(5) The offense charged involves escape, promoting prison contraband, bail jumping, bribing, intimidating a witness or juror, or jury tampering (the bill lists the specific offenses excluded).

The words "grossly" and "cruel" have been deleted from exceptions 1 and 2, respectively, and "intentional", "knowing", and "serious bodily injury" have been added to exception 2.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2329-80, S.D. 2, H.D. 1 as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2329-80, S.D. 2, H.D. 1, C.D. 1.

Representatives D. Yamada, Dods, Garcia, Honda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Chong and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 83-80 on S.B. No. 2741-80

The purpose of this bill is to provide for a reasonable period of detention of defendants not fit to proceed due to mental or physical disorder, disease or defect.

The Senate and House drafts of this bill were substantially different. The Senate bill provided for detention for a period up to the maximum possible sentence for the most serious crime charged. The House bill allowed the possibility of immediate release after a finding of lack of fitness to proceed.

Relevant to your Committee's compromise on this bill was Jackson v. Indiana, 406 U.S. 715, 32 L.Ed. 2d 435. Jackson held that indefinite commitment of a defendant unfit to proceed was unconstitutional on two grounds. First, equal protection was violated because indefinite commitment in a criminal case did not grant guarantees provided for in civil commitment statutes. Second, due process was violated because indefinite commitment was not reasonably related to the purpose of the commitment, i.e., fitness to proceed.

This bill as drafted by your Committee requires that a defendant be held for a six-month period after a determination of lack of fitness to proceed. During this period, attempts will be made to assist the defendant in acquiring to necessary capacity to proceed. Mandatory review of fitness every 90 days is required. At any time during the six-month period, if the defendant is fit to proceed, the director of health shall so notify the court, or the defendant or prosecutor to enable the court to move for a determination of fitness.

At the end of the six-month period, the court shall make a determination as to whether there is "a substantial possibility of the defendant's attaining competency to stand trial in the foreseeable future." If not, the court shall order that a determination be made in family court regarding civil commitment of the defendant. If the defendant is committed, the penal proceeding shall be stayed during the period of commitment. A defendant may not be released on condition if he is dangerous. Once the defendant is fit to proceed, the criminal court shall begin proceedings again or dismiss them, in its discretion, if justice requires.

If a defendant is not committed, a renewed six-month period of commitment shall begin to attempt to help the defendant become fit to proceed. If the defendant is not fit to proceed at the end of this six-month period, a new civil commitment hearing shall be ordered, etc.

In no case shall the defendant be committed or released on condition under section 704-406 for a period longer than the maximum period of imprisonment to which the defendant could be sentenced for the most serious charge against him. At this point, the court must dismiss the charge against the defendant and order a civil commitment proceeding instituted if appropriate. Short of this maximum period, the defendant is credited with time served in commitment on conditional release.

Your Committee believes that this procedure is constitutionally permissible while providing maximum protection for the public.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2741-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2741-80, S.D. 1, H.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Lee, Masutani, Nakamura, Ikeda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Mizuguchi and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 84-80 on S.B. No. 2784-80

The purposes of this bill are to (1) require a towing company to inform the registered owner of a motor vehicle of the location of the vehicle after it has been towed and (2) allow a person who has been overcharged for towing costs to sue for damages against the towing company.

Your Committee has amended this bill by the expansion of section 290-11 to include vehicles left unattended on public property. This amendment has been made to regulate the towing of vehicles left on public property as well as private property.

This bill further provides for notification to the "legal owner" as well as the registered owner of the vehicle. This addition has been made to protect the property rights of the person or institution such as a bank or credit union which in fact holds title to the vehicle.

This bill has also been amended to provide that a towing company notify the registered and legal owners within 15 days of the tow. Where an owner has not been notified within 15 days of the tow, he may recover his car from the towing company without paying any fees for the tow or storage. The towing company may however show a mail receipt as proof of notification.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2784-80, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2784-80, S.D. 2, H.D. 1, C.D. 1.

Representatives D. Yamada, Dods, Garcia, Honda and Medeiros,
Managers on the part of the House.

Senators O'Connor, Ushijima and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 85-80 on S.B. No. 1851-80

The purpose of this bill is to create a juvenile justice master plan for Hawaii.

For a comprehensive dissertation on the policy bases of the juvenile justice master plan, see Standing Committee Report No. 440-80 of the Committee on Judiciary of the Senate.

The Committee on Judiciary of the House of Representatives made certain changes to S.B. No. 1851-80, S.D. 2. The changes so made are listed and explained in its Standing Committee Report No. 830-80. Your Committee on Conference adopts these changes insofar as they are not inconsistent with the final version of S.B. No. 1851-80 reported out as C.D. 1 and unless otherwise indicated by this committee report.

AMENDMENTS TO THE PURPOSE SECTION OF CHAPTER 571.

The Judiciary Committee of the House of Representatives by S.B. No. 1851-80, H.D. 1, had deleted the amendments previously reflected in S.D. 2 and pertaining to the purpose language of Section 571-1, Construction and purpose of chapter. In the main, the deleted language made reference to "punishment" as a function of the juvenile justice system. After careful consideration, your Committee agreed to restate the purpose language so as to indicate the paramount role of rehabilitation in juvenile cases, together with

the need to recognize the legitimate role of punishment in deterring those juveniles who would resist rehabilitation from harming the innocent. We think that the goal of both rehabilitation and punishment is the same: the teaching of responsibility to those seeking to emerge from immaturity to adult life. In the adult world, it is essential that one should prove responsible to oneself and others in coping with conditions of reality. To do otherwise, is to fail.

While the concepts of treatment and rehabilitation which are appropriate in most juvenile cases have pervaded the philosophy attending juvenile justice for many years, there is growing recognition, confirmed by comprehensive studies, that the threat of punishment sufficiently buttressed by certainty of imposition is a formidable deterrent for the criminally inclined, particularly those who resist benevolent rehabilitative efforts.

Professor Barry C. Feld at the University of Minnesota Law School observed:

"Deterrence or general prevention is the restraining influence that punishment of an offender has on other potential offenders. In addition to the overt compliance resulting from the threat of punishment, the imposition of sanctions also has a moralizing, educating, and socializing influence on others by expressing societal condemnation of the prohibited acts and reinforcing habitual conformity. Within the juvenile court, the elevation of rehabilitation over the other justifications for punishment has tended to undermine the general preventive effects of coercive intervention by characterizing dispositions as treatment rather than sanctions, by preventing the communication of the threat of punishment to other potential offenders because of close proceedings and restricted publicity, and by individualizing disposition, thereby, reducing any certainty of application of sanctions and obscuring any relationship between an act and its consequences. As faith in the rehabilitative ideal has declined, there has been an enormous upsurge of interest and research in the preventive effects of punishment. . . . With regard to certainty of punishment the research up to now, seen in its totality, has given support to the common sense assumption that increased certainty of sanction will tend to reduce the amount of crime." Feld, "Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions," 62 Minnesota Law Review 515 at 607 and 608 (1978). See the comprehensive list of law review articles at footnote no. 300 of 62 Minnesota Law Review at 608.

Professor Feld explains at length:

"Although the conjunction of adult deterrence research and studies of cognitive development indicates that youths may respond to a threat of punishment having enough certainty to be credible, the juvenile court as an institution has virtually ignored its potential role in achieving that credibility. Sanctions imposed in juvenile court are defined as treatment rather than punishment, addressed to what the offender needs rather than what he did, and administered so as to prevent the communication of the threat to its relevant audience -- other potential juvenile offenders. The unwillingness to acknowledge explicitly that one purpose of juvenile court intervention is social control has seriously detracted from the potential deterrent effect that such intervention might have. By insisting that it is not punishing a juvenile, the court virtually eliminates the word "threat" from its vocabulary, and closed and confidential proceedings with individualized dispositions limit the communication of whatever threat of punishment may remain.

"Perhaps more significantly, the juvenile court may actually give misleading messages to the youths who appear before it. Juveniles are brought before the court for committing crimes. Recognizing that they have 'done wrong,' their reasonable expectation is that unpleasant consequences will follow. Instead of punishment, however, the court's intervention is defined as treatment, thus introducing a degree of confusion in the child's mind. If, despite committing a crime, a child is "treated" rather than punished because he is "dependent and immature," the court may actually reinforce the irresponsible behavior it is attempting to prevent. If the treatment is only a nominal intervention that the child perceives as inconsequential, it may foster disrespect for the court and the laws it attempts to uphold. Conversely, if the sanction is severe enough to be perceived as unpleasant, then the child may regard the court as hypocritical, disguising punishment with claims of benevolence." 62 Minnesota Law Review at 609 to 612.

More recently, a report entitled "Beyond Probation, Juvenile Corrections and the Chronic Delinquent," Charles A. Murray and Louis A. Cox, Jr., states that punishment of chronic juvenile offenders by incarceration can help reduce the number of crimes a juvenile delinquent is likely to com mit. This is a study sponsored by the U. S. Justice Department's Law Enforcement Assistance Administration and by the State of Illinois. The researchers found that the average number of arrests for an imprisoned juvenile

offender declines by two-thirds in the year following his release when compared with the year preceding incarceration.

Thus, although the intent of S.B. No. 1851-80 is to clearly afford extensive opportunity and programs for rehabilitating juveniles in trouble, its thesis also includes the position that our laws are intended to have substantial preventive influence by their inherent punishment that is sufficiently buttressed by certainty of imposition.

DETENTION AS A POST-ADJUDICATION SANCTION.

Your Committee resolved the difference in the House and Senate drafts regarding what classes of children are subject to detention as a sanction upon a finding that the child has violated a family court order by restoring the Senate's version. The House draft had deleted "children subject to orders of protective supervision" which includes status offenders. Your Committee restored this class as one subject to post-adjudication detention by amending Sections 571-2(7)(D), 571-31(a), and 571-31(b)(3), Hawaii Revised Statutes.

AMENDMENTS TO SECTION 571-31.1, "STANDARD FOR DETENTION".

The following words which had previously appeared in the respective subsections of Section 571-31.1 in S.D. 2 were deleted in the House draft because they are "difficult to apply":

(1) Section 571-31.1(a): "immediate";

(2) Section 571-31.1(a): "urgent";

(3) Section 571-31.1(a)(1): "Substantial";

(4) Section 571-31.1(a)(2): "frequent or substantial"; and

(5) Section 571-31.1(b)(1): "substantial".

Your Committee concurred with these deletions, but would note that they are not intended to render considerations of such concepts inappropriate in all cases. Rather, they are to be considered where good sense requires their application. That is to say, it is conceivable that a threat of damage may be so remote or insubstantial as to render detention inappropriate in a given case. We are also cognizant of the possibility that even where no overt or expressed threat or danger is readily discernible, their imminence may nonetheless lie latent in the nature of the individual or in the circumstances of a given case. The deletions are intended to establish reasonable discretion in persons vested with the duty to apply the standard and are not intended to preclude scrutiny of the exercise of that discretion.

WAIVER OF JURISDICTION.

Your Committee modified the opening language of the H.D. 1 version of Section 571-11 from "Except as otherwise provided herein" to "Except as otherwise provided in this chapter." The reason for this is that the topic of waiver of family court jurisdiction is affected by two other bills under consideration by the legislature at this time. They are H.B. No. 2930-80 dealing with automatic waiver of jurisdiction and H.B. No. 1873-80 treating the subject of appeal from orders waiving jurisdiction.

The Revisor of Statutes is instructed to appropriately coordinate the respective legislative dispositions of H.B. Nos. 2930-80 and 1873-80 with S.B. No. 1851-80. To that end, the Revisor is instructed to obtain the logical organization and appropriate cross-references of the subject matters covered by H.B. Nos. 2930-80 and 1873-80 and coordinate them with the treatment of Section 571-22 affected by S.B. No. 1851-80.

A similar language change was made with respect to the H.D. 1 version of Section 571-22(e) where the word "section" was changed to "chapter."

AMENDMENTS TO SECTION 571-13, "RETENTION OF JURISDICTION".

Your Committee on Conference agreed to substantially alter Section 571-13 that had been entitled "Assertion of jurisdiction" in the House Judiciary Committee's draft of the bill. The word "retention" that originally appeared in the section's title was therein replaced by the improper word "assertion". The assertion of family court jurisdiction is already provided for in Section 571-11 entitled Jurisdiction; children. The intent of Section 571-13 is to provide for family court's retention of jurisdiction over a person

beyond the age of majority rather than its mere assertion.

Relatedly, the substantial language change agreed upon in conference clarifies the jurisdictional handling of a situation where a minor commits an offense prior to age eighteen and is not brought before family court for adjudication until after age eighteen. Added language explicitly grants the court continued original jurisdiction to hold hearings and order dispositions relating to the person who committed the relevant offense prior to age eighteen.

This change prevents the possibility of a youthful offender escaping prosecution due to ambiguous provisions in the law regarding the above-described timing situation. The House version was still found to be ambiguous and so language deleted by the House was reinstated and new language was added for maximum clarity.

Additionally, the Committee compromised on an acceptable maximum age that would limit such retention of jurisdiction to twenty years of age. The House had suggested retaining the existing nineteen-year age limit in opposition to the Senate's initial suggestion of twenty-two years of age. The reason for the conference change reflects the other intent behind Section 571-13. Extending the time period during which family court can retain jurisdictional control over a person beyond the age of majority is the objective. Your Committee on Conference found that the usual termination of family court jurisdiction triggered when a person reaches age eighteen is too arbitrary. In light of this sense that court jurisdiction should be tied more to the specific needs in a person's situation rather than to the mere attainment of a standard age level, the age limit was extended to twenty years.

Practically, such an extension allows the possibility of more time for effective disposition of an offender should the court deem such necessary. Notably, such powers of jurisdictional retention are discretionary. In effect, they resolve the dilemma of judicial treatment of offenders during this transition period between the period of minority status and adult status.

INCARCERATION AS PART OF PROBATION IN FAMILY COURT DECREE.

The provision governing family court decree whereby the court asserts its jurisdiction over a person based on certain findings of facts are contained in Section 571-48. Your Committee decided to reinstate similar language to that initially suggested in the Senate version for Subparagraph (1)(A).

The House version did retain the Senate-added phrase "or facility", thus expressly enabling the family court to incarcerate minors in a youth correctional facility as a possible condition of probation. However, it deleted qualifying language that would have permitted such incarceration for up to a maximum period of one year. Language providing for this one-year maximum is hereby reinstated in this conference draft.

The intent of your Committee's reinstatment of this specific probation option is to afford the family court an increased range of alternatives for disposition. A wider range of disposition alternatives allows for a wider range of treatment possibilities for individual cases. The family court now would be able to maintain probationary control over a minor until age twenty that could include incarceration for up to twelve months in a youth correctional facility.

Some minor word changes render the reinstated language less than identical to what was part of the Senate version. These include changing "commitment to" a facility to "incarceration in" to avoid any confusion with the phrase "term of commitment" that is defined in Section 352-1 of the Hawaii Youth Correctional Facilities portion of the bill.

HAWAII YOUTH CORRECTIONAL FACILITIES.

Your Committee made several alterations within the Hawaii Youth Correctional Facilities portion of the bill, Chapter 352. These changes reflect needed corrections and issue compromises that were necessary to conform the chapter to proper form and content.

The first change concerned Section 352-9, "Period committed". Here, the section was divided into Subsections (a) and (b) which in effect reinstated Subsection (b) as it had appeared in the original Senate draft with one exception. In the original Senate draft, subsection (b) provided for a person whose court-imposed term of commitment extended beyond age nineteen to be placed on juvenile parole for a period not to extend past the person's twenty-second birthday. This conformed both with the original Section 571-13 discretionary retention of jurisdiction to age twenty-two and subsection (a)'s

mandate that no person beyond age nineteen shall remain incarcerated in a youth facility. Language in reinstated subsection (b) is identical to the original version except that the maximum age of twenty-two years is now changed to twenty years to conform with the age twenty compromise embodied in Section 571-13.

The House had deleted this subsection (b) of Section 352-9 for the same reasons it deleted the Senate version of subsection (c) of Section 352-27 (since renumbered Section 352-26) relating to violations of terms and conditions of parole for persons over nineteen. Both deletions followed the House rejection of any possible extension of family court jurisdiction beyond age nineteen as already examined in Section 571-13. The interjection of the compromise age of twenty years in Section 571-13 dictates that these subsections be reinstated in amended form in Chapter 352.

Whereas Section 571-13 provided for the discretionary retention of jurisdiction itself, Section 571-48 and sections in Chapter 352 define just how such an extension of jurisdiction will be handled. Section 571-48 addresses the possible imposition of probation on a person to age twenty. Section 352-9 provides for the possibility of a nineteen-year-old who can no longer remain in a youth correctional facility to be placed on parole. Just as family court is able to maintain a degree of control over a person with probation, the director of the Department of Social Services and Housing can do so through the Office of Juvenile Parole.

By way of explanation, your Committee on Conference concurred with the concept that such continued control is desirable. Instead of a nineteen-year-old person walking out of a youth correctional facility irrespective of his readiness to re-enter society and based simply on his reaching a certain birthday, the Committee saw a juvenile parole possibility for another year as indeed desirable.

Thus, Section 352-27 (now Section 352-26) was similarly altered by reinstating subsection (c) that provides for the taking into custody and detention for parole violations of persons nineteen years of age who can no longer remain incarcerated in a youth correctional facility and are on juvenile parole. The advisability of maintaining some form of continued control over a nineteen-year-old was not very controversial. What presented a more difficult question to your Committee was how to handle the nineteen-year-old once the person was on such parole status. What sanctions could be reasonably available to help enforce the conditions and spirit of parole? Section 352-9 expressly prohibits incarcerating anyone in a youth correctional facility beyond the person's nineteenth birthday so a return to a youth facility was precluded for any parole violation.

The Committee proceeded to resolve the dilemma by distinguishing between types of parole violations, thereby relating the probability of a retaking and incarceration in an adult correctional facility with the severity of the alleged violation. The conference draft language in Section 352-26(c)(1) provides that in those cases where the alleged parole violation constitutes a crime, the parolee may be taken into custody and incarcerated in an adult facility should the director issue a written order to that effect after being advised of such.

The parallel with the adult parole system is intended. When an adult paroled from an adult correctional facility commits a serious parole violation such as another crime, the parolee is retaken into custody and returned to the facility pending a hearing to determine the possibility of parole revocation.

In the instance of a nineteen-year-old on juvenile parole, a similar fate faces the parolee with the variation that the person is now incarcerated in an adult facility because the youth facilities are no longer available. The juvenile parolee's rights are safeguarded under such circumstances by statutory language requiring, among other things, an Office of Juvenile Parole hearing within thirty days after reincarceration.

Paragraph (2) of subsection (c) provides for similar incarceration in an adult facility with the attendant safeguards in the event of a parole violation other than a crime. Additional safeguards with this type of sanction include the necessity of the director seeking an ex parte family court order to affect such reincarceration. Then, both the director and family court must judge it necessary to incarcerate a juvenile parole violator for the alleged violation.

Another change made to the House draft by your Committee occurred in Section 352-14, Educational programs provided by the department of education. The section's basic intent has survived to this point. Educational programs for persons incarcerated in youth correctional facilities are and should remain an integral part of the person's treatment. Besides providing mental stimulation and self-discipline, the opportunity

to continue learning is crucial to preparing the person for the eventual return to society.

However, the more specific intent of this section is to require that such educational programs be skillfully tailored to the needs of those persons incarcerated. Your Committee finds it highly unreasonable to impose standard curricula and requirements on these persons who have dramatically demonstrated by their very presence in the facility a distinctness from the rest of their peers and more often than not a complete alienation from the traditional educational system in which they probably have failed from an early age.

Pursuant to this objective of special adaptation of the educational programs, the Senate originally sought to require the director's involvement with such educational programming based on the director's familiarity with the committed person's needs. The section emerged from the House with the control of educational programs switched to the Department of Education. Your Committee has made the acceptable compromise of adding "in coordination with the director of the department of social services" to the previously total-prescribing powers of the Department of Education.

A further change was agreeably made to Section 352-24, Harboring or concealing a person away from custody assigned by competent authority. This section provides for the offense of harboring or concealing a committed person who has been placed in the custody of an authorized custodian. A major thrust of the section is to address the problem of pimps attempting to solicit prostitutes from the ranks of these persons committed to the custody of some competent authority.

The Senate version defined such an offense in subsection (b) as a class C felony. The House deleted subsection (b) and attempted to conform the classification of the offense with Section 710-1028 of the Hawaii Penal Code. Section 710-1028 was found by this Committee to constitute an improper reference due to its emphasis on the offense of harboring or concealing a person on a pre-adjudication basis. Furthermore, Section 710-1028 only defines what constitutes hindering prosecution including harboring or concealing and does not specify the degree of offense involved. For these reasons, the Committee deleted the House's suggested penal code reference and simply made the offense of harboring or concealing a misdemeanor. Therefore, "subject to section 710-1028" is replaced by "guilty of a misdemeanor offense."

The words "has left" in Section 352-24 have been replaced with the phrase "was in the custody of". This clarifies the status of those persons who if harbored or concealed by another will render the latter guilty of the misdemeanor offense specified in this section.

The technical change of relocating Section 352-24 to Section 352-27 was also made in this conference draft. This was done simply for more logical sequential ordering of sections. Three other sections were affected by the relocation in terms of changed section numbers.

The final change made to Chapter 352 was for clarifying cross-reference purposes. The following language was added to the end of the first paragraph of Section 352-26 (now Section 352-25), Furlough, parole, discharge.

"Court approval shall be obtained when such is specifically required in accordance with section 352-29."

This reference is necessary to qualify how the director may proceed to discharge a committed person.

Newly-numbered Section 352-25 requires that the director give family court thirty days' notice prior to discharging a person to afford the court the opportunity to order otherwise. Section 352-29, Termination of director's right to supervise person, provides for discharge by the director of a person under age eighteen only with the express approval of family court if such is required prior to discharge. The director's order to discharge persons eighteen or older must be accompanied with such express approval. In other words, the thirty-day notice is required in all discharge attempts and express prior court approval is required in certain discharge cases. The added sentence clarifies the proper statutory provision of this power to discharge.

As a final comment, your Committee on Conference addresses the matter of funding for this juvenile justice plan. The Juvenile Justice Master Plan formulated by this bill is the culmination of the efforts of many individuals over the last several years. However, it is only a plan -- a conceptualization of concerned analysis and thoughtful

deliberation. As with any plan, it will be meaningless without effective implementation. As with any effort to meet the need for public service, those who will be assigned the task of implementing this Juvenile Justice Master Plan will be able to accomplish as much as they are allowed adequate facilities, equipment, personnel, and funds. It will be a paramount challenge for Hawaii's legislature during this and the next several years, whether it will provide adequate funding to meet the crucial need sought to be addressed by this bill.

A noted authority in the area of juvenile justice, Chief Judge Louis Bazelon of the Appeals Court of the District of Columbia made the following statement in a recent Department of Justice publication that accurately reflects your Committee's conviction regarding funding:

"When the legislature justifies confinement by a promise of treatment, it thereby commits the community to provide the resources necessary to fulfill the promise . . . and the duty that society assumes, to fulfill the promise of treatment employed to justify involuntary (confinement) is clear." (Juvenile Disposition and Corrections, Volume IX, page 17 of Working Papers of the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, prepared under a grant from the Law Enforcement Assistance Administration).

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1851-80, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1851-80, S.D. 2, H.D. 1, C.D. 1.

Representatives D. Yamada, Honda, Ige, Lee, Masutani, Nakamura, Ikeda, Medeiros and Kobayashi,
Managers on the part of the House.

Senators O'Connor, Cobb, Mizuguchi, Ushijima, George and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 86-80 on S.B. No. 2927-80

The purpose of this bill is to protect the rights of in-patients in a psychiatric facility.

To accomplish this purpose, this bill provides for (1) a requirement of informed consent from a patient or the patient's guardian prior to the commencement of any non-emergency treatment for mental illness, and (2) a bill of rights for in-patients which may be adopted by the facility.

Your Committee has removed the mandatory language in Section -2 of the bill which would have required all licensed psychiatric facilities to guarantee certain rights to in- patients. It is the belief of your Committee that while the list of rights in section -2 are reasonable and desirable, to mandate the enforcement of such rights at this time might cause considerable hardship and unforeseen consequences for both patients and the facilities. It is, however, the hope of this Committee that psychiatric facilities will review the list of rights and adopt these rights for their patients.

Non-substantive, technical changes have also been made to this bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2927-80, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2927-80, S.D. 2, H.D. 1, C.D. 1.

Representatives D. Yamada, Dods, Garcia, Honda, Lacy, Segawa and Medeiros,
Managers on the part of the House.

Senators O'Connor, Carpenter and Saiki,
Managers on the part of the Senate.

Conf. Com. Rep. No. 87-80 on H.B. No. 1784-80

The purpose of this bill, as received, is to require the developer of any condominium conversion project to make first sale offerings of 25 per cent of the apartments in the project to persons who will reside in them as owner-occupants. Your Committee recognizes that the price of housing is rapidly rising and that with a shortage of single-family

residences in this State, it would be beneficial to give persons looking for a home the opportunity to buy a residence at a time when the price is generally at its lowest.

Under this bill, a developer of a condominium conversion project must publish an announcement in a newspaper of general circulation in the county of the project giving material information on the project to prospective purchasers. The developer must also compile a reservation list of persons who have applied for one of the designated apartments as owner-occupants and sell to only persons on such list during the first 15 days of the sales campaign.

Your Committee upon further consideration has made the following amendments to H.B. No. 1784-80, H.D. 1, S.D. 1:

(1) The bill has been amended to apply to apartments in any condominium project which contains apartments intended for only residential use but excludes any such apartments if they are located on parcels designated by a county for hotel or resort use.

(2) The percentage of apartments designated for initial sale to only prospective owner-occupants is increased to 50 per cent.

(3) The time for publishing the public announcement of the project has been moved so as to begin 15 days prior to the filing of the notice of intent to sell a project with the real estate commission.

(4) The number of days during which sales must be limited to only prospective owner-occupants has been decreased to 10.

(5) The contents of the public announcement have been amended to require only a fair and reasonable estimate of the total number of apartments in the project and number of floors, bedrooms, and square feet of each apartment. This amendment is made with the realization that sometimes building plans must be altered prior to completion of construction and that full disclosure of this fact should be made to the consumer. The announcement must also state the intended use of all apartments in the project. Some consumers may not wish to live in a project where there will be transient residents or commercial establishments.

(6) A provision has been included to require the developer of a condominium conversion project to make the first offer of sale of the owner-occupant designated residential units to the persons occupying the units just prior to the conversion if such persons intend to occupy the units as owner-occupants, and the Residential Landlord-Tenant Code has been amended to conform.

(7) A provision has been included which would require any person contracting to purchase one of the designated residential units to obtain financing or a commitment for financing within 30 days from the end of the 10-day limited sales period. This amendment was made to accommodate the policy of lending institutions to process applications for financing only after a contract for purchase has been entered into. The 30-day period to obtain financing was selected as the most reasonably short period of time in which a financing institution is able to act on the application.

(8) An obligation on lenders has been included in this bill to assure that all applicants for credit are notified of action on their applications within 30 days of submission. Such a provision is important since this bill has been amended to provide that a developer is required to complete sales of the designated units to prospective owner-occupants only if they have received a commitment for adequate financing within 30 days following the limited sales period. An affirmative duty has also been imposed upon such lenders making loans for the purposes of this bill to require them to be assured that an applicant is, in fact, a prospective owner-occupant. A lender which fails to comply would be subject to the general penalty section of the chapter on horizontal property regimes.

(9) The requirement that a prospective owner-occupant must submit satisfactory evidence that financing will be applied for has been deleted because of the amendment described in item (7).

(10) The reference to the newspaper in which the public announcement is to be published has been amended to provide that the paper must be one which is published daily. This change is to insure that the greatest number of persons read the announcement as possible.

(11) A provision has been included that developers need not pay any interest on earnest money deposits.

Your Committee has also made various other technical, nonsubstantive amendments for purposes of clarity and style.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1784-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1784-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Shito, Aki, Baker, Blair, Kobayashi and Lacy,
Managers on the part of the House.

Senators Cobb, Young and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 88-80 on S.B. No. 1838-80

The purpose of this bill is to extend the life of the crime commission as presently constituted and organized to June 30, 1981, and to create a reorganized commission with newly-stated purposes to begin July 1, 1981, for a period ending January 30, 1984, unless extended by the legislature.

The conference draft of this bill is the result of a compromise between originally quite different House and Senate versions. This compromise was worked out by your Committee after extensive discussion and debate. The result is a bill which creates an effective and efficient commission which will serve well in the fight against crime in Hawaii.

I. PURPOSE

The principal purposes of the commission are to conduct research, and to investigate incident to that research, the status of crime in Hawaii. Pursuant to these purposes, your Committee envisions the commission operating in all areas that affect crime -- those involved in crime, the victims of crime, the courts, the prosecutors and public defenders, the police, and law enforcement agencies, the executive and legislative branches of government, and any other area the commission feels appropriate. Such research will serve a significant overview function not presently in operation.

The commission is not intended by your Committee to be a "super law enforcement agency." Rather, your Committee intends that the commission will not duplicate the law enforcement efforts of other agencies. The commission is not designed or empowered to prosecute cases or work up cases for prosecution. Any cases for which prosecution is evident should be turned over by the commission to appropriate law enforcement agencies. Discovery of crime does not require the termination of investigation if further investigation is required incident to the need for ongoing research by the commission.

II. TERM OF COMMISSION

The commission as presently constituted shall continue until June 30, 1981. The terms of the present commissioners are therefore extended to June 30, 1981. The new commission created by this bill shall begin service July 1, 1981, for a term ending January 30, 1984, unless renewed by the legislature. This is not the permanent investigative body originally envisioned by the Senate bill or the short-term citizens' panel envisioned by the House bill.

III. COMPOSITION OF COMMISSION

The commission shall consist of nine members. This is a greater number than the seven "investigators" proposed by the Senate bill and less than the twelve "citizens" proposed by the House bill. This compromise number parallels the purpose of a commission that investigates only incident to research.

The members need not be "representative of the population of the State." Their selection should be more closely geared to persons with the temperament and desire for such service rather than mere representation of a segment of the community. On the other hand, "expertise" is not a required factor either.

The members shall be screened by the Attorney General due to the sensitive nature

of the matters they will be researching. "Criminal history record information," as this term is defined in section 846-1(3), on nominees is to be obtained and available to the governor and the Senate. Honesty and the ability to keep confidential information from "leaking" are the qualities your Committee expects of the commission members.

A. Members Generally

All members shall be appointed by the governor with the advice and consent of the Senate. Unfilled vacancies shall be filled by the governor with the advice and consent of the Senate and the members may be removed or suspended for cause by the governor pursuant to chapter 91. The members shall serve without compensation.

B. The Chairman

The chairman shall be specifically appointed by the governor with the advice and consent of the Senate. A vacancy in the chairman's position shall be filled in the same manner as a chairman's initial appointment. The chairman may be removed or suspended by the governor upon two-thirds vote of the commission initiating such action. The chairman may only vote in case of a tie.

The chairman shall be paid $75 per day for each day of attendance at a meeting or each day in which he spends four or more hours on commission business. The chairman's compensation recognizes the key role he plays as the "driving force" behind the commission's direction.

IV. FUNCTIONS

As stated above, the commission's basic function is research and collection of information regarding crime in Hawaii. Investigation may be conducted incident to such research. The commission retains its presently existing subpoena power to enchance its investigative efforts. The subpoena section has, however, been redrafted to correspond to section 92-16, Hawaii Revised Statutes.

The other existing functions of the commission have been reinstated in the order of their importance as viewed by your Committee. Notice that review and recommendations to the legislature and other branches of government in all areas involving crime is mandated.

V. LEGISLATIVE OVERSIGHT COMMITTEE

The legislative oversight committee of the Senate bill has been deleted as being inconsistent to the compromise worked out by your Committee. "Investigative reports" will not be submitted to the legislature by the commission.

VI. OVERVIEW

Most of the compromises agreed upon by your Committee resulted from agreement on the purpose of the commission. Neither a "super investigative body" envisioned by the Senate bill or a "simple citizens' commission" envisioned by the House bill has been created. Rather, your Committee has created an important and powerful research body relating to criminal law. Your Committee feels that the wisdom of the creation of such a commission will be evident from its effectiveness in improving the criminal justice system in future years.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1838-80, S.D. 3, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1838-80, S.D. 3, H.D. 1, C.D. 1.

Representatives D. Yamada, Dods, Garcia, Holt, Honda, Medeiros, Hashimoto and Ikeda,
Managers on the part of the House.

Senators O'Connor, Cayetano, Abercrombie, Ajifu, Campbell, Kawasaki and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 89-80 on H.B. No. 2720-80

The purpose of this bill is to appropriate funds for the settlement agreement which was

negotiated between the State of Hawaii and Mark Construction, Inc., for three cases filed in the Circuit Court of the First Circuit.

The three separate actions, civil numbers 38134, 44113, and 45060, sought damages totalling in excess of $12,000,000, which were allegedly suffered as a consequence of performing construction contracts for three separate federal-aid highway projects for the State Department of Transporation.

However, due to the extended and complex nature of the claims, the trial was suspended and the parties, with the approval of the court, entered into negotiations to settle their differences. In February, 1978, an agreement was reached to settle said cases for $3,500,000, contingent upon legislative appropriation. Such contingency, however, was not forthcoming.

Your Committee on Conference, however, finds that further analysis and reconsideration of the cases indicate that an appropriation in the amount of $2,500,000 for the purpose of settlement of the claims of Mark Construction, Inc., against the State of Hawaii would be in the best interest of the State. As both parties to the suits are amenable to the amount of $2,500,000, such sum appears to be a fair and just settlement, and therefore, your Committee has amended this bill to reflect the agreed-to settlement. In addition, reimbursement to the State through application to the Federal Highway Administration for the amount of the settlement will result in off-setting of the funds.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2720-80, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2720-80, S.D. 2, C.D. 1.

Representatives D. Yamada, Dods, Honda, Inaba and Lacy,
Managers on the part of the House.

Senators Cayetano, Kawasaki, O'Connor, Yamasaki, Anderson and Carroll,
Managers on the part of the Senate.

Conf. Com. Rep. No. 90-80 on H.B. No. 2773-80

Recent economic conditions have resulted in alarming instability in the previously stable bond market. Interest rates on government bonds which were once relatively stable at six per cent or less have in recent months soared in excess of eight or nine per cent. Translated into dollars, each interest point increase on a long term multi-million dollar bond represents millions of dollars in extra interest expense which must be borne by government, and thereby the taxpayers, over periods ranging from twenty to thirty years.

Numerous major cities as well as states have recently postponed or cancelled planned bond issuance due to high interest rates demanded on government bonds.

Unlike many state and local governments, Hawaii is fortunate in that during this time of high interest costs, the State enjoys an ample surplus in its general fund. Thus, your Committee finds that it is undesirable at this time to allow the issuance of state bonds at interest rates which are so costly. Your Committee has therefore amended section 1 of this bill to provide for a nine and one-half per cent limitation on State bonds and section 39-5, Hawaii Revised Statutes, is accordingly revised by your Committee.

Your Committee further agrees that unlike the State government, the counties are not in a position to resort to temporary cash financing for their capital improvement projects. Thus, the counties have no recourse but to seek to raise capital for such projects through the bond market. Your Committee therefore approves of the proposal to allow the county governments to issue bonds at rates which may be established by ordinance adopted by the respective county governing body. (See section 2 of this conference draft.)

Your Committee also has amended this bill by appropriately renumbering the remaining sections of the bill.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2773-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2773-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy and Narvaes,
Managers on the part of the House.

Senators Cayetano, Kawasaki, Abercrombie and Ajifu,
Managers on the part of the Senate.

Conf. Com. Rep. No. 91-80 on H.B. No. 18

The purpose of this bill is to establish a council on revenues as is required by Article VII, section 7, of the State Constitution. The council is to prepare revenue estimates of the state government and to report the estimates to the governor and the legislature.

The creation of the council was authorized by the 1978 Constitutional Convention with the intention that the estimates to be prepared by the council would be considered by the governor in preparing the budget, recommending appropriations and revenue measures, and controlling expenditures. A further intention was that the legislature would also consider the estimates in appropriating funds and enacting revenue measures. Thus, the council's estimates should provide guidance to the governor and the legislature in four areas: (1) budget preparation by the governor; (2) appropriations by the legislature; (3) budget execution by the governor; and (4) adjustments to the State's revenue structure. The constitutional provisions do not require that the estimates of the council be binding on the executive or the legislature. However, should the governor or the legislature choose to deviate from the estimates, such deviation and the reasons therefor are to be publicly disclosed.

This bill makes clear that the council is to provide revenue estimates for the fiscal year in progress and each of the ensuing fiscal years of the six-year state program and financial plan. Such estimates will be required in order to provide for sound fiscal planning.

Under this bill, the council is to report to the governor and the legislature at least four times a year on June 1, September 10, January 10, and March 15. Your Committee believes that this timetable is necessary due to the budget preparation, budget appropriation and budget execution schedule of the State. Revenue estimates required on these dates will provide timely guidance for the executive branch and the legislature in the budgetary process.

This bill will also allow the council to meet in closed session, chapter 92 ("sunshine law") notwithstanding, when the council must discuss confidential tax information. Your Committee agrees that this exclusion from the "sunshine law" for certain council meetings is necessary in order for the council to be able to properly assess state revenues obtained from competitive businesses.

The council has been placed in the department of taxation for administrative purposes since revenue projection figures can be readily obtained from that department. The departments of budget and finance and taxation are directed to provide the council with such staff assistance and technical support as necessary.

Your Committee has amended this bill as follows:

(1) The council is to be comprised of seven members. Three members are to be appointed by the governor, two members are to be appointed by the president of the senate and two members are to be appointed by the speaker of the house of representatives. These members shall then select a chairman from their membership.

(2) The council members appointed by the governor shall serve for four year terms, and those appointed by the president of the senate and the speaker of the house of representatives shall serve for two year terms.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 18, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 18, H.D. 1, S.D. 2, C.D. 1.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy, Narvaes and Sutton,
Managers on the part of the House.

Senators Cayetano, Abercrombie, Carpenter, Chong, Hara, Kawasaki, Toyofuku, Yamasaki, Yim, Young, Ajifu, Anderson, Soares and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 92-80 on H.B. No. 1912-80 (Majority)

The purpose of this bill is to provide supplemental appropriations for fiscal year 1980-81 and to make other amendments to the 1979 General Appropriations Act.

This report summarizes the basic financial guidelines and program appropriation decisions agreed to by your Committee. To the extent that Standing Committee Report No. 667-80 of the House Committee on Finance and Standing Committee Report No. 959-80 of the Senate Committee on Ways and Means are not contradicted by provisions of the bill finally agreed to by your Committee or by this report, expressions of legislative concern, intent and direction in those reports are to be regarded also as expressions of your Committee.

Basic Financial and Budgetary Guidelines

General Fund Expenditure Ceiling. The 1978 State Constitution requires the legislature to establish a "general fund expenditure ceiling which shall limit the rate of growth of general fund appropriations . . . to the estimated rate of growth of the State's economy as provided by law." The Constitution also requires that such a ceiling shall apply to the general fund expenditures proposed by the governor in the budget.

The requirement for a general fund expenditure ceiling, has been established in separate legislation which provides for the application of a general fund expenditure ceiling beginning with the next fiscal biennium, using the rate of change of total state personal income as the measure by which general fund appropriations shall be recommended by the governor and provided for by the legislature. However, uncertainty remains as to the appropriateness of the use of total state personal income as the indicator of economic growth used to calculate the expenditure ceiling for any year. Therefore the legislation regarding the expenditure ceiling has been amended to address these concerns in the following manner: (1) a "sunset" provision has been added to provide for the repeal of the provisions of such legislation as of June 30, 1984. This would require the legislature to conduct a review at that time of the appropriateness of the expenditure ceiling formula; (2) the legislative auditor has been directed to conduct a study of various economic growth indicators and to provide recommendations as to which indicators would be best indicative of the estimated rate of growth of the State's economy and to present such a report to the legislature prior to the 1984 regular session.

In the meanwhile, your Committee believes that the general fund appropriations made by this Session of the legislature should be controlled as if implementing legislation for the constitutional spending limitation were already in effect. This would be in keeping with the spirit of the constitutional provision. This was the guideline used in the development and passage of the General Appropriations Act of 1979, and it continues to be the guideline used by your Committee in this Supplemental Appropriations bill and other appropriation bills recommended for passage in this legislation session.

Funds for Private Organizations. Another constitutional matter resolved by your Committee is the question of the funding of the numerous programs of private organizations receiving state financial aid through grants, subsidies and purchases of service. Undoubtedly, many of these programs are for a public purpose and in the public interest, but the 1978 Constitution prohibits all funding of private organizations "except pursuant to standards provided by law."

Your Committee has decided that a system of both substantive and procedural standards should be incorporated in the supplemental appropriations bill. Such a system calls for private organizations funded by this bill and the 1979 General Appropriations Act to agree to certain fundamental conditions before funding can be released. It also requires appropriations intended for private organizations in this bill to be brought under such controls as are normally required to be exercised over appropriations to the programs of government agencies. In addition, the system of controls incorporated in this bill requires the development and implementation of procedures to ensure that requests for grants, subsidies and purchases of service for the next budget biennium will be reviewed and analyzed by the appropriate state agencies and the governor prior to the consideration by the legislature.

It is intended by your Committee that the standards required by the Constitution shall be enacted through appropriate amendments to the Hawaii Revised Statutes in the 1981 Regular Session and that the standards provided for in this bill shall serve as the standards until such statutory amendments are effected. Such a sequence of actions will enable the standards of this bill to be tested in the next budget execution and budget preparation cycle before being established, and modified if necessary, in statutory form.

The major program recommendations of your Committee on the supplemental appropriations bill are covered in the remainder of this report.

ECONOMIC DEVELOPMENT

New and Emerging Industries. A diversified and stable economy has long been the goal of the Hawaii State Legislature. In this regard, funds have been made available to support the development of Hawaii's fledgling fishing industry in accordance with the recently completed Fisheries Development Plan. In addition, your Committee has provided funds to determine the environmental impacts of the manganese nodule processing industry, the electronics industry, and the garment industry.

Tourism. In recognition of the plight of Hawaii's major industry and the decline of west-bound visitors to Hawaii, additional funds have been provided to support tourism.

Redevelopment of the Aloha Tower Complex. Funds have been provided for development of design and financial criteria including site assessment studies intended to guide ultimate redevelopment of this significant landmark.

EMPLOYMENT

Disability Compensation. Your Committee has included appropriations to improve the State Workers' Compensation program. Improvements include establishing a unit in the Department of Labor and Industrial Relations for the rehabilitation of permanently disabled workers and establishing a study commission to review the workers' compensation law and make recommendations on ways of reducing or stablilizing costs while maintaining benefits at existing levels.

Career Kokua. Funding is included to extend the services of the Hawaii Career Information Delivery System (Career Kokua) program to the neighbor islands. Career Kokua provides current occupational, educational, training, job search, and related occupational and career information.

TRANSPORTATION

General Aviation Airport. Hawaii's congested Honolulu International Airport (HIA) remains a concern due to the heavy mix of large and light aircraft. Funds have been made available to support a general aviation airport and relieve traffic at the HIA.

HEALTH

Emergency Medical Services. Your Committee recognizes the impact of higher inflationary costs for personnel, fuel, and drug and medical costs on the various county operated emergency medical services systems. funds are included in the budget for this purpose.

Mental Health. Due to the recent and rapid increase of penal code patients admitted to the Hawaii State Hospital, your Committee has found that additional staffing is required by the facility for security purposes as well as for the rehabilitative needs of these patients and has provided funds accordingly.

Hospital Care. Your Committee recognizes the need for additional staffing to state-administered hospitals for expansion and upgrading of services. Additional funds for this need have been provided. Also, two of the major items for which funds are provided are for a new Acute Care Facility at Hilo Hospital and the modernization and renovation of Kula Hospital.

Adult Day Activity for Developmentally Disabled. Your Committee believes there is a need for additional pre-vocational services for developmentally disabled adults. Presently, there is a lack of programs for those over twenty years of age. Your Committee has therefore provided additional funds to meet this purpose.

Community Based Residential Treatment Program. Funds have been provided to

initiate establishment of a system of community-based residential treatment programs for the mentally ill to provide alternatives to institutional settings.

SOCIAL PROBLEMS

Medicaid. Your Committee has provided for an appropriation of $4 million so that payments to medical providers -- doctors and dentists -- can be made on a more equitable basis. The Medicaid profile had not been updated since 1975, but with the updating of the profile to 1979, this should substantially correct the inequities which have resulted. In the meanwhile, your Committee requests that the Department of Social Services and Housing explore and report to the 1981 session on ways to curb recipient abuse in the Medicaid program, including an analysis of a co-payment requirement for recipients. Your Committee also believes that the medical profession should come to grips with the problem of recipient abuse in Medicaid services. It therefore requests the Hawaii Medical Association to study and report on the controls which the medical community might exercise to assist in curbing recipient abuse.

Adult Boarding and Care Homes. Your Committee has provided additional funds to increase payments to recipients of Supplemental Security Income residing in adult and boarding homes. Current payment levels are inadequate for the continued operation of these homes and without additional payments many of these homes may close. Considering the expensive alternative of institutional care, your Committee believes that provision of additional payments to continue the operation of these homes is a cost effective means of maintaining care for Hawaii's needy.

Welfare Administration. The State's welfare program has grown substantially in recent years. Several audits have pointed out deficiencies in the administration of the Medicaid Program and your Committee has provided resources to address these deficiencies. Your Committee has also provided additional positions to adequately staff the Income Maintenance Program and to strengthen the fraud investigation capabilities of the Department of Social Services and Housing.

LOWER EDUCATION

Intensive Basic Skills. Funds have been provided to continue the special intensive basic skills to students requiring such services. This program supplements on-going programs with the objective of assuring that students acquire the basic skills of speaking, reading, writing, listening, computing, and thinking.

Special Needs. The appropriation of special needs funds to each school was instituted by the Legislature in 1977 to enable each school to meet some of its own needs which are not met by the funds which the Department of Education ordinarily provides. From all accounts, the program has been successful and widely accepted by the schools. The current formula for the allocation of special needs funds provides for $2,000 to each school, regardless of size, plus $3.50 per pupil. Your Committee has reviewed the formula and finds that it unduly favors smaller schools over larger ones such that students in some schools recieve more than three times those in other schools. While recognizing that there are probably economies of scale in larger schools, your Committee proposes that the formula be made less inequitable.

Under the new formula proposed by your Committee, each school is to receive $1,000 plus $5.00 per pupil. This means, for example, that a large school such as Waianae Elementary with 1,169 students would receive $6,845 ($5.86 per student), whereas it would have received $6,092 ($5.21 per student) under the old formula. A small school such as Anuenue with 156 students would receive $1,780 ($11.41 per student) under the old formula. Smaller schools would still receive a disproportionately larger share when calculated on a per capita basis, but the inequity when compared with larger schools would not be as great under the new formula.

Textbooks and Learning Materials. Your Committee is concerned over reports of widespread shortages of textbooks and other needed learning materials in the schools. However, no new appropriations are required at this time, inasmuch as it is your Committee's understanding that funds are available from salary savings resulting from the United Public Workers' strike to enable the necessary purchases to be made. It is your Committee's expectation that the Department of Education will institute a system by which textbook and learning material needs can be identified in a timely manner, budgeted for properly, and accommodated through timely purchases and distribution; and by which emergency shortages can be filled with minimum disruption of classroom instruction. The Department of Education should not have to conduct a special survey to determine the extent of textbook shortages if it has in place such a system. Your Committee requests the department to submit a report to the 1981 legislative session

detailing what changes have been made to (1) assure that all schools have adequate textbooks and learning materials; and (2) assure that there will be no recurrence of a condition of shortages.

Athletic Coaches. While the compensation to athletic coaches in schools should be further reviewed, your Committee has tken the immediate step of providing funds so that all coaches who are authorized for a particular school can be compensated through state funds.

Hawaiian Culture and Language Program. The 1978 Constitutional Amendment (Article X, Section 4) requires the State to promote the study of Hawaiian culture, history, and language. Your Committee has provided funds to develop a plan to implement the intent of this amendment.

Limited English Speakers. Funds are included to accommodate additional students whose first or home language is other than English. This program will assist students in acquiring the necessary level of language proficiency to allow them to perform satisfactorily in regular classes where English is the instruction medium.

Asbestos in Classrooms. Your Committee has provided $5.4 million in capital improvement funds to eliminate the asbestos health hazards in classrooms. These funds are in addition to $25 million worth of cash financing of other urgent repairs and maintenance projects throughout the State, a substantial portion of which is directed at correcting deficiencies in the schools.

HIGHER EDUCATION

Continuing Education for Women. The Displaced Homemakers Program was evaluated and was found to provide valuable services to a growing amount of women in today's society. Courses provided under this program enabled program participants to better cope with the problems encountered in business and in their private lives. Funding support was provided to continue this program.

Graduate Assistant Stipends. Your Committee realizes the need for graduate assistants in the delivery of a quality educational program at the University of Hawaii. Since graduate assistants have not received any increases in their stipend allowance for over three years, your Committee has provided additional funds to help these students meet some of the inflationary increases in the cost of living.

Maui Community College. Maui Community College serves as the only higher education institution for the county of Maui. Funds were authorized to provide students attending MCC better student housing by replacing the existing, dilapidated dorms with new facilities.

School of Law. The newly instituted School of Law at the University of Hawaii has begun to emerge as a positive force in the community. Services are provided through its community legal education programs, its research programs and the publication of the Law Review. Funding support was provided for physical facilities for the School of Law and to enhance its library collection.

CULTURE AND RECREATION

Public Television. Your Committee has provided capital improvement funds for the expansion of public television. Funds are included for expansion of existing studio facilities and for installation of translators to provide improved reception for residents of Windward Oahu, northern Kauai, and the Kona Coast and Volcano areas of the Big Island.

Historical and Archeological Places. Hawaii's cultural and historical sites are threatened by impending destruction in the face of rapid urban development. Your Committee has recognized this situation and has accordingly provided funds to save those sites for the posterity of the State.

Hawaii Foundation for History and the Humanities. The Hawaii Foundation for History and the Humanities has been dissolved and its functional responsibilities transferred to the State Foundation on Culture and the Arts and the Department of Land and Natural Resources.

Pacific War Memorial Commission. The Department of Budget and Finance has recommended that the Pacific War Memorial Commission be abolished and its functions

transferred to the Department of Land and Natural Resources. In order to accomplish a smooth transition, funding for the Pacific War Memorial Commission has been continued through FY81.

PUBLIC SAFETY

Oahu Community Correctional Center. In order to help alleviate the overcrowded conditions in our prisons, your Committee has provided supplemental funds for positions and operating expenses for Modules 17, 18, and 19.

Other Programs. Your Committee has also provided funds for Liliha House II, a program to assist inmates in making the transition to living in a community setting.

GOVERNMENT-WIDE SUPPORT

Reapportionment Commission. Funds for convening the Reapportionment Commission as mandated by Article IV of the Constitution of the State of Hawaii are provided.

Elections Administration. New Constitutional requirements mandating the single party primary and confidentiality in party preferences necessitated a unique approach to the administration of elections. Additional funding provided to the Lieutenant-Governor's office reflects the legislature's endorsement and accommodation of public intent in this regard.

RECOMMENDATION

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1912-80, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1912-80, H.D. 1, S.D. 1, C.D. 1.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy, Narvaes and Sutton,
Managers on the part of the House.
(Representative Narvaes did not concur.)

Senators Cayetano, Abercrombie, Carpenter, Chong, Hara, Kawasaki, Toyofuku, Yamasaki, Yim, Young, Ajifu, Anderson, Soares and Yee,
Managers on the part of the Senate.
(Senators Anderson and Yee did not concur.)

Conf. Com. Rep. No. 93-80 on H.B. No. 1865-80

The purpose of thi bill is to provide supplementary Judiciary appropriations for the fiscal biennium beginning July 1, 1979, and ending June 30, 1981.

Your Committee has assessed the Judiciary's operating request and has included among other requirements the following significant items:

1. Twenty-six positions with associated costs -- four for the Circuit Court, one for the Family Court, sixteen for the District Court, four for the Administrative Director Services, and one position for the Driver Education program;

2. $75,000 to begin a review and analysis of the financial management systems of the Judiciary; and

3. Funding and appropriate language to enable the Judiciary to assume the security guard function, formerly under contract with the Attorney General's Office, thereby allowing for more efficient utilization of this resource.

In addition, your Committee has reviewed the proposed appropriation increases in the capital improvement projects originally stipulated in Section 11 of Act 208. These projects are organized under the title of the Administrative Director Services (JUD 201) of the Judiciary. Your Committee has adjusted the Judiciary's request by deferring the appropriation request for equipment for the State Judiciary Complex on Oahu and reducing the request for renovation of Judiciary buildings statewide.

The cost of both the additional and new appropriations for capital improvement projects amount to the sum of $35,509,000. This replaces last year's CIP sum of $5,339,000, as shown

in Section 5 and Section 6 of this bill and will be funded by general obligation bonds.

Section 6 of this bill is amended by revising the general obligation bond authorization to reflect reductions in appropriations. Section 7 of this bill has also been amended to synchronize the lapsing date for appropriations made for capital projects in accordance with constitutional amendments.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1865-80, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1865-80, H.D. 1, S.D. 2, C.D. 1.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy, Narvaes and Sutton,
Managers on the part of the House.

Senators Cayetano, Kawasaki, Abercrombie, Carpenter, Chong, Hara, Toyofuku, Yamasaki, Yim, Young, Ajifu, Anderson, Soares and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 94-80 on H.B. No. 1864-80 (Majority)

The purpose of this bill is to appropriate moneys out of the general revenues of the State for the payment of certain tax refunds, judgments, settlements, and outlawed warrants and accounts.

The claims were filed with the state director of finance who transmitted all the claims with supporting data to the legislature.

The large number of miscellaneous claims approved by the departments remains a matter of concern to your Committee. Your Committee agrees that standards and guidelines need to be developed for the review process of these claims. For that reason, your Committee has not granted relief at this time to various miscellaneous claims.

Your Committee has amended this bill to delete the claim for tax refund of Gasco, Inc. ($41,564.71) and to amend the amount of the claim of George Montague from $25,000 to $40,000.

This bill as amended by your Committee appropriates $321,142.54 representing 35 claims under section 37-77 and chapter 662, Hawaii Revised Statutes.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1864-80, H.D. 1, S.D. 2, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1864-80, H.D. 1, S.D. 2, C.D. 1.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy and Narvaes,
Managers on the part of the House.
(Representative Lacy did not concur.)

Senators Cayetano, Kawasaki, Abercrombie, Carpenter, Chong, Hara, Toyofuku, Yamasaki, Yim, Young, Ajifu, Anderson, Soares and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 95-80 on S.B. No. 2795-80

The purpose of this bill is to conform the Hawaii Revised Statutes to the provisions of Article VII, Section 8 and 9, of the State Constitution as amended by the Constitutional Convention of 1978 and ratified by the voters on November 7, 1978.

This bill establishes a general fund expenditure ceiling as required by the constitution and sets forth a formula for adjusting that ceiling by the estimated rate of growth of the State's economy.

The expenditure ceiling for each fiscal year as determined under this bill sets the

limit of general fund appropriations which the legislature is authorized to appropriate from the general fund. In the event that the legislature should choose to exceed the expenditure ceiling this bill would first require the legislature to secure a two-thirds vote of each house of the legislature approving such excess appropriations; set forth the dollar amount and the rate by which the appropriations allowed exceeds the expenditure ceiling; and set forth the reasons for exceeding the expenditure ceiling in each act which will cause appropriations from the general fund to exceed those allowed under the expenditure ceiling.

The conferees of the Senate and the conferees of the House of Representatives engaged in considerable debate as to the appropriate formula for determining the general fund expenditure ceiling. Discussion centered principally around the appropriate indicator of state growth which would be utilized and which fiscal year would be designated the base year from which the expenditure ceiling for succeeding fiscal years would be calculated.

It was proposed by the Senate that the average rate of increase in total state personal income over a three year period be utilized as the index of state growth and that fiscal year 1978-79 be designated the base year and that the general fund appropriations made in that year be the base amount from which the expenditure ceiling for succeeding fiscal years be calculated. The Senate position was premised on the ground that total state personal income is an indicator which is best reflective of the economic condition of the state for the year for which it is determined and is readily available and objectively determined through the United States Department of Commerce.

The House proposal was that the average rate of increase in general fund revenues over a three year period be utilized as the index of state growth and that fiscal year 1980-81 be designated as the base year. This proposal was grounded in the argument that information regarding the increase in general fund revenues is readily available and substantially more current than the use of United States Department of Commerce information regarding total state personal income which is usually not available until sometime well into the year after the year for which the determination is made. The use of this indicator would thus ensure that the permissible increase in general fund expenditures would more likely correspond to current fluctuations in the rate of growth of the state economy.

Your Committee has agreed that the average rate of increase in total state personal income would be an appropriate indicator of state growth, provided that such average rate of increase would be reflective of the three calendar years immediately preceding the session of the legislature making appropriations from the state general fund rather than the three calendar years immediately preceding the calendar year before the session of the legislature making appropriations from the state general fund. This bill has been amended accordingly.

Your Committee has amended this bill to designate fiscal year 1978-79 as the base year and the general fund appropriations for that year as the expenditure ceiling from which the expenditure ceiling for succeeding years is determined.

Since there is usually a considerable lag between the end of the calendar year and the date of publication of the total state personal income for that year by the United States Department of Commerce, the bill has been amended to provide that for any calendar year for which total state personal income data has not yet been published by the United States Department of Commerce, total state personal income for that year as estimated by the council on revenues shall be the economic indicator utilized.

Your Committee has also amended the bill by adding a section directing the council on revenues to prepare an estimate of the total personal income for the calendar year in progress and to report its estimate and any revision thereto to the director of finance, the governor, the chief justice, and the legislature each July 15, and October 15. These dates are designated to correlate with the dates on which the director of finance is required to determine a preliminary and final estimate of the state growth and the expenditure ceiling.

The bill has been amended to change the date on which the director of finance is required to determine a preliminary estimate of the expenditure ceiling from July 1 to August 1 of each year. This change allows the council on revenues to have some lead time in which to obtain the second quarter tax receipts data and utilize such data in preparing its estimate of total state personal income for that year.

Your Committee has also made various other language changes including:

1. Amending line 17 of page 3 by substituting the word "adjusting" for "increasing". This word change makes clearer the intent that the expenditure ceiling be increased or decreased as appropriate data regarding state growth becomes available.

2. Amending line 23 of page 4 by changing the phrase "For purposes of this section" to "For purposes of this subsection." This change clarifies the intent of that paragraph.

3. Amending line 13 of page 5 by substituting the word "four" for "three" and to thus require the governor to present the legislature with a statement showing the total state personal income for each of the four calendar years immediately preceding the session of the legislature making appropriations from the state general fund. This information is necessary in order to determine the rate of change in total state personal income for three years.

Your Committee has also changed the effective date of this Act to July 1, 1980 rather than upon its approval. Thus, the first state budget which the provisions of this bill would legally impact would be the budget for fiscal biennium 1981-83. However, your Committee intends that the provisions of this bill be self-imposed and utilized in guiding the development of the supplemental budget for fiscal year 1980-81.

Various members of your Committee remain uncertain as to the appropriateness of the use of total state personal income as the indicator of economic growth used to calculate the expenditure ceiling for any year. Your Committee has therefore amended this bill to address these concerns in the following manner: (1) a "sunset" provision has been added to provide for the repeal of the provisions of this bill as of June 30, 1984. This would require the legislature to conduct a review at that time of the appropriateness of the expenditure ceiling formula established by this bill; (2) the legislative auditor is directed to conduct a study of various economic growth indicators and to provide recommendations as to which indicators would be best indicative of the estimated rate of growth of the State's economy. The legislative auditor is directed to present such a report to the legislature prior to the 1984 regular session.

Your Committee has made other technical and non-substantive changes to this bill.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2795-80, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2795-80, S.D. 1, H.D. 1, C.D. 1.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy, Narvaes and Sutton,
Managers on the part of the House.

Senators Cayetano, Abercrombie, Carpenter, Chong, Hara, Kawasaki, Toyofuku, Yamasaki, Yim, Young, Ajifu, Anderson, Soares and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 96-80 on H.B. No. 1772-80

The purpose of this bill is to extend the State Program for the Unemployed as provided by Act 151, 1975, as amended.

As part of the State's effort to combat cyclical unemployment through a program similar to CETA, the 1975 Hawaii State Legislature established the State Program for the Unemployed (SPU). SPU, a temporary state funded program administered by the department of labor and industrial relations, has been extended from year to year by the State Legislature.

With unemployment rates still relatively high and unstable, there is still a need to continue programs such as SCET. Continued efforts in this area can also serve as a countercyclical strategy since State and national economic forecasts include continued recession and a down turn in the visitor industry in Hawaii. Your Committee therefore recommends that an appropriation be made to extend the SCET component of SPU.

Your Committee upon further consideration has amended this bill by providing the appropriation amount of $3,000,000, to implement the program.

Your Committee on Conference is in accord with the intent and purpose of H.B. No.

1772-80, H.D. 2, S.D.1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1772-80, H.D. 2, S.D. 1, C.D. 1.

Representatives Takamine, de Heer, Hagino, Kunimura and Medeiros,
Managers on the part of the House.

Senators Cayetano, Abercrombie, Toyofuku, Yamasaki, Ajifu and Anderson,
Managers on the part of the Senate.

Conf. Com. Rep. No. 97-80 on H.B. No. 2035-80

The purpose of this bill is to provide an increase in the cost-of-living bonus for certain retirees in addition to the automatic post retirement allowance of 2-1/2 percent in order to keep pace with the rapid increase in inflation.

House Bill No. 2035-80 has deviated from the traditional percentage formula of providing for a cost-of-living allowance inasmuch as the bill proposed would provide a fixed dollar increase based on the member's credited years of service rather than a flat percentage formula. Consequently, this would provide a higher allowance especially to those who are receiving lower benefits.

Estimates by the Employees' Retirement System indicate that the bonus proposed will provide for an average monthly increase of $99.90 for those pensioners who retired prior to July 1, 1965; $66.45 for those retired between July 1, 1965 and June 30, 1970; and $23.36 for those retired between July 1, 1970 and June 30, 1975.

Your Committee has amended Section 1, paragraph 8 of the bill as follows:

1. Line 22 on page 4--substitute the date July 1, 1975 for July 1, 1970.

2. Line 6 on page 5, sub-paragraph A--substitute $4.50 for $3.

3. Line 9 on page 5, sub-paragraph B--substitute $2.50 for $1.50.

4. Include an additional sub-paragraph C as follows:

"(C) $1 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970 but prior to July 1, 1975."

The bill has been further amended to include a proviso that no special cost of living bonus be paid to those who have eight or less years of credited service.

The bill has also been amended to provide for an appropriation of $3,800,000 in general fund revenues to be expended by the Department of Budget and Finance to carry out the intent of the bill. The Health Department is to expend $35,000 of this amount to provide for bonuses to pensioners at Kalaupapa.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2035-80, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2035-80, H.D. 2, S.D. 2, C.D. 1.

Representatives Stanley, Morioka, Andrews, Dods, Fukunaga, Holt,
Kunimura, Lacy and Ikeda,
Managers on the part of the House.

Senators Cayetano, Toyofuku, Kawasaki, Abercrombie, Anderson and
Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 98-80 on H.B. No. 1853-80

The purpose of this bill is to amend Chapter 10 of the Hawaii Revised Statutes to provide that a portion of all funds derived from the public land trust be used by the Office of Hawaiian Affairs for the betterment of the conditions of native Hawaiians.

Your Committee on Conference has amended H.B. No. 1853-80, S.D. 3, by adding a new section to Chapter 10, Hawaii Revised Statutes, to provide that twenty per cent of all funds derived from public land trust, described in Section 10-3, shall be expended

by the Office of Hawaiian Affairs for the purposes of Chapter 10. $100,000 is also appropriated from the general revenues of the State for the purpose of the Office of Hawaiian Affairs.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1853-80, S.D. 3, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1853-80, S.D. 3, C.D. 1.

Representatives Kawakami, Fukunaga, Holt, Honda, Nakamura, Sakamoto, D. Yamada, Anderson and Medeiros,
Managers on the part of the House.

Senators Cayetano, Abercrombie, Hara, O'Connor, Young, Anderson and Yee,
Managers on the part of the Senate.

Conf. Com. Rep. No. 99-80 on H.B. No. 1912-80

The purpose of this bill is to provide supplemental appropriations for fiscal year 1980-81 and to make other amendments to the 1979 General Appropriations Act.

This report summarizes the basic financial guidelines and program appropriation decisions agreed to by your Committee. To the extent that Standing Committee Report No. 667-80 of the House Committee on Finance and Standing Committee Report No. 959-80 of the Senate Committee on Ways and Means are not contradicted by provisions of the bill finally agreed to by your Committee or by this report, expressions of legislative concern, intent and direction in those reports are to be regarded also as expressions of your Committee.

Basic Financial and Budgetary Guidelines

General Fund Expenditure Ceiling. The 1978 State Constitution requires the legislature to establish a "general fund expenditure ceiling which shall limit the rate of growth of general fund appropriations ... to the estimated rate of growth of the State's economy as provided by law." The Constitution also requires that such a ceiling shall apply to the general fund expenditures proposed by the governor in the budget.

The requirement for a general fund expenditure ceiling has been established in separate legislation which provides for the application of a general fund expenditure ceiling beginning with the next fiscal biennium, using the rate of change of total state personal income as the measure by which general fund appropriations shall be recommended by the governor and provided for by the legislature. However, uncertainty remains as to the appropriateness of the use of total state personal income as the indicator of economic growth used to calculate the expenditure ceiling for any year. Therefore the legislation regarding the expenditure ceiling has been amended to address these concerns in the following manner: (1) a "sunset" provision has been added to provide for the repeal of the provisions of such legislation as of June 30, 1984. This would require the legislature to conduct a review at that time of the appropriateness of the expenditure ceiling formula; (2) the legislative auditor has been directed to conduct a study of various economic growth indicators and to provide recommendations as to which indicators would be best indicative of the estimated rate of growth of the State's economy and to present such a report to the legislature prior to the 1984 regular session.

In the meanwhile, your Committee believes that the general fund appropriations made by this Session of the legislature should be controlled as if implementing legislation for the constitutional spending limitation were already in effect. This would be in keeping with the spirit of the constitutional provision. This was the guideline used in the development and passage of the General Appropriations Act of 1979, and it continues to be the guideline used by your Committee in this Supplemental Appropriations bill and other appropriation bills recommended for passage in this legislative session.

Funds for Private Organizations. Another constitutional matter resolved by your Committee is the question of the funding of the numerous programs of private organizations receiving state financial aid through grants, subsidies and purchases of service. Undoubtedly, many of these programs are for a public purpose and in the public interest, but the 1978 Constitution prohibits all funding of private organizations "except pursuant to standards provided by law."

Your Committee has decided that a system of both substantive and procedural standards

should be incorporated in the supplemental appropriations bill. Such a system calls for private organizations funded by this bill and the 1979 General Appropriations Act to agree to certain fundamental conditions before funding can be released. It also requires appropriations intended for private organizations in this bill to be brought under such controls as are normally required to be exercised over appropriations to the programs of government agencies. In addition, the system of controls incorporated in this bill requires the development and implementation of procedures to ensure that requests for grants, subsidies and purchases of service for the next budget biennium will be reviewed and analyzed by the appropriate state agencies and the governor prior to consideration by the legislature.

It is intended by your Committee that the standards required by the Constitution shall be enacted through appropriate amendments to the Hawaii Revised Statutes in the 1981 Regular Session and that the standards provided for in this bill shall serve as the standards until such statutory amendments are effected. Such a sequence of actions will enable the standards of this bill to be tested in the next budget execution and budget preparation cycle before being established, and modified if necessary, in statutory form.

The major program recommendations of your Committee on the supplemental appropriations bill are covered in the remainder of this report.

SPECIAL PROGRAM RECOMMENDATIONS

Repairs and Maintenance. $25 million worth of cash financing of urgent repairs and maintenance projects throughout the State has been included.

Land Banking, Water Resource Development, Flood Control, and Historic Site Preservation. An additional $25 million of cash funding has been provided to initiate an accelerated program of land banking, water resource development, flood control and preservation of historic sites.

ECONOMIC DEVELOPMENT

New and Emerging Industries. A diversified and stable economy has long been the goal of the Hawaii State Legislature. In this regard, funds have been made available to support the development of Hawaii's fledgling fishing industry in accordance with the recently completed Fisheries Development Plan. In addition, your Committee has provided funds to determine the environmental impacts of the manganese nodule processing industry, the electronics industry, and the garment industry.

Tourism. In recognition of the plight of Hawaii's major industry and the decline of west-bound visitors to Hawaii, additional funds have been provided to support tourism.

Redevelopment of the Aloha Tower Complex. Funds have been provided for development of design and financial criteria including site assessment studies intended to guide ultimate redevelopment of this significant landmark.

EMPLOYMENT

Disability Compensation. Your Committee has included appropriations to improve the State Workers' Compensation program. Improvements include establishing a unit in the Department of Labor and Industrial Relations for the rehabilitation of permanently disabled workers and establishing a study commission to review the workers' compensation law and make recommendations on ways of reducing or stabilizing costs while maintaining benefits at existing levels.

Career Kokua. Funding is included to extend the services of the Hawaii Career Information Delivery System (Career Kokua) program to the neighbor islands. Career Kokua provides current occupational, educational, training, job search, and related occupational and career information.

TRANSPORTATION

General Aviation Airport. Hawaii's congested Honolulu International Airport (HIA) remains a concern due to the heavy mix of large and light aircraft. Funds have been made available to support a general aviation airport and relieve traffic at the HIA.

Kalanianaole Highway. Funds have been provided for the widening of the Kalanianaole Highway corridor.

HEALTH

Emergency Medical Services. Your Committee recognizes the impact of higher inflationary costs for personnel, fuel, and drug and medical costs on the various county operated emergency medical services systems. Funds are included in the budget for this purpose.

Mental Health. Due to the recent and rapid increase of penal code patients admitted to the Hawaii State Hospital, your Committee has found that additional staffing is required by the facility for security purposes as well as for the rehabilitative needs of these patients and has provided funds accordingly.

Hospital Care. Your Committee recognizes the need for additional staffing to state-administered hospitals for expansion and upgrading of services. Additional funds for this need have been provided. Also, two of the major items for which funds are provided are for a new Acute Care Facility at Hilo Hospital and the modernization and renovation of Kula Hospital.

Adult Day Activity for Developmentally Disabled. Your Committee believes there is a need for additional pre-vocational services for developmentally disabled adults. Presently, there is a lack of programs for those over twenty years of age. Your Committee has therefore provided additional funds to meet this purpose.

Community Based Residential Treatment Program. Funds have been provided to initiate establishment of a system of community-based residential treatment programs for the mentally ill to provide alternatives to institutional settings.

SOCIAL PROBLEMS

Medicaid. Your Committee has provided for an appropriation of $4 million so that payments to medical providers--doctors and dentists--can be made on a more equitable basis. The Medicaid profile had not been updated since 1975, but with the updating of the profile to 1979, this should substantially correct the inequities which have resulted. In the meanwhile, your Committee requests that the Department of Social Services and Housing explore and report to the 1981 session on ways to curb recipient abuse in the Medicaid program, including an analysis of a co-payment requirement for recipients. Your Committee also believes that the medical profession should come to grips with the problem of recipient abuse in Medicaid services. It therefore requests the Hawaii Medical Association to study and report on the controls which the medical community might exercise to assist in curbing recipient abuse.

Adult Boarding and Care Homes. Your Committee has provided additional funds to increase payments to recipients of Supplemental Security Income residing in adult and boarding homes. Current payment levels are inadequate for the continued operation of these homes and without additional payments many of these homes may close. Considering the expensive alternative of institutional care, your Committee believes that provision of additional payments to continue the operation of these homes is a cost effective means of maintaining care for Hawaii's needy.

Welfare Administration. The State's welfare program has grown substantially in recent years. Several audits have pointed out deficiencies in the administration of the Medicaid Program and your Committee has provided resources to address these deficiencies. Your Committee has also provided additional positions to adequately staff the Income Maintenance Program and to strengthen the fraud investigation capabilities of the Department of Social Services and Housing.

LOWER EDUCATION

Intensive Basic Skills. Funds have been provided to continue the special intensive basic skills to students requiring such services. This program supplements on-going programs with the objective of assuring that students acquire the basic skills of speaking, reading, writing, listening, computing, and thinking.

Special Needs. The appropriation of special needs funds to each school was instituted by the Legislature in 1977 to enable each school to meet some of its own needs which are not met by the funds which the Department of Education ordinarily provides. From all accounts, the program has been successful and widely accepted by the schools. The current formula for the allocation of special needs funds provides for $2,000 to each school, regardless of size, plus $3.50 per pupil. Your Committee has reviewed the formula and finds that it unduly favors smaller schools over larger ones such that students in some schools receive more than three times those in other schools. While recognizing that there are probably economies of scale in larger schools, your Committee

proposes that the formula be made less inequitable.

Under the new formula proposed by your Committee, each school is to receive $1,000 plus $5.00 per pupil. This means, for example, that a large school such as Waianae Elementary with 1,169 students would receive $6,845 ($5.86 per student), whereas it would have received $6,092 ($5.21 per student) under the old formula. A small school such as Anuenue with 156 students would receive $1,780 ($11.41 per student) under the new formula instead of $2,546 ($16.32 per student) under the old formula. Smaller schools would still receive a disproportionately larger share when calculated on a per capita basis, but the inequity when compared with larger schools would not be as great under the new formula.

Textbooks and Learning Materials. Your Committee is concerned over reports of widespread shortages of textbooks and other needed learning materials in the schools. However, no new appropriations are required at this time, inasmuch as it is your Committee's understanding that funds are available from salary savings resulting from the United Public Workers' strike to enable the necessary purchases to be made. It is your Committee's expectation that the Department of Education will institute a system by which textbook and learning material needs can be identified in a timely manner, budgeted for properly, and accommodated through timely purchases and distribution; and by which emergency shortages can be filled with minimum disruption of classroom instruction. The Department of Education should not have to conduct a special survey to determine the extent of textbook shortages if it has in place such a system. Your Committee requests the department to submit a report to the 1981 legislative session detailing what changes have been made to (1) assure that all schools have adequate textbooks and learning materials; and (2) assure that there will be no recurrence of a condition of shortages.

Athletic Coaches. While the compensation to athletic coaches in schools should be further reviewed, your Committee has taken the immediate step of providing funds so that all coaches who are authorized for a particular school can be compensated through state funds.

Hawaiian Culture and Language Program. The 1978 Constitutional Amendment (Article X, Section 4) requires the State to promote the study of Hawaiian culture, history, and language. Your Committee has provided funds to develop a plan to implement the intent of this amendment.

Limited English Speakers. Funds are included to accommodate additional students whose first or home language is other than English. This program will assist students in acquiring the necessary level of language proficiency to allow them to perform satisfactorily in regular classes where English is the instruction medium.

Asbestos in Classrooms. Your Committee has provided $5.4 million in capital improvement funds to eliminate the asbestos health hazards in classrooms.

HIGHER EDUCATION

Continuing Education for Women. The Displaced Homemakers Program was evaluated and was found to provide valuable services to a growing amount of women in today's society. Courses provided under this program enabled program participants to better cope with the problems encountered in business and in their private lives. Funding support was provided to continue this program.

Graduate Assistant Stipends. Your Committee realizes the need for graduate assistants in the delivery of a quality educational program at the University of Hawaii. Since graduate assistants have not received any increases in their stipend allowance for over three years, your Committee has provided additional funds to help these students meet some of the inflationary increases in the cost of living.

Maui Community College. Maui Community College serves as the only higher education institution for the county of Maui. Funds were authorized to provide students attending MCC better student housing by replacing the existing, dilapidated dorms with new facilities.

School of Law. The newly instituted School of Law at the University of Hawaii has begun to emerge as a positive force in the community. Services are provided through its community legal education programs, its research programs and the publication of the Law Review. Funding support was provided for physical facilities for the School of Law and to enhance its library collection.

CULTURE AND RECREATION

Public Television. Your Committee has provided capital improvement funds for the expansion of public television. Funds are included for expansion of existing studio facilities and for installation of translators to provide improved reception for residents of Windward Oahu, northern Kauai, and the Kona Coast and Volcano areas of the Big Island.

Hawaii Foundation for History and the Humanities. The Hawaii Foundation for History and the Humanities has been dissolved and its functional responsibilities transferred to the State Foundation on Culture and the Arts and the Department of Land and Natural Resources.

Pacific War Memorial Commission. The Department of Budget and Finance has recommended that the Pacific War Memorial Commission be abolished and its functions transferred to the Department of Land and Natural Resources. In order to accomplish a smooth transition, funding for the Pacific War Memorial Commission has been continued through FY81.

PUBLIC SAFETY

Oahu Community Correctional Center. In order to help alleviate the overcrowded conditions in our prisons, your Committee has provided supplemental funds for positions and operating expenses for Modules 17, 18, and 19.

Other Programs. Your Committee has also provided funds for Liliha House II, a program to assist inmates in making the transition to living in a community setting.

GOVERNMENT-WIDE SUPPORT

Reapportionment Commission. Funds for convening the Reapportionment Commission as mandated by Article IV of the Constitution of the State of Hawaii are provided.

Elections Administration. New Constitutional requirements mandating the single party primary and confidentiality in party preferences necessitated a unique approach to the administration of elections. Additional funding provided to the Lieutenant-Governor's office reflects the legislature's endorsement and accommodation of public intent in this regard.

RECOMMENDATION

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1912-80, H.D. 1, S.D. 1, C.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1912-80, H.D. 1, S.D. 1, C.D. 2.

Representatives Morioka, Crozier, de Heer, Fukunaga, Hashimoto, Holt, Ige, Inaba, Kobayashi, Kunimura, Sakamoto, Silva, Takitani, Lacy, Narvaes and Sutton,
Managers on the part of the House.

Senators Cayetano, Abercrombie, Carpenter, Chong, Hara, Kawasaki, Toyofuku, Yamasaki, Yim, Young, Ajifu, Anderson, Soares and Yee,
Managers on the part of the Senate.