

FIFTY- NINTH DAY

Monday, May 3, 2004

The House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 9:06 o'clock a.m., with the Speaker presiding.

The invocation was delivered by Representative Brian K. Blundell, after which the Roll was called showing all members present with the exception of Representatives Hamakawa, Hiraki, Kaho'ohalahala, Meyer, Pendleton, Souki, Takai, Takamine and Waters, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Fifty-Eighth Day was deferred.

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 762 through 773) were received and announced by the Clerk:

Sen. Com. No. 762, informing the House that the following bills have passed Final Reading in the Senate:

S.B. 2586, RELATING TO PROFESSIONAL AND VOCATIONAL LICENSING
SD 2,
HD 2, CD 1

S.B. 2948, RELATING TO PUBLIC HEALTH NURSING SERVICES
SD 2,
HD 1, CD 1

S.B. 2608, RELATING TO CRITICAL ACCESS HOSPITALS
SD 1,
HD 1, CD 1

S.B. 2929, RELATING TO MEDICAID REIMBURSEMENT
SD 1,
HD 1, CD 1

H.B. 1259, RELATING TO THE UNIFORM COMMERCIAL CODE
HD 1,
SD 1, CD 1

H.B. 2020, RELATING TO PROSTITUTION
HD 1,
SD 2, CD 1

H.B. 2013, RELATING TO POLYBROMINATED DIPHENYL ETHERS
SD 2, CD 1

S.B. 2748, RELATING TO DRUG DEMAND REDUCTION ASSESSMENTS
SD 1,
HD 2, CD 1

S.B. 2840, RELATING TO TOBACCO
SD 2,
HD 2, CD 1

S.B. 2861, RELATING TO CRIMINAL PROCEDURE
SD 1,
HD 2, CD 1

S.B. 3113, RELATING TO VOTING
SD 1,
HD 1, CD 1

H.B. 1765, RELATING TO GOVERNMENT BOARDS, COMMISSIONS, AND AGENCIES
HD 1,
SD 1, CD 1

H.B. 2254, RELATING TO CHAPTER 707, HAWAII REVISED STATUTES
SD 1, CD 1

H.B. 2683, RELATING TO DEFERRED ACCEPTANCE OF GUILTY PLEA AND DEFERRED ACCEPTANCE OF NOLO CONTENDERE PLEA
SD 1, CD 1

S.B. 3025, RELATING TO THE OFFICE OF PLANNING
HD 1, CD 1

H.B. 1770, RELATING TO MOTOR VEHICLES
HD 1,
SD 2, CD 1

H.B. 2023, RELATING TO ADMINISTRATIVE APPEALS
HD 2,
SD 2, CD 1

H.B. 2674, RELATING TO IDENTITY THEFT
HD 1,
SD 1, CD 1

H.B. 2739, RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS BY THE HIGH TECHNOLOGY DEVELOPMENT CORPORATION
HD 1,
SD 2, CD 1

S.B. 2908, RELATING TO BUSINESS REGISTRATION
SD 1,
HD 1, CD 1

S.B. 2377, RELATING TO PRIVACY
SD 1,
HD 1, CD 1

S.B. 2380, RELATING TO THE STATE ART MUSEUM
SD 1,
HD 1, CD 1

S.B. 3156, RELATING TO EMERGENCY MEDICAL SERVICES
SD 1,
HD 1, CD 1

S.B. 3085, RELATING TO NURSES
SD 2,
HD 2, CD 1

S.B. 2782, RELATING TO THE FUNDING OF A HABITAT CONSERVATION PLAN
SD 1,
HD 1, CD 1

H.B. 2814, RELATING TO KALAUPAPA SETTLEMENT
HD 2,
SD 1, CD 1

H.B. 2472, RELATING TO THE SALE OF STERILE SYRINGES FOR THE PREVENTION OF DISEASE
HD 2,
SD 1, CD 1

H.B. 1980, RELATING TO FAMILY COURT
HD 1,
SD 1, CD 1

Sen. Com. No. 763, informing the House that the Senate has on April 29, 2004, reconsidered its action taken on April 8, 2004 in disagreeing to the amendments proposed by the House

to the following Senate Bill and has moved to agree to the amendments, and that on April 30, 2004, said bill passed Final Reading:

S.B. 2882, RELATING TO ALIEN INSURERS
SD 1, HD 1

Sen. Com. No. 764, informing the House that the Senate has on April 29, 2004, reconsidered its action taken on April 15, 2004 in disagreeing to the amendments proposed by the House to the following Senate Bills and has moved to agree to the amendments, and that on April 30, 2004, said bills passed Final Reading:

S.B. 2021, RELATING TO STREET ROD VEHICLES
SD 1, HD 2

S.B. 2246, RELATING TO AGRICULTURE
SD 1, HD 1

S.B. 2869, RELATING TO THE MAINTENANCE OF
SD 2, HD 1 PROPERTIES WITHIN THE KALAELOA
COMMUNITY DEVELOPMENT DISTRICT

S.B. 2994, RELATING TO THE USE TAX
SD 1, HD 2

S.B. 3044, RELATING TO PUBLIC PROPERTY
HD 1

S.B. 3190, RELATING TO THE PUBLIC UTILITIES
SD 1, HD 1 COMMISSION

Sen. Com. No. 765, informing the House that the Senate has on April 29, 2004, reconsidered its action taken on April 13, 2004 in disagreeing to the amendments proposed by the House to the following Senate Bill and has moved to agree to the amendments, and that on April 30, 2004, said bill passed Final Reading:

S.B. 469, RELATING TO EMPLOYMENT
HD 1 PRACTICES

Sen. Com. No. 766, informing the House that the Senate has on April 29, 2004, reconsidered its action taken on April 27, 2004 in disagreeing to the amendments proposed by the House to the following Senate Concurrent Resolutions and has moved to agree to the amendments, and that on April 30, 2004, said resolutions were adopted:

S.C.R. 79, REQUESTING THE HAWAII STATE
SD 1, HD 1 COUNCIL ON DEVELOPMENTAL
DISABILITIES TO CONVENE A TASK
FORCE TO IDENTIFY ISSUES AND
SOLUTIONS REGARDING INDIVIDUALS
WITH DEVELOPMENTAL DISABILITIES
AND THEIR CHOICE OF RESIDENTIAL
SETTING

S.C.R. 101, REQUESTING THE UNITED STATES
SD 1, HD 1 CONGRESS TO PROVIDE FOR THE
COMPENSATION OF AWARDS, TO THE
FULLEST EXTENT, AS DETERMINED BY
THE MARSHALL ISLANDS NUCLEAR
CLAIMS TRIBUNAL

S.C.R. 180, THE PUBLIC UTILITIES COMMISSION IS
SD 1, HD 1 REQUESTED TO EXPLORE HOW TO
IMPLEMENT THE CONCEPT OF INTRA-
GOVERNMENTAL WHEELING TO
FACILITATE GOVERNMENT WHEELING
OF ELECTRICITY

Sen. Com. No. 767, transmitting H.C.R. No. 60, entitled: "HOUSE CONCURRENT RESOLUTION ENCOURAGING THE HAWAII'S CONGRESSIONAL DELEGATION TO SUPPORT THE DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ("DREAM") ACT," which was adopted by the Senate on April 30, 2004.

Sen. Com. No. 768, transmitting H.C.R. No. 117, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING CONGRESS TO SUPPORT FULL FUNDING FOR THE CARL D. PERKINS VOCATIONAL AND TECHNICAL EDUCATION ACT," which was adopted by the Senate on April 30, 2004.

Sen. Com. No. 769, transmitting H.C.R. No. 161, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO DECLARE HALEIWA TOWN AS THE SURFING CAPITAL OF THE WORLD," which was adopted by the Senate on April 30, 2004.

Sen. Com. No. 770, transmitting H.C.R. No. 199, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS, THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE OFFICE OF HAWAIIAN AFFAIRS TO CEASE ISSUING ANY EASEMENTS TO THE CITY AND COUNTY OF HONOLULU FOR ACCESS TO HAIKU VALLEY AND TO "HAIKU STAIRS"," which was adopted by the Senate on April 30, 2004.

Sen. Com. No. 771, informing the House that the Senate has appointed as conferees on the part of the Senate for the consideration of amendments proposed by the Senate to the following Senate Bills:

S.B. 2404, Taniguchi/Kawamoto/Kim, Co-Chairs; Whalen
SD 2, HD 1

Sen. Com. No. 772, informing the House that the Senate has on April 30, 2004 overridden the Governor's veto to H.B. 1797, (Governor's Message No. 496) by a two-thirds vote of all members to which the Senate is entitled.

Sen. Com. No. 773, informing the House that the Senate has on April 30, 2004 overridden the Governor's veto to H.B. 2003, HD 1, SD 1, (Governor's Message No. 520) by a two-thirds vote of all members to which the Senate is entitled.

INTRODUCTIONS

The following introductions were made to the members of the House:

Representative Marumoto, on behalf of Representatives Leong, Nishimoto, Speaker Say and herself, introduced the Fifth grade students of Epiphany Episcopal School, and their teachers, Ms. Leah Rafanan, Ms. Lori Abe, and Mr. Bruce Black.

Representative Tamayo, on behalf of Representative Mindo and herself, introduced Fifth grade students from Ewa Beach Elementary, and their teachers, Ms. Darlene Cadiente, Mr. Brian Merrill, Ms. Mildred Longboy, and Ms. Jan Brooks.

At 9:12 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 10:18 o'clock a.m.

ORDER OF THE DAY

At 10:19 o'clock a.m., Representative Luke requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 10:19 o'clock a.m.

SUSPENSION OF RULES

On motion by Representative Lee, seconded by Representative Meyer and carried, the rules were suspended for the purpose of considering bills on Third Reading and Final Reading on the basis of a modified consent calendar. (Representatives Jernigan, Nakasone, and Takumi were excused.)

UNFINISHED BUSINESS

Conf. Com. Rep. No. 51-04 and S.B. No. 2704, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2704, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MANDATORY SELLER DISCLOSURES," passed Final Reading by a vote of 49 ayes and with Representatives Herkes and Takumi being excused.

Conf. Com. Rep. No. 52-04 and S.B. No. 2909, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2909, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO APPLICATIONS SEEKING GENERAL RATE INCREASES FILED BY PUBLIC UTILITIES HAVING ANNUAL GROSS REVENUES OF LESS THAN \$2,000,000," passed Final Reading by a vote of 49 ayes and with Representatives Herkes and Takumi being excused.

Conf. Com. Rep. No. 53-04 and S.B. No. 2951, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2951, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO RADIOLOGIC TECHNOLOGY," passed Final Reading by a vote of 49 ayes and with Representatives Herkes and Takumi being excused.

Conf. Com. Rep. No. 54-04 and H.B. No. 2786, HD 1, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2786, HD 1, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Meyer rose to speak in opposition to the measure, stating:

"Sorry, Mr. Speaker. I'm rising in opposition to Stand. Com. Report 54.

"My concern is that this bill may encourage more legal disputes and raise the cost of insurance. And for that reason, I'll be voting no. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2786, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ARBITRATION," passed Final Reading by a vote of 38 ayes to 11 noes, with Representatives Blundell, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Meyer, Moses, Ontai and Stonebraker voting no and with Representatives Herkes and Takumi being excused.

At 10:21 o'clock a.m., Representative Meyer requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 10:23 o'clock a.m.

At 10:24 o'clock a.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2704, HD 1, CD 1
S.B. No. 2909, SD 1, HD 1, CD 1
S.B. No. 2951, SD 1, HD 1, CD 1
H.B. No. 2786, HD 1, SD 2, CD 1

At 10:26 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:27 o'clock a.m.

RECALL FROM COMMITTEE

At this time, Representative Fox moved that S.B. No. 2436 be recalled from the Committee on Judiciary.

At 10:28 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:30 o'clock a.m.

The Chair then stated:

"A motion has been made to recall a particular Senate Bill and there isn't a second at this point, but the Chair recognizes Representative Meyer for the second."

Representative Meyer then seconded the motion.

Representative Fox rose, stating:

"Thank you, Mr. Speaker. It's Senate Bill 2436. And Senate Bill 2436 passed Second Reading and was referred to the Committee on Judiciary on March 23rd."

At this time, the Chair stated:

"Thank you. Members, at this time, it has been moved and seconded that SB No. 2436 be recalled from the Committee. All of you know for the past two years that this is a procedural motion. The debate is limited to the propriety of the action in recalling the bill. Debate will be allowed not on the context of

the bill, but on the motion of the recall. Debate on the merits of the bill is not in order at this time. So discussion on the recall motion will occur."

Representative Fox rose, stating:

"Thank you, Mr. Speaker. And I know you've allowed a little bit of latitude in terms of explaining exactly what the bill is. The bill sitting in the Committee on Judiciary after Second Reading could be brought out and passed on Third Reading today. And because it's a Senate Bill, if the Senate would agree to the actions taken in the House, we would be able to get the bill through both houses by Thursday.

"The bill is in response to a task force that wanted to deal with the issue ..."

Speaker Say: "Representative Fox. Representative Fox."

Representative Fox: "I'm just explaining what this habitual criminal bill is."

Speaker Say: "The motion before this House is for the recall procedure. So your statements ..."

Representative Fox: "Yes, but it's the recall procedure of bill that has a certain title."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order. The Chair has made a ruling. The discussion is limited to the procedural aspect of the motion."

Speaker Say: "Absolutely right."

Representative Fox: "I totally agree that it's a procedural aspect that we're discussing. And in the past, you've allowed a certain amount of latitude that allows the person to explain what the bill is. I'm not arguing for it, I'm just simply trying to explain a bill titled habitual criminals."

Representative Luke rose to a point of order, stating:

"Mr. Speaker, point of order. The Chair has made a ruling."

Speaker Say: "Representative Fox, could you confine your remarks to the procedure of the recall motion that is before this Body."

Representative Fox: "But we have to vote on a motion to recall. We need to understand what the bill is."

Speaker Say: "Representative Fox, your point is well taken. And that's why the Chair has said to this Body, that the motion before this House is the recall. And you are to address the motion of the recall as far as its procedures. There is no discussion on the contents of Senate Bill 2436 at this point."

Representative Fox: "But let me just explain that this bill is dealing with habitual criminals."

Speaker Say: "Representative Fox, you are out of order at this point."

Representative Fox: "Passed the Senate unanimously. And passed the Committee on Public Safety and Military Affairs unanimously before it was parked in the Committee on Judiciary. And would be very good if we had a roll call vote to move this matter forward so that we could actually discuss the bill itself. Thank you, Mr. Speaker."

At this time, Representative Saiki called for the previous question.

Representative Stonebraker rose, stating:

"Mr. Speaker, I'd like to speak in favor of the motion."

Speaker Say: "No. The question has been called, Representative Stonebraker."

Roll call having been approved, the motion that S.B. No. 2436, entitled: "A BILL FOR AN ACT RELATING TO SENTENCING OF HABITUAL VIOLENT FELONS," be recalled from the Committee on Judiciary, was put to vote by the Chair and failed to carry on the following show of Noes and Ayes:

Noes, 34: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanoho, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Tamayo and Wakai.

Ayes, 15: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

Excused, 2: Representatives Takumi and Waters.

Representative Thielen rose stating:

"Mr. Speaker, I move to pull from committee the bill to require businesses engaged in the sale of cigarettes and other tobacco products at the retail level to acquire retail tobacco permit from the Department of Taxation ..."

The Chair interjected, stating:

"Representative Thielen, you are out of order at this point. Could you state your motion once more for the Members of this House."

At 10:36 o'clock a.m., Representative Saiki requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:59 o'clock a.m.

The Chair then recognized Representative Thielen, who stated:

"Thank you, Mr. Speaker. Mr. Speaker, before I make that motion, I would like to just for Members' edification, talk about the rules of the House of Representatives. And it's rule 37."

Speaker Say: "Yes, you're correct, rule 37 on the recall."

Representative Thielen: "And Mr. Speaker, the rule relates to any bill that's been referred to a committee may be recalled from that committee 20 days after referral if one-third of the Members to which the House is entitled to vote in favor of the recall. It requires simply a one-third vote, Mr. Speaker, to stop the black market in cigarettes."

Speaker Say: "Representative Thielen, you are out of order."

Representative Thielen: "Yes, I'm going on with the rule."

Representative Luke: "Mr. Speaker, I request that her entire remarks be stricken from the Journal. Mr. Speaker, I also question on what point the Representative is standing."

Representative Thielen: "This is for information, Mr. Speaker. It goes on, the last sentence in the bill recalled from committee goes on, 'No parliamentary rule or procedure may supersede the constitutional right of recall of a bill from committee.' So this is a constitutional right, Mr. Speaker, to recall this bill relating to tobacco that will prevent the black market."

Speaker Say: "Representative Thielen, you are out of order at this point in time. This is a procedural motion that is before this Body. And the Chair will recognize you to make that motion and second by one of our colleagues."

Representative Thielen: "I am in the middle of making the motion now, Mr. Speaker."

Speaker Say: "Representative Thielen, please proceed."

Representative Thielen: "Mr. Speaker, I move to recall the bill."

Speaker Say: "What's the bill number?"

Representative Thielen: "I'm going to get to that, Mr. Speaker. I'm moving to recall the bill relating to tobacco from committee to the Floor for action. And the bill number is Senate Bill 2841, Senate Draft 1. And what it will do is ..."

Speaker Say: "Representative Thielen, your point is well taken. The motion now, I need a second to recall this measure."

Representative Jernigan: "Mr. Speaker, I second that motion and I would also request a roll call vote at the appropriate time."

Representative Thielen moved that S.B. No. 2841, SD 1, be recalled from the Committee on Judiciary, seconded by Representative Jernigan.

Speaker Say: "Members, it has been moved and seconded that Senate Bill Number 2841, Senate Draft 1 be recalled from the Committee. Once again, this is a procedural motion. Debate is limited on the propriety of the action in recalling the bill out from the Committee. Debate on the merits of this bill is not in order at this time. Any discussion?"

Representative Thielen rose to speak in support of the motion, stating:

"Thank you, Mr. Speaker. I'm rising in favor of the recall motion to bring this bill before the Members.

"Mr. Speaker, there was literally no opposition of any kind to the bill. The anti-tobacco health groups are strongly in support of the bill. Yet the bill remains bottled up in a House Committee."

Speaker Say: "Representative Thielen, you are out of order. Could you address your statements to the recall motion?"

Representative Thielen: "I am, Mr. Speaker."

Speaker Say: "Why are you making the motion to recall it out of committee? Not on the substance of the bill that is not before us at this point."

Representative Thielen: "Thank you, Mr. Speaker. I am making my comments. The bill went through the Senate with no problems. It has remained bottled-up in a House committee."

Speaker Say: "Representative Thielen, please proceed on the procedural motion before us. It has been in the Committee for more than 20 days. Yes, please proceed. It is a constitutional provision that you have to recall measures out. The Chair will allow you to continue."

Representative Thielen: "And it is a constitutional right, Mr. Speaker, to bring this measure before Members so we can stop the black market in cigarettes. Thank you."

Representative Stonebraker rose to speak in support of the motion, stating:

"Mr. Speaker, I'd like to rise in support of the motion.

"Mr. Speaker, there's a lot of ways in a democratic system to kill a bill. There's a lot of ways to stifle debate. There's a lot of ways to keep democracy as far from the people as possible. One way is to allow the Chairman of the Committee to stop the motion of a bill out of that Committee onto the House Floor for a broad vote.

"There are lots of ways to stop debate, calling a recess, calling for the question, things that we might see on this House Floor today. And it's for these reasons that we have moved that these bills would come to the House Floor for a vote by all the Members of this Chamber.

"Often times, a bill which one Chairman or a Vice Chairman of a Committee do not particularly like will be held and bottled-up in that Committee. And what happens by default, Mr. Speaker, is that the voice of the people as whole, in the broad spectrum in the State of Hawaii is not heard because of the power, the overwhelming power of the Chairman of the Committee. And it's for these reasons that we move that this bill come to this House Floor so that we can debate it openly and let the people of the State of Hawaii see this on public broadcast, see the votes of the Representatives of their district.

"And so, Mr. Speaker, to vote in favor of this motion to bring this bill to the House Floor would be a vote for democracy. A vote against this motion to bring these measures to the Floor would be a vote against the people of Hawaii. So I vote aye."

Representative Takai rose to speak in opposition to the motion, stating:

"Thank you, Mr. Speaker. I rise against this motion to recall.

"Mr. Speaker, we're not even on page 2 of our Order of the Day, today. And as the previous speaker mentioned, Olelo's here today. The Republican Caucus could have brought these measures up to recall last week or anytime after the twenty some-odd day's requirement. So I have some difficulty sitting here and listening to this. And just wonder as the previous speaker had mentioned, whether the other side of the House is delaying the business of the House. And in fact, Mr. Speaker ..."

Representative Thielen rose, stating:

"Mr. Speaker, I think that goes far beyond the procedural discussion on this bill."

Speaker Say: "In regards to motive."

Representative Thielen: "We were hoping the Chair would allow this bill to come forward."

Speaker Say: "Representative Thielen, you are out of order. Representative Thielen. Representative Takai, please proceed."

Representative Takai: "Thank you, Mr. Speaker. I understand that our House, as well as the Senate, are both contemplating floor amendments for a few bills, including the Governor coming in and asking for us to consider floor amendment for the education reform bill."

Speaker Say: "Representative Takai, are you addressing the motion of recall at this point?"

Representative Takai: "Mr. Speaker, I am addressing the motion as it pertains to the business of this House. We have a 12-midnight deadline to get out of here. If we are going to do any floor amendment, this type of recall ..."

Representative Stonebraker: "Mr. Speaker, point of order. This has nothing to do with the motion of recalling a bill and the procedure. It has absolutely nothing to do with what we're talking about."

Speaker Say: "Your point is well taken, Representative Stonebraker. Representative Takai, can you confine your remarks to the motion that is before this House which is to recall Senate Bill 2841?"

Representative Meyer: "Mr. Speaker, point of personal privilege."

Speaker Say: "State your point of personal privilege. How have you been aggrieved?"

Representative Meyer: "The speaker, who is the Chair of Higher Ed, made a comment about the time that's being wasted but I think it's important to point out that when we came in this morning at 9, the Majority Caucus asked for a recess for an hour."

Representative Saiki: "Mr. Speaker, point of order. This is not a point of ..."

Speaker Say: "Representative Meyer, your point is well taken. Representative Takai, can you confine your remarks to the motion to recall and not delve into the area of the operations of the House?"

Representative Takai: "Thank you, Mr. Speaker. I believe this last motion took us about 45 minutes to figure out. I guess my question, and if the Minority Leader could yield to a question is this: How many more bills are going to come up today to recall?"

Representative Thielen: "Mr. Speaker, this isn't dealing with ... You've made me stay very narrow on the bill name and bill number."

Representative B. Oshiro: "Mr. Speaker, point of order. You have not recognized the Representative from Kailua. So she is out of order."

Speaker Say: "Representative Thielen, would you please sit at this period in time. Representative Takai, why don't you just follow up and that's it."

Representative Takai: "Mr. Speaker, I asked the question of the Minority Leader, whether he knows, how many more."

Speaker Say: "Representative Takai, can you address the question? Then I can ask the Representative from Waikiki if he wants to respond to your question at this point."

Representative Takai: "Yes, my question, Mr. Speaker is, how many more bills are going to be recalled today."

Representative Stonebraker: "Point of order, Mr. Speaker."

Speaker Say: "Representative Fox, would you like to respond to this question or would you like to call recess?"

Representative Stonebraker: "Point of order. Again, the question to the Minority Leader has absolutely nothing to do with the procedure of recalling a bill from committee to the House Floor. You have required the Republican Caucus to be very narrow."

Speaker Say: "Representative Stonebraker, I believe the Representative from Pearl City, has that point of inquiry to the Minority Leader if he wants to find out if there is going to be more of these motions before this Body."

Representative Stonebraker: "And yet, Mr. Speaker, it has no bearing on the procedure of recalling a bill from committee to the House Floor."

Speaker Say: "Correct. That's correct. But Representative Stonebraker, would you allow the Minority Leader to respond to that point of inquiry at this point."

Representative Stonebraker: "I will allow that. Thank you."

Speaker Say: "Representative Fox."

Representative Fox: "Thank you, Mr. Speaker. I think this all would have gone very quickly, if we've been allowed to simply explain what people were voting on. There are a total of three issues. They were outlined in the letter from the Attorney General addressed to you and also to the ..."

Speaker Say: "Representative Fox, it is not before us in regards to this substantive ..."

Representative Fox: "I'm trying to answer the question that was put to me. If you would allow me to finish answering the question, Mr. Speaker, I'll do so and we can just move on."

At 11:09 o'clock a.m., Representative Luke requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:10 o'clock a.m.

At this time Representative Takai rose, stating:

"I withdraw the question. Thank you."

Representative Fox rose to speak in support of the motion, stating:

"Thank you, Mr. Speaker. In support of the recall.

"There are altogether three measures that the Attorney General outlined in this letter. We are on the second of three. It's not going to take that long. And Mr. Speaker, in response to the point made by the Chair of Higher Education, this is the last possible day to do it. We're sorry, but if we don't do it today, it won't get done. This is the last chance that this State Legislature has to record a vote in favor of these three measures

that passed virtually unanimously through both Houses. Thank you."

Representative Saiki rose to speak in opposition to the motion, stating:

"Mr. Speaker, I have the Floor, Mr. Speaker. I rise in opposition to the motion to recall. I have two brief points.

"First of all, if this measure was so important, then the Republican Leader should have made a request that the bill be heard in Committee, which he did not do.

"Second, I'd like to advise the Members, that this series of motions and points are in violation of Section 180 of *Mason's* which prohibits dilatory conduct on the Floor. With that, I call for the question."

Representative Thielen: "Mr. Speaker, that's offensive."

Speaker Say: "Representative Thielen, please be seated. Before calling the question, the Chair will recognize Representative Halford."

Representative Halford rose, stating:

"Thank you, Mr. Speaker. Just a point of personal privilege. Mr. Speaker, I'm not bringing the motion to recall, nor seconding the motion to recall. Mr. Speaker, I appreciate your pointing out clearly that this discussion should not include discussing the merits or demerits of the underlying bill, but simply whether we should recall a bill or not.

"Mr. Speaker, this Session, we're literally dealing with thousands of bills. There's no way that I am going to, on a moment's notice, recall what the contents of some bill is by the bill number. I would like, Mr. Speaker, not to discuss the merits or demerits of the bill but simply to have the basic information of what the bill contains. And simply by getting the official bill description provided to us before making this vote. Mr. Speaker, I need to defend this vote or at least communicate this vote to my constituents. And I need at least to know what it is we are voting on. So Mr. Speaker, I would like to have the official bill description before I vote. Thank you."

Roll call having been approved, the motion that S.B. No. 2841, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TOBACCO," be recalled from the Committee on Judiciary, was put to vote by the Chair and failed to carry on the following show of Noes and Ayes:

Noes, 36: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanoho, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Tamayo, Wakai and Waters.

Ayes, 15: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

Representative Moses moved that S.B. No. 2848, SD 1, be recalled from the Committee on Labor and Public Employment, seconded by Representative Pendleton

Representative Moses also requested a roll call vote at the appropriate time.

The Chair then announced:

"It has been moved and seconded that SB No. 2848 be recalled from the Committee. Once again, this is a procedural motion. Debate is limited to the propriety of the action in recalling the bill. Debate on the merits of this bill is not in order at this time. Any discussion on the recall motion?"

Representative Moses rose, stating:

"Thank you, Mr. Speaker. This is one of the important measures that the Attorney General has pointed out, that this Legislature has failed to take ..."

The Chair interjected, stating:

"Representative Moses, you are out of order if you're not addressing the motion to recall with the procedural motion."

Representative Moses: "Okay, Mr. Speaker, as I say, we need to recall this now or it's too late. If I may, I would read the description of the bill so Members will know what they're voting on."

Speaker Say: "No."

At 11:16 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:16 o'clock a.m.

Representative Moses continued, stating:

"Thank you, Mr. Speaker. I think it's a very important measure. And we need to discuss it here on the Floor since we did not discuss it in Committee. It's been sitting around. It passed the Senate 25-0. So there was no opposition in the Senate. There should be no opposition in the House to eliminate bribery in our State. Thank you, Mr. Speaker."

Representative Saiki: "Once again, I rise in opposition to this motion."

Representative Stonebraker: "Mr. Speaker, was my rising previous to ..."

Speaker Say: "Representative Stonebraker, at this point the Chair recognized Representative Saiki, and then we'll recognize you afterwards."

At 11:17 o'clock a.m., Representative Saiki requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:18 o'clock a.m.

Representative Saiki rose, stating:

"Mr. Speaker, I'll yield to the Representative from Hawaii Kai at this point."

Representative Stonebraker rose, stating:

"Thank you, Mr. Speaker. I knew that I had to rise quickly because we would call for the question prior to debate on the motion to recall.

"As we have mentioned, the motion to recall a bill from Committee is a necessary step when a bill becomes 'log-

jammed' in a Committee. And as has been mentioned, we are not debating the substance of the measure, however, if the motion to recall was passed by this House, Mr. Speaker, we would then have the opportunity and the option to openly debate the merits or the demerits of the bill.

"As we have been told, the measure apparently has had quite a bit of support on the Senate. I don't know the substance or the content of the bill. But I believe that in a state where democracy is so highly valued, and we have been incredibly busy this Session, a lot of bills get stuck in Committee, and the option to recall them allows the people of the State of Hawaii the opportunity to hear through the public broadcast and through the floor vote where their Representatives stand on an issue. And so, in the favor of democracy, and the favor of bringing this, because it is as we have said, the last opportunity that we have to bring a bill to the Floor for a vote. If we don't pass this measure now, a) we will not have the chance to debate on the substance, the merits or the demerits of the bill, and b) this bill, which has had incredible bipartisan support, will die a quiet and a sad death in its Committee. And so for these reasons, I would urge the even-keeled, well-thinking people of this Chamber to go ahead and vote yes, then we'll vote for or against the merits or demerits of the bill on the motion to pass. Why vote no on democracy? Vote yes."

Representative Saiki rose to speak in opposition to the motion, stating:

"Mr. Speaker, I rise in opposition to this motion.

"I'd just like to note that if Senate Bill 2428 was of such priority, then the Republican Leader should have requested a hearing by the appropriate Committee. He did not. And I will not speculate as to the reasons why. But in any event, I call for the question. Thank you."

Speaker Say: "So ordered. The question has been called at this period in time. Madame Clerk, roll call."

Representative Thielen: "Mr. Speaker, just a point of information. He stated the wrong number of the bill."

Speaker Say: "Yes, he stands corrected. SB No. 2848."

Roll call having been approved, the motion that S.B. No. 2848, SD 1, entitled: "A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION," be recalled from the Committee on Labor and Public Employment, was put to vote by the Chair and failed to carry on the following show of Noes and Ayes:

Noes, 36: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanoho, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Tamayo, Wakai and Waters.

Ayes, 15: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

At 11:22 o'clock a.m., Representative Saiki requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:22 o'clock a.m.

Conf. Com. Rep. No. 56-04 and S.B. No. 3185, SD 1, HD 1, CD 1:

By unanimous consent, Conf. Com. Rep. No. 56-04 and S.B. No. 3185, SD 1, HD 1, CD 1, were deferred to the end of the calendar.

Conf. Com. Rep. No. 59-04 and S.B. No. 2928, HD 2, CD 1:

By unanimous consent, Conf. Com. Rep. No. 59-04 and S.B. No. 2928, HD 2, CD 1, were deferred to the end of the calendar.

Conf. Com. Rep. No. 55-04 and S.B. No. 2834, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2834, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Kahikina rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I rise in support with some reservations.

"Mr. Speaker, my reservations, and I know that this purpose is to satisfy claims of legislative relief to these following people for reimbursements, payments, refunds, judgments, and settlements. My reservation is that constitutionally and statutorily we have a requirement of entitlements to Native Hawaiians, and I just wish that we could have taken the Native Hawaiian legal claims. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2834, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 57-04 and S.B. No. 2077, SD 2, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2077, SD 2, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"The second most significant job in relating to this bill to start doing functional plans again, is going to be the job of the person who dusts off these volumes when they're sitting on the shelves. The most important job that's going to be done is to spend thousands of man-hours writing plans that nobody's going to read because that's been the experience over the past 25 years. We've had the functional plans and I don't think they've had much to do with policy. It takes years to write these plans. By the time they're done, these 10-year plans are already kind of out of date. And folks, we've got a lot of important business to do. Every civil servant that works for the State has an important job to do. Let's set this one aside and get on with our main business. Vote no on this bill. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2077, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PLANNING," passed Final Reading by a vote of 38 ayes to 13 noes, with Representatives Blundell, Ching, Evans, Finnegan, Fox, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton and Thielen voting no.

Conf. Com. Rep. No. 58-04 and S.B. No. 2926, SD 1, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2926, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HOUSING LOAN AND MORTGAGE PROGRAMS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 60-04 and S.B. No. 473, SD 1, HD 3, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 473, SD 1, HD 3, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HALFWAY HOUSES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 61-04 and S.B. No. 2887, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2887, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INTERSTATE INSURANCE COMPACT," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 62-04 and S.B. No. 2839, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2839, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 63-04 and S.B. No. 2606, SD 1, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2606, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BREWPUB LICENSES," passed Final Reading by a vote of 51 ayes.

At 11:24 o'clock a.m., Representative Evans requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 11:25 o'clock a.m.

At 11:26 o'clock a.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2834, SD 2, HD 2, CD 1
S.B. No. 2077, SD 2, HD 1, CD 1
S.B. No. 2926, SD 1, HD 2, CD 1
S.B. No. 473, SD 1, HD 3, CD 1
S.B. No. 2887, SD 2, HD 2, CD 1
S.B. No. 2839, SD 2, HD 2, CD 1
S.B. No. 2606, SD 1, HD 2, CD 1

At 11:26 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 11:27 o'clock a.m.

Conf. Com. Rep. No. 64-04 and S.B. No. 3170, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3170, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Pendleton rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition to this measure.

"Mr. Speaker, I rise in opposition to this measure not because I oppose clean air or because I oppose certain industries, agricultural related industries in our State that would benefit from this. But I oppose it basically on the main point of, do we want this additive in our fuel and would the cost outweigh the benefits, or vice versa.

"Mr. Speaker, I just did a quick Internet search not long ago on ethanol and fuel additives. And by and large, I have found the weight of opposition to be astounding. For example, Mr. Speaker, if I can share just a few examples.

"Senator Feinstein of California requested information from California's EPA. The simple question is, should we or should we not require ethanol additives? The California equivalent of the EPA said that according to their data, the increase in ethanol would result in an increase in volatile organic gas emissions. That was not good for their environment. They also opined that it would drive up fuel prices in that particular State.

"Mr. Speaker, the *National Policy Analysts*, it's a publication of the National Center for Public Policy Research, has opined that ethanol will increase gas prices.

"Mr. Speaker, the Heartland Institute has indicated that their research demonstrates that ethanol does not decrease vehicle pollution emissions. And the reason why I bring that up is because some of the proponents of this, perhaps not today, but throughout the nation, people have said, let us add ethanol because it will reduce emissions. Their finding is that it will not have a beneficial effect in terms of reducing emissions. And that it would have little if any effect on lowering ozone levels.

"In a separate study by the Heartland Institute, Mr. Speaker, this is a Chicago-based think-tank. They indicated that the cost of the federal mandate were the feds to look at a nationwide mandate in terms of ethanol as a fuel additive, if they did that, nationwide, it amounts to, not millions perhaps but, even a billion in terms of gas prices increases over 5 years, if you look at all of the vehicles being used on the nation's roads and highways. And again we're talking about a state bill so we would have to look at our percentage. But nonetheless, that is applicable to Hawaii because if you found that it would

increase gas prices nationwide, a state law on this matter would likely have an increase on state gas prices.

"Jonathan Adler writes for *The National Review* and he looked at what California was looking at, and he looked at the general issue of do we want to try to subsidize the corn farmers in the Midwest by requiring this additive? And his finding was that it would not only not make the air better, but it could possibly make it worse, so emissions would be harm. He also found that it might be actually less expensive to just outright subsidize that particular industry than to have this indirect subsidy and burden the environment and raise gas prices. So in effect, Jonathan Adler in *The National Review* said if we want to subsidize the corn farmers on a nationwide basis, let's just subsidize them outright and not have this required fuel blending because there are all sorts of other negative impacts.

"Mr. Speaker, if I can just generally cite some other findings by the EPA and then insert the balance of my remarks into the Journal. But one of the concerns was not only the negative pollution that would result from the automobiles using the blended fuel, but the very plants that put together apparently the ethanol have certain kinds of emissions that would not benefit the environment, but would make it worse.

"Mr. Speaker, I've been told that this bill would benefit our Neighbor Islands in the sense that we have sugar cane. We're having a hard time competing with other nations that produce sugar ..."

Representative Stonebraker rose to yield his time, stating:

"Mr. Speaker, may I incorporate these words while yielding the balance of my time? Thank you," and the Chair "so ordered." (By reference only.)

Representative Pendleton continued, stating:

"Thank you, Representative. I'll wrap this up, Mr. Speaker.

"Other countries are able to produce sugar at a lower rate. It puts us at a relative disadvantage. And so the thinking is that if we have this blend mandated, it will then create an additional market for our sugar. And again, I would urge us to look at if it's those jobs that we're concerned about, maybe on Maui or Kauai, look at directly assisting those people as opposed to an indirect way causing this blending, perhaps harming our environment, perhaps driving up gas prices. It might be cheaper if we just said, let's pick a dollar figure, let's cut those people a check, once they lose their jobs in sugar, give them a four year scholarship, a free ride at UH. That might be a more efficient way of assisting these people than turning to the whole gasoline blending process and perhaps resulting in higher gas prices and some economic consequences that are not intended. And I'd like to insert the balance of my remarks, Mr. Speaker," and the Chair "so ordered."

Representative Pendleton's written remarks are as follows:

"Mr. Speaker, I rise in opposition to Senate Bill 3170, Senate Draft 2, House Draft 2, Conference Draft 1 which establishes new requirements concerning blending ethanol with gasoline. The Clean Air Act Amendments of 1990 require that gasoline used in the United States contain additives which oxygenate the fuel. The most common oxygenate was methyl tertiary butyl ether (MTBE), which is being phased out due to its harmful effects on human health. In its place, the federal government is seeking to make ethanol the only legal oxygenate for meeting the federal fuel oxygenate requirement. This bill is seeking to enact an ethanol mandate in the State.

"First of all, I want to make it clear that I am not against finding alternative fuel sources, nor am I against the agricultural industry, specifically the sugarcane industry in Hawaii. I am for understanding all of the problems and for creating solutions to them. However, I am against the mandating of ethanol as a fuel additive especially since several studies have shown that its benefits are not conclusive. Supporters of ethanol blending claim that it is economically and environmentally more sound than other oxygenated blends such as methyl tertiary butyl ether (MTBE), or gasoline itself.

"However, I find that this argument is not entirely sound. After over a decade of Environmental Protection Agency (EPA) mandates concerning the use of oxygenates MTBE and ethanol in reformulated gasoline, a committee of the National Research Council (NRC) has determined that the additives do little to reduce vehicle pollution. The NRC also concluded in 1999 that the problem with ethanol-containing fuels is that they tend to evaporate readily, and evaporative emissions, along with combustion exhaust, contribute to air pollution.

"Originally, the aim of requiring oxygenated fuels was to help reduce carbon monoxide pollution. However, it has been found that ethanol is no longer needed by states to keep their air quality within federal health standards. According to an article by Judy Fahys in *The Salt Lake Tribune* on January 13, 2004, the Utah Air Quality Board recently set into motion regulation changes that would exempt them from the federal mandate that Utah County gas pumps sell only oxygenated fuel. Utah has been under the ethanol mandate for more than 12 years. Utah's Division of Air Quality Director Rick Sprott said that, 'vehicle engineering improvements have led to lower carbon monoxide emissions.'

"Tom Randall's article, MTBE, 'Ethanol Don't Reduce Auto Pollution,' published on The Heartland Institute website, also makes the same claim. In his article, Tom Randall quotes William Chameides, committee member of the National Research Committee that determined that additives do little to reduce vehicle pollution emissions: 'Motor vehicle emissions of chemicals that form ozone pollution have decreased in recent years. But that's largely due to better emissions control equipment and components of reformulated gasoline – other than oxygen additives – that improve air quality. Although additives do reduce some pollutants from motor vehicle emissions, the oxygenates appear to have little impact on lowering ozone levels.'

"Mr. Speaker, it is already established that ethanol blending is not more environmentally sound, that it in fact causes more pollution. Along with Utah's experience there are numerous research and studies that support this. According to an article from the Frontier Centre for Public Policy called Ethanol- The Promise and the Peril, despite the fact that ethanol blending does decrease the amount of carbon monoxide emissions, to the contrary, in some cases the mandatory use of oxygenates can make the ozone problem worse. Burning ethanol creates more nitrous oxide and ozone, the main ingredients in what is called 'winter smog', and puts more aldehydes and alcohol in the air, both are known carcinogens.

"The EPA formed a Blue Ribbon Panel in 1999 to study the health benefits of fuel oxygenates – MTBE and ethanol. The report highlighted the fact that the air quality benefits of oxygenates are unclear. *In fact, their recommendation was to eliminate the oxygenate recommendation altogether.* California's EPA reiterates this point in their letter to Senator Feinstein, dated August 6, 2003. The letter points out potentially serious environmental and health hazards to ethanol blended gasoline. The EPA says that 'the increase in the use of ethanol-blended gasoline has likely resulted in about one percent increase in emissions of volatile organic gases (VOC)

in the South Coast Air Quality Management District in the summer of 2003.' The letter goes on to say that, 'these emission increases have resulted in higher ozone levels in this year than what would have otherwise occurred, and are responsible for at least some of the rise in ozone levels that have been observed.'

"VOC emissions are not just from car emissions but from ethanol plants themselves, an added pollution source. In an article published on the Chemical and Engineering News website, Cheryl Hogue writes that the EPA found that ethanol plants themselves could be a major source of air pollutants. The EPA spokesman goes on to say that tests conducted by the federal agency and state regulators at a number of ethanol plants found emissions of volatile organic compounds and carbon monoxide that were many times greater than companies had reported. Emitted organic compounds included three chemicals ranked as hazardous air pollutants: acetaldehyde, formaldehyde, and acrolein.

"Exactly how 'green' is ethanol blending? Although it is touted as a way to achieve energy independence, ethanol blending not only causes more pollution, it also uses more energy and more resources overall. In an article by Matthew McCormick, Scott Freifeld, and Lynne Kiesling published on the Reason Public Policy Institute web site, they cite a UC Berkeley study that argues that ethanol in reformulated gasoline does not deliver the promised environmental benefits because of the energy used in producing ethanol. According to the study, more energy is needed to create ethanol than burning it afterwards creates. It found that 1.5 gallons of ethanol are needed to replace 1 gallon of gasoline in a car engine. That is an incredible amount of energy needed to produce a relatively small amount of ethanol.

"The report also claims that the production of ethanol leads to the degradation of the environment by the emission of global warming gases, fertilizer and herbicidal runoff, and wastewater. Furthermore, all energy in ethanol comes from fossil fuels, with their own emissions. Making ethanol is an extremely energy-intensive process. Before it reaches your gas tank, the production of a gallon of ethanol has already caused more pollution than would a comparable gallon of gasoline. According to a Congressional Research Service study, 'if the energy used in ethanol production is petroleum-based, ethanol would do nothing to contribute to energy security.' It is very likely that a broad ethanol mandate will actually increase overall energy use.

"Mr. Speaker, if the environmental argument for ethanol is weak, the economic argument is even worse. How can a fuel that requires nearly as much energy to make as it produces be more economically viable? It isn't. Ben Lieberman, a senior policy analyst with the Competitive Enterprise Institute, says ethanol costs nearly twice as much as gasoline. 'Even preferential tax treatment has not significantly expanded its use, which explains the push for this mandate by the ethanol industry and its congressional allies.'

"This leads me to ask if there really is a market for this in Hawaii? Proposals for ethanol blending with gasoline have been around for a while, but it clearly will not move forward without regulation and very serious subsidies. When the subsidies end and the blending mandate remains, costs will inevitably go up, triggering a rise in gas prices as well. By having an ethanol mandate, we will continue to place an unnecessary financial burden on Hawaii's people.

"The study by McCormick, Freifeld and Kiesling analyzed and projected the benefits in 2012 from using ethanol in reformulated gasoline. 'Projections are that we would be using five billion gallons of ethanol by 2012, which are produced from 2 billion bushels of corn, given that a bushel of corn can

generate 2.5 gallons of ethanol. If a bushel of corn costs \$3 to produce, farmers incur \$6 billion in corn production costs. Selling the corn at \$1.86/bushel generates \$3.72 billion in sales. The federal subsidy of ethanol production at 54 cents/gallon would be \$2.7 billion. Adding the \$2.7 billion subsidy to the revenues from corn sales yields \$6.42 billion in revenues for farmers from production, a 420 million dollar profit. However, overall net benefits remain negative at \$2.28 billion.'

"Notwithstanding the positive impact on farmers due to the subsidy, the net benefit for the nation as a whole would be negative. The high cost of ethanol is not reflected in its true market price, but is deceptively borne by the taxpayer through federal subsidy. Another cost that will likely be passed on to the consumer, is the cost of slashing emissions because ethanol plants generate emissions that violate air quality regulations. According to the study by McCormick, Freifeld and Kiesling, the average ethanol plant in the United States incurs costs of two million dollars to slash emission, plus the civil fees, and a total fixed cost of approximately \$144 million to reduce emissions.

"Mr. Speaker, the costs for an ethanol mandate will continue to add up as supply and logistics come into play. Moisture causes ethanol to separate from gasoline and ethanol is also highly corrosive, so gas with the additive cannot be shipped through inter-state pipelines, it must be transported by train or truck or barge. In our case, because Oahu no longer produces sugarcane, our molasses will have to be imported to be refined and blended here. That would add to the final cost of the fuel.

"Because of the added cost of transporting and handling ethanol, the current level of ethanol use in California has added between 6 cents and 10 cents to the price of each gallon. This added cost becomes a base cost like gasoline station rent or gasoline taxes, which according to Thomas Elias in his article for the *Los Angeles Daily News*, 'will not fluctuate with the price of oil. It will permanently make gasoline here cost more than in other places.'

"Tom Doggett in an article for the Reuters News Service, explains that the supply and logistic problems were so great in California, that they obtained an exemption from the EPA to avoid using ethanol in 2001. California, with the most stringent fuel requirements in the nation, could meet the Clean Air Act requirements without oxygenates. However, according to Senator Feinstein, the federal ethanol mandate 'will drive up the price of gasoline for consumers and do little to lessen America's dependence on foreign oil. Moreover, this mandate is simply unnecessary and amounts to a new hidden gas tax.'

"Mr. Speaker, gasoline is expensive as it is nowadays; the ethanol provisions will only make matters worse. Ethanol as a fuel additive not only fails to deliver environmental benefits, it fails to deliver any economic benefits as well. It does not clean the air; in fact, it adds to the pollution. Any potential energy efficiency is lost because its production uses fossil fuel, thus still maintaining our dependence on foreign oil. We must not forget the costs in growing the crop and the environmental consequences to producing ethanol. Clearly, ethanol does not make economic or environmental sense. The evidence says it would be a bad energy policy to mandate ethanol use because it will cost us a great deal of money without actually helping clean our air or reduce our dependence on petroleum. Wouldn't Hawaii's agricultural workers be better off subsidized directly through college scholarships or checks from the government than through the indirect subsidy via an ethanol additive requirement?

"For these reasons, I stand in opposition to SB 3170, SD2, HD2, CD1. Thank you, Mr. Speaker, for the opportunity to speak.

The Chair then stated:

"Representative Stonebraker, you were going to stand up in opposition and incorporate the words of Representative Pendleton. Is that correct? Okay, so ordered," (By reference only.)

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support.

"Mr. Speaker, generally, I support locally produced fuel. Bio-diesel has been a positive thing and I supported that. And so far as it looks, that's a positive. And so generally that's why I'm supporting this. But I want to also point out a couple things, Mr. Speaker.

"Our current law for years now, our current law is that it is mandated that 100% of our fuels be ethanol, have 10% ethanol, but we've never implemented it. Now this bill, is reducing the mandate from 100% down to, 100% which we never implemented, so really was 0% and in reality what we said 100%, now we're reducing it to 85%. And maybe this is a signal that we really intend to implement the law we passed.

"I would like to clarify a separate point about sugar production made by the previous speaker. Mr. Speaker, HC&S on Maui is one of the most efficient sugar producers in the world, absolutely. Mr. Speaker, HC&S can produce sugar cheaper, more efficiently, better, than almost any plantation in the world. The only reason that the world price of sugar is so low is that all of the countries that produce sugar, no exception, are somehow protected or subsidized by their governments. So these other countries are overproducing sugar, dumping excess on the world market, making the world price of sugar something like 6 cents or 7 cents. But the cost of production, Mr. Speaker, no matter what country you're talking about, is some amount in excess of 15 cents. And in most countries, more than 20 cents. So I just wanted to clear up this. And it's because I'm from Maui and I'm provincially prejudiced, Mr. Speaker, I want to stick up for our plantation which is tremendously efficient in doing its job. Thank you."

Representative Thielen rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I'm rising in strong support of the ethanol bill.

"Thank you. Mr. Speaker, there have been a lot of faxes that we've all received back and forth on this issue. Some of the information unfortunately, seemed to raise apprehension of Members in this House of Representatives. I would like to put a little bit of balance on that by reading a short statement.

To suggest that ethanol use in Hawaii will place upward pressure on gasoline prices is either a statement of ignorance or deliberately misleading. Adding a 10% volume of high octane, low cost fuel to the Hawaiian market outside of the control of refiners will lead to increased competition and lower fuel prices for consumers. One has to ask, why else would the refiners be opposing this bill so vociferously.

"Mr. Speaker, there are many positive steps to moving ahead with ethanol. Senate Bill 3170 will not lead to imports of ethanol. The Department of Business and Economic Development can waive the minimum blending requirement in whole or in part to the extent ethanol production capacity is not in place.

"Ethanol producers under the bill must register prior to construction and production. So there will be ample notice to DBEDT to address blending levels accordingly.

"The timing date is really important, Mr. Speaker. Some have argued for a delay similar to a delay in the bottle bill. They've argued for a delay ultimately with the hope to kill the ethanol bill. But the timing is important. Mr. Speaker, you know as do Members in this Body, that it's important to have a time certain when ethanol production can begin and when it will actually be part of the fuel mix. They have to go to their funders. They can't do that if it's just way out there in the future. They need to have it at time certain that this will occur, 85% of the fuel will then have a 10% ethanol content. So this will enable them to get the funding that they will need to put up the various construction that they have to do.

"Mr. Speaker, Governor Schwarzenegger, has been referenced in this Body and California's been referenced in this Body. Let me just tell you that California's technical waiver request from the federal oxygen requirements is mostly irrelevant for Hawaii, as California's fuel recipe is completely different. The issue in California has to do with whether CARB Phase III reformulated gasoline, the cleanest gasoline in the U.S. should still require an oxygenate. California says no. The EPA says yes. And then it's misleading, Mr. Speaker, to say that California has petitioned the EPA for a waiver to remove ethanol from California gasoline. In fact, the contrary is true. In requesting a waiver from the oxygen requirement, Governor Schwarzenegger said, "I recognize the benefit of one aspect of the CAA oxygen requirement would dramatically increase use of ethanol." That's a benefit according to Governor Schwarzenegger. He added, "California is also considering various mechanisms to spur in-State ethanol production so that our citizens and economy benefit directly from the State's increased use of ethanol as a gasoline blending component."

"Ethanol has not increased gasoline prices in California. And I believe that this increased competition in Hawaii will ultimately bring down the price of fuel at the pump for our motoring public. So I strongly urge our Members to vote yes on this bill. Thank you, Mr. Speaker."

Representative Morita rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this measure.

"Over the past week, the opponents of ethanol have circulated numerous misstatements and many of those inaccurate statements have been presented on the Floor. While I intended to respond to these inaccuracies and misstatement with written remarks, many of my colleagues said they do not intend to read the Journal, so I'd like to share some of my findings with you.

"First of all, both the production and use of ethanol in Hawaii has been a policy goal since the 1994, when we had a statute mandating ethanol blends in Hawaii's gasoline and the 2000 Ethanol Tax Credit. Bills that this Body has considered this year clarify and improve current laws by removing ambiguities and provide certainty so that both investors in ethanol production, and the petroleum sector can plan accordingly.

"Second, the environmental benefits of ethanol blends in conventional gasoline, like we have in Hawaii, are not in dispute. Therefore, there is no uncertainty as to whether ethanol use will lead to less pollution when blended with Hawaii's gasoline. Hawaii's gasoline has very high levels of toxic pollutants, most notably, carcinogenic aromatics such as benzene and toluene, which converts to benzene when there is

vehicle combustion and is prevalent in vehicle exhaust. As a matter of fact, the aromatic level in one particular brand of gasoline is 41%, where in California, it's only 1%.

"Ethanol use in conventional gasoline reduces tailpipe carbon monoxide emissions by as much as 30%, exhaust VOC emissions by 12%, and toxic emissions by 12%. Ethanol reduces particulate emissions, especially fine-particulates that pose a health threat to children, senior citizens, and those with respiratory ailments. The use of ethanol-blended fuels has been shown to reduce greenhouse gas emissions by 12 to 19%, according to Argonne National Laboratory. The American Lung Association of Metropolitan Chicago credits ethanol-blended reformulated gasoline with reducing smog-forming emissions by 25% since 1990.

"Ethanol is widely used in the federal winter oxygenated fuels program and the reformulated gasoline program in cities that exceed public health standards for carbon monoxide and ozone pollution.

"The proponents of maintaining the status quo with Hawaii's conventional gasoline note that studies go back and forth on whether ethanol use may increase smog in warm areas in certain gasoline formulas. This issue is not relevant to Hawaii. This debate concerns very specialized blends of gasoline, like California's Phase III formulated gasoline, which is also called CARB Phase III RFG, not conventional gasoline which we have in Hawaii. CARB Phase III RFG has been reformulated removing most of the aromatics and like other components ..."

Representative Lee rose to yield her time, and the Chair, "so ordered."

Representative Morita continued, stating:

"Thank you. CARB Phase III RFG has been reformulated removing most of the aromatics and like other components and other components like butane and pentanes. And like I said before, the aromatic level in one particular brand of gasoline in Hawaii is 41%. In California it's only 1%. So the debate between the U.S. Environmental Protection Agency and the California Air Resources Board, is whether an oxygenate like ethanol should be added to this specific formula. The EPA said it is required, and California disagrees. It has nothing to do with the kind of gasoline we have in Hawaii.

"Third, the new equipment required to blend ethanol will not lead to increased costs to Hawaii's consumers. While there is no way to predict how capricious oil companies will react when faced with the implementation of the ethanol mandate, the use of ethanol may succeed in reducing prices to Hawaii's consumers. The costs, benefits and analysis of the potential financial impact on oil companies and gasoline prices, specific to Hawaii, has been extensively studied, reviewed and updated. These studies have concluded that the federal and state tax incentives for ethanol blending, along with the octane value of ethanol, result in the net price of ethanol being significantly below gasoline. Also, adding the additional low-cost, high-octane fuel volume ethanol represents will lead to more competition in the petroleum sector.

"Some opponents have cited California, and federal rules requiring ethanol for raising the price of gasoline by as much as 20 cents per gallon. Nothing can be further from the truth. The Chairman of Valero, the largest independent refiner in the United States and a major California refiner said, "because ethanol is cheaper than gasoline on the West Coast it gives refiners an economical blend and actually lessens the amount of gasoline used and brings down the cost of finished gasoline."

"Valero's statements are supported by recent price data from the Energy Information Administration which shows that ethanol is and has been consistently cheaper than gasoline since being integrated into both California's and New York's fuel systems.

So in conclusion, Mr. Speaker, your Committee on Energy and Environmental Protection has reviewed the merits of ethanol and the costs and benefits of its use in great detail. We have concluded that ethanol production and use represents a unique opportunity for Hawaii to create jobs, preserve existing jobs, spur rural agricultural development, reduce our dependence on imported petroleum, and reduce pollution. Therefore I request that my colleagues support this measure. Thank you."

Representative Meyer rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I'm rising in opposition to this measure.

"It's kind of interesting to see how this Body seems to have a penchant for going to things that are just about to be withdrawn completely. The bottle bill, no other state ... Twenty years now, we just discovered and we're going to pass it when there are far better ..."

Representative Lee rose to a point of order, stating:

"Mr. Speaker, point of order. We're not discussing the bottle bill."

The Chair responded, stating:

"Your point is well taken. Representative Meyer, please."

Representative Meyer continued, stating:

"Thank you, Mr. Speaker. I'm just using that as an example because this ethanol bill is just another example of something that's been tried, has been subsidized to a great degree, and continues to benefit small groups and really has no overall benefit.

"Proponents of ethanol will try to tout it as a new and breakthrough technology that will save our environment and relieve our economy driven by the combustion engine from the oil dependency that fuels it.

"These are myths, as is much of the pro-ethanol rhetoric. Ethanol is an old technology. It is an inefficient energy source. It is a technology that depends on subsidies and protectionism.

"Ethanol is not the environmental panacea or cure-all that proponents have long claimed. Nor is ethanol a smart energy move for Hawaii.

"Henry Ford tinkered with using ethanol during the days of the Model T back in 1908. Ethanol was determined to be an inefficient energy source then and nearly a century of science since then has confirmed that fact. A vote for ethanol is simply a vote for corporate welfare. It is time for ethanol to stand on its own merit. The tax credits, subsidies, and protectionism that have propped up ethanol need to be removed and repealed, not strengthened.

"When you talk about corporate welfare, ethanol really is the 'poster boy'. In the case of ethanol, Archer Daniels Midland Company has been accused of collecting the bulk of \$10 billion in ethanol tax credits since 1980. What a wonder they do all the advertising that they do.

"When you talk about ethanol's claim that the benefits of ethanol on the environment justify the millions of dollars of subsidies and the increase in fuel costs, unfortunately, the benefits of ethanol have been drastically overstated. Which begs the question: Who benefits from ethanol and the subsidies required to sustain this industry?"

"I'd like to read from an article that was written by Gary Libecap, who is a Professor of Economics, and the Director of the Karl Eller Center at the University of Arizona. He states:

Numerous scientific assessments in the early 1990s challenged the environmental benefits of ethanol. Studies by the EPA, National Academy of Sciences, the White House National Science and Technology Council, and the Committee on the Environment and Natural Resources of the National Science and Technology Council did not find conclusive air-quality benefits from the use of any oxygenate additive. In 1994 policy debates, representatives of the Sierra Club, Environmental Defense, and Resources for the Future, opposed the oxygenate mandates. Ethanol advocates never dropped their environmental claims, however.

The most recent information suggests that ethanol, when mixed with gasoline, has higher emissions of VOCs.

"Which I keep forgetting what that stands for. Anyway, it's not something that you want. It has higher VOCs than does gasoline blended emissions. Gasoline blended."

Representative Leong rose to yield her time, and the Chair, "so ordered."

Representative Meyer continued, stating:

"With ethanol, the VOCs will be higher than "gasoline blended with MTBE, and the use of ethanol could increase the release of nitric oxide and other pollutants such as carcinogenic aldehydes into the atmosphere. A 1999 National Academy of Sciences study found no significant pollution reduction from ethanol's use and instead possible increases in pollutants that cause smog."

"I wanted to rebut something that my dear colleague from Kailua said about the situation in California. Actually it was the former governor, Governor Gray Davis, that wanted to get a waiver from the EPA, a requirement that they use an oxygenate in gasoline. And his request was turned down and he appealed it in Circuit Court. That was on July 17. The Appeals Court found that the EPA improperly rejected Davis' April 1999 request for a waiver from the federal gasoline requirements. Davis cited adverse economic effect of an ethanol requirement. Half the nation's ethanol production is controlled by the Midwest agribusiness giant, Archer Daniels Midland. And Davis also cited California Air Resources Board studies predicting ethanol would hinder the State's attempt to meet federal ozone limits and national ambient air quality standards for particulate matter emissions.

"Governor Davis renewed his request to the EPA for an oxygenate waiver. Well I think he wanted to have something happen on it before the election, but it didn't and we all know how the election went in California. And the new Governor was able to do the exact thing that Governor Davis was trying to do.

"Another reason, I'm voting no on this bill is because of the loss in revenues that this bill will create. The Hawaii gasoline excise tax waiver for gasoline would cost the State approximately \$16 million. That's assuming that we use somewhat over 400 million gallons of this gasohol product. As

far as the federal excise tax exemption on gasoline, that on a 10% ethanol blend would reduce the federal tax by 5 cents, that would equal about \$20 million a year. Then you take, the State's proposed Ethanol Facility Tax Credit, at 30 cents per gallon, that would cost the State in lost revenues, \$12 million.

"The credits don't stop there. You also have a Small Producer Credit available in Hawaii. The producers with annual capacity of 30 million gallons or less per year, the credit is 10 cents a gallon up to 15 million gallons. So you figure that one point, 5 million, that will cost the State because there would be more than one producer, \$4 million a year. So the total there is lost State revenue, about \$16 million. Lost State revenue with full local production would be up to \$28 million. If you add lost State, federal, and full local production, that's \$52 million a year. The question is, ethanol's mandate increases manufacturing and distribution costs for gasoline. It will drive up gasoline prices, while here in Legislature we are pursuing price controls in the hopes that that will keep the prices down. Seems sort of counter intuitive.

"Gas cap legislation does not allow for the adjustment for approximately ..."

Representative Lee rose, stating:

"Mr. Speaker, I believe the speaker has exceeded her 5 minutes."

Representative Jernigan rose to yield his time, stating:

"Mr. Speaker, I would like to adopt the words of the current speaker and the other speaker from Kailua [Maunawili], and yield the balance of my time," and the Chair "so ordered." (By reference only.)

Representative Meyer continued, stating:

"Thank you, Representative. Gas cap legislation does not allow for the adjustment for approximately 9 cents a gallon in increased costs of ethanol blended gasoline. This will inappropriately and adversely affect Tesoro, its viability of operations in Hawaii. Only a small percentage of Tesoro's gasoline is sold at retail where the tax benefits of ethanol programs occur. So they'll have the 100% cost to accommodate the mixing of this new mix of 10% ethanol that they will not be able to recoup the expense of the cost because they're not in the market to get much of these credits.

"Ethanol is also difficult to handle and that's what adds to the cost of the product. It can't be transported through pipelines. It's very volatile. It evaporates easily. And tends to attract contaminants.

"I guess then my final thought here is, I did want to also point out that according to a study, a gallon of ethanol, now that they have improved methods of producing it, provides almost one-fourth more energy than it takes to produce it. If you compare that with a gallon of gasoline which provides six to seven times more energy than it takes to produce it. There's no comparison between the two products. One puts out far more than the other. I think that the time to stop these subsidies has come and gone because of the legislation that has outlawed MTBE, which was the preferred oxygenate that has been a great opportunity for these Midwest companies then. And they're drooling over the anticipation of having to produce so much more ethanol that some of these other states that are required to use it will have to use. And yet, MTBE may be not as bad a product as ethanol. For those reasons and more than I can cover in the time allotted, I will be voting no. Thank you."

Representative Marumoto rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I will be voting yes on this measure.

"And in the past, I have expressed grave reservations about ethanol, about the dislocation costs that would surround the institution of ethanol, the transition costs, and perhaps increase costs at the pump. The good news was, of course, it would encourage our agricultural industry, and perhaps, add thousands of other workers.

"But I will be voting yes because I believe this bill gives the Director of Business and Economic Development the latitude to determine when this program will go into effect. And there's certain very strong conditions attached to it. He would have to make sure that there would be a sufficient amount of competitively priced ethanol available before this program could go into effect or a sufficient ethanol production capacity. So, if there is not enough ethanol to produce at least 40 million gallons, I don't see that this program starting up. So for these reasons, I will be voting for the measure. Thank you very much."

Representative Morita rose to respond, stating:

"Just a brief rebuttal. With all due respect to the Representative from Laie, most of the statistics that she stated dealt with the California situation, which again has no bearing on Hawaii, and also dealt with corn – corn to ethanol rather than sugar to ethanol. Sugar to ethanol has a higher conversion rate than corn to ethanol, much higher. I'm sorry I don't have those specific statistics before me.

"And second of all, I'd be happy to advocate for the reduction of subsidies to Archer Daniels Midlands as soon as the United States stops subsidies to the petroleum industry, and especially in financing the war in Iraq for petroleum."

Representative Moses rose stating:

"Mr. Speaker, I believe the last statement is just not in line with anything we're supposed to be doing here. And I ask that it be stricken from the record."

The Chair responded, stating:

"I will not allow that statement to be stricken from the record."

Representative Moses: "Well, then we can talk about the war in Iraq, Mr. Speaker?"

Speaker Say: "No, you may not."

Representative Moses: "But she just did."

Speaker Say: "She just made reference in regards to the war in Iraq, tied to the oil industry."

Representative Moses: "Well then, I'll point out that there are people over there dying left and right because of Archer Daniels ..."

Speaker Say: "Representative Moses, for what purpose do you rise? Are you rising in support of the measure?"

Representative Moses: "That was a point of personal privilege, Mr. Speaker."

Speaker Say: "I did not hear that."

Representative Moses: "I take personal offense when people start talking against the war in Iraq here as if it was a war for oil, which is exactly what she did."

Speaker Say: "Representative Moses."

Representative Saiki rose to a point of order, stating:

"Point of order, Mr. Speaker. A point of privilege goes to the ability of a Representative to perform his legislative function. That is not a proper point of personal privilege."

Speaker Say: "Representative Saiki, your point is well taken. Representative Moses, would you please stand on a point, or in support of this measure or against this measure."

Representative Moses: "That was a point of personal privilege because I was personally offended by those comments."

Speaker Say: "Your point is well taken."

Representative Bukoski rose, stating:

"Point of order, Mr. Speaker. I believe the Representative from Makakilo, as the subject has been brought up on this Floor, has the ability to rebut the comments made as in reference to the war in Iraq, Mr. Speaker."

The Chair responded, stating:

"Representative Bukoski, the Chair has allowed you all a lot of latitude. And I think the Representative from Kauai, in making the reference, it was never the intent to make that type of a reference in regards to what is happening with our military."

Representative Bukoski: "Mr. Speaker, by bringing the subject up, it opens it up to debate."

Speaker Say: "Representative Bukoski, would you please sit. Thank you."

Representative Jernigan rose, stating:

"Thank you, Mr. Speaker. I wanted to correct my previous request. It was the speaker from Maunawili that I would like to have his words incorporated as my own, instead of Kailua. And the speaker from Laie," and the Chair "so ordered." (By reference only.)

Representative Bukoski rose to speak in support of the measure, stating:

"I rise in support.

"Mr. Speaker, I just want to say that my previous no votes on this measure were related to my concern that the ethanol would not be locally produced. And I believe this measure, as was stated previously, leads me to believe that those concerns have been addressed in this measure that's before us. So for those reasons, I support this bill."

At this time, the Chair stated:

"Thank you very much. Members, we've had a lot of discussion on this measure. Representative Moses, for what purpose do you rise?"

Representative Moses rose to speak in opposition to the measure, stating:

"I rise to cast my vote, Mr. Speaker. Thank you, Mr. Speaker. I am rising in opposition because the speaker that made the comments about the oil industry changed my mind. Thank you very much. I was going to vote in favor because I believe that we should do something to get away from fossil fuels as much as we can. However, if we're going to talk about the subsidies for the oil industry, let's talk about the subsidies for steel industry. And we're not doing that. We're singling out the oil industry. I would like the words from the speaker from Maunawili, Laie, and Kaimuki entered in the Journal as if they were my own.

"And just point out that even though we have given some latitude now to the Department of Business, Economic Development, and Tourism, I think that's very good, but I still take personal umbrage any time we just start talking about an industry. So let's talk about the sugar industry. Why are we subsidizing them? We can't subsidize oil, but we can subsidize sugar. I don't understand this, Mr. Speaker. Thank you."

Representative Ching rose in support of the measure and asked that the remarks of Representative Thielen be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3170, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PETROLEUM PRODUCTS," passed Final Reading by a vote of 42 ayes to 7 noes, with Representatives Finnegan, Jernigan, Meyer, Moses, Ontai, Pendleton and Stonebraker voting no and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 65-04 and S.B. No. 1238, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 1238, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH," passed Final Reading by a vote of 49 ayes and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 66-04 and S.B. No. 2056, SD 1, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2056, SD 1, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Moses rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker, in opposition.

"This measure designates the Auditor as an authorized representative of both the Department of Education and the Department of Health for purposes of accessing student records. I know there was a problem getting some records during the Felix Investigative Committee, but I don't know if the Auditor, the Legislative Auditor can act as a representative of both the Department of Education and Department of Health. It seems to me that there are higher standards and higher laws than just the State laws. This may violate some federal laws. Because both of those departments do get federal moneys. And I don't know that they can do this. I don't know if the Auditor can do this legally. Legally, other than us passing a law. There's still other laws. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2056, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE AUDITOR," passed Final Reading by a vote of 42 ayes to 7 noes, with Representatives Blundell, Fox, Halford, Jernigan, Meyer, Moses and Pendleton voting no and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 67-04 and S.B. No. 2200, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2200, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 49 ayes and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 68-04 and S.B. No. 2425, SD 1, HD 1, CD 1:

Representative Saiki moved that the report of the committee be adopted and that Conf. Com. Rep. No. 68-04 and S.B. No. 2425, SD 1, HD 1, CD 1, pass Final Reading, seconded by Representative Lee.

Representative Fox rose, stating:

"Thank you, Mr. Speaker. I believe there's a floor amendment laying on the desk of the Members. I would like to offer that floor amendment."

The Chair then stated:

"Madame Clerk, have the copies of the floor amendment been circulated and distributed to the Members of this House?"

The Clerk responded, stating:

"Mr. Speaker, for clarification, copies of Floor Amendment Number 18 have been placed on the Members' Desk, but I believe subsequently, Representative Fox introduced another floor amendment which has yet to be placed on the Members' desk."

At 12:07 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 12:14 o'clock p.m.

At this time, the Chair announced:

"Members, you all have received Floor Amendment No. 20 that was offered by Representative Fox. With your indulgence, the Chair would like to recommend that we take this measure out of order at this period in time, and take it up after lunch."

Representative Luke rose, stating:

"Mr. Speaker, just for clarification, is the Minority Leader withdrawing Floor Amendment Number 18?"

At this time, Representative Fox withdrew Floor Amendment No. 18, amending S.B. No. 2425, SD 1, HD 1, CD 1.

By unanimous consent, action was deferred to the later in the calendar.

Representative Halford rose, stating:

"Mr. Speaker, if I could, just to clarify. Earlier, you said that we're going to take up this Floor Amendment 20 after lunch. Thank you, and that means also that we'll discuss Conference Committee Report Number 68 after lunch? That the underlying bill itself will be discussed later also? "

The Chair responded, stating:

"The floor amendment plus the bill itself, yes."

Conf. Com. Rep. No. 69-04 and S.B. No. 2716, SD 1, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2716, SD 1, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Moses rose to speak in opposition to the measure, stating:

"Mr. Speaker, in opposition.

"This measure establishes the Higher Education Statutory Analysis Interim Study Group. I mean, it will take a week just to figure out what the title means before I can get busy. But it's with the assistance of the LRB. And this is to determine an approved framework for statutes related to higher education in the UH. And then it lists a bunch of paragraphs and chapters in our law, but I thought we made the UH autonomous. And now, we've got the Legislature dictating business to them. And also it removes any Administration initiatives, if you will. It removes any authority from the Administration and gives it to the Legislature. So it looks like the Legislature is trying to run the UH instead of them being autonomous as we have previously passed and agreed to. Thank you, Mr. Speaker."

Representative Takai rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this measure.

"I just want to reassure the previous speaker that this measure pretty much does nothing of what he mentioned previously. Basically what we're doing is, we're taking a look at the current statutes in law. And by the way, the University of Hawaii, although we provided some level of autonomy through the amendment done in 2000, still needs to come to the Legislature for many different items. In fact, Mr. Speaker, as you noticed as we went through this legislative Session, the University has come and requested support in form of money but also in the form of changing some statutes.

"Chapter 304 of the Hawaii Revised Statutes is but one part of our State law that oversees and guides the University of Hawaii system. When we took a look at the education statutes in 1995, the Legislature chose to recodify those statutes to put it into one section of law, now entitled Section 302A. Our hope is that during this interim, the Chairs of the Higher Education Committees, working with the LRB, can put some semblance and organization to our higher education statutes.

"And it has nothing to do with undermining the Administration's efforts in higher education, nor does it have anything to do with the constitutional amendment that was passed in 2000. Thank you, Mr. Speaker."

Representative Marumoto rose to speak in opposition to the measure, stating:

"Mr. Speaker, I'm going to rise in opposition to this measure.

"Although I was very happy to hear the Chair of the Higher Education Committee mention that the Committee on Higher Education would be involved in this measure during the interim. I'm not totally assured of that because I don't see the language in the bill itself. I kind of take issue with the Senate Bill 2716 because the study group is nonspecific and open-ended. It does specify that the Chair of the Board of Regents will be, one member represent of the University of Hawaii or their designees. And the one faculty member appointed by the Speaker and the Senate President, they will also designate a student. And then (c) is kind of open ended. 'Any other individuals deemed to have appropriate expertise and experience.'

"I assume that the Chairs of the Committees on Higher Education in the Senate and the House will be members, but they are not specified. They're just mentioned in the text. I don't know how many members will be on this board because any other individuals could mean fifty people with the appropriate expertise and experience.

"There's also no assurance that we will have Minority Members on this. So this is sort of a red flag asking for some input on this. And yet we don't want to step on the toes of autonomy of the University. Thank you very much."

Representative Tamayo rose to speak in support of the measure, stating:

"I'm rising in support, Mr. Speaker.

"Just to clear up a comment made by the previous speaker, on line 6 of page 2, Senate Bill 2716, says:

The Chairs of the House Committee on Higher Education and the Senate Committee on Education shall serve as Co-Chairs of the study group.

"And then it goes on to list the various members of the study group. So they're more than just mentioned, they will be Co-Chairing this study group. Thank you."

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support.

"Mr. Speaker, I was a Conferee on this measure. Mr. Speaker, the intention expressed regarding the direction of this bill and the study group is very well-meaning. As with many of our laws, they live in our big fat law books that seem to get bigger and bigger as time goes on in a disjointed way. What's being proposed here is to look at all of these laws concerning the University of Hawaii that are scattered throughout the books and make recommendations as to how to present them in an integrated way. And if that is what comes of this, then it's a very good thing. Thank you."

Representative Thielen rose in opposition to the measure and asked that the remarks of Representative Marumoto be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2716, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 39 ayes to 10 noes, with Representatives Blundell, Finnegan, Fox, Jernigan, Marumoto, Meyer, Moses, Ontai, Stonebraker and

Thielen voting no and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 70-04 and S.B. No. 2538, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2538, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR IOLANI SCHOOL," passed Final Reading by a vote of 49 ayes and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 71-04 and S.B. No. 2671, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2671, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR THE CONGREGATION OF CHRISTIAN BROTHERS, INC. DBA DAMIEN MEMORIAL HIGH SCHOOL," passed Final Reading by a vote of 49 ayes and with Representatives Arakaki and Herkes being excused.

Conf. Com. Rep. No. 72-04 and S.B. No. 2790, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2790, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR HALEAKALA WALDORF SCHOOL," passed Final Reading by a vote of 49 ayes and with Representatives Arakaki and Herkes being excused.

At 12:25 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 3170, SD 2, HD 2, CD 1
S.B. No. 1238, SD 2, HD 2, CD 1
S.B. No. 2056, SD 1, HD 2, CD 1
S.B. No. 2200, HD 1, CD 1
S.B. No. 2716, SD 1, HD 2, CD 1
S.B. No. 2538, SD 1, HD 1, CD 1
S.B. No. 2671, SD 1, HD 1, CD 1
S.B. No. 2790, SD 1, HD 1, CD 1

Conf. Com. Rep. No. 73-04 and S.B. No. 2791, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2791, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR MONTESSORI SCHOOL OF MAUI, INC," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 74-04 and S.B. No. 3086, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee

was adopted and S.B. No. 3086, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR ISLAND PACIFIC ACADEMY," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 75-04 and S.B. No. 2968, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2968, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NATURAL RESOURCE VIOLATIONS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 76-04 and S.B. No. 2063, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2063, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"Mr. Speaker, this is a bill that gets back to micromanaging what goes on at the local schools. We really have to get away from that. It's time to allow the power to go to the individual schools, resting under the control of the principal at the individual schools. And not to repeal large sections of a law that set up a program that works at the school. And substitute those large sections with words that put this under the central control of the DOE and involve the DOE in the business of determining what should be done in response to lost or damaged textbooks. Time to end the micromanaging. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2063, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 42 ayes to 9 noes, with Representatives Finnegan, Fox, Jernigan, Leong, Meyer, Moses, Ontai, Stonebraker and Tamayo voting no.

Conf. Com. Rep. No. 77-04 and S.B. No. 2358, SD 2, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2358, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CONSTRUCTION CLAIMS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 78-04 and S.B. No. 3092, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 3092, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SOLID WASTE MANAGEMENT," passed Final Reading by a vote of 45 ayes to 6 noes, with Representatives Fox, Herkes, Jernigan, Moses, Ontai and Souki voting no.

Conf. Com. Rep. No. 79-04 and H.B. No. 1756, HD 2, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 1756, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HIGH TECHNOLOGY INDUSTRIAL ENTERPRISES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 80-04 and H.B. No. 1710, HD 2, SD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 1710, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Final Reading by a vote of 51 ayes.

At 12:28 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2791, SD 1, HD 1, CD 1
S.B. No. 3086, HD 1, CD 1
S.B. No. 2968, SD 1, HD 1, CD 1
S.B. No. 2063, SD 2, HD 2, CD 1
S.B. No. 2358, SD 2, HD 1, CD 1
S.B. No. 3092, SD 1, HD 1, CD 1
H.B. No. 1756, HD 2, SD 1, CD 1
H.B. No. 1710, HD 2, SD 2, CD 1

Conf. Com. Rep. No. 81-04 and H.B. No. 1786, HD 1, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 1786, HD 1, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition to House Bill 1786, which is entitled, 'Exempt Employees.'

"And exempt employees are a useful group to have within the total workforce of the State government. They work essentially at the pleasure of the directors of their departments. And that provides flexibility in hiring. It also provides flexibility to essentially eliminate the exempt employee when the time comes when that job is no longer necessary.

"People who deal with the question of reform of government strongly are in favor of provisions in the law that allow greater flexibility. Passing this law, bill, will have the opposite effect. It will reduce flexibility. It will tell us we've got to start treating the exempt employees after a certain number of years as if they were regular civil servants. And we have a lot of problems with our civil service structure the way it is now. And one of the benefits we have is the exempt employees who are not part of that structure. Let's keep it that way by voting this bill down. Thank you, Mr. Speaker."

Representative M. Oshiro rose to speak in support of the measure, stating:

"Mr. Speaker. I rise in strong support of this measure.

"Mr. Speaker, this measure will allow employees in exempt positions, who have performed and worked satisfactorily for six

or more consecutive years, to apply for intra-departmental or inter-departmental transfers and for promotion examinations for which they meet minimum qualifications.

"Exempt employees provide valuable service. That is true. And their jobs are important to the proper management of our departments in delivering services. But so too is our civil service system and the merit selection process that we employ. This bill affords exempt employees the opportunity to apply for civil service positions for which they are qualified, as long as they perform satisfactorily for six years. In turn this will lead to more competition for positions which ultimately will result in better quality hires.

"Mr. Speaker, we should all take note of Act 253, which we passed in 2000, the Civil Service Reform Act. And one of the purposes of the Act was to take an assessment of all the exempt positions in our State government. Last year, the Legislature adopted HCR No. 94, HD 1, which requested the Department of Human Resources Development to complete its review of all exempt positions in this State and to provide recommendations on the conversion of each exempt position to civil service status. Presently, Mr. Speaker, there are approximately 2,174 positions that are still in the process of being reviewed, with 533 more.

"Mr. Speaker, as such, this bill directs the Department of Human Resources Development to complete its review of all exempt positions and submit a report of the findings and recommendations to the 2005 Legislature. In addition, Mr. Speaker, the bill instructs the Legislative Reference Bureau to compile a list of all statutory references to exempt positions. Hopefully with this information, the Legislature will be in a better position to address the issue of converting exempted employees to civil service status.

"And finally, Mr. Speaker, I'd like to thank Department Director Kathleen Watanabe and her able and competent special assistant Paul [Francis] Keeno. They were very instrumental in working out the final language in this Conference Draft. And I believe it does have their endorsement and support.

"And finally, Mr. Speaker, I think people should know that under the current process that we have in place right now, through an Executive Order, the Governor can allow for intra-departmental, inter-departmental hiring. What this bill does is ensure that the civil service system and the merit selection and promotion and transfer of public servants is also given its due respect and provided that we can hire the best and capable employees. Mr. Speaker, it's for these reasons that I support this measure. Thank you."

The Chair then stated:

"Thank you very much. Representative Marcus Oshiro, may I ask a question? This is just to correct the Journal. It's not Paul Keeno but Francis Keeno. You said Paul. Madame Clerk, you may correct that."

Representative M. Oshiro: "It's Francis Keeno."

Representative Mindo rose in support of the measure and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Fox rose to respond, stating:

"Thank you, Mr. Speaker. Brief response to the Chair of the Labor Committee.

"The Director of Human Resources Development has specifically expressed concerns about Section 2 of the bill, saying that the timetable was ambitious."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1786, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EXEMPT EMPLOYEES," passed Final Reading by a vote of 44 ayes to 7 noes, with Representatives Blundell, Fox, Jernigan, Leong, Meyer, Moses and Pendleton voting no.

Conf. Com. Rep. No. 82-04 and H.B. No. 2911, HD 2, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2911, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARTER SCHOOLS," passed Final Reading by a vote of 37 ayes to 14 noes, with Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Meyer, Moses, Ontai, Pendleton, Stonebraker and Waters voting no.

Conf. Com. Rep. No. 83-04 and H.B. No. 1929, HD 1, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 1929, HD 1, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Schatz rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, I'd like to declare a potential conflict of interest. My company has a contractual relationship with Hawaii 3Rs," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1929, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SCHOOL REPAIR AND MAINTENANCE," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 84-04 and H.B. No. 2049, HD 1, SD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2049, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 85-04 and H.B. No. 1820, HD 1, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 1820, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 86-04 and H.B. No. 2143, HD 2, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee

was adopted and H.B. No. 2143, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGULATION," passed Final Reading by a vote of 48 ayes to 3 noes, with Representatives Ching, Jernigan and Ontai voting no.

Conf. Com. Rep. No. 87-04 and H.B. No. 2773, HD 1, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2773, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES," passed Final Reading by a vote of 37 ayes to 14 noes, with Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Jernigan, Kaho'ohalahala, Meyer, Mindo, Moses, Nishimoto, Ontai, Schatz and Stonebraker voting no.

Conf. Com. Rep. No. 88-04 and H.B. No. 2774, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2774, HD 1, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Morita rose to speak in opposition to the measure, stating:

"Mr. Speaker. On Conference Committee Report Number 88, I rise in opposition.

"My basic concern regarding this bill is it affects agricultural subdivisions as defined under HRS 205. And it's that one group, these types of subdivisions really did not participate in this process that was geared toward planned communities that people are familiar with like Ocean Point, and Kapolei, or whatever. And so I'm really concerned that not enough input was given as to the impacts to agricultural subdivisions. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2774, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SUBDIVISIONS," passed Final Reading by a vote of 35 ayes to 16 noes, with Representatives Blundell, Bukoski, Chang, Ching, Finnegan, Fox, Jernigan, Kaho'ohalahala, Magaoay, Meyer, Mindo, Morita, Moses, Schatz, Stonebraker and Waters voting no.

Conf. Com. Rep. No. 89-04 and H.B. No. 2074, HD 1, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2074, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PENALTIES OF HEALTH, ENVIRONMENTAL, AND CULTURAL PRESERVATION LAWS," passed Final Reading by a vote of 49 ayes to 2 noes, with Representatives Blundell and Moses voting no.

At 12:36 o'clock p.m., Representative Lee requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 12:37 o'clock p.m.

At 12:38 o'clock p.m., Representative Magaoay requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 12:38 o'clock p.m.

At 12:44 o'clock p.m., the Chair noted that the following bills passed Final Reading:

H.B. No. 1786, HD 1, SD 2, CD 1
 H.B. No. 2911, HD 2, SD 1, CD 1
 H.B. No. 1929, HD 1, SD 2, CD 1
 H.B. No. 2049, HD 1, SD 2, CD 1
 H.B. No. 1820, HD 1, SD 1, CD 1
 H.B. No. 2143, HD 2, SD 1, CD 1
 H.B. No. 2773, HD 1, SD 1, CD 1
 H.B. No. 2774, HD 1, SD 1, CD 1
 H.B. No. 2074, HD 1, SD 1, CD 1

Conf. Com. Rep. No. 92-04 and S.B. No. 1611, HD 2, CD 1:

By unanimous consent, Conf. Com. Rep. No. 92-04 and S.B. No. 1611, HD 2, CD 1, were deferred to the end of the calendar.

Conf. Com. Rep. No. 98-04 and S.B. No. 2690, SD 2, HD 2, CD 1:

By unanimous consent, Conf. Com. Rep. No. 98-04 and S.B. No. 2690, SD 2, HD 2, CD 1, were deferred to the end of the calendar.

Conf. Com. Rep. No. 90-04 and S.B. No. 2976, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2976, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE DEPARTMENT OF PUBLIC SAFETY," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 91-04 and H.B. No. 680, HD 2, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 680, HD 2, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Karamatsu rose to speak in support of the measure, stating:

"Brief comments in support.

"Mr. Speaker, I introduced this bill because it is extremely important for the top officials of our State government to have mandatory ethics training in order to understand our ethics and lobbying laws. Traditionally, newly elected Legislators attend an ethics course. This bill would go further by requiring mandatory ethics training for Legislators, elected members of the Board of Education, the Governor, the Lieutenant Governor, Executive department heads and deputies, and Trustees of the Office of Hawaiian Affairs. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 680, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ETHICS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 93-04 and S.B. No. 17, SD 1, HD 1, CD 2:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 17, SD 1, HD 1, CD 2 pass Final Reading, seconded by Representative Lee.

Representative Arakaki rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I'd like to speak in favor of Conference Committee Report 93.

"I just have some reservations. Mr. Speaker, I have consistently voted against any proposals to change the entry date for kindergarten in the past. However, this measure acknowledges the fact that those that may be left behind should be taken care of in terms of providing some program for them. It's called Junior Kindergarten.

"I guess my reservation is that it's only a pilot program. And the other thing is we still haven't made Kindergarten mandatory. Although, all the studies, all the research have shown that early childhood education is so important in the educational outcomes for children. And I'm still hoping that there is a vision to provide universal access to early childhood education somewhere in the future. And whether that's going to be part of our educational system or not, I think someone should take the lead on it. In this measure, it's as if the Department is trying to do away with that part of the responsibility.

"And so I think this addresses some problems in the short-term, but I think in the long-term, unless we address issues of early childhood education, especially when we're talking about education reform, then I think we're going to be missing a big piece of what we can do for Hawaii's children. So I hope at some point in time, someone will have that vision included. Thank you, Mr. Speaker."

Representative Takumi rose to speak in support of the measure, stating:

"Thank you very much, Mr. Speaker. On Conference Report No. 93-04, Senate Bill 17, I stand in support.

"I echo the concerns expressed by the Chair of the Human Services Committee, however, the concern obviously we have is that of a fiscal nature. If we went with the universal Pre-K program, we know that that would be a tremendous amount of dollars, not to mention increased infrastructure cost. But I do think that is the direction we need to go.

"Regarding mandatory age for Kindergarten, the reality is that 98% of those children who are eligible to enter Kindergarten today do enter. The remainder are basically children who are home-schooled. So we have a *de facto* mandatory age in that respect.

"But lastly, this is a good first step. It takes care of the children in the gap group. We know children who are late born, particularly boys, and for those of us who are late born boys, you know the dilemma that has arisen in our lives. But in any event, this is a good first step and I think the fundamental question we have to ask ourselves as policymakers is, are we going to shift the focus of the Department of Education from

K-12 to P-12. I'm all in favor of that, but I'm not in favor of doing it simply by telling the Department to go and do it without additional resources. Thank you, Mr. Speaker."

Representative Meyer rose in support of the measure with reservations, and asked that the remarks of Representative Takumi be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Kaho'ohalahala rose in support of the measure with reservations, and asked that the remarks of Representative Takumi be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Takai rose to speak in support of the measure, stating:

"Just brief comments in support on Conference Committee Report Number 93.

"Thank you, this has been an 8 year process. In fact, I believe it was the Representative from Hanalei, who really kind of educated this House about Kindergarten and Pre-K. And a gentleman from Kauai has been diligently working hard on this effort and I did want to recognize his hard work. His name is Dean Liskum. He's come and visited us on many occasions, probably starting from 6 years ago. And his efforts, as well as the efforts of many others have resulted in this bill today.

"Two other points, Mr. Speaker, and that is, I've spoken to the advocates of the Pre-K program and I've mentioned to them that this effort and this bill and the resulting actions from this bill should give them evidence if everything goes correctly, that the Pre-K program, universal Pre-K, should be supported in the future. But it's just such a big price to pay right now for us to focus on covering every child, four and above, for this service. So I think this is a step in the right direction.

"The last thing I'd like to mention is this. I believe that the federal government provides tax breaks for families who send their kids to Kindergarten in the private sector. And I think that one of the things that we didn't want to do is to remove a tax exemption or tax break, tax credit for families in these situations. Thank you, Mr. Speaker."

Representative Pendleton rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this measure. The one relating to Junior-K and Kindergarten.

"Mr. Speaker, I have consistently voted against moving the date regarding how old a student needs to be in order to get into Kindergarten. But when I look at this measure and the plans for Junior-K, on balance, I think I can support it. What I want to urge parents is not to simply just depend on government. That the education of children is the responsibility of all Hawaii residents and all families. It's not just the responsibility of policymakers or certified teachers or the Department of Education. Parents need to do everything they can at the preschool level and the Kindergarten level to get their students into the learning mode, to recognize that the world is a marvelous place to live in.

"Our own children began to identify letters and to read 3-letter words before they showed up at public Kindergarten. And so I want to urge parents that they shouldn't take any of the provisions in this bill in the sense that well, my kids not old enough now or his birthday is late or early or whatever, and so we don't have to start doing those things at home. I want to urge parents to say that they need to partner, they need to partner with the professional educators to get all of our young

people in the learning mode to prepare for the future. Thank you."

Representative Ching rose in support of the measure and asked that the remarks of Representatives Arakaki and Takumi be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 17, SD 1, HD 1, CD 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Stonebraker voting no.

Conf. Com. Rep. No. 94-04 and S.B. No. 3182, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3182, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"The Business Action Center is set up to be responsive to business and it is manned by people who understand that they're working relationship is with business. It's trying to make it easier for business to get registered and do the other things that business has to do to essentially maneuver its way through the bureaucracy. I think in the spirit of the DCCA arrangement where special funds support the people who work directly for business, it's very good to have the Business Action Center operating with a non-civil service, essentially a more business-like staff. And that this shift of these members into the civil service will operate to the detriment of responsive service to the business community. I don't think that's the step that we want to take. And it is opposed by the Director of DBEDT. So I would urge us to vote against that."

Representative Blundell rose in opposition to the measure and asked that the remarks of Representative Fox be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3182, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE OF HAWAII," passed Final Reading by a vote of 41 ayes to 10 noes, with Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Jernigan, Meyer, Moses, Ontai and Pendleton voting no.

Conf. Com. Rep. No. 95-04 and S.B. No. 2995, SD 2, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2995, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER LICENSING," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 96-04 and S.B. No. 3080, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee

was adopted and S.B. No. 3080, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 97-04 and S.B. No. 2281, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2281, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HIGH TECHNOLOGY DEVELOPMENT CORPORATION," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Souki voting no.

At 12:57 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2976, SD 1, HD 1, CD 1
H.B. No. 680, HD 2, SD 1, CD 1
S.B. No. 17, SD 1, HD 1, CD 2
S.B. No. 3182, HD 1, CD 1
S.B. No. 2995, SD 2, HD 1, CD 1
S.B. No. 3080, SD 2, HD 2, CD 1
S.B. No. 2281, SD 1, HD 1, CD 1

At 12:58 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 12:59 o'clock p.m.

Conf. Com. Rep. No. 99-04 and S.B. No. 2134, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2134, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 100-04 and S.B. No. 2440, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2440, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 101-04 and S.B. No. 3049, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3049, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Magaoay rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Magaoay's written remarks are as follows:

"Mr. Speaker and colleagues, I stand in strong support for CCR 101, SB 3049 SD2 HD2 CD1. Under this bill, the minimum net worth is lowered from \$5 million to \$200,000. This would enable more charitable organizations to offer charitable gift annuities, in return for a transfer of cash, marketable securities, or other property, agrees to pay an individual a fixed sum of money for life, as a method of raising money for their charitable work.

"Our current law precludes many small but meritorious non-profit organizations from utilizing charitable gift annuity agreements as a fundraising tool. Ironically, the current requirements preclude many of the neediest nonprofits, including churches, social service agencies, and health care organizations, from utilizing charitable gift annuity agreements as a fundraising mechanism. Having this bill pass will enable more local nonprofit organizations to enter into charitable gift annuity agreements with donors and thereby encourage more local citizens to donate to their favorite local nonprofit 501(c)(3) organizations. It is necessary to be mindful of both the expectations of the donors and the needs of the charitable organizations. This bill levels the "playing field" for more participation.

"Therefore, Mr. Speaker I ask my colleagues for their full support for SB 3049."

Representative Schatz rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, I'd like to declare a potential conflict. I run a nonprofit organization," and the Chair ruled "no conflict."

Representative Meyer rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3049, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARITABLE ANNUITIES," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 102-04 and S.B. No. 2396, SD 1, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2396, SD 1, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Meyer rose to speak in opposition to the measure, stating:

"I'm in opposition. I'm not going to go into a long speech. It's just that it exempts certain convention, conference, and tradeshow fees from the GET tax. My concern is that the estimate by the Department of Taxation was a loss of revenues to the State of about \$2 million. And for that reason, I would be voting no. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2396, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 103-04 and S.B. No. 2529, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2529, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SECURITIES FOR THE PROTECTION OF PUBLIC FUNDS," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 104-04 and S.B. No. 2045, SD 2, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2045, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII CIVIL AIR PATROL," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 105-04 and S.B. No. 2165, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2165, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE AND PROTECTION," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 106-04 and S.B. No. 2936, SD 2, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2936, SD 2, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Mindo rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support.

"The purpose of this bill is to expand State-funded medical assistance to pregnant legal immigrants. This measure would provide timely and prenatal care to those mothers who came to the United States legally. By providing timely prenatal care, this would enhance the chances of the birth of a healthy baby and lessen the chance of complications arising during the delivery and further health problems for both mother and newborn.

"Mr. Speaker and esteemed colleagues of this august Body, this bill would providing tremendous assistance to eligible immigrant mothers who otherwise would not be able to afford medical care. This bill is the right way to address critical medical care.

"Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2936, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL ASSISTANCE FOR PREGNANT LEGAL IMMIGRANTS," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

At 1:03 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2134, HD 1, CD 1

S.B. No. 2440, SD 1, HD 1, CD 1
S.B. No. 3049, SD 2, HD 2, CD 1
S.B. No. 2396, SD 1, HD 1, CD 1
S.B. No. 2529, HD 1, CD 1
S.B. No. 2045, SD 2, HD 1, CD 1
S.B. No. 2165, SD 1, HD 1, CD 1
S.B. No. 2936, SD 2, HD 1, CD 1

Conf. Com. Rep. No. 107-04 and S.B. No. 779, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 779, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative M. Oshiro rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative M. Oshiro's written remarks are as follows:

"Mr. Speaker, I rise to speak in favor of Senate Bill No. 779, Conference Draft 1, Relating to the Employees' Retirement System. This bill would create a "hybrid" contributory plan in the Employees' Retirement System, a new class H membership that provides a defined benefit retirement allowance while providing a minimum hypothetical account balance that is based on employee contributions.

"During the Regular Session of 2001, the Legislature adopted Senate Concurrent Resolution No. 159, which directed the ERS to conduct a study of current public sector pension benefits and make recommendations for enhancement or change, and to study the feasibility of adding an alternative defined contribution plan.

"The ERS conducted a comprehensive study and presented its findings and recommendations to the 2002 Legislature. In its recommendations, the ERS proposed a hybrid contributory plan that would apply to new employees, class C noncontributory members, and class A contributory members.

"It was believed that the hybrid contributory plan could enhance public sector pension benefits and, in turn, improve the recruitment and retention of public sector employees. Based on these findings, this bill was introduced during the Regular Session of 2003 to promote further discussion on the mechanics of the "hybrid" contributory plan.

"Despite proceeding through the Senate, this bill was deferred last year at the request of the ERS so that an actuarial study could be performed, and the design of the plan could be further refined. The actuarial study was performed pursuant to House Concurrent Resolution No. 97, 2003, the design was refined, and proposed legislation as embodied in House Bill No. 2401 was submitted to your Committee on Labor and Public Employment earlier this session for review and deliberation.

"Your Committee on Labor agreed with the ERS's findings that the "hybrid" plan would greatly benefit the employees of the State. Many employees have neither the discipline to save and invest their money wisely, which is a necessity under a non-contributory plan. Many employees and retirees who opted out of the contributory plan in the past have regretted that decision because they either spent their money that should have gone toward their retirement or made investments that performed poorly. The same can be said of many employees who were hired after the contributory plan was discontinued.

"Your Committee on Labor also acknowledged that the "hybrid" plan was designed to be cost neutral -- an important factor given the escalating costs of employer contributions for pension accumulation.

"Mr. Speaker, I believe this is one of the most important bills that we take action on this session. It has the potential to greatly enhance the benefits provided to employees and retirees at no additional cost to the State. As such, I urge my colleagues to support this notable measure.

"Lastly, I would like to personally commend the exemplary efforts of the ERS, and in particular, Administrator David Shimabukuro, who devised the original concept of the hybrid plan and worked tirelessly with his staff over the past two years to bring this idea to fruition."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 779, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 108-04 and S.B. No. 2930, SD 2, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, and the report of the Committee was adopted and S.B. No. 2930, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HOME AND COMMUNITY-BASED SERVICES," passed Final Reading by a vote of 51 ayes.

At 1:03 o'clock p.m., Representative Tamayo requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 1:05 o'clock p.m.

Conf. Com. Rep. No. 109-04 and S.B. No. 3230, SD 2, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 3230, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY CHILDHOOD CARE," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 110-04 and S.B. No. 1239, SD 1, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 1239, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 111-04 and S.B. No. 3162, SD 1, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 3162, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 112-04 and S.B. No. 3153, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 3153, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR BIOREMEDIATION RESEARCH," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 113-04 and S.B. No. 3148, SD 2, HD 3, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 3148, SD 2, HD 3, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 114-04 and S.B. No. 3020, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3020, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Tamayo rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I'm rising in opposition to Conference Committee Report Number 114.

"I believe we have four multi-track schools in our State. And originally this bill provided funding for that extra period of time that those schools are serving our community and teaching our kids. I'm very disappointed to see that in this final version of the bill, funding for Holomua Elementary and Mililani Middle School was taken out. So I'm not really sure how they're going to operate for those next few months because they have no alternative form of funding. I don't know how else this can be addressed. And I'm just really disappointed that they were taken out. Thank you."

Representative Lee rose in opposition to the measure and asked that the remarks of Representative Tamayo be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Mindo rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. For the same reason, I rise in opposition. Thank you."

Representative Moses rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support.

"I've always lobbied for the fact that we should fully fund our multi-track schools. I told DOE at the beginning that we should not build multi-track schools, we should build our schools large enough to handle the population but they said no, we're going to build multi-track. So I said it's going to cost us more in the long run than just building a school bigger in the first place.

"I do support Ewa Beach's desire and need for their schools. They should all be funded. This does fund the schools in my district and leaves out the multi-track schools in Ewa Beach and I think they should be funded also. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3020, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 47 ayes to 4 noes, with Representatives Lee, Mindo, Ontai and Tamayo voting no.

At 1:08 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 779, SD 2, HD 2, CD 1
 S.B. No. 2930, SD 2, HD 1, CD 1
 S.B. No. 3230, SD 2, HD 1, CD 1
 S.B. No. 1239, SD 1, HD 2, CD 1
 S.B. No. 3162, SD 1, HD 1, CD 1
 S.B. No. 3153, SD 2, HD 2, CD 1
 S.B. No. 3148, SD 2, HD 3, CD 1
 S.B. No. 3020, HD 1, CD 1

At 1:08 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 2:47 o'clock p.m., with the Vice Speaker presiding.

Conf. Com. Rep. No. 115-04 and S.B. No. 2424, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2424, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NEW CENTURY CONVERSION CHARTER SCHOOLS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 116-04 and S.B. No. 420, SD 1, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 420, SD 1, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Stonebraker rose to speak in opposition to the measure, stating:

"Thank you, Madame Chair. I'm rising in opposition to Conference Committee Report 116.

"This is SB No. 420. It's a \$10 million raid of the Compliance Resolution Fund. While on one hand, Madame Speaker, I am happy to see that the Compliance Resolution Fund seems to be moving in a direction that will retain its integrity, yet I do have incredible difficulties with this continual practice of raiding funds in order to balance the budget. These are not sound fiscal policies to raid special funds that by design have excessively high fees, simply as a means to enable a continued practice of fiscal irresponsibility. I have likened our fiscal plan in the past to that of a heroin addict. We cannot stop spending and therefore we scrape, we scratch, we dig. We do anything we can for quick fixes. This is a continued practice. At the same time I am happy to see other bills that will decrease the fees for the Compliance Resolution Fund and allow that special fund to remain intact. Thank you."

Representative Halford rose to speak in support of the measure, stating:

"Madame Speaker, in favor.

"Reflecting off the previous speaker's comments, Madame Speaker. This is a case in point, that in fact we are deficit spending when we use one-time funds to try to balance a budget. We've been doing this for years. For the last few years, the State used to have huge surpluses. We've spent them down to deficits, and used these one time fix-its to support a deficit spending budget. Thank you."

Representative Meyer rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. I'm rising in support with some reservations.

"We've heard many long, probably hours arguing on bills having to do with the DCCA and the Compliance Resolution Fund. I am grateful that we have not taken that Department out of the special fund that they are now operating under. But I would rather have seen, if we were going to take excess funds, the Department did identify about \$4.6 million that they felt were excess funds because of a legal procedure where they received \$4.6 million and that was definitely excess. But the \$10 million may put some pressure on them. And so on the other hand, I'm very happy that we are leaving them special funded. Thank you, Madame Speaker."

Representative Ching rose in support of the measure with reservations, and asked that the remarks of Representatives Stonebraker and Meyer be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 420, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE FINANCES," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Stonebraker voting no.

Conf. Com. Rep. No. 117-04 and S.B. No. 214, SD 3, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 214, SD 3, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO WORKFORCE DEVELOPMENT," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 118-04 and S.B. No. 2073, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2073, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Takai rose to speak in support of the measure, stating:

"Madame Speaker, rise in support of this measure. May I ask that I insert into the record the comments made by the Budget Director and ERS Executive Director, as well as UHPA? Thank you."

Representative Takai submitted the following remarks:

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2073, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 119-04 and S.B. No. 2355, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2355, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Halford rose to speak in support of the measure, stating:

"Madame Speaker, I would like to speak in favor of 119, Public Employees Health Benefits.

"I guess since you are ready to go on to the next bill that we will not be hearing a floor amendment to this bill. Madame Speaker, I am very disappointed that this good bill regarding health benefits does not include the VEBA Trust. Madame Speaker, if just a few years ago, the majority of the Members of this Body and the Senate stole VEBA Trust ..."

The Chair interjected, stating:

"Representative Halford, the discussion on the VEBA is not in order at this time. You need to stick with the contents of this bill."

Representative Halford continued, stating:

"Madame Speaker, thank you. I'd like to address public employee health benefits.

"Madame Speaker, I'm just saying that I'm disappointed that in our addressing health benefits that we have not reconsidered giving employees more options, especially an excellent option like the VEBA Trust. They had it before. We stole it from them."

Representative Saiki rose to a point of order, stating:

"Madame Speaker, point of order. This is not germane to the bill before us."

The Chair responded, stating:

"Again, Representative Halford, as I have stated before, the discussion on VEBA is not germane to this bill. If you have any further things to say on this bill, you can proceed."

Representative Halford continued, stating:

"Madame Speaker, this bill is about public employee health benefits. All of my discussion has been about public employee health benefits. I guess my sentiment has been expressed. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2355, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEE HEALTH BENEFITS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 120-04 and S.B. No. 2873, SD 1, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2873, SD 1, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative M. Oshiro rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative M. Oshiro's written remarks are as follows:

"Madame Speaker, I rise to speak in favor of Senate Bill No. 2873, Conference Draft 1, Relating to Employees' Retirement System. This measure would establish employer contributions at 15.75 percent of the member's compensation for police and firefighters and 13.75 percent of the member's compensation for all other employees beginning in fiscal year 2005-2006. This measure also eliminates the separate computation of contributions for the Early Incentive Retirement Plan, or EIRP, authorized under Act 212, Session Laws of Hawaii 1994, and makes technical amendments to Chapter 88, HRS, for consistency in the implementation of the proposed employer contributions as a stated percentage of compensation.

"Currently, employer contributions to the ERS are based on actuarial valuations that determine employer contributions amounts for normal costs and amounts required to amortize the projected unfunded liability within 29 years as of June 30, 2000. As a result, sizeable fluctuations in funding requirements can occur when the investment market is volatile, when actuarial experience gains or losses vary substantially, and as the amortization process decreases.

"The proposed method of determining the employers contribution amount establishes a stated percentage of compensation that is expected to remain unchanged from year-to-year provided the unfunded liability can be amortized within an acceptable target period. The proposed method provides employers with more predictable budget requirements and the ERS with more predictable and immediate cash flow. Employer contribution amounts are not increased when short-term adverse experience occurs. Ongoing funding commitments by the employer provides employees with added security of benefits.

"In addition, for administrative simplification and without material dollar contributions, this proposal eliminates the special handling of the prior EIRP so that the same set of contribution rates apply for all employees. The EIRP represents only approximately .20 to .25 percent of the proposed 13.75 and 15.75 contribution rates, respectively.

"For these reasons, I respectfully urge my colleagues to support this measure. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2873, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 121-04 and S.B. No. 2878, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2878, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE FEDERAL TAX LIMIT ON COMPENSATION APPLICABLE TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 122-04 and S.B. No. 2879, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2879, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO FEDERAL TAX QUALIFICATION OF THE EMPLOYEES' RETIREMENT SYSTEM," passed Final Reading by a vote of 51 ayes.

At 2:56 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2424, SD 2, HD 2, CD 1
 S.B. No. 420, SD 1, HD 1, CD 1
 S.B. No. 214, SD 3, HD 2, CD 1
 S.B. No. 2073, SD 2, HD 2, CD 1
 S.B. No. 2355, SD 2, HD 2, CD 1
 S.B. No. 2873, SD 1, HD 2, CD 1
 S.B. No. 2878, SD 2, HD 2, CD 1
 S.B. No. 2879, SD 2, HD 2, CD 1

Conf. Com. Rep. No. 123-04 and S.B. No. 3106, SD 1, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3106, SD 1, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative M. Oshiro rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative M. Oshiro's written remarks are as follows:

"Madame Speaker, I rise to speak in favor of Senate Bill No. 3106, Conference Draft 1, Relating to Counties. This bill would allow the counties to enter into an agreement with the State to extend the State's mandatory deferred compensation plans to part-time, temporary, and seasonal or casual county employees.

"I believe that this is a good bill because it will allow the counties to take advantage of the State's deferred compensation plan without having to duplicate effort and resources involved in establishing and maintaining separate deferred compensation plans in each county. While the Department of Human Resources Development raised concerns that the bill would result in additional human and fiscal costs on the State, language was added to allow the State to levy fees on the counties to cover the additional cost it incurs for extending the State's deferred compensation plan to the counties.

"Accordingly, I respectfully urge my colleagues to support this measure. Thank you."

Representative Bukoski rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Bukoski's written remarks are as follows:

"I introduced this measure on the House side of the legislature as HB 2948, and am just happy that it was passed. I was asked by the County of Maui to introduce the measure. I did so, and it was referred to Committee but never heard. The Conference draft that resulted and was eventually passed has very minimal changes to it and is almost exactly worded to the one I introduced. Again, I am happy it was adopted. It will allow the counties to save a little money in this area."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3106, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTIES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 124-04 and S.B. No. 3018, SD 2, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3018, SD 2, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Mindo rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in strong support of this measure.

"The purpose of this measure is to allow an eligible member of the State's Employee's Retirement System, who suffer from a service-related disability while serving as a police officer to receive a retirement allowance equal to two and one-half percent of the member's average final compensation for each year of credited service as a police officer.

"Madame Speaker, this bill provides for fair treatment for those of our dedicated law enforcement community members who are injured on the job. We are all well aware of the dangers which come with serving our community as a law enforcement officer, and this measure acknowledges that there are times when duty to others has a negative impact upon the health of those sworn to serve our community.

"Madame Speaker and colleagues, under Act 205, Session Laws of Hawaii 2002, firefighters with at least ten years of credited service as a firefighter, who continue employment in public service other than as a firefighter after suffering a service-related disability, have the benefit of receiving a retirement allowance of two and one-half percent of the member's average compensation. Therefore, this bill would be tailored to prevailing State law. Currently, a police officer who suffers a service-related disability and continues employment in public service in a capacity other than as a police officer is entitled to receive a retirement allowance calculated at only two percent of the member's average final compensation multiplied by the total number of years of credited service.

"Madame Speaker and distinguished Members of this House, I respectfully urge you to pass Senate Bill 3018, Senate Draft 2, House Draft 1, Conference Draft 1 for Final Reading. Thank you."

Representative M. Oshiro rose in support of the measure and asked that his written remarks and the remarks of Representative Mindo be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative M. Oshiro's written remarks are as follows:

Madame Speaker, I rise to speak in favor of Senate Bill No. 3018, Conference Draft 1, Relating to Pension and Retirement Systems. This measure would allow a police officer who suffers from a service-connected disability and continues public service in any position other than as a police officer to receive a retirement allowance at two and one-half percent of the member's average final compensation for each year of credited service as a police officer.

"According to testimony submitted by the Department of Budget and Finance, the same benefit was provided to

firefighters by Act 205, Session Laws of Hawaii 2002. Currently, a contributory plan member who retires because of a service-connected disability will receive a refund of their retirement compensation with interest, and a retirement allowance of fifty percent of their average final compensation. If the retiree returns to public employment, a revised retirement benefit would be computed based on their occupation during the reemployment period and added to their disability pension.

"Police officers contribute 12.2 percent of their pay to the retirement system as compared to the regular rate of 7.8 percent for other employees. When a police officer retires, the police officer's benefit is calculated at a 2.5 percent rate, as compared to the two percent rate for all other contributory members and a 1.25 percent rate for non-contributory members. However, if a police officer leaves the job for a regular position in government and then retires, all the years the employee worked, both as a police officer and a regular employee, are calculated at the 2 percent rate. This is true even if the employee accepted another position after a service-related injury or illness resulted in the officer being medical disqualified from police work.

"This bill would enable a police officer in this situation to retain the 2.5 percent rate for the years as a police officer.

"In my view, this is an issue of fairness to allow police officers who are injured in the line of duty to utilize the additional contributions they made to the pension system while serving as police officers upon retirement.

"For these reasons, I respectfully urge my colleagues to support this measure. Thank you."

Representative Kanoho rose to disclose a potential conflict of interest, stating:

"Thank you, Madame Speaker. I request a ruling on a possible conflict. I have two sons who are police officers," and the Chair ruled "no conflict."

Representative Kanoho then spoke in support of the measure and asked that the remarks of Representative Mindo be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Marumoto rose to disclose a potential conflict of interest, stating:

"I have a possible conflict, Madame Speaker. My stepson is a police officer," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3018, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PENSION AND RETIREMENT SYSTEMS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 125-04 and S.B. No. 3175, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3175, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Caldwell rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Caldwell's written remarks are as follows:

"Madame Speaker, I rise in strong support of this measure.

"Madame Speaker, this measure provides the opportunity for long-time employees of the East-West Center the option of participating in the federal Medicare system. In effect, this allows these employees to receive Medicare benefits upon their retirement.

"Currently, all East-West Center employees contribute to Social Security except for approximately 30 employees who, in a 1981 Center-wide referendum, voted not to be covered under the Social Security Act. Their decision was retroactive to January 1, 1977.

"For the past 27 years, these East-West Center employees have not contributed to the Social Security or Medicare systems. Now, however, recognizing the importance of Medicare coverage, the federal government has required this coverage for all public employees hired on or after April 1, 1986, who are not covered by Social Security. However, there is no mechanism to provide this critical coverage to employees such as those at the East-West Center who were hired prior to that date.

"I urge all my colleagues to support this measure, Madame Speaker, which provides the critical bridge for these long-time East-West Center employees, to participate in the federal Medicare system."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3175, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 126-04 and S.B. No. 1318, SD 1, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 1318, SD 1, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Stonebraker rose to speak in support of the measure, stating:

"I rise in support.

"Thank you, Madame Speaker. For many years, the State of Hawaii has had a reputation, sometimes unfounded, but many times founded that we are anti-business. And one of those reasons is because of the structure of our budgeting. But this bill, Conference Committee Report 126, it's Senate Bill 1318, begins to go in the right direction. And begins to send a positive message to the business community here throughout the Pacific Rim and really throughout the globe.

"This is what the Director of DCCA had requested and asked for prior to this Session. As you know, your Republican Caucus, Madame Speaker, had amended a bill calling for these proposals to allow the Director to reduce fees. And as we look through the bill, we see that these fees for business registration, Certificates of Standing, Statements of Foreign Qualifications, annual reports, so on and so forth, down the line, we are giving the authority to the Director of DCCA to cut these fees. Most of them by one-half, many of them by 75%.

"And so this is a beginning. A positive beginning. A step in the right direction. Unfortunately it took a lot of hard work and a lot of fighting, a little bit on this House Floor but I begin to have hope that we are going in the right direction. So I thank you for the capitulation and ask the Members vote in support."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1318, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 127-04 and H.B. No. 2667, HD 2, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2667, HD 2, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Kahikina rose to speak in support of the measure, stating:

"I stand in support and just wanted to say a few short words in support. Madame Speaker, I appreciate all the efforts to address the Hawaiian issue. I appreciate the creation of Hawaii Home Commission Act by Congress in 1920. I appreciate the Admissions Act that made a Compact with the State of Hawaii to manage and dispose of the Hawaiian Home Commission. I appreciate Article XII of our Constitution that houses all the Hawaiian entitlements. Madame Speaker, what I am concerned is that in all of these efforts, statutorily, we do not put the funding mechanism to see this into reality. And I just wanted to bring this issue to the Floor, that although we are creating this Hawaiian language medium education program, there's still no money to implement it. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2667, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIAN LANGUAGE MEDIUM EDUCATION," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 128-04 and H.B. No. 2703, HD 1, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2703, HD 1, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Tamayo rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in strong support. I'd just like to thank my colleagues for their assistance in working hard to make sure that this bill gets passed. It's very important to communities like mine and my colleague from Ewa Beach in making sure that we provide the appropriate infrastructure for our quickly growing communities. And I also would like to reference previous remarks I've made on this measure. Thank you," and the Chair "so ordered." (By reference only.)

Representative Moses rose, stating:

"Thank you, Madame Speaker. I'd like to also thank this Body for moving this measure forward. It's going to be essential to the development of some of the road networks that's necessary in the Ewa area, Kapolei, Ewa Beach. Those areas are thriving. There's tremendous growth, population growth there. Movement from Central and East Honolulu to West Oahu. Unfortunately there's gridlock. And this measure will help improve that area through the road network that the Department of Transportation has gotten approval through the federal transportation system to improve. But without this, they couldn't move forward. Thank you, Madame Speaker."

Representative Mindo rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In strong support of this measure.

"Madame Speaker, the purpose of this measure is to allow the counties to assess, impose, levy, and collect impact fees for State highway improvements. This measure further establishes a highway development special fund, to be administered by the State Department of Transportation, in which the counties shall transfer the impact fees collected. Under the Conference Draft, the definition of county was changed to mean a county having a population in excess of 500,000, as well as other changes.

"I strongly urge you to support the underlying concept of this measure to authorize the City and County of Honolulu, for example, to have the ability to assess and transfer impact fees to a new State special fund in order to facilitate the transfer of millions of dollars to the State to help pay for much needed transportation related public works projects. This would greatly aid the State in its goal of addressing transportation related public works projects in a more timely manner.

"Madame Speaker, this bill would address much needed infrastructure public works oriented projects which currently are not being adequately addressed in a timely manner. As a result, I respectfully urge everyone in this august Body to please pass this measure. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2703, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO IMPACT FEES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 129-04 and H.B. No. 2005, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2005, HD 1, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Arakaki rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I'd like to speak in strong support of the Conference Draft of House Bill 2005.

"And just some brief remarks because people, colleagues may not be aware that this is formerly our Hawaii Rx bill, the House version. But it's been amended to reflect another way of providing affordable prescription drugs by allowing drugs that are not used to be provided through a repository. And there are guidelines that are provided in this measure that will avoid perfectly good prescription drugs from being wasted. And it also provides for those who cannot afford prescription drugs to have access to them through programs like the Medicine Bank, and also through foreign repositories.

"I really wanted to thank the Department of Health, Department of Human Services, the Medicine Bank, and HMSA and Kaiser for working so diligently on this measure. And also congratulate my counterpart, the Health Chair in the Senate for working on this measure. Thank you, Madame Speaker."

Representative Ching rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In strong support. I would like to echo the words of the Chair from Health on congratulating the number of people who were involved in this measure in making it a reality. But I think that it's important to note that in this measure, many of the members of the public may not be aware that oftentimes, very expensive drugs that have not been opened at all, have not been tampered with, are unfortunately made to be thrown away because of the law not allowing them to be redistributed. Through a lot of work, through different parties, this is made a reality with this law. And it's not only important to the people who cannot afford drugs, but I think it's important to note that it's a good use of our resources, of Medicaid. It ensures our Medicaid money is preserved in some ways. And then also the detrimental effects of having to throw away these drugs and what they do to the environment. Thank you."

Representative Kahikina rose in support of the measure and asked that the remarks of Representative Arakaki be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2005, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PRESCRIPTION DRUGS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 130-04 and H.B. No. 2547, HD 2, SD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2547, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 131-04 and H.B. No. 851, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 851, HD 1, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Moses rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In support.

"I don't know if many people noticed this measure, but right now if you want to appeal a tax case, you have to pay the disputed amount of tax beforehand. And that's a hardship for many people in businesses. This measure allows you to appeal the tax assessment to either the Board of Review or the Tax Appeals Court without first making the payment of the assessed taxes. And it applies to tax appeals followed after July 1 of this year. So I think it's a very good measure for individual taxpayers and businesses. Thank you."

Representative Meyer rose in support of the measure and asked the remarks of Representative Moses be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 851, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION APPEALS," passed Final Reading by a vote of 51 ayes.

At 3:09 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 3106, SD 1, HD 2, CD 1
S.B. No. 3018, SD 2, HD 1, CD 1
S.B. No. 3175, SD 2, HD 2, CD 1
S.B. No. 1318, SD 1, HD 2, CD 1
H.B. No. 2667, HD 2, SD 1, CD 1
H.B. No. 2703, HD 1, SD 2, CD 1
H.B. No. 2005, HD 1, SD 1, CD 1
H.B. No. 2547, HD 2, SD 2, CD 1
H.B. No. 851, HD 1, SD 1, CD 1

At 3:09 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 3:10 o'clock p.m.

Conf. Com. Rep. No. 136-04 and H.B. No. 2002, HD 2, SD 1, CD 1:

By unanimous consent, Conf. Com. Rep. No. 136-04 and H.B. No. 2002, HD 2, SD 1, CD 1, were deferred to the end of the calendar.

Conf. Com. Rep. No. 133-04 and H.B. No. 1848, HD 1, SD 1, CD 1:

Representative Saiki moved that notwithstanding the report of the Committee, that H.B. No. 1848, HD 1, SD 1, CD 1, be recommitted to the Committee on Conference, seconded by Representative Lee.

The motion was put to vote by the Chair and carried, and H.B. No. 1848, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EXCEPTIONAL TREES," was recommitted to the Committee on Conference.

Conf. Com. Rep. No. 132-04 and H.B. No. 2840, HD 1, SD 3, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2840, HD 1, SD 3, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"My opposition to this is that this a process under way to deal with the question of what should go out at Kalaeloa. And as one would expect, this sort of steps into the middle of it with one particular idea and the Hawaii Community Development Authority testified with real concern about the Legislature interfering with this process, and said the Kalaeloa stakeholders group is exploring a broad range of economic drivers that would help to create jobs and provide investment for the area. I know that we like to get our hands in a lot of stuff and maybe that's part of what the Legislature is supposed to do, but I would rather leave it to the process that's underway to sort out the best uses for that land. Thank you, Madame Speaker."

Representative Kanoho rose to speak in support of the measure, stating:

"In support, Madame Speaker.

"And for clarification, yes, this bill did start as a means to look at Kalaeloa for economic diversity, but it was also found necessary that we should move forward with providing technological training for our youth. We couldn't do both, but the Kalaeloa funding is in the budget. So that initiative will still proceed. This other initiative to provide the 3Ts. Technological Thinking and Training is an important one, so this paves the way so that we can proceed with that initiative. Thank you."

Representative Moses rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. Since I was not brought into the loop on this measure and it is supposed to deal with Kalaeloa ... I'm rising in support. I have the reservations of absolutely not knowing what is going on in my district because nobody has bothered to tell me. But I will support the idea that Kalaeloa and Kapolei in general, is a great place to do the technological laboratories. It's a great place to do any of the innovative thinking. I just wish somebody would have talked to me about what's going on in my own backyard so I could be more involved in the process. Thank you, Madame Speaker."

Representative Fox rose to respond, stating:

"I appreciate the enlightenment provided by the Water and Land Use Chairman, that this bill has changed in its form. It is worthy to point out that there is no money left in the bill for the Kalaeloa project and it goes to a new entity to be called the Economic Development Alliance of Hawaii Inc. or EDAH. And I do not think we need another such bureaucracy. And that what we really need to do is to get the control over the finances of the school system in the hands of the principals at the school. And if they want to build computer laboratories in conjunction with the private sector at the individual schools, they certainly should be able to do so. Thank you, Madame Speaker."

Representative Moses rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. And that's why I was rising also because I did see how it was changed in Conference Committee. I'd like to change my vote to a no vote. And the reason is, all funding was taken out for HCDA to draw down federal funds for the planning of Kalaeloa. That was the former Naval Air Station Barber's Point. There's vast lands out there that need to be developed. And this bill was to allow, as I said, our State government to draw down federal funds to help plan the redevelopment of Kalaeloa. That portion has been removed from the bill. Thank you, Madame Speaker."

Representative Kanoho rose to respond, stating:

"Thank you, Madame Speaker. And still in much strong support for further clarification.

"It would have been the desire of the Conference Committee to retain both provisions for Kalaeloa, as well as for the 3Ts Initiative. However, the Attorney General ruled that that would have been unconstitutional because clearly that would have been two subjects. And so to prevent the bill from being vetoed, we had to do that. However, we must emphasize that the funds are in the budget so that the planning for Kalaeloa for economic enhancement will still move forward. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2840, HD 1, SD 3, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENHANCING ECONOMIC DIVERSITY,"

passed Final Reading by a vote of 48 ayes to 3 noes, with Representatives Fox, Meyer and Moses voting no.

Conf. Com. Rep. No. 134-04 and H.B. No. 2136, HD 1, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2136, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Schatz voting no.

Conf. Com. Rep. No. 135-04 and H.B. No. 1908, HD 2, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 1908, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 137-04 and H.B. No. 2411, HD 1, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2411, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 138-04 and H.B. No. 2523, HD 1, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2523, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PASSENGER FACILITY CHARGES," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 139-04 and H.B. No. 2009, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2009, HD 1, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Abinsay rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In strong support of Conference Committee Report Number 139, House Bill Number 2009, HD 1, SD 1, and CD 1.

"This measure, Madame Speaker, is requesting some funding for a total of \$1 million to the Hawaii Farm Bureau Federation and the University of Hawaii College of Tropical Agriculture and Human Resources for agricultural research and market development programs.

"I would just like to mention, Madame Speaker, that during this Session, this is one of the major issues of the farmers, including the College during this Session, as far as their priorities are concerned. And now for that reason, I would like to thank the Chair of our Finance Committee and his

counterpart in the Senate for recognizing the importance of research for agricultural purposes.

"And if I can explain, Madame Speaker, the importance of research. Indeed, research is fundamental to the sustainability of any industry, and agriculture is no exception. And Hawaii's agriculture industry has been a positive contributor to our economy for well over a century because of this agricultural research. Research in this sector has always been at its cutting edge in technology which allowed the industry to overcome the many agricultural business barriers, such as crop adaptation to tropical climate, pest control, nutrient management, water availability, high labor costs and distance from the marketplace.

"The Hawaii Farm Bureau Federation and the University of Hawaii College of Tropical Agriculture and Human Resources are two very important organizations that are assisting the agricultural community in its continuing efforts to diversify. The State's statistical data show that this has been a very successful partnership as the contribution of this sector has remained steady, despite downsizing of the pineapple and sugarcane industries. And as these two major crops stabilize based on the steady 4% growth in alternate crops grouping, the agricultural sector is poised to increase its overall economic contribution to the State. Import replacement continues to keep our dollars here and increasing export opportunities are bringing new dollars here in the State of Hawaii. And in addition, new agricultural businesses are continuing to spring up in our rural communities helping to keep employment in those areas.

"The support for research during the 1970s and 80s, Madame Speaker, was key to the success of many diversified farm operations that have emerged and that continue to emerge. New businesses in flowers, nursery plants, tropical fruits, vegetables, landscaping, and others have proved the value of that support. And some research, for example the development of improved cultural/sustainable practices, is difficult for private companies to package and market profitability. So in other cases, access to sophisticated research is beyond the financial resources of small crop growers. So it is imperative, Madame Speaker, to continue our support for the agricultural sector as it continues to diversify.

"And so the passage of House Bill 2009, C.D. 1 encourages the partnership between the private sector represented by the Hawaii Farm Bureau and the public sector, represented by the College of Tropical Agriculture and Human Resources. Thank you, Madame Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2009, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR AGRICULTURAL RESEARCH AND MARKET DEVELOPMENT," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 140-04 and H.B. No. 2883, HD 2, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2883, HD 2, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Thielen rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I'm rising in support of this bill.

"Thank you. Madame Speaker, this bill would establish a wireless telephone surcharge that's going to be dedicated simply to providing and maintaining a wireless emergency services and that's E911.

"Madame Speaker, the Chief of Police, Lee Donahue, has sent a letter to all of us. And he states in the letter, the deployment of wireless E911 services among the most urgent public safety and homeland security enhancements for the State of Hawaii. E911 automatically directs a wireless call to the appropriate 911 center or public safety answering point. Most important, it also identifies the caller's location in an emergency. That's what's been missing, Madame Speaker. Callers have used their cell phones and dialed 911 but the responder has not been able to pinpoint where that caller is. That could lead to some tragic loss of lives. This bill will prevent that from happening and we will now have an enhanced E911 system that will be able to pinpoint the location of that emergency call. Thank you."

Representative Blundell rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. I rise in support with some reservations. And I'd like to have the words of the Representative from Kailua entered as my own," and the Chair "so ordered." (By reference only.)

Representative Blundell continued, stating:

"The reservation I have of course is the tax that's been put onto the registration fee. It's just another small tax, but it is a tax. And for those reasons, I have reservations. Thank you."

Representative Mindo rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in strong support.

"Thank you, Madame Speaker. The purpose of this bill is to protect the health, safety, and welfare of the public by funding and implementing a wireless enhanced 911 system designed to route a wireless caller's identification and location to a public safety answering point. This measure will establish a monthly surcharge on commercial mobile phone connections; as well as establish the Wireless Enhanced 911 Fund into which these surcharges will be deposited; and will create a Wireless Enhanced 911 Board of Directors to oversee the collection and distribution of these surcharge funds.

"Madame Speaker and colleagues, with the widespread use of cellular telephones, this measure would provide a vital communication link between a stranded visitor or resident, and an emergency network which could relay assistance in a timely manner. This is utilizing enhanced technology to benefit the general welfare at an affordable cost.

"The Conference Draft enhanced the efficacy of this measure by, amongst other changes, setting the rate of the surcharge at 66 cents per month for each commercial mobile radio service connection; clarifying that a wireless provider may recover wireless enhanced 911 commercial mobile radio service costs if the provider is collecting the surcharge and remitting the appropriate portion to the fund; and has been requested by a public safety answering point to provide either Phase I or Phase II wireless enhanced 911 service in a particular county or counties.

"Finally, Madame Speaker and colleagues, this measure as amended in Conference provides that one-third of the Fund shall be made available for wireless provider cost recovery,

which ensures fairness to all participants. Thank you, Madame Speaker."

Representative Ching rose to speak in support of the measure, stating:

"Thank you. In support and I ask that the words of the Representative of Kailua be entered as my own.

"But I would also like to add that when it comes to safety, I also regret that there is such a charge, but when it comes to safety, I think that we all agree that our lives of our loved ones are very important. Thank you."

Representative Tamayo rose to speak in support of the measure, stating:

"Madame Speaker, I'm rising in strong support.

"I also had a question regarding the fees that this bill proposes because I looked on my cell phone bill for the last few months and I've already been charged for a State 911 fee. I have T-Mobile, and I've been charged 50 cents a month for a State 911. So a couple hours ago, I actually talked to a couple members of our Honolulu Police Department and they said that this 66 cents is not an additional fee for the State 911. So in my case it would be an additional 16 cents, but I would pay to help support this 911. And I think that when we're looking at saving lives, 16 cents is nothing. Thank you."

Representative Leong rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I stand in strong support of this bill.

"I've heard the policemen as they go from Neighborhood Board to Neighborhood Board, and I've heard some of the stories. And I really feel that's an important thing. The charge is so minimal and it's going to save a life. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2883, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO WIRELESS ENHANCED 911 SERVICE," passed Final Reading by a vote of 49 ayes to 2 noes, with Representatives Jernigan and Stonebraker voting no.

Representative Meyer rose, stating:

"Madame Speaker, point of clarification. This Conference Committee Report 133, was that the one that got recommitted?"

Vice Speaker Luke: "Yes."

Representative Meyer: "I'm sorry, I thought it was 138."

Vice Speaker Luke: "No. 133."

At 3:29 o'clock p.m., the Chair noted that the following bills passed Final Reading:

H.B. No. 2840, HD 1, SD 3, CD 1
H.B. No. 2136, HD 1, SD 1, CD 1
H.B. No. 1908, HD 2, SD 1, CD 1
H.B. No. 2411, HD 1, SD 1, CD 1
H.B. No. 2523, HD 1, SD 1, CD 1
H.B. No. 2009, HD 1, SD 1, CD 1
H.B. No. 2883, HD 2, SD 2, CD 1

At 3:29 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 3:31 o'clock p.m.

Conf. Com. Rep. No. 145-04 and S.B. No. 2549, SD 1, HD 1, CD 1:

Representative Saiki moved that notwithstanding the report of the Committee, that S.B. No. 2549 SD 1, HD 1, CD 1, be recommitted to the Committee on Conference, seconded by Representative Lee.

At 3:31 o'clock p.m., Representative Halford requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 3:33 o'clock p.m.

The Chair then announced:

"Just for the edification of the Members, Conference Report No. 145-04 and SB No. 2549, SD 1, HD 1, CD 1 is to take care of UPW raises. Unfortunately, there is no agreement between the two parties and at this point in time it is too late for the Legislature to act. Is there any discussion?"

The motion was put to vote by the Chair and carried, and S.B. No. 2549, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," was recommitted to the Committee on Conference with Representatives Arakaki, Ching, Kahikina, B. Oshiro and Takumi being excused.

Conf. Com. Rep. No. 141-04 and H.B. No. 2137, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2137, HD 1, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Magaoay rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Magaoay's written remarks are as follows:

"Madame Speaker and colleagues, I stand in strong support of CCR 141, HB 2137 HD1 SD1 CD1. Under this bill a one call center in place would identify the location of various utilities such as gas lines, water, electricity and other service lines. The purpose of the one call center would provide excavators from damaging utilities, which could result in the loss of one's life or lives or economic hardship for businesses and consumers. As an illustration, a recent incident that happened in Las Vegas crippling a resort for a couple of days resulting in a loss of millions of dollars per day. Madame Speaker, having a one call center in place could help prevent such an incident here especially in our fragile tourist economy.

"Even with a start-up cost with fiscal implications, the loss of one's life and other economic impacts is a reasonable price to pay. This bill will significantly reduce the risks of severe disruption and consequent direct or indirect costs.

"By minimizing damage to public utility facilities, the integrity and sustainable life of the public utility network will

be preserved. Repair and piecemeal replacement portions of this network due to damages will, in the long run, impair the efficiency and reliability of the overall network. With fewer repairs necessary due to damages, the effective life of these public utility facilities will be realized, resulting in lower cost to the public utility and ultimately, to the consumer.

"Finally, the health and safety of workers and those engaged in other activities in the vicinity of "live wire" public utility facilities will also be enhanced. A cut to a live electrical cable could result in injury, permanent impairment, or death. A one-call center providing a convenient means for locating underground facilities prior to excavation will improve the safety of everyone that is involved.

"Therefore, Madame Speaker I ask my colleagues for their full support for HB 2137 HD1 SD1 CD1."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2137, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO A ONE CALL CENTER," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 142-04 and H.B. No. 1374, HD 2, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 1374, HD 2, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative M. Oshiro rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative M. Oshiro's written remarks are as follows:

"Madame Speaker, I rise to speak in favor of House Bill No. 1374, Conference Draft 1, Relating to Workers' Compensation.

"SUMMARY OF BILL

This measure would:

- Authorize recovery of attorney's fees and costs under law administered by the Department of Labor and Industrial Relations by any person who successfully defends any charge of workers compensation insurance fraud, except criminal cases, against the person who initiates and prosecutes the action; and
- Authorize the Insurance Division of the Department of Commerce and Consumer Affairs to investigate fraudulent workers' compensation cases, provided that the complaint is against an insurance carrier, a self-insured employer, or a full-insured employer.

"BACKGROUND

Madame Speaker, if you and my colleagues would indulge me, I would like to provide some background information on this bill so that my position can be made clear for the record.

"Earlier this session, the Administration proposed an omnibus measure intended to reform Hawaii's workers' compensation system. This measure, House Bill No. 2486, contained nine (9) separate and distinctive components that sought to alleviate the financial burden of the workers' compensation system on Hawaii's employers.

"These components involved:

- Managed care and limits on palliative care;
- Exemptions for limited liability corporations, limited liability partnerships, partnerships, and sole proprietorships;
- "Maximum medical improvement" and limits on coverage;
- Mental stress claims;
- Employer-designated health care providers;
- Emergency care;
- Vocational rehabilitation;
- Arbitration; and
- Fraud.

"During my initial review of this measure with staff, I was concerned that if a public hearing was held on a single bill containing all of these very technical components, the members of this Committee would not be able to fully review and assess the merits of each. As such, for purpose of promoting thorough review and discussion on each of these components, I instructed staff to break up the Administration's omnibus measure into separate "vehicles" so that the Committee could receive testimony and comment from the public, and discuss the mechanics of each part of the omnibus bill.

"Throughout the public hearing on these "components", your Committee on Labor received voluminous testimony both in support and opposition to Administration's package. While it was clear that the business community supported these measures, it was also evident that the Administration did not work with labor nor with all of the health care providers when they drafted this measure since they vehemently opposed these measures.

"This public hearing was held in the Auditorium and lasted approximately eight (8) hours, during which it was obvious that consensus could not be achieved among the public nor among the members on any of these components. Despite this, of the nine (9) components contained in the Administration's omnibus measure, six (6) were reported out of your Labor Committee.

"At the outset, let me state for the record that I do indeed recognize the plight of Hawaii's employers. Our economy is only now starting to turn around after a decade of decline and many businesses continue to struggle to earn ends meet. Yet, as the Chair of the Labor Committee, I am also mindful of the need to balance the interests of the employer with those of the employee to ensure that the interests of the collective are met. This is a responsibility that I take very seriously.

"DISCUSSION

With that said, regarding House Bill No. 1374, Conference Draft 1. This measure has been termed, "the Bounty-Hunter" bill by many of its opponents because it would allow persons who successfully investigate cases of workers' compensation fraud to receive up to 50% of the proceeds of a civil fine charged on the fraudulent party.

"I'm sure that everyone here agrees that fraud is a problem and that it is sound public policy to establish mechanisms that would deter fraud in the workers' compensation system. Yet, I am mindful that to create a mechanism that could be misused to the detriment of the innocent is neither fair nor in the public's best interest.

"It was based on these concerns that your Committee on Conference deleted this particular provision. In its place, your Committee on Conference established a two-tiered system by which insurers, self-insured employers and full-insured employers would be investigated and prosecuted by the Department of Commerce and Consumer Affairs' Insurance Fraud Investigations Branch, while all others would continue to be investigated and prosecuted by the Department of Labor and Industrial Relations.

"Concerns were raised that the Department of Labor and Industrial Relations does not have the necessary resources to effectively enforce the anti-fraud laws that are currently in place. Your Committee on Conference strongly disagreed with this contention based on the lack of a backlog in the processing of investigations and prosecutions. It was our view that it is the Department's responsibility to enforce the laws within its current budgetary means, especially since this bill, if enacted, would ease its burden by sharing the investigative and prosecutorial responsibilities with DCCA.

"With regard to the funding of DCCA's new responsibilities, your Committee on Conference also shared grave concerns on the Administration's recommendation that they use the Motor Vehicle Insurance Administration Revolving Fund to subsidize the enforcement of workers' compensation fraud cases.

"In recent years, my colleagues across the aisle have been very critical on the use of dedicated funding mechanisms for purposes other than those which they were originally meant. I specifically recall the numerous speeches delivered by my colleagues from Hawaii Kai and Kailua denouncing the Majority on this very issue.

"Given that this component was taken directly from the Administration's bill and that it had been thoroughly supported by the Department of Labor and the business community, I would be curious to learn why my colleagues across the aisle have wholeheartedly supported this component throughout this session.

"Since it was clear to your conferees that this particular provision would likely be challenged by motor vehicle insurers, Madame Speaker, your Committee on Conference amended it by establishing the Insurance Commissioner's authority to enforce workers' compensation fraud cases in Article 2 of the Insurance Code rather than in Article 10C, the Motor Vehicle Insurance Law.

"NEGOTIATIONS AND MEDICARE

"Madame Speaker, let me say that negotiations with our counterparts on this bill were especially difficult due to the diametrically opposing viewpoints of business and labor on not only the issue of fraud, but on the entire subject of workers' compensation reform. It is clear that consensus has not been achieved on how our laws must be changed that is fair and reasonable to both the employer and the employee.

"Madame Speaker, while it disturbs me that the Administration has added gasoline to this fire by the one-sided manner in which they arrived at their omnibus measure as well as the combative approach that it used in lobbying on this issue, Madame Speaker, we as lawmakers must also share some of the blame. Clearly, workers' compensation reform is a "motherhood" issue for labor and management and many of us on both sides of the aisle have also decided to choose one or the other. **For effective reform to be achieved, we all must bridge this divide between the employer and employee to do what is best for all of our citizens.**

"In arriving at the compromise offered in this Conference Draft 1, the conferees looked at a host of alternatives to find

common ground, not just pertaining to fraud, but the entire spectrum of workers' compensation reform proposed by Administration and the public during the many public hearings held throughout this session.

"Of particular note was a proposal offered by the Chief Executive Officer of HEMIC to apply all medicare fee schedules to workers' compensation cases. What made us consider this was documented evidence that the application of all fee schedules on workers' cases would significantly reduce the medical costs of workers' compensation cases with little to no negative impact on the injured worker. This particular concept is currently under review by the State of California and may possibly be enacted as early as next year. It is my hope that next year, your Committee on Labor will further investigate the feasibility of such a concept.

"For his last-minute efforts to spur compromise, I would like to personally thank Mr. Dove and his staff for providing the conferees with their research and expertise on this concept. In my view, this is the kind of collaboration and cooperation that is needed to develop effective reform -- not the rhetoric, hidden barbs, and sound-bites that this year's workers' compensation reform effort will be remembered for.

"In conclusion, Madame Speaker, I would also like to thank the Chair of the Finance Committee, our counterparts on the Senate, and most especially, the Vice Chair of your Committee on Labor for their hard work in arriving at this compromise.

"I urge my colleagues to support this bill. Thank you."

Representative Pendleton rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Pendleton's written remarks are as follows:

"Madame Speaker, I rise in support of House Bill 1374, House Draft 2, Senate Draft 2, Conference Draft 1. The purpose of HB 1374 is to address the issue of workers' compensation fraud. Its approach is twofold. First, it authorizes the Insurance Commissioner to investigate complaints and prosecute cases of workers' compensation fraud. Second, it authorizes the recovery of attorney's fees and costs by those who successfully defend any charge of such fraud.

"Madame Speaker, this bill will be effective in dealing with workers' compensation fraud in Hawaii. I find the provision that expands the authority of the Insurance Commissioner to be particularly valuable. In the words of the State Insurance Commissioner, 'Workers' compensation fraud is a continuing problem for both the insurance industry and business owners. While the Department of Labor and Industrial Relations has the authority to deal with workers' compensation fraud, DLIR's limited resources inhibit their ability to address fraud issues fully. The Insurance Fraud Investigations Branch of the Department of Commerce and Consumer Affairs is equipped to address insurance fraud and would provide an important asset to DLIR in investigating and prosecuting insurance fraud within the workers' compensation arena.'

"Madame Speaker, the fraud unit in the Insurance Division of DCCA has been effective in dealing with insurance fraud in other areas of business. They have the capacity to do to an excellent job of investigating workers' comp fraud. It makes sense to give the job to a division that has a proven track record and the resources to do this new job equally well.

"In addition to the Insurance Commissioner, the Department of Human Resources Development, The Chamber of Commerce of Hawaii and the National Federation of

Independent Business also support HB 1374. I have found their reasoning and testimony to be compelling.

"Madame Speaker, according to Director Watanabe of the Department of Human Resources Development, "This bill seeks to amend Section 386-98, Hawaii Revised Statutes, and require that any individual, who fraudulently receives benefits, make full restitution of those benefits to the payer. This is especially meaningful to the State of Hawaii, as a self-insured employer, because we use monies appropriated out of the State's general fund to pay those benefits. It also entitles a party, who successfully investigates and has a determination that fraud was committed, to receive 50 per cent of the administrative penalty awarded. This will go a long way towards defraying the cost of such an investigation.

"With this new law, we will be able to more effectively combat worker's compensation fraud. HB 1374, HD 2, SD 2, CD 1 creates meaningful changes in the workers compensation system. I would like to thank Director Watanabe of the Department of Human Resources Development, Director Recktenwald of the Department of Commerce and Consumer Affairs, and Director Befitel of the Department of Labor and Industrial Relations for their continued leadership and their unwavering dedication to improving the worker compensation system.

"For these two reasons, I strongly support this bill. Thank you, Madame Speaker, for the opportunity to speak in support of House Bill 1374, House Draft 2, Senate Draft 2, Conference Draft 1."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1374, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 143-04 and H.B. No. 2511, SD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and H.B. No. 2511, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INCOME TAX WITHHOLDING," passed Final Reading by a vote of 49 ayes to 1 no, with Representative Jernigan voting no and with Representative Meyer being excused.

Conf. Com. Rep. No. 144-04 and H.B. No. 2396, HD 2, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2396, HD 2, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Schatz rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Schatz's written remarks are as follows:

"Madame Speaker, I rise in support of this measure.

"First of all, I want to thank Ted Liu, Kurt Kawafuchi, Pearl Iboshi, Ann Chung, David Watumull, David Ige, Carol Fukunaga, Speaker Say, President Bunda, Brian Taniguchi, Dwight Takamine, Glenn Wakai, Bill Spencer, Jay Fidell,

Bruce Nakaoka, Eric Martinson, and many others for their work on this measure.

"I want to talk about what this bill does.

"First, it does tighten up significantly the provisions under Act 221. It disallows investments that do not meet a basic test of economic substance and business purpose. The purpose of this Act is to enable high-tech investment that wasn't already occurring, and to encourage research and development in high tech. Simply re-describing what a business is already doing in order to qualify under the Act is not what the legislature has in mind.

"We didn't address the question of so-called "drop-downs" and other specific structures because we want to give DoTax the latitude to interpret the "economic substance and business purpose" criteria. There are probably drop-downs and other structures that are appropriate under the Act, and others that are not, and it is not appropriate for the legislature to judge whether or not individual deals and structures meet the "economic substance and business purpose" criteria. We don't know. We are supposed to set policy, and the Department of Tax should administer it.

"Also, there are clearly some investors and investments that are appropriate with credit allocations as high or higher than 2 to 1. But we wanted to provide a guideline for DoTax to begin to evaluate proposals.

"Finally, I want to insert an *Advertiser* editorial that talks about the question of disclosure:

"EDITORIAL

Taxpayers deserve look at the tax credit details

While the Legislature did a fair job of tightening up some of the more egregious loopholes in the Act 221 high-tech tax credit bill, it flopped on the issue of public disclosure in this controversial law.

The net result is that the public and policy-makers will continue to have a hard time making a reasoned cost-benefit analysis of the investments prompted by the measure.

The best hope now is that officials in the state tax and business departments can accomplish administratively what lawmakers were unable to do legislatively.

Here's how it could work:

The revised law tightens up the definition of what a qualified high-tech research company is. It will be harder for marginal high-tech operations to qualify for Act 221 investments.

Further, before any company can seek such investments, it must file a formal request for certification with the Tax Department, outlining how much it expects to receive in investments and how much will be spent on qualified high-tech work. That's an improvement over today's voluntary system.

The Legislature could have required that this certification information be made public, but it did not. By the same token, however, the bill does not specifically forbid release of such information.

Assuming the Tax Department can get legal clearance that these certification letters are not privileged "tax return" documents, it might be able to forward them to the Department of Business for cost-benefit analysis and public disclosure.

This only makes sense. Taxpayers are supporting "high tech" businesses with millions in tax dollars. They have a right to clear, focused information on what those tax dollars are buying in the form of jobs and economic development.

"I believe that the certification process outlined is one that is intended to provide this information to the public, not simply to other state departments. The question of whether or not the data collected is considered part of a "tax return" is central to whether or not the data can be subject to sunshine. We do not believe that the data collected as part of the certification process is considered part of the tax return.

"Finally, on the SPIF, I want to make clear that the legislature intended to retain its authority over the incurrence of any indebtedness, and over any appropriations. In other words, while we authorized this program to move forward, we did so cautiously, with the requirement that the 2005 Legislature approve the actual floating of debt, and the real launch of the program. Members of the Legislature remain concerned about borrowing money for the purpose of manufacturing investment capital, and the bill was intentionally written to enable the Legislature to remain the steward of the public's money. DBEDT and HSDC's new structure specifically and intentionally did not authorize floating debt immediately - the Legislature expects that the proponents of this program will come back in 2005 for all of the necessary authorizations."

Representative Meyer rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I'm rising in strong support.

"I'd like to extend some kudos the Chairman of Economic Development. This was a bill that was very important. Often times, parties were far apart. There were lots of strong feelings. It's an important bill. It extends Act 221, which I think is a good thing. It's taken the bill as written now, eliminates the liberally construed measure, that language that was very troublesome to the Department of Taxation. I think that everybody is the winner on this. And I'm proud that this Legislature is passing this measure. Thank you."

Representative Wakai rose to speak in support of the measure, stating:

"Madame Speaker, I rise in support of this measure. And just would like to also acknowledge the Chairman of the Economic Development Committee for doing a wonderful job. There were a lot of different parties that he brought together and created a bill that will help us economically for generations to come."

Representative Schatz rose to speak in support of the measure, stating:

"I just want to make a remark in support. We'd just like not to call it Act 221 anymore. Thank you."

Representative Moses rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In strong support.

"And if this is not Act 221, okay. But if we had amended Act 221 when we first tried last year, we would have saved \$60 million. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2396, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT

RELATING TO CAPITAL INVESTMENTS," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 146-04 and S.B. No. 2550, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2550, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In support.

"Madame Speaker, congratulations to the Governor and the teachers for successfully negotiating this pay raise contract. Madame Speaker, in the *Maui News* yesterday, there was actually a medium sized article but with some comments from a Maui teacher that was part of the negotiating team. And if I could read just a few of the comments.

"One is she says, 'I think the teachers are going to be surprised and pleased.' In being more specific about this negotiated contract, annual salaries, starting salaries would increase nearly \$2,200 to \$36,486. And she goes on to say, even with the proposed raises, Hawaii ranks as the bottom state in the country for starting teacher's salaries. Even though it's gone up to \$36,000, she refers to it as the bottom in the country for starting teacher's salaries. Still, she called the tentative agreement, the best one possible given the State's economic resources and the negotiation environment.

"Madame Speaker, this new contract includes a lot of elements but I'd like to talk about a few of them. One is that the teachers got some increments in addition to an increase in pay. There is defined in this contract a minimum teacher's salary which was characterized as the lowest in the nation, however, it did go up and that's a good thing. The increments, Madame Speaker, the increments are part of a schedule that's already predetermined. And the schedule does change when negotiated. However, Madame Speaker, in our statutes, we are required, a 'shall' requirement that we fund, the Legislature fund, the annual increments. And if I could read that law, Madame Speaker, 302A-626. "Teachers shall be entitled to an annual increment. Teachers shall receive longevity step increases."

"Madame Speaker, on another bill that we were discussing this year in the Legislature, there was a big argument as to whether 'shall' really means 'shall' when we're telling the Legislature that it needs to fund things. That was the air ambulance bill. Well, Madame Speaker, we have regarding teacher's increments and longevity step increase, it's a 'shall' function in our statutes. And as long as I've been in the Legislature, 10 years, the Legislature has failed to implement that and just stood by for the Executive branch, for the Governor to negotiate with the teachers. Well fortunately, the teachers got what was characterized by that one negotiator from Maui, a successful negotiation, a successful outcome, and there was movement regarding steps and increments.

"Madame Speaker, regarding minimum teacher pay, the teachers got a larger minimum teacher pay. This Legislature, Madame Speaker, I introduced a bill to increase minimum teacher pay to \$38,000. Madame Speaker, this Legislature could have on its own, without relying on the Executive branch, raised minimum teacher pay. But Madame Speaker, we did not want to hear that bill."

Representative Saiki rose to a point of order, stating:

"Madame Speaker, point of order. This is not germane to the bill before us."

The Chair responded, stating:

"Representative Saiki brings up a good point. Representative Halford, please proceed."

Representative Halford continued, stating:

"Thank you, Madame Speaker. Minimum teacher pay is a part of this contract and as such, it is germane."

Representative Leong rose to yield her time, and the Chair, "so ordered."

Representative Halford continued, stating:

"Thank you, Madame Speaker. The last week there was a letter to the editor that I wrote. It was published in the *Star Bulletin* and I would like to include that in the Journal," and the Chair, "so ordered."

Representative Schatz rose to a point of order, stating:

"Madame Speaker, point of order. I did read that letter to the editor and it would not be in compliance with the rules of the House. It is insulting to the Democratic Majority. It makes accusations. It's clearly out of order. If necessary perhaps, we should call a recess to review the letter to see whether or not it's in order but I believe that you would rule that it was out of order."

The Chair stated:

"I'll allow it."

Representative Halford "Thank you, Madame Speaker. I could read the letter right now. And then see how they feel about it."

Vice Speaker Luke: "No, I have already allowed you to insert it. Representative Halford, the Chair has given you a lot of latitude. Please proceed, but please stick to the contents of this bill."

Representative Halford continued, stating:

"Thank you, Madame Speaker. But the contents of this bill gives teachers a raise, funds the increment schedule or creates funding for increments, I think that's a more accurate way of saying it, raises minimum teacher pay and actually pays some more even at the higher end of the scale. But Madame Speaker, I wanted to point out that the Legislature could have, on its own, done much. That we have, that this Legislature has ditched teachers in many ways. One, as I mentioned before ..."

Representative Saiki rose to a point of order, stating:

"Madame Speaker, point of order. This is not relevant to the bill before us."

Vice Speaker Luke: "Representative Halford, please stick to the contents of this bill. Let me not warn you again. Please stick to the contents of this bill."

Representative Halford: "Madame Speaker, this bill has to do with, includes many things, including annual increments and step increases. In State law, in our statutes, Madame Speaker, it says teachers shall be entitled to an annual increment funded

by the Legislature without going to the Executive branch. And teachers shall receive longevity step increases. We can do that. Should do that. Or as told, shall do that in State law. We don't need to go to the Executive. We haven't done it Madame Speaker. And I submit that increments and step increases are relevant to this bill."

Representative Saiki rose to point of order, stating:

"Point of order. This is still irrelevant to the bill before us. Could we have a recess please?"

At 3:43 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 3:48 o'clock p.m.

The Chair recognized Representative Halford who continued, stating:

"Thank you, Madame Speaker. I guess there's some sensitivity to my remarks so I will respect that and summarize."

"Madame Speaker, the teachers have a raise. Some of the negotiators at least feel like the negotiations with the Governor went well. Congratulations to them for that."

"There were several things that we as a Legislature could have done. We could have provided increments that were negotiated by the Governor. We could have established a minimum teacher pay that is more in line with retention, keeping good teachers. We could have made the job easier for the Department of Education in recruiting when they show the teachers on the mainland the increment schedule and the step schedule. Those teachers believe that it will be implemented. Yet, we don't implement it. If we did, we would have better teacher retention. We could have, even today, given them the VEBA Trust. Thank you."

Representative M. Oshiro rose to speak in support of the measure, stating:

"Madame Speaker, I rise in strong support of Senate Bill Number 2550, Conference Draft 1."

"Just a couple of points. First of all, I think before we go and submit any type of legislation to deal with minimum wages for teachers that we bear in mind that several years ago, this Legislature passed Act 100, which was deemed unconstitutional and an abridgement of the collective bargaining principles and laws. And I believe this Administration, the present one on the Fifth floor, would not support such a measure. So I think we need to keep that in mind."

"Secondly, Madame Speaker, on this measure before us, what we need to understand is that this is a negotiated settlement with the teachers that provides salary increases for two years. And as the gentleman from Maui stated, for the lower ranking teachers, they will be going up about \$2,200 to \$36,486 per year. And for those teachers, there's a top end, the more senior members in our teaching profession raise about \$2,500 per year to \$66,203 per year. It's for these reasons that I support these raises."

"I also encourage the teachers' union and the Administration the best of luck and success in their next round of negotiations which will occur in several months. Thank you."

Representative Souki rose to speak in support of the measure, stating:

"Yes, Madame Speaker. Thank you very much. I wish to speak in favor of this Senate bill.

"First of all, I want to thank the Finance Committee, leadership, and the Senate Ways and Means Committee for putting the money in the budget for the wage negotiations for the teachers. I believe this acted as a catalyst to finally resolving the pay issue. Thank you very much."

Representative Moses rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In strong support.

"While I wasn't on the negotiating team of course, I did have the privilege of being on the Conference Committee for this measure, and saw the numbers early on. And I believe, I may be wrong, but I believe the Administration would have offered more if we thought we could afford it as a State. But I'm glad for the amount they got. I think the teachers will be happy with it. And I'm sure, if our finances show that we can, they'll get more in the future because all of this has to be tied to what we can pay. Thank you very much, Madame Speaker."

Representative Ching rose in support of the measure and asked that the remarks of Representatives Moses and Halford be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Stonebraker rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in strong support.

"On 146, Senate Bill 2550. I owe much to public education in Hawaii. I have gone to public schools and many of my teachers played instrumental roles in giving me vision for the future and shaping me. As a matter of fact, I have a teacher that was at the high school where I went, Kaiser High School, that is still there. And Mr. Peter Choo has been teaching in public education for 50 years. This is the kind of dedication that we want to support. This is the kind of focus and support of the students that public educators like the teachers have. And of course Peter Choo says that he wants to continue teaching for another 25 years. I hope that he does because he's well worth it.

"My wife was also a teacher in public schools prior to our three daughters being born. And now she's pretty much full time teaching at home.

"But this is a small step forward. And we know from the past, in the Legislature, through the teacher's strike of a couple of years ago, through those negotiations regarding VEBA, I'm not talking about that but I saw the strength and the desire of the teachers to see their profession recognized by this Body. And with the system that we have, with binding arbitration at this point, this is I believe, the best possible circumstance. A rational, reasonable pay raise over the next 2 years granted to these public educators. And so with that I'd like to incorporate the words from the speaker from Maui and encourage the Members of this Body to vote yes on the teacher raises."

Representative Takamine rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I also wish to rise in support of the measure.

"Thank you, Madame Speaker. Madame Speaker, I think we all were delighted to hear about the settlement that was struck

between the teachers and the Administration. But perhaps just as a reminder of our fiscal situation, if the Members of the Body will recall, on April 12, the Administration did come down with their revised balanced financial plan. And in putting forth those alternatives to the Members of the Legislature, we were warned that anything above 4%, a 4% increase for this biennium, would not be affordable. As has been indicated on this Floor, certainly the settlement is in excess of that 4%. Presumably that would put the Administration's financial plan into an unbalanced situation.

"However, fortunately, because of the accelerated calendar that was followed, and our passage of the budget on April 15, it allowed an opportunity that perhaps may not have as clearly been seen at the outset of this legislative Session. And as will be made clear through other bills that we will be acting upon, what happened was by passing the budget early and having a financially balanced plan, a 6-year plan, it provided an opportunity for the Administration and this Legislature to work together at refinements. And I believe the following measures will reaffirm that. And so with that part in mind, I stand in strong support of the measure. Thank you."

Representative Takai rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in support of this measure. Thank you. First, I'd like to ask that the words of Finance Chairman be entered into the Journal as if they were my own," and the Chair "so ordered." (By reference only.)

Representative Takai continued, stating:

"Thank you. I have some problems with the way that the Representative from Kihei has framed his discussion because I think we're all here ..."

Representative Thielen rose, stating:

"Madame Speaker, could we have the speaker please focus on the bill rather than another Member."

The Chair responded, stating:

"I think it's a rebuttal. Please proceed."

Representative Takai continued, stating:

"Thank you, Madame Speaker. I think we're all here to support education. And in fact if you take a look at the bills that were still alive to the 'eleventh hour', one of them was the annual increments bill. But I don't think it was appropriate for this Legislature to move the annual increments bill with the collective bargaining agreement. In fact, Madame Speaker, it was the House Democrats who pushed forward this bill at the very beginning of session at the encouragement of the union to help move negotiations along.

"Now we could, at the urging of the Representative from Kihei, take over collective bargaining and do bargaining ourselves each and every year for every single unit, but I think that's inappropriate. In fact, collective bargaining is not the responsibility of the Legislature, and I don't think we should be doing that. It's the responsibility of the Fifth floor working with the various unions.

"I think today, we sit here and take a look at this measure relieved because we know that once again, the teachers can get back to teaching and focus on what's very important to us and to them, and that's the education of our students without being distracted by a potential strike or other items that keep their focus away from education. So I don't want the public nor the

teachers to have this perception that we don't support education, or we don't support teachers. And I appreciate the Finance Committee Chairman mentioning that there are a whole lot of other measures that are on the Floor today which have been passed already. And in fact, Madame Speaker, there are other measures that have not passed and other proposals during this Legislature that have not passed that I believe are as important as the measures that we're passing today. Thank you."

Representative Moses rose, stating:

"Thank you, Madame Speaker. Since we're in a rebuttal mood. I'd like to see the Finance Chair's 6-year financial plan, which we still haven't seen. And I'd like to see that."

Vice Speaker Luke: "Representative Moses, you're out of order."

Representative Moses: "Thank you, Madame Speaker. And I'd like to say that the Fifth floor sent down an amended plan because this Body was spending more than she said we could afford. And she was trying to work with this Body. Thank you, Madame Speaker."

Representative Halford rose to respond, stating:

"Thank you, Madame Speaker. If I could rebut the Chair of Higher Education in just one respect. He suggested perhaps that I would like the Legislature to take over collective bargaining, and that nothing could be further from the truth. Madame Speaker, all I'm suggesting is that we simply follow the law.

"In this case, Madame Speaker, it's in law, we shall fund steps, shall provide annual increments. That's our job. And whenever they do annual increments that annually, we should be funding the increments. The downside of not doing that portion of government's relationship with teachers, one of the huge downsides is that we, DOE, recruits teachers on the mainland. They give them the schedule and they can honestly say to those recruited teachers that this schedule lives in law and by law we have to fund it. So the teachers come thousands of miles to start teaching here and find that we don't follow the law. We don't fund it. And many of the people who we have spent large sums to recruit them still just go right back. And every year, the DOE is on the mainland recruiting new teachers with this deception. And it's a deception, Madame Speaker, because we don't fund it.

"The schedule exists. And it is asked, the shall function in law, just like we shall have aeromedical services, shall fund. That's in law. And so I'm just suggesting that we do our part. I'm not suggesting that we take over collective bargaining. Thank you."

Representative Takai rose to respond, stating:

"Madame Speaker, real quick, as rebuttal to the rebuttal.

"I think, the Governor is responsible for the budget. If the Governor put it in her budget coming down to the Legislature at the beginning of Session, we would have considered it. The Governor did not send us a proposal to fund the annual increments this year, nor last year. And I can promise you, well I hope I'm still around, that should the Governor come in with a proposal in her financial plan and with the Administration bill supporting annual increments, we won't be here today talking, or next year talking about this same scenario on the Floor on the second to the last day of Session.

"We're here today supporting the contract as approved by the bargaining unit. And I think that that's it. We should celebrate that success and move forward. To say that we failed the teachers because we have not funded annual increments is to say that we all failed; the Fifth floor, Republicans, and Democrats. So as we move forward, I look forward to seeing the Administration fund or place in the Administration's financial plan, the Executive budget, an Administration bill for annual increments. Thank you, Madame Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2550, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 147-04 and S.B. No. 2551, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2551, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative M. Oshiro rose to speak in support of the measure, stating:

"Madame Speaker, I rise in strong support.

"Madame Speaker, this bill would provide fund authorizations and appropriations for collective bargaining cost items for Unit 7 and their excluded counterparts, including the cost of salary adjustments negotiated between the State of Hawaii and the exclusive bargaining representative for the fiscal biennium 2003-2005.

"On March 25, 2004, the Governor, jointly with the President of the University of Hawaii, members of the UH Board of Regents, and the University of Hawaii Professional Assembly, UHPA, announced that they had reached an unprecedented six-year collective bargaining contract between the State and the University professors.

"Among other things, the contract provided for pay increases equating to raises over thirty-four percent of the next six years, with the cost borne entirely by the State for the first three years, and then shared between the State and University over the last three. Total obligations will be \$124 million to the State and \$39 million to University of Hawaii.

"The exclusive bargaining representative of bargaining Unit 7 reported that the 2003-2009 six-year contract was ratified by its membership on April 7, 2004. Subsequently, on April 26, 2004, the Governor transmitted to the Legislature the cost items applicable to the ratified contract in accordance with Section 89-10(b), Hawaii Revised Statutes.

"In the Governor's transmittal letter of the cost items, the Governor informed the Legislature that precedent exists for the approval of appropriations for future fiscal bienniums. Pursuant to Act 63, Session Laws of Hawaii 1994 and not Act 73 as it was incorrectly cited in the Governor's letter, the Legislature did have and did authorized appropriations to pay for collective bargaining cost items for fiscal biennium 1993-1995, and authorized the implementation of cost items in fiscal biennium 1995-1997, as provided in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 3.

"However, Madame Speaker, on January 27, 2000, the Attorney General opined that due to constitutional limitations,

legislative approval of collective bargaining cost items must occur on a biennial basis. Citing Article VII, Sections 5, 9, and 11 of the State Constitution, the floor debates of the 1978 Constitutional Convention, and Frost v. State, a state decision rendered in Iowa, the Attorney General asserted that "it is a fundamental principle that one legislature cannot restrict the power of future legislatures to legislate. The authority of the legislature is limited to the period of its own existence. One legislature cannot bind a future one."

"Madame Speaker, the reasons for this principle have been explained by a legal expert as follows:

"Number 1, legislatures are agents of a constantly changing constituency;

"Number 2, a current legislature may not adequately account for the interests of future constituents;

"Number 3, legislatures are collective bodies requiring consensus of many individuals; and

"Number 4, legislative membership changes at frequent intervals.

"Madame Speaker, I firmly agree with these principles and agree that the appropriations for collective bargaining cost items can only be approved during the fiscal biennium to which this Legislature is constituted.

"As such, the proposed amendment offered by the Governor was amended to provide the necessary appropriations to fund the cost items applicable to the ratified contract with University of Hawaii Profession Assembly for only the 2003-2005 fiscal biennium.

"So for these reasons, I truly support this measure and ask that all Members vote aye. Thank you."

Representative Meyer rose to speak in support of the measure, stating:

"On 147, I just standing in strong support.

"I did vote no on this bill when it was moving through the process earlier when there were all blanks. A no vote was because we didn't know what we were voting on. I am happily supporting this. I believe this was a very good initiative. I think that everybody is a winner. And I personally appreciate the University of Hawaii Professional Assembly's sensitivity to some of the problems that the Administration has with keeping a balanced budget over the six years. Thank you, Madame Speaker."

Representative Jernigan rose to speak in support of the measure, stating:

"Same measure, in strong support.

"I think the Governor was really innovative. And her bargaining staff negotiators to negotiate a long-term contract, it gives the State the ability to look down the road and see where we're at so we can chart where we're going and actually have a six year plan. Thank you."

Representative Ching rose in support of the measure and asked that the remarks of Representative Jernigan be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2551, HD 1,

CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," passed Final Reading by a vote of 50 ayes and with Representative Meyer being excused.

Conf. Com. Rep. No. 148-04 and S.B. No. 2556, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 2556, HD 1, CD 1, pass Final Reading, seconded by Representative Lee.

At this time, Representative Takamine offered Floor Amendment No. 19, amending S.B. No. 2556, HD 1, CD 1, as follows:

SECTION 1. Senate Bill No. 2556, H.D. 1, C.D. 1, is amended by amending section 1 to read as follows:

"SECTION 1. There are appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums or so much thereof as may be necessary for fiscal year 2004-2005 to fund the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

	<u>FY 2004-2005</u>
State ethics commission	\$12,000
Office of the auditor	\$82,825
Office of the legislative reference bureau	\$49,728
Office of the ombudsman	\$32,466

The sums appropriated shall be expended by the respective heads of the legislative agencies for the purposes of this Act."

Representative Takamine moved that Floor Amendment No. 19 be adopted, seconded by Representative Kawakami.

Representative Takamine rose, stating:

"Thank you, Madame Speaker. Madame Speaker, Senate Bill 2556, House Draft 1, Conference Draft 1 deals with pay adjustments for the staffs of the legislative agencies. When the bill was reported out of Conference, the appropriation for the Hawaii Ethics Commission was inadvertently left out of the draft. The floor amendment addresses that oversight."

The motion was put to vote by Chair and carried, and Floor Amendment No. 19, amending S.B. No. 2556, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS," was adopted with Representatives Saiki and Schatz being excused.

The Chair then announced:

"Members, Senate Bill 2556, House Draft 1, Conference Draft 2 will be taken up on Thursday. Thank you."

Conf. Com. Rep. No. 149-04 and S.B. No. 2528, SD 1, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2528, SD 1, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Thielen rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. Madame Speaker, I'm rising in opposition to this measure.

"Thank you. Madame Speaker, I opposed this Loss Mitigation Grant Program all along the way because it is not means tested. In other words, someone that has a very expensive home would be able to qualify for the 30% grant and use up the money in the Fund. Where it could be someone in a very modest older home that really needs the help from the grant to put in some hurricane, I guess hurricane clips on the roof, other kinds of protection to that house. It should be tied with the need of the resident that is applying for money from that grant. I don't know why it hasn't been. I don't know why it continues not to be. But I can't support it this way. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2528, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Final Reading by a vote of 49 ayes to 1 no, with Representative Thielen voting no and with Representative Meyer being excused.

At 4:14 o'clock p.m., the Chair noted that the following bills passed Final Reading:

H.B. No. 2137, HD 1, SD 1, CD 1
H.B. No. 1374, HD 2, SD 2, CD 1
H.B. No. 2511, SD 1, CD 1
H.B. No. 2396, HD 2, SD 2, CD 1
S.B. No. 2550, HD 1, CD 1
S.B. No. 2551, HD 1, CD 1
S.B. No. 2528, SD 1, HD 1, CD 1

Conf. Com. Rep. No. 150-04 and S.B. No. 2595, SD 2, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2595, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONAL COUNSELORS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 151-04 and S.B. No. 2906, SD 1, HD 2, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2906, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CERTIFICATES OF GOOD STANDING," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 152-04 and S.B. No. 459, SD 1, HD 1, CD 2:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 459, SD 1, HD 1, CD 2 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"Madame Speaker, we are guided on this bill by the thoughts of the Chair of the Campaign Spending Commission, who has done such a good job at really using the abilities of the law to go after people who are bundling and otherwise abusing the law. And he wanted some major fixes that would have helped us really clamp down on the basic problem that we have in campaign financing, which is that the people who do business with the government are able to contribute to the people who award contracts. It's on its face a corrupt practice, where people put money in the hands of those who make the decisions and are able to influence the decisions in that way.

"And of course, we all know that the irony of this process is that the people who make the contributions would much prefer that the law be changed and that they not have to make the contributions. And that people be selected for bids based on whether or not they were the most qualified for the job rather than how much they gave in the way of campaign contributions.

"So that's the change we were really looking for. In this bill, touching superficially in the area of contract awards, we do have a limitation of non-bid contracts only. Non-bid contracts over \$25,000. Otherwise, the rest of the process goes on.

"What particularly concerns the Chair of the Campaign Spending Commission is what he calls the corporate 'black hole', which is the fact that contributions made by corporations and unions continue to be legal. As opposed to how it's handled in the federal government and a majority of other states where it's strictly illegal for corporations and unions to make direct contributions to political campaigns. We should in this particular bill before us be outlawing that practice. He said it's quite all right to set up PACs because if you set up a PAC, you know exactly where the money is going into the PAC. It's all carefully recorded. In a corporation, you can't see where that money begins. You only see how it ends. And he's particularly concerned in the way corporations can get funds into several different pockets before they go out as campaign contributions. And so that's a big deficiency of this measure.

"There are two other parts of this bill that he was concerned about. One is that the process of 'raise and give', where you can go out and hold a fundraiser, collect money, and then disperse that money to charities, nonprofit organizations who essentially will cooperate with your campaign organization, understanding that they get money from you. This practice could be outlawed. It's legal according to this bill.

"Third, he's very concerned that we, those of us in the House and Senate, refuse to put ourselves under the obligation of electronic filing. But it goes for the major offices. And that would round out the picture of electronic filing so he very much wants that.

"He pointed out a couple of other problems with the bill. One that bundling is described on page 3 of the bill at the bottom of the page under Section 3, and then bundling doesn't appear anywhere else in the bill. So he considered that a little bit unusual. And then he actually says that on page 21, Subsection 1, which penalizes people, who are losers in the non-bid contract process. That's a little rough, he thought for companies that aren't necessarily getting any business at all from the government and yet they're excluded under that provision. So he said that is a flaw.

"So in essence and to sum up, he called this bill a disappointment. I certainly think it's a disappointment because it fails to break the nexus between campaign contributors and awards by those in key positions in the government. And for that reason, I oppose the bill. Thank you, Madame Speaker."

Representative Herkes rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In support.

"Madame Speaker, I'm just a little confused. Last year, we addressed the issue of contracts based on capability and not campaign contributions and we passed the procurement code, which was praised by the Governor, as taking politics out of the procurement process. And a little earlier, we passed an amendment to the procurement code, which even strengthens that. So I'm a little confused about the Minority Leader's comments. Thank you."

Representative Thielen rose to speak in support of the measure, stating:

"Madame Speaker, I'm rising in reluctant support but in support.

"Thank you. Madame Speaker, it limps ahead very slightly, the campaign spending reform bill. I would like to read something from the Hawaii Clean Elections Coalition. "A recent *Star Bulletin* editorial correctly noted that campaign spending reform in Hawaii is a bad joke. The Legislature after much election year posturing and promising reform and change not only did nothing but now appears to be poised to brazenly protect the loopholes for special interests partisan money via Senate Bill 459." The bill that we are now voting upon. "This bill with the exception of controls it would put on non-bid contracts above \$25,000 is riddled with minor and fake reforms too numerous to list. It fails to reduce money in campaigns and is touted to be real reform when it is not. Meanwhile, the comprehensive public funding of election campaigns legislation is dead again for the sixth year."

"Madame Speaker, the forward progress is so small, I guess it could be called moving at a snail's pace. And I would hope that next year, something more meaningful would pass."

Representative Schatz rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in support of this measure.

"I would just want to make a couple of technical points. First of all Senate Bill 459, the draft to which the *Star Bulletin* editorial was referring was a previous draft and not the Conference Draft.

"And the loopholes that were referred to were removed. Most of those were not House priorities. And we were able to negotiate the removal of those provisions.

"And I think the real test ... Let me say up front, I personally agree with the Representative of Kailua that full public financing is the real reform and I'd be happy to co-introduce a measure to that effect next year should we return, although, that's not the measure in front of us. But it seems to me that the real measure of whether or not we're reforming the campaign finances from the perspective of breaking the nexus between campaign contributions and the doling out of government contracts exists.

"If this bill were law ten years ago, with all of the indictments, prosecutions, and all of the apparent corruption that's occurred over the last ten years, would that have happened? And the answer is resoundingly, no. None of the contributions that happened in various Administrations that are currently under investigation, where people are getting hauled

off to jail, all of that wouldn't be allowed. And I think that is an important thing to say.

"I agree with a lot of what Mr. Watada says. There are lots of things in this bill that I think could be better, lots of things I think could be worse. But I know the Conferees worked very hard in negotiating with the Senate the best reform package that we could put forward. And the key thing here is that all of the stuff that all of the people in all of our communities are disgusted by will no longer be allowed if the Governor signs this into law. Thank you."

Representative Caldwell rose to speak in support of the measure, stating:

"Madame Speaker, also in support.

"I would like to point out just some of the things that this bill does. It prohibits fundraising in buildings being used for State and county purposes. It prohibits contributions by government contractors selected through the non-bid process. It prohibits the use of campaign contributions for personal expenditures. It reduces the trigger amount for reporting by non-candidate committees. It makes falsifying reports and contributions under a false name or anonymously with intent to circumvent the law or deceive the Commission, the Campaign Spending Commission, a Class C felony. It amends the public funding provisions to require qualifying contributions from residents of Hawaii only.

"Those are just some of the things it does, Madame Speaker. My point here, as expressed by others today, this bill is not the bill that was introduced in the House last year, that when it went over to the Senate and in negotiation came out with a lot less than what the Members of the House wanted. But in any legislative process, in any compromise, things have to be given up. This is a step forward. I think most of us would like to see a lot more. And I believe that we are going to see more reform proposed in the next Session of the Legislature.

"Just this Sunday, there was an editorial by Richard Borreca called, 'Forty percent of the way there'. And it starts off:

One of Hawaii Sen. Daniel K. Inouye's wisest axioms is that when negotiating in Congress, any day you can get 40 percent of what you want, you are wise to shake hands on the deal.

Then next year, Inouye reasons, you can get another 40 percent, which gives you more than half of the original.

"Madame Speaker, that's what we have here today. I would say we probably have about 40% of what we wanted. It's a step forward. It's not everything. It's not the ideal. But it is a step forward and I think we should endorse it, take it, and work on further reform next year. Thank you very much, Madame Speaker."

Representative Moses rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. In weak support.

"I have major reservations. The Campaign Spending Commission Director, Mr. Robert Watada believes that this bill doesn't move far enough forward. And the previous speaker talked about 40%. Well I'd be very, very happy if this moved 40% forward. What I'd really like to see is it move at least 80% forward because it doesn't go far enough. According to Mr. Watada, it maybe moves 20% forward. 20%. We should have 80% and be looking for the other 20% next year but we're 20%. So next year we have to move forward a little bit more, maybe

we'll get to the 40% then next year. So it doesn't move very far forward at all.

"Before I forget, I would like the words from the Representative from Waikiki and Kailua entered as if they were my own.

"But there's so much this bill doesn't do. But I guess then I've been here long enough and I've heard the phrase long enough that I'm just going to have to go with the flow. And after all, this is just a work in progress, Madame Speaker. And we have to make more progress next year, and the next year, and the next year, till we finally get 100% reform because this is just a tiny, baby step forward in the right direction. Thank you, Madame Speaker."

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In support.

"Madame Speaker, some small, good things are done in this bill so I'm happy to vote for it. I think the gains are so small that the bill title is a misnomer. That it's erroneous to say campaign spending reform. Reform implies some larger movement, I think. But nevertheless, some small good movement. Good, let's go do some more next year. Thanks."

Representative Hale rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I stand in strong support of it.

"I always believe that half a loaf is better than none. We are making progress. Eventually we'll get there. And I think those of you who have been here long enough realize it doesn't happen overnight. Thank you."

Representative Fox rose to respond, stating:

"Thank you. And brief rebuttal.

"It's not half a loaf. It's a fifth of a loaf. That's what Chair Watada said.

"I want to speak to the point of the Representative from Makiki, that the corruption that we've seen over the last ten years is going to be dealt with under this bill. I just want to remind Members of this Body that Chair Watada has been able to act under the current law. Those campaign violations were so egregious that the people are being indicted and some of them sent to jail based on the current law that outlaws bundling that these people have been doing.

"What we have to do, we have to recognize that the basic campaign process that we have in Hawaii is corrupt. It's corrupt on its face. We collect money from ... The campaigns of people who award contracts collect money from the people who get the contracts. That basic process is corrupt. This bill does not stop that basic process. It is not real campaign reform. Thank you."

Representative B. Oshiro rose to speak in support of the measure, stating:

"Madame Speaker, I rise in strong support of this bill.

"Thank you very much. I did want to address some of the criticisms of the bill. I think people need to take a step back and really bring some perspective. Campaign spending laws have only been around since about 1970 after the Watergate

incident. That's when the federal government first started trying to regulate campaign spending. And it's a very difficult balance because what you have to do is try and regulate an activity that inherently is almost always protected by the First Amendment or free speech.

"So it wasn't until 1976 that the U.S. Supreme Court in Buckley v. Vallejo, first issued the seminal decision on campaign spending reform. And this is the case right here. I mean, it's 152 pages. So this is sort of the bible, I guess, of campaign spending.

"And unfortunately, since that time, since 1976, what we've tried to do is move forward in various different ways. Cases have constantly been up to the Supreme Court and challenged and various things have been struck down. We've seen that happen over and over again. Similarly, just in December 10, 2003, the Supreme Court issued its decision in the McConnell case. And that further refined the recent bipartisan Campaign Reform Act of 2002 or what people may refer to as a McCain-Feingold decision.

"So really when people are talking about we need to change our overall system, really overhaul it, listen to Bob Watada, unfortunately, it really is not that simple. Because unfortunately, while Mr. Watada is quite knowledgeable in terms of the mechanisms of campaign spending, in terms of the practical effects of how people are actually moving money through the system, some of the things that he may not be so aware of are the legally binding constraints of the First Amendment.

"Particularly what we saw in even the Lex Smith v. Jeremy Harris v. Hawaii State Campaign Spending Commission decision issued by the federal court on March 20, 2002. They basically said, the Campaign Spending interpretation of contribution limits was unconstitutional. So they had three advisory opinions on how you can come up with campaign contribution limits. And the federal court said that those are unconstitutional. So as we can see, when we come to campaign spending regulations, unfortunately sometimes, Mr. Watada is not clearly as informed as maybe he should be when it comes to the First Amendment, particularly when it comes to the criticisms of charitable contributions. We did nothing in this bill. We've left it as status quo because right now we do have a cap on charitable contributions. And I think that is probably the best thing we can do because as I stated before, there are limitations when it comes to how you can regulate campaign spending.

"In Buckley v. Vallejo, the case I was talking about earlier, what the Supreme Court said was basically when it comes to a campaign committee expending its own money, those kinds are expressions are protected by the First Amendment. Those get the highest protection of what's called strict scrutiny. So while you may be able to regulate disclosures, how information is put out, how people file things, that you can freely regulate. While you may be able to regulate the amount people can contribute to a campaign, when it comes to expenditures, how people are spending the money, how they want to get out their message, that is something the Supreme Court said, these are strict scrutiny. Because whether for you or me or somebody else, for any person in state government to come in and say your speech is not legal, your speech, how you want to get out your message, is not proper. It's something the State shouldn't be doing. That instead should be done by the electorate.

"What we should be doing is having strong disclosure laws. Everybody says what they're doing with their money. It's in the report and you let the constituency decide. That is probably the best thing that campaign spending laws can do. And that's exactly what Buckley v. Vallejo said. They said when you're

going into disclosure, you need not worry too much about treading down the First Amendment.

"When it comes to the criticisms over our lack of electronic filing, I find that a bit odd because recently the *Government Technology Magazine*, January 2004, rated all of these state's campaign spending laws. And for our electronic filing program, they ranked us tenth in the nation. So I'm wondering ..."

Representative M. Oshiro rose to yield his time, and the Chair, "so ordered."

Representative B. Oshiro continued, stating:

"Thank you. When it came to the overall campaign disclosure laws, we were found to be eighth in the overall nation. So basically speaking, our disclosure laws are pretty good. So what we do is any time your campaign is spending money, that's the kind of thing that is reported. And that's how we want our laws to work. Because then constituents or anybody else, or a challenger, can take a look at the reports and they can hold you accountable for how you are spending that money. And they can therefore put that information out and let the people decide if they want to continue that kind of practice or have somebody new in office. So that is no longer allowed.

"Finally, I did want to talk about one more issue when it came to our bill. And really what we did was, and I'm very happy that we increased the criminal penalties in this bill. As we've seen, as stated by the Chairman of EDB, there has been a lot of egregious actions in the media and in the court system that we've seen when it comes to campaign contributions. Unfortunately some of that has been done with knowingly or intentional misleading information. And it's that kind of egregious actions that we have decided no longer should be misdemeanors. What we've done is increase them to Class C felonies.

"So while I do agree with some of the criticisms that maybe we haven't gotten a full 100% of a loaf, maybe we haven't even gotten a 50% of a loaf, I think what we've done is really tried to clean up what we could. We really took a look at the procurement process. We looked at the improvements that we made last year. We are believing that Russ Saito and DAGS are going to be fulfilling their duties, are going to be making sure that there is no more corruption in the system so that when the people get their contracts, they get them because they are providing low bids, providing good services, going to provide good contracting services for us. All of those things will be there so that we no longer need to worry about political influence or political corruption through campaign spending. So if that indeed is true, then there is no reason for us to put them under campaign spending laws. Unfortunately because we only passed the procurement amendments last Session, we need to see how these bills or how these new amendments will work. Whether it really will bring that kind of effect that we are hoping for. And if it does not, then we shall revisit this issue. And I believe that the Legislature would then step in and put in the other contracts under the regulations. But I believe at this time, there's no reason for us to move in that direction. So it's for these reasons I stand in strong support."

Representative Meyer rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. I'm rising in opposition to this measure.

"I think it's a little embarrassing that we've been mixing dough and letting it rise, and knocking it down and letting it

rise, and it's been a two year process and we've come up with less than half a loaf. It's a lot of time and effort.

"It was said on this Floor that with this new amended campaign reform bill, that the abuses that we've seen here that were mainly related to the Harris campaign couldn't happen now but I don't see it that way. There are no limits on corporations here. And there are many corporations where the officers there have other corporations. And then they have a limited liability corporation. And then they have a general partnership. And you have the same players giving money to the same candidate and so you're multiplying the 4,000 by 4,000 by 4,000. And that's not what we really want because the more money you give a candidate, it would seem the more influence you have.

"And because of what we've seen, the pattern in Hawaii, over not just the last ten years, for the last thirty years, there's been anecdotal evidence, which says that there's been a lot of pain to play. And it's not painful for a large business or corporation to pay large quantities of money when they know they're standing in line to make \$20 million, \$60 million. So this is I think the phrase, 'pay to play' is very apt. And this is something that after all the publicity that we've seen, Madame Speaker, in the paper, it seems every month, new people are brought in. It's a credit to the Director of Campaign Spending. He, I think, is the first person who's been in that office, who's taken his job seriously. And we are fortunate, the State of Hawaii is fortunate. But I think that the voters expected us on the strength of all the negative information coming out in the papers that we would really do something to make a huge difference. But this is not it. There are some baby steps here. We're moving in the direction. But it's just hard to believe that we could take two years to move to this place. It's as if I would just step one foot closer to the Minority Leader and say that's progress. So I had hoped for much more than this and I think many people had. And for that reason I can't support the bill."

Representative Thielen rose to respond, stating:

"Thank you, Madame Speaker. I would like to just respond to the Representative from Aiea/Halawa/Pearlridge, the Vice Chair of Judiciary. He made certain assumptions when he was talking about the Executive Director of the Campaign Spending Commission. But first let me go back to the *Buckley v. Vallejo* case that he has been referencing. That case is about 34 years old. We would think that Hawaii would have been able to make more progress in that 34-year period than what we have done. Instead, what we have seen is elected official after elected official go to jail. And that's really an appalling situation for our State. Think of how many elected officials have served time in jail, in prison in the last decade and if that isn't the clear alarm for us to take more dramatic steps toward campaign spending reform, I don't know what is.

"Madame Speaker, what concerns me is this government contractor definition now when it talks about a non-bid government contract valued in excess of \$25,000. Then that government contractor, there's certain restrictions upon that entity. But we're not dealing, as my colleague from Laie said, we're not dealing with the corporations. What are we doing about the contractors that are going through a procurement process? What are we doing about that huge sum of money that is coming through from architects, engineers, or contractors? And now some of those people are probably going to go to jail. This bill doesn't stop any of that. It's kind of a continue-to-get-out-jail-free card. And so I think that it's a rather embarrassing for this House. I would have expected better. Thank you."

Representative Schatz rose to respond, stating:

"Thank you, Madame Speaker. In rebuttal.

"I'm really surprised. I mean I understand the need to sort of poke holes at campaign spending legislation. It's very confusing. And it's very easy, especially when you're dealing with somebody of integrity and the stature of Mr. Watada and by the way, the tenacity of Mr. Watada. And I think everybody knows that he is going to continually ask for as much as he can get. So I think if the test continues to be, did we make Mr. Watada happy in any legislative Session, I think we have to manage those kinds of expectations because I consider myself an advocate for campaign finance reform. And even, Mr. Watada and I don't always agree, especially on the issue for example, of public financing.

"But this isn't about Mr. Watada. This is about, in my mind, one question. It just has to be made crystal clear to whoever is listening, whether it's ten people or a thousand people, this bill basically gets at the problem. And most of the people that made contributions to the Executive Office in the hopes that they would get government contracts and all those indictments and all of those incarcerations, and all of that scandal, those were non-bid contractors. There's actually two things here. If you're a non-bid contractor, that's number one. And the contract is in excess of \$25,000 then, here it comes, you can't give, okay? So none of those people would have been able to give. None of that scandal would have happened.

"And the Representative from Kailua said, if non-bid contractors in excess \$25,000, she said there are certain restrictions on that entity. Certain restrictions on that entity. No. They can't give. That's not 'certain restrictions'. They're not allowed to give. They're out of it. The 'pay to play' aspect of Hawaii's politics is over for non-bid contracts. Do I think it should include bid contracts? Perhaps. That we should be careful? Yes. Because by the way, nonprofit social service providers, Verizon Hawaii, the Electric Company, court appointed council, there are a lot of concerns that people have because there are a lot of people who do work with the government. And so we do want to make sure that we get at the problem.

"But let's be honest, the problem was the A and E firms feeling like they had 'pay to play', especially on the Executive level, the mayoral races, and the gubernatorial races, this bill solves most of that problem. I don't want to assign a percentage because I think it's getting a little absurd whether it's 20% or 40% or 80%. But the non-bid contractors above \$25,000 cannot give and that's why this bill is a real important step forward. 20, 40, 80%, I don't care. But it's going to solve a big problem."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 459, SD 1, HD 1, CD 2, entitled: "A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING," passed Final Reading by a vote of 48 ayes to 3 noes, with Representatives Blundell, Fox and Meyer voting no.

Conf. Com. Rep. No. 153-04 and S.B. No. 2404, SD 2, HD 1, CD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, the report of the Committee was adopted and S.B. No. 2404, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR EXPENSES OF THE 2005 NATIONAL ASSOCIATION OF COUNTIES MEETING IN HONOLULU," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 154-04 and S.B. No. 2210, SD 2, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2210, SD 2, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Caldwell rose to speak in support of the measure, stating:

"Madame Speaker, on 154, in support. I just wanted to point out to everyone that this bill, which no one spoke on, is a significant bill for the State of Hawaii. It's the condo re-cod bill. It's huge. And I wanted to point out that the Chair of Commerce and Consumer Protection worked very hard this Session to get this bill into a form that everyone could support. It's a bill that's been two years in the making. It's going to have major impact on condo ownership in our State. I think that the Chairman does deserve a lot of credit for getting all diverse interest groups, of which there are many, on to the same 'sheet of music' to work together and get this thing out. So thank you very much, Madame Speaker."

Representative Finnegan rose in support of the measure and asked that the remarks of Representative Caldwell be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2210, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 155-04 and H.B. No. 1904, HD 1, SD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 1904, HD 1, SD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Tamayo rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I'm standing in strong support.

"In my other job, Madame Speaker, as an enlisted member of our Hawaii National Guard, I have the opportunity to see and speak with many, many of our soldiers from all over the State. These are people of all ages, coming from all walks of life, from many different careers and backgrounds, all coming together, to make the same honorable sacrifice of serving, first and foremost our State, and secondly, our country.

"The sacrifices these citizen-soldiers are being asked to make are rapidly changing in a monumental way. In this day and age, National Guard soldiers face a very real and likely possibility of being called to serve our country in many dangerous combat zones, fighting in the war against terror. When I was at Basic Combat Training last summer, our drill sergeants reminded us daily of the importance of taking our training very seriously, telling those of us who are active duty soldiers, that it's likely they will be deployed immediately after graduating, and those of us in the National Guard, and Reserves, that our deployment was no longer a matter of if, but when.

"With this change in our world's current affairs and military needs, Hawaii's National Guard soldiers are being asked to sacrifice even more when deployed, by taking pay cuts, leaving

family and children behind, businesses taking losses, and of course the risk of making the ultimate sacrifice in the line of duty.

"Our State's National Guard soldiers provide a crucial service to our State, and have become increasingly important to our country. There are two things we need to do in order to keep our forces strong and keep morale high. We must retain all of our soldiers currently serving, and provide incentives and benefits to those who are considering serving as a citizen-soldier.

"This bill provides just one small way we can help address both of these needs. I have talked to many soldiers about this bill and they are very appreciative to this Body for our show of support for them, and our saying, thanks through this bill. Thank you."

Representative Mindo rose in support of the measure and asked that the remarks of Representative Tamayo be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Takai rose to disclose a potential conflict of interest, stating:

"Thank you, Madame Speaker. I rise in support of this measure. First I would like to request a ruling on a potential conflict of interest. I'm a Captain in the Hawaii Army National Guard," and the Chair ruled "no conflict."

Representative Takai continued in support of the measure, stating:

"Thank you very much. Madame Speaker, when we started this Session out, I gave this bill about a 5% chance. In fact about Monday of last week, it was still about 5% chance. As we went through the week, Wednesday, there was about a 50% chance. And as everyone knows, by Friday, we got the bill.

"I'd like to personally thank the Chairman of the Public Safety Committee for his efforts on this measure. I also wanted to recognize the efforts of the Representative from Wailuku, who also helped us shepherd this measure through our House, as well as the Finance Committee Chairman.

"Madame Speaker, the terrorist attacks on September 11 continue to have repercussions today as thousands of military service members and their family are grappling with the news about upcoming deployments to dangerous, volatile, and unstable areas of the world such as Iraq and Afghanistan. Such massive mobilizations and deployments have not left Hawaii untouched.

"This bill recognizes the Hawaii National Guard and the Hawaii Reserves for their invaluable contribution and commitment to enhancing the well being of our nation by going beyond what is expected to assist others in time of need.

"The assigned strength of the Hawaii National Guard stands at approximately 5,500. In September 11, 2001, more than 1,200 National Guard members had been activated. There are currently more than 300 Hawaii Army National Guard soldiers in Iraq and Afghanistan. Since August of 2003, approximately 55 soldiers from B Company, 193rd Aviation had been in Afghanistan serving in Operation Enduring Freedom. They will be returning to us shortly. Replacing Forward 1 is approximately 60 Army National Guard soldiers from B Company, 193rd Aviation, who we now call Forward 2.

"Recently, and we met most of them in March, approximately 200 soldiers from C Company, 193rd went north

of Baghdad to serve in Operation Iraqi Freedom. They will be returning in April 2005.

"More than 300 National Guard members have also served in Operation Noble Eagle. These local residents have served country by providing security at military bases, airports, and other areas such as Iraq and Afghanistan.

"Around 2,500 army reservists are based in Hawaii. And about 390 of these with the 411 Engineer Battalion had been mobilized for duty in Iraq. It is the first deployment of this battalion since World War II.

"Nationwide, there are approximately 200,000 reservists, about 60,000 of whom had been called up to serve in Iraq and Afghanistan. In fact, estimates suggest that within the next few months, more than 40% and approaching 50% of the fighting force on ground will be National Guard and Reserve forces.

"But I think even beyond the sheer numbers, the effects of the call-up of National Guard and Reservists are substantial. And although they recognize their duty and their willingness to serve their nation, the disruption to their personal or professional lives cannot be denied.

"They serve one weekend a month, and fifteen days a year. These men and women are proud citizen soldiers. They hold jobs like all of us. Pilots, nurses, businessmen, students, engineers, policemen and women, etc. They are our family members, friends and coworkers. They are people just like you and me. These are individuals from all walks of life who are plucked from their daily routines and sent overseas under hostile conditions.

"The Hawaii National Guard more importantly has a unique dual mission that consist of both federal and State roles, which means not only being part of a nation's entire military force during these times of national crisis but also being responsible for community emergencies. Since its inception, the mission of the Army and Air Guard components of our Hawaii National Guard ..."

Representative Lee rose to yield her time, and the Chair, "so ordered."

Representative Takai continued, stating:

"Thanks. Since it's inception, the mission of the Army and Air Guards of our Hawaii National Guard have been to serve as an integral component of the active force by providing fully-manned, operational-ready, and well-equipped units that can respond to any national contingency such as war, peaceful missions, or national building operations. But more importantly to us as lawmakers, is the duty of the National Guard to provide organized and trained units to protect Hawaii's citizens and property, preserve peace, and ensure public safety in response to natural or human caused disasters.

"And I think all we have to remember is the situation for those on Kauai and the Leeward Coast of Oahu when the two hurricanes hit, Iwa and Iniki. It was the National Guard that came to the rescue of many of our local residents immediately following that disaster. So as we reflect on the actions taken during this legislative Session, I believe that one of the more important pieces of action taken by this Body will in the future be measures just like these. And on behalf of all of the reservists throughout Hawaii, I'd like to thank you, Madame Speaker and the Members of this Body for supporting them and this bill. Thank you."

Representative Ito rose to speak in support of the measure, stating:

"Madame Speaker, I rise in support.

"Thank you, Madame Speaker. Madame Speaker, before I begin, I wanted thank the Vice Chair of Public Safety and Military Affairs and the Higher Ed Chairman for their hard work on this bill.

"Madame Speaker, I rise in support of this measure because I believe that Hawaii's National Guardsmen and women and Reservists need our support during these turbulent times. As our State Adjutant General Robert Lee stated, "As America continues its war on terrorism, it is truly important that the Hawaii National Guard and military Reserves maintain their personal strength and readiness to support our nation's wars and provide assets for Homeland Security and defense of our State. Any incentive, such as increasing this income tax deduction to \$5,000, will assist our units in maintaining personal readiness to perform their federal and state missions."

"Madame Speaker, I would also like to point out that this tax deduction increase is a graduated one, meaning that our National Guardsmen and women and military Reserves would not receive the full increased tax deduction until five years from the effective date. I also would like to stress that this tax reduction has not increased since 1988. With the uncertainties that these men and women face abroad, this bill will definitely help their families here at home and allow them to concentrate on protecting our way of life wherever they may be. I ask all of you to support this bill. Thank you."

Representative Meyer rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in strong support. I would like the words of the Representative from Ewa and the Chairman of Higher Ed put in the Journal as if they were my own.

"And I want to say that I have a great deal of aloha for the service that the two of them are giving the State and the country. At no time that I can remember has the National Guard served in such dangerous places and with such distinction. Thank you, Madame Speaker."

Representative Kahikina rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In strong support. And I request that the words of all those that support it be entered in the Journal as my own.

"And I just wanted to make a point, Madame Speaker. And that is the point that we are taking our Guard that was really created for home security, to fight a war that I believe that we should have sent the 'first string,' which are the regular soldiers, to war. Thank you."

Representative Moses rose to speak in support of the measure, stating:

"In strong support and I request the words of all the previous speakers.

"And I too wish that we could send in only active duty forces. That's why we should have never cut our divisions down like we did in the last Administration. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1904, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT

RELATING TO TAXATION," passed Final Reading by a vote of 51 ayes.

Conf. Com. Rep. No. 156-04 and H.B. No. 2662, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2662, HD 1, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Ito rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ito's written remarks are as follows:

"Madame Speaker, I rise in support of this measure.

"Madame Speaker, the State of Hawaii recognizes the significant contribution of the military to our economy. When military base closures and realignments occur, one of the most impacted groups in our community are the new and existing small businesses who are affected directly by these changes.

"This bill allocates \$100,000 to assist these new and existing small businesses to be able to acquire loans to adjust to these changes through development of infrastructure to mitigate the impact of base closures and realignments.

"Madame Speaker, those new and existing small businesses that are affected experience much difficulty in obtaining loans from private and conventional lenders and therefore, need our help.

"Central to this assistance is that these small businesses are usually the ones who play an important role in the development of alternative industries for Hawaii and help to stir an increase in employment for our local people.

"In this manner, we are able to maintain our good relationship with the military and continue to work together in helping to keep our economy strong.

"I ask all my colleagues to support this measure."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2662, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Fox voting no.

At 5:00 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 6:14 o'clock p.m.

Conf. Com. Rep. No. 157-04 and S.B. No. 1491, SD 1, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 1491, SD 1, HD 1, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Takamine rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise to speak in support of the measure.

"Thank you. First of all, I'd like to thank the House Leadership, and certainly in their working together with the Senate Leadership during this legislative Session. At the outset of the Session, when the time deadlines were scheduled, and that became part of the framework for all of the legislative work to be completed, I'm sure it required embracing some change. And part of that change was an earlier deadline for completion of the budget bill. And change of course brings with it certain risks. Yet, Leadership embarked on that effort.

"And I think now, as we stand on the 59th day and have the benefit of hindsight, it certainly has created a number of very positive consequences. And perhaps one of the consequences was allowing the Legislature and the Administration to work better together. Let me say very clearly, Madame Speaker, that I do believe there is a learning curve. That the Administration is learning how to work better with the Legislature. And by the same token, the Legislature is learning better how to work with the new Administration. And it appears as though as long as we don't forget that all of us, all of us collectively, are responsible for working in the best interest of the people of our State, I believe we're proceeding in the right direction.

"I'd like to remind the Members that in the past month, April 12 was a critical date because that is when the Administration came down with its revised financial plan. That is the time when they indicated that, in their perspective, 4% was what was affordable in this biennium for collective bargaining. Three days later, on April 15, the House and Senate, the Legislature passed CD 1 of House Bill 1800, the Supplemental Budget bill.

"And it was last week that we received word from the Fifth floor, word from the Governor, that the budget that was passed and would not be vetoed. But in her message, she also indicated a request for consideration. Essentially a request for consideration for six areas in the budget that she had concerns about.

"Madame Speaker, those areas of concern included restorations. First of all, in the Compliance Resolution Fund, that while she had vetoed the bill for the Compliance Resolution Fund, there were adjustments within the budget bill that would need to be addressed to restore the sequence to the status quo, to the special fund setup that currently exists.

"She also requested restorations in the area of Agriculture, in the area of the Department of Labor and Industrial Relations, and in the area of Human Services. I am happy to report to you, Madame Speaker, that of the six areas she requested consideration for, this bill before us addresses four of the six areas.

"I must admit that in looking backwards, while both parties have learned how to work with each other better, the dialogue has continued. And at times, that dialogue has gotten strained. And perhaps at times, very strained. Yet, I believe at this point, one day before we adjourn Sine Die, to have a measure like this before us, perhaps reminds us, reminds all of us, of what our work really is about.

"And therefore, let me close by saying this, Madame Speaker, that these are restorations. Restorations meaning these were previously cuts in the Supplemental Budget. And because, they're restorations, other adjustments are necessary to remain balanced. I believe these adjustments can be accommodated. Therefore I would urge the Members of our Body to support this measure. Thank you."

Representative Thielen rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I'm rising in support of the bill.

"Thank you. Madame Speaker, as the Finance Chairman said, this bill provides for various fiscal adjustments. I'm specifically talking to Sections 23 through 31 which is the reinstatement of the Compliance Resolution Fund, Madame Speaker. And I think that is a very positive act to take. A very sensible act. And Madame Speaker, for the balance of my remarks, I would like to request that two editorials be placed into the Journal. They're short editorials. One from the *Star-Bulletin* and the other from the *Advertiser*. Thank you," and the Chair "so ordered."

Representative Thielen submitted the following editorials:

"Business fund should not go to general costs

In the chess game that involves vetoes by Republican Governor Linda Lingle and the Democrats who control the state Legislature, there is one move that is not worth the effort.

That's the move that would have the Legislature dip into some \$32 million collected by the Department of Commerce and Consumer Affairs to finance its operations. The money, held in something called the Compliance Resolution Fund, is generated by various fees and assessments levied by the department.

The move to make the department self-supporting, in other words, almost totally reliant on fees charged its customers, began during the previous Cayetano administration.

It is a sensible example of fee-for-service administration. And in theory, it makes bureaucrats more sensitive to the needs of their "customers" since their livelihood depends on fees paid.

Now, in theory it can be argued that the Department of Commerce and Consumer Affairs does not work for the business community; it works for the public whose interests it is supposed to protect.

But businesses themselves depend on evenhanded administration of the rules and regulations. So it is reasonable to expect that the fees business pays translates into quality service.

Because there is a surplus in the resolution fund, the Legislature sought to draw that money back into the general fund. Future operations would be paid out of the general fund just as any other state service.

It's clear the \$32 million that would be generated would help balance the budget. But it would also disrupt an unusually successful example of getting government to pay for itself.

If there is a surplus over and above what it takes to run the department, the money should be returned to those who paid it rather than plowing it back into the general fund.

This is one veto by Governor Lingle that should be sustained."

Honolulu Advertiser
April 30, 2004
A-16

"Lingle is right to refuse to raid business fund

THE ISSUE

The governor has vetoed a bill that would raid a special fund created by local business fees and use the money to help balance the budget.

Following through on last year's shameful repeal of civil service reform, Democrats in the Legislature are moving to raid special funds to assure public employee unions that they will get pay raises the state cannot afford. The move is proof that an arbitrator's decision approving the raises was faulty. Governor Lingle has vetoed legislative authorization for the raid, correctly calling it a "money grab," and legislators should recognize the measure's potential damage and support the veto.

The Legislature met in special session last year to provide for binding arbitration of collective bargaining contracts. Civil service reforms enacted two years earlier at the urging of then-Governor Ben Cayetano had restored public employees' right to strike. The unions had found that, without that power, they were able to obtain hefty pay raises through binding arbitration by asking for twice as much as they wanted. Arbitrators had proved to be patsies.

An arbitrator recently ruled that the state could afford 8 percent pay raises for Hawaii Government Employees Association members in a two-year contract. Lingle says the state can afford only 4 percent raises.

Last year's resurrection of binding arbitration contains a caveat that pay raises cannot be justified by the state's power to increase taxes or fees, and also recognizes that state can "use special funds only for authorized purposes or under special circumstances." Among those is the fund comprised of fees paid by regulated businesses to operate, in its entirety, the state Department of Commerce and Consumer Affairs. The fund is expected to total \$38 million by the end of this year.

The Legislature set up the fund in 1997 to make the department self-sufficient. Prior to that, the department had received numerous complaints about its service. The department's operation has greatly improved because of the structural changes, "one of the most important of which is the self-sufficiency concept in its funding," legislators were told by Robert Alm, director of the department from 1987-93.

The current bill would dismantle the fund and direct fees by regulated businesses to the state's general fund. Legislators would be free to subtract the amount demanded by the public employee unions and send the rest back to a diminished Department of Commerce and Consumer Affairs. No wonder that 80 some businesses, regulatory boards and individuals testified against the bill when it emerged late in this session. Its sole support came from the Tax Foundation of Hawaii."

Honolulu Star-Bulletin
April 30, 2004
A-12

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. In support.

"Madame Speaker, I'm in favor of this bill because it's needed. But Madame Speaker, I want to point out that this bill is a over-acknowledgement that we generally deficit spend. This bill is taking from special funds, many of them one-time sources of funding which are needed to pay for our general over-spending.

"Madame Speaker, over the last twenty years, twenty years ago, the State had big surpluses. This Legislature has proceeded to erode those surpluses into deficits. In the last few

years, since I've been in the Legislature, we've regularly deficit spent and gone to one-time funding sources to balance our budget. This bill is one of those bills. We've taken from special funds over and over again. We created a payroll lag for a one-time \$50 million funding of our deficit spending. We borrowed from the Employees' Retirement System to keep our pattern afloat.

"All this time, Madame Speaker, we really have not been cognizant of our finances. We haven't done management and performance audits of all State government as required in the State Constitution. The Legislature, Madame Speaker, has brought us to this day, when we need a bill like this. So unlike the Finance Chair, Madame Speaker, that would like to thank legislative Leadership for this bill, I have no thanks for legislative Leadership that has brought us to this fiscal dilemma today. Thank you."

Representative Bukoski rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Bukoski's written remarks are as follows:

"I am disappointed that requested language by the Governor, regarding the Kula Malu Long Term Care Facility was not included in this measure. Including the language that would indicate the intent of the legislature to run the facility as a private facility would have guaranteed the immediate release of the monies that have been appropriated. By not doing so, the legislature has again put itself into a situation similar to that of the Maui Air Ambulance Bill."

Representative Stonebraker rose to speak in opposition to the measure, stating:

"Madame Speaker, I guess I'm going to be the only one to vote against Conference Committee Report 157.

"With all the back-patting, you'd think we're doing something great here. The fact of the matter is we're outspending our ability to pay for things. And any vote in favor of this is an acknowledgement of that fact that we cannot spend within our means. This raids 49 funds for upwards of \$37 million. I don't see how anybody can support that."

Representative Moses rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I'd just like to say it's good that we're restoring the positions which bring us federal funds which we took away. So we're just realizing we made a mistake and going back. Thank you."

Representative Magaoay rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Magaoay's written remarks are as follows:

"Madame Speaker and colleagues, I stand in strong support for CCR 157. Under this Act, it will authorize the transfer of excess amounts of fiscal resources from various State, special and revolving funds and special accounts to the State's general fund in order to meet the needs of the State budgetary requirements.

"In the major segment of the bill, this bill will serve as a conduit to continue to support the State's effort to the further development of biomedical research and addresses the important role of new facilities. By doing this, the State would

maximize its precious fiscal resources and channel it to other programs and projects.

"Therefore, Madame Speaker, I ask my colleagues for their full support for SB 1491."

Representative Meyer rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1491, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE GOVERNMENT," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Stonebraker voting no.

At 6:26 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2595, SD 2, HD 2, CD 1
S.B. No. 2906, SD 1, HD 2, CD 1
S.B. No. 459, SD 1, HD 1, CD 2
S.B. No. 2404, SD 2, HD 1, CD 1
S.B. No. 2210, SD 2, HD 1, CD 1
H.B. No. 1904, HD 1, SD 2, CD 1
H.B. No. 2662, HD 1, SD 1, CD 1
S.B. No. 1491, SD 1, HD 1, CD 1

At 6:26 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 6:38 o'clock p.m.

At this time, the Chair stated:

"Members, before we move on to page 14, can we go back to page 2? When we first started, we deferred Conference Committee Report Number 56-04 and Conference Committee Report Number 59-04. At this time we'll be taking those two items up."

Conf. Com. Rep. No. 56-04 and S.B. No. 3185, SD 1, HD 1, CD 1:

Representative Saiki moved that notwithstanding the report of the Committee, that S.B. No. 3185, SD 1, HD 1, CD 1, be recommitted to the Committee on Conference, seconded by Representative Lee.

Representative Thielen rose to speak in support of the motion, stating:

"Madame Speaker, I'm rising in support of the recommitment of the vexatious requestor bill.

"Thank you. Madame Speaker, I really think on further reflection that this recommitment makes a lot of sense. I don't think we should start down that slippery slope of having government be able to refuse to open up its records to people that have a legitimate interest in seeing those records. So I think that this move, Madame Speaker, to recommit it to Committee is in the best interest of open government. Thank you."

The Chair then stated:

"Thank you. Representative Thielen, usually I would not allow substantive argument but I'll allow that.

Representative Moses rose to speak in support of the motion, stating:

"Madame Speaker, I would like the words of the previous speaker be entered as if they were my own. I also agree with the recommitment. Thank you," and the Chair "so ordered. (By reference only.)

Representative Lee rose in support of the motion and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Lee's written remarks are as follows:

"Madame Speaker, I rise in support of the recommitment.

"This bill would allow the State Office of Information Practice to declare someone a "vexatious requester" if the person has established a pattern of abusing the state's open records law.

"Madame Speaker, we talk a lot about constitutional rights, and this is one of them. The job of OIP is to help citizens obtain information that is public. The OIP should see itself as the protector of such rights, and do everything in its power to ensure the access to information needed by our people.

"In any public service job, there may be persons who do not fit the prescribed mold of behavior expected. However, it is the job of that public entity to work creatively to meet the needs of the public. Deciding who is "vexatious" could create another whole set of problems. Therefore, I support the recommitment."

The motion was put to vote by the Chair and carried, S.B. No. 3185, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION PRACTICES," was recommitted to the Committee on Conference.

Conf. Com. Rep. No. 59-04 and S.B. No. 2928, HD 2, CD 1:

Representative Saiki moved that notwithstanding the report of the Committee, that S.B. No. 2928, HD 2, CD 1, be recommitted to the Committee on Conference, seconded by Representative Lee.

Representative Kahikina rose to speak in support of the motion, stating:

"Thank you, Madame Speaker. I rise in support of the recommitment and to explain.

"Thank you. Madame Speaker, your Committee on Human Services and Housing worked very diligently to try to open up the process so that we could build more affordable rentals in our community. As you and I know, the housing and the homeless crisis has been escalating along with drug addiction and violence.

"In this measure, we tried to cut the redundancy, but the Rental Housing Trust Fund Advisory Commission, which we wanted more of the advocates and the consumers to sit on this Commission to direct HCDCH in developing more housing, in an effort to try to streamline the process so that we could get more projects in. We were hoping to take the Advisory Commission and place an advocate on the real Board that makes the decision. In the final legal check, we found that because of the title, we could not add that advocate on the real Board and in reconsidering, because we are afraid that perhaps we would not be able next year to get an advocate on that Board to make decisions to guide HCDCH in creating more

affordable rentals and creating communities that are viable to raising families. We wanted to recommit this and look at it next year to help the agency to get rid of redundancy, but also to assure that we can place an advocate on the real Board in making these decisions. So I ask my colleagues to support the recommitment."

Representative Arakaki rose to speak in support of the motion, stating:

"Thank you, Madame Speaker. Also in support of the motion. I would agree with the Chair of Human Services and Housing. I would like to have his words as my own," and the Chair "so ordered." (By reference only.)

Representative Arakaki continued, stating:

"I just want to add that I really feel that housing for low income families is probably reaching crisis proportion right now. And I don't think this is the right time to abolish the Rental Housing Trust Fund Advisory Commission. It doesn't send the right message. And it's certainly not the time to remove the seat of someone who represents that very critical need. We were hoping to at least have an advocate replace that person, but since that couldn't be done, I think we should just leave things as they are and then work on it next year. Thank you, Madame Speaker."

The motion was put to vote by the Chair and carried, and S.B. No. 2928, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE RENTAL HOUSING TRUST FUND ADVISORY COMMISSION," was recommitted to the Committee on Conference.

Conf. Com. Rep. No. 68-04 and S.B. No. 2425, SD 1, HD 1, CD 1:

Representative Saiki moved the report of the Committee be adopted, and that S.B. No. 2425, SD 1, HD 1, CD 1, pass Final Reading, seconded by Representative Lee.

At this time, Representative Fox withdrew Floor Amendment No. 20, amending S.B. No. 2425, SD 1, HD 1, CD 1, which had been previously placed on the Members' desks.

Representative Finnegan rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. I rise in strong support of S.B. 2425, Senate Draft 1, House Draft 1, Conference Draft 1."

At 6:45 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 6:45 o'clock p.m.

Representative Finnegan continued in support of the measure, stating:

"Thank you, Madame Speaker. First let me thank the Chair of Education, the Chair of the Finance Committee, and all the Members of the Conference Committee for their efforts on this bill. Without their quick action, hard work, and support, our public charter schools would not be getting this necessary additional money.

"Since this problem arose and was addressed outside of the normal Committee hearing cycle of the Legislature, I know that not all of my colleagues have full information on the

background of the problem and how it was solved. Many of you might only know what you have heard. For their information and for the House Journal, I would like to briefly explain why the deficit arose and how it was addressed.

"The problem arose with Act 203, passed last year. This Act specified that beginning with fiscal year '05, a calculation for per pupil allocation for charter schools would be based on the DOE consolidated annual financial report and enrollment figures.

"In December 2003, when State departments were submitting their supplementary budget requests to the Administration, the DOE submitted a figure of \$25.9 million for charter school operations. This figure was based on an out of date enrollment and per pupil allocation figures but was submitted as a placeholder until new figures became available.

"In February 2004, Dewey Kim was confirmed by the BOE as the new Executive Director of the Charter School Administrative Office. He noticed that the old figure was still in place and that based on more recent figures, charter schools were facing a shortfall of \$2.5 million. At his request, the Board of Education approved a revised budget request incorporating the additional money. However, the revised request was never sent from the DOE/BOE to the Department of Budget and Finance for action by the Governor.

"This is why the Administration never transmitted a message to the Legislature for the additional money. I know some of my colleagues in this Chamber and in the Senate have tried to insinuate that the Governor intentionally cut charter school funding. Nothing could be further from the truth. The Administration never communicated the revised request to the Legislature because it never received it from the BOE/DOE, which is the normal process of these requests.

"I was first alerted to the shortfall by a fax from charter school representatives on Thursday, April 15, before the final vote on the supplementary budget. Since we were voting out the budget bill that day, there was no opportunity to address the shortfall within itself. This meant another vehicle would have to be identified. My office staff identified this bill as a possible vehicle for the supplemental funding.

"Since I'm a Member of the Minority Party and did not sit on the Conference Committee for this measure, I felt that the way I could contribute to solving the problem was by working and communicating with the Administration and representatives of the charter schools.

"Over the course of the following week, the mission for funding the \$2.5 million was accomplished. The Administration identified the carryover balance as a source of funding for closing the deficit, and gave its approval for the appropriation. And the Conference Committee added the necessary amendment appropriating the necessary money.

"In addition, after consulting with representatives of the charter schools, the Conference Committee made additional very good amendments. These amendments should help keep the same situation from arising in the future. They will make sure that additional money will come with transfer students, and that the charter schools get the money earlier to enable more effective budgeting at the school level. Everyone involved solved the problem and did it quickly.

"On Friday, April 23, the charter schools held a rally here at the Capitol. My office planned this rally at the request of several charter schools before the Conference Committee added the additional funding. The charter school's staff, students, and parents wanted to make their voices heard in the debate.

"Once the additional funding was put into S.B. 2425, this measure, there were some suggestions that we cancel the rally. However, after consulting with the charter schools involved, we decided to go ahead with the rally to say mahalo to the Administration and Legislature for their support."

Representative Leong rose to yield her time, and the Chair, "so ordered."

Representative Finnegan continued, stating:

"Thank you, Representative. And to raise awareness of the very real challenges charter schools still face. Foremost, among these challenges is the lack of equitable funding between charter schools and traditional public schools. A student who would bring over \$9,000 to a traditional public school brings only \$5,736 to a charter school during the upcoming fiscal year.

"On top of that, most charter schools also do not have funding for their facilities. This lack of equity in funding will need to be addressed if our charter schools are to show what they can truly achieve if they are to thrive instead of just survive. And that is where I would like to end my remarks.

"Speaking as a charter school parent, I appreciate the work of the Legislature and the Administration in providing the additional necessary funds to the charter schools. Speaking as a Legislator, I hope the actions this Session, me and my colleagues on both sides of the aisle will support full equality in funding for charter schools, as well as other important reforms in the years ahead.

"As our colleagues in the Senate Majority said in the April 28, 2004 edition of their e-newsletter, 'Charter schools create choices for parents and students within the existing public school system as they provide a system of accountability for student achievement. Charter schools also encourage innovations and provide opportunities for parents to play powerful roles in shaping and supporting the education of their children. As a result, charter schools can spur healthy competition to improve public education'

"I hope that this is an attitude that will continue beyond this Session. Madame Speaker, I would like to ask permission to insert items into the Journal. The first is a copy of the letter sent by the Governor to charter schools on April 21, 2004. The second is a letter sent to me by the Director of Budget and Finance on April 22, 2004.

"Since there was no opportunity for testimony before a Committee and no Governor's Message on this issue, in order to have a complete and accurate record, I feel it is important to have in the Journal, these statements of the Administration's position.

"The third item is an article from the April 25, 2004, *Honolulu Advertiser* which provides an excellent summary of the ongoing challenges facing Hawaii's charter schools.

"Lastly, I would like to recognize the charter school principals, teachers, and parents for their hard work, tenacity, and love of the children and their education as they worked miracles despite low funding.

"And I'd just like to add Madame Speaker, I was highly disappointed this weekend when I read an editorial by the House Majority Leader that said Republicans are being hypocritical on issues. And one of the points was, number three. It said, 'The Republicans apparently want to have their political cake and eat it too.' Three recent examples. 'The third

example was when the shortfall in the budgeted amount for charter schools was discovered, the Governor's spokesperson and Republican lawmakers,...' and I believe this to mean me because I was at the forefront of this, '... say they're all for full funding of Hawaii's charter schools insinuating Democrats were at fault.' At no time did I ever say that the Democrats were at fault. In fact, the underfunded amount was what the Governor had requested, this is true. But like I said, there's some history to that. And now the Democrats have found a way to fix it.

"I'd like to also just go ahead and share, because my attitude and gratefulness in regards to how this came about, I do want to also put in, aside from this letter to editor ..."

Representative Thielen rose to yield her time, and the Chair, "so ordered."

Representative Finnegan continued, stating:

"Thank you, Representative. Aside from this letter to the editor, this press release that I have done after the date that S.B. 2425 was passed out, entitled, 'Conference Committee Gives Money for Charter Schools.' And then it also said in quotes, 'This victory for charter schools was the result of a team effort.' I'll just conclude at that. Thank you."

Representative Finnegan submitted the following:

"EXECUTIVE CHAMBERS
HONOLULU
April 21, 2004

Mr. John Thatcher
Principal
Connections New Century PCS
174 Kamehameha Avenue
Hilo, HI 96720

Aloha Mr. Thatcher!

I want to thank you – the principals, teachers and parents of Hawaii's charter schools – for your ongoing commitment to strengthen and expand charter schools in our state. Through your dedication, you have proven that we can do a better job of educating all of our students.

This Friday, I understand several charter schools will come to the State Capitol for a rally to encourage the Legislature to approve additional charter school funding. These additional funds are necessary because the amount appropriated by the Legislature in the spending bill they recently passed was based on old figures.

While I wish I could be here to meet with you, I will be on Maui for various previously scheduled appointments. Coincidentally, one of my meetings will be with Gene Zarro, principal of Kihei Charter High School. Mr. Zarro has invited me to tour his school and to meet with students and teachers to see first-hand the successes and challenges facing Kihei Charter High School.

Lt. Governor Aiona, who is as committed to supporting charter schools as I am, will join you at the rally, and he is looking forward to meeting with you.

As I write this letter, Representative Lynn Finnegan, a parent of a charter school student, is working on an amendment to restore the needed funding. My Administration fully supports this effort, and I encourage you to work with Representative Finnegan and her colleagues on this important measure.

As a long-time proponent of charter schools, I am heartened that you are taking the time to come to the Capitol to fight for the resources your schools need to teach our children. I applaud you for your commitment, and I want you to know that my Administration will continue to work with you to ensure the long-term success of charter schools in our state.

Sincerely,

/s/

LINDA LINGLE"

"STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150
April 22, 2004

The Honorable Lynn Finnegan
Representative, 32nd District
Twenty-Second State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear Representative Finnegan:

Thank you for expressing your support for preserving State funding for our public charter schools.

I appreciate your concern and want to assure you that education continues to be one of our Administration's highest priorities. Accordingly, the Administration will be submitting to the Legislature a request for an additional \$2.5 million in general funds based on an updated per pupil allocation of \$5,736, and a revised enrollment projection of 4,944 students. The additional sum will increase the FY 05 charter schools appropriation from \$25,886,070 to \$28,358,784.

The additional funds will come from estimated balances in our financial plan submitted to the Legislature on April 12, 2004. The funds should be appropriated to EDN 600 – Charter Schools, Department of Education.

Mahalo for sharing your thoughts and comments with me.

Aloha,

/s/

GEORGINA K. KAWAMURA
Director of Finance"

"COMMENTARY

Lack of money, support killing charter schools
By Drake Beil

Keola Nakanishi is not chained to a rock like Prometheus and tortured daily by an all-powerful Zeus.

Students from Halau Ku Mana New Century Public Charter School chant in ceremonies welcoming Maori exchange students at the Kamakakuokalani Center for Hawaiian Studies at the University of Hawai'i-Manoa.
Advertiser library photo • Aug. 26, 2002

Heroes go on sacred quests, and just as Prometheus gave fire to mankind and suffered the consequences, Nakanishi gives the same fire of knowledge to his 70 students and anyone who comes in contact with him, despite the treatment from the state Department of Education.

He is an unlikely Hawaiian hero, but his name is on the dotted line where it says:

"Principal/Director" of Halau Ku Mana New Century Public Charter School.

Charter schools are semi-autonomous public schools operated by parents, educators, community groups or private organizations under contracts with the Board of Education.

In his late 20s, with a master's degree in Pacific island studies from the University of Hawai'i, Nakanishi is in his third year as principal and director. His school serves an unusually high number of Native Hawaiians (98 percent Polynesian) and a high number (27 percent) of students with special educational needs.

In his academically rigorous culture-based school of choice, more than 80 percent of his 70 students tested four grade levels below average in reading and math when they entered his care.

He has a high number of students from subsidized-lunch families and the majority witness drugs, violence, abuse, gambling, and gangs in their homes and neighborhoods. Their main concentration of students reaches into Papakolea, and they also include students from Windward and Leeward O'ahu, and East and West Honolulu.

But tests are not always measures of true student potential. Here are two additional measures of success to note:

• Attendance.

Halau Ku Mana has a longer-than-normal school day, with classes going from 8 a.m. to 3:15 p.m. Yet with students who had extremely poor attendance records at their previous schools, Halau Ku Mana saw 92 percent of its students decrease absences compared to previous years.

"This is the first time I've actually enjoyed going to school every day," said one 17-year-old boy.

• Community involvement.

In a more personal way, Nakanishi smiled and said, "It's been extremely difficult, to say the least, but we've seen a remarkable turnaround with our students. It became real when we connected to the community. Now our waiting list is larger than our enrollment.

"Along with community involvement, we feature project-based learning. For example, three days a week, 15 students spend time making a double-hull Hawaiian canoe. They make connections and get grounding in Hawaiian culture, language and values. They learn math and science as they plot courses, physics in sailing dynamics.

"Others are out at the fishpond learning the science of water quality as they develop fish, crab and have limu projects. The island is our classroom, but we're actually limited by space and money. Instead of support it's been a nightmare from the DOE."

He continued, "As charter schools, we are public schools but have no facilities and get less money than all other schools per pupil. It has been many years now of this inequity, and we're not getting the funding, nor the services."

Perseverance amid pain

Voyager Public Charter School in Kaka'ako is among two dozen charter schools across the state. They are part of the state Department of Education but are free to experiment on spending and curriculum.
Advertiser library photo

There are 25 charter schools in Hawai'i by law, and that law isn't changing this year. By comparison, the number of charter schools operating in the United States in 2003 grew from 2,687 to 2,996.

Charter schools are serving disproportionately high numbers of low-income, at-risk, and minority students. The schools use a wider variety of innovative curricula, are smaller, give more instructional time, attract more students than they can serve, and still receive fewer dollars per student than noncharter public schools.

Halau Ku Mana's primary location was the Atherton YMCA on University Avenue, where students have access to classrooms, office space and a large multipurpose room. Last year, a secondary site was the Kamakakuolani Center for Hawaiian Studies at the University of Hawai'i-Manoa.

The school also just signed a one-year deal with Paradise Park as another temporary location, but most learning takes place at auxiliary sites like Loko i'a o He'eia, a traditional fishpond, where students study marine resources, fish and seaweed cultivation, ecosystems, land resource management, math and Hawaiian culture.

Last, they work and play on a voyaging canoe that helps students learn traditional sailing skills. The school's canoe is the Kanehunamoku.

This article is a call to action for support for Keola Nakanishi and others like him in the charter schools who have taken the punishment and yet persevered in their pioneering breakaways from the Department of Education on the path to freedom and educational excellence in our public schools.

It is no longer acceptable to say they succeeded despite the efforts of the DOE. The charter schools are the brightest ray of hope we have in public education today, and we must help them before they are bureaucratized to death.

There are others like Nakanishi.

Little money, little support

What are the facts and key issues as we look at the quest of the charter schools to improve public education?

First, the schools do not receive an allocation or even a set percentage of facilities money even though they have the same responsibilities to provide them as the regular state-run schools.

State law recognizes only one chartering authority, the BOE. Hawai'i is the only state where the single board responsible for the operations and management of every traditional school is also the sole chartering authority.

Many see this as a clear conflict of interest, and multiple chartering authorities are being considered, with the UH College of Education as a likely candidate. "Multiple authorities lead to more and healthier charter Schools," the Center for Education Reform said in a paper titled "Lessons Learned About Enacting Charter Laws."

Second, charter schools do not receive a fair or appropriate share of per-pupil expenditures. In the first year that the DOE gave money to charter schools, the allotment was \$2,997 per student. Slowly it has risen to \$5,355 per student this year.

"None of us came asking for more per student, but what we expected was equity," said Ku Kahakalau, principal at Kanu 'o Ka 'Aina New Century Public Charter School. "The lack of

funding and lack of support literally caused nightmares for the first couple of years.

"The only reason we're still here is that it works for the kids. I see the smiles, the glowing eyes, the growth in reading scores, and knowledge of their culture. How can they continue to deny us the funding? Where is the pono in it all?"

That \$5,355 is 64 percent of the \$8,374 the DOE says it spends per student annually in other public schools.

Now, the Cooper-Ouchi study pegs the per-pupil expenditures at \$8,148. But that was before things like special-education funds, federal funds, capital expenditures and facilities monies were included, which brings the total to \$10,422 per student.

If you use that number, charter schools receive only 51 percent of the monies allocated to every other public school.

Another way to look at per-pupil costs is helpful for perspective. There are slightly more than 180,000 students in public schools K-12 in Hawai'i, and that number has been reasonably stable for 30 years. We now spend roughly \$1.8 billion annually on the system. Divide that by 180,000, and you have about \$10,000 per student.

Why give the charter schools around half of what is fair? Especially when many are dealing with our most challenging groups of students?

"The big thing is that 'fringes' for employees are paid out of our per-student allocation. Nowhere else in the entire system does this occur," Kahakalau said. Another example: Charter schools like Wai'alaie Elementary and Lanikai Elementary (which were converted to charter schools) not only receive less money but also pay for their electricity, water, sewer, gas and food costs.

Too much to afford?

"My biggest worry," said Laura H. Thielen, a member of the BOE, "is that under the current majority package of school-reform bills, charter schools would get the same or similar per pupil allowances, no federal funds, no special-education monies, and the reality is, after all the expenses forced on them, they'll actually get less."

The governor's CARE Report recommended "that public charter schools receive a per-pupil allocation equivalent to the allocation in traditional public schools with the same students. In addition, the fact that public charter Schools do not receive any allocations for facilities should be addressed."

Addressing the facilities issue, state Sen. Norman Sakamoto, chairman of the Senate Education Committee, said: "The problem we face is that we may spend up to \$23 million to build a new school facility, and we can't give that amount to each startup."

State Rep. Roy Takumi has been chairman of the House Education Committee for two years. He said, "It looks like we'll be passing out a bill to change the distribution of the monies to the charter schools so they can budget better. However, the amount of per-pupil funding is unchanged."

The inequitable status quo is not progress.

Nakanishi stated emphatically on April 13 that "in regard to (the House education bill), please urge your legislators to fund at least the amount approved by the BOE, \$28.3 million. The current figure amounts to barely over \$4,000 per pupil for charter schools, and they are currently struggling to survive at

\$5,355 per pupil, which already represents major inequity versus the spending on (other) DOE schools.

"We need tons of people calling, because if we don't make noise, all charter schools will face even greater financial challenges next year. ... Please kokua. ...

E ho'omau ana no kakou," Nakanishi said.

Drake Beil, Ed.D., CMC, is president of Solutions Inc. Reach him at drake@drakebeil.com or (808) 587-5832."

The Honolulu Advertiser

Posted on: Sunday, April 25, 2004

"FOR IMMEDIATE RELEASE: April 22, 2004

Contact: Rep. Lynn Finnegan (586-9470, 741-5966)
State Capitol, Room 328 Honolulu, Hawai'i 96813
Fax 586-9476, repfinnegan@capitol.hawaii.gov

CONFERENCE COMMITTEE GIVES MONEY FOR CHARTER SCHOOLS

Representative Lynn Finnegan (R-Lower Aiea, Foster Village, Moanalua) praised the decision of the Conference Committee on S.B. 2425, H.D. 1, S.D. 1 to amend the bill to include necessary additional money for Hawaii's public charter schools. Earlier this week Rep. Finnegan proposed amending SB2425 to include an appropriation for \$2,472,712 that charter schools need to remain in operation for the upcoming fiscal year.

"This victory for charter schools was the result of a team effort," said Rep. Finnegan. "The whole charter school community worked very hard in communicating to the Legislature how important this money was to them. The Governor lent her support to our effort and the Department of Budget and Finance identified a funding source. The leadership of the Legislature and the members of the Conference Committee, of both parties, made solving this problem a priority and were able to come together quickly to provide this money. As the parent of a charter school student, I am very happy with the quick response to this problem and appreciate the work everyone put into it. I know our charter schools will show their appreciation at the rally at the Capitol tomorrow."

The Capitol rally for equitable charter school funding will take place at 9 a.m. tomorrow beneath the rotunda. The Charter Schools that are expected to attend are Lanikai Elementary, Halau Ku Mana, Voyager, Halau Lokahi, Ke Kula O Samuel Kamakau, Waialae Elementary, and Education Laboratory."

Representative Leong rose in support of the measure and asked that the remarks of Representative Finnegan be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and S.B. No. 2425, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 51 ayes.

At 6:55 o'clock p.m., the Chair noted that the following bills passed Final Reading:

S.B. No. 2425, SD 1, HD 1, CD 1

At 6:55 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 7:34 o'clock p.m.

SUPPLEMENTAL CALENDAR #1

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 219, 224, 220, 225, 222, and 223) were announced by the Clerk and received:

Gov. Msg. No. 219, informing the House that on May 3, 2004, the following bill was signed into law:

H.B. No. 2743, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS." (ACT 043)

Gov. Msg. No. 224, informing the House that on May 3, 2004, the following bill was signed into law:

S.B. No. 3237, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PRESCRIPTION DRUGS." (ACT 047)

"EXECUTIVE CHAMBERS
HONOLULU
May 3, 2004

STATEMENT OF SUPPORT TO SENATE BILL NO. 3237

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, with my approval, Senate Bill No. 3237, entitled "A Bill for an Act Relating to Prescription Drugs."

The purpose of this bill is to implement the Hawaii Rx Plus prescription drugs assistance program. This bill represents the work of a bipartisan team that recognized problems in the original bill enacted in 2002 and who worked cooperatively to address these problems. This bill is designed to reduce the price of prescription drugs to qualified participants, to keep administrative costs at a minimum, to streamline the application process, to prevent the crowding out of prescription drug benefits already available through the Hawaii Pre-paid Care Act, and to protect the rights and benefits of the Medicaid population.

First, this bill creates a nonexclusive list of drugs to be covered under the program. In addition to the existing Medicaid preferred drug list, the bill allows the inclusion of various drugs used in the treatment of cancer and mental health illnesses. It also utilizes the Department of Human Services Pharmacy and Therapeutic Committee to review and recommend drugs for placement on the preferred drug list.

Second, the bill limits participation in the program to residents of the State of Hawaii who have a family income equal to or less than 350 percent of the federal poverty level, who lack prescription drug coverage, and who enroll in the Hawaii Rx program. The 350 percent threshold would cover a single person who earns up to \$36,000 in annual income and a family of four up to an annual income of \$74,500.

Third, the amendments in this bill ensure integrity in the program's administration by prohibiting the contractor administering the program from receiving compensation or other benefits from a participating drug provider.

Fourth, the bill establishes an initial list of discount priced drugs that currently encompasses those drugs purchased pursuant to the Department of Human Services administered Medicaid program. The effective date for this list is July 1, 2004. A second tier of discount drugs would be added on July 1, 2005.

The initial Hawaii Rx program was modeled after a program in the State of Maine. Maine's program was involved in protracted litigation, resulting in a United States Supreme Court decision issued last year. Hawaii's program has been tied to the State's QUEST healthcare program, thereby placing in jeopardy the State's Medicaid Title XIX funding. This linkage was decoupled through suitable language in this bill.

Finally, I would point out that the Hawaii Rx Plus program contained in this bill can be implemented via a streamlined application process. This will allow the enrollment of as many qualified residents as possible. A larger participant population will enable the State to negotiate higher discounts.

I am proud to affix my signature to Senate Bill No. 3237 and believe it will improve the health and well-being of the residents of our State.

Respectfully,

/s/

LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 220, informing the House that on May 3, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, and transmitting her statement of concerns as follows:

H.B. No. 2796, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS." (ACT 045)

"EXECUTIVE CHAMBERS
HONOLULU
April 30, 2004

STATEMENT OF CONCERNS REGARDING HOUSE BILL NO. 2796

Honorable Members
Twenty-Second Legislature
State of Hawaii

I will allow HB 2796, "A Bill for an Act Relating to State Funds," to become law on May 3, 2004 without my signature. This action is taken pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to appropriate \$9,585,765 from the Emergency and Budget Reserve Fund to finance various programs. Many of these programs are those that provide services to those people who are the most vulnerable in our population - the frail, the disabled, children, and those who are suffering serious illnesses.

The concern I have is the manner in which these programs would be funded. This bill further reduces the Emergency Budget Reserve Fund (EBRF), which was created to provide

the State with a critical financial reserve during an emergency, such as a severe economic downturn or a natural disaster, or even, God forbid, another terrorist attack.

The Emergency Fund was not intended to provide money for programs that are ongoing in nature and help the neediest within our community. What is particularly disturbing is that forty specific programs listed in this bill are forced to wait anxiously every year, not knowing until the eleventh hour whether they will be accommodated by dipping into the emergency reserves.

This is both unfair and unkind. It is unfair because it makes the managers of these programs come begging to the legislators each year trying to get funds for their projects before they have to close their doors. It is unkind because these programs serve those in our societies who have no way to fend for themselves.

Using the Emergency Budget Reserve Fund places the State in a precarious position. Bond rating agencies point out that although the emergency budget reserve is small relative to total State expenditures, the establishment and maintenance of the fund represent an important step toward institutionalizing prudent fiscal management policies for the State. We believe that to be an effective reserve, this fund should be allowed to grow to about five percent of general fund reserves, or approximately \$190 million. The estimated fund balance as of June 30, 2004 is \$54.3 million, considerably below this prudent goal. Also, we estimate receiving approximately \$8.1 million in FY 2005, well below the total appropriations of this bill at \$9.6 million. Therefore, the estimated fund balance on June 30, 2005 will go down to \$52.8 million. As a result, it will be incumbent upon me, as Governor, to manage this account, as well as the rest of the State's resources, in a prudent and conservative manner.

For the forgoing reasons, I will allow House Bill No. 2796 to become law effective May 3, 2004 without my signature.

Respectfully,

/s/

LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 225, transmitting a corrected copy of her Statement of Objections to the following bill which corrects the title:

H.B. No. 2003, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ILLEGAL USE OF CONTROLLED SUBSTANCES."

"EXECUTIVE CHAMBERS
HONOLULU
April 30, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2003

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2003, entitled "A Bill for an Act Relating to the Illegal Use of Controlled Substances."

The purpose of this bill is to implement the recommendations of the Joint House-Senate Task Force on Ice and Drug Abatement that was created to address the epidemic proportion

of crystal methamphetamine ("ice") use in Hawaii. This omnibus measure contains provisions that meet this purpose. However, it also contains provisions that would exacerbate the problem of "ice" abuse in Hawaii.

Favorable provisions of this bill include increasing the prison sentence for those who manufacture drugs in the presence of a child, amendments to the drug paraphernalia law that would make it easier for law enforcement officials to prosecute these cases, and amendments that provide the Hawaii Paroling Authority with discretion in determining whether parole should be revoked for violations involving illegal drugs. In addition, the bill partially restores sentencing judges' discretion to impose a jail sentence with regard to certain drug convictions. The bill also addresses the need for substance abuse treatment by mandating parity in health insurance plans allowing substance abuse to be treated like other medical conditions.

Although these provisions are a step in the right direction, they are unfortunately outweighed by other egregious provisions. For example, there are provisions in this bill that would actually reduce the penalty for manufacturing "ice" and make the penalty for manufacturing small quantities of "ice" less than the penalty for manufacturing small quantities of other dangerous drugs. As "ice" manufacturing is a more serious problem in Hawaii than the manufacture of other dangerous drugs, this change in the law would be particularly inappropriate. Currently, manufacturing less than one-eighth of an ounce of methamphetamine is a class A felony with a mandatory minimum term of not less than ten years during which time the convicted person is not eligible for parole. Under this bill, that crime is reduced to a class B felony with a mandatory minimum term of only three years. Moreover, manufacturing that same quantity of any other dangerous drug remains a class A felony. Thus, if this bill were enacted into law, manufacturing small amounts of every dangerous drug except "ice" would be a class A felony. This would not represent good public policy.

Furthermore, the bill even reduces the mandatory minimum sentence for manufacturing large quantities of "ice" from ten years with no possibility of parole to a sentence of five years. This is unacceptable. This is also inconsistent with one of the avowed purposes of this bill: to "deter the proliferation of drug trafficking" with regard to "ice." If we are to successfully intervene in the availability of "ice," these provisions should not be allowed to become law.

This bill is also objectionable because it overturns the Hawaii Supreme Court's decision (*State of Hawaii v. Smith*, 103 Haw. 228, 81 P.2d 408 (2003)) that requires drug users with multiple felony convictions to be sent to jail. To the contrary, this bill provides drug users with multiple felony convictions the possibility of not serving even one day in jail. This is a matter of poor public policy, because other criminals with multiple prior offenses would be given a mandatory prison sentence.

Other objections to this bill include its disregard of the counties' home rule. As currently drafted, the bill infringes upon the zoning powers of the counties by exempting drug rehabilitation homes from land use ordinances that establish guidelines from these homes. The bill provides that, with regard to any drug rehabilitation home accommodating up to ten persons, "no conditional use, permit, variance, or special exception shall be required for a residence used as a drug rehabilitation home." The bill also provides that such a drug rehabilitation home "shall be considered a residential use of property and shall be a permitted use in residentially designated zones including . . . zones for single-family dwellings" (emphasis added). There is no provision that allows homeowners and residents any procedure to challenge a

decision to place a drug rehabilitation home in their neighborhoods.

This bill also amends the zero tolerance in public schools law by mandating that students caught, for example, selling drugs be assessed for treatment and given treatment, if needed, rather than being suspended from school (except for a possible ten-day "crisis suspension"). The provision ties the hands of the Department of Education in disciplining students who possess, sell, or use drugs. Furthermore, the Department may be unable to implement the proposed revision, because not all schools have certified substance abuse treatment counselors on staff and because there may well be an inadequate number of programs to which students can be referred.

Further, the provisions, as written, would result in two students who have engaged in exactly the same behavior to be punished differently. A student who sells drugs who DOES NOT need drug treatment is still subject to the "zero tolerance policy." However, a student who sells drugs who DOES need drug treatment is NOT subject to the "zero tolerance policy." In fact, the student with the drug problem is better off for disciplinary purposes than the student without the drug problem, because the bill states that "the child shall not be excluded from school and all disciplinary action shall be deferred" (emphasis added). The bill further provides that upon completion of the treatment program, all records of disciplinary action relating to the original offense shall be expunged. We should not enact legislation that, in effect, tells our children that being addicted to drugs is an effective way avoid discipline or maintain a clean disciplinary record.

Moreover, we should not say that a student who deals large quantities of drugs, for example, cannot be suspended just because the students needs treatment. And, the provision appears to bar the zero tolerance policy even for student who is caught selling drugs a second or third time.

House Bill No. 2003, in short, is a collection of provisions that are internally inconsistent, result in conflicting outcomes, and are, in some instances, inconsistent with good public policy. There are certain laudable provisions in the bill. I would hope they could be reenacted without those provisions that are steps backward rather than forward.

For the foregoing reasons, I am returning House Bill No. 2003 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 222, transmitting the following bill without her approval, and her statement of objections as follows:

H.B. No. 267, HD 2, SD 2, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT."

"EXECUTIVE CHAMBERS
HONOLULU
May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 267

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 267, entitled "A Bill for an Act Relating to Government."

The purpose of this bill is to repeal certain limitations on the powers of the Office of Elections and the Campaign Spending Commission that are imposed upon administratively attached agencies. The bill would also authorize the Office of Elections and the Campaign Spending Commission to retain their own legal council. Additionally the bill would establish an elections commission appointed by members of the Legislature that would appoint the Chief Election Officer and oversee the operations of the Office of Elections.

Attached agencies, boards and commissions, such as the Office of Elections and the Campaign Spending Commission, were created to retain a degree of autonomy in their mission and functions. Current law is ambiguous in defining the level and nature of autonomous actions these "attached agencies" should enjoy. My Administration has honored the intended ability of such agencies, boards and commissions to communicate freely with the legislative branch, the executive branch, and the general public. We have requested, as a courtesy, that these boards keep the Departments to which they are attached apprised of their activities. In many instances boards, commissions, and attached agencies have developed a collaborative working relationship that has served the public well.

I must return this bill without my approval because it denigrates these collaborative relationships, would significantly skew representation of the voting public in the election process, and would place two attached agencies, the Campaign Spending Commission, and the Office of Elections, outside the score of the law.

First, the bill gives appointment power and the power to oversee the Chief Election Officer to elections commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new elections commission must be residents of the neighbor island counties. As a result, eighty percent of the State's population, residing in the City and County of Honolulu, would be represented by as few as two and no more than three of the nine elections commissioners.

Second, this bill deprives the Governor of any voice in the appointment of the State's Chief Election Officer. The Governor presently appoints one of the five members of the existing Elections Appointment and Review Panel. Under this measure, the Governor would not appoint any of the nine members of the elections commission, which would replace the Elections Appointment and Review Panel. Further, if the elections commission member positions are not filled by the legislators with the times specified, this bill provides that the Chief Justice of the Supreme Court of Hawaii, not the Governor, must appoint the members to fill the vacancies. Because the Supreme Court decides elections cases on a regular basis, it would be inappropriate for the Chief Justice to appoint members to the commission this bill would create, and could blur the separation of powers provisions established in the State Constitution.

Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller. Further, the Office of Elections, Campaign Spending Commission, and Elections Commission could take these actions without complying with all applicable requirements of the Hawaii Public Procurement Code and applicable personnel laws. Attached agencies should not be

allowed to be "above the law" when carrying out their administrative functions.

Pursuant to section 26-38, Hawaii Revised Statutes, the Comptroller has the authority to delegate approval for personnel decisions and purchases to attached agencies, boards, and commissions. This bill's provisions would set an unwarranted precedent.

Finally, this bill erodes consistency and objectivity in the State Government's legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. It is critical that the legal advice given to those agencies be consistent with that given to other State agencies and with the interests of the State of Hawaii. Retention of separate counsel would likely result in inconsistent advice. Also, because the subject matter of these agencies involves political issues that affect predominantly members of the Legislature, it is important to assure that legal advice is not unduly influenced by what the agencies want to hear, rather than by sound legal analysis. This bill increases the risks of undue influence, especially because the attorneys would serve at the agencies' pleasure and would be paid by the agencies.

For the foregoing reasons, I am returning House Bill No. 267 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 223, transmitting the following bill without her approval, and her statement of objections as follows:

H.B. No. 2608, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TOURISM AUTHORITY."

"EXECUTIVE CHAMBERS
HONOLULU
May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2608

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2608, entitled "A Bill for an Act Relating to the Hawaii Tourism Authority."

The purpose of this bill is to authorize the Hawaii Tourism Authority (HTA) to hire attorneys independent of the Attorney General; to exempt the HTA from the Comptroller's supervision; to authorize the appointment of a sports coordinator; to clarify the compensation package for the executive director of the HTA (\$274,500 per year); to increase the allowance for the HTA's administrative expenses from 3.5 percent to 5 percent of the Tourism Special Fund; and to appropriate funds from the Tourism Special Fund to cover a fiscal problem when HTA paid 18 months of a Hawaii Visitors and Convention Bureau (HVCB) contract with 12 months of funds.

This bill is objectionable because it allows the Hawaii Tourism Authority to operate outside the safeguards of State law, micromanages the personnel decisions of the Authority,

diverts funds away from direct tourism activities, and potentially creates legal difficulties for the State.

First, House Bill No. 2608 would exempt the HTA from Chapter 40, Hawaii Revised Statutes, the accounting and audit statutes for the State of Hawaii. This exemption would allow the HTA to spend moneys without regard to the safeguards and control administered by the State Comptroller. It would allow disbursements from the Tourism Special Fund and Convention Center Enterprise Fund to be signed by the HTA Executive Director, in effect allowing this person to sign his own paychecks. The State Comptroller ensures the propriety of expenditures and imposes no extraordinary processing delays.

Second, this bill is another example of legislative micromanagement. It would place in statute the hiring of a "Sports Coordinator" by the HTA. This provision of the bill appears to contradict section 26-39 of the Hawaii Revised Statutes that provides for the establishment of positions as deemed necessary to carry out the functions of any department or agency.

Third, the bill would divert an additional \$915,000 away from direct tourism expenditures to cover the administrative expenses of HTA. Under current law HTA is allowed to expend 3.5 percent of the Tourism Special Fund for overhead. Based on a \$61 million appropriation, a total of \$2,315,000 is already permitted to finance HTA operations. This bill would raise that total to \$3,050,000. The Tourism Special Fund was created to provide a dedicated source of funding to develop and market tourism in the State of Hawaii. To use these funds for administrative expenses constitutes a type of "internal raid" on special funds that this Administration has consistently opposed.

Fourth, this bill would erode the consistency and objectivity in the State's legal interpretations by authorizing the Hawaii Tourism Authority to hire its own attorneys. It is important that legal advice given to an agency be consistent with the advice given other agencies and with the interests of the State as a whole. Retention of separate counsel by the HTA would likely result in inconsistent advice. Hiring outside counsel also would be another diversion of tourism funds into administrative expenditures when adequate counsel already exists in the Attorney General's office. Additionally, the Attorney General can hire special outside counsel when thorny or difficult legal issues arise and thus could accommodate any special legal needs the HTA might have.

For the foregoing reasons, I am returning House Bill No. 2608 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii

The following message from the Governor (Gov. Msg. No. 213) was announced by the Clerk and the following action taken:

Gov. Msg. No. 213, informing the House that on April 29, 2004, S.B. No. 3238, SD 2, HD 2, CD 1, was vetoed.

Representative Saiki moved to override the veto of S.B. No. 3238, SD 2, HD 2, CD 1, seconded by Representative Schatz.

At 7:37 o'clock p.m., Representative Halford requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 7:45 o'clock p.m.

At this time, Representative Saiki withdrew his previous motion to override the veto of S.B. No. 3238, SD 2, HD 2, CD 1, and Representative Schatz withdrew his second.

UNFINISHED BUSINESS

Conf. Com. Rep. No. 158-04 and S.B. No. 3193, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 3193, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. I would like to speak in opposition to this gas cap bill.

"One of the most incredible bills to come out of the Legislature is the bill that's currently in effect, Act 77, the bill to cap the price of gasoline. It's got to be extremely uncomfortable for any supporter of this bill to watch the current situation in which the price of gasoline in California is consistently higher than the price of gasoline in Hawaii because the cap price is 18 cents above that figure. So we would be, instead of having a price of gasoline below that of California, were the current law in effect, we'd have something 18 cents higher than the price of gasoline in California. This is an absolutely horrendous bill. We've all got to be thankful that the bill is not in effect right now. It is scheduled to go into effect on July 1. Voting for the gas cap delays the implementation of this horrible system.

"However, there is a provision in the current bill that allows the Governor to suspend the gas cap if she finds it necessary to do so. She has to explain it. That provision is tightened up under the new gas cap bill. And that's making it more difficult to get out of this terrible situation that we're in. I think the present bill is preferable to this change. So I would recommend a no vote on this. It's unfortunate we can't repeal the current gas cap bill. But this is not the right way to go to sustain a process that we know is already very, very flawed. It's so flawed, we can't face it straight in the face. Thank you, Madame Speaker."

Representative Marumoto rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. I am speaking in favor of this bill, however, I must agree with many of the points made by the previous speaker. I will speak with reservations. I have many grave reservations about this bill. And however, I am voting for it because I feel it is the lesser of two evils. If we do not pass this and extend the time limit, it goes into effect, then we will have it happen even earlier, July 1 of this year and that is unacceptable.

"I know that I've spoken on this bill before, and I think you all know that I favor the repeal of Act 77 and offered an amendment to that effect. And as usual it got shot down. But I think Act 77 is socialistic. I think it's an example of price control, which we don't need. It's over-regulation. It's heavy-handed government. And I guess we should be grateful that this present measure before us kicks off the gas cap on retail gasoline but leaves it on the wholesale level.

"I think gas caps really hurt the little guy. I think it hurts the consumer, the person who fills up, the small businesses who are the retail gas dealers, the employees who need the jobs, independent jobbers, even more so than it hurts the bigger entities at the top of the food chain.

"This bill proposes some zones which are more or less exempt from the price cap. In other words, you charge a higher price in these zones. They're called 'location adjustment factor'. I don't think they'll work very well. I think areas like Kohala, if they are able to charge higher prices, people could go to the next zone and fill up, maybe in Kona. In Hana, the same thing might happen even though Kahului might be another zone. Hana drivers will probably drive to Kahului and fill up their cars.

"So I think this bill is really flawed. It's based on some sort of spot price. I think it's very arbitrary as to what was selected. Whereas Act 77 was based on a West Coast price, we found that was much too high. So we're switching gears now. We're going to look at New York and the Gulf Coast and Los Angeles. And perhaps that will be lower. But who knows? We just don't know what their prices are going to be. It's anybody's guess. But they're searching around for a more appropriate price to set it on.

"I think it's all very fuzzy. We don't know what will happen in the future. I think it's a very bad bill. And all I got to say is it's better to put it off so we vote for the bill in front of us rather than face our life without the bill. Thank you very much."

Representative Hiraki rose to speak in support of the measure, stating:

"I rise to speak in favor of this measure, Madame Speaker.

"Madame Speaker, the purpose of this bill is to afford Hawaii's long suffering gasoline consumers price relief by fine tuning Act 77. This measure, Madame Speaker, amends Act 77 in numerous significant ways.

"First, it changes the baseline for determining maximum pretax wholesale gasoline prices by using the average of the spot prices in Los Angeles, New York Harbor, and on the Gulf Coast for regular unleaded gasoline as reported by the Oil Price Information Service. This one change alone will result in a price savings to consumers of 13 cents a gallon for regular unleaded gasoline.

"Second, we extend the maximum pretax wholesale price limits to mid and premium grade gasoline.

"Third, we appeal the maximum pretax retail gasoline price.

"Fourth, we provide a maximum mid-grade and premium price.

"Fifth, we delay the effective date for the imposition of the maximum pretax wholesale gasoline price to comply with this request by the Administration.

"Sixth, we establish a legislative task force to investigate the petroleum industry and its operations on the islands of Hawaii, Maui, Molokai, Lanai, and Kauai.

"Next, we establish Neighbor Island zone prices within the State and authorize the PUC to adjust the maximum pretax wholesale gasoline price in the various zones.

"And finally, we allow the PUC discretion to adjust any of the numbers in the price formula to arrive at a competitive

maximum pretax wholesale price to ensure safeguards in the process.

"Members, what you have before us is our best effort to protect consumers against the practice of price gouging at the fuel pumps. By this law, the Legislature is responding to overwhelming data from the Attorney General's lawsuit and the Stillwater report that indicates the presence of a gasoline oligopoly in Hawaii.

"In previous House debates and probably tonight, you'll hear opponents blame the high cost of gasoline on high taxes, high rent, too little competition, etc., but did these opponents do anything to address the things they claim are to blame for the high cost of gasoline? The answer is no. The fact is no opponent introduced a bill this Session to address the problem of the high cost of gasoline in Hawaii.

"As you know, Madame Speaker, it's very difficult to find solutions to very complex problems but we continue to try our best. The easiest job in the world is to sit in a chair and criticize a measure just because you don't have any better ideas. Some will argue for repeal of this amended Act 77, but how does this help consumers? Repealing Act 77 will turn back the clock to a time when Hawaii's gasoline prices were 40 cents higher than California.

"Under this law, Hawaii's gasoline prices have stabilized to the point where Hawaii's consumers no longer pay the highest gasoline prices in the United States and have already saved millions of dollars.

"Under this law, there's more competition today in the gasoline market with the entry of Costco and the soon to be Sam's Club.

"Under this law, we have learned more about gasoline prices than at any other time in our State's history.

"I was intrigued by this recent letter to the editor in the *Advertiser* by an unlikely supporter of our efforts. This letter is from service station owner, Mr. Warren Higa who used to own the Beretania Street Makiki Shell. Let me sort of paraphrase his letter. It's from again, Warren Higa."

Representative Lee rose to yield her time, and the Chair, "so ordered."

Representative Hiraki continued, stating:

"Thank you.

I don't like our gas price law but I support it. I'm a former Shell service station owner who has publicly supported the company on most issues but on this, I cannot support this one because I know their high profits are made unfairly.

Higher profits are simply coming from higher prices. And how do the oil companies calculate gas prices in Hawaii? I don't believe they're sitting down and calculating their cost and then adding a fair profit margin. They are more likely sitting down and calculating what the market will bear. They'll probably try to calculate the highest price they can charge without being accused of gouging.

But unfortunately for them, there's no business formula to calculate the gouging threshold. It is one of those, 'if you see it, you know it'. And we have seen the numbers and we felt the sting of being gouged. Sales at lessee stations in Hawaii were just 3% of sales, but represented 22% of profits. That is way, way out of line. The new numbers try to hide that slice in a bigger pie.

Some people are defending the oil companies by pointing out that everything costs more in Hawaii. So the fact that our gas prices are 35 cents more than on the mainland is okay. The company supporters assume that part of the 35 cents is for higher taxes and the rest is divided between the oil company and the retail dealer.

Here's how the 35 cents is divided up: Number one, 13 cents is for Hawaii's higher than average gasoline tax. Number two, the remaining 22 cents goes to the oil company. Number three, not a single penny goes to the retail dealer to help pay for his higher cost of doing business in Hawaii.

This is true for the independent Shell dealer. The old Shell leases allowed for the rent subsidy but the new leases do not. In fact, according to the Lundberg Survey, the Oahu retail dealers operate on gasoline margins that are lower than the national average. That means even more money going to the companies.

The gasoline market is not normal and the companies take advantage of the situation. We need a mechanism to ensure fair prices.

"Like Mr. Higa, Madame Speaker, I believe price formulas are to be used as a last resort. And so I continue to be open to any and all solutions to solve this problem. However, until someone comes up with a better idea, I will continue to support this measure. Thank you."

Representative Moses rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"I was hit last election for voting against the bill so I may as well vote against it again, right? I'm voting against the gas cap because gas caps don't work. The Stillwater report said gas caps don't work. Gas caps have not worked anywhere in the world. Why should we expect that we're different? But we are different though. We do a lot of things different here. We do a lot of things wrong here. And this is wrong.

"This bill was bad then. It's still bad. This does not give price relief. We're tying this to the Sweet Texas Crude. We don't use Sweet Texas. We get our oil, the raw product, from Indonesia and other places like that. We don't get it from the same source that the mainland does so why should we tie our prices to them? It's totally different.

"This bill also takes a half a million dollars from the general fund and puts it into the PUC to regulate this. That's a half a million dollars we could use for pay raises, Madame Speaker. But no, we're going to spend it on a gas cap.

"Again the Stillwater report, contrary to the previous speaker, did not say that we should cap the price of gasoline. How do we help consumers? This won't. This definitely won't, Madame Speaker. So how do we help them? How about allowing some competition? We pass laws in this Body before that stifled competition. Makes it harder for competition. Competition drives the price down, not artificial caps that we do here in the Legislature.

"Now, Madame Speaker, we talk about the high price of gasoline. We pay more for a gallon of milk than we do for a gallon of gasoline. We pay more for a gallon of bottled water than we do for gasoline. Are we going to cap those also, next year? We're going to be back here saying that milk cost too much, and we ought to tie the price of milk, to the price of milk in Texas cause it's cheaper there? Are we going to do that? I

sure hope not. This is a bad bill. I'm voting against it. Thank you."

Representative Jernigan rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"We have, two bad bills don't make a good law. I wasn't here when Act 77 was first passed. I know it was touted as the greatest thing since sliced bread. Everybody, I think in this room, is in agreement, it's a bad bill. It's a bad law. It's done nothing to help reduce the price of gasoline. Now we're talking about amending it.

"The problem with amending it is we're extending it out further. What's killing our industry and gas stations right now? What businesses need is certainty. They need stable interest rates and a stable market. This throws chaos into it. I say we just pass. Go ahead and kill this bill. Let Act 77 go in. If it's so bad, the Governor can stop it. But it brings certainty to these businesses. It allows them to expand, hire more employees, build more services. So I'm in opposition. Thank you."

Representative Ontai rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"Madame Speaker, the way I see it is that we kind of had three choices this Session on this bill, or Act 77 which is: to repeal it; to enact it; or no act. And I think what we're choosing is, no act. But putting it off another few more months, this Madame Speaker, creates a cloud over the industry, this putting this off, putting this off, putting this off. And so I think fundamentally, there is a flaw with this thinking, that is that the Legislature actually thinks they have control over prices of commodities. It's the most remarkable thing, Madame Speaker. I think we have to rid ourselves of this thought that we actually can control prices. That we can make a law. But we're going to mess up many things in our market.

"It's already clear. I was walking, just driving around the neighborhood, you can see service stations closing one after another. And on each corner, there used to be a service station there. Now there's something else or there's a hole in the ground or there's an empty station. This industry is not healthy.

"I want to make a couple more comments and couple other points made by previous speakers. One is this. We cling to this notion, that 2% of the market for our gas-gouging oil companies here in Hawaii are making 23% of the profits for this company. Now this may have been true for a year. May have been true for another year. Might have even been true for three years in the last hundred. Who knows? But I guarantee you, Madame Speaker, that no other oil company is going to allow one company or two companies to make those kind of profits year-in and year-out. We would have real competition unless there are some mechanisms that we're actually excluding these guys from coming into the market. So I find that argument, that 'Oh, they're really gouging,' ludicrous.

"My final point, Madame Speaker, is if we really are sincere about lowering the price of gas, I think many of our consumers, our taxpayers may not realize that almost 60 cents of a \$2 gallon of gas is taxes. And if we follow that thread, over the last eight years, if my calculations are correct and my information is correct, we have taken \$143 million out of the State Highway Fund. And as you know, Madame Speaker, this Highway Fund is made up of I believe the Weight Tax and Gasoline Taxes. And this is deposited into a Highway Fund with the intention to repair and build highways for our citizens.

"Unfortunately, because this tax is so high, apparently, it becomes used for other means instead of repairing our highways, we're using it to balance other funds. And so this, Madame Speaker, is a clear indication that perhaps, the State can do less with, at least lower the State portion of the gasoline tax, and perhaps save our customers, our taxpayers some money right off the top by being up-front and clear that we have the highest per gallon taxes in the nation and at the same time we are claiming that the oil companies are gouging us. So for these matters, and as a matter of fact, Madame Speaker, I believe last week I voted against another bill that was raiding another \$12.5 million from the State Highway Fund which is primarily funded from the gasoline taxes that we take from our citizens. So for those reasons, Madame Speaker, I must oppose this bill and ask my colleagues to do so also."

Representative Souki rose to speak in opposition to the measure, stating:

"Thank you very much, Madame Speaker. It grieves me but I must vote against this bill. And due respect to the Co-Chairs of the Conference Committee who worked very hard in trying to arrive at what they figured is a fair cap to assist the people of the State of Hawaii. However, sometimes good intentions can go astray and I think it has in this case. Gas caps, caps of any sort have never worked. In the 70s, there were gas caps in the United States. What happened was long lines for gasoline. There wasn't enough gas to go around. I know. I waited in line like everybody else. We were rationing gas in the 70s for a short period of time.

"Also, within this last few years, either directly or indirectly, over twenty service station dealers have gone out of business. That may be attributed to other items like high rent, high taxes, or whatever, or the cloud of the gas cap over these stations who may not be able to get a loan for increased capital costs to continue in the operation or to enlarge. As long as you have this cloud over the service stations, the banks will be remiss in providing them a loan.

"Now we're changing this and we're going into caps on the wholesalers and the jobbers. While this is an improvement, Madame Speaker, the cloud however, remains because if these jobbers go out of business, if they cannot maintain a profit, then they will not be able to serve their client who are mostly in the out rural areas where the major refineries don't want to provide or can't provide their services. It's not economical for them. So if you have places like Hana and Haiku, and probably on the Big Island, you'll have a number of places that are so scattered about, on Kauai and here in the North Shore area. A lot of these stations are served by jobbers, wholesalers. Now if they go out of business, who is going to service them? The people who live in that area will have to drive for miles to get their gasoline.

"So Madame Speaker and Members, even though I find it very difficult to go and vote against my Majority colleagues here, but this is a wake up call really to be careful in the kind of legislation we pass. Sometimes, as I stated in the beginning, good intentions are not enough. So let us reconsider this decision that we have made and let's do the right thing. Thank you."

Representative Morita rose to speak in support of the measure, stating:

"Thank you, Madame Speaker. And I rise in support of this measure.

"I think we all understand that consumers are best served when vigorous competition exists. And I think we all can agree

that Hawaii's motor fuel market is served by an oligopoly. Where we may not be in agreement is the role of the State in not only ensuring a level of competition in the market but also protecting consumers from market abuses.

"The oligopoly structure of the gasoline market confers significant market power to the existing companies allowing a few buyers or sellers in a market to exert significant influence over the quantity of goods and services traded for the price which they are sold at.

"Because of the limited size of Hawaii's market and the large economies of scale needed in gasoline refining, we find a natural oligopoly has been created with only a few companies sustaining profitability. Therefore a small number of companies will continue to dominate the market in Hawaii for the foreseeable future limiting competition in these islands.

"The existence of an oligopoly and market power does not always guarantee high prices, but there appears to be two main behavioral strategies. Either companies work together to maximize the profits of the group by maintaining high prices, or they compete with each other by cutting prices and improving the service they provide to customers demonstrating that competition is possible. However the potential of a firm exercising market power to raise prices is immense and undeniable.

"I believe Hawaii's gasoline market exhibits characteristics of this first example where companies work together to maximize the profits of the group. Therefore, this oligopoly situation requires careful scrutiny to maximize competition within the market and to regulate when justifiable. Currently, the market is not competitive. And further, it is unlikely to become competitive in the near future.

"This bill is a refinement to Act 77 and focuses in on the problem which cannot be corrected by market forces. This bill tasks the Public Utilities Commission to protect Hawaii's consumers by fostering the opportunity for prices that reflect and correlate with competitive market conditions. Currently we're looking at the benchmark of New York, the Gulf States, and Los Angeles. But we also give the PUC the flexibility when the Commission, in its discretion, may determine a more appropriate baseline or more appropriate price information reporting service. So we give a lot of flexibility to the PUC to make sure, and again, that prices reflect and correlate with competitive market conditions. So I ask my colleagues to support this measure. Thank you."

Representative Halford rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"And I would like to acknowledge, and actually several good observations, acknowledge the Representatives from Wailuku, Kahala, and the Ranking Member of the Education Committee for great comments.

"Madame Speaker, two years ago we passed the gas cap bill that today, no one believes is a good gas cap bill. So therefore we're talking about a new gas cap bill. What we did two years ago was pass a bad gas cap bill. We went into the election, some of us went into the election saying that we were promising that we were going to relieve consumers of gas prices. That didn't happen. But what we did do, Madame Speaker, was put a cloud on the industry. For the retail gas stations, their ability to refinance, to have confidence of their bankers, to plan ahead, we put a two-year cloud on those small independent businessmen. And we have done a disservice to our community. We have done nothing in two years to lower

gas prices. And we have hurt parts of our community. That's not good, Madame Speaker."

Representative Caldwell rose to speak in support of the measure with reservations, stating:

"Madame Speaker, with reservations.

"It is my hope, Madame Speaker, that in this delay, that we'll be supporting by voting for this bill with the effective date now being September of 2005, that our State will take action to address the issues of antitrust and monopolistic tendencies. I think it's incumbent on this State to look for the areas where there could be these types of practices and address them to help bring down the price of gas in our State.

"My concern, Madame Speaker, with a gas cap is that we probably have the most efficient system in place in the world, our market system for distributing scarce resources. And it works pretty well overall, Madame Speaker. My fear is that by placing a cap anywhere in the system, you have inefficiencies resulting in other areas. And it's hard to predict what those are. And that's part of the struggle, the hard struggle and the really hard work of both the Chair of the Environmental Committee and the Chair of Consumer Protection and Commerce, in trying to come up with a mechanism that addresses those concerns.

"So it's my hope that during this delayed period, the State will take action. And that perhaps when we come back, we'll see prices that are more under control. And if not, we have additional time to look at additional mechanisms to try to address this problem. Thank you much, Madame Speaker."

Representative Hale rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. I vote also with reservations on this bill.

"I think in this bill, we are hurting the small independent retailers, but we aren't really tackling the problem. The problem lies with the oligopoly that's been referred to that controls refineries. And until we find a mechanism to do something about that, I don't think we're to help the situation for the consumers. So I'm hoping also. I will vote for the bill because at least it gives us another chance to look at this whole problem and how find out how we can help consumers. Thank you."

Representative Stonebraker rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. I rise in opposition.

"It's an election year. And here we are in our third year with the gas cap bill. I remember two years ago, sitting on this Floor, in this seat, debating on whether or not I should vote for or against. I knew that if I voted against, I could face some pretty devastating 'hit pieces' in the elections. Things that said, 'Stonebraker is in the pocket of big oil. Stonebraker and Republicans receive hundreds of thousands of dollars from the bad guy, big oil.' And I didn't get those 'hit pieces', but a lot of my colleagues did. A lot of my colleagues who weren't even in the House actually, Madame Speaker, got 'hit pieces' against them."

The Chair interjected, stating:

"Representative Stonebraker, please refer your comment to the contents of this bill."

Representative Stonebraker continued, stating:

"Well this is the point that I'm making, Madame Speaker. It's that here we are, many of the Members of this Body, owe their seats in this House due to that bill which was passed. Here we are saying, pretty much unanimously, that bill is a bad bill. And it shouldn't go into effect. And now what are we doing? Are we repealing that as your Republican Minority has suggested? No, we're going to delay it one more year. And my question is: Is this going to be a campaign piece?

"One gas station owner just outside of my district, he's not big oil, he's just a man who works hard. He's got grease under his fingernails. He's got calluses on his hands. And he's spent many years working hard as both a mechanic and running a gas station. He said that this was the most ignorant piece of legislation he's ever seen.

"Now I remember that old comedian, Will Rogers, who was a cowboy. He said, 'I don't write jokes. I watch Congress and report the facts.' This is how we feel when we approach a piece of legislation like this. Madame Speaker, I'm not sure whether I should take it seriously. We don't know if this is actually a good faith effort.

"We want to be honest in how we legislate and so we think of the taxes. Well it has been mentioned and conceded by the Chair of the Consumer Protection Committee that we have a tax, and he said it was 13 cents above average than the nation. It's actually 14 cents above average. We have the highest gas tax in the country.

"And another Member mentioned that on a \$2 gallon of gas, 60 cents of that almost is tax. And so for example for the consumer, Madame Speaker, when you drive up to the gas station, let's say that the price that's posted there is \$2.05. Now if anybody buys premium, they've got my kudos. I never can afford premium. I just put the cheapest stuff I can. And usually that's around \$2.05, \$2.08 on Oahu. Now if I drive up to that gas station on Oahu, the tax is 56 cents. So what am I paying for gas? What is the cost for the gasoline that I'm buying? It's \$1.49. That's how much gas costs in the State of Hawaii, \$1.49. The other 56 cents on the island of Oahu goes straight to the government.

"Now who's the bad guy here? If over a quarter of our price on gas goes straight to the government, let's see what is the government doing with that money. As was mentioned from previous speaker, the Ranking Member on Education Committee, that money goes into the Highway Special Fund. What has this Legislature done with the Highway Special Fund over the past eight years? Well it's raided it almost \$150 million.

"So what we have here, Madame Speaker, is a system where we overtax the people and then we raid the Fund into which that money goes. And we call the big oil guys, the bad guys? We need to protect the consumers from the oil companies? I propose, Madame Speaker, that we need to protect the consumers from a government that is stealing from them. And I will say stealing because the money that people pay for their gas taxes should go to fix the roads, but are they? No. They're being raided year after year after year. This year there was a proposal for \$12.5 million. \$17 million to raid that excessively high tax on the people of Hawaii. I'm here to fight for the consumer. I'm here to protect them not from big oil necessarily. Yeah, nobody likes the oil companies. Nobody likes big conglomerates or corporations that have all this power. But who's the real problem here? It's this Body. It's this Legislature which cannot control its spending. And therefore overtaxes the people and steals that money and pays it out to special interest. Let's do the right thing for a change.

How about that? Let's protect the consumer from ourselves? Vote no on this bill. Take a courageous high stand."

Representative Karamatsu rose to speak in support of the measure with reservations, stating:

"I rise in support, with reservations.

"First of all, I have a lot of respect for the Chairs of CPC and EEP for all their hard work and good intentions. However, I believe a cap on the gas market will actually restrict the competition from further entering that market. And I'm supporting this measure because there's an extension in this measure. And basically I would like to take the words of Speaker Emeritus, as well as the Representative from Manoa as my own. Thank you," and the Chair "so ordered." (By reference only.)

Representative Pendleton rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. Madame Speaker, I rise in opposition to this measure.

"Madame Speaker, I join my colleagues in standing for lower gas prices for our citizens. I stand here saying that gas costs too much in Hawaii, but I do know that our gas taxes compound, don't help the process. And I know that making it more difficult for businesses to succeed in sales doesn't increase competition, but actually decreases competition. And decreasing competition is exactly the opposite direction that we want to be heading.

"Madame Speaker, it might be tempting to vote for this measure, and I thought about that. I contemplated that this measure does put further into the future the implementation date, September 1, 2005. That would be a good thing because when you have something bad, at least if we put it further into the future, you buy some time to maybe make some changes. But I think now is the time to take a stand.

"Madame Speaker, all we have to do is look at history and we see that price caps do not work. Unless we can somehow repeal the laws of economics, we need to recognize this fact.

"A previous speaker spoke about the United States' experiments with price caps in this very arena. In the 1970s we had a situation where price caps were placed on gasoline. The result, shortages. Shortages in terms of production.

"Later on, in the 70s and 80s, many several jurisdictions sought to ensure that people could afford low income housing or housing that was affordable. So what did they do? They instituted rent control, which is a price cap on housing. What happened for those types of housing? Shortages.

"How can we imagine that anything other than that would result? And how can we think that these kinds of price caps would actually work, Madame Speaker?

"A previous speaker claimed credit for Costco coming to Hawaii based on this law but that is just absolutely false. Our passage of Act 77 had nothing to do with attracting Costco to come and sell gas. That's just a natural part of their business.

"Also the claims have been that our prices, vis-à-vis, in comparison to the West Coast, have improved. But they've improved not because our gas prices have dropped but because California's has gone up. So I don't think we can claim credit for the bill that we have, for the law that we have before us. And certainly not for this measure which puts it further into the future.

"If this really is the medicine that cures the patient, why postpone implementation of that medicine? Again it's tempting to support this Madame Speaker, but I think there are just too many strong and compelling reasons to vote no.

"Madame Speaker, there was report that came out and that report has been quoted a number of times, but I think the most important part of that report is that it recommended repealing, repealing the gas cap because of the unintended consequences.

"Madame Speaker, in 1979, Ronald Reagan addressed this issue. There are those who said that we need to be fair, to use the government and to make sure that people weren't gouged. Cutting the price of energy should be our goal but the question is how do we make that happen? Yet in 1979, Ronald Reagan addressed this very issue on his radio show. He said, "California has 65,000 oil wells but 23,000 of them are closed down. California crude is a heavy oil and requires more expensive equipment to refine it."

"Once upon a time this was reflected in the price of California oil. Since 1973, however, the Department of Energy has set the price on oil. So when a well in California stands up, or a pump breaks down, there is no profit incentive for putting it back in operation. At least 15,000 of those closed oil wells could be reopened if the Department of Energy would get out of the way and trust the free market to determine the prices. That was absolutely true. What happened was the government, despite its good intentions, actually compounded the problem.

"Madame Speaker, I don't think anybody here is accusing the people who support price caps of wanting to compound the problem. No one's questioning motives for those kinds of things, Madame Speaker. But what we're saying is let's look at what history has concluded with price caps and let's recognize that these just don't work. We need to increase our competition. We need to find ways to bring in more market actors. And we certainly won't help things by restricting the market and making it more difficult for people to enter this market. So for these reasons, I vote no on this measure. And I'd like to also insert into the Journal the balance of my remarks. Thank you," and the Chair "so ordered."

Representative Pendleton's written remarks are as follows:

"Madame Speaker, I rise in strong opposition to Senate Bill 3193, Senate Draft 2, House Draft 2, Conference Draft 1. The purpose of this bill is to make changes to the gasoline price caps established by Act 77, Session Laws of Hawaii 2002. The bottom line is that this bill is seeking to repair a bad law which should be repealed. I am strongly opposed to gasoline price caps, or price caps in general. History has shown that they are a bad idea.

"Madame Speaker, DBEDT conducted a comprehensive survey of Hawaii's petroleum market and presented their findings. First and foremost on their list was to call for the repeal of the gasoline price caps. During hearings, testimony was heard and extensive research showed that gas caps, or price caps in general, have not been effective in the past, and will not be effective now.

"Madame Speaker, risks of a failed gasoline price cap policy include supply shortages, fuel business closures, departure of capital from the state, additional barriers to market entry, anti-business image, incentives to produce diminished, and other unintended consequences. These effects are contrary to the goal of Act 77 which was to help consumers.

"Instead of imposing price controls, we need to see reductions in state fuel taxes and increases in competition. We

want more market participants and actors in our Hawaii fuel market. We need lower fuel taxes, not higher taxes. I've asked it before and I must continue to ask: How can government seek to solve a problem with a price cap when we have in place taxes and laws which are at odds with bringing down gas prices?

"History and economists have warned that price caps are a bad idea. I will/cannot support a measure that leaves a bad law in place. We need to repeal Act 77, Session Laws of Hawaii 2002 because trying to fix it will not work. For these reasons, I stand in strong opposition to SB 3193, SD2, HD2, CD1. Thank you, Madame Speaker."

The Chair then stated:

"Members, we can continue on with our debate, but I ask your indulgence to submit written remarks whenever you can. So Representative Fox, I'll recognize you, and then Representative Sonson, I'll recognize you after that."

Representative Fox rose to respond, stating:

"Thank you, Madame Speaker. Still in opposition."

"Madame Speaker, several times after I have exhausted my opportunities to speak in previous debates on this issue, the word 'oligopoly' comes up. Madame Speaker, oligopoly is a perfectly legal process of doing economics. Oligopolies dominate Hawaii. We have a daily newspaper oligopoly. We have a department store oligopoly. We have a bank oligopoly. We have supermarket oligopoly. We have a discount store oligopoly. We have an inter-island airlines oligopoly. We have an agribusiness oligopoly. And I could go on, and on, and on. Oligopoly just means a few principle actors in the market."

"Do we want to fix the prices in all these institutions? I hope not because in the United States, oligopolies are perfectly legal. The word may sound awful but it's absolutely legal. The thing that's wrong is monopoly. And if we had a monopoly in oil, we could address it some other way. But an oligopoly, in the minute you say 'oligopoly', you're saying 'legal'. It's a fact. Thank you, Madame Speaker."

Representative Sonson rose to speak in support of the measure, stating:

"Thank you very much. In support."

"First of all, Madame Speaker, I'd like to just express that the Chair of EEP and the Chair of CPC are two very courageous individuals for continuing the fight for the consumers in this particular bill. It is not a very popular position to take. It seems that the issue has been confused by all these debates. It is very difficult for me to understand both sides by listening to the debates on this Floor. And I'm concerned that the consumer on the street might not understand and may be confused by the things that we are saying."

"I'd like to point out that we do all agree on one thing though, and that is that gas prices are too high. Some say that's what the market is and we should allow them to take profits as they see fit because that's their job as being companies in the market. But someone also asked, why don't we do that to milk and water, whatever. You know what? I think we did. I sort of recall what happened during the hurricane season when Iniki devastated Kauai. Some people were selling water, I don't know, for \$5 a bottle or something like that. When something becomes very scarce, they take advantage of the situation. Something that we luckily need to survive. Something you cannot get a replacement for. And companies take advantage

of that, or individuals, are normally called industrious entrepreneurs."

"But in certain situations it just doesn't make sense because we do have an obligation, not just to make money but also to be fair. And the situation that we have now is certainly not fair. The consumers are always asking why are gas prices so high. We have a lot of excuses. Excuses like higher taxes. But if you really take a look at it, you subtract the taxes from Hawaii, subtract the taxes from other states, and you look at what's left. And you compare those prices, Hawaii's still too high. So taxes are not really the issue. So it's not really government always overtaxing you. That's not it. It's probably part of the problem but certainly it will not solve the problem if we do as one speaker said, which is just eliminate taxes altogether."

"The Act 77 that we're trying to delay is something that was passed prior to me coming here. But upon hearing all these arguments, I'd say I would have supported it then, although I would agree with some of the individuals here that says, these prices caps are bad. I would agree with that. And I always will say, that actually can impede the market forces. But in a situation where you have a broken market and you don't have a real solution, you have to put a stop to it. We have to stop the bleeding. The bleeding means drawing blood from consumers basically. Gasoline is something that we cannot replace, like water or milk. Gasoline is something that we need to run our businesses. Gasoline is something we need to get to our businesses in order to work. We need it to get here. We can't walk from Waipahu to here. Similarly, I cannot take the boat. Similarly, I won't run that far."

"So the point is, we have to find a solution for this. We don't have a solution right now, Madame Speaker. But I can tell you that the price cap, has at least brought a lot of attention to the problem where we are all trying to think together for a solution. Stopping the search for a solution right now by eliminating all this, stopping all this and just say let's just repeal it. Let's not go with this delay, is actually nonsense. That means stopping and giving up. I don't want to give up on this. I think that there may be a better solution. Similarly, I don't believe that what we have right now is actually going to send the message, stands as the right solution. And I think that the two Chairs, as I have previously mentioned, have the courage to continue this fight and I will support them every step of the way."

"One other good thing that hasn't been said tonight is the fact that there's going to be a study on this that will benefit the Neighbor Islands. It is unfortunate the speaker from Maui, Speaker Emeritus is concerned about this bill and will vote against this particular bill. But it must be because of his belief that yes, that gas caps don't work. But he's referring to a 1970 gas cap which was really artificial. It's artificial in a way because that's what ..."

Representative Abinsay rose to yield his time, and the Chair, "so ordered."

Representative Sonson continued, stating:

"Thank you very much, Representative. Two speakers at least mentioned the 1970s as an example of price cap not working. That's not a good example, Madame Speaker, because that was shortage. By the way, I was working at a gas station in those days. I was pumping gas. The shortage of gas was not caused by price caps, but actually caused by the greediness of the suppliers who would hold their supply out there in the ocean, waiting for things to happen so that they can sell it at a higher price. So it's not a good comparison. What we have today, the high prices we have today in Hawaii are not the same. The situation is not the same. The situation in Hawaii today is high prices driven by greed."

"I think that we do need a solution for this. And we need this Act 77 to be postponed. Please vote for this amendment to Act 77. Let's continue the fight to find the right solution. And we can do this together. Thank you very much."

The Chair then stated:

"Members, can we move on. I will recognize Representative Hiraki. Hold on. We've had 40 minutes of discussion on this bill. A lot of your arguments are getting repetitive. If you're bringing up new points, that's fine. But if you're bringing up and rehashing, the same type of arguments, I request that you either incorporate remarks or put it in the Journal. With that said, I recognize, Representative Hiraki."

Representative Hiraki rose to respond, stating:

"Madame Speaker, I still rise in support."

Representative Thielen: "Madame Speaker, Madame Speaker."

Vice Speaker Luke: "I'll recognize you after."

Representative Thielen: "I was thinking if before someone talks two times, if people that have not spoken yet could go first."

Vice Speaker Luke: "No, I recognized Representative Fox who spoke two times. So I'll recognize Representative Hiraki."

Representative Hiraki rose to respond, stating:

"Madame Speaker, I'm still speaking in support of this measure."

"As you know, my predictions came true tonight. I told you that you'd hear opponents blame the high cost of gasoline on high taxes, high costs, too little competition. But again my answer back to them is: If you really feel that strongly, why didn't you do something about it? The fact is all the people that spoke, raising those concerns, not one opponent introduced a bill this Session to address the problem of the high cost of gasoline. Not one talked about reducing taxes. Not one talked about introducing a bill about increasing competition. Someone talked about, let's be sincere about lowering prices. Yes, let's be sincere about lowering prices."

Representative Stonebraker rose to a point of order, stating:

"Point of order, Madame Speaker. Does the present speaker refer to the bill that I introduced to lower the gas taxes in the State of Hawaii? Is he aware of that?"

Vice Speaker Luke: "I can't answer your question."

Representative Stonebraker: "Will the present speaker yield to a question?"

Representative Hiraki: "Yes."

Representative Stonebraker: "Were you aware of the tax decrease that I proposed?"

Representative Hiraki: "This Session?"

Representative Stonebraker: "Yes."

Representative Hiraki: "Did it ..."

At 8:35 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 8:39 o'clock p.m.

At this time, the Chair announced:

"Members, there was 40 minutes, maybe 45 minutes of discussion, and it started out really well. It was a really good substantive argument. And it made a very, very bad turn. We have Members of the Senate, our esteemed colleagues, Senators Hooser and Ihara watching us, so Members, please keep your tempers down, keep your comments very professional."

"Let's continue on so that we can finish before 12 o'clock midnight. And as I have stated before, if Members start to get repetitious, I'm going to cut you off and ask that you submit your remarks. With that said, Representative Hiraki, you have the Floor."

Representative Hiraki continued, stating:

"Just to clarify. The measure that the previous speaker had mentioned does not exist. As was clarified by the Minority Leader, what he meant was the repealing of Act 77 and that is not an option. Again, just to summarize, the easiest job in the world is to sit in a chair and criticize."

Representative Stonebraker interjected, stating:

"Madame Speaker, this is not relevant. Point of personal privilege, Madame Speaker."

Vice Speaker Luke: "Hold on, Representative Hiraki. Representative Stonebraker, please state your point."

Representative Stonebraker: "The present speaker is simply erroneous. It is not true what he says. We introduced a repeal of Act 77 and I also introduced a decrease in the gas tax for the sake of the consumers."

Vice Speaker Luke: "Representative Stonebraker, I will allow that as a substantive argument."

Representative Stonebraker: "Madame Speaker, may I make a point of personal privilege? I am personally offended if a speaker on this House Floor desires to put words in my mouth and to take a position for me which I have not taken."

Vice Speaker Luke: "Representative Stonebraker. That point of personal privilege is out of order. Representative Hiraki, you have the Floor."

Representative Hiraki continued, stating:

"And I'll just summarize, Madame Speaker, at this point. And I just want to reiterate, it's very difficult to find solutions to very complex problems and we're trying our best. But I say that the easiest job in the world is to sit in a chair and criticize a measure just because you don't have any better ideas. And Madame Speaker, we been struggling with this for several years. And we are looking for solutions. We're trying to help the consumer. And that is all we're trying to do. Thank you."

Representative Thielen rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. I'm rising with very serious reservations, but I'm going to vote in favor of the bill because it delays the implementation date."

"Madame Speaker, there's a very troubling provision on page 7 of the bill. The bill directs the Attorney General to immediately investigate any shortage or condition affecting the supply of petroleum products such as if Tesoro decided it would lose money if it sells its product here in Hawaii and then chose to sell it to another market overseas. The Attorney General will be directed to investigate that and file criminal charges against the corporate officials of Tesoro. The bill goes to such an extreme, Madame Speaker. That provision purely is unconstitutional. Purely unconstitutional. And, not purely, I should say flatly unconstitutional. There's nothing pure in the whole bill.

"Madame Speaker, I think that it is a serious mistake to continue with this. But the one redeeming fact that the bill has is that it delays the implementation date. And for that reason, I can vote in favor of it because it's critical to postpone that implementation date until we get some sound sense in this Chamber. Thank you."

Representative Meyer rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. I'm rising in opposition to the bill.

"I think if we, if the Members in this Body, really believe that this bill would help consumers, they would implement it quicker. Even if they really wanted and believed that this is in the best interest of consumers, they would let Act 77 become law. But the truth is, they saw the flaws in that bill and that's why we are now looking at Senate Bill 3193. Because with Act 77, we see that we would have paid more than we did over the last two years for a large portion of that time.

"This bill has now set caps only at the wholesale level on all types of gas. But it repeals the maximum pretax retail gasoline price. I believe that makes this bill unconstitutional. That capping the price for the wholesalers is like a taking. It's a taking of their profits. We are saying, limiting what they can do as far as being profitable. And on the other hand, we give full raise to the retailers. Charge anything you want. It's okay. We have no caps on you. So the whole rationale, that the government gets involved, telling businesses what kind of profits they can have if that's in the public interest, we would have a cap on the retail level as well. And I believe that if we pass this bill and it comes into effect in September, the wholesalers will take the State to court and they will win. Thank you, Madame Speaker."

At 8:45 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 8:47 o'clock p.m.

Representative Leong rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

Representative Pendleton rose to a point of information, stating:

"Madame Speaker, point of information. Madame Speaker, we heard represented on this Floor this evening a statement that no measure was introduced. Fortunately, I have my laptop and I went into Eclipse and looked up the measure that the gentleman from Hawaii Kai described. The measure is HB No. 2830. And according to Eclipse, it was introduced this Session by Representative Stonebraker, the Representative from Hawaii Kai on January 28, 2004. The introducers were Stonebraker, Meyer, Jernigan, Ching, Marumoto, Thielen, Moses, Pendleton,

and Halford. And this clearly contradicts what was stated on the Floor.

"I would like to request that the gentleman who said that no one has introduced anything. The bill description here says, 'Reduces State liquid fuel tax by 50%. Eliminates tax on alternative fuels. Repeals divorce laws.' This clearly falls within the category. He said we can't count the repeal of Act 77 towards doing something substantive, but this is a measure clearly on point. And my question is, will the gentleman acknowledge that this is in Eclipse. That this bill has in fact been introduced and has been sponsored by the individuals that our State computer system says."

The Chair responded, stating:

"The floor speech that you just gave will be reflected in the Journal. Thank you."

At 8:49 o'clock p.m., Representative Hiraki requested a recess and the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 8:49 o'clock p.m.

Representative Marumoto rose to speak in support of the measure with reservations, stating:

"Thank you, Madame Speaker. As the Representative who offered the amendment to repeal Act 77, and as a supporter of the Transportation Chair's 2003 bill to repeal Act 77, I ask that my numerous, substantive reservations be noted in the Journal for posterity."

Representative Finnegan rose to speak in opposition to the measure, stating:

"Thank you, Madame Speaker. In opposition.

"In regards to the amendment that the Minority Caucus had made earlier on this Session, I just wanted to clarify that the repeal was just for the gas cap part. But in regards to the other part of the bill that talked a little bit about transparency, what it did in the amendment was, it actually made more transparency by asking for reporting and disclosure, and tons of it, by not only the refiners but, everyone in the gas business. So I just wanted to let you know, as we were talking about earlier about campaign spending and disclosure and reporting and how that is so relevant to this particular measure of transparency.

"The other thing that it would do, when we have this transparency and all of the reporting, is at that point in time, we can determine whether or not there is overcharging or greediness within the gas industry. And at that point in time, should we decide that the best way to go is through a cap, then we do that. I think that is the best route to go.

"And the reason why we're looking at this and going, I don't think the gas cap is the way to go is because red flags are raised not only from the Minority Caucus, but we get our information from the FTC, the NCSL, and the Stillwater report. So I wish we could have gone along with the amendment to not only remove the gas cap, but ask for more transparency. Thank you."

Representative Moses rose in opposition to the measure and asked the remarks of Representatives Finnegan and Pendleton be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Waters rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Kahikina rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Wakai rose in support of the measure with reservations, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Wakai's written remarks are as follows:

"I would like to express my reservations on this measure. I am supporting this bill because it provides a 14-month delay in the implementation of the gas cap. I don't see that we currently have a pricing system that is troublesome, but I believe this heavy-handed government proposal will create a crisis.

"When government holds prices below market levels, false signals are sent to both consumers and producers. Consumers are encouraged to buy more than what is available on the market, while producers are discouraged from providing that commodity because they cannot receive revenues that justify production and distribution costs.

"Market pricing performs the vital role of allocation of resources, a price held below what the market will bear causes shortages. So we will be creating a situation where instead of being able to get gasoline to drive to work, customers will not be able to buy gas at all, because it will not be available at the regulated price.

"Act 77 has been around since 2002 and still needs work. This practice of creating bad laws and fine-tuning them for years is unacceptable. If it's not a good law now, it won't be a good law later.

"During this delay I hope we can find a better solution to what may or may not be a problem."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 3193, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CONSUMERS," passed Final Reading by a vote of 36 ayes to 15 noes, with Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Kawakami, Meyer, Moses, Nakasone, Ontai, Pendleton, Souki and Stonebraker voting no.

At 8:54 o'clock p.m., the Chair noted that S.B. No. 3193, SD 2, HD 2, CD 1 passed Final Reading.

LATE INTRODUCTIONS

The following late introductions were made to the members of the House.

Representative Saiki introduced Department of Education Superintendent, Ms. Pat Hamamoto.

Representative Thielen introduced Ms. Kat Brady and Mr. Henry Curtis of the Life of the Land.

UNFINISHED BUSINESS

Conf. Com. Rep. No. 159-04 and S.C.R. No. 127, SD 1, HD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.C.R. No. 127, SD 1, HD 1, CD 1 be adopted, seconded by Representative Lee.

Representative Arakaki rose to speak in support of the measure, stating:

"Madame Speaker, may I be allowed some brief remarks in support of this measure? I know it's only a Concurrent Resolution but I really wanted to thank the Chairs of Conference Committee, especially the Chairs of Labor Committees on the House and Senate side. Number one, for acknowledging the professional value of social workers. And number two, for requesting a delay of the elimination of the social workers series.

"I really want to point out to my colleagues, to you and my colleagues, that we have a real problem here. I don't think people realize how valuable as professionals, social workers are in providing services throughout the State, especially in the areas of child protective services, especially in Department of Human Services and the Department of Health, and also in the Department of Education.

"And I'm really concerned that just by eliminating the title Social Worker because you have shortage, doesn't make the problem go away. And I think we owe it to the people of Hawaii to provide the best possible services, the best professional services we can. And we have to recognize that we have a shortage but this is not the way to deal with the problem. So they have nine months according to this resolution of the Labor Committee, and hopefully they can produce something that will address the problem. Thank you, Madame Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.C.R. No. 127, SD 1, HD 1, CD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT TO DELAY THE IMPLEMENTATION OF THE ELIMINATION OF THE SOCIAL WORKER SERIES," was adopted.

STANDING COMMITTEE REPORTS

Representatives M. Oshiro and Ito, for the Committee on Labor and Public Employment and the Committee on Public Safety and Military Affairs presented a report (Stand. Com. Rep. No. 1558-04) recommending that S.C.R. No. 13, be adopted.

Representative Saiki moved that the report of the Committee be adopted and that S.C.R. No. 13 be adopted, seconded by Representative Lee.

Representative M. Oshiro rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative M. Oshiro's written remarks are as follows:

"Madame Speaker, I rise to speak in favor of Senate Concurrent Resolution 13, Requesting Hawaii's Congressional Delegation to Ensure that at Least Eighty Per Cent of Federal Expenditures Remain in Hawaii, and the Rights of Local Union Labor to Fair Wages Under the Davis-Bacon Act are Not Circumvented, on the U.S. Military Privatization Construction Contracts for Improvements on Hawaii Military Bases. This measure requests that Hawaii's Congressional delegation help to:

- (1) Ensure that at least eighty percent of federal expenditures on the Residential Communities Initiative stays in Hawaii through the hiring or contracting of local firms and laborers;
- (2) Investigate piecework systems and rate-fixing that circumvent Davis-Bacon; and
- (3) Take steps to ensure that local contractors are not underbid by mainland firms on Residential Communities Initiative contracts.

"Madame Speaker, the Residential Communities Initiative was passed in 1996 by the Federal government, and is the impetus for large, long-range, multi-billion dollar military housing projects. As such, these project contracts go far beyond individual military contracts and have far-reaching, long-lasting implications for the economies of the communities they affect.

"Because construction contracts of the sizes involved in the Initiative could have significant positive impacts on the local economy through the use of local contractors, Hawaii's Congressional delegation has been encouraging the use of local contractors. In the last couple of years, local contractors have been used for up to seventy-five percent of the work contained in requests for proposals. This measure urges Hawaii's Congressional delegation to continue their work to ensure that at least eighty percent of Initiative expenditures go toward the hiring of local contractors.

"Madame Speaker, the sheer size of the contracts covered by the Initiative also means that these projects could have tremendous impacts on many workers. It is in all of our best interests that the contractors on these projects comply with Davis-Bacon and little Davis-Bacon directives, so that our local workers and laborers are paid what they are entitled.

"To this end, this measure also requests that Hawaii's Congressional delegation inquire into and cause to be investigated, if necessary, techniques that may be used by contractors to circumvent the requirements of Davis-Bacon.

"Finally, Madame Speaker, your Committees on Labor and Public Employment and Public Safety and Military Affairs received extensive testimony relating to the final purpose of this measure. The testimony indicated that there is currently an ongoing situation in which a mainland contractor received a pre-contract award for an Army contract, and is now seeking tax breaks and waivers from the state and City and County of Honolulu.

"While your Committees would have liked to have heard from the Army project contractor, and notice of this hearing was posted sixty-five hours in advance, the contractor sent no representative to the hearing.

"The testimony emphasized that the subject contract is a multi-billion dollar long-term Army contract, which could go on for fifty years. As such, it is imperative that all parties involved, especially the affected jurisdictions, recognize the fiscal implications of such a large contract and any tax break or waiver that may be awarded to a contractor.

"In this case, the low bidding contractor has been lobbying the Governor for tax waivers for the length of the contract. The reason given for the waivers was that without them, the contractor would not be able to do the work assigned to them via the bidding procedure.

"A slide show presentation entitled, "Impact of Proposed Taxes on soldiers and families, U.S. Army Garrison, Hawaii"

asserted that if tax waivers or breaks are not given to this contractor, 2,097 units would be impacted, and "All of the soldiers (and their families) that were on the parade field for the Iraq departure ceremony will not get new or renovated houses for 11-15 years." It further stated that total impacts of property taxes and general excise taxes on rent and construction would total \$261 million, and that the delay of the 2,097 units would cost \$244 million.

"I find the relation of the \$261 million tax impact to the \$244 million delay related costs to be disingenuous. Testimony indicated that these representations were meant to show that without tax concessions by the affected jurisdictions, the contractor would refuse or not be able to do the work assigned to them via their bid. However, further testimony indicated that this work was required under the contract, and that any tax breaks that the contractor received was intended to go toward maintenance, management, reserves, or fixtures for the property, to guarantee that local contractors would be involved long-term.

"Further, the Congressman representing the First Congressional District of Hawaii indicated in his testimony that he had initially given his support of exemptions from state General Excise and Use taxes for the Army project contractor. In his letter dated October 17, 2002, the Congressman specified that he supports tax exemptions that would consider "long-term viability" and give attention to "building maintenance and required replacement reserves."

"However, the Congressman had to rescind his support in a letter dated April 22, 2004, when he found out that the tax waiver dollars were meant for "... future necessary operating, management and maintenance expense *following* initial construction. At no time was there ever a presentation to me that a waiver would be sought to fund the construction *itself*." Indeed, the Congressman testified that he has not since received any further information regarding the disposition of these tax waiver dollars.

"The upshot of all of this, Madame Speaker, is that the contractor on the Army project seems to be relying on the affected state and county jurisdictions to "bail them out" of their bid. If this is the case, it is not fair to the other contractors who submitted bids that correctly considered taxes. The contractor on the Army contract should be held to its bid, and the affected state and county jurisdictions should receive the tax revenue they are entitled to for the upkeep of the amenities and infrastructure that they have to offer.

"Furthermore, military communities do not live in isolation from the rest of the local community. Members of the military community are a welcome part of the local community and are encouraged to enjoy and use the amenities our cities and state have to offer, including our roads, water and sewer systems, emergency response services, and recreational facilities. As such, their impact on these amenities must also be considered.

"To this end, the Honolulu City Council passed two bills for second reading. The first bill, Bill 25 (2004), Required Annual Budget Information, requires that City appropriations proposed by the mayor to support the service and infrastructure requirements of developments on certain military lands be identified in materials accompanying the City budget documents transmitted annually by the mayor pursuant to the City Charter. The second bill, Bill 26 (2004), Taxation of Federal Real Property, ensures that the City obtain a full and equitable collection of real property tax revenues from federal property converted to nonmilitary purposes for use by private firms and individuals to support and defray the City's expenditures for services enjoyed by users and residents of those properties. It is clear that tax revenues are vital to state

and county jurisdictions to support developments such as those included in the Initiative, and that it is equitable to have military communities share in the costs of supporting the infrastructure and amenities of state and county jurisdictions.

"As a side issue, it has been contended that non-support of tax breaks for Initiative contractors is un-patriotic because troops will go without upgraded housing for over ten years. To the contrary, condoning private enrichment at the expense of taxpayers is not patriotic and even contemptuous. In addition, testimony indicated that another Navy project did not have problems with the contractor balking at paying taxes. What's more, the current contractor on the Army project is based in Napa, California, but its parent is an Australian company. I have concerns that any tax waivers or exemptions granted to this contractor may go to this foreign parent company, rather than being reinvested into maintenance of the Initiative project.

"Because of the previously stated interest of promoting local contractors for Initiative contracts, it is imperative that Hawaii's Congressional delegation assure that the contractor that currently has the subject Army contract hire sufficient local contractors. Further, because testimony has shown that the current contractor for the Army contract may have underbid all others without sufficiently accounting for tax costs, that they be held to the terms of their bid and the bid documents. To allow otherwise via tax breaks would not be fair to the other bidders, some of whom may have been local or involved local contractors, who correctly factored the tax costs into their bids, and will cost the state and counties much needed tax revenue. The current contractor should not be bailed out of their miscalculation by the state or county jurisdictions.

"For the reasons I've just stated, I urge my fellow colleagues to support this measure. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.C.R. No. 13, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING HAWAII'S CONGRESSIONAL DELEGATION TO ENSURE THAT AT LEAST EIGHTY PER CENT OF FEDERAL EXPENDITURES REMAIN IN HAWAII, AND THE RIGHTS OF LOCAL UNION LABOR TO FAIR WAGES UNDER THE DAVIS-BACON ACT ARE NOT CIRCUMVENTED, ON THE U.S. MILITARY PRIVATIZATION CONSTRUCTION CONTRACTS FOR IMPROVEMENTS ON HAWAII MILITARY BASES," was adopted.

THIRD READING

S.B. No. 1302, SD 1:

On motion by Representative Saiki, seconded by Representative Lee and carried, S.B. No. 1302, SD 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," passed Third Reading by a vote of 51 ayes.

At 8:58 o'clock p.m., the Chair noted that S.B. No. 1302, SD 1 passed Third Reading.

At 8:58 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 9:04 o'clock p.m., with Speaker Say presiding.

At this time, Representative Takumi withdrew Floor Amendment No. 22, amending H.B. No. 2002, HD 2, SD 1, CD 1, which had been previously placed on the Members' desks.

SUPPLEMENTAL CALENDAR #1

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 213, 218, and 221) were announced by the Clerk and the following action taken:

Gov. Msg. No. 213, informing the House that on April 29, 2004, S.B. No. 3238, SD 2, HD 2, CD 1, was vetoed.

"EXECUTIVE CHAMBERS

HONOLULU

April 29, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3238

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3238 entitled "A Bill for an Act Relating to Education."

This bill has been referred to as the "Reinventing Education Act of 2004."

After listening to the advice of people throughout the community and considering all the pros and cons, it became clear that I could not in good conscience place my stamp of approval on the "Reinventing Education Act of 2004." This bill contains too many flaws in its present form. While not wanting to paint the bill with too broad a brush, it does not reinvent education, it mainly protects the status quo, and in one case it makes matters much worse by increasing bureaucracy and reducing accountability.

Fortunately there is time to correct the most serious flaws in Senate Bill No. 3238.

I am, therefore, exercising what I call a "soft veto." I am asking the Legislature to develop new language that would create legislation we can all take pride in and regard as a step forward.

I realize we have to identify a vehicle for this new education bill. There are many to choose from, including possibly **House Bill No. 1176** which has been in conference since April 2003. I propose that we rename our joint effort the "**Bipartisan Education Reform Act of 2004.**"

Because we still have one week left in the regular session of 2004, the executive and legislative branches have time to come together to craft an education bill that will bring about meaningful education reform.

I am recommending in this statement of objections that the Legislature enact five changes to Senate Bill No. 3238 using the vehicle of House Bill No. 1176. They are simple to make, yet would result in significant improvements at our schools. These changes are:

- Give principals control over 70 percent of their operating budgets initially, but phase-in a plan that would allow them eventually to control 90 percent of funds. At first glance it may not appear there is much difference between giving principals 70 percent versus 90 percent of the money. But it will mean a world of difference in the classroom. That is because at 70 percent most of the spending is already predetermined since it goes to salaries and related items over which the principal has little or no control. It is only when principals are given authority for 90 percent or more of the funds at their schools that they truly gain the financial flexibility they need to make meaningful improvements.
- Empower principals, set standards for their performance, and hold them accountable. In business, in education, and in every social organization, leadership makes the difference. Individual teachers also make a difference. But it is the principals who can inspire, motivate, and lead their schools by example.
- Give charter schools their fair share of funding, for facilities as well as operations, so they can provide instruction that is culturally appropriate for their communities. Charter schools have demonstrated that they can produce successful, self-confident students, even in the face of tremendous obstacles created by the Department of Education. Such schools are especially important for Hawaiian students, who suffer greatly under the Department of Education's one-size-fits-all system. It is time to give charter schools the resources and the support to excel.
- Instead of launching the "weighted student formula" in the 2006-07 school year, start this sensible funding plan a year earlier. Under this formula, money would be allocated based on the needs of individual students. There are successful models we can use from school systems elsewhere. Let us get on with the task now.
- Make the school community councils advisory in nature. That way, councils can offer their recommendations to principals without complicating the decision-making process or confusing who the public should hold accountable.

These five changes are incorporated in a proposed House Bill No. 1176 attached to this statement of objections.

It is important to note that I did not mention local school boards among my proposed changes. That does not mean I have abandoned this critical concept, for I have not.

I will continue to do everything possible to give the people an opportunity to vote on the issue of nonpartisan, locally elected school boards in the 2006 general election.

Education reform is not about us – it is about the children. The people of Hawaii know that and they want to see significant progress this session. If the Legislature makes the "five easy fixes" listed above, we will have a much better bill that will really advance the cause of student achievement through education reform.

Together, we have one last opportunity before the session ends to do what the people brought us here to do.

The education bill before me today does not really help our children in a systemic way. To let Senate Bill no. 3238 become law as is would mean we have squandered a chance to act in a bipartisan way to achieve real reform. And far worse, we

would have deprived our children of the quality education they deserve.

I am recommending these five revisions on behalf of people all across our State who have watched many previous attempts to fix our schools and who should not settle for less than real education reform this time. While far from perfect, this modified legislation would move us ahead.

Someone once asked Thomas Edison if he got discouraged when an invention did not turn out as planned. "I am not discouraged," he said, "because every wrong attempt discarded is another step forward." Let us discard what is wrong with Senate Bill No. 3238 and pass a law that truly moves us forward.

For the foregoing reasons, I am returning Senate Bill No. 3238 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

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THE SENATE
TWENTY-SECOND LEGISLATURE, 2004
STATE OF HAWAII

H.B. NO. 1176
H.D. 1
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO EDUCATION.

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

PART I

PURPOSE

SECTION 1. This Act shall be known as the "Bipartisan Education reform Act of 2004." Although many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity. This Act is a road map for a critical phase in that ongoing journey.

The legislature finds that significant changes need to be made to enhance Hawaii's public education system to ensure the success of that journey. Although the State's students, parents, teachers, school administrators, departmental staff, and other educational stakeholders strive to achieve excellence, their efforts will never be completely successful until various aspects of the system around them are improved.

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The legislature has supported and will continue to support efforts by the department of education to improve Hawaii's schools as a means of enhancing the academic achievement, safety and well being, and civic commitment of students, to meet the evolving needs of today's communities.

The coordinated package of initiatives in this Act aims to implement comprehensive education reform in Hawaii's public schools and shall be known as the "Reinventing Education Act of 2004." Its main elements include:

- (1) Establishing a weighted student formula;
- (2) Providing additional information technology;
- (3) Empowering principals through a Hawaii principals academy and other means;
- (4) Strengthening community involvement through school community councils and parent-community networking centers;
- (5) Providing more mathematics textbooks;
- (6) Lowering class size in kindergarten, grade one, and grade two;
- (7) Providing full-time, year-round, high school student activity coordinators;

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- (8) Providing support for students who need additional help to succeed in school;
 - (9) Establishing a national board certification incentive program for teachers;
 - (10) Enhancing teacher education;
 - (11) Reducing the bureaucracy that hampers the effectiveness of the department of education;
 - (12) Improving the educational accountability system; and
 - (13) Requiring the board of education members to hold community meetings in their districts.
- Research shows that student performance is significantly higher in smaller schools. While establishing smaller schools throughout the State is not financially feasible, some schools have taken it upon themselves to create smaller and more manageable learning communities within their schools. Research also strongly supports the need for early childhood education and the establishment of a coherent system that spans all levels of education. The department of education teamed with the University of Hawaii and Good Beginnings Alliance to create a vision for such a system, which was presented in 2002, and is now being implemented.

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Despite these efforts, more needs to be done. Currently, public school principals are faced with a nearly impossible task, as they are asked to attend to every detail of operating their schools without ~~enough institutional support or discretion to expend funds~~ being given the authority needed to accomplish the task. While some support and additional school leadership is provided by the school/community-based management (SCBM) system at many schools throughout the State, SCBM plays a far more limited role at some locations, and has not been implemented at all at others.

Recently, departmental leadership was decentralized through the creation of the complex area system, including the hiring of complex area superintendents. While replacing the old district system with this new structure was an important first step, further changes need to be made to allow meaningful authority to exist as close to the schools as possible. The complex area structure will serve as an excellent base upon which to build these continued reforms. It is the legislature's intent to place ~~a far greater number of decisions~~ decisionmaking and ~~a much higher percentage of money~~ at least 90% of funding directly in the hands of individual school ~~and their~~ leaders -- principals.

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1 Another area of improvement necessary to promote excellence
2 in learning is the method by which moneys are allocated to
3 individual schools. Hawaii currently receives high marks
4 nationally for funding equity, as being organized as a single
5 unified system enables the State to fairly disburse moneys to
6 schools. In other states, local revenue sources such as
7 property taxes account for a significant portion of school and
8 district funding, resulting in massive financial disparities
9 between schools in more and less affluent areas.

10 Although the State avoids this particular pitfall, further
11 improvements can be made to ensure that moneys go to the schools
12 that truly have the greatest need, and to place ~~(more)~~ moneys at
13 the ~~(discretion of)~~ individual school[s] level. While the
14 current funding system takes into account certain criteria when
15 allocating moneys to schools, it does not comprehensively
16 address the fact that some students are more costly to educate
17 than others. For example, students with special needs, such as
18 those with limited proficiency in English, or who have physical,
19 psychological, or other impediments to learning, are more
20 expensive to teach than students who are not faced with these
21 barriers.

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1 One method that can be used to address these funding issues
2 is a weighted student formula. Under such a system, moneys are
3 allocated to schools based on a system of weighted
4 characteristics that apply to every student in the ~~(public)~~
5 school[s].

6 Under a weighted student formula there are several
7 advantages. Among other things:

8 (1) The relative cost of educating students can be much
9 more accurately assessed, based upon the unique
10 learning needs of each student;

11 (2) Funds follow students to whichever school they attend;
12 and

13 (3) The budget process becomes more transparent as it is
14 based on dollars, not staff positions.

15 However, establishing a weighted student formula cannot be
16 effective in a vacuum. Other reform measures must be
17 implemented as well. Principals will be empowered to act as the
18 educational leaders of their schools, with ~~(more)~~ authority
19 ~~(relating to)~~ over budgeting, and ~~(more flexibility to expend)~~
20 control of funds. With these expanded powers, principals will
21 be held accountable for their performance through a system that
22 includes rewards, assistance, and sanctions. Principals will

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1 also need more training and support ~~(if they are required)~~ to
2 take on additional duties, ~~and are expected to~~ advance
3 student success. Furthermore, community involvement and suppo
4 of schools will need to be enhanced if schools are to work
5 effectively.

6 The department of education is also faced with significan
7 impediments that will likely reduce its ability to effectively
8 implement the weighted student formula. With educational
9 responsibilities spread throughout numerous state agencies,
10 there are various roadblocks to progress that could prevent th
11 department of education and individual schools from successful
12 performing their duties and effectively using a new funding
13 system.

14 The legislature finds that a comprehensive effort
15 addressing all of these issues is required for Hawaii's public
16 schools to maximize student achievement. Accordingly, the
17 purpose of this Act is to enhance educational outcomes in
18 Hawaii's public schools by:

19 (1) Implementing the weighted student formula by:

20 (A) Requiring the department of education to provi
21 supplementary allocations to those schools who
22 budgets are adversely affected by the weighted

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1 student formula for no more than three years
2 beginning with the 2006-2007 school year;

3 (B) Establishing a committee on weights within the
4 department of education to determine the unit
5 value of student weights and recommend a weight
6 student formula to the board of education at
7 least annually, and appropriating \$10,000 to
8 support the operation of the committee;

9 (C) Requiring the department of education to adopt
10 weighted student formula in allocating funds to
11 all public schools, ~~(including)~~ new century
12 charter schools and new century conversion
13 charter schools allowed to participate if they
14 choose;

15 (2) Appropriating \$2,000,000 to the department of
16 education to facilitate field support, security and
17 privacy for the telecommunications network, and
18 training regarding information technology
19 infrastructure used to enhance accountability,
20 compliance with the federal No Child Left Behind Ac
21 of 2001, and implementation of school reform includ
22 the weighted student formula;

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- 1 (3) Supporting and empowering principals by:
- 2 (A) Requiring the department of education, with the
- 3 invited participation of the exclusive bargaining
- 4 agent of educational officers of the department
- 5 of education, to propose salary schedules and
- 6 other terms and conditions of employment of
- 7 principals and vice principals based upon a
- 8 twelve-month term of service, and report findings
- 9 back to the Legislature no later than twenty days
- 10 prior to the regular session of 2005;
- 11 (B) Requiring the board of education to classify all
- 12 educational officer positions of the department
- 13 of education to adopt two separate
- 14 classification/compensation plans for educational
- 15 officers, one for principals and vice principals
- 16 (based on the general pattern of a school
- 17 administrator's career development and associated
- 18 school administrator's qualification
- 19 requirements) and one for all other educational
- 20 officers (reflective of the career development
- 21 pattern and qualification requirements for the
- 22 respective professional field of expertise), and

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- 1 (A) Appropriating \$350,000 for training and other
- 2 activities needed to facilitate the transition
- 3 from the current SCBM system into an advisory
- 4 school community council system to be implemented
- 5 at each public school, excluding new century
- 6 charter schools and new century conversion
- 7 charter schools;
- 8 (B) Clearly articulating the ~~balance and reciprocity~~
- 9 ~~of~~ powers and responsibilities ~~between~~ of the
- 10 principal and the advisory nature of the school
- 11 community council;
- 12 (C) Appropriating \$1,743,900 to support and enhance a
- 13 proven means of improving parental and community
- 14 involvement in schools, parent-community
- 15 networking centers;
- 16 (5) Directly, concretely supporting the academic
- 17 achievement and holistic development of students by:
- 18 (A) Appropriating \$2,500,000 for mathematics
- 19 textbooks and other mathematics learning
- 20 materials in schools, provided that mathematics
- 21 curriculum is aligned within the school complex;

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- 1 including classification appeals procedures for
- 2 both; and
- 3 (C) Convening a working group to create a plan for
- 4 the implementation of performance contracts for
- 5 principals;
- 6 (D) Establishing a Hawaii principals academy to
- 7 support and train complex area superintendents,
- 8 principals, and prospective principals, and
- 9 appropriating \$500,000 to operate the academy;
- 10 (E) Clarifying the authority and responsibility of
- 11 principals;
- 12 (F) Appropriating \$183,780 to operate the department
- 13 of education's administrator certification for
- 14 excellence (ACE) program; and
- 15 (G) Appropriating \$400,000 to compensate principals
- 16 recalled to work by the department, outside of
- 17 their regular term of service, for professional
- 18 development and any other activities that may
- 19 enhance their effectiveness as leaders of their
- 20 schools;
- 21 (4) Enhancing community involvement in schools by:

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- 1 (B) Appropriating \$2,143,350 to reduce class size in
- 2 kindergarten, grade one, and grade two by hiring
- 3 seventy-five elementary school teachers;
- 4 (C) Appropriating \$460,000 for full-time, year-round,
- 5 high school student activity coordinators; and
- 6 (D) Appropriating \$100,000 for programs that support
- 7 parents in working with students who need
- 8 additional help to succeed in school provided the
- 9 programs have measurable outcomes;
- 10 (6) Directly, concretely supporting teachers by:
- 11 (A) Establishing a national board certification
- 12 incentive program to be administered by the
- 13 Hawaii teacher standards board to continue
- 14 comparable efforts initiated under a memorandum
- 15 of understanding between the department of
- 16 education and Hawaii teacher standards board
- 17 which expires on June 30, 2005, and appropriating
- 18 \$480,000 funding to execute the memorandum of
- 19 understanding during fiscal year 2004-2005;
- 20 (B) Appropriating \$92,000 for the administration of
- 21 the Hawaii teacher standards board;

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- 1 (C) Increasing the pool of qualified teachers and
2 administrators by appropriating \$500,000 to fund
3 seven teacher education positions and one
4 education administration faculty position at the
5 college of education of the University of Hawaii;
- 6 (7) Reducing bureaucracy that hampers the effectiveness of
7 the department of education by:
- 8 (A) Requiring the department of education to convene
9 an interagency working group to address systemic
10 impediments to the efficient management and
11 operation of schools;
- 12 (B) Transferring certain key functions from various
13 state agencies to the department of education;
- 14 (C) Requiring the board of education to adopt a
15 single school calendar for all public schools to
16 apply beginning with the 2006-2007 school year;
- 17 (8) Enhancing educational accountability by:
- 18 (A) Requiring academic achievement, safety and well
19 being, and civic responsibility of individual
20 students to be assessed and tracked;
- 21 (B) Expanding the accountability provision to include
22 fiscal accountability;

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- 1 (C) Including complex area superintendents and
2 principals in the accountability system;
- 3 (D) Requiring clear, easily understandable report
4 cards on key performance indicators for schools,
5 school complexes, and the public school system;
- 6 (E) Requiring the board of education to hold
7 community meetings in each school district;
- 8 (9) Appropriating \$400,000 for the ~~for school community~~
9 ~~councils and~~ development of academic and financial
10 plans at selected schools prior to the statewide
11 implementation of the weighted student formula; and
- 12 (10) Requiring the department of education to submit
13 findings and recommendations to the legislature prior
14 to the 2005 regular session relating to the
15 implementation of this Act.

PART II

WEIGHTED STUDENT FORMULA

- 12 SECTION 2. The department of education, from within
13 appropriations provided to the department of education, shall
14 provide supplementary allocations to those schools whose budgets
15 are adversely affected upon the implementation of the weighted
16 student formula, as determined by the superintendent, for no

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- 1 more than three years beginning with the ~~2004-2007~~ 2005-2006
2 school year.

3 SECTION 3. Chapter 302A, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 ~~*§302A- Committee on weights.~~ (a) There is establishe
7 within the department of education the committee on weights to
8 develop a weighted student formula pursuant to section 302A-
9 The committee shall:

- 10 (1) Create a list of student characteristics that will be
11 weighted;
- 12 (2) Create a system of weights based upon the student
13 characteristics ~~that may be applied~~ used to
14 determine the relative cost of educating any student;
- 15 (3) Determine specific student weights, including their
16 unit value;
- 17 (4) ~~Determine which moneys shall be included in the~~
18 ~~amount of funds to be~~ Ensure that departmental
19 operational funds, including federal funds, are
20 allocated through the weighted student formula
21 according to section 302A-1301(b);

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- 1 (5) Recommend a weighted student formula to the board of
2 education;
- 3 (6) Perform any other function that may facilitate the
4 implementation of the weighted student formula; and
- 5 (7) Meet not less than annually to review the weighted
6 student formula and, if the committee deems it
7 necessary, recommend a new weighted student formula
8 for adoption by the board of education.
- 9 (b) The composition of the committee on weights shall be
10 determined by the board of education based on recommendations
11 from the superintendent of education and dean of the Universit
12 of Hawaii at Manoa college of education and include principals
13 teachers, and other members with the appropriate professional
14 skills, experiences, and qualifications needed to facilitate t
15 work of the committee. The superintendent or the
16 superintendent's designee shall chair the committee on weights
- 17 (c) The committee on weights may form advisory
18 subcommittees to obtain input from key stakeholders as
19 determined necessary by the committee.
- 20 (d) The members of the committee on weights shall serve
21 the pleasure of the board of education and shall not be subje
22 to section 26-34. Members of the committee on weights shall

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1 ~~serve without compensation but shall be reimbursed for expenses,~~
 2 ~~including travel expenses, necessary for the performance of~~
 3 ~~their duties."~~

4 SECTION 4. Chapter 302A, Hawaii Revised Statutes, is
 5 amended by adding a new section to be appropriately designated
 6 and to read as follows:

7 "§302A- Weighted student formula. Based upon
 8 recommendations from the committee on weights, the board of
 9 education, not less than annually, shall adopt a weighted
 10 student formula for the allocation of moneys to public schools
 11 ~~excluding new century charter schools and new century~~
 12 ~~conversion charter schools~~ which takes into account the
 13 educational needs of each student, with new century charter
 14 schools and new century conversion charter schools allowed to
 15 participate if they so choose. The department, upon the receipt
 16 of appropriated moneys, shall use the weighted student formula
 17 to allocate funds to public schools, excluding or including new
 18 century charter schools and new century conversion charter
 19 schools as they so choose. Principals shall ~~pend~~ control
 20 moneys provided to the principals' schools.

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1 SECTION 5. Section 302A-101, Hawaii Revised Statutes, is
 2 amended by amending the definition of 'public schools' to read
 3 as follows:

4 "Public schools" means all academic and noncollege type
 5 schools ~~either~~ established and maintained by the department ~~or~~
 6 ~~issued a charter by the board of education,~~ in accordance with
 7 law. All other academic and noncollege type schools are
 8 'private schools', irrespective of the hours during which the
 9 sessions take place."

10 SECTION 6. Section 302A, Hawaii Revised Statutes, is
 11 amended by adding a new definition to be appropriately inserted
 12 and to read as follows:

13 "Weighted student formula" means a formula for allocating
 14 ~~operating moneys to individual public schools that includes a~~
 15 ~~system of weighted characteristics affecting the relative cost~~
 16 ~~of educating each student attending a public school, ~~including~~~~
 17 ~~with new century charter schools and new century conversion~~
 18 ~~charter schools participating at their choice."~~

19 SECTION 7. There is appropriated out of the general
 20 revenues of the State of Hawaii the sum of \$10,000, or so much
 21 thereof as may be necessary for fiscal year 2004-2005, to
 22 support the operations of the committee on weights.

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1 SECTION 8. The sum appropriated shall be expended by the
 2 department of education for the purposes of this part.

3 PART III
 4 INFORMATION TECHNOLOGY

5 SECTION 9. The department of education uses technology to
 6 support instructional, student information, fiscal, human
 7 resources, and outcome-based research systems. To meet the
 8 information needs of the principals, teachers, and the school
 9 community councils as they develop academic and fiscal plans for
 10 individual schools, the requirements of the No Child Left Behind
 11 Act, and the Felix consent decree, the department must improve
 12 its administrative support information systems.

13 SECTION 10. There is appropriated out of the general
 14 revenues of the State of Hawaii the sum of \$2,000,000, or so
 15 much thereof as may be necessary for fiscal year 2004-2005, for:

16 (1) Positions to provide technical support to school level
 17 information systems uses;
 18 (2) Infrastructure to meet the security and privacy
 19 requirements of the telecommunications network;
 20 (3) Customization of the student information system
 21 software; and
 22 (4) Training regarding the use of information technology.

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1 SECTION 11. The sum appropriated shall be expended by the
 2 department of education for the purposes of this part.

3 PART IV
 4 PRINCIPALS

5 SECTION 12. The department of education, with the invited
 6 participation of the exclusive bargaining agent of educational
 7 officers of the department of education, shall propose salary
 8 schedules and other terms and conditions of employment of
 9 principals and vice principals based upon a twelve-month term of
 10 service. The department of education shall submit their
 11 findings to the legislature no later than twenty days prior to
 12 the convening of the regular session of 2005.

13 SECTION 13. Section 302A-619, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "~~[(4)]~~§302A-619~~[(7)]~~ Classification, educational officers.
 16 The board shall classify all educational officer positions of
 17 the department and ~~shall~~ adopt (a) ~~two separate~~
 18 ~~classification/compensation (plan) plans for [these] educational~~
 19 ~~[officer positions]~~ officers. ~~One classification/compensation~~
 20 ~~plan shall be for principals and vice principals and shall be~~
 21 ~~based on the general pattern of a school administrator's career~~
 22 ~~development and associated school administrator's qualification~~

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1 requirements. A separate classification/compensation plan shall
 2 be for all other educational officers and shall be reflective of
 3 the career development pattern and qualification requirements
 4 for the respective professional field of expertise; provided
 5 that ~~(the)~~ both classification/compensation ~~(plan)~~ plans shall
 6 include ~~(a)~~ classification appeals ~~(procedure-)~~ procedures."

7 SECTION 14. The superintendent of education shall select
 8 and convene a working group to create a plan for performance
 9 contracts for principals to be implemented beginning with the
 10 ~~2004-2005~~ 2005-2006 school year. The working group shall
 11 include:

- 12 (1) The superintendent of education;
- 13 (2) Representatives of complex area superintendents;
- 14 (3) Representatives of school principals; and
- 15 (4) Representatives of any other agency, organization, or
 16 group as deemed appropriate by the superintendent of
 17 education.

18 The superintendent shall request the exclusive representative
 19 for collective bargaining unit 6 to participate in the working
 20 group.

21 The working group shall:

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1 twenty days prior to the convening of the regular session of
 2 2005.

3 SECTION 15. Chapter 302A, Hawaii Revised Statutes, is
 4 amended by adding a new section to be appropriately designated
 5 and to read as follows:

6 "§302A- Hawaii principals academy. There is established
 7 within the department the Hawaii principals academy. The
 8 academy shall support and train department complex area
 9 superintendents, principals, and prospective principals in areas
 10 including but not limited to:

- 11 (1) Becoming better leaders;
- 12 (2) Improving students' academic achievement, safety and
 13 well being, and civic responsibility;
- 14 (3) Collaborating with the school community councils;
- 15 (4) Developing curriculum alignment;
- 16 (5) Managing school budgets; and
- 17 (6) Establishing partnerships with the private sector."

18 SECTION 16. Section 302A-1103, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 "(4)§302A-1103(4) Principal; authority and responsibility.
 21 The role of the principal shall include but not be limited to
 22 overseeing the day-to-day management of the school, the primary

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1 (1) Establish appropriate performance criteria ~~for~~ which
 2 ~~(principals are to be evaluated under)~~ will be used in
 3 individual performance contracts for principals.
 4 including:

- 5 (A) Core criteria to be incorporated into performance
 6 contracts statewide; and
- 7 (B) Criteria that may be used at the discretion of
 8 individual schools;
- 9 (2) Determine appropriate performance benchmarks, or
 10 methods of devising performance benchmarks, that may
 11 be used to assess principal performance relative to
 12 expected standards, provided that such performance
 13 benchmarks, at a minimum, shall include those elements
 14 related to principals in the educational
 15 accountability system;
- 16 (3) Determine appropriate rewards, assistance, and
 17 sanctions to be included or considered for inclusion
 18 in performance contracts; and
- 19 (4) Address any other issues necessary for the
 20 implementation of performance contracts.

21 The department of education shall submit findings,
 22 including proposed legislation, to the legislature no later than

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1 function of which is to develop and deliver instructional
 2 services to students in ~~(accordance with statewide-statewide~~
 3 ~~educational policy and standards)~~ a manner that promotes student
 4 achievement. The principal shall ~~(ensure)~~:

- 5 (1) Ensure that the curriculum facilitates the achievement
 6 of the statewide student performance standards adopted
 7 for the public school system~~(-)~~;
- 8 (2) ~~(Maintain and)~~ Exercise authority over the
 9 ~~(implementation of the)~~ budget, policies, and
 10 operations of the school; and
- 11 (3) Collaborate with other principals in the principal's
 12 school complex to ensure that:
 - 13 (A) Logical, sequential curricula are adopted within
 14 the school complex;
 - 15 (B) Best practices are shared among and implemented
 16 by schools within the school complex;
 - 17 (C) The goals and objectives of the school complex
 18 are being met;
 - 19 (D) The use of school complex-based personnel and
 20 contractors who divide their time between more
 21 than one school in a school complex is
 22 coordinated to maximize efficiency; and

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1 (E) The passage of students through the continuum of
2 grades is coordinated in a manner consistent with
3 section 302A-1004.

4 SECTION 17. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$1,083,780, or so
6 much thereof as may be necessary for fiscal year 2004-2005, to
7 be expended as follows:

- 8 (1) \$500,000 to establish and operate the Hawaii
9 principals academy;
- 10 (2) \$183,780 for the operation of the administrator
11 certification for excellence (ACE) program; and
- 12 (3) \$400,000 to compensate principals who are recalled to
13 work by the department, outside of their regular term
14 of service, for professional development and any other
15 activities that may enhance their effectiveness as
16 leaders of their schools.

17 SECTION 18. The sum appropriated shall be expended by the
18 department of education for the purposes of this part.

PART V

COMMUNITY INVOLVEMENT

21 SECTION 19. One of the most important means of improving
22 educational outcomes and public confidence in those outcomes in

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1 for the purposes of improving student achievement and building a
2 sense of family among all.

3 The purpose of this part is to:

- 4 (1) Establish school community councils at each school,
5 excluding new century charter schools and new century
6 conversion charter schools; and
- 7 (2) Appropriate funding for:
 - 8 (A) Facilitating the transition from
9 school/community-based management to school
10 community councils by training and other
11 necessary activities; and
 - 12 (B) Parent-community networking centers for:
 - 13 (i) Supplies, equipment, and telephones; and
 - 14 (ii) A minimum of one part-time parent
15 facilitator in each school.

16 SECTION 20. School/community-based management councils
17 shall prepare for the transition to school community councils
18 pursuant to this section in the 2005-2006 school year. All
19 policies or bylaws adopted, and all decisions made, by a
20 school/community-based management council shall remain in effect
21 until repealed or revised by members of the new school community
22 council. The department of education shall ensure that schools

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1 schools is by enhancing community involvement. This part seeks
2 to accomplish this by:

- 3 (1) Establishing school community councils for each public
4 school, excluding new century charter schools and new
5 century conversion charter schools, to provide a
6 mechanism whereby parents, the community, and other
7 key stakeholders can have a ~~substantially increased~~
8 voice in the affairs of their local schools, with ~~a~~
9 ~~clear and concrete enunciation of~~ powers and
10 responsibilities, ~~and how these are shared with those~~
11 ~~of~~ as determined by the principal; and
- 12 (2) Supporting and enhancing parent-community networking
13 centers, a mechanism for improving community and
14 parental involvement with a proven track record of
15 success.

16 The legislature finds that there is also overwhelming
17 research evidence of the critical need for an integrated
18 comprehensive system of family support, parent education,
19 teacher-parent partnerships, and volunteer and resource
20 development.

21 Parent-community networking centers serve to create
22 supportive partnerships among the home, school, and community

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1 not participating in the school/community-based management
2 system are prepared for the implementation of school community
3 councils in the 2005-2006 school year.

4 SECTION 21. Section 89-10.6, Hawaii Revised Statutes, is
5 amended to read as follows:

6 ~~"§89-10.6 [School/community-based management waiver.]~~
7 ~~Schools; waiver of policies, rules, or procedures. (A) Any~~
8 ~~school [or a learning support center participating in the~~
9 ~~school/community-based management program] may initiate a waiver~~
10 ~~from policies, rules, or procedures, including collective~~
11 ~~bargaining agreements, as provided for in section 302A-1126."~~

12 SECTION 22. Section 302A-101, Hawaii Revised Statutes, is
13 amended by deleting the definition of "school/community-based
14 management system".

15 ~~["School/community-based management system" means a method~~
16 ~~of educational management that diffuses educational~~
17 ~~decisionmaking to involve or secure the input of those persons~~
18 ~~directly affected by the decision to be made at the school~~
19 ~~level, and encourages school-initiated methods for achieving~~
20 ~~educational goals established statewide by the board."]~~

21 SECTION 23. Section 302A-202, Hawaii Revised Statutes, is
22 repealed.

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1 ~~["§302A-302 Student assessments, any school electing to~~
2 ~~participate in school/community-based management may develop and~~
3 ~~implement its own student assessment mechanisms, provided that~~
4 ~~the board shall include the results of the assessments in the~~
5 ~~educational status report to the legislature and the governor~~
6 ~~required in section 302A-1004."]~~

7 SECTION 24. Section 302A-601, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§302A-601 Selection of school personnel.~~
10 ~~School/community-based management councils may participate in~~
11 ~~the selection of school personnel by providing input into the~~
12 ~~selection process."]~~

13 SECTION 25. Section 302A-1124, Hawaii Revised Statutes, is
14 amended to read as follows:

15 ~~"[§302A-1124(i) Mandate to initiate (school/community-~~
16 ~~based management system.) school community councils. (a) The~~
17 ~~department, through the board and its superintendent, shall~~
18 ~~(formulate policies, including criteria and procedures to~~
19 ~~determine which schools and learning support centers shall~~
20 ~~participate in the system, to initiate a school/community-based~~
21 ~~management system in the public schools.) establish a school~~
22 ~~community council system under which each public school,~~

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1 ~~excluding new century charter schools and new century~~
2 ~~conversion charter schools, shall create and maintain a school~~
3 ~~community council. Each school community council shall~~
4 ~~participate in principal selection and evaluation, and transmit~~
5 ~~any such evaluations to the complex area superintendent.~~
6 ~~Further, each community council shall, under the principal's~~
7 ~~guidance:~~

8 ~~(1) Participate in the development of, and recommend for~~
9 ~~approval by the principal and complex area~~
10 ~~superintendent, the school's annual:~~

11 ~~(A) Academic plan; and~~

12 ~~(B) Financial plan;~~

13 ~~(2) Ensure that the school's academic and financial plans~~
14 ~~are aligned with the educational accountability system~~
15 ~~under section 302A-1004;~~

16 ~~+++ Participate in principal selection and evaluation, and~~
17 ~~transmit any such evaluations to the complex area~~
18 ~~superintendent;~~

19 ~~+++ (3) Provide collaborative opportunities for input and~~
20 ~~consultation.~~

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1 ~~(b) School community councils shall be exempt from the~~
2 ~~requirements of chapters 91 and 92. The school community~~
3 ~~councils shall:~~

4 ~~(1) Make available the notices and agendas of public~~
5 ~~meetings:~~

6 ~~(A) At a publicly accessible area in the school's~~
7 ~~administrative office so as to be available for~~
8 ~~review during regular business hours; and~~

9 ~~(B) On the school's Internet web site,~~
10 ~~not less than six calendar days prior to the public~~
11 ~~meeting, unless a waiver is granted by the~~
12 ~~superintendent in the case of an emergency; and~~

13 ~~(2) Make available the minutes from public meetings on a~~
14 ~~timely basis in:~~

15 ~~(A) The school's administrative office so as to be~~
16 ~~available for review during regular business~~
17 ~~hours; and~~

18 ~~(B) On the school's Internet web site.~~

19 ~~(c) Complex area superintendents may require a school~~
20 ~~community council to revise if any school academic and~~
21 ~~financial plan if the plans are in violation of law or conflict~~

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1 ~~with statewide educational policies and standards; not~~
2 ~~conforming to the principal's policies.~~

3 ~~(d) The superintendent of education may recommend to the~~
4 ~~board of education dissolution of a school community council and~~
5 ~~establish an interim school community council if the school~~
6 ~~community council engages in any act or omission that would~~
7 ~~constitute gross negligence, wilful and wanton misconduct, or~~
8 ~~intentional misconduct. The superintendent may recommend to the~~
9 ~~board the removal of any member of a school community council.~~
10 ~~The superintendent shall appoint or facilitate the creation of~~
11 ~~an interim school community council at any school that has not~~
12 ~~established a council or has had its council dissolved. In~~
13 ~~appointing or facilitating the creation of an interim school~~
14 ~~community council at any school that has had its council~~
15 ~~dissolved, the superintendent may appoint individuals who were~~
16 ~~previously members of the council.~~

17 ~~(e) Unless otherwise specified, each school community~~
18 ~~council shall establish policies governing the council's~~
19 ~~composition, election, staggered terms of office for members,~~
20 ~~operation, and vacancies; provided that:~~

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- 1 (1) The number of school personnel in any school community
 2 council shall be equal to the number of primary
 3 stakeholders on the school community council;
 4 (2) At the elementary and middle school levels, each
 5 school community council shall be composed of the
 6 principal and at least one member representing each of
 7 the following groups:
 8 (A) Parents elected by ballots distributed among and
 9 collected from the parents of the school's
 10 students;
 11 (B) Teachers elected by ballots distributed among and
 12 collected from teachers of the school;
 13 (C) Noncertificated school personnel elected by
 14 ballots distributed among and collected from
 15 noncertificated personnel of the school;
 16 (D) Community representatives elected by ballots
 17 distributed among and collected from parents of
 18 the school's students; and
 19 (E) Student representatives selected by the student
 20 council of the school; and
 21 (3) At the high school level, each school community
 22 council shall be composed of the principal and at

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- 1 (4) Other officers as needed to perform stated duties in
 2 support of the work of the council.
 3 (g) The principal shall have the authority to set aside
 4 any decision made by the school community council if the
 5 principal determines it to be in the best interest of the
 6 school, provided that the principal notifies the school
 7 community council. ~~If the school community council opposes a~~
 8 ~~decision of the principal, an appeal shall first be brought to~~
 9 ~~the complex area superintendent for resolution and, if~~
 10 ~~necessary, to the superintendent and, finally, to the board of~~
 11 ~~education. The principal shall not set aside decisions made by~~
 12 ~~the school community council to recommend annual academic and~~
 13 ~~financial plans for approval by the complex area~~
 14 ~~superintendent.~~
 15 (h) Complex area superintendents shall assist the school
 16 community councils and principals within their respective
 17 complex areas in:
 18 (1) Obtaining the support and services of the department;
 19 and
 20 (2) Ensuring the progress and success of the school's
 21 academic and financial plan."

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- 1 least one member representing each of the following
 2 groups:
 3 (A) Parents elected by ballots distributed among and
 4 collected from parents of the school's students;
 5 (B) Teachers elected by ballots distributed among and
 6 collected from teachers of the school;
 7 (C) Noncertificated school personnel elected by
 8 ballots distributed among and collected from
 9 noncertificated personnel of the school;
 10 (D) Community representatives elected by ballots
 11 distributed among and collected from the parents
 12 of the school's students; and
 13 (E) Student representatives selected by the student
 14 council of the school.
 15 For the purposes of this subsection, "primary stakeholders"
 16 means students, parents, and community members.
 17 (f) School community councils shall elect officers,
 18 including:
 19 (1) A chairperson;
 20 (2) A vice-chairperson;
 21 (3) A secretary; and

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- 1 SECTION 26. Section 302A-1126, Hawaii Revised Statutes, is
 2 amended to read as follows:
 3 "§302A-1126 Waiver of policy, rule, or procedures.
 4 Any state agency that may be required to act under state law on
 5 a matter affecting an individual school ~~(or its school community,~~
 6 ~~or a learning support center)~~ shall waive otherwise applicable
 7 policies, rules, or procedures when requested to do so by a
 8 school ~~(or a learning support center participating in the~~
 9 ~~school/community-based management system) (school community~~
 10 ~~council)~~ unless the agency, within thirty days, can justify a
 11 denial to the appropriate authority. The board shall adopt
 12 procedures necessary to process waivers initiated by schools ~~(or~~
 13 ~~learning support centers subject to the school/community-based~~
 14 ~~management system).~~ to school community council. Any general
 15 waiver of policy, rule, or procedures granted by the board to a
 16 specific school or schools may be extended by the board to apply
 17 to other schools under comparable circumstances. This section
 18 shall apply to collective bargaining agreements as provided for
 19 in all relevant collective bargaining agreements negotiated
 20 pursuant to chapter 89."
 21 SECTION 27. Section 302A-1306, Hawaii Revised Statutes, is
 22 repealed.

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1 ~~["§302A-1306] School priority program; established. (a)~~
 2 ~~There is established within the department a school priority~~
 3 ~~program to augment regular instruction and other educational~~
 4 ~~services at the discretion of the individual public schools.~~
 5 ~~Further, it is the intent of the legislature that the school~~
 6 ~~priority program promote the equitable distribution of~~
 7 ~~educational resources statewide, strengthen the scope of~~
 8 ~~decisionmaking, increase flexibility in resource allocation at~~
 9 ~~the school level, and provide a systematic method of conforming~~
 10 ~~resource allocation to the unique needs and priorities of~~
 11 ~~individual schools.~~
 12 ~~(b) All moneys to carry out the purposes of the school~~
 13 ~~priority program under this section to section 302A-1309 shall~~
 14 ~~be allocated by the legislature through appropriations out of~~
 15 ~~the state general fund.~~
 16 ~~(c) The department shall include in its budgetary request~~
 17 ~~for each upcoming fiscal period, the amounts necessary to~~
 18 ~~effectuate the purposes of this section to section 302A-1309."~~
 19 SECTION 28. Section 302A-1307, Hawaii Revised Statutes, is
 20 repealed.
 21 ~~["§302A-1307] Distribution of resources. The~~
 22 ~~superintendent shall allot the moneys of the school priority~~

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1 ~~program to the school districts based on enrollment. In the~~
 2 ~~allotment of positions to the districts, the superintendent~~
 3 ~~shall calculate each district's entitlement based on enrollment~~
 4 ~~and may deploy one instructional resource augmentation position~~
 5 ~~for each two hundred fifty students enrolled in each school,~~
 6 ~~provided that all positions shall be deployed."~~
 7 SECTION 29. Section 302A-1309, Hawaii Revised Statutes, is
 8 repealed.
 9 ~~["§302A-1309] Departmental controls. The superintendent~~
 10 ~~shall develop and implement appropriate planning procedures and~~
 11 ~~follow-up accountability reports, without regard to chapter 91,~~
 12 ~~to ensure sound planning, control, and accountability in the use~~
 13 ~~of moneys allocated by the legislature to the school priority~~
 14 ~~program. The procedures and reports, however, shall recognize~~
 15 ~~the need for providing the schools latitude and discretion to~~
 16 ~~determine their needs and priorities, and shall avoid imposing~~
 17 ~~undue amounts of paperwork and administrative burdens on the~~
 18 ~~schools.~~
 19 ~~The department shall submit an annual report to the~~
 20 ~~legislature, which shall include but not be limited to an~~
 21 ~~accounting of how funds were used by the schools."~~

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1 SECTION 30. Section 302A-1505, Hawaii Revised Statutes, is
 2 amended by amending subsection (b) to read as follows:
 3 "(b) Prior to meeting with the department ~~(of accounting~~
 4 ~~and general services)~~ to advise it of a school's repair and
 5 maintenance needs, the school's principal and the business and
 6 fiscal officer shall consider the recommendations made by the
 7 ~~(school/community-based management council, if there is such a~~
 8 ~~council at the school.)~~ school community council or the local
 9 school board, if the school is ~~(a new century charter school or)~~
 10 a new century conversion charter school. ~~(If there is no~~
 11 ~~school/community-based management council or local school board,~~
 12 ~~then the school's principal shall appoint a standing committee~~
 13 ~~composed of a teacher, a member of the support staff, a parent,~~
 14 ~~a student, and a community member.)"~~
 15 SECTION 31. Section 302A-1507, Hawaii Revised Statutes, is
 16 amended to read as follows:
 17 ~~"[§]302A-1507[§] Classroom cleaning project; established.~~
 18 (a) There is established a classroom cleaning project in all
 19 public schools ~~(designated to participate in school/community-~~
 20 ~~based management-), excluding new century charter schools and~~
 21 new century conversion charter schools. Each ~~(school/community-~~
 22 ~~based management) school,~~ through its school community

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1 ~~council,~~ may develop mechanisms to provide for classroom
 2 cleaning, including but not limited to having parent, student,
 3 or other community groups clean the classrooms on a regular,
 4 continuing basis.
 5 (b) ~~(school/community-based management schools)~~ Schools
 6 may use any available resources to achieve the purposes of this
 7 section; provided that no full-time custodial staff ~~(currently)~~
 8 employed at the school shall be displaced."
 9 SECTION 32. There is appropriated out of the general
 10 revenues of the State of Hawaii the sum of \$2,093,900, or so
 11 much thereof as may be necessary for fiscal year 2004-2005, to
 12 be expended as follows:
 13 (1) \$350,000 for training and other activities needed to
 14 facilitate the transition from school/community-based
 15 management councils to school community councils; and
 16 (2) \$1,743,900 for parent-community networking centers
 17 including:
 18 (A) \$483,000 for supplies, equipment, and telephones;
 19 and
 20 (B) \$1,260,900 for a minimum of one part-time parent
 21 facilitator in each school.

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1 SECTION 33. The sum appropriated shall be expended by the
2 department of education for the purposes of this part.

PART VI

STUDENTS

5 SECTION 34. Ultimately all education reform must be driven
6 by the needs of students. Students are the primary clients
7 served by the public education system and they must be served
8 well by providing them with access to the tools they need to
9 succeed, a nurturing environment conducive to learning, and
10 supplementary opportunities for growth that facilitate their
11 development.

12 The legislature finds that much of an individual's
13 cognitive, emotional, and social development takes place in
14 their earliest years of life. To a significant extent,
15 opportunities during this age set the parameters for an
16 individual's development throughout the rest of the individual's
17 life. The legislature further finds that grade three is a
18 pivotal year in preparation for the No Child Left Behind Act's
19 assessment plans. For this reason, children in the preceding
20 grades should be provided with the instructional support needed
21 to ensure superior performance in assessment instruments
22 mandated by the No Child Left Behind Act.

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1 (2) \$2,143,350 to reduce class size in kindergarten, grade
2 one, and grade two in public schools, excluding new
3 century charter schools and new century conversion
4 charter schools, by hiring seventy-five full time
5 equivalent (75.00 FTE) regular elementary teachers for
6 kindergarten, grade one, and grade two;

7 (3) \$460,000 for full-time, year-round, high school
8 student activities coordinators in all public high
9 schools; and

10 (4) \$100,000 for programs that support parents in working
11 with students who need additional help to succeed in
12 school provided the programs have measurable outcomes.

13 SECTION 36. The sum appropriated shall be expended by the
14 department of education for the purposes of this part.

PART VII

TEACHERS

17 SECTION 37. The National Commission on Teaching and
18 America's Future, a national organization with twenty partner
19 states, including Hawaii, is focused on improving student
20 learning by ensuring that there is a caring, competent, and
21 qualified teacher in every classroom.

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1 For these reasons, the Legislature finds that a class size
2 of not more than twenty-five students per teacher to be
3 advisable in kindergarten, grade one, and grade two classrooms.

4 The purpose of this part is it to appropriate funding to:

- 5 (1) Provide mathematics textbooks and other mathematics
6 learning materials;
- 7 (2) Reduce class size in kindergarten, grade one, and
8 grade two;
- 9 (3) Provide for full-time, year-round, high school student
10 activity coordinators; and
- 11 (4) Programs that support parents in working with students
12 who need additional help to succeed in school provided
13 the programs have measurable outcomes.

14 SECTION 35. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$5,203,350, or so
16 much thereof as may be necessary for the fiscal year 2004-2005,
17 to be expended as follows:

- 18 (1) \$2,500,000 to purchase mathematics textbooks and other
19 mathematics learning materials for schools; provided
20 that the mathematics curriculum within a school
21 complex shall be aligned;

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1 The Hawaii policy group of the National Commission on
2 Teaching and America's Future, composed of a representative
3 group of educational stakeholders, completed an inventory of
4 state policies relating to teacher quality and, based on this
5 inventory, made recommendations for improving teaching in
6 Hawaii.

7 Other than home and societal factors, teacher quality was
8 determined to be the single most influential factor in student
9 achievement. National board certification prompts candidates to
10 analyze their practice in very profound ways. It is, therefore,
11 important to continue to identify, support, recognize, and
12 reward public school teachers who voluntarily undergo the
13 national board certification process.

14 National board certification requires a tremendous
15 commitment of time and professional risk-taking. The
16 application fee represents a large financial investment. To be
17 successful, certification candidates need a strong support
18 program, access to the program and testing facilities, and
19 release days to organize and prepare the documents and portfolio
20 required for submittal.

21 The legislature finds that, in addition to supporting and
22 recognizing highly accomplished teaching, the overall pool of

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1 qualified teachers in the State of Hawaii should be expanded.
 2 Currently the University of Hawaii lacks the stable, ongoing
 3 resource base needed to fund college of education faculty
 4 positions necessary to produce enough teachers for Hawaii's
 5 public schools.
 6 While the department of education hires over one thousand
 7 three hundred new teachers each year, the college of education
 8 of the University of Hawaii at Manoa and the education
 9 department of the University of Hawaii at Hilo are only able to
 10 prepare four hundred to four hundred fifty teachers each year.
 11 Furthermore, the legislature also finds that there is a
 12 shortage of school principals, necessitating additional faculty
 13 in the area of educational administration.
 14 The purpose of this part is to:
 15 (1) Establish a national board certification incentive
 16 program to be administered by the Hawaii teacher
 17 standards board to continue comparable efforts
 18 initiated under a memorandum of understanding between
 19 the department of education and Hawaii teacher
 20 standards board which expires on June 30, 2005, and
 21 appropriate funding to execute the memorandum of
 22 understanding during fiscal year 2004-2005;

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1 (2) Appropriate funding to the Hawaii teacher standards
 2 board to provide training and support for national
 3 board certification applicants; and
 4 (3) Appropriate funding for eight faculty positions at the
 5 college of education of the University of Hawaii.
 6 SECTION 38. Chapter 302A, Hawaii Revised Statutes, is
 7 amended by adding a new section to be appropriately designated
 8 and to read as follows:
 9 *302A- Teacher national board certification incentive
 10 program. (a) There is established within the department the
 11 teacher national board certification incentive program to
 12 recognize and support exemplary teaching practice by supporting
 13 public school teachers who have achieved national board
 14 certification under the certification program of the National
 15 Board for Professional Teaching Standards. The teacher national
 16 board certification incentive program shall provide:
 17 (1) A \$5,000 bonus per year for each public school teacher
 18 who maintains current national board certification;
 19 (2) \$1,500 upon completing the certification program of
 20 the National Board for Professional Teaching
 21 Standards; and

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1 (3) A reimbursement of the remainder of the national board
 2 certification application fee upon achievement of
 3 national board certification.
 4 (b) The incentive program shall include a mentoring
 5 component that encourages and enables national board-certified
 6 teachers to assist other teachers and share their teaching
 7 expertise.
 8 SECTION 39. There is appropriated out of the general
 9 revenues of the State of Hawaii the sum of \$572,000, or so much
 10 thereof as may be necessary for fiscal year 2004-2005, to be
 11 expended as follows:
 12 (1) \$480,000 to provide salary differentials and
 13 reimbursements for national board certification
 14 candidate support to public school teachers, including
 15 those of new century charter schools and new century
 16 conversion charter schools; and
 17 (2) \$92,000 for training, assistance, conducting candidate
 18 recognition initiatives, and operational expenses,
 19 including the establishment of a temporary position,
 20 associated with national board certification candidate
 21 support by the Hawaii teacher standards board.

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1 The sum appropriated shall be expended by the department of
 2 education for the purposes of this part.
 3 SECTION 40. There is appropriated out of the general
 4 revenues of the State of Hawaii the sum of \$500,000, or so much
 5 thereof as may be necessary for fiscal year 2004-2005, for seven
 6 full-time equivalent (7.00 FTE) teacher education positions and
 7 one full-time equivalent (1.00 FTE) educational administration
 8 position.
 9 The sum appropriated shall be expended by the University of
 10 Hawaii for the purposes of this part.
 11 PART VIII
 12 REDUCTION OF BUREAUCRACY
 13 SECTION 41. A wide variety of state agencies perform many
 14 services for the department of education. In some cases this is
 15 an efficient, cost-effective means of organizing state
 16 government. The legislature finds that that in other cases,
 17 however, this system hampers the efficiency of the State's
 18 public educational system. The services provided to the
 19 department of education by the department of accounting and
 20 general services, department of budget and finance, department
 21 of human resources development, department of the attorney
 22 general, and department of human services need to be scrutinized

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1 to reduce bureaucracy and improve the responsiveness and service
2 delivery of the department of education. Such a reorganization
3 is an integral part of a comprehensive, multi-faceted education
4 improvement initiative. However, it is also clearly a
5 significant reorganization of state government and must be taken
6 with prudent precaution at each step. For that reason, each
7 phase in the reduction of bureaucracy, with targeted transfer
8 dates of certain key rights, powers, functions, duties, and
9 resources from various state agencies to the department of
10 education, is subject to repeal by subsequent legislation.

11 SECTION 42. (a) The department of education shall convene
12 an interagency working group to develop comprehensive plans and
13 timetables for transferring certain rights, powers, functions,
14 duties, and resources, including positions, from the departments
15 of accounting and general services, budget and finance, health,
16 human resources development, the attorney general, and human
17 services to the department of education. The interagency
18 working group will also establish measurable outcomes for
19 transferred responsibilities, monitor the implementation through
20 achievement of measurable outcomes, and determine action steps
21 if measurable objectives are not attained. Rights, powers,

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1 employees and trainees who work with public school
2 students; and
3 (9) School health aides.
4 (b) The comprehensive plans shall identify:
5 (1) Each position to be transferred by position number;
6 and
7 (2) All moneys budgeted in support of each position to be
8 transferred, including moneys for direct and indirect
9 employee benefits.
10 at the lowest level on the state program structure.
11 (c) The working group shall include the following
12 individuals or their designees:
13 (1) The superintendent of education;
14 (2) The comptroller;
15 (3) The director of human resources development;
16 (4) The director of human services;
17 (5) The director of health;
18 (6) The director of finance;
19 (7) The attorney general;
20 (8) The exclusive bargaining agents of affected employees;
21 and

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1 functions, duties, and resources including positions to be
2 transferred shall include but not be limited to:
3 (1) The expending of capital improvement funds for
4 construction of new school facilities and resources,
5 for repairs and maintenance services;
6 (2) The funding of collective bargaining agreement
7 increases;
8 (3) The securing, administering, use, and expending of
9 federal funds and other aid, including their custodial
10 supervision;
11 (4) The capital improvement project allotment process;
12 (5) The determination of retirement and other employee
13 benefits;
14 (6) The operation of a human resources system including
15 the recruitment, certification, examination,
16 management, classification, and compensation of
17 department of education employees and labor relations;
18 (7) Negotiating workers' compensation claims and
19 labor-management relations within the department of
20 education;
21 (8) Conducting employment background checks for the
22 after-school plus program, private vendors, and other

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1 (9) Any community members that may be appointed by the
2 superintendent.
3 (d) The department of education may recommend to the
4 legislature deletion or addition of rights, powers, functions,
5 duties, and resources, including positions, that are to be
6 transferred as a result of the working group's deliberations
7 which shall be included and reflected in the required plans and
8 legislation. The working group shall submit its comprehensive
9 plans, including proposed legislation, to implement the transfer
10 of rights, powers, functions, duties, and resources, including
11 positions relating to the:
12 (1) Department of accounting and general services and
13 department of human resources development not less
14 than thirty days prior to the convening of the regular
15 session of 2005; and
16 (2) Department of budget and finance, department of the
17 attorney general, department of health, and department
18 of human services not less than thirty days prior to
19 the convening of the regular session of 2006.
20 SECTION 43. The working group on interagency relations
21 shall cease to exist on June 30, ~~2007~~ 2008. Prior to its
22 termination, the interagency working group will issue a final

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1 report to the legislature not less than thirty days prior to the
2 convening of the regular session of 2008. The final report will
3 outline those measurable outcomes achieved and those which have
4 not been achieved along with recommendations to achieve those
5 outcomes.

6 SECTION 44. All the rights, powers, functions, duties, and
7 resources, excluding positions unless transferred under the
8 Supplementary Appropriations Act of 2004, of the department of
9 accounting and general services relating to school physical
10 plant operations and maintenance, including moneys in:

11 (1) The state educational facilities repair and
12 maintenance account; and

13 (2) The school physical plant operations and maintenance
14 account;

15 are transferred to the department of education effective
16 July 1, 2004 based on the timetable set forth by the
17 interagency working group, but no later than July 1, 2005.

18 SECTION 45. All the rights, powers, functions, duties, and
19 personnel relating to the Hawaii 3R's school repair and
20 maintenance fund, are transferred to the department of education
21 effective July 1, [2004] 2005.

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1 SECTION 46. (a) All the rights, powers, functions,
2 duties, and resources of:

3 (1) The department of accounting and general services
4 relating to capital improvement programs, including
5 the:

6 (A) Expending of capital improvement funds for the
7 acquisition and development of land, the design
8 and construction of new facilities, and the
9 making of renovations or additions to existing
10 facilities, including moneys in the state
11 educational facilities improvement special fund;
12 and

13 (B) Buying, purchasing, renting, leasing, or
14 otherwise acquiring of any good, service, or
15 construction, including the description of
16 requirements, selection and solicitation of
17 sources, preparation and awarding of contracts,
18 payment of vendors, and all other phases of
19 contract administration;

20 (2) The department of accounting and general services
21 relating to repair and maintenance functions not

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1 transferred to the department of education under
2 section 44 of this Act; and

3 (3) The department of human resources development relating
4 to the:

5 (A) Operation of a centralized human resources system
6 that encompasses the classes of work performed by
7 department of education employees, and that
8 integrates payroll, records, transactions,
9 leaves, and reports; and

10 (B) Recruitment, certification, examination,
11 management, classification, and compensation of
12 department of education employees, including
13 labor relations;

14 are transferred to the department of education effective
15 July 1, 2005 based on the timetable set forth by the
16 interagency working group, but no later than July 1, 2005.
17 subject to repeal by subsequent legislation.

18 (b) All moneys budgeted in support of each position to be
19 transferred to the department of education, including moneys for
20 direct and indirect employee benefits, are transferred to the
21 department of education effective July 1, 2005 based on the
22 timetable set forth by the interagency working group, but no

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1 later than July 1, 2005, subject to repeal by subsequent
2 legislation.

3 SECTION 47. (a) All the rights, powers, functions,
4 duties, and resources of:

5 (1) The department of budget and finance relating to the
6 (A) Funding of collective bargaining agreement
7 increases; and

8 (B) Securing, administering, use, and expending of
9 federal funds and other aid, including their
10 custodial supervision;

11 (2) The department of the attorney general relating to:
12 (A) The negotiating of workers' compensation claims
13 and

14 (B) Labor-management relations within the department
15 of education;

16 (3) The department of human services relating to the
17 conducting of employment background checks for the
18 after-school plus program, private vendors, and other
19 employees and trainees who work with public school
20 students; and

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1 (4) The department of health relating to school health
2 aides and public health nurses who supervise school
3 health aides;
4 are transferred to the department of education effective July 1,
5 2006, subject to repeal by subsequent legislation.
6 (b) All moneys budgeted in support of each position to be
7 transferred to the department of education, including moneys for
8 direct and indirect employee benefits, are transferred to the
9 department of education effective July 1, 2006, subject to
10 repeal by subsequent legislation.
11 SECTION 48. All resources, appropriations, records,
12 equipment, databases, software, programming, machines, files,
13 supplies, contracts, books, papers, documents, maps, and other
14 personal property heretofore made, used, acquired, or held by
15 the department of accounting and general services, department of
16 budget and finance, department of human services, and department
17 of health relating to the functions transferred to the
18 department of education shall be transferred with the functions
19 to which they relate.
20 SECTION 49. No later than July 1, 2005, the board of
21 education shall adopt a single school calendar for all public
22 schools beginning with the 2006-2007 school year, provided that

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1 ~~repair and maintenance requirements and overall repair and~~
2 ~~maintenance priorities.~~
3 ~~2. By amending subsections (c), (f), and (g) to read:~~
4 ~~“(c) The expenditure of funds for any project with an~~
5 ~~estimated total cost of less than \$100,000 shall be exempt from~~
6 ~~chapter 103D and section 464-4, provided that:~~
7 ~~“(1) The (comptroller) superintendent of education shall~~
8 ~~develop internal policies and procedures for the~~
9 ~~procurement of goods, services, and construction,~~
10 ~~consistent with the goals of public accountability and~~
11 ~~public procurement practices, but not subject to~~
12 ~~chapter 103D. However, where possible, the~~
13 ~~(comptroller) superintendent of education is~~
14 ~~encouraged to use the provisions of chapter 103D,~~
15 ~~provided that the use of one or more provisions of~~
16 ~~chapter 103D shall not constitute a waiver of the~~
17 ~~exemption of chapter 103D and shall not subject the~~
18 ~~(comptroller) superintendent of education to any other~~
19 ~~provision of chapter 103D;~~
20 ~~“(2) Insofar as is practical, and based on specifications~~
21 ~~developed, adequate and reasonable competition of no~~
22 ~~fewer than three proposals shall be solicited for each~~

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1 this section shall not apply to multi-track schools, new century
2 charter schools, and new century conversion charter schools.
3 [SECTION 50, Section 36-35, Hawaii Revised Statutes, is
4 amended as follows:
5 “1. By amending subsections (c) and (b) to read:
6 “(c) There is created in the state general fund under (AGS
7 807 (physical plant operations and maintenance)) EDN 100 (school
8 based budgeting) the state educational facilities repair and
9 maintenance account, into which shall be deposited legislative
10 appropriations to the account designated for use solely to
11 eliminate the backlog of school repair and maintenance projects,
12 including the repair or replacement of fixtures, furnishings,
13 and equipment, existing on June 30, 2000. Expenditures from the
14 account shall be subject to sections 37-31 and 37-32 to 37-40.
15 Based on the prioritization approved by the department of
16 education as prescribed by section 305A-1505, appropriations or
17 authorizations from the account shall be expended by the
18 (comptroller,) superintendent of education.
19 “(b) The department of education, with the assistance of
20 the department of accounting and general services, shall review
21 the existing condition of school facilities and establish
22 specific vision plans for each school complex based on current

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1 project, based on rules adopted by the (comptroller,)
2 superintendent of education;
3 “(2) Considering all factors, including quality, warranty,
4 and delivery, the award shall be made to the vendor
5 with the most advantageous proposal;
6 “(4) The procurement requirements shall not be artificially
7 divided or parceled so as to avoid competitive bidding
8 or competitive proposals; and
9 “(5) Formal design for projects shall be done when there is
10 a clear need to preserve structural integrity, health
11 and safety, or to clearly communicate construction
12 requirements.
13 For all projects, the (comptroller) superintendent of
14 education shall develop a strategy for the efficient and
15 cost-effective use of government and private sector workforces
16 and consider increased flexibility through public-private
17 partnering, design-build options, cost-plus, job order
18 contracts, performance-based contracts, request for proposals,
19 and any other means to improve communications and accelerate
20 repairs while preserving the quality of the repairs.
21 “(f) The (comptroller) superintendent of education shall
22 ensure that all repair and maintenance projects achieve maximum

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1 cost-efficiency by emphasizing functional or performance
 2 criteria, uniformity of design, and commonality of products, and
 3 by avoiding unique or custom requirements that increase costs.
 4 The ~~(comptroller) superintendent of education~~ shall develop
 5 project specifications based on generic specifications or
 6 prescriptive specifications using standard commercial products.
 7 Prescriptive specifications may include a qualified product
 8 list.
 9 ~~For the purposes of this subsection:~~
 10 ~~"Generic specification" means a technical specification~~
 11 ~~that is written in a clear, unambiguous, and nonrestrictive~~
 12 ~~manner establishing:~~
 13 ~~(1) Design, performance, or functional requirements to~~
 14 ~~identify the work to be performed, and~~
 15 ~~(2) Material standards to be used on a project.~~
 16 ~~"Prescriptive specification" means a technical~~
 17 ~~specification:~~
 18 ~~(1) Establishing that the required work to be performed is~~
 19 ~~written in a clear, unambiguous, and nonrestrictive~~
 20 ~~manner; and~~
 21 ~~(2) Listing manufacturers or products that are acceptable~~
 22 ~~for use on the project.~~

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1 account, into which shall be deposited all legislative
 2 appropriations to the account.
 3 ~~The moneys in the account shall be used solely for school~~
 4 ~~repairs and preventive maintenance projects scheduled after~~
 5 ~~June 30, 2001. Expenditures from the account shall be subject~~
 6 ~~to sections 37-21 and 37-33 to 37-40. Based on the~~
 7 ~~prioritization approved by the department of education as~~
 8 ~~prescribed by section 102A-1505, appropriations or~~
 9 ~~authorizations from the account shall be expended by the~~
 10 ~~(comptroller) superintendent of education."~~
 11 ~~3. By amending subsections (d) and (e) to read:~~
 12 ~~"(d) The expenditure of funds made under this act for any~~
 13 ~~project with an estimated total cost of less than \$100,000 shall~~
 14 ~~be exempt from chapter 103D and section 44-4, provided that:~~
 15 ~~(1) The (comptroller) superintendent of education shall~~
 16 ~~develop internal policies and procedures for the~~
 17 ~~procurement of goods, services, and construction,~~
 18 ~~consistent with the goals of public accountability and~~
 19 ~~public procurement practices, but not subject to~~
 20 ~~chapter 103D. However, where possible, the~~
 21 ~~(comptroller) superintendent of education is~~
 22 ~~encouraged to use the provisions of chapter 103D;~~

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1 ~~"Standard commercial product" means a product or material~~
 2 ~~that in the normal course of business is customarily maintained~~
 3 ~~in stock by, or readily available for marketing from a~~
 4 ~~manufacturer, distributor, or dealer.~~
 5 ~~This subsection shall not apply to any school facility~~
 6 ~~designated a historic property pursuant to section 45-5.5.~~
 7 ~~(g) The (comptroller) superintendent of education shall~~
 8 ~~submit an annual report to the legislature, which shall include~~
 9 ~~a financial statement of the account and the status of repair~~
 10 ~~and maintenance projects undertaken pursuant to this section, no~~
 11 ~~later than twenty days prior to the convening of each regular~~
 12 ~~session. Expenditures for repair and maintenance projects~~
 13 ~~undertaken pursuant to this section shall be posted~~
 14 ~~electronically on the Internet by the department of (accounting~~
 15 ~~and general services) education within thirty days of each~~
 16 ~~project's completion."~~
 17 ~~SECTION 51. Section 36-36, Hawaii Revised Statutes, is~~
 18 ~~amended as follows:~~
 19 ~~1. By amending subsection (a) to read:~~
 20 ~~"(a) There is created in the state general fund under (AGS~~
 21 ~~807 (physical plant operations and maintenance)) EDN 400 (school~~
 22 ~~support) the school physical plant operations and maintenance~~

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1 ~~provided that the use of one or more provisions of~~
 2 ~~chapter 103D shall not constitute a waiver of the~~
 3 ~~exemption of chapter 103D and shall not subject the~~
 4 ~~(comptroller) superintendent of education to any other~~
 5 ~~provision of chapter 103D;~~
 6 ~~(2) Insofar as is practical, and based on specifications~~
 7 ~~developed, adequate and reasonable competition of no~~
 8 ~~fewer than three quotations shall be solicited for~~
 9 ~~each project based on rules adopted by the~~
 10 ~~(comptroller) superintendent of education;~~
 11 ~~(3) Considering all factors, including quality, warranty,~~
 12 ~~and delivery, the award shall be made to the vendor~~
 13 ~~with the most advantageous quotation;~~
 14 ~~(4) The procurement requirements shall not be artificially~~
 15 ~~divided or parceled so as to avoid competitive bidding~~
 16 ~~or competitive proposals; and~~
 17 ~~(5) Formal design for projects shall be done when there is~~
 18 ~~a clear need to preserve structural integrity, health~~
 19 ~~and safety, or to clearly communicate construction~~
 20 ~~requirements.~~
 21 ~~(c) The (comptroller) superintendent of education shall~~
 22 ~~submit an annual report to the legislature, which shall include~~

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~~a financial statement of the account and the status of school repair and preventive maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. The department of accounting and general services, education shall post the following reports electronically on the Internet and update them quarterly.~~

~~(1) Expenditures for school repair and preventive maintenance projects undertaken pursuant to this section, shall be posted within thirty days of each project's completion; and~~

~~(2) A list of each school's repair and maintenance needs to be undertaken.]~~

SECTION [52] 50. Section 37-41.5, Hawaii Revised Statutes, is amended to read as follows:

*37-41.5 Department of education; carryover of funds.

(a) The department of education may retain up to five per cent of any appropriation, except for appropriations to fund financing agreements entered into in accordance with chapter 37D, ~~[for the school-based budgeting program EDN-100 and for the comprehensive school support services program EDN-150]~~ at the close of a fiscal year and the funds retained shall not lapse

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until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

(1) A report to the director of finance ninety days after the close of each fiscal year, which shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds that will carry over to the next fiscal year; and

(2) A copy of this report to the legislature, as well as a report identifying the carryover of funds on a school-by-school basis, at least twenty days prior to the convening of the next regular session of the legislature.

~~(4b) Any appropriation retained in accordance with this section shall be used exclusively for the school-based budgeting program EDN-100 and the comprehensive school support services program EDN-150, and of those appropriations] (b)~~

Appropriations allocated to the schools ~~(-funds)~~ shall remain within the budget of the school to which they were originally allocated; provided that the retention of an appropriation shall not be used by the department as a basis for reducing a school's future budget requirements."

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SECTION [52] 51. Section 37-74, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:

(1) Authorized transfers or changes, when made, shall be reported to the legislature;

(2) Except with respect to appropriations to fund financing agreements under chapter 37D, the University of Hawaii shall have the flexibility to transfer appropriated funds and positions for the operating cost category among programs, among cost elements in a program, and between quarters, as applicable; except with respect to appropriations to fund financing agreements under chapter 37D, the department of education shall have the flexibility to transfer appropriated funds and positions for the operating cost category among programs and among cost elements in a program, and between quarters, as applicable; and the Hawaii health systems corporation shall have the flexibility to transfer special fund appropriations among community hospitals facilities as applicable;

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provided that the Hawaii health systems corporation shall maintain the integrity and services of each individual facility and shall not transfer appropriations out of any facility that would result in a reduction of services offered by the facility, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and

(3) The university and the department of education shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer."

SECTION [54] 52. Section 302A-1502.4, Hawaii Revised Statutes, is amended by amending subsection (q) to read as follows:

"(q) The ~~[state comptroller]~~ superintendent of education shall submit an annual report of the progress of the Hawaii 3R's school repair and maintenance fund no later than twenty days

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1 prior to the convening of each regular session of the
2 legislature."

3 PART IX
4 EDUCATIONAL ACCOUNTABILITY

5 SECTION [§§] 53. As a result of the passage of Act 235,
6 Session Laws of Hawaii 2000, a report was conducted by The
7 Accord Group, LLC. This report synthesized input from a wide
8 variety of stakeholders throughout the State and was designed to
9 ascertain "what the State of Hawaii - from the top of the system
10 to the bottom - must do to hold 183,000 students, and 260+
11 schools accountable, and what kinds of 'public accounting' must
12 be done by the Board of Education, District and State Offices of
13 the Board of Education, the Governor, parents, the business
14 community, the Legislature, and other key stakeholders in the
15 overall system."

16 The collaborative fact-finding process found agreement
17 among the stakeholders on three primary goals that the public
18 educational system should foster among students: academic
19 achievement, safety and well being, and civic responsibility.
20 Specific performance and competency indicators in these areas
21 remain somewhat difficult to formulate, as the proxies used to
22 measure success in these broad areas must be valid and broadly

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1 accepted by the major stakeholders. Nevertheless, the prompt
2 development of such indicators remains critical to the ongoing
3 implementation of a comprehensive and systematic educational
4 accountability system that is straightforward and easily tracked
5 over time.

6 Areas in which performance and competency indicators in
7 academic achievement should be developed include such laudable
8 goals as:

9 (1) Achieving reading proficiency by the end of third
10 grade;

11 (2) Developing personalized education plans for each
12 student;

13 (3) Teaching students the ability to think critically; and
14 (4) Producing graduates who do not need remediation.

15 Similarly, safety and well being could be measured by
16 proxies such as:

17 (1) Attendance;

18 (2) Comprehensive student support system plans in place to
19 support each student with a personalized classroom
20 climate, differentiated classroom practices, family
21 involvement, early intervention, support for
22 transitions between grades, community outreach and

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1 support, and specialized assistance and crisis or
2 emergency support; and

3 (3) Disciplinary offenses as provided by the board of
4 education administrative rules.

5 The third area identified in the Accord Group report, civic
6 responsibility, is the most abstract and difficult to measure.
7 General concepts that should be addressed include:

8 (1) Knowledge of the fundamental processes of American
9 democracy;

10 (2) Skills necessary to actively engage in a democratic
11 society;

12 (3) Understanding and awareness of community and global
13 issues;

14 (4) Respect for self and others and ability to work
15 together as part of a team; and

16 (5) Participation in school and community organizations.

17 The legislature finds that the indicators for programmatic
18 and fiscal accountability that are used should be made available
19 annually to the governor, legislature, board of education,
20 parents, and general public in a format that is easy to
21 comprehend. The department of education shall report trend data
22 as such data becomes available.

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1 Measures in existence on the effective date of this Act
2 shall be reported to the legislature and the governor no later
3 than twenty days prior to the convening of each regular session.
4 New measures to be developed by the department of education
5 shall be reported no later than twenty days prior to the
6 convening of each regular session thereafter. The department of
7 education shall report trend data as such data becomes
8 available.

9 The purpose of this part is to:

10 (1) Assess and track the academic achievement, safety and
11 well being, and civic responsibility of individual
12 students;

13 (2) Adding fiscal provisions to accountability statutes;

14 (3) Adding provisions to hold complex area superintendents
15 and principals accountable; and

16 (4) Requiring the department of education to report back
17 the legislature no later than twenty days prior to the
18 2005 regular session regarding specific performance
19 and competency indicators that should be used to
20 measure academic achievement, safety and well being,
21 and civic responsibility among students.

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1 SECTION ~~[46]~~ 54. Section 302A-1004, Hawaii Revised
2 Statutes, is amended to read as follows:
3 "§302A-1004 Educational accountability system; annual
4 reports. (a) The department shall implement a comprehensive
5 system of educational accountability to motivate and support the
6 improved performance of students and the education system. This
7 accountability system shall:
8 (1) Include student accountability; school or collective
9 ~~(professional)~~ accountability; individual professional
10 accountability for teachers, principals, and other
11 employees; and public accounting ~~(for other~~
12 ~~significant partners to the education process~~
13 ~~(including, but not limited to,)~~ to parents, community
14 members, businesses, higher education, media, and
15 political leadership~~);~~;
16 (2) Link authority and ~~(adequate)~~ resources to
17 responsibility;
18 (3) Define clear roles for all parties and lines of
19 responsibility and mutual obligation and develop a
20 collaborative process with stakeholders, including
21 representatives of appropriate bargaining units,
22 parents, administration, and students;

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1 ~~(b) An annual assessment in core subjects for each~~
2 ~~grade level, as conducted by each school,~~
3 ~~(7) involve a comprehensive school profile or report card~~
4 ~~for each school, which shall include, but not be~~
5 ~~limited to, student performance measures, school~~
6 ~~attendance, drop-out rates, and parental involvement.~~
7 ~~These reports shall be made available annually to the~~
8 ~~board, the governor, the legislature, the parents, and~~
9 ~~the general public.~~
10 (6) involve an annual statewide assessment program that
11 provides a report card containing trend data on
12 school, school complex, and system performance at
13 selected benchmark grade levels with performance
14 indicators in areas relating to student achievement,
15 safety and well being, and civic responsibility.
16 These performance indicators shall include but not be
17 limited to:
18 (A) Student performance relative to statewide content
19 and performance standards; and
20 (B) School attendance and drop-out rates;
21 ~~(48)~~ (7) Require that teachers and administrators engage
22 in the continuous professional growth and development

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1 ~~(4) (involve fair and adequate assessment against agreed~~
2 ~~upon goals.) Assess and track measures of academic~~
3 ~~achievement, safety and well being, and civic~~
4 ~~responsibility of individual students at selected~~
5 ~~grade levels and report trend data on these measures~~
6 ~~over time annually;~~
7 (5) Invoke a full and balanced set of appropriate
8 consequences for observed performance, including
9 rewards and recognition for those schools that meet or
10 exceed their goals, assistance to those that fall
11 short, and sanctions for those that, given adequate
12 assistance and ample time, continue to fail to meet
13 goals;
14 ~~(46) involve.~~
15 ~~(7) A statewide student assessment program that~~
16 ~~provides annual data on student, school, and~~
17 ~~system performance at selected benchmark grade~~
18 ~~levels in terms of student performance relative~~
19 ~~to statewide content and performance standards~~
20 ~~and embodies high and rigorous expectations for~~
21 ~~the attainment of all students; and~~

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1 that ensure their currency with respect to
2 disciplinary content, leadership skill, knowledge, or
3 pedagogical skill, as appropriate to their position.
4 This requirement may be established by the department
5 in terms of credit hours earned or their equivalent in
6 professional development activity certified by the
7 department as appropriate in focus and rigor; ~~(and)~~
8 ~~(49)~~ (8) Establish an explicit link between professional
9 evaluation results and individual accountability
10 through professional development of the knowledge,
11 skill, and professional behavior necessary to the
12 position, by requiring that results of the
13 professional evaluation be used by the department to
14 prescribe professional development focus and content,
15 as appropriate[.]
16 (9) Include an annual statewide fiscal accountability
17 program, which includes a published report card that
18 contains trend data on school, school complex, and
19 system-wide plans and results, including:
20 (A) Amounts allocated;
21 (B) Amounts expended;
22 (C) Amounts carried over; and

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1 (D) Any significant changes to the budget, with an
 2 explanation for the change;
 3 (10) Include an evaluation of the effectiveness of complex
 4 area superintendents and principals in supporting;
 5 (A) Students' academic achievement, safety and well
 6 being, and civic responsibility; and
 7 (B) The satisfaction of stakeholders affected by the
 8 work of the complex area superintendents and
 9 principals, which may be measured by broadbased
 10 surveys; and
 11 (C) Fiscal accountability.
 12 [Beginning with the 2001-2002 school year, the] (b) The
 13 department shall submit to the legislature, the governor, and
 14 the board of education at least twenty days prior to the
 15 convening of each regular legislative session a report of the
 16 specifics of the ~~(decision)~~ implementation of the comprehensive
 17 accountability system, as well as the fiscal requirements and
 18 legislative actions necessary to ~~(create)~~ maintain and improve
 19 the accountability system.
 20 ~~(4b)~~ (c) The department shall submit to the legislature
 21 and to the governor, at least twenty days prior to the convening

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1 (1) The financial analysis of expenditures by the
 2 department with respect to the following areas:
 3 (A) Instruction, including face-to-face teaching, and
 4 classroom materials;
 5 (B) Instructional support, including pupil, teacher,
 6 and program support;
 7 (C) Operations, including non-instructional pupil
 8 services, facilities, and business services;
 9 (D) Other commitments, including contingencies,
 10 capital improvement projects, out-of-district
 11 obligations, and legal obligations; and
 12 (E) Leadership, including school management, program
 13 and operations management, and district
 14 management; and
 15 (2) The measures of accuracy, efficiency, and productivity
 16 of the department, districts, and schools in
 17 delivering resources to the classroom and the student.
 18 ~~(4d)~~ (e) The superintendent of education is responsible
 19 for the development and implementation of an educational
 20 accountability system. The system shall include consequences
 21 and shall be designed through a collaborative process involving
 22 stakeholders that shall include parents, community members, the

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1 of each regular ~~(legislative)~~ session, an educational status
 2 report that includes but is not limited to the following:
 3 (1) Results of school-by-school assessments of educational
 4 outcomes;
 5 (2) Summaries of each school's standards implementation
 6 design;
 7 (3) Summary descriptions of the demographic makeup of the
 8 schools, with indications of the range of these
 9 conditions among schools within Hawaii;
 10 (4) Comparisons of conditions affecting Hawaii's schools
 11 with the conditions of schools in other states; ~~(and)~~
 12 (5) Other such assessments as may be deemed appropriate by
 13 the board~~(-)~~; and
 14 (6) Any other reports required by this section.
 15 ~~(4e)~~ (d) The department shall provide electronic access
 16 to computer-based financial management, student information, and
 17 other information systems to the legislature and the auditor.
 18 The department shall submit to the legislature and to the
 19 governor, at least twenty days prior to the convening of each
 20 ~~(legislative)~~ regular session, a school-by-school expenditure
 21 report that includes but is not limited to the following:

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1 respective exclusive representatives, as well as others deemed
 2 appropriate by the superintendent.
 3 For the purposes of this section, negotiations under
 4 chapter 89 shall be between the superintendent or the
 5 superintendent's designee and the respective exclusive
 6 representative, and shall be limited to the impact on personnel
 7 arising from the superintendent's decision in implementing the
 8 educational accountability system. After the initial agreement
 9 is negotiated, provisions on the impact of the accountability on
 10 personnel may be reopened only upon mutual agreement of the
 11 parties.
 12 SECTION ~~[57]~~ 55. Section 302A-1301, Hawaii Revised
 13 Statutes, is amended to read as follows:
 14 ~~"(4) §302A-1301(4) School system financial accountability.~~
 15 (a) Beginning with the 1995-1997 fiscal biennium, the
 16 department's administrative expenditures shall not exceed 6.5
 17 per cent of the total department operating budget unless
 18 approved by the legislature.
 19 ~~(4b) The department shall not transfer any funds~~
 20 ~~appropriated under the school-based budgeting program EDN-100 of~~
 21 ~~the state budget, except for unforeseeable circumstances that~~
 22 ~~pose a threat to the health and safety of personnel and~~

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1 ~~students, and subject to approval by the governor and~~
2 ~~notification to the legislature.]~~
3 (b) ~~Of the total department budget, including federal~~
4 ~~funds, but excluding debt service and capital improvement~~
5 ~~programs:~~
6 (1) ~~No later than the 2005-2006 school year, at least~~
7 ~~seventy per cent shall be controlled by the individual~~
8 ~~schools principals;~~
9 (2) ~~No later than the 2006-2007 school year, at least~~
10 ~~eighty per cent shall be controlled by the individual~~
11 ~~schools principals; and~~
12 (3) ~~No later than the 2007-2008 school year, at least~~
13 ~~ninety per cent shall be controlled by the individual~~
14 ~~schools principals;~~
15 ~~(Not less than seventy per cent of appropriations, for the~~
16 ~~total budget of the department, excluding debt service and~~
17 ~~capital improvement programs, shall be expended) by~~
18 ~~principals.]~~
19 SECTION [56] 56. Chapter 302A, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:
22 "§302A- Board of education; community meetings. The
23 board shall hold not less than two community meetings annually

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1 in each departmental school district in addition to their
2 regular meetings to discuss and receive input from the community
3 on public education and public library issues. The board
4 chairperson shall designate board members to attend the
5 community meetings. These community meetings shall not be held
6 for the purpose of formulating educational policy. The
7 community meetings shall be exempt from sections 92-2.5, 92-7,
8 92-9, and 92-41, provided that the board shall give written
9 public notice of each community meeting. The meeting notice
10 shall indicate the date, time, and place of the meeting, and
11 shall be filed in the office of the lieutenant governor and in
12 the board's office for public inspection six calendar days
13 before the meeting. The notice shall also be posted at the site
14 of the meeting.

PART X

PILOT

17 SECTION [59] 57. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$400,000, or so much
19 thereof as may be necessary for fiscal year 2004-2005, for the
20 piloting of school community councils and development of
21 academic and financial plans at selected public schools prior to
22 the statewide implementation of the weighted student formula.

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1 SECTION [60] 58. The sum appropriated shall be expended by
2 the department of education for the purposes of this Act.

PART XI

FINDINGS AND RECOMMENDATIONS

5 SECTION [64] 59. The department of education shall submit
6 findings and recommendations to the legislature no later than
7 twenty days prior to the convening of the regular session of
8 2005 including:

- 9 (1) A report regarding progress made in and the impact on
the public education system of:
 - 10 (A) Establishing a weighted student formula;
 - 11 (B) Providing additional information technology;
 - 12 (C) Empowering principals through the Hawaii
13 principals academy and other means;
 - 14 (D) Strengthening community involvement through
15 school community councils and parent-community
16 networking centers;
 - 17 (E) Providing more mathematics textbooks;
 - 18 (F) Lowering class size in kindergarten, grade one,
19 and grade two;
 - 20 (G) Providing full-time, year-round, high school
21 student activity coordinators;
 - 22

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- 1 (H) Providing support for students who need
2 additional help to succeed in school;
- 3 (I) Establishing a national board certification
4 incentive program for teachers;
- 5 (J) Enhancing teacher education;
- 6 (K) Reducing the bureaucracy that hampers the
7 effectiveness of the department of education;
- 8 (L) Improving the educational accountability system;
9 and
- 10 (M) Requiring the board of education members to hold
11 community meetings in their districts; and
- 12 (2) A list of statutes, rules, policies, or procedures
13 that need to be amended, removed, or enacted to enable
14 the effective implementation of the weighted student
15 formula, performance-based contracts for principals,
16 ~~implementation of~~ school community councils, and
17 ~~enhancement of~~ transparency in financial reporting;
18 and
- 19 (3) A list of programs recommended to be repealed to
20 enable the department and individual schools to have
21 greater flexibility in budgeting, operations, and
22 curriculum management.

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1 PART XII
2 MISCELLANEOUS
3 SECTION 60. Section 302A-1182, Hawaii Revised Statutes
4 is amended by amending subsection (a) to read as follows:
5 (a) Up to a total of ~~[twenty-three]~~ thirty-five schools may be
6 established as new century charter schools. These new century
7 charter schools may be established by:
8 (1) The creation of a new school; or
9 (2) The creation of a new school, comprising programs or
10 sections of existing public school populations and
11 using existing public school facilities, pursuant to
12 subsection (b).
13 SECTION ~~[62]~~ 61. For the purposes of this Act, any
14 appropriation made for public schools shall ~~include~~ include
15 new century charter schools and new century conversion charter
16 schools unless otherwise ~~included~~ excluded.
17 SECTION ~~[63]~~ 62. In the event of a conflict between this
18 Act and section 89-10(d) or 89-19, Hawaii Revised Statutes, this
19 Act shall control.
20 SECTION ~~[64]~~ 63. The sums appropriated by this Act for
21 fiscal year 2004-2005 shall be deemed part of the Supplemental
22 Appropriations Act of 2004 for the department of education and

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1 University of Hawaii for the purposes of developing and
2 submitting the executive budget request for the biennium budget
3 for fiscal years 2005-2006 and 2006-2007, except for the
4 one-time supplemental appropriation for mathematics textbooks
5 and mathematics learning materials in schools made in section 35
6 of this Act. The department of budget and finance shall
7 consider the sums appropriated by this Act as if appropriated in
8 the Supplemental Appropriations Act of 2004, except for the
9 one-time supplemental appropriation for mathematics textbooks
10 and mathematics learning materials in schools made in section 34
11 of this Act.
12 The legislative reference bureau shall conduct a study to
13 determine conforming amendments to the Hawaii Revised Statutes
14 that may be necessary as a result of the amended definition of
15 'public school' in section 5, to effectuate the purposes of this
16 Act without altering either the effect or intent of existing
17 statutory language.
18 SECTION ~~[65]~~ 64. The legislative reference bureau shall
19 submit its findings, including any proposed legislation, to the
20 legislature no later than twenty days prior to the convening of
21 the regular session of 2005.

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1 SECTION ~~[66]~~ 65. Statutory material to be repealed is
2 bracketed and stricken. New statutory material is underscored.
3 SECTION ~~[67]~~ 66. This Act shall take effect upon its
4 approval, provided that:
5 (1) Sections 7, 8, 10, 11, 15, 17, 18, 32, 33, 35, 36, 39,
6 40, 50, 51, 52, ~~[53, 54, 59]~~ 57, and ~~[60]~~ 58 shall
7 take effect on July 1, 2004;
8 (2) Sections 2, 3, 4, 5, 6, 13, 16, 21, 22, 23, 24, 25,
9 26, 27, 28, 29, 30, 31, 38, and 55 shall take effect
10 on July 1, 2005, and shall apply to the 2005-2006
11 school year.
12 ~~[(3) Sections 3, 4, 6, 27, 28, 29, and 57 shall take effect~~
13 ~~on July 1, 2006, and shall apply to the 2006-2007 school year.]~~

This section left blank.

Representative Saiki moved to override the veto of S.B. No. 3238, SD 2, HD 2, CD 1, as contained in Gov. Msg. No. 213, seconded by Representative Ito.

At 9:07 o'clock p.m., Representative Ontai requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:11 o'clock p.m.

The Chair then announced:

"A motion has been made to override Senate Bill Number 3238 Senate Draft 2, House Draft 2, Conference Draft 1 as contained in Governor's Message Number 213. Any discussion?"

Representative Halford rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I will be voting to sustain the veto. In that regard, may I comment on this? I'd like to incorporate the remarks that I made on Final Reading and insert them in the Journal with this speech now," and the Chair "so ordered." (By reference only.)

Representative Halford continued, stating:

"Mr. Speaker, in that Final Reading, when I spoke on Final Reading, I spoke in favor of the bill. I acknowledged that this was by no means great reform, but I was hopeful that this might be a better bill. That this bill might have some small improvements to our existing education system. And so I voted yes.

"Mr. Speaker, the Governor was very clear, presented a very good message explaining why this bill is insufficient. And if we get an amendment tonight to improve, to make an improvement, then I will say the veto has served us very well. Thank you."

Representative Takumi rose to speak in support of the motion to override, stating:

"Thank you very much, Mr. Speaker. I stand in support of the override.

"Mr. Speaker, when Governor Lingle vetoed Senate Bill 3238, the Reinventing Education Act of 2004, she described it as a 'soft veto'. But whether it was soft or hard, in their sense, the Governor is saying that no reform was better than what was embodied in the bill. I disagree.

"As drafted, Senate Bill 3238 is the most significant education reform measure adopted in Hawaii in the last 30 years. It represents a sustained commitment to improve student achievement.

"We firmly believe that Senate Bill 3238 does and will reinvent our public education system. The main features of the measure, and I feel like I'm repeating myself because I think this is about the sixth time we've had debate on the Floor, but I think it's worthwhile to say what the main features are.

"It establishes a weighted student formula; empowers principals; provides for meaningful parent and community involvement in the direction and evaluation of their schools through new community councils; and moves to streamline and consolidate budget support, legal services, human resources, and facilities construction and repair for the public schools by giving the Department of Education autonomy in many areas

and many respects similar to that of the University. Also, it lowers class sizes in the critical early K-3rd grades. These are significant changes in the educational system, Mr. Speaker. And we've come a long way since we started this effort to reinvent education at the beginning of this Session.

"We've come to realize that greater community involvement and decentralization at the school level brings its own set of challenges. However, our approach, as reflected in Senate Bill 3238, puts the focus where it should be — at every school, in every community, without added layers of bureaucracy.

"Moreover, any change must proceed with the ultimate goal of making a positive difference in the lives of the 183,000 students who attend our public school system. I said this before and I'll say it again. It cannot be about polls. It cannot be politics. It cannot be about what sounds good or feels good. It must be about what is good. That is, what has the greatest potential to raise student achievement.

"So whether we do a soft or a hard override, I believe it makes good policy sense to pass this measure out. I believe that this bill is a result of putting policy over politics, resources over rhetoric, substance over slogans. I believe it has nothing to do with campaigns or elections, but everything to do about student achievement. It's about doing what's right. It's about doing it now. Thank you very much."

Representative Pendleton rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. Mr. Speaker, I rise in opposition to the override motion. I also vote obviously to stand with the Governor to sustain the veto.

"I think that we can do better. And I think that the Governor is correct in terms of her critique of the measure that we passed out.

"I did have one query, Mr. Speaker. In terms of procedure, do we all need to rise and state our no vote for the record? Or will you be calling on the Floor Leaders to take the vote, Mr. Speaker?"

The Chair responded, stating:

"Representative Pendleton, a roll call vote will be called on an override."

Representative Moses rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I'm voting to sustain the Governor's veto.

"Thank you, Mr. Speaker. I'd like my words incorporated from last time we discussed this measure on Final Reading," and the Chair "so ordered." (By reference only.)

Representative Moses continued, stating:

"But also, I just want to add that in the 'soft veto', what the Governor did do was spell out five major areas of concern. And she asked this Body to consider amending a bill and she provided the vehicle to use to make this bill a real meaningful education reform. And it was very simple for this Body to do that. And I'm very sorry we didn't. Thank you, Mr. Speaker."

Representative Thielen rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I'm rising in support of the Governor's veto and opposing the override of her veto.

"Mr. Speaker, the veto that was issued by the Governor did set out the five different factors that she wanted to see in a true education reform bill. The Chair of the Education Committee said that the existing bill, which you are trying to reinstate, didn't add bureaucracy. Well, obviously it did add bureaucracy. It added a whole 'nother layer of bureaucracy.

"A bill that would really be reform, Mr. Speaker, would enable the principals to be responsible for the development of their schools academic and financial plans. It would enable the school community councils to be advisory. But the principals should take the primary role in developing the academic and financial plans for their schools. And the bill that would really make reform happen would adopt a weighted student formula and implement it rather than waiting. It would help those schools that should be able to get more funding through the weighted student formula. And it would help them now if we were able to enact a bill that would really be true reform.

"We also could look at establishing performance contracts for principals where principals would be held accountable, but they would receive the training that would be necessary on this support system. So they wouldn't be cast out all on their own. But then they would be held accountable for student achievement. It's all about students learning, Mr. Speaker. It's all about student achievement. And unfortunately, through this override of the Governor's veto, we'll be putting a bill back into place that isn't really placing the students first. It's merely creating more bureaucracy and less accountability, less direct accountability.

"There's also the aspect that true education reform would place 90% of the funding, the budget within the school itself. And Mr. Speaker, unfortunately, that is really not even in existence in the bill that you're trying to reinstate. 70% is your basic cost anyway. So where you really make the difference is when you move from the 70% control up to the 90% control at the school level.

"Mr. Speaker, I would like to request that my remarks from the previous Third Reading bill be placed by reference in the Journal. And in opposition to this override of the Governor's veto.

"It troubles me so much. I became very emotional when I spoke that time but it troubles me so much that we're moving further and further away from helping the students. And probably the ones that are going to suffer the most from this are the ones in the rural districts. They probably are going to feel more abandoned by the added layers of bureaucracy and the less ability to really shape what is going to be going on in their schools. What is necessary for their schools. You know and I know, Mr. Speaker, it's very different. What you may need up out in Waianae versus what you may need in Downtown Honolulu. And it's different on the Windward side. Certainly different on the Neighbor Islands. The difficulty with bill that you're trying to reinstate is that those individual differences just aren't going to be able to be dealt with at the community level. We're not allowing Neighbor Islands to have their own Board of Education. We're not even allowing that to be put out for the voters to vote upon that. But we are adding more bureaucracy.

"So when the parents are saying, 'My child isn't learning. My child's falling behind. Who's responsible?' We then have it fixed that there is no accountability because you're going to have all the groups pointing at each other saying, it's their fault. And I have said before, there are four groups that are going to be named. School community council, it's your fault. Principal, it's your fault."

Representative Ching rose to yield her time, and the Chair, "so ordered."

Representative Thielen continued, stating:

"Thank you. And so the four groups, it's really five. It's School Community Councils that will be saying, it's not my fault. It's the principal's fault. It's the Department of Education's fault. And then my goodness, it's the Legislature's fault. So we are going to have ... And the principal is in there too."

The Chair interjected, stating:

"Representative Thielen, your comments are well taken. That was stated on Third Reading, as well as here."

Representative Thielen continued, stating:

"That's correct, but I think it's very important to bring it up again because what you're trying to do now is go back to that bill that doesn't call for student achievement and it just diffuses any responsibility for education reform. Mr. Speaker, it's sad. I mean, I'm a grandparent of a second grader in public school. And I know that her mother and I certainly do hope that she'll be able to go all the way through the public school system. But Mr. Speaker, we want that school system to work. And we want the teachers to be able to have the support that they need at the local level at the classroom. We don't want to have them now be dragged out to be in more committee hearings. I mean my goodness, what are they doing? They are struggling to be able to spend enough time in the classroom as it is. Now we've added a whole 'nother layer for them. So the teachers are going to be responsible to be in another group to go to meetings. All of this takes away from the basic role of the teachers should get the support that she or he needs to be able to teach in that classroom to be able to help their students to learn. All the rest of it should just be able to get out of the way so that teachers can do their jobs. The principal should be able to have the funding they need to buy the services, contract for the services that are appropriate for that individual school. But we're going far afield from that. We know that there are examples in Canada where the system works and student achievement has been really rising. We know that there is a way to deal with this but this bill that you are trying to reinstate doesn't do it.

"And Mr. Speaker, I don't know how I go back and say to a second grader, 'Well, just hang in there, maybe in 10, 15, 20 years. We'll be able to reform the school district.' We've set up two classes of students. One where the parents have struggled to spend the money to send them to parochial or private schools, and they are voting with their pocketbooks. Hard as it is and difficult as it is. And they are sending their kids to parochial or private school. And if you look around in this Body and you know how many of you are in here that are either doing that or have done it, it's very telling.

"And then we have the other group who are staying with the public school system, some because they believe they want their students to be there, others because they don't have that financial option to make the change. That's wrong, Mr. Speaker. When you stop and look at the increase in our population but then if you look at the fact that the public school population, the student population has remained constant, something is telling. They've added children. They're there. But they're not in the public schools. And that's for the reason that we are not able to provide the education that we want for our students. This fake reform bill won't do it. Thank you."

Representative Takai rose to speak in support of the motion to override, stating:

"Thank you, Mr. Speaker. I rise in support of the override.

"Thank you. I've had a chance to take a look at the Governor's veto message and I'm terribly disappointed. First of all, I don't know what a 'soft veto' is. I mean a veto, is a veto, Mr. Speaker. And this veto sends a clear message to me and should send a clear message to us, that the Governor does not support our reform measure. And as we talked about it on Third Reading, this bill makes tremendous, tremendous progress and efforts towards reaching where we all want to go. The focus again is on the child and that teacher in the classroom. And if you take a look at our bill, part by part, everything in there should be something that everybody supports.

"In fact, Mr. Speaker, the previous speaker mentioned some things about students, and I'll tell you that over the past four months, we've worked with students. We've worked with the Hawaii State Student Council Leadership, and we've worked with the Hawaii State Student Conference Planners. Working with these students, working with the Hawaii State Teachers Association. And by the way, Mr. Speaker, we just got a message from them tonight saying that they support the override of this measure, the teachers. Working with the Hawaii Business Roundtable. Working with the Chamber of Commerce. Working with our teachers, principals, and our Superintendent. We've come this far. In fact Mr. Speaker, over the past ten years that I've had an opportunity to serve in this Body, I can tell you honestly that the past four months have been the toughest in my legislative career. And I think the Chairman of Education Committee, although he spent many hours on the prescription drug program, can probably say that that effort pales into comparison to the effort he put in this Session.

"If we go back to the beginning of Session, we take a look at the Governor's bill, House Bill 2331 and House Bill 2332, there are so many problems with those bills. Our bill when we first started, there were problems with it. But over the past four months, what we have today, Senate Bill 3238 is a much improved bill. And I think it moves, as a matter of fact, I know it moves our education system forward.

"So as we hear this debate about fake reform and moving backwards, and the Governor mentioning in her veto message that this bill contains flaws. I looked at this bill. I looked at her veto message. There are no flaws in this bill. There may be differences in terms of policy, but technically, this bill is solid. We have no excuses. We shouldn't be apologetic. I think after four months of working hard with the stakeholders across the State, we should stand proud and override this veto. Thank you, Mr. Speaker."

The Chair then stated:

"Members, we have had a lot of discussion on this particular measure on Third Reading. And the motion before this House is just the override of a measure that was vetoed by the Governor. So at this time the Chair will entertain any Member who wants to submit written comments in the Journal, for or against the override at this period in time."

Representative Ching rose in opposition to the motion to override and asked that the remarks of Representative Halford be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Tamayo rose in support of the motion to override and asked that the remarks of Representative Takumi be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Ontai rose in opposition to the motion to override, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ontai's written remarks are as follows:

"In opposition to the override motion. SB 3238 represents a weak attempt to reform an obsolete Department of Education system. As I stated in my objections when it left the Legislature on Final Reading, the bill itself demonstrates clearly what is fundamentally wrong with the education system in Hawaii. Besides minor tinkering with the status quo, the line item appropriations suggest that the Legislature from downtown Honolulu can tell all our 285 principals and administrators what to buy. Once these purchases are made, reform, supposedly, will be under way. Nonsense.

"Finally, whereas the Republican package wanted to allow voters to decide upon local elected school boards, this bill extends the weak site-based management model in place by changing the name of the SCBM (School-Community Based Management councils) to SCC (School Community Councils). The name change and tinkering with its authority will not change the results. In fact, the increased authority given to these councils may interfere with the Principals' efforts. Our model with local elected school boards would not involve such up close involvement with the professionals running the schools."

Representative Blundell rose in opposition to the motion to override and asked that the remarks of Representative Thielen be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Sonson rose in support of the motion to override and asked that the remarks of Representatives Takumi and Takai on Third Reading be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Kahikina rose in support of the motion to override and asked that the remarks of Representatives Takumi and Takai be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Saiki rose in support of the motion to override and asked that the remarks of Representatives Takai and Takumi be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Lee rose in support of the motion to override and asked that the remarks of Representatives Takai and Takumi be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Mindo rose in support of the motion to override and asked that the remarks of Representatives Takai and Takumi be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Roll call having been approved, the motion to override the veto of S.B. No. 3238, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," as contained in Gov. Msg. No. 213, was put to vote by the Chair and carried on the following show of Ayes and Noes:

Ayes, 36: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanoho, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Tamayo, Wakai and Waters.

Noes, 15: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

At 9:33 o'clock p.m., the Chair noted that the motion to override the veto of S.B. No. 3238, SD 2, HD 2, CD 1, as contained in Gov. Msg. No. 213, was carried.

At 9:33 o'clock p.m., Representative Saiki requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:34 o'clock p.m.

Gov. Msg. No. 218, informing the House that on April 30, 2004, H.B. No. 2743, HD 2, SD 1, CD 1, was line item vetoed with specific appropriation items stricken or reduced and her official statement of objections to those specific appropriation items contained in the bill, as follows:

"EXECUTIVE CHAMBERS
HONOLULU
April 30, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2743

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2743, entitled "A Bill for an Act Relating to Non-General Funds."

The stated purpose of this bill is to transfer moneys from certain special and revolving funds to the general fund, including setting up a mechanism to "automatically" take money out of the Tobacco Settlement Special Fund and the State Parking Revolving Fund at the end of each fiscal year.

This bill is a manifestation of the questionable financial practices that have plagued the State for too long. Using moneys out of special funds to pay for ongoing expenses, such as arbitrated pay raises, is further evidence that the State is living beyond its means. This is not unlike a family taking money out of the children's college fund or an IRA account to pay its grocery bills. This practice must cease if we are to ensure the State's long-term fiscal health and well-being.

While I believe this practice should not continue over the long term, I realize that without some use of these moneys, the biennium budget will remain out of balance. Of the transfers of money made by this bill, I object to the following transfers, because I believe that these transfers will most severely compromise the ability of the State to carry out legally mandated programs:

1. The \$800,000 transfer from the Animal Quarantine Special Fund to the general fund. While the Legislature determined that there was \$800,000 in excess of the requirements of this fund and authorized the deposit of that amount to the general fund, I believe that a reduction of that magnitude would deplete this fund by fiscal year 2006 and cause the quarantine operations to close down. The impact on the health of our community by this action cannot be overstated.

2. The \$900,000 transfer from the Agricultural Loan Reserve Fund to the general fund. While the Legislature determined that there was \$900,000 in excess of the requirements of this fund and authorized the deposit of that amount to the general fund, this action would cripple the Department of Agriculture's ability to provide loans to farmers in the event of natural disasters, such as the recent floods experienced on all islands.

3. The \$3,000,000 transfer from the Special Land and Development Fund to the general fund. While the Legislature determined that there was \$3 million in excess of the requirements of this fund and authorized the deposit of that amount to the general fund, taking this action would severely impact our ability to manage our parks, recreational, and conservation areas.

4. The \$12,500,000 transfer from the State Highway Fund to the general fund. This fund provides moneys critical to the repair and maintenance of our state highways. The recent flooding that has caused serious disrepair to our roadways is ample evidence of the need for these moneys. Additionally, money in this fund can be utilized to match federal highway dollars in a 20 percent to 80 percent ratio. Thus, taking \$12.5 million in highway funds is equivalent to the State losing \$50 million.

Section 5 of Article VII of the State Constitution provides that "[n]o public money shall be expended except pursuant to appropriations made by law." The removal of money from the special and revolving funds constitute expenditures of that money from those special and revolving funds and must be authorized by "appropriations made by law." While this bill uses the term "transfer" to authorize the removal of money out of various special and revolving funds, these authorizations to remove money by "transfers" are "appropriations made by law" within the requirement of Section 5 of Article VII of the State Constitution. Section 16 of Article III of the State Constitution provides that, "[e]xcept for items appropriated to be expended by the judicial and legislative branches, the governor may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same." Because of the foregoing objections, I have taken the following actions pursuant to my line item veto authority:

1. Stricken out the \$800,000 special fund appropriation out of the Animal Quarantine Special Fund on page 1, line 6 and changed it to \$0.

2. Stricken out the \$900,000 special fund appropriation out of the Agricultural Loan Reserve Fund on page 1, line 12 and changed it to \$0.

3. Stricken out the \$1,500,000 special fund appropriation out of the Special Land and Development Fund effective July 1, 2004 on page 5, line 15 and changed it to \$0.

4. Stricken out the \$1,500,000 special fund appropriation out of the Special Land and Development Fund, effective January 1, 2005, on page 6, line 1 and changed it to \$0.

5. Stricken out the \$11,000,000 special fund appropriation out of the State Highway Fund, effective January 1, 2004, on page 6, line 7 and changed it to \$0.

6. Stricken out the \$1,500,000 special fund appropriation out of the State Highway Fund, effective June 29, 2005, on page 6, line 13 and changed it to \$0.

For the foregoing reasons, I am returning House Bill No. 2743 with the special fund appropriations for fiscal year 2004-2005 set forth above, totaling \$17,200,000, stricken from the bill.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

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ORIGINAL

HOUSE OF REPRESENTATIVES
TWENTY-SECOND LEGISLATURE, 2004
STATE OF HAWAIIH.B. NO. 2743
H.D. 2
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO NON-GENERAL FUNDS.

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

PART I

SECTION 1. The legislature determines that there is in the animal quarantine special fund at least \$800,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the animal quarantine special fund to the general fund the sum of ~~\$800,000~~ ^{\$0.22} or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 2. The legislature determines that there is in the agricultural loan reserve fund at least \$900,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of ~~\$900,000~~ ^{\$0.22} or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 3. The legislature determines that there is in the stadium special fund at least \$600,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the stadium special fund

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Page 2

H.B. NO. 2743
H.D. 2
S.D. 1
C.D. 1

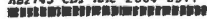
to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 4. The legislature determines that there is in the state motor pool revolving fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 5. The legislature determines that there is in the state identification revolving fund at least \$300,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 6. The legislature determines that there is in the medicaid investigations recovery fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005.

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Page 3

H.B. NO. 2743
H.D. 2
S.D. 1
C.D. 1

SECTION 7. The legislature determines that there is in the research subaccount of the tourism special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the research subaccount of the tourism special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 8. The legislature determines that there is in the foreign-trade zones special fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the foreign-trade zones special fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 9. The legislature determines that there is in the Aloha tower fund at least \$750,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the Aloha tower fund to the general fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 10. The legislature determines that there is in the Hawaii community development revolving fund at least \$10,000,000 in excess of the requirements of the fund. On

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Page 4

H.B. NO. 2743
H.D. 2
S.D. 1
C.D. 1

July 1, 2004, the director of finance is authorized to transfer from the Hawaii community development revolving fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 11. The legislature determines that there is in the dwelling unit revolving fund at least \$10,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 12. The legislature determines that there is in the human resources development special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the human resources development special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 13. The legislature determines that there is in the environmental response revolving fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the environmental response revolving fund to the general fund the

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Page 5

H.B. NO. 2743
H.D. 2
S.D. 1
C.D. 1

1 sum of \$500,000 or so much thereof as may be necessary for
2 fiscal year 2004-2005.
3 SECTION 14. The legislature determines that there is in
4 the environmental management special fund at least \$2,000,000 in
5 excess of the requirements of the fund. On July 1, 2004, the
6 director of finance is authorized to transfer from the
7 environmental management special fund to the general fund the
8 sum of \$2,000,000 or so much thereof as may be necessary for
9 fiscal year 2004-2005.
10 SECTION 15. The legislature determines that there is in
11 the special land and development fund at least \$1,500,000 in
12 excess of the requirements of the fund. On July 1, 2004, the
13 director of finance is authorized to transfer from the special
14 land and development fund to the general fund the sum of
15 ~~\$1,500,000~~ ¹⁰²² or so much thereof as may be necessary for fiscal
16 year 2004-2005.
17 SECTION 16. The legislature determines that there is in
18 the special land and development fund at least \$1,500,000 in
19 excess of the requirements of the fund. On January 1, 2005, the
20 director of finance is authorized to transfer from the special
21 land and development fund to the general fund the sum of

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Page 6

H.B. NO. 2743
H.D. 2
S.D. 1
C.D. 1

1 ~~\$1,500,000~~ ¹⁰²² or so much thereof as may be necessary for fiscal
2 year 2004-2005.
3 SECTION 17. The legislature determines that there is in
4 the state highway fund at least \$11,000,000 in excess of the
5 requirements of the fund. On July 1, 2004, the director of
6 finance is authorized to transfer from the state highway fund to
7 the general fund the sum of ~~\$11,000,000~~ ¹⁰²² or so much thereof as
8 may be necessary for fiscal year 2004-2005.
9 SECTION 18. The legislature determines that there is in
10 the state highway fund at least \$1,500,000 in excess of the
11 requirements of the fund. On June 29, 2005, the director of
12 finance is authorized to transfer from the state highway fund to
13 the general fund the sum of ~~\$1,500,000~~ ¹⁰²² or so much thereof as may
14 be necessary for fiscal year 2004-2005.
15 PART II
16 SECTION 19. Section 28-15, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:
18 "(c) All unencumbered and unexpended moneys in excess of
19 ~~(\$1,000,000)~~ ^{500,000} remaining on balance in the tobacco
20 enforcement special fund at the close of June 30 of each year
21 shall lapse to the credit of the state general fund."

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H.D. 2
S.D. 1
C.D. 1

1 SECTION 20. Section 107-11, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§107-11 Parking; control by comptroller. (a) The
4 comptroller may assess and collect reasonable fees for parking
5 for all government officials and employees, install parking
6 meters, and restrict and otherwise control parking on all state
7 lands within the comptroller's jurisdiction.
8 (b) The comptroller may make such rules ~~(and regulations)~~
9 as may be found necessary to carry out the objects and
10 provisions of this section relating to the control and
11 restriction of parking on all lands of the State which are
12 within the comptroller's jurisdiction. The rules ~~(and~~
13 ~~regulations)~~ shall be ~~(promulgated)~~ ^{adopted} as provided in
14 chapter 91.
15 (c) Any person who violates any of the rules adopted by
16 the comptroller shall be fined not more than \$50 for each
17 violation; provided that a person violating any provision of
18 part III of chapter 291, or any rule adopted thereunder, shall
19 be guilty of a traffic infraction under chapter 291D and shall
20 be fined or otherwise penalized in accordance with part III of
21 chapter 291.

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1 (d) The comptroller is authorized to confer the powers of
2 police officers, including the power to serve and execute
3 warrants, arrest offenders, and serve notices and orders, to
4 employees of the department of accounting and general services
5 who are engaged as special officers to enforce this section.
6 (e) There is hereby created a fund to be known as the
7 "state parking revolving fund" which shall be used to carry out
8 the purposes of this section. Such amounts shall be expended by
9 the comptroller from the fund, as may be necessary, to defray
10 the cost of paving parking areas, the purchase and installation
11 of parking meters and the operation thereof, and of other
12 parking facilities on state land within the comptroller's
13 jurisdiction. The state parking revolving fund shall be
14 ~~(utilized)~~ ^{used} to conform with the special fund depository
15 requirements under section 39-62 for all revenues and user taxes
16 received as the result of the issuance of any state parking
17 facility undertaking or loan program revenue bonds.
18 (f) All fees, charges, and other moneys collected pursuant
19 to this section, and all revenues and user taxes received
20 pursuant to section 39-62 as the result of the issuance of any
21 state parking facility undertaking or loan program revenue bonds
22 shall be deposited in the state parking revolving fund.

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C.D. 1

1 (g) All moneys in excess of \$500,000 remaining on balance
2 in the state parking revolving fund on June 30 of each fiscal
3 year shall lapse to the credit of the state general fund. On
4 July 1 of each year, the director of finance is authorized to
5 transfer any excess funds in the state parking revolving fund to
6 the state general fund.

PART III

8 SECTION 21. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 22. This Act shall take effect on June 30, 2004.

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This section left blank.

Representative Saiki moved to override the line item vetoes set forth in Sections 1, 2, 15, 16, 17, and 18 of H.B. No. 2743, HD 2, SD 1, CD 1, as contained in Gov. Msg. No. 218, seconded by Representative Lee.

Representative Takamine rose to speak in support of the motion to override, stating:

"Thank you, Speaker. I rise in support of the override.

"Thank you, Mr. Speaker. Mr. Speaker, first of all, I'd like to start off with what is already in our statutory scheme in Chapter 37 of the Hawaii Revised Statutes. And Section 37-53 specifically refers to transfer of special funds. If I can beg your indulgence, it states, and I quote, "at anytime during a fiscal year, notwithstanding any other law to the contrary, any department may with the approval of the Governor or the Director of Finance, if so delegated by the Governor, transfer from any special fund relating to such department to the general revenues of the State, all or any portion of moneys determined to be in excess of the fiscal year requirements for such special fund." Mr. Speaker, as you are well aware, this is a statutory basis for the measure before us.

"And when you take a look at House Bill 2743, when you look at the specific language, it does not mandate any transfers. What it does is authorize transfers from the special fund to the general fund in a specific amount, or so much as may be necessary for the specific fiscal year.

"Now, Mr. Speaker, again when we look through the contents of the measure and if I can just establish a time framework here. As you will recall, the Governor did on April 12, established what her revised financial plan would be. And given that, three days later, we did pass the budget. On the day after that, on April 16, we did pass House Bill 2743. And on Friday, we received the line item veto message from the Governor.

"I think it is important to understand what makes up the particular issues related to this veto. And if I can again, call your attention to, when you look at the details, there's not very much difference between what the Legislature is doing and what the Governor is proceeding on. And in fact, the veto message probably says as much about what was not vetoed, as what was line item vetoed. And let me explain that, Mr. Speaker, because if you were to compare what the Governor put on the table on April 12, and if we were to look at what the Legislature actually did when it passed House Bill 2743, and then compare that to the veto message, I'd like to point out first of all, when it comes to the Dwelling Unit Revolving Fund, the Governor increased what was her original transfer of excess funds to the tune of \$5 million. And then by not vetoing in the bill, she actually adopted the Legislature's position of transferring \$10 million. And so she actually adopted and moved to the Legislature's position on that one line item.

"With respect to the Environmental Response Revolving Fund, again, the Governor moved to the Legislature's position. Initially on April 12, her position on raiding this Fund was at the amount of \$1 million. Again, by not line item vetoing this, she adopted the Legislature's position of transferring excess at the level of \$2 million.

"Mr. Speaker, again, this same dynamic is repeated when you go to the Environment Response Revolving Fund. On April 12, she was not going to transfer any excess. Her veto message tells us that she has adopted the Legislature's position of transferring \$500,000.

"With respect to the Spectator Events and Shows, Aloha Stadium Special Fund, again on April 12, there was no transfer

of excess in her financial plan. However, again, in light of what the veto message says, she has adopted and moved to the Legislature's position of transferring \$600,000 in excess.

"Again, this repeats itself with respect to the Tourism Research Special Fund, where she had no transfer on April 12 and now has moved to the Legislature's positions of transferring \$200,000.

"And again you see a similar dynamic with respect to the Medicaid Investigation Special Fund where although on April 12 ..."

Representative Hamakawa rose to yield his time, and the Chair, "so ordered."

Representative Takamine continued, stating:

"Thank you. There on April 12, the Governor had actually a position of transferring excess funds at the level of \$300,000. At this point, that appears she has adopted or shifted to the Legislature's position of transferring \$500,000 in excess funds.

"Again, Mr. Speaker, at times this just a difference of where that level is at. And to give you another example of that let me just point you to again, the example of the Beverage Container Deposit Special Fund. Mr. Speaker, as you are aware a few years ago, numerous Members from this Body across the aisle were very critical of a bill that was set up to address the beverage container recycling issue. And in this legislation a special fund was created to handle the deposit fees charged to the public. Members from the Minority Party were critical of what they called a new 'slush fund' being created that would just be raided by the Majority. I find it somewhat ironic, Mr. Speaker, that this Administration was the first to propose raiding that fund. In fact the Administration's proposal takes \$5 million. And this is again what was put on the table through their revised financial plan on April 12. Basically all of the money that is currently in the Fund to balance the Administration's financial plan, the Governor or the Administration in this instance didn't just identify excess funds. What was identified was all of the funds that are currently in that special fund.

"And so we're not just talking about transferring excess funds here. We're talking about transferring funds that will totally undermine the operations of the underlying program. In effect, such a move would cripple the program before it even starts.

"I guess, Mr. Speaker, the Administration's financial plan becomes unbalanced especially when you consider what was referenced earlier tonight about the settlement with the teachers and the level of funding that that was at. That you add to that the fact that the Legislature at least at this point is not adopting the additional \$5 million raid on this Beverage Container Deposit Special Fund that just raises further questions, Mr. Speaker.

"The approach taken to House Bill 2743 was what is normally done. To determine excess, we need to know the projections of each department with respect to the special fund and the programs that are implemented therefrom. That was done in case. And the amounts that are reflected in the measure are a true reflection of information provided by the various departments.

"Mr. Speaker, I think I'll conclude here but in so doing, I ask permission to include further written remarks into the Journal. Thank you very much."

Representative Takamine's written remarks are as follows:

"Although I strongly support the override of this Veto for the reasons previously mentioned, I must make clear that the Governor has exceeded her powers under Section 16 of Article III of the State Constitution.

"The Governor argues in her Statement of Objections that the authorization given to the Director of Finance to transfer money from various special and revolving funds are "appropriations made by law" and that she therefore has the power to line item veto such transfers.

"Putting aside the issue of whether or not an authorization to transfer special funds into the general fund is an "appropriation", the Constitution explicitly states that the Governor's line item veto power is limited to "any specific item or items in any bill which appropriates money for **specific purposes....**" (Emphasis added)

"The vetoed transfers in HB 2743 are not for a specific purpose, as the funds do not leave the state treasury under this measure. They remain intact as part of state funds until appropriated for specific purposes. Thus the Governor has no legal power to line item veto these transfer authorizations.

"Her line item veto power arises only when an appropriation is made that authorizes moving money as an expenditure into the wider economy. The line item veto is a negative power meant to preserve state resources, i.e. to reduce or eliminate outflows from the state treasury.

"The application of the line item veto, in this instance is misplaced. Neither the language nor the purpose of Section 16 of Article III would support a purported exercise of a line item veto as to transfers **into** the general fund.

"As a practical matter, and to avoid uncertainty and delay, I prefer that the Legislature override the purported vetoes but urge the Governor to re-evaluate her position so that future court challenges can be avoided.

"Therefore, I wish to make it clear that by arguing for overriding these line item vetoes neither the Finance Committee, this House nor the Legislature as a whole implies that the Governor's actions in this case are Constitutionally permissible exercises of her line item veto powers."

Representative Moses rose, stating:

"Thank you, Mr. Speaker. The previous speaker faulted the Governor for compromise and I think that's something this Body should strive to learn. I'm speaking in opposition to the override. I seek to sustain the veto.

"Mr. Speaker, the stated purpose of this bill is to transfer moneys from certain special and revolving funds to the general fund, including setting up a mechanism to automatically take money out of the Tobacco Settlement Special Fund and the State Parking Revolving Fund at the end of each fiscal year.

"This bill is a manifestation of the questionable financial practices that have plagued the State for too long. Using moneys out of special funds to pay for ongoing expenses such as arbitrated pay raises is further evidence that the State is living beyond its means. This is not unlike a family taking money out of the children's college fund or an IRA account to pay its grocery bills. This practice must cease, Mr. Speaker, if we are to ensure the State's long-term fiscal health and well being.

"Mr. Speaker, the \$12.5 million transfer from the State Highway Fund to the general fund, this fund is to provide

moneys critical to the repair and maintenance of our State highways. The recent flooding that has caused serious disrepair of our roadways is ample evidence of the need for these moneys.

"Additionally, Mr. Speaker, as we've discussed previously, money in this Fund can be utilized to match federal highway dollars in a 20% to 80% ratio. Thus, the \$12.5 million Highway Fund raid is equivalent to the State losing \$50 million. That is a lot of money that we could use, Mr. Speaker. And we do need to fix our highways.

"The \$3 million transfer from the Special Land and Development Fund to the general fund, while taking this action, it's really impact our ability to manage our parks, recreational and conservation areas. Something we talked about in this Body all the time is the things we say we have to fix. We need to put the money there. We need to put the emphasis there. We need to fix those things. And here we are, taking the money.

"\$900,000 transfer from the Agricultural Loan Reserve Fund to the general fund. This action would cripple the Department of Agriculture's ability to provide loans to farmers in the event of natural disasters such as the recent floods experienced on all islands.

"Mr. Speaker, \$800,000 transfer from the Animal Quarantine Special Fund to the general fund."

Representative Ching rose to yield her time, and the Chair, "so ordered."

Representative Moses continued, stating:

"Thank you, Representative. The reduction of the \$800,000 is of such a magnitude that it's going to deplete the total Fund by fiscal year 2006 and cause the quarantine operation to close down. Mr. Speaker, the impact of this on the health of our community cannot be overstated. This is a tremendous health risk, Mr. Speaker.

"Now why can the Governor veto this message or at least line item veto the actions taken herein? Well Section 5 of Article VII of the State Constitution provides that no public money shall be expended except pursuant to appropriations made by law. The removal of money from the special and revolving funds constitute expenditures of that money from those special and revolving funds and must be authorized by appropriations made by law. Well this bill uses the term 'transfer' to authorize the removal of money out of various special and revolving funds. These authorizations to remove money by transfers are appropriations made by law. Within the requirement of Section 5 of Article VII of the State Constitution, Section 16 of Article III of the State Constitution provides that except for items appropriated to be expended by the Judicial and Legislative branches, the Governor may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same. Thank you, Mr. Speaker."

Representative Wakai rose to speak in support of the motion to override, stating:

"Mr. Speaker, I rise in support of this override effort.

"Mr. Speaker, the moneys from these four special funds represent excess. This surplus will be used to pay for essentials. I will focus my comments on one of the four areas being debated.

"In her veto message, Governor Lingle claims that a transfer of \$800,000 will cause the quarantine program to shut down. Well, she's 'barking up the wrong tree'. Last year there were dramatic changes to Hawaii's animal quarantine rules. Agriculture Director Kunimoto told the Finance Committee that about 85% of animals now coming into Hawaii are leaving the airport with their owners. That's great news. One government program just got a whole lot more efficient. With only a fraction of the animals winding up in the quarantine facility, why in the world does the Governor feel that this program needs to keep a \$1.5 million special fund balance. Instead of drawing down on this special fund, the Governor's arguing to keep the account bloated. We should support this effort to override the Governor's veto because the needs for government services are raining down on us like cats and dogs. Thank you, Mr. Speaker."

Representative Meyer rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I'm rising in opposition to this bill.

"This raid of the special funds totals around \$43 million. And the Governor restricted or struck out about \$17 million. Obviously we can't balance our budget without all of that money, but it is a poor practice because by taking \$12.5 million out of the Highway Fund, we are actually precluding our getting close to \$48 million. And we figure our money would be matched 4 to 1. So in our efforts to steal from Peter to pay Paul to somehow find enough money to fund some of the raises that we have this year, we have put ourselves in a box where we have to have this money. It's just such a poor way to keep our books balanced.

"When we argued on the Floor earlier this Session about the budget and about some of the other financial bills, I asked the Finance Chair, where was our financial plan? Not just the plan to 2005, but out to 2009 and the out years. And it is clear to me that the only thing this Body is concerned about is just getting through 2005. And we can't do it without this additional \$17 million. I think it's irresponsible.

"I think the Governor is doing everything that she can to look down the road, not just looking to 2005, and looking to 2009. Because our money Committees both in the House and Senate did not come up with a financial plan that showed three biennial periods, we have just, sort of blinders on and we're simply looking on the short haul for 2005.

"And I think that we're doing a disservice to the taxpayers of the State of Hawaii. We've been doing this for about 10 years. The Governor has said, she sees that the economy is getting better. This is a time when we could put our financial house in order. But rather than using discipline, living within our means, we continue to just try to find the money to fund things in a short haul. That's not responsible. Thank you, Mr. Speaker.

"Mr. Speaker, I'm sorry, did I say that I was against the override? Thank you."

At 9:53 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:55 o'clock p.m.

Roll call having been approved, the motion to override the line item vetoes set forth in Sections 1, 2, 15, 16, 17, and 18 of H.B. No. 2743, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS," as

contained in Gov. Msg. No. 218, was put to vote by the Chair and carried on the following show of Ayes and Noes:

Ayes, 36: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanoho, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Tamayo, Wakai and Waters.

Noes, 15: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

At 9:57 o'clock p.m., the Chair noted that the motion to override the line item vetoes set forth in Sections 1, 2, 15, 16, 17, and 18 of H.B. No. 2743, HD 2, SD 1, CD 1, as contained in Gov. Msg. No. 218, was carried.

At 9:58 o'clock p.m., Representative Lee requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:01 o'clock p.m.

Gov. Msg. No. 221, transmitting the following bill without her approval and her statement of objections relating to the measure as follows:

H.B. No. 1043, SD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES."

"EXECUTIVE CHAMBERS
HONOLULU
May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1043

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1043, entitled "A Bill for an Act Relating to [sic] Making Appropriations for Salary Increases for Public Employees."

The purpose of this bill is to fund collective bargaining cost items as a result of binding arbitration with collective bargaining units (2), (3), (4), (6), (8), and (13), as well as salary increases and other cost adjustments for their excluded counterparts.

As outlined in my April 7, 2004 Message to the Legislature, the HGEA Arbitration Award will have serious, long-term adverse impacts on the financial well-being of the State of Hawaii.

The HGEA Arbitration Award amounts to a 7.8 percent pay increase in fiscal year 2005, at a cost of \$32.2 million in fiscal year 2005 and \$53.8 million in fiscal year 2006. Over the next five years this arbitrated award would create a \$248.9 million I.O.U. that taxpayers would have to pay. This total is the best-case scenario, since it assumes no new pay raises for HGEA members over the next four years.

Salary increases of this magnitude will create sustained budget deficits starting in fiscal year 2006 and cause serious

cuts in government services. These deficits will occur at a time when the State is facing a \$165 million jump in debt service payments and a \$57 million increase in retirement system contributions. As I have repeatedly emphasized, it is not a matter of whether the State can afford the HGEA pay raises this year. It is a matter of what the State can afford next year and in the years to come.

To compound the problem, the Arbitration Panel coupled the significant increase in wages with a reduction in productivity by granting employees hired after July 1, 2001 nine more days of vacation and six more days of sick leave beginning July 1, 2004. I have not included this as a cost item. However, the un rebutted evidence produced at the arbitration hearings was that this vacation and sick pay increase equates to an \$8.9 million loss in productivity for the second year of the contract and an increasing loss of productivity each year thereafter.

Succinctly put, the State of Hawaii cannot afford the HGEA Arbitration Award. Raiding special funds, emergency funds, deferring pay days or diverting monies from the Employees Retirement System to pay for wage settlements are reactions that have proven fundamentally detrimental to the State's future financial well-being. The overall public interest is not served if a disproportionate share of the State's limited discretionary resources is used to fund collective bargaining costs, leaving other critical public programs unfunded or underfunded.

In addition to the detrimental fiscal implications of enacting House Bill No. 1043, the passage of this bill was based on factual assumptions in the HGEA Arbitration Award that were flawed. First, the Arbitration Panel incorrectly assumed that the State had a balance of \$972 million in unrestricted funds at the end of the fiscal year 2003. This figure represents the net of \$1.065 billion in assets from the Airports Fund, the Harbors Fund, and the Unemployment Compensation Fund, minus \$92.9 million from all other governmental activities. Balances in the airport, harbors, and unemployment funds must, by law, be used for the specific purposes named. It is neither fiscally or legally possible to use these monies for wage settlements.

Second, the Arbitration Panel incorrectly used the State of Hawaii Comprehensive Annual Financial Report (CAFR) to estimate available funds at the end of fiscal year 2003. The State's financial reports are published on an accrual basis. This means the end of year figures in 2003 included tax revenues generated in fiscal year 2003 but not collected until the fiscal year 2004. The figures also included expenditure liabilities (such as Medicaid and payroll) incurred in fiscal year 2003 but not paid out until fiscal year 2004. To use the CAFR, which is a backward looking document, to project what funds may be available in a future year, is inaccurate and misleading.

Third, the Arbitration Panel referenced the State's good credit rating to conclude the State could pay for this award. The fact of the matter is credit rating agencies consider a wide variety of factors in their analysis of a jurisdiction's creditworthiness. The credit rating process examines the State's economy, revenue collections, and the Administration's commitment to fiscal discipline. The willingness of the State to control expenditures during periods of slower economic growth, allowing the State to carryover sufficient financial reserves, also contributed to its positive credit rating. The rating is performed to assure bondholders that the State is able to pay its existing debts, not to indicate the State's ability to pay for future salary increases.

Finally, the HGEA Arbitration Award is legally flawed. As pointed out in my April 7, 2004 transmittal to the Legislature, the award failed to adequately explain how it took into account at least five factors set forth in sections 89-11 (f) of the Hawaii Revised Statutes. These factors include failure to stay within

the lawful authority of the employer, failure to include the interests and welfare of the public, failure to consider the State's ability to pay, failure to use proper wage comparisons, and failure to give proper consideration to the overall compensation package when making the award.

In consideration of the exercise of my legal and fiduciary responsibility to the State, I am returning House Bill No. 1043 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Representative Saiki moved to override the veto of H.B. No. 1043, SD 1, CD 1, as contained in Gov. Msg. No. 221, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. In opposition.

"Mr. Speaker, the issue here is not the importance of taking care of our government employees who are in the bargaining units in question. We all would like to see that they're appropriately compensated. The issue is the ability of the State to handle the money involved. Over the next five years, this arbitrated award is going to cost \$250 million. And unfortunately, that amount of money comes on top of the deficit for the fiscal year of 2006 of \$165 million in debt service and \$57 million in additional money and Retirement Systems compensations. As a result of the impact of these three items, we're going to be facing a deficit of \$400 million at the end of fiscal year '07.

"In addition to this, the agreement contains what is estimated to be a \$9 million loss in productivity in the second year of the contract due to increased payments for sick leave and vacation for persons that previously did not have that higher level.

"Beyond that, there are real technical problems with the arbitration award that has been forced on the people of Hawaii. First, the arbitration panel incorrectly assumed that the State had a balance of \$972 million. It did so by looking at money that is in the Airport Fund, the Harbor Fund, and the Unemployment Compensation Fund that we know is not available for direct payments of salaries.

"Second, that same arbitration panel misread the CAFR, the Comprehensive Annual Financial Report. And just as an example of how they misread the CAFR to suggest that there was plenty of money available. The end of the year figures in 2003 included tax revenues generated in fiscal year 2003 but not collected until the next year. If you look at the CAFR that money shows up as available. In fact, it isn't. And it's that kind of mis-examination of the books that justified an arbitrated award that should not have been justified.

"And third, this arbitration panel looked at the rating that is used to assure bond holders that the State is able to pay its existing debts. And they used those bondholder ratings to indicate the State's ability to pay for future salary increases. The two are completely not connected. They have no relationship to each other. And it's a further indication that the arbitration panel didn't really know what it was doing.

"The HGEA arbitration award furthermore, failed to include five factors set forth in Section 89-11(f) of the Hawaii Revised Statutes. These factors had to have been properly used in order to make a correct arbitration award and they were not.

"First, they failed to stay within the lawful authority of the employer. Second, they failed to include the interests and welfare of the public. Third, they failed to consider the State's ability to pay. Four, they failed to use proper wage comparisons. And five, they failed to give proper consideration to the overall compensation package when making the award.

"These failures on the part of the arbitrator really leave the Governor no choice but to veto the bill. And certainly suggest that court action may lie in our future. For these reasons, the right thing to do is to sustain the Governor's veto. Thank you, Mr. Speaker."

Representative M. Oshiro rose to speak in support of the motion to override, stating:

"Mr. Speaker, I rise in strong support of overriding the Governor's veto of House Bill 1043, Senate Draft 1, Conference Draft 1. I rise in strong support of this motion because it's a matter of fairness, respect, and dignity to our workers. The issue of fairness arises because this measure is a final joint product of agreements, promises, and representations of processes, procedures, and rules collectively agreed to by the employer and employee, between the HGEA and the Governor through the Office of Collective Bargaining and Managed Competition. Agreed to by the respective agents of the employer and the employee. Agreements to the process, the timeline, the location, and even the meeting schedule. And yes, Mr. Speaker, even to the final arbitration award which seems to be in dispute by the Governor.

"Yes, Mr. Speaker, even the written award, line by line, word by word, page by page, all endorsed and agreed upon by the Governor through a representative through the Office of Collective Bargaining and Managed Competition. These are the undisputed facts contained within the arbitration award.

"Mr. Speaker, when you set up a game, you agree to the rules. The rules of engagement, whether it be Nine Ball, baseball, or foosball, fairness and fair play dictate. You play and abide by the rules. Sometimes you win, sometimes you lose, sometimes you draw. But in any case, you agree and abide by the rules and the outcome, win or lose. It's not rocket science, or even requires a rocket scientist to figure this out. It's not even an issue of deep ethical debate. It's very simple. It's something you and I learned many, many years ago, probably in Kindergarten. It's something that we hope our youths remember throughout their lives. A simple truth about fairness and fair play. Whether it be in the sandlot, on the golf course, in the courtroom, or in binding arbitration.

"We certainly expect our leaders to uphold these truths in our instances. We expect fairness to be administered in our courts, in trade and commerce, in our interpersonal dealings both public and private. It is elementary, Mr. Speaker. It is a 'no brainer'. If you keep on changing the rules, pretty soon no one will want to play with you. Keep on changing the rules and no one wants to do business with you. Keep on changing the rules and pretty soon, no one will trust you.

"Mr. Speaker, let us not forget for even a moment, that we are a nation of laws and not of men. Indeed no man or woman is above the law, so our laws and rules must be applied fairly to all. Laws fairly administered promote trust, support relationships, and honor our central belief of equality for all. Fairness demands override of this veto. Fairness compels us to right a wrong of this Governor's veto.

"I am also advocating overriding this veto so that we might demonstrate our respect for the process and for our workers. Respect that they deserve as equals in service to Hawaii's citizens, the respect every worker deserves. Every worker's vocation and trade, skill and ability, and God-given talents.

"Mr. Speaker, when we consider that pay raises are in order for our judges, our professors, and our teachers, how can we explain to our individual constituents and members of the HGEA that we cannot stand for a pay raise for them. How can we deny some of our lower paid workers a pay raise of less than \$25 a week on average, while we gave raises to our directors and deputies of several thousand dollars and more.

"Mr. Speaker, how can we explain and grant a pay raise automatically increased over eight years? How do we explain to HGEA workers that we can find pay raises of 1% ..."

Representative Lee rose to yield her time, and the Chair, "so ordered."

Representative M. Oshiro continued, stating:

"1% retroactive to 2003, 3% for 2004, 2% for 2005, to our University professors. And then 5% in 2006, 9% in 2007, and 11% in 2008, and we cannot afford no retroactive pay raises for 2003 and a 4% pay raise for 2004.

"Mr. Speaker, Aretha Franklin, American diva and Queen of Motown R&B, reminds of an important principle: R, E, S, P, E, C, T. Tell you what it means to me. R, E, S, P, E, C, T. Tell you what it means to me. It's respect, Mr. Speaker. It's still a hit today and will be tomorrow. Most moral truths never go out of style. Let us respect the process. Let us respect this arbitration award. And let us respect our workers.

"Finally, Mr. Speaker, I speak in strong support of this override because I desire that we consider and take to heart the dignity of our workers as a group and as individuals. Again, how can we possibly justify giving raises of 7% to our teachers, 35% to our University professors, 10% to our cops, 8% to our firefighters, 9% to our nurses, but not to our APTs at the University. Not to our principals and vice principals. Not to our teaching assistants. Not to our CPS counselors, police radio dispatchers, domestic violence intervention coordinators, and lifeguards, and many, many, many other blue collar, white collar, non-supervisory and supervisory workers. Mr. Speaker, ask any teacher, any professor, any nurse, any firefighter, any prison guard, any cop, if these colleagues of theirs, these coworkers deserve a pay raise. All will say yes, yes, yes.

"Ask them if their coworkers deserve the same dignity afforded them. Ask a cop if the radio dispatcher queueing the calls and directing their assignments deserves the same dignity as them. Ask our teachers if our principals, vice principals, and CEOs of our schools deserve a pay raise and the respect of the Administration. They will say yes, yes, yes.

"Mr. Speaker, most of the workers do not have distinguished titles, fancy offices, private secretaries, or assigned parking stalls. They are the unknown and often times faceless workers in the trenches, on the firing line, day in, day out. They are not 'queen bees'. No, they are more like the 'worker bees'. And their labor is respected and deserve our respect.

"In closing, Mr. Speaker, let us remind ourselves of a promise made to our constituents, to our community, and to ourselves. We took an oath to uphold the Constitution. We all promised to uphold the law of the land. To uphold the law, whether one opposes it, or whether one relishes it. To be fair to all, beholden to none. To treat all with respect. To treat each

one with dignity. This override is consistent with good government, checks and balances, promises and pledges, and all notions of fairness, equality, and respect for all workers and the dignity that each man and woman deserves regardless of their tasks, job title, or wage level. Upon these principles of fairness, respect, and dignity, fairness to all, respect for all, and dignity to all, I support this motion to overturn the Governor's veto of the HGEA pay raise for bargaining units 2, 3, 4, 6, 8, and 13. Thank you."

Representative Stonebraker rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I am opposed to the motion to override the veto.

"I do respect the workers in the State of Hawaii. Mr. Speaker, outside of being a legislator, I am an assistant pastor at a local church. And I know numerous people that are part of HGEA. I know them and I love them. And I desire to do all I can to support them where I can.

"Unfortunately, as a legislator, I cannot look out for only one group at a time. I have to look out for my entire constituency, the people that live and work in the district, that live and work in the district outside of the government, that work for the private sector.

"When I first ran for office, one of the major issues was whether or not to support the binding arbitrated raise for HGEA which was 12.5% that year. I said that I wouldn't because I felt like that was a large increase. But as I found out, that over the last eight years, this particular union has been paid increasingly. There has been a 25% pay increase over the last eight years. And so as much as I respect, R, E, S, P, E, C, T, the Labor Chair, we have to respect all the people of Hawaii. And let's not say that there hasn't been a pay increase for HGEA. There has, 25% over the past 8 years.

"Now I would at this time, Mr. Speaker, if I may incorporate the words from the speaker from Waikiki," and the Chair "so ordered." (By reference only.)

Representative Stonebraker continued, stating:

"Thank you. He did very well enunciate the reasons that were laid out in the Governor's message. Basically the bottom line is we cannot afford at this time. We cannot afford it at this time. And yet many of the proponents are going to say, 'Well we have to. We have been put into this position and we have to support this. We cannot vote against what has been arbitrated.'

"But let me quote the previous speaker, the Chair of the Labor Committee. As we move to override the Governor's veto on binding arbitration last year, he said, the final responsibility for any funding, and thereby approval of any arbitrated awards rests with this Body. You see, so on one hand, we say, 'Well we have to vote for it. We have no choice.' And on the other hand, past statements have been accurate that the real funding lies with this Body. And our responsibility is to be fiscally considerate of the full financial plan.

"Another colleague from Kauai said we do not need to pass an arbitrator's decision if it is not right, if it extends beyond good judgment and beyond the ability for the State to render payment. This is from a senior Member from the Island of Kauai.

"Finally, the Majority Leader said the arbitration process still contains the safeguard for cost containment. Mr. Speaker, we put ourselves in this position with binding arbitration. When I think of binding arbitration, I think of a great knot. I think of

that story of the Gordian Knot. Perhaps you know it. King Gordius was a Median King. Many years, hundreds of years B.C. He was a king that decided to twist a ball of rope into a massive knot probably about the size of a basketball. Nobody could untie this knot and its fame grew and became mythical. People from all over the world would come and try to untie this gigantic Gordian Knot. And nobody could untie it. They would look from all sides and they would try to open it and they couldn't. Eventually, Mr. Speaker, they took this knot and they put it in the temple to their god. And King Gordius passed away and the temple priests oversaw it. And a couple hundred years passed until finally a young general from Macedonia, as he was conquering, heading toward the east, arrived at this temple. Hearing about the great Gordian Knot, he decided to have a go at it. And so he entered the temple and he looked at it from all sides. And then he unsheathed his sword and he hacked that knot into pieces. And there as the fragments of rope on the floor, he said, 'Thus I deal with all Gordian Knots.' And thus he did, where he continued to conquer. And he conquered the known world before the age of 29. His name was Alexander the Great.

"And in this situation, Mr. Speaker, we are faced with a Gordian Knot of binding arbitration and I would propose that we should uphold this veto. Because by doing so we unsheathed the sword of truth and fiscal responsibility."

Representative Luke rose, stating:

"Mr. Speaker, the speaker has run out of time."

Representative Finnegan rose to yield her time, and the Chair, "so ordered."

Representative Stonebraker continued, stating:

"The way we deal with this Gordian Knot is to unsheathed the sword of truth and fiscal responsibility and honesty. And we should hack this knot to pieces. And do what's right. Yes, it's respectful for all the people.

"We don't want to go in this direction and have to face massive layoffs to this union. I'm concerned about my friends and colleagues outside of the State. I don't want them to lose their jobs because we've overextended ourselves. Let's be responsible fiscally. Let's listen to the words of wisdom from the Governor. And thus we will deal with this Gordian Knot. Thank you."

Representative Mindo rose to speak in support of the motion to override, stating:

"Thank you, Mr. Speaker. I rise in strong support of the override.

"Thank you. If there's anyone in this august Body who has had the chance to sit down and make a City contract, I'm one of those for so many years. The most dreaded pain that the union leader can have is to arrive to a conclusion that we cannot negotiate this contract, or we cannot meet what we demand, or the counter-offer of the employers is to go back to the general membership and ask them to authorize a strike. A strike is something that all unions dread because everybody loses. Everybody. That's why last year, when we passed a bill and implemented the binding arbitration, that really ruled out everything, the possibility of strike. And I just think 23,000 public employees, if they cannot lead properly, of course the leadership will bring it to the members to authorize for a strike. And what will happen? Even one day, two days, maybe a week. The government will be paralyzed. It cannot function with 23,000 out there walking on the pavement.

"In the private sector when we renegotiate and we reach an agreement, we honor this agreement. We have to implement this agreement because that's the way it works. But I'm surprised and I'm puzzled that we here in the government are trying to bend the decision of the arbitrator. So in this, Mr. Speaker, I strongly support the override. Thank you."

Representative Halford rose to speak in support of the motion to override, stating:

"Thank you, Mr. Speaker. I speak in support of the override.

"Mr. Speaker, before I go into the meat of what I want to say, I want to acknowledge that the Governor's message, the veto message is lucid. That very good points are made. Mr. Speaker, all of us acknowledge that money is tight. That the Legislature has acknowledged money is tight. If you read the newspapers, government money is tight. And the Governor has made the point that money is tight. I believe we all agree to that.

"Mr. Speaker, if I understand this veto correctly, that what the Governor is hopeful for, that her hopefulness is that instead of this arbitrated raise, that she would prefer a lower raise. A raise, but a smaller amount. I want to point out, Mr. Speaker, that whether we implement this arbitrated decision which I'm voting for, or whether we supported her lower amount, in any case we will be required to dip into our special funds. We will be required to go into our one-time sources of money. In either case, Mr. Speaker, there's a raise being paid in the face of deficit spending.

"Mr. Speaker, I think the Governor makes a good point that we cannot afford the raise from that viewpoint. But Mr. Speaker, I'm not supporting this because I believe that we can easily afford the raise. I'm supporting this because I believe the workers deserve the raise.

"So Mr. Speaker, what of this awkward fiscal position that we're in? This pattern where recently, recently meaning in the last few years, that our State has been deficit spending, and going after one time funds like borrowing from the Employees' Retirement System, or a one time hit of \$50 million by applying payroll lag on our employees. I voted no on payroll lag by the way.

"Mr. Speaker, twenty years ago, the State had a big surplus. And over the last twenty years, we've eroded our surplus. And since I've been a legislator in the last ten years, the pattern of overspending continued to the point of deficit spending and a mad scramble of our finances. Borrowing from this fund, the Employee Retirement System, payroll lag, or whatever, to mad scramble to afford a deficit spending. And Mr. Speaker, tonight we've talked about many bills that are raids on funds to keep up this pattern.

"Mr. Speaker, if you asked our public workers, and we have all across the board, over 50,000 public workers, if you ask any one of them, they will easily tell you of waste in government that they know of. Everyone, Mr. Speaker. Everyone knows of waste in the area that they work in because they see it everyday.

"Mr. Speaker, if you add up all of the waste that our public employees know of, there's hundreds of millions of dollars that we are not seeing, we're not identifying, that's being squandered.

Representative Luke rose to a point of order, stating:

"Mr. Speaker, point of order. The subject matter that the speaker is addressing is no longer germane to this bill."

The Chair responded, stating:

"Representative Halford, could you confine your remarks to the pay raise even though you made reference to the raise and etc."

Representative Halford continued, stating:

"Mr. Speaker, what I'm talking about is being able to fund raises, substantial raises, and being able to fund other good programs and things that we need."

"Mr. Speaker, this Legislature, the legislative branch of government as the holder of the 'purse strings' of the State, has compromised our fiscal position which puts us in this place right now where the Governor is saying, no to this award. Not for any other reason except she says, we can't afford it. The affordability issue, Mr. Speaker, is a result of a long-standing legislative practice that has brought us to this point."

"But Mr. Speaker, regarding waste in government, that's recoverable. I want to get to a point maybe I should just shift right now to lift off of what the Labor ..."

Representative Luke rose to a point of order, stating:

"Point of order, Mr. Speaker. The speaker has run out of time. Somebody needs to yield."

Representative Bukoski rose to yield his time, and the Chair, "so ordered."

Representative Halford continued, stating:

"Thank you, Representative. The Labor Chair emphasized, play by the rules. The Labor Chair emphasized that we are a nation of laws. Mr. Speaker, it is the law of this land, constitutional law that the Legislature would perform management and performance audits of all State government. Mr. Speaker, if we had ever implemented that law, we would uncover the waste that every State employee knows we have in State government. Like the Storeroom in the Department of Education, all the teachers knew that that was a wasteful enterprise."

Representative Lee rose to a point of order, stating:

"Point of order. The speaker is wandering from point of the debate."

The Chair responded, stating:

"Representative Halford, could you confine your remarks to the binding arbitration pay raise. I believe ..."

Representative Halford continued, stating:

"Mr. Speaker, I'm looking forward to funding this raise. I'm looking forward to funding raises for employees in the future. Mr. Speaker, the only way we're going to do that is to change our financial practices. And the change needs to come in the Legislature. We are constitutionally mandated with control the 'purse strings' of the State. That's the job of our coequal branch of government. We dropped the ball. We haven't even played by the rules or followed the law. If we would just simply do our job, Mr. Speaker, this is a prosperous State with good people. We have the people in our State that can generate an excellent economy."

Representative Saiki rose to a point of order, stating:

"Point of order. This is not germane to the bill before us."

Representative Halford: "Mr. Speaker, I'm sorry if this is a painful discussion."

Speaker Say: "Representative Halford, your comments do not relate basically to the binding arbitration settlement that is before us. The Chair has given you a lot of latitude in regards to your opinion in reference to how we as legislators can find the excess waste that is in government. That is correct. But can you confine your remarks to why you support the override of the veto that is before us this evening."

Representative Halford: "Mr. Speaker, I support the override because I believe the employees deserve it. Thank you."

Representative Meyer rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I'm rising in opposition to the override."

"The HGEA arbitration award amounted to 7.8% pay increase in fiscal year 2005 and 2006. Over the next five years, this arbitrated award would create a \$248.9 million IOU. Like my colleague from Hawaii Kai, I am in favor, most definitely that workers should get raises. The question is: How much? And is it within the realm of our financial plan? With an IOU of \$248 million, almost \$249 million, the taxpayers will have to pay."

"I'm concerned about all the other hard working people in the State of Hawaii. Many of them who haven't seen raises for many years but pay taxes religiously. Hawaii is still within the top two or three states as far the proportionate amount of taxes that the people in this State pay. It's demoralizing to work hard and give up sometimes almost 50% of what you make in taxes. And that's where self-employed people find themselves."

"As Legislators, we have to look at the big picture, not just the small picture. Our former Governor realized, about the sixth year he was in office, that the binding arbitration put the employer in a very disadvantageous position. And he lobbied hard to change that. He also could see that health costs, various benefits, were just climbing dramatically and he feared for the State, the financial state of our great State of Hawaii. And we passed a law. We got rid of arbitration and reenacted the ability of unions to strike. Then, there were about 60% of this Body that's here tonight that voted that in favor of that change in the law."

"But within two years, it's changed back to binding arbitration. Here we let a third party arbitrator come in from outside of the State. There are two other members that are selected, one for the employer, one for the employees. But as the Governor's message points out, there are many flaws in the financial information that the arbitrator looked at. And because of that, they came to the conclusion that we could easily afford it."

"Going back to the almost \$249 million that will be owed on this bargaining unit alone over the next six years, we will have to find the money. And my concern is that we will have to look at raising taxes. This is going to hurt all the people of Hawaii."

"In addition to the financial ramifications, the arbitrated agreement reinstated the very generous benefits to new hires. This was another area that Governor Cayetano saw that should be changed. In the private sector, people work for ten years before they get a two-week vacation. Fifteen years before they get a three-week vacation. Here, after this settlement, somebody can just hire on and at the end of the first year, they have three weeks vacation. In addition to that, 21 days of sick

leave. And they're encouraged to take it. And then you add on 13 days of State holidays. That's almost 2.5 months of not working. In addition to that, we passed a law last year that you could take time off to have school, for your children to go to school, to have a conference with the teacher, but the law said you didn't have to use sick leave. And when you add that in, you're adding more time.

"This is a very generous settlement here. I'd have no problem with it if we were flushed with money, but we're not. And we have to live within our means. And we have to think of the other taxpayers, the other people who live here, all the other hard working people in Hawaii."

Representative Luke rose to a point of order, stating:

"Mr. Speaker, point of order. The speaker has run out of time."

Representative Marumoto rose, stating:

"I'd be very happy to yield my time."

Representative Meyer responded, stating:

"It's not necessary, I think I've said all I need to say."

Representative Pendleton rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. Mr. Speaker, I rise in opposition to the override.

"Mr. Speaker, whenever we look at appropriations, we have to ask two things. Is it fair? And is it affordable? To illustrate that two-step process, I would share that my wife believes she deserves a Lincoln Navigator. I think she deserves it too, but we both need automobiles and so we settled for two minivans instead of one fancy Lincoln Navigator. Deserving something or something being fair is one thing. Being affordable is quite something else. We've heard comparisons this evening, Mr. Speaker, between various unions. Saying if one percentage is fair for one particular union, that very same percentage should at least be equal or available to another union. Or at least we should be able, be willing to pay this 7.8% increase in 2005.

"Mr. Speaker, we need to remember that HGEA is 23,000 members strong. That means that the percentage for that union results in a much higher, a much higher dollar figure to the State than it would say to UHPA, which is much smaller than the 23,000 figure. That's just a matter of numbers. If I was a single parent and we only needed one car in our family, I guess I could afford the Lincoln Navigator, but since it's two parents in my family, we have to have two lesser expensive automobiles. That's just the simple mathematics and economics of this.

"Mr. Speaker, the big problem with this measure is not that it is undeserved, but that we can't afford it. The HGEA arbitration award, this award will have serious long-term adverse impacts on the financial well-being of the State of Hawaii.

"The 7.8% pay increase in fiscal year 2005 amounts to a \$32.2 million in fiscal year 2005. But then the numbers begin to grow. \$53.8 million in the subsequent year. And in the following five years, a \$248.9 million IOU."

The Chair interjected, stating:

"Representative Pendleton, I believe that is repetitive at this point, which was stated by some of your colleagues already on the Floor. It is the Governor's message."

Representative Pendleton continued, stating:

"Okay, I'll move along, Mr. Speaker. One of the speakers this evening, Mr. Speaker, indicated that because this is the law, we have to automatically follow it. The implication was once the arbitrator made the decision, our obligation is simply to fund it. That's fascinating to compare that representation tonight with the very contrasting representation made sometime back.

"If you recall, Mr. Speaker, we were under arbitration, moved to the right to strike, and then moved back to arbitration. Well in that last change, from the right to strike, to arbitration, the Representative from Wahiawa stated these words to reassure the Body that there was a sense in which there could be cost containment. The quotation is: 'The final responsibility for any funding, and thereby approval of any arbitrated award, rests with this Body.' The final response, I remember, the context of those words, Mr. Speaker, they were articulated on this Floor to reassure those of us who were concerned that this would be kind of a mechanical situation where the arbitrator came down with an award and we had to fund it. That was the big concern. These words were stated. At least they had the consequence of reassuring that there would be some deliberation. There would be some thought process that we would ask not only, is it fair, but is it affordable? We would look at the financial and fiscal state of affairs and ask the question whether we could pay it.

"In support of that, a fellow Representative said this, in fact he's the Majority Leader now, that 'the arbitration process still contains the safeguard for cost containment.' How do those quotations line up with what's being represented tonight? We're being told that this is the law to arbitration and that you have to follow it. We're not allowed by the law to think, to ask the fiscal questions, to look at how we can afford this. We wish we could afford 8%."

Representative Leong rose to yield her time, and the Chair, "so ordered."

Representative Pendleton continued, stating:

"I'm going to wrap it up, Mr. Speaker. We wish that we could afford 8%. The Governor says 8% may be fair but it's not affordable. 4% is both affordable and fair. Sometimes you have to look at the reality. And that's what happens when you grow government so you end up with 23,000 members in one particular union. Not going to be able pay them the same percentage increases as you would a much smaller union like UHPA. That's just the simple laws of mathematics.

"And it's not about not respecting people. My son went to Keolu, K through 6, graduated. I have a lot of aloha for his principal. She happens to be an HGEA member, not an HSTA member. That's just the way we have it set up. I have a lot of aloha. She worked hard. They deserve this. But the question we have to ask, being Legislators sworn to uphold the Constitution, part of that requires us looking at all 1.2 million residents and ask, can we afford it? We have the 'purse strings'. We have to be prudent. We have to be good stewards of the resources of this State. Not just look at one party and fund whatever the arbitrator says because 'that's the law.'"

"And so let me close by just saying this one point. When you're having to choose between various groups, various percentages, I think one of the interesting observations you can make is that the Governor has chosen to first at this time fund

those positions where that person is closer to the student. And how can I back it up? You look at UHPA, professors, they're closer to the student. Look at the administrators, different group. Look at the teachers in the classroom, HSTA. Look at the vice principals and principals, different union. They're trying to fund first those that are closest in line. Not to say that we disrespect the principals or don't love them or don't have aloha for them but if you have finite resources, you're going to have to make those kinds of judgment calls. So for those reasons, I believe what the Governor has done is prudent, is fair, and is what we can afford at this time. I oppose this override."

Representative Luke rose to speak in support of the motion to override, stating:

"Mr. Speaker, in support.

"Real briefly, in this arbitration process, the Administration didn't get exactly what it wants. The union members, the union itself didn't get exactly everything that they wanted. For the arbitration to truly work, there needs to be good faith negotiation between both parties. If we were not to override, it would give more of an incentive to the Administration not to bargain in good faith knowing that the Legislature will not agree to the bargained for amount. So this is a policy call. This will make sure that arbitration is done in good faith and will make sure that the process is followed."

Representative Saiki then called for the previous question.

The Chair then stated:

"Before we call for the question, Representative Saiki, the Chair would allow Members to submit written comments for or against the override."

Representative Caldwell rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Karamatsu rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Magaoay rose in support of the motion to override and asked that his written remarks and the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Magaoay's written remarks are as follows:

"Mr. Speaker and colleagues, I stand in Strong Support for CCR 4 veto override. Under this bill, it provides a vehicle to fund collective bargaining cost items in the agreements negotiated with various collective bargaining units. By overriding the veto, this bill will appropriate funds for cost items awarded through mandatory arbitration for public employees in collective bargaining units 2, 3, 4, 6, 8, and 13. This Act shall take effect on July 1, 2004 and lapse as of June 30, 2005.

"Therefore, Mr. Speaker, I ask my colleagues for their full support for HB 1043 SD1 CD1."

Representative Takumi rose to speak in support of the motion to override, stating:

"In strong support with the comments from the Labor Chair, except for the references to Aretha Franklin in the record as my

own. Thank you," and the Chair "so ordered." (By reference only.)

Representative Souki rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Schatz rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Kahikina rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Moses rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. In opposition. The problem is this is a very, very important bill and I thought I should have at least a couple of minutes to state my peace. I stood up ..."

The Chair interjected, stating:

"Representative Moses, the Chair has already ruled. If you would like to submit written comments, or what you stated on Third Reading, you may at this point in time."

Representative Moses responded, stating:

"Alright, Mr. Speaker, I will. And I'll also insert the comments from the Representative from Maunawili. But it doesn't give me justice to explain why on such an important vote, with 23,000 members going to be opposing me now, why I can't say my peace on the Floor."

Representative Moses' written remarks are as follows:

"I rise in opposition to the override of the Governor's veto of House Bill 1043. I do not do this lightly, for it is always unpleasant to speak against large pay raises for a powerful union, but we State legislators have a duty to represent all the people of Hawaii, not just the powerful.

"While I support the HGEA employees and appreciate their hard work I cannot support the arbitrator's decision. I believe that the raise offered by the Governor, although smaller, is more affordable, and that the HGEA Arbitration Award will have serious, long-term adverse impacts on the financial well-being of Hawaii. I am very concerned. I don't want to see the need for layoffs, or tax increases which affect the entire State.

"I appreciate the desire of State employees for a pay raise. It is only human to want a better life, but the State cannot spend more than it has, and this raise is unsustainable for the State's economy. HGEA salaries have grown faster than the State economy, 25% over the last eight years. This cannot continue.

"The HGEA Arbitration Award amounts to a 7.8 percent pay increase in fiscal year 2005, at a cost of \$32.2 million in fiscal year 2005 and \$53.8 million in fiscal year 2006. Over the next five years this arbitrated award would create a \$248.9 million IOU that taxpayers would have to pay. This total is the best-case scenario, since it assumes no new pay raises for HGEA members over the next four years.

"Salary increases of this magnitude will create sustained budget deficits starting in fiscal year 2006 and cause serious cuts in government services. These deficits will occur at a time

when the State is facing a \$165 million jump in debt service payments and a \$57 million increase in retirement system contributions, creating a State budget shortfall of \$184,000,000. By fiscal year 2007 the shortfall will be more than \$410,000,000, and by fiscal year 2008 the shortfall will be more than \$562,000,000 – over a half a billion dollars.

"It is not just a matter of whether the State can afford the HGEA pay raises this year. It is a matter of what the State can afford next year and in the years to come.

"The Legislature has raided special funds, emergency funds, deferred pay days and diverted monies from the Employees Retirement System to pay for this wage settlement, risking the State's future financial well-being. The public is hurt when a disproportionate share of the State's limited discretionary resources is used to fund salaries and other fixed costs, leaving other critical public programs unfunded or underfunded.

"To compound the problem, the Arbitration Panel coupled this significant increase in wages with a reduction in productivity by granting employees hired after July 1, 2001 nine more days of vacation and six more days of sick leave beginning July 1, 2004. This vacation and sick pay increase equates to an \$8.9 million loss in productivity for the second year of the contract and an increasing loss of productivity each year thereafter.

"In addition, the factual assumptions in the HGEA Arbitration Award are flawed.

"First, the Arbitration Panel improperly included assets from the Airports Fund, the Harbors Fund, and the Unemployment Compensation Fund in the State's balance of unrestricted funds for the end of fiscal year 2003. Balances in the airport, harbors, and unemployment funds must, by law, be used for the specific purposes named. It is neither fiscally or legally possible to use these monies for wage settlements.

"Second, the Arbitration Panel incorrectly used the State of Hawaii Comprehensive Annual Financial Report (CAFR) to estimate available funds at the end of fiscal year 2003. The State's financial reports are published on an accrual basis. This means the end of year figures in 2003 included tax revenues generated in fiscal year 2003 but not collected until fiscal year 2004. The figures also included expenditure liabilities (such as Medicaid and payroll) incurred in fiscal year 2003 but not paid out until fiscal year 2004. To use the CAFR, which is a backward looking document, to project what funds may be available in a future year, is inaccurate and misleading.

"Third, the Arbitration Panel referenced the State's good credit rating to conclude the State could pay for this award. That was improper. The ratings are performed to assure bondholders that the State is able to pay its existing debts, they are not an indication of the State's ability to pay for future salary increases.

"Finally, the HGEA Arbitration Award is legally flawed. As pointed out in Governor Lingle's April 7, 2004 transmittal to the Legislature, the award failed to adequately explain how it took into account at least five factors set forth in sections 89-11(f) of the Hawaii Revised Statutes. These factors include failure to stay within the lawful authority of the employer, failure to include the interests and welfare of the public, failure to consider the State's ability to pay, failure to use proper wage comparisons, and failure to give proper consideration to the overall compensation package when making the award.

"In vetoing the proposed pay raises, Governor Lingle was correctly performing his duty to preserve the State's financial

integrity. We should put aside petty partisan politics and support her veto for the good of Hawaii and her people."

Representative Blundell rose in opposition to the motion to override and asked that the remarks of Representative Pendleton be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Meyer rose in opposition to the motion to override and asked that the remarks of Representatives Stonebraker and Pendleton be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Lee rose in support of the motion to override and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Lee's written remarks are as follows:

"Mr. Speaker, I rise in favor of the override. Our State employees have waited a long time for this increase in pay and benefits.

"Contrary to some public opinion, this pay raise will be given to many who work in ordinary jobs from clerks, stenographers and clerical people to workers who maintain our public buildings. They are our neighbors, friends and associates. The money they receive will be pumped back into the economy, increasing the tax revenues of our State. The raises they receive may keep many of them working in the public sector, rather than moving to private industry.

"In addition, this pay raise applies to our principals. There is no question that they deserve more compensation for the many hours of extra service they provide."

Representative Ontai rose in opposition to the motion to override, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ontai's written remarks are as follows:

"In opposition to the Override motion. HB1043 appropriates funds for raises we cannot afford. We must stop the practice of stealing from funds like the Highway Fund to pay for these popular, but unaffordable raises. The Highway Fund is an incredible example of State government's largesse. The Legislature has taken over \$143 million from the State Highway fund over the past 8 years alone and is attempting to take another \$12.5 million this year. The State Highway Fund was not created to balance the budget. No special funds were created to balance the budget.

"It is dishonest to take money from taxpayers, tell them its for the Highway Fund, then take it to pay for popular, unaffordable pay raises or to respond to special interest groups. Ironically, these raids come from the highway fund which gets its money from the State's share of taxes on each gallon of gasoline. How can we conscientiously take this money from the taxpayer who pays the highest per gallon taxes in the nation then accuse the oil companies of gouging? We must stop this underhanded practice and live within our means. Highway Fund money should be spent to repair or build highways."

Representative Kanoho rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Kaho'ohalahala rose in support of the motion to override and asked that the remarks of Representative M.

Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Ching rose in opposition to the motion to override and asked that the remarks of Representatives Stonebraker and Pendleton be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Takamine rose in support of the motion to override and asked that the remarks of Representative M. Oshiro be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Roll call having been approved, the motion to override the veto H.B. No. 1043, SD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR SALARY INCREASES FOR PUBLIC EMPLOYEES," as contained in Gov. Msg. No. 221, was put to vote by the Chair and carried on the following show of Ayes and Noes:

Ayes, 38: Representatives Abinsay, Arakaki, Bukoski, Caldwell, Chang, Evans, Hale, Halford, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanohe, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Tamayo, Wakai and Waters.

Noes, 13: Representatives Blundell, Ching, Finnegan, Fox, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

At 10:50 o'clock p.m., the Chair noted that the motion to override the veto of H.B. No. 1043, SD 1, CD 1, as contained in Gov. Msg. No. 221, was carried.

At 10:50 o'clock p.m., Representative Luke requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:05 o'clock p.m.

UNFINISHED BUSINESS

Conf. Com. Rep. No. 136-04 and H.B. No. 2002, HD 2, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that H.B. No. 2002, HD 2, SD 1, CD 1 pass Final Reading, seconded by Representative Lee.

At this time, Representative Takumi offered Floor Amendment No. 23, amending H.B. No. 2002, HD 2, SD 1, CD 1, as follows:

SECTION 1. H.B. No. 2002, H.D. 2, S.D. 1, C.D. 1 (RELATING TO EDUCATION), is amended to read as follows:

"PART I

SECTION 1. The legislature finds that the after-school plus program, popularly known as "A-plus", was established to provide affordable after-school care for latchkey children. Initiated in 1990, the after-school plus program was billed as the nation's first subsidized, statewide after-school care program for public school students in kindergarten through grade six.

The legislature further finds that currently, fees and other moneys for the after-school plus program are deposited into the general fund. However, the deposit of program fees and moneys into the general fund does not guarantee that the fees and moneys will be dedicated to the after-school plus program.

The establishment of a revolving fund for the after-school plus program would provide a clear nexus between the fees assessed and collected for after-school program services and the provision of those services.

The purpose of this part is to create a revolving fund for the collection and disbursement of moneys to pay for the administration and operations of the after-school plus program.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- After-school plus program revolving fund. (a) There is established the after-school plus program revolving fund to be administered by the department.

(b) The after-school plus program revolving fund shall consist of:

- (1) Fees collected by the department for administering and operating the after-school plus program, and the provision of program services;**
- (2) Legislative appropriations;**
- (3) All interest earned on the deposit or investment of moneys in the after-school plus program revolving fund; and**
- (4) Any other moneys made available to the after-school plus program revolving fund from other sources.**

(c) The department may establish appropriate fees and other charges to be assessed to each participant for the cost of administering and operating the after-school plus program. The revenues from those fees and charges shall be deposited into the revolving fund to be used to pay the costs of administering and operating the program."

SECTION 3. There is appropriated out of the after-school plus program revolving fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to be used to pay the costs of administering and operating the after-school plus program.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

PART II

SECTION 4. The legislature finds that S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1 (Regular Session 2004), is a comprehensive measure that ambitiously aims to reinvent the public education system in numerous important ways. Some of the most critical goals of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, are to:

- (1) Address the individual needs of students by requiring the establishment of a weighted student formula for allocating moneys to public schools;
- (2) Require no less than seventy per cent of operating funds for the department of education, excluding debt service and capital improvement programs to be expended by school principals;

- (3) Empower principals as educational leaders of their schools;
- (4) Support principals and involve school communities by establishing school community councils at public schools;
- (5) Require the development of plans, to be implemented in the 2006-2007 school year, for performance contracts for principals;
- (6) Remove bureaucratic constraints that hamper the effectiveness of the department of education;
- (7) Enhance the accountability system of the department of education; and
- (8) Provide more books and learning materials for students.

These are only some of the ways in which S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, seeks to improve Hawaii's public schools. In recognition of the importance of this essential and revolutionary bill, the legislature took early action to ensure that the governor and other concerned stakeholders had ample time to reflect upon the bill and express their concerns or suggest improvements which could be addressed before the end of the legislative session.

One suggestion for amending this bill was to accelerate the implementation of the weighted student formula. S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, sets an extremely ambitious agenda for Hawaii's public schools. They will be faced with a new funding allocation system, a new school community council system, and new responsibilities in expending an increased percentage of their operating budget at the school level.

S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, provides funding for the department of education to pilot school community councils and the development of academic and financial plans. This Act specifies that this pilot program shall be implemented no later than January 1, 2005, ensuring the department of education begins these critical aspects of the education reinvention effort in a timely manner.

Other suggestions for amending the bill were to ensure that principals are sufficiently empowered to manage effectively, and clarify the relationship between principals and school community councils to ensure that decision-making can be executed efficiently. Although S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, expressly places principals in control of their schools, the legislature finds that more can be done to ensure their ability to effectively lead. This Act specifies that principals, rather than school community councils, shall be responsible for the initial development of their schools' academic and financial plans. This will ensure that principals are intimately involved in the formulation and execution of their schools' educational and fiscal goals.

A final suggestion to improve S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, was to allow charter schools to choose whether they want to be funded under the weighted student formula. Accordingly, this Act allows charter schools to select, as a group, whether to receive allocations through the weighted student formula for each fiscal biennium.

In approving S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, the legislature has fashioned an innovative, comprehensive, and ambitious yet implementable law, the purpose of which is to improve student achievement. In doing this, the legislature has committed itself, the board of education, the department of education, the governor, and the entire state government to

efforts that require actions and commitment over many years. The complete effort to reinvent public schools begins with the enactment of both S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, and this Act.

Upon enactment, the creation and work of the committee on weights begins. Work begins immediately to prepare for the implementation of the school community councils, which must be in place by July 1, 2005. Beginning January 1, 2005, one school in each complex area, or fifteen in total, will pilot the process that the principal and the school community councils will use in developing their individual school's academic and financial plan. All schools will have school community councils by July 1, 2005, and they will receive training for their duties, including reviewing and recommending for approval by the complex area superintendent the academic and financial plans for their school.

The principals academy will be developed during the latter half of 2004 to provide training for principals in developing and implementing budgets, writing academic plans, and working effectively with school community councils.

The board of education will initially adopt the weighted student formula recommended by the committee on weights by December 1, 2005. Principals will prepare and submit to the school community councils their academic and financial plans, which will be approved by the complex area superintendent no later than April 1, 2006. School allocations based on the weighted student formula will be made by July 15, 2006.

As experience is gained, the funds that each principal will budget and expend may be increased by the department of education. Local control of schools will also increase, allowing the principal and the school community council to shape their particular school to meet the needs of their students.

Other actions are required to reinvent education, which include the development of performance-based contracts for principals, the adoption of a unified school calendar, and a reduction of the bureaucracy that hinders the department of education in providing support services for the schools. All of these actions will take place over the next three years.

The legislature finds that the actions required to improve student achievement and the implementation of those requirements as set forth in S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, and this Act, are prudent and reasonable. The legislature invites the people of this State to lend their support, time, and participation in this endeavor to improve student achievement.

SECTION 5. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- New century charter schools and new century conversion charter schools; weighted student formula. Notwithstanding section 302A-1185 and beginning on September 1, 2006, new century charter schools and new century conversion charter schools shall elect whether to receive allocations according to the weighted student formula adopted pursuant to section 302A- by the board of education; provided that:

- (1) All new century charter schools and new century conversion charter schools, as a group, shall elect whether to receive allocations through the weighted student formula;
- (2) Any election by new century charter schools and new century conversion charter schools to receive allocations, or not to receive allocations, through the

weighted student formula shall be made by September 1 of each even-numbered year, and such election shall apply to the fiscal biennium beginning July 1 of the following year; and

- (3) The election to receive allocations, or not to receive allocations, through the weighted student formula shall be communicated to the department through the charter school administrative office."

SECTION 6. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 1 to read as follows:

"SECTION 1. Although many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity. This Act is a road map for a critical phase in that ongoing journey.

The legislature finds that significant changes need to be made to enhance Hawaii's public education system to ensure the success of that journey. Although the State's students, parents, teachers, school administrators, departmental staff, and other educational stakeholders strive to achieve excellence, their efforts will never be completely successful until various aspects of the system around them are improved.

The legislature has supported and will continue to support efforts by the department of education to improve Hawaii's schools as a means of enhancing the academic achievement, safety and well being, and civic commitment of students, to meet the evolving needs of today's communities.

The coordinated package of initiatives in this Act aims to implement comprehensive education reform in Hawaii's public schools and shall be known as the "Reinventing Education Act of 2004." Its main elements include:

- (1) Establishing a weighted student formula;
- (2) Providing additional information technology;
- (3) Empowering principals through a Hawaii principals academy and other means;
- (4) Strengthening community involvement through school community councils and parent-community networking centers;
- (5) Providing more mathematics textbooks;
- (6) Lowering class size in kindergarten, grade one, and grade two;
- (7) Providing full-time, year-round, high school student activity coordinators;
- (8) Providing support for students who need additional help to succeed in school;
- (9) Establishing a national board certification incentive program for teachers;
- (10) Enhancing teacher education;
- (11) Reducing the bureaucracy that hampers the effectiveness of the department of education;
- (12) Improving the educational accountability system; and

- (13) Requiring [the] board of education members to hold community meetings in their districts.

Research shows that student performance is significantly higher in smaller schools. While establishing smaller schools throughout the State is not financially feasible, some schools have taken it upon themselves to create smaller and more manageable learning communities within their schools. Research also strongly supports the need for early childhood education and the establishment of a coherent system that spans all levels of education. The department of education, teamed with the University of Hawaii and Good Beginnings Alliance to create a vision for such a system, which was presented in 2002, [and] is now being implemented.

Despite these efforts, more needs to be done. Currently, public school principals are faced with a nearly impossible task, as they are asked to attend to every detail of operating their schools without enough institutional support or discretion to expend funds. While some support and additional school leadership is provided by the school/community-based management (SCBM) system at many schools throughout the State, SCBM plays a far more limited role at some locations, and has not been implemented at all at others.

Recently, departmental leadership was decentralized through the creation of the complex area system, including the hiring of complex area superintendents. While replacing the old district system with this new structure was an important first step, further changes need to be made to allow meaningful authority to exist as close to the schools as possible. The complex area structure will serve as an excellent base upon which to build these continued reforms. It is the legislature's intent to place a far greater number of decisions, and a much higher percentage of moneys, directly in the hands of individual schools and their leaders.

Another area of improvement necessary to promote excellence in learning is the method by which moneys are allocated to individual schools. Hawaii currently receives high marks nationally for funding equity, as being organized as a single unified system enables the State to fairly disburse moneys to schools. In other states, local revenue sources such as property taxes account for a significant portion of school and district funding, resulting in massive financial disparities between schools in more and less affluent areas.

Although the State avoids this particular pitfall, further improvements can be made to ensure that moneys go to the schools that truly have the greatest need, and to place more moneys at the discretion of individual schools. While the current funding system takes into account certain criteria when allocating moneys to schools, it does not comprehensively address the fact that some students are more costly to educate than others. For example, students with special needs, such as those with limited proficiency in English, or who have physical, psychological, or other impediments to learning, are more expensive to teach than students who are not faced with these barriers.

One method that can be used to address these funding issues is a weighted student formula. Under such a system, moneys are allocated to schools based on a system of weighted characteristics that apply to every student in the public schools.

Under a weighted student formula there are several advantages. Among other things:

- (1) The relative cost of educating students can be much more accurately assessed, based upon the unique learning needs of each student;

- (2) Funds follow students to whichever school they attend; and
- (3) The budget process becomes more transparent as it is based on dollars, not staff positions.

However, establishing a weighted student formula cannot be effective in a vacuum. Other reform measures must be implemented as well. Principals will be empowered to act as the educational leaders of their schools, with more authority relating to budgeting, and more flexibility to expend funds. With these expanded powers, principals will be held accountable for their performance through a system that includes rewards, assistance, and sanctions. Principals will also need more training and support if they are required to take on additional duties, and are expected to advance student success. Furthermore, community involvement and support of schools will need to be enhanced if schools are to work effectively.

The department of education is also faced with significant impediments that will likely reduce its ability to effectively implement the weighted student formula. With educational responsibilities spread throughout numerous state agencies, there are various roadblocks to progress that could prevent the department of education and individual schools from successfully performing their duties and effectively using a new funding system.

The legislature finds that a comprehensive effort addressing all of these issues is required for Hawaii's public schools to maximize student achievement. Accordingly, the purpose of this Act is to enhance educational outcomes in Hawaii's public schools by:

- (1) Implementing the weighted student formula by:
 - (A) Requiring the department of education to provide supplementary allocations to those schools whose budgets are adversely affected by the weighted student formula for no more than three years beginning with the 2006-2007 school year;
 - (B) Establishing a committee on weights within the department of education to determine the unit value of student weights and recommend a weighted student formula to the board of education at least annually, and appropriating \$10,000 to support the operation of the committee;
 - (C) Requiring the department of education to adopt a weighted student formula in allocating funds to ~~[all]~~ public schools~~[-excluding new century charter schools and new century conversion charter schools];~~
- (2) Appropriating \$2,000,000 to the department of education to facilitate field support, security, and privacy for the telecommunications network, and training regarding information technology infrastructure used to enhance accountability, compliance with the federal No Child Left Behind Act of 2001, and implementation of school reform including the weighted student formula;
- (3) Supporting and empowering principals by:
 - (A) Requiring the department of education, with the invited participation of the exclusive bargaining agent of educational officers of the department of education, to propose salary schedules and other terms and conditions of employment of principals and vice principals based upon a twelve-month term of service, and report findings back to the ~~[Legislature]~~

~~legislature~~ no later than twenty days prior to the regular session of 2005;

- (B) Requiring the board of education to classify all educational officer positions of the department of education to adopt two separate classification/compensation plans for educational officers~~[-one];~~

- (i) ~~One~~ for principals and vice principals (based on the general pattern of a school administrator's career development and associated school administrator's qualification requirements); and ~~[one]~~

- (ii) ~~One~~ for all other educational officers (reflective of the career development pattern and qualification requirements for the respective professional field of expertise),

and including classification appeals procedures for both; ~~[and]~~

- (C) Convening a working group to create a plan for the implementation of performance contracts for principals;
- (D) Establishing a Hawaii principals academy to support and train complex area superintendents, principals, and prospective principals, and appropriating \$500,000 to operate the academy;
- (E) Clarifying the authority and responsibility of principals;
- (F) Appropriating \$183,780 to operate the department of education's administrator certification for excellence (ACE) program; and
- (G) Appropriating \$400,000 to compensate principals recalled to work by the department, outside of their regular term of service, for professional development and any other activities that may enhance their effectiveness as leaders of their schools;
- (4) Enhancing community involvement in schools by:
 - (A) Appropriating \$350,000 for training and other activities needed to facilitate the transition from the current SCBM system into a mandatory school community council system to be implemented at each public school, excluding new century charter schools and new century conversion charter schools;
 - (B) Clearly articulating the balance and reciprocity of powers and responsibilities between the principal and school community council; and
 - (C) Appropriating \$1,743,900 to support and enhance ~~[a proven means of improving parental and community involvement in schools;]~~ parent-community networking centers;
- (5) Directly, concretely supporting the academic achievement and holistic development of students by:
 - (A) Appropriating \$2,500,000 for mathematics textbooks and other mathematics learning materials in schools~~[-];~~ provided that mathematics curriculum is aligned within the school complex;
 - (B) Appropriating \$2,143,350 to reduce class size in kindergarten, grade one, and grade two by hiring seventy-five elementary school teachers;

- (C) Appropriating \$460,000 for full-time, year-round, high school student activity coordinators; and
- (D) Appropriating \$100,000 for programs that support parents in working with students who need additional help to succeed in school; provided the programs have measurable outcomes;
- (6) Directly, concretely supporting teachers by:
 - (A) Establishing a national board certification incentive program to be administered by the Hawaii teacher standards board to continue comparable efforts initiated under a memorandum of understanding between the department of education and Hawaii teacher standards board which expires on June 30, 2005, and appropriating \$480,000 [funding] to execute the memorandum of understanding during fiscal year 2004-2005;
 - (B) Appropriating \$92,000 for the administration of the Hawaii teacher standards board; and
 - (C) Increasing the pool of qualified teachers and administrators by appropriating \$500,000 to fund seven teacher education positions and one education administration faculty position at the college of education of the University of Hawaii;
- (7) Reducing bureaucracy that hampers the effectiveness of the department of education by:
 - (A) Requiring the department of education to convene an interagency working group to address systemic impediments to the efficient management and operation of schools;
 - (B) Transferring certain key functions from various state agencies to the department of education; and
 - (C) Requiring the board of education to adopt a single school calendar for all public schools to apply beginning with the 2006-2007 school year;
- (8) Enhancing educational accountability by:
 - (A) Requiring academic achievement, safety and well being, and civic responsibility of individual students to be assessed and tracked;
 - (B) Expanding the accountability provision to include fiscal accountability;
 - (C) Including complex area superintendents and principals in the accountability system;
 - (D) Requiring clear, easily understandable report cards on key performance indicators for schools, school complexes, and the public school system; and
 - (E) Requiring the board of education to hold community meetings in each school district;
- (9) Appropriating \$400,000 for the piloting of school community councils and development of academic and financial plans at selected schools prior to the statewide implementation of the weighted student formula; and
- (10) Requiring the department of education to submit findings and recommendations to the legislature prior to the 2005 regular session relating to the implementation of this Act."

SECTION 7. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 4 to read as follows:

"SECTION 4. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- **Weighted student formula.** Based upon recommendations from the committee on weights, the board of education, not less than annually, shall adopt a weighted student formula for the allocation of moneys to public schools[~~excluding new century charter schools and new century conversion charter schools~~], which takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools[~~excluding new century charter schools and new century conversion charter schools~~]. Principals shall expend moneys provided to the principals' schools. This section shall only apply to new century charter schools and new century conversion charter schools for fiscal years in which the new century charter schools and new century conversion charter schools elect pursuant to section 302A- to receive allocations according to the weighted student formula."

SECTION 8. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 6 to read as follows:

"SECTION 6. [Section] Chapter 302A, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"'Weighted student formula' means a formula for allocating operating moneys to individual public schools that includes a system of weighted characteristics affecting the relative cost of educating each student attending a public school[~~excluding new century charter schools and new century conversion charter schools~~]."

SECTION 9. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 14 to read as follows:

"SECTION 14. The superintendent of education shall select and convene a working group to create a plan for performance contracts for principals to be implemented beginning with the 2006-2007 school year. The working group shall include:

- (1) The superintendent of education;
- (2) Representatives of complex area superintendents;
- (3) Representatives of school principals; and
- (4) Representatives of any other agency, organization, or group as deemed appropriate by the superintendent of education.

The superintendent shall request the exclusive representative for collective bargaining unit 6 to participate in the working group.

The working group shall:

- (1) Establish appropriate performance criteria [~~for~~] which shall be used in individual performance contracts for principals [~~are to be evaluated under performance contracts~~], including:

- (A) Core criteria to be incorporated into performance contracts statewide; and
- (B) Criteria that may be used at the discretion of individual schools;
- (2) Determine appropriate performance benchmarks, or methods of devising performance benchmarks, that may be used to assess principal performance relative to expected standards[.]; provided that such performance benchmarks, at a minimum, shall include those elements related to principals in the educational accountability system;
- (3) Determine appropriate rewards, assistance, and sanctions to be included or considered for inclusion in performance contracts; and
- (4) Address any other issues necessary for the implementation of performance contracts.

The department of education shall submit findings, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005."

SECTION 10. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 16 to read as follows:

"SECTION 16. Section 302A-1103, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1103 Principal; authority and responsibility. The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and to enable students to meet or exceed statewide academic standards. The principal shall:

- (1) Ensure that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system;
- (2) Develop and present to the school community council for its review and approval, academic and financial plans relating to the school;
- ~~[(2) Maintain and exercise]~~ (3) Exercise authority over the implementation of the budget, policies, and operations of the school; and
- ~~[(3)]~~ (4) Collaborate with other principals in the principal's school complex to ensure that:
 - (A) Logical, sequential curricula are adopted within the school complex;
 - (B) Best practices are shared among and implemented by schools within the school complex;
 - (C) The goals and objectives of the school complex are being met;
 - (D) The use of school complex-based personnel and contractors who divide their time between more than one school in a school complex is coordinated to maximize efficiency; and
 - (E) The passage of students through the continuum of grades is coordinated in a manner consistent with section 302A-1004."

SECTION 11. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 25 to read as follows:

"SECTION 25. Section 302A-1124, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1124 Mandate to initiate school community councils. (a) The department, through the board and its superintendent, shall establish a school community council system under which each public school, excluding new century charter schools and new century conversion charter schools, shall create and maintain a school community council. Each school community council shall:

- (1) ~~[Participate in the development of, and recommend for approval by the complex area superintendent, the school's annual:~~

~~(A) Academic plan; and~~

~~(B) Financial plan;]~~

Review and evaluate the school's academic plan and financial plan, and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent;

- (2) Ensure that the school's academic and financial plans are aligned with the educational accountability system under section 302A-1004;
- (3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent; and
- (4) Provide collaborative opportunities for input and consultation.

(b) School community councils shall be exempt from the requirements of chapters 91 and 92. The school community councils shall:

- (1) Make available the notices and agendas of public meetings:

(A) At a publicly accessible area in the school's administrative office so as to be available for review during regular business hours; and

(B) On the school's Internet web site,

not less than six calendar days prior to the public meeting, unless a waiver is granted by the superintendent in the case of an emergency; and

- (2) Make available the minutes from public meetings on a timely basis in:

(A) The school's administrative office so as to be available for review during regular business hours; and

(B) On the school's Internet web site.

(c) Complex area superintendents may require ~~[a school community council to revise its school]~~ revisions to a school's academic and financial plans if the plans are in violation of law or conflict with statewide educational policies and standards[.], or are otherwise in the best interests of the school.

(d) The superintendent of education may recommend to the board of education dissolution of a school community council and establish an interim school community council if the school community council engages in any act or omission that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct. The superintendent may recommend to the board the removal of any member of a school community council. The superintendent shall appoint or facilitate the creation of an interim school community council at any school that has not established a council or has had its council dissolved. In appointing or facilitating the creation of an interim school community council at any school that has had its council dissolved, the superintendent may appoint individuals who were previously members of the council.

(e) Unless otherwise specified, each school community council shall establish policies governing the council's composition, election, staggered terms of office for members, operation, and vacancies; provided that:

- (1) The number of school personnel in any school community council shall be equal to the number of primary stakeholders on the school community council;
- (2) At the elementary and middle school levels, each school community council shall be composed of the principal and at least one member representing each of the following groups:

- (A) Parents elected by ballots distributed among and collected from the parents of the school's students;
- (B) Teachers elected by ballots distributed among and collected from teachers of the school;
- (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
- (D) Community representatives elected by ballots distributed among and collected from parents of the school's students; and
- (E) Student representatives selected by the student council of the school;

and

- (3) At the high school level, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from the parents of the school's students; and
 - (E) Student representatives selected by the student council of the school.

For the purposes of this subsection, "primary stakeholders" means students, parents, and community members.

(f) School community councils shall elect officers, including:

- (1) A chairperson;
- (2) A vice-chairperson;
- (3) A secretary; and
- (4) Other officers as needed to perform stated duties in support of the work of the council.

(g) The principal shall have the authority to set aside any decision made by the school community council if the principal determines it to be in the best ~~[interest]~~ interests of the school~~[-];~~ provided that the principal notifies the school community council. If the school community council opposes a decision of the principal, an appeal shall first be brought to the complex area superintendent for resolution and, if necessary, to the superintendent and, finally, to the board of education. ~~[The principal shall not set aside decisions made by the school community council to recommend annual academic and financial plans for approval by the complex area superintendent.]~~

(h) Complex area superintendents shall assist the school community councils and principals within their respective complex areas in:

- (1) Obtaining the support and services of the department; and
- (2) Ensuring the progress and success of the school's academic and financial plan."

SECTION 12. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004, is amended by amending section 59 to read as follows:

"SECTION 59. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000~~[-];~~ or so much thereof as may be necessary for fiscal year 2004-2005~~[-];~~ for the piloting of school community councils and development of academic and financial plans at ~~[selected public schools prior to the statewide implementation of the weighted student formula-]~~ least at one school in each complex area. The pilot program shall begin no later than January 1, 2005."

SECTION 13. The department of education shall submit to the legislature no later than twenty days prior to the convening of the regular session of 2005 a report detailing the programs and functions that would need to be placed under the control of individual schools to achieve certain benchmark figures in enabling principals to expend an increased percentage of the appropriations for total department of education budget, excluding debt service and capital improvement programs. The report shall include:

- (1) A list of functions and programs for which moneys would be expended by school principals at each of:
 - (B) Eighty per cent; and
 - (C) Ninety per cent

of the appropriations for the total department of education budget, excluding debt service and capital improvement programs;

- (2) A description of required department infrastructure and system support, including any buyback programs for

services, to achieve the benchmark figures in paragraph (1); and

- (3) A description of any other requirements foreseen by the department to be necessary to achieve the benchmark figures in paragraph (1).

PART III

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval; provided that sections 2 and 3 shall take effect on July 1, 2004

Representative Takumi moved that Floor Amendment No. 23 be adopted, seconded by Representative Takai.

Representative Halford rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In favor.

"Mr. Speaker, I just saw this 15 minutes ago, this comprehensive bill regarding education or comprehensively addressing this large issue. I'm hopeful that it's an improvement. And so I'm voting yes on that basis. And I presume we'll be voting again on Thursday on this bill.

"But Mr. Speaker, I want to also acknowledge that without one of the Governor's vetoes, we would not have this in front of us. And I appreciate the ongoing dialogue. And I appreciate movement on both sides to work for better education. Thank you."

Representative Luke rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support of the floor amendment.

"And we just wanted to thank the Chair of Education and the Chair of Higher Education. They worked for hours, over the whole weekend, while we were doing other things with our families and friends. And they spent tons of hours trying to make amendments and look at some of the concerns brought down by the Governor. But let's not fool ourselves. This is a joint package. This floor amendment goes with the education reform bill. So it's a package deal. Thank you."

Representative Moses rose, stating:

"Thank you, Mr. Speaker. Like one of our previous speakers from South Maui said, this is a 34-page bill that we've looked at now for about 10 minutes. So I'm sure that we're going to debate it again on Thursday. I am sorry to hear that part of it is taken out, the weighted student formula, increasing to 90% over a few years. That I thought was very good. As we were looking at it, it's not here. I'm not sure what else is in here but I hope that there is enough movement here that we can all support it. And I do thank everybody concerned for working on the Governor's comments and trying to come up with a bill that will be education reform. Thank you."

Representative Fox rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition.

"I believe that when the Governor vetoed the message, she basically set out conditions that were like those that ... I mean, it was like a minimal. She was a long way from where her bill

was. She was trying to search for compromise. And she found places where she thought that compromise might be possible. Let me just go over some of those.

"She felt that the weighted student formula issue did not have to wait till 2006. She thought there's plenty of experience with weighted student formula around the country. And we could probably put a system in place, not this year, but within 14 months.

"She thought that it was very important to get the percentage of money under the control of the principal, up from 70% which is where the bill that was vetoed was, to 90%. She pointed out that 70% is basically fixed costs. Therefore the principal doesn't really have any discretion. Getting it up to 90% is where the key discretionary funding available to the principal is. That gap, between 70 and 90%. Her compromise was an understanding that this might be played out over 2 or 3 years. I don't think she was looking at 2012 as when the 90% would go into effect. But to see that completely absent from this bill is certainly a great disappointment, at least from this Representative's perspective.

"Third, she said that the community councils should be advisory in nature. They should not be part of the process of spreading accountability away from the principal to another body. It's very difficult to know who on that body you would ever hold accountable if they had real power.

"And while this measure does take some steps back toward putting the principal in charge, the principal is still in the position of submitting a financial plan and an academic plan to the council for approval. And that sounds to me a little bit like the council has got a chunk of that accountability. Diffusing accountability is an enemy of real education reform. It's very important to hold the principals accountable.

"On the Charter School issue, we all know that the bill that has just been overridden did not allow the charter schools to participate in money awarded on the weighted student formula. It specifically excluded them. This bill brings the charter schools back into the picture. They are allowed as a body to choose whether to be in or out of the weighted student formula. That is a step forward. It is however, Mr. Speaker, not the step forward that the Governor asked for. The Governor asked very importantly that charter school funding include funding for facilities because if it's only limited to paying for salaries and operational expenses and not facilities, the charter schools are not equal. They only become equal when their facilities are taken care of.

"These are all disappointments. That's four out of five significant disappointments. And for that reason, I feel that the right vote is against this. Thank you, Mr. Speaker."

Representative Takumi rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. I rise in support on this measure.

"Mr. Speaker, throughout this entire Session, I do believe that the House and Senate Leadership, including the Education Chairs are always more than willing to sit down with the Administration but clearly that was extremely difficult to do until last Friday because in all the proposals that the Administration had submitted, it rested on their premise that there could be no change unless we had local school boards. Anything else, anything that we proposed, and that was true until last Friday, was fake, or *shibai*, or smoke and mirrors, and was merely tinkering at the edges.

"I was pleasantly surprised that the Governor now proposes five changes that she said, 'are simple to make, yet would result in significant improvements at our schools.' And although it's extremely late in the Session, I mean last Friday was fairly late, we welcomed the input from the Governor to come up with a bipartisan approach that again will result in improved student achievement. Because after all, whatever we do must have that in mind.

"I'd like to respond to several of the comments made by the Minority Leader, for example, the charter schools. He may not be aware that the charter schools themselves decided not to come under the weighted student formula. We had originally had them in the original bill that was vetoed by the Governor. But they decided, not me. They decided that they did not want to come under the weighted student formula.

"But I would also suggest that the Minority Leader read the Conference draft that was proposed by the Administration. I don't know if copies were circulated. I think they were. The way the Governor's proposal is drafted, it would allow the charters to come in at anytime, leave at anytime. One charter could have come in. All of them could have come in. They could have come in for a week, two years, and leave at anytime. I hope that's not what we want to see happen. That would have wreaked havoc with the budgeting process. And therefore in the floor amendment, if you read it carefully, we are proposing that the charters be allowed to come in under the weighted student formula as a group every two years when the biennium budget is being developed. And then they can leave at the end of that biennium or choose to remain under the weighted student formula at that time. That was agreed upon. Let me repeat that. That was agreed upon by the Administration.

"The Minority Leader also mentioned that the Governor's five points proposed that we give charter schools their fair share of funding for facilities, as well as operations. I can agree with that, Mr. Speaker. Unfortunately in the Conference draft that was proposed by the Governor, there was no mention of facilities or operations for charter schools. All it did was lift the cap on charter schools. It did nothing, again I repeat, nothing for facilities for charter schools. So I'm a bit puzzled as to why on the one hand in the public pronouncements, the Governor says we need to provide for more facility funding for the charter schools, and yet in the proposed Conference draft, it was silent.

"And lastly, I know I'm beating a 'dead horse' but let me get to that 90% again. First, and I would like to ask the Minority Leader now. I don't want to ask him to yield to a question but at anytime between now and maybe Thursday, if he could provide me information of any one of the 16,000 school districts in the United States that provides 90% of their general funded budget directly to the schools. Just one. So I can call them ask them how they do that. Because that would mean they would have to handle, again, cafeteria, transportation, federal funds, custodial. They would have to handle high-end special education kids. And that is as far as I know, I could be wrong because I'll be honest with you, I have not called, written, or e-mailed all 16,000 school districts in the United States. But I haven't heard of any. So I'm puzzled again why, not just the Minority Leader but there was another speaker who said, unless you give 90%, it is fake. I just don't understand why that can be, and if you give only 70% then what's the big deal? Or the big deal, Mr. Speaker, is if you look at other school districts that have adopted the weighted student formula, and I've said it before on this Floor, whether it's Seattle with 46.3%, or San Francisco which started at 58% and now is at 65%, I would like to ask anyone to go up to those school districts, not to mention Houston, and ask them, or not just ask them, tell them, 'By the way, all of you are engaged in fake

reform because it's not even close to 90%.' I would suspect they would beg to differ. So I don't know best to explain it. Now the one example that I'm always told is Edmonton, Canada. And again Edmonton, Canada does not include transportation in that 90%. They do not include pension checks. They do not include food services."

Representative Luke rose to yield her time, and the Chair, "so ordered."

Representative Takumi continued, stating:

"So I just don't understand how we can say one school district in North America does it and therefore, unless we do it, it's fake. I'm just baffled and perhaps we can continue this dialogue on Thursday. Thank you, Mr. Speaker."

Representative Fox rose to respond, stating:

"Thank you, Mr. Speaker. Still in opposition.

"The basic point on how school funding is handled by principals is answerable within our community. Virtually every private school has 100% of the decision making done by the principal at the school. Thank you, Mr. Speaker."

At this time, Representative Saiki called for the previous question.

The Chair then stated:

"Before I call for the question, which is just a vote of aye and nay, is there anyone who wants to record a no vote at this point in time? This is a voice vote. Representative Fox has already voiced his no vote."

The motion was put to vote by the Chair and carried, and Floor Amendment No. 23, amending H.B. No. 2002, HD 2, SD 1, CD 1, entitled, "A BILL FOR AN ACT RELATING TO EDUCATION," was adopted, with Representatives Fox voting no and with Representatives Kaho'ohalahala and Nakasone being excused.

At 11:19 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:19 o'clock p.m.

SUSPENSION OF RULES

On motion by Representative Saiki, seconded by Representative Lee and carried, the rules were suspended for the purpose of reconsidering action previously taken in disagreeing to amendments proposed by the Senate to certain House bills.

RECONSIDERATION OF ACTION TAKEN

Representative Saiki moved that the House reconsider its action previously taken in disagreeing to the amendments proposed by the Senate, and gave notice of intent to agree to such amendments for the following House bills, seconded by Representative Lee and carried.

H.B. No. 1780, HD 1 (SD 1)
H.B. No. 1987, HD 1 (SD 1)
H.B. No. 2025, HD 3 (SD 2)
H.B. No. 2408, HD 2 (SD 1)

H.B. No. 2459, HD 1 (SD 2)

END OF CALENDAR

UNFINISHED BUSINESS

Conf. Com. Rep. No. 92-04 and S.B. No. 1611, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 1611, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Moses rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. This is the bottle bill. So-called bottle bill. And I am opposed, Mr. Speaker.

"I'm sorry but this is going to cause a great hardship on not only the providers of beverages because of the labeling that they have to do, but I think also on the population at large because it's going to cost more for everything we buy. I think it's actually a tax in disguise. In fact, it's already taxed us. We're already paying extra because of this measure. And we're going to pay even more. And we're going to get back part of it but not all of it. So it is a taxation.

"It's also going to take a lot of money. I mean millions of dollars out of circulation in the State, which will hurt the economy of the State because it's going to float around here, some being deposited, some being returned. And for stores, what are they going to do? They're going to either take back your dirty bottle and store it somewhere in the store, in the parking lot somewhere, or they're going to say, 'Well, we don't take it here,' which means you're going to start going to some other store. So that's going to hurt them. Or they'll have to hire more people to take care of these bottles. Or they're going to say you can go a mile down the road to the depository, where you can take back your bottle. And people aren't going to like that so they're going to find a different place to shop.

"So I think all in all, it's just a bad bill. And actually, what are we doing? Millions and millions of dollars, probably about \$50 million we're going to spend on this thing to take care of maybe 2% of the solid waste that goes into our landfills. Maybe 2%. Thank you, Mr. Speaker."

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"I think that my objection to the bottle bill really rests on the fact that we don't do what the rest of the United States does in terms of running a deposit recovery program. In the rest of the country, the program is handled by the private sector. And it's financed by the difference between the deposit that people pay when they buy their beverage containers and the level of refund that you get from actually turning in the beverage containers. There is a gap between those two figures because not everybody who buys the beverage containers actually returns it for deposit. And the balance, the gap between those two figures is sufficient to finance a privately run recovery program. If that's where we ended up, I would be perfectly comfortable with this bill. But instead, we've created a bureaucracy. We charge people more for their deposit than they get back when they return it. And we have the potential of creating a large 'slush fund' that is going to result in possible inefficiencies and a temptation for corruption. And certainly a strong temptation for the misuse of public funds.

"All this could be avoided. So much of what we've done with the bottle bill is refer to other states and their programs. Why did they fail to copy the other programs in this important respect? Thank you, Mr. Speaker."

Representative Caldwell rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support but I share some of the concern about the impact this may have on our bottle industry or our business community.

"I also want to focus on what this bill means in terms of the environment. And here are some pretty amazing statistics. 75,000 bottles and cans are thrown away or littered every hour in Hawaii. 75,000, Mr. Speaker. There's 800 million beverage containers used in our State annually. I'm just staggered in terms of these numbers. Under the bottle statute as amended by this bill, approximately 50,000 tons will be headed to recycling facilities and not to our rapidly filling landfills.

"Based on estimated per area capita consumption, each one of us consumes about 600 beverage drinks that are in containers per year. Based on that statistic, each person will pay approximately \$9 per year under this proposed amendment. That's a penny and half per container fee, each time we purchase a beverage. If we don't redeem the containers, it comes up to about \$45 per capita consumer, Mr. Speaker. That's not significant amounts of money to encourage recycling.

"Mr. Speaker, voting for this bill will mean less litter on roadsides in incredibly scenic areas, safer beaches, smaller landfills, and a stronger recycling industry. For that reason, Mr. Speaker, I think on balance, the environment wins over small business. And I vote in support of this bill. Thank you."

Representative Lee: "Mr. Speaker, I wanted to speak in favor of the bill.

Speaker Say: "I'll let just two more of you speak since time is very short."

Representative Lee: "Okay, I yield to the Minority Floor Leader."

Representative Meyer rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I'm rising in opposition.

"And I think I've spoken many times on this Floor in opposition. But for one thing, this is an old model of recycling and we should be looking at more comprehensive recycling. While the Representative from Manoa talked about this burgeoning amount of beverage bottles in the landfill, it only makes up about 2.5 to 3% of what goes into the landfill. And as far as litter, beverage containers make up 6% to 7% of the litter that's along the highway. The biggest problem we have with litter is abandoned automobiles, which of course this bill doesn't relate to.

"I'm concerned about this newest version of the bottle bill in that people will, it will go into effect in November and people will start paying their deposits, the five cent deposit that will not be able to get it back until after January. This means people have to store these containers if they want to get their deposit back or I mean they can just take them, put them in their garbage, take them to schools, or whatever they want to do. But I think once people pay this additional five cents on every container, they have something invested. So they're going to

have to store these. This will be particularly hard for people in condominiums where space is not very great.

"There's another wrinkle in this particular Conference version in that come January 5, if a wholesaler, a bottler, has not yet been able to get cans, bottles, glass bottles, or plastic, imprinted with some kind of a paint, I think they normally use, showing clearly that there is a five cent deposit in Hawaii, they're going to be required to put manually, stickers on every single container. 24 cans of beer, 24 cans of soda, 24 cans of juice, maybe these are already in a cardboard box with plastic shrink-wrap around them. Now the date comes, they have to take the shrink-wrap off and put these labels on it. This just seems an incredible exercise to go through.

"Another thing that's in here that's pretty disturbing is that in Committee we heard many times that the rules that would apply to this bill to say that this law could operate in a fair way and try to anticipate all the various problems, those rules were in the process of being promulgated but they have had no public hearings. Now in this version of the bottle bill, we've incorporated pages of, I guess the overall, close to the rules, that were being considered. But we're going to adopt this. The public will have had no absolutely no say. They will not have gone to any kind of a public hearing. And I don't think that's the way we should do legislation.

"There are, depending on what district you represent, I know some Representatives say overwhelmingly, their constituents want recycling of bottles. That's not so in my district. And I don't believe it's so in a lot of districts. There are a lot of people that have no idea what the ins and outs of this. Many people don't realize there will be a 1.5 cents of what's tacked on to their beverage container that they won't get back. There will be a very large amount of money just circling around from deposits, to the Department of Health, to recyclers, back to people to pick up. It's a lot of money that's not working in the economy. It's just circulating around. Question is, how beneficial is this to the people of Hawaii?

"Some of the money that the Department expects that they will keep because somewhere between 15% to 17%, the people will at least in the beginning, won't go back for their deposits so the special fund at the Department of Health will grow. And that's what introducers ..."

Representative Leong rose to yield her time, and the Chair, "so ordered."

Representative Meyer continued, stating:

"Thank you, Representative. The introducers of this bill anticipated that and that was something they wanted. That was to have additional money so that Department of Health could have people that would go run programs to teach people about recycling. I just don't believe that this very narrow recycling of beverage containers is going to really solve our landfill problem or solve our problems with litter.

"It's been repeated many times on this Floor about how most of us that are over the age of 50 remember taking bottles back to the store and you get the deposits back. And if you had some old people next door, that it was too much humbug for them, they'd give you the bottles, you'd get the money and you'd go to the movies. And that was a great way to make extra money. But that was a different kind of recycling. That was absolutely recycling. You had bottling companies. You'd bought your soda. You took the bottles back. The bottling company took the bottle, they'd wash them, they'd refill them. It was a cycle of recycling. This is something else. We're going to subsidize recyclers. We're not absolutely sure how the market will be to take the recycled materials. And I would say

with a lot of confidence right now, that if this goes into effect, within a year, a year and a half, the recyclers are going to say, we need more money, we cannot do this service, the markets aren't good out there. Instead of 1.5 cents, it would be 2 cents, and then it would be 2.5 cents, and then it would be 3 cents. This is something I don't think the voters understand. And I don't think they're going to appreciate it. For those reasons, I'm more than happy to vote no and I would hope that others in this Chamber would think about this before they pass it. Thank you."

Representative Lee rose to speak in support of the measure, stating:

"Mr. Speaker, I'd like to speak in favor of the measure.

"Mr. Speaker, the opponents of the bottle bill have engaged in a last minute blitz to kill Senate Bill 1611, a bill to work out the bugs in the original, extremely popular bottle bill that we passed in the past. The original bottle bill will be going into effect whether we pass Senate Bill 1611 or not. In these circumstances, it would seem that it would be in everyone's interest including the National Soft Drink Association's to make this the best program it can be. Instead in Sunday's *Advertiser* there is a full-page ad raising bogus concerns about the bill and an editorial by the President of the Tax Foundation of Hawaii calling the container deposit and processing fees a "tax."

"Let's examine the arguments against this bill. First, the tax issue. The only amount that could arguably be labeled a 'tax' is the one penny that the State would keep to administer the program. The nickel that we will deposit for each bottle would be returned to the consumer when the empties are returned. If this one penny is a tax, it is a very small price to pay for the benefits achieved. The ten states that have bottle bills already, and they have all had them for at least 18 years and thus have extensive data to work from, have diverted 70% or more of the containers out of the litter stream and into a recycling stream. Currently Hawaii recycles only 20% of its containers.

"The beverage industry acts as if throwing containers into our ditches and onto the sides of our roads is costless. Of course, it is not. Litter is a classic case of a negative externality. All those cans and bottles have a harmful effect on the environment, on our visitor industry, and on our quality of life. But these negative side effects are costless as far as the beverage industry is concerned. Currently the industry does not have to pay anything for disposal of the millions of containers it uses. Under the bottle bill the industry will pay one cent; some or all of which it may be able to pass on to consumers.

"One cent is a very good deal. If the beverage industry had to hire people to go and clean up the mess that their industry produces, it would cost a lot more than one cent per container. Is it really a tax if the money is used to clean up the mess the industry caused itself?

"Second, the opponents claim the details of how the nickel deposit will be refunded cannot be worked out by January 1, 2005. That is just a silly argument. Ten other states have had this problem solved for at least 18 years. I am sure we can figure it out.

"Third, opponents argue that curbside recycling should be used instead of the bottle bill. I support curbside recycling, but millions of beverage containers are used away from home. Those who care about the *aina* take their bottles and cans home and recycle, but the reality is that the temptation to throw them on the side of the road is too great for a lot of people. And as we heard before, currently, 75,000 beverage containers are thrown away or become litter every hour in Hawaii. A market

incentive to do the right thing has proven its effectiveness in other states and it will work here too. How many times have I heard my Republican colleagues speak in glowing terms about 'market solutions'? This is a market solution. It internalizes the negative externalities of an industry. I agree with my Republican colleagues in this case, a market solution is needed.

"Opponents claim the bottle bill is currently unworkable. Any time you start a new program as extensive as this one will be, there will be bugs to work out. Senate Bill 1611 is intended to do just that, work out the bugs. And if you are worried about implementation it behooves you to vote for this bill.

"Finally, opponents argue we need more time to implement the bill. As the opponents have repeated *ad nauseam*, no state has enacted a bottle bill in 18 years, although it never mentions that none of the states that enacted container deposit laws have ever repealed them. The beverage industry has had 18 years to propose a better solution. It never said a word about this issue until the Legislature acted to fix the problem. Hawaii has waited 18 years to address problems ten other states tackled in the early 80s. We've waited long enough. Thank you, Mr. Speaker."

Representative Ontai rose in opposition to the measure, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ontai's written remarks are as follows:

"In opposition. SB1611 represents the modified State Deposit beverage container program (Bottle Bill 2). A delay in the implementation date has been required because of the inherent difficulties that government always has in creating a new industry where none existed. As such, there are always inefficiencies because the State Government never has to satisfy its customers because it need only tax taxpayers more.

"In this case, bottle bill math goes something like this: Taxpayer pays up to 1.5 cents for each of the estimated 800,000,000 beverage containers sold in Hawaii annually. Then the taxpayer pays an additional 5 cents for each of the 800,000,000 beverage containers. Even the best estimates report a return rate of 80 percent. At this return rate, this means that the bottle returner gets 4 cents per container that the taxpayer/purchase has paid 6.5 cents. No business would do this--it's bad business. It means a loss of incredible amounts of money. We are led to believe that Hawaii will be cleaner, but creating this incredibly convoluted program to do so. Further, this program is meant to alleviate bottle and container trash throughout the state.

"My problem with this bill is that bottle and container trash represents only about 2% to 4% of the trash in the state. I cannot support spending millions each year in an inefficient system to alleviate such a small percentage of the trash."

Representative Stonebraker rose to speak in opposition to the measure, stating:

"Just a few brief words in opposition. I voted in favor of the original bottle bill. And Mr. Speaker, I too also remember a time when I was in college where we had returned bottles and so forth and so on, and it's for that reason and from the start, the only reservation that I had was the fact that we would be charging more than we would be returning. That it wouldn't be a sort of self-contained system. But it's like with this and with the gas cap bill. We pass something and then we confess and we say, 'Well, it really wasn't a good idea. Let's pass a different bill.' I'd just like to call the bluff and say, 'Let's implement what we had. Let's do it right the first time.' And so, I have to vote no. Thank you."

Representative Jernigan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition. I would like to insert a commentary by Lowell Kalapa into the Journal. Thank you."

Representative Jernigan submitted the following:

"COMMENTARY

Bottle bill is just a tax hike in disguise
By Lowell Kalapa

So you think there were no tax increases in the cards. Surprise, as Rep. Hermina Morita admits, the so-called bottle bill is nothing but a tax increase in disguise.

The problem with that admission is that it just scratches the surface of the hidden tax increase by alluding only to the 1-1/2 cent handling fee and the nickel deposit fee.

It doesn't even begin to address the hidden costs to be imposed on retailers and ultimately their customers. Additional personnel will have to be hired to handle the refunds of deposits and store the empties while additional time will have to be spent accounting for these nickels since under the law that nickel is not subject to the 4 percent general excise.

Additional storage areas will have to be set aside, meaning less storage for products to be sold or new storage areas to be built.

True, not all retail stores are required to become redemption centers if there is a recycling center within a two-mile radius of that retail outlet. With the implementation of the bill just eight months away, how many such recycling centers are there?

Advocates overlook that land is very expensive in Hawai'i and it would, no doubt, be economically unfeasible to throw up these recycling centers in populated areas where available land is very expensive. So, wish as they may, it is doubtful that there will be geographically convenient recycling centers to relieve grocers and other types of beverage sellers from the return requirement.

The added cost of personnel, warehousing, cleaning the beverage containers, paying the recycler to pick up the empties, and shipping the empties out of state will be reflected in the cost of all of the items the grocer sells — be it a bag of rice or a pound of tomatoes.

Thanks to our lawmakers, the cost of living and putting food on the table will rise because of this new mandate.

According to testimony on this measure two years ago, it is projected that the nickel will generate about \$56 million, of which only \$32 million will be claimed upon return of the containers. According to advocates of the bill, the other \$24 million will be used to educate the public on the importance of recycling.

Read between the lines: it means hiring more public employees in the Department of Health to do this educating.

At a time when we don't have money for textbooks in the classroom, we will spend \$24 million on more public employees. Further, the full \$56 million is money that is being taken out of the economy — even though a portion is being refunded, it will go back into the never-ending cycle of the deposit.

The nickel deposit, together with the hidden cost on grocers, hurts the poor most of all. It is already difficult for the poor to make ends meet; hiking the cost of groceries just means a longer line at the FoodBank. And you thought our legislators had a heart for the poor.

Instead, the message the bottle bill sends to the poor is, "Let them eat cake."

Not only does the bottle bill represent a tax hike, but it reflects a lack of creativity and willingness to work toward new solutions that truly have public support. The so-called public support for the bottle bill comes from a very vocal minority because the vast majority of the population only now is learning of the increased costs this measure will impose on all consumers.

Thank you, lawmakers, for hiking the cost of living! Thanks for the tax increase!

*Lowell Kalapa is president of the Tax Foundation of Hawai'i.
The Honolulu Advertiser
Posted on: Sunday, May 2, 2004*

Representative Marumoto rose in opposition to the measure, and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Marumoto's written remarks are as follows:

"These are the remarks I would like to submit on SB No. 1611 from a person who operates three bars, Mr. Bill Comerford. His objections are real world and more eloquent than the protestations of legislators.

"I operate 3 bars and may be opinionated in this matter. I am in favor of curbside recycling. I recycle at home sorting out my cans, plastic, glass and paper. I might put out trash only once a week and often every other week. I don't find it difficult and I find it truly effective.

In each of my bars I am currently paying the ½ cent per bottle fee for the city and county recycling and I currently recycle 99% of my glass waste without having to store the trash inside my premise. Bars and restaurants already recycle effectively under the existing law. With the instituted Bottle Bill, businesses will be penalized for the general public's failure to recycle.

However I foresee some effects that the bottle bill will incur.

1. The cost to each and every business dealing in beverages will increase. Not by a nickel a bottle which every consumer expects. Each importer, every wholesaler and every retailer will have an added expense to pay per bottle based on deposits. Each of the above will also have the added expense of finding storage for outgoing as well as incoming bottles. Lease space is not readily available particularly at the retail level. If their [sic] is no room, where are you going to put it.
2. Who is going to pick up the bottles in Waikiki? The delivery trucks that nobody wants on the streets of Waikiki. They'll be parked twice as long or they will require a second "return" vehicle blocking more street space.
3. The current recyclers take all glass whole or broken, compacted and stored for perhaps twice a week pickup. They will all be put out of business by the "deep pocket" aspects of this bill. Only the big buck guys who have cash to pay out deposits for 9 months without reimbursement can survive this bill. Every current glass recycler will be gone. Read the qualifications to be a recycler.

4. The pyramiding of deposits and tax, the cost of handling and storage will drive the expected price of beer up by a dollar in many bars and restaurants. Bad for consumers, good for legislatures, another 4.16 cents tax per sale in addition to the 1 cent deposit that is never returned.

5. Within the year the health department will make some statement to the effect that it is not a good idea to be storing trash on the same premise that food or beverage is going to be served. What options are there, it will be the law. They'll insist on all beverage containers be washed and sterilized before returning to the grocery stores where your food is waiting to be sold to you. Excuse me but aren't we supposed to be conserving water.

6. Come summer time the stench of stale beer and sticky soda will permeate certain areas and at grocery store return centers. Business will be affected.

7. Some restaurant owners will find it easier to just throw the bottles outside and let the homeless or others pick them up rather than store them.

8. "Variety is no longer the spice of life" Bars won't have the option of offering 20 types of beer. Space being the issue only the most popular brands will survive here. Ditto soda and other beverages at all retail levels. Adios to all the microbrews.

9. Has recycling ever been effective in a place that did not have a bottling plant?

Maybe I'm biased but I believe curbside recycling has a better chance of being effective in the long run. Let's at least consider the consequences of this bill. It sure seems like a feel good idea but to what effect. People have to take the responsibility to recycle on an individual basis. Stop being lazy and sort your trash or you'll be paying higher prices for everything you drink. Did I just see a van cam?

Bill Comerford"

Representative Bukoski rose in support of the measure with reservations, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Bukoski's written remarks are as follows:

"I am voting with reservations because I am not convinced that this measure will help the program succeed and help the retailers implement the program successfully. I have talked with both sides of the issue and have voiced my concerns. I believe that the implementation of the program is being rushed. I believe the retailers need more time to ramp their operations up to the point where they can accommodate the program on an on-going basis. If this program is rushed, as I believe it is being, the entire program may be in jeopardy. In addition, this bill inserts the actual rules that the department is still working on. The rules have not gone through the necessary public review process as mandated by law. However, this is a sort of fast tracking way of getting around those requirements. I believe this kind of precedent setting is not good. For these reasons, I am in support with reservations."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1611, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM," passed Final Reading by a vote of 35 ayes to 16 noes, with Representatives Finnegan, Fox, Jernigan, Karamatsu, Kawakami, Leong, Marumoto, Meyer, Mindo, Moses,

Nakasone, Ontai, Pendleton, Sonson, Souki and Stonebraker voting no.

At 11:41 o'clock p.m., the Chair noted that S.B. No. 1611, HD 2, CD 1 passed Final Reading.

Conf. Com. Rep. No. 98-04 and S.B. No. 2690, SD 2, HD 2, CD 1:

Representative Saiki moved that the report of the Committee be adopted and that S.B. No. 2690, SD 2, HD 2, CD 1 pass Final Reading, seconded by Representative Lee.

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"And I have problems with the lack of nexus or the fuzzy nexus between the fee collected and the service provided. I don't know why the people who are registering their automobiles are going to be paying for ambulance service that serves many people who don't have cars. Thank you."

Representative Ching rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support.

"Thank you. Mr. Speaker, I have spoken before in support of EMTs and paramedics and I do so because I am a believer in supporting our frontlinesmen. Earlier there was a speech made about the many sacrifices that our soldiers are making in Iraq and those that put their lives at risk. Well, I think here at home, we have a war going on. A war on ice. A war on crystal meth. This is not the Hawaii of years gone by. And for me, our paramedics are frontlinesmen. They put their lives at risk against people who you and I probably wouldn't want to have to put into an ambulance. And they protect us and make sure that we're safe. We all know that we want an ambulance there at the right time for ourselves and our loved ones. They are our frontlinesmen. They deserve our help. I'm in strong support. I urge my Members to vote yes."

Representative Herkes rose to speak in support of the measure, stating:

"In strong support, Mr. Speaker. I listened very carefully to the E-911 discussion. And this is 41.5 cents a month as opposed to 66 cents and it's going to save a lot more lives. And I will say that the people in Ocean View went and got their own ambulance. No cost to the taxpayers at all. This is the area bigger than the Island of Oahu. And the least we could do is to give them some equipment and some funding."

Representative Moses rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"First of all, on the E-911, people choose to use their cell phone so they pay that price. On this one, this is a \$5 increase on every vehicle. Now we've already heard with the gas cap, we had all the discussions and we're told people have to have cars. They have to have them. They have to have them to go to work or for other reasons but we're charging everybody with a car \$5 more for registration. So again, I don't see the nexus.

"And Mr. Speaker, this is another difficult one for me because I believe in the paramedics. It has training for them. It has some systems they need. It provides a lot of things for the

Neighbor Islands. And I feel for them. It also provides for Leeward Oahu. So it's not easy to vote against something like this but I don't see the nexus. I believe all these things are really needed. Everything in this bill is needed. I support everything in the bill. If we all support it, why don't we take it out of the general fund, Mr. Speaker? Thank you."

Representative Arakaki rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support. And real quickly. The question that I think we need to ask is: How do we put a price on someone's life? And I think if you talk to any EMS personnel, the most critical thing that we have to consider is response time. And as a State, we're obligated to provide a system of rapid response for emergency medical service. And the fact is we haven't responded through general funds to provide the needed services, especially in rural areas and the Neighbor Islands. So the question is, how do we provide the needed resources? And I think this is a creative and a most appropriate way of utilizing funds to provide these needed services. Thank you, Mr. Speaker."

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I'll summarize too. Mr. Speaker, in strong support, very strong support.

"And just to summarize, that with good services like these, we can have more and more of them with good fiscal responsibility. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2690, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES," passed Final Reading by a vote of 47 ayes to 4 noes, with Representatives Fox, Jernigan, Moses and Ontai voting no.

At 11:47 o'clock p.m., the Chair noted that S.B. No. 2690, SD 2, HD 2, CD 1 passed Final Reading.

FINAL READING

The following bills were taken from the Clerk's desk and the following action taken:

Representative Saiki then moved to agree to the amendments proposed by the Senate to the following House bills, seconded by Representative Lee and carried.

H.B. No. 2170, HD 1, SD 1

H.B. No. 2286, HD 1, SD 1

The Chair addressed the Clerk who announced that the record of vote forms for the aforementioned bills had been received.

H.B. No. 2170, H.D. 1, S.D. 1:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 2170, H.D. 1, on the following showing of Ayes and Noes:

Ayes, 4 (Kawakami, Shimabukuro, Nishimoto and Moses). Noes, none. Excused, none.

On motion by Representative Saiki, seconded by Representative Lee and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 2170, H.D. 1 and H.B. No. 2170, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR REHABILITATION HOSPITAL OF THE PACIFIC," passed Final Reading by a vote of 51 ayes.

H.B. No. 2286, H.D. 1, S.D. 1:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 2286, H.D. 1, on the following showing of Ayes and Noes:

Ayes, 3 (Takai, Takamine and Leong). Noes, none. Excused, none.

On motion by Representative Saiki, seconded by Representative Lee and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 2286, H.D. 1 and H.B. No. 2286, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII COMMISSION FOR NATIONAL AND COMMUNITY SERVICE," passed Final Reading by a vote of 51 ayes.

At 11:50 o'clock p.m., the Chair noted that the following bills passed Final Reading:

H.B. No. 2170, HD 1, SD 1
H.B. No. 2286, HD 1, SD 1

At 11:50 o'clock p.m., Representative Luke requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:51 o'clock p.m.

ANNOUNCEMENTS

The Chair then announced:

"Members, at this time, the Sergeant-at-Arms has stated that you can leave your books and folders on your desk so that your staff could pick it up tomorrow morning rather than having all of you carry it back to your respective offices."

Representative Ching: "Just quickly. May is Historic Preservation Month. Tomorrow morning at 9 a.m. begins the first ever Hawaii Historic Fair. Preservation where it would be proclaimed Historic Preservation Day. Every legislator is invited to a free luncheon that is hosted by these organizations. I hope you will come by. There's a special gift from artist Maryline Webber for you. Please come by room 309 at 12 noon. Thank you."

Representative Halford: "Thank you. Mr. Speaker. Every year we've had an excellent drive for the Hawaii Foodbank and I'd like to take this opportunity I guess to thank everyone that have participated in it. But I wanted to mention, Mr. Speaker, I was amazed that almost half of all of what the House collected for the Hawaii Foodbank was provided by the office of Representative Pendleton. Phenomenal. Thank you."

Representative Arakaki: "Thank you, Mr. Speaker. Your Health Committee is always working and healthy. We're going to have an informational briefing on Wednesday, May 5, 10:30

in conference room 325 on the Auditor's report on the proposed mandatory parity in health insurance coverage for additional serious mental illness and substance abuse. Thank you, Mr. Speaker."

Representative Luke: "Mr. Speaker, speaking of the Foodbank, I wanted to thank the designated House coordinator for the Foodbank, Representative Nishimoto for a job well done."

ADJOURNMENT

At 11:51 o'clock p.m. on motion by Representative Lee, seconded by Representative Meyer and carried, the House of Representatives adjourned until 9:00 o'clock a.m. Thursday, May 6, 2004.

HOUSE COMMUNICATIONS

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has passed on Final Reading the following bills:

H.B. 680, HD 2, SD 1, CD 1
H.B. 851, HD 1, SD 1, CD 1
H.B. 1374, HD 2, SD 2, CD 1
H.B. 1710, HD 2, SD 2, CD 1
H.B. 1756, HD 2, SD 1, CD 1
H.B. 1786, HD 1, SD 2, CD 1
H.B. 1820, HD 1, SD 1, CD 1
H.B. 1904, HD 1, SD 2, CD 1
H.B. 1908, HD 2, SD 1, CD 1
H.B. 1929, HD 1, SD 2, CD 1
H.B. 2005, HD 1, SD 1, CD 1
H.B. 2009, HD 1, SD 1, CD 1
H.B. 2049, HD 1, SD 2, CD 1
H.B. 2074, HD 1, SD 1, CD 1
H.B. 2136, HD 1, SD 1, CD 1
H.B. 2137, HD 1, SD 1, CD 1
H.B. 2143, HD 2, SD 1, CD 1
H.B. 2396, HD 2, SD 2, CD 1
H.B. 2411, HD 1, SD 1, CD 1
H.B. 2511, SD 1, CD 1
H.B. 2523, HD 1, SD 1, CD 1
H.B. 2547, HD 2, SD 2, CD 1
H.B. 2662, HD 1, SD 1, CD 1
H.B. 2667, HD 2, SD 1, CD 1
H.B. 2703, HD 1, SD 2, CD 1
H.B. 2773, HD 1, SD 1, CD 1
H.B. 2774, HD 1, SD 1, CD 1
H.B. 2786, HD 1, SD 2, CD 1
H.B. 2840, HD 1, SD 3, CD 1
H.B. 2883, HD 2, SD 2, CD 1
H.B. 2911, HD 2, SD 1, CD 1
S.B. 17, SD 1, HD 1, CD 2
S.B. 214, SD 3, HD 2, CD 1
S.B. 420, SD 1, HD 1, CD 1
S.B. 459, SD 1, HD 1, CD 2
S.B. 473, SD 1, HD 3, CD 1
S.B. 779, SD 2, HD 2, CD 1
S.B. 1238, SD 2, HD 2, CD 1
S.B. 1239, SD 1, HD 2, CD 1
S.B. 1318, SD 1, HD 2, CD 1
S.B. 1491, SD 1, HD 1, CD 1
S.B. 1611, HD 2, CD 1
S.B. 2045, SD 2, HD 1, CD 1
S.B. 2056, SD 1, HD 2, CD 1
S.B. 2063, SD 2, HD 2, CD 1

S.B. 2073, SD 2, HD 2, CD 1
 S.B. 2077, SD 2, HD 1, CD 1
 S.B. 2134, HD 1, CD 1
 S.B. 2165, SD 1, HD 1, CD 1
 S.B. 2200, HD 1, CD 1
 S.B. 2210, SD 2, HD 1, CD 1
 S.B. 2281, SD 1, HD 1, CD 1
 S.B. 2355, SD 2, HD 2, CD 1
 S.B. 2358, SD 2, HD 1, CD 1
 S.B. 2396, SD 1, HD 1, CD 1
 S.B. 2404, SD 2, HD 1, CD 1
 S.B. 2424, SD 2, HD 2, CD 1
 S.B. 2425, SD 1, HD 1, CD 1
 S.B. 2440, SD 1, HD 1, CD 1
 S.B. 2528, SD 1, HD 1, CD 1
 S.B. 2529, HD 1, CD 1
 S.B. 2538, SD 1, HD 1, CD 1
 S.B. 2550, HD 1, CD 1
 S.B. 2551, HD 1, CD 1
 S.B. 2595, SD 2, HD 2, CD 1
 S.B. 2606, SD 1, HD 2, CD 1
 S.B. 2671, SD 1, HD 1, CD 1
 S.B. 2690, SD 2, HD 2, CD 1
 S.B. 2704, HD 1, CD 1
 S.B. 2716, SD 1, HD 2, CD 1
 S.B. 2790, SD 1, HD 1, CD 1
 S.B. 2791, SD 1, HD 1, CD 1
 S.B. 2834, SD 2, HD 2, CD 1
 S.B. 2839, SD 2, HD 2, CD 1
 S.B. 2873, SD 1, HD 2, CD 1
 S.B. 2878, SD 2, HD 2, CD 1
 S.B. 2879, SD 2, HD 2, CD 1
 S.B. 2887, SD 2, HD 2, CD 1
 S.B. 2906, SD 1, HD 2, CD 1
 S.B. 2909, SD 1, HD 1, CD 1
 S.B. 2926, SD 1, HD 2, CD 1
 S.B. 2930, SD 2, HD 1, CD 1
 S.B. 2936, SD 2, HD 1, CD 1
 S.B. 2951, SD 1, HD 1, CD 1
 S.B. 2968, SD 1, HD 1, CD 1
 S.B. 2976, SD 1, HD 1, CD 1
 S.B. 2995, SD 2, HD 1, CD 1
 S.B. 3018, SD 2, HD 1, CD 1
 S.B. 3020, HD 1, CD 1
 S.B. 3049, SD 2, HD 2, CD 1
 S.B. 3080, SD 2, HD 2, CD 1
 S.B. 3086, HD 1, CD 1
 S.B. 3092, SD 1, HD 1, CD 1
 S.B. 3106, SD 1, HD 2, CD 1
 S.B. 3148, SD 2, HD 3, CD 1
 S.B. 3153, SD 2, HD 2, CD 1
 S.B. 3162, SD 1, HD 1, CD 1
 S.B. 3170, SD 2, HD 2, CD 1
 S.B. 3175, SD 2, HD 2, CD 1
 S.B. 3182, HD 1, CD 1
 S.B. 3193, SD 2, HD 2, CD 1
 S.B. 3230, SD 2, HD 1, CD 1

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered its action taken in disagreeing to the amendments made by the Senate, on April 8, 2004, to H.B. 2408, HD 2, SD 1.

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered its action taken in

disagreeing to the amendments made by the Senate, on April 13, 2004, to H.B. 1987, HD 1, SD 1.

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered its action taken in disagreeing to the amendments made by the Senate, on April 15, 2004, to the following House Bills:

H.B. 1780, HD 1, SD 1
 H.B. 2025, HD 3, SD 2
 H.B. 2459, HD 1, SD 2

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has agreed to the amendments made by the Senate on April 13, 2004, and has passed the following House bills on Final Reading:

H.B. 2170, HD 1, SD 1
 H.B. 2286, HD 1, SD 1

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered S.B. 3238, SD 2, HD 2, CD 1, heretofore vetoed as set forth in Governor's Message dated April 29, 2004, and approved said bill by an affirmative vote of two-thirds of all members of which the House is entitled.

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered H.B. 2743, HD 2, SD 1, CD 1, heretofore vetoed as set forth in Governor's Message dated April 30, 2004, and approved said bill by an affirmative vote of two-thirds of all members of which the House is entitled.

House Communication dated May 3, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered H.B. 1043, SD 1, CD 1, heretofore vetoed as set forth in Governor's Message dated May 3, 2004, and approved said bill by an affirmative vote of two-thirds of all members of which the House is entitled.

SIXTIETH DAY

Thursday, May 6, 2004

The House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 9:07 o'clock a.m., with the Speaker presiding.

The invocation was delivered by Representative Kika G. Bukoski, after which the Roll was called showing all members present with the exception of Representatives Meyer and Souki, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Fifty-Ninth Day was deferred.

INTRODUCTIONS

Representative Hamakawa recognized the House Printshop staff members who were seated in the gallery: Ms. Linda Shishido, Ms. Amy Say, Ms. Elaine Miyamoto, Mr. Tom Asato; and thanked all the Printshop staff for their hard work during the Session.

Representative Hale introduced her legislative staff: Ms. Cody Vargo, Ms. Michele Martenson, and Mr. Issac Liu.

Representative Mindo, on behalf of Representative Tamayo and himself, introduced 9th Grade students of Campbell High School, along with their teachers, Mr. Dean Oleole, Mr. Blaine Takekuchi, and Mr. Tyrone Horrace; counselors, Ms. Keawe Kalama, Ms. Newlynne Young, and Ms. Leilani Nunes; and grandparent, Ms. Lydia Ramos. They were accompanied by his legislative office manager, Mr. Philmund Lee.

Representative Ontai introduced his legislative staff and volunteers, Mr. Herb Haynes, Ms. Lani Bartholomew, Ms. Ellen Diggs, Mr. Boxley Diggs, and Mr. Douglas Thomas.

Representative Chang introduced Mr. Barry Mizuno of Puna Geothermal Ventures.

Representative Chang also introduced Mr. Maurice Morita and Ms. Beverly Gotelli of the Hawaii State Teachers Association.

Representative Halford introduced Department of Education Superintendent Pat Hamamoto.

Representative Lee acknowledged and thanked the session and full-time staff and requested that their names be placed in the Journal in recognition of their service to the House.

Representative Abinsay: Christine Sabino, Norma Chang, Terance Lee, Jake Manegdeg, Sanford Sasaki.

Representative Arakaki: John Mizuno, Ted Lubong, Alice Nakama, Brenda Wong.

Representative Blundell: Verna Takahashi, Leslie Couch, Reyna Machida.

Representative Bukoski: Keoki Leong, Malia Smith, Malisa Uchida, Tyler Vasconcellos.

Representative Caldwell: Cindy Apana, Lynn Miller, Tina Yamamoto.

Representative Chang: Sharon Miranda, Barbara Anderson, Francine Kaneshige, Gloria Rodrigues.

Representative Ching: Brody McClellan, Ryan Hew, Beverlyn Ho, Gaye Miyasaki.

Representative Evans: Jessie Torres, Margaret Logotaeao, Jessica Orr.

Representative Finnegan: Malia Gray, Bradley Davis, Peter Salbiejo.

Representative Fox: Anita Young, Lacene Terri, Venus Delos Santos, Nicholas Hahn.

Representative Hale: Barbara Hale, Chad Ahia, Cheryl Jarrell, Isaac Liu, Michele Martenson, Cody Vargo.

Representative Halford: John Gibo, David Levao, Soo Jong Park, Keene Rees.

Representative Hamakawa: Joy Kobayashi, Pollyanna Fiaui, John Kagehiro, James Miura, Holly Mizuno, Melissa Shimizu, Ember Shinn.

Representative Herkes: Eloise Kuniyoshi, Larissa Meinecke, Robert Watland, Cathy Yasuda.

Representative Hiraki: Andrew Garrett, Hannah Bingham, Russell Blair, Michel Garrett, Arthur Mann, Kendall Matsuyoshi, Yvonne Miranda, June Toguchi-Tassill.

Representative Ito: Lisa Kirimitsu, Paul Ah Yat, Pauline Namuo, George Okuda.

Representative Jemigan: Carrie Kealoha, Victoria Ambriz, Kristi Arakaki, Elisa Marie Furtado-Fischer.

Representative Kahikina: Merrie Aipoalani, Moses Lum Hoy, Lavonne Richardson Sexton.

Representative Kaho'ohalahala: Coochie Cayan, Jasmine Branco, Solomon Tolo Enos, Marlena Kaleiohi, Adrian Kamali'i.

Representative Kanoho: Lei Kanoho, Ray Adams, Nani Long, Mason Young.

Representative Karamatsu: Baron Gushiken, Stacy Mitchell, Brian Miyamoto.

Representative Kawakami: Kippen De Alba Chu, Amy Maeda, Michael Moscati, Florence Wakuya.

Representative Lee: Ann Thomock, Laurie Veatch, Janet Liftee, Lloyd Nakahara, Karl Rhoads, Douglas White.

Representative Leong: Roberta Weatherford, Caroline Dang, Eric Ikawa, Sharon Pattison.

Representative Luke: Blayne Higa, Dawn Hirai, Tushanee Kuruppu, Gregory Schlais, Colleen Takenouchi.

Representative Magaoay: Lawrence Sagasay, Genaro Bimbo, Rex Ann Dubiel, Sharon Matutino.

Representative Marumoto: Joan Shinn, Eileen Mortenson, Maureen Muraoka, Allison Murata.

Representative Meyer: Joan Sabanos, Jason Barrett, Susan Hogan.

Representative Mindo: Philmund Lee, Mark Bradley, James Brennan, Catalina De Castro, Brian Fuchigami, Paul Marrack, Milovale Thompson.

Representative Morita: Jennifer Lucien, Daniel Kalili, Malia Lyons.

Representative Moses: Mike Foley, Milton Dea, Georgine Flores.

Representative Nakasone: Ann Takaki, Tracy Nagao, Lois Tambalo, Kyle Yamashita.

Representative Nishimoto: Puna Chai, Christine Ho, Jessica Lee, Angela Pucci.

Representative Ontai: Randy Prothero, Timothy Buckley, Ellis Diggs, Rosalind Diggs, Douglas Thomas.

Representative B. Oshiro: Stuart Saito, Melita Lani, Amoreena Rabago, Marc Todoroki.

Representative M. Oshiro: Linda Kawabata, Erik Abe, Paul Fung.

Representative Pendleton: Aura Flores, Katharine Chang, Christianne Gorospe, Richard Pendleton, Brian Tanada.

Representative Saiki: Clarice Okada, Audrey Endo, Jodi Higuchi, Chenise Kanemoto.

Representative Say: Gail Kakuda, Janel Cohen, Mark Oto.

Representative Schatz: Karin Gill, Charles Huxel, Jacce Mikulanec, Mitsue Stout.

Representative Shimabukuro: Colleen Young, Georgette Gora, Wallace Inglis, Sandra Morimoto, Robin Shishido.

Representative Sonson: Park Kaleiwahea, Michelline Alarcon, Rogel Duma, Felicitas Guillermo, Jeannie Park.

Representative Souki: Flo Hamasaki, Peggy Collier, Vernon Souki, Brian Yamane.

Representative Stonebraker: Marti Tom, John DeAngelo, Sean Matlock, Raymond Miller.

Representative Takai: Lisa Vargas, Cheryl Derby, Sandra Kim, William Kunstman, Grace Kwan, Lenna Mulipola-Ayers.

Representative Takamine: Cynthia Okazaki, Steven Idemoto, Tyra Ito, Christi-Anne Kudo, Johnathan Lee, Kauluwehi Matsuda, Clayton Nakamoto, Anthony Nikae, Erin Ogawa, Kathleen Stanley, Ruby Takehiro, Keith Tanaka, Ai Yamane, Lea Young.

Representative Takumi: Nancy Nishimura, Marin Bogema, Gayle Hirohata-Goto, Kenneth Oshiro.

Representative Tamayo: Mayette Smith, Sarah Chandley, Erika Moon, Saipeti Tagovailoa.

Representative Thielen: Desiree Poteet, John Foster, Paul Reid, Claire Sullivan.

Representative Wakai: Garrett Umeda, Melanie Arakaki, Janice Ching, Miekko Treaster, Edward Wong.

Representative Waters: Cheryl Takabayashi, Mary Baker, Janelle Tokunaga, Laura Yoshida.

Chief Clerk's Office: Patricia Mau Shimizu, CJ Leong, Linda Asato-Kaichi, Josette Friedl, Gail Iseri, Lyndall Kawakami, Adele Kuraoka, Jade Lariosa, Denise Liu, Brent Miyagi, Craig Nakahara, Neal Shigemura, Carl Smith, Chad Takahashi, Tammy Tengan, Roger Tyau, Tony Baratti, Layne Belen, Ruperto Juarez, Danny Kato, Lynne Kong, Melanie Kuroiwa-Steiner, Gloria Laimana, Joseph Laxamana, Brian Nii, Anita Ortiz-Cruz, Minerva Remigio, Robert Simmons, Shayne Takahashi, Jill Takamatsu, Bryson Villanueva, Hollis Wilson.

Printshop: Dorothy Horie, Virgil Jhoo, Yoshi Kiyabu, Jean Kinoshita, Thomas Asato, Kay DeMello, Kenneth Gibo, Roy Higa, Lorrin Kaalekahi, Summer Kaleo, Douglas Kuahulu, Sandra Kuewa, Elaine Miyamoto, Har Ping Pang, Mildred Phillips, Joseph Rapoza, Eleanor Riney, Amy Say, Linda Shishido, Shirley Sing, Peggie Spencer, Norman Tajiri, Shirley Yone, Curtis Yoshida.

Sergeant-at-Arms: Kevin Kuroda, Lon Paresa, Paulette Abe, Marilyn Inouye, Barbara Leong, Ronie Low, Glenn Okamura, Elsie Abad, Jesse Alvarado, Douglas Arakaki, Francis Baysa, Don Kusunoki, Channele Lee, Kenneth Lee, Bronson Low, John Maehara, Richard Nagamine, Mitchell Osurman, Nellie Piena, Puletua Popo, Jeffrey Spencer, Richard Tamashiro, Renwick 'Uncle Joe' Tassil, Belle Teixeira, Shigeo Tengan, Stacie Yuen, Dorothy Alvarado, Anna Salis, Lisa Waipa.

Majority Research: Linda Oamilda, John Moriyama, James Funaki, Richard Dvnoch, Doreen Belen, Iris Brown, Aaron Dunn, Jamie Go, Sharilyn Ho, Mary James, Joel Kennedy, Joaquin Manibusan, Steven Lum, Pam McCreddie, Joyce Nakagawa, Jolene Nakamatsu, Roy Nihei, Kendra Oishi, Carolyn Plett, Wimmie Wong, Stacie Hong, Robert Soto, Dawn Wachi.

Finance Committee: Brian Hallett, Jo Hamasaki, Nandana Kalupahana, Michael Ng, Eric Noguchi, Brian Takeshita.

Minority Research: Kymberly Pine, Boyd Akase, Candace Crouch-Kelsey, James Hall, Daniel Ontai, Evelyn Cho, Gloria Geiger, Darien Kadens, Michael Lee, Nadine Nishioka, Gary Paul, Sean Rostron.

Representative Moses introduced and thanked Ms. Queenie Kuheana of the Capitol Tours Office.

At 9:16 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 10:21 o'clock a.m.

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 226 through 232, 222 and 223) were received and announced by the Clerk:

Gov. Msg. No. 226, informing the House that on May 4, 2004, the following bill was signed into law:

S.B. No. 2443, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ATTORNEYS' LIENS." (ACT 048)

Gov. Msg. No. 227, informing the House that on May 4, 2004, the following bill was signed into law:

S.B. No. 2844, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CRIME." (ACT 049)

Gov. Msg. No. 228, informing the House that on May 4, 2004, the following bill was signed into law:

S.B. No. 2294, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL TRESPASS." (ACT 050)

Gov. Msg. No. 229, transmitted the 2003 Annual Report of the State of Hawaii Overseas Offices prepared by the Department of Business, Economic Development, and Tourism.

Gov. Msg. No. 230, informing the House that on May 5, 2004, the following bill was signed into law:

S.B. No. 2577, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PEER REVIEW." (ACT 054)

Gov. Msg. No. 231, informing the House that on May 5, 2004, the following bill was signed into law:

H.B. No. 1294, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS." (ACT 055)

Gov. Msg. No. 232, informing the House that on May 5, 2004, the following bill was signed into law:

S.B. No. 3222, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE." (ACT 056)

Gov. Msg. No. 222, returning House Bill No. 267, without her approval and her statement of objections relating to the measure as follows:

"EXECUTIVE CHAMBERS
HONOLULU
May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 267

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 267, entitled "A Bill for an Act Relating to Government."

The purpose of this bill is to repeal certain limitations on the powers of the Office of Elections and the Campaign Spending Commission that are imposed upon administratively attached agencies. The bill would also authorize the Office of Elections and the Campaign Spending Commission to retain their own legal council. Additionally the bill would establish an elections commission appointed by members of the Legislature that would appoint the Chief Election Officer and oversee the operations of the Office of Elections.

Attached agencies, boards and commissions, such as the Office of Elections and the Campaign Spending Commission, were created to retain a degree of autonomy in their mission and functions. Current law is ambiguous in defining the level and nature of autonomous actions these "attached agencies" should enjoy. My Administration has honored the intended ability of such agencies, boards and commissions to communicate freely with the legislative branch, the executive branch, and the general public. We have requested, as a courtesy, that these boards keep the Departments to which they are attached apprised of their activities. In many instances boards, commissions, and attached agencies have developed a collaborative working relationship that has served the public well.

I must return this bill without my approval because it denigrates these collaborative relationships, would significantly skew representation of the voting public in the election process, and would place two attached agencies, the Campaign Spending Commission, and the Office of Elections, outside the score of the law.

First, the bill gives appointment power and the power to oversee the Chief Election Officer to elections commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new elections commission must be residents of the neighbor island counties. As a result, eighty percent of the State's population, residing in the City and County of Honolulu, would be represented by as few as two and no more than three of the nine elections commissioners.

Second, this bill deprives the Governor of any voice in the appointment of the State's Chief Election Officer. The Governor presently appoints one of the five members of the existing Elections Appointment and Review Panel. Under this measure, the Governor would not appoint any of the nine members of the elections commission, which would replace the Elections Appointment and Review Panel. Further, if the elections commission member positions are not filled by the legislators with the times specified, this bill provides that the Chief Justice of the Supreme Court of Hawaii, not the Governor, must appoint the members to fill the vacancies. Because the Supreme Court decides elections cases on a regular basis, it would be inappropriate for the Chief Justice to appoint members to the commission this bill would create, and could blur the separation of powers provisions established in the State Constitution.

Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller. Further, the Office of Elections, Campaign Spending Commission, and Elections Commission could take these actions without complying with all applicable requirements of the Hawaii Public Procurement Code and applicable personnel laws. Attached agencies should not be allowed to be "above the law" when carrying out their administrative functions.

Pursuant to section 26-38, Hawaii Revised Statutes, the Comptroller has the authority to delegate approval for personnel decisions and purchases to attached agencies, boards, and commissions. This bill's provisions would set an unwarranted precedent.

Finally, this bill erodes consistency and objectivity in the State Government's legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. It is critical that the legal advice given to those agencies be consistent with that given to other State agencies and with the interests of the State of Hawaii. Retention of separate counsel would likely result in inconsistent advice. Also, because the subject matter of these agencies involves political issues that affect predominantly members of the Legislature, it is important to assure that legal advice is not unduly influenced by what the agencies want to hear, rather than by sound legal analysis. This bill increases the risks of undue influence, especially because the attorneys would serve at the agencies' pleasure and would be paid by the agencies.

For the foregoing reasons, I am returning House Bill No. 267 without my approval.

Respectfully,

/s/

LINDA LINGLE
Governor of Hawaii"

Representative Saiki moved to override the veto of H.B. No. 267, HD 2, SD 2, as contained in Gov. Msg. No. 222, seconded by Representative Lee.

Representative Moses rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. In opposition.

"You've all read the message but I'm going to read it for the record, part of it at least. This bill does many things to undermine the authority of the Governor, but further it erodes the good functioning of the government.

"First, the bill gives appointment power and the power to oversee the Chief Elections Officer to Elections Commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new Elections Commission must be residents of the Neighbor Island counties. As a result, eighty percent of the State's population ...' I'm going to repeat that, Mr. Speaker. 'Eighty percent of the State's population, residing in the City and County of Honolulu, would be represented by as few as two and ...' absolutely, 'No more than three of the nine elections commissioners.' One man, one vote? Not so.

"Second, this bill deprives the Governor of any voice in the appointment of the State's Chief Elections Officer. If the Elections Commission Member positions are not filled by the Legislature within the time specified, and Mr. Speaker, you know how we're always on time as a Legislature, we always do things on time, even when we're not in Session. So if the positions are not filled within the time specified, this bill provides that Chief Justice of the Supreme Court of Hawaii, and not the Governor as is currently the case, must appoint the members to fill the vacancies.

"Mr. Speaker, the Supreme Court decides elections cases on a regular basis. I'd believe it would be inappropriate and I think as a matter of law, and constitutionally it's inappropriate for the Chief Justice to appoint members to the Commission this bill would create. And it could blur the separation of powers provisions established in the State Constitution.

"Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller.

"This is without complying with all applicable requirements of the Hawaii Public Procurement Code, which we just passed, and applicable personnel laws. Attached agencies should not be allowed to be "above the law" nor should anybody else in this State.

"Finally, the Office of Elections and the Campaign Spending Commission are authorized under this measure to employ their own attorneys. I believe this bill would increase the risk of undue influence. And especially, Mr. Speaker, if you understand, because who do these attorneys work for? They work for the agency that hires them. So when they give their legal opinion, it's probably going to be the opinion that they know their boss wants to get. So they would be serving of course at the pleasure of the agency that they are paid by. Thank you, Mr. Speaker."

Representative Pendleton rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I too rise in opposition to the motion.

"Mr. Speaker, I think there are many good and cogent and important reasons why the Governor vetoed this message. I agree with all of them. I'd like to incorporate the remarks of the previous speaker, the gentleman from Kapolei and have them in the Journal as though they are my own," and the Chair "so ordered." (By reference only.)

Representative Pendleton continued, stating:

"I'd also like to just make one observation, Mr. Speaker. Throughout the course of this Legislature, this particular Session, I have been concerned about bills that have been introduced, bills that have been heard, bills that have been talked about, including this one. Those bills would have the tendency to erode and to take away from and to diminish the traditional, customary, and lawful powers of the Governor.

"I've spoken about this not because I'm concerned about some sort of conspiracy, but there is a true way in which these things take away powers that have been given to the Governor. On Election Day, not long ago, a couple years ago, the Governor was elected by the people of this State and one of the powers that was given to her was that to appoint one of the five members of the Elections Appointment and Review Panel. Under this bill, that power will no longer be hers. She will not have that power.

"We are here to serve and represent the people. We respond to constituent email, to request of information. We react and reflect upon public polls. But I have never received an email, never received a fax, never received a letter which said, you know what, there's a problem here, we need to take away the Governor's ability to appoint a member concerning elections. I've never heard a single person speak to me about the Governor abusing, misusing, or failing to responsibly exercise that power. I've never read an article in the newspaper that says this is something we need to be sure to take away from the Governor. I've never seen a poll, which indicated that this is even on the radar screen of the people of Hawaii. So the question I have, and I guess it's a rhetorical one, is why are we doing this? What problem is this supposed to be solving? What brokenness is this seeking to fix? What is behind this? I don't know. But I don't think that it is appropriate.

"At least this part of the bill I strongly disagree with. And for that reason alone, as well as the ones represented by or spoken about by the Representative from Kapolei, this reason alone I think is reason to veto this measure. So I would ask my colleagues not to support the motion that's before us which would seek to override this. Thank you, Mr. Speaker."

Representative Hamakawa rose to speak in support of the motion to override, stating:

"Thank you, Mr. Speaker. I rise in support of the override of the Governor's veto.

"Mr. Speaker, House Bill 267 is a relatively moderate measure that seeks to encourage independence, increase efficiency, and reduce bureaucratic control by giving basic decision making power to the Campaign Spending Commission and the Office of Elections.

"Mr. Speaker, it's hard for anyone to look beyond their own interest and see the big picture. Elected officials are no different.

"After a long and hard fought political campaign, the temptation to manage and control is great. However, elected officials need to know when to step back and allow certain agencies some independence.

"That's clearly the case with the Campaign Spending Commission and the Office of Elections. These entities monitor the activities of candidates who eventually head our government. It should be obvious to any elected official that these entities need the type of independence provided in House Bill 267.

"Unfortunately, this measure has met with strong opposition from the new Governor. Mr. Speaker, House Bill 267 is a relatively simple measure that contains just a few basic provisions.

"First, this bill allows the Office of Elections and Campaign Spending Commission to communicate directly to the Legislature and to the Governor. Mr. Speaker, entities that oversee elections and campaign spending must be free to speak candidly and truthfully with elected officials who run our government. Both the Governor and the Legislature need to hear what these entities have to say free of any message management or spin.

"It is not enough that these entities be allowed to speak, they must be free to speak without having anyone's permission to do so. This provision shouldn't present a problem for any elected official who values candor, honesty, and the free flow of ideas.

"Unlike a political campaign, free and open government cannot operate as a highly scripted and tightly orchestrated public relations machine. These agencies need to be allowed to speak freely.

"Secondly, this bill gives the Office of Elections and the Campaign Spending Commission basic operational independence. That is the ability to hire, fire, and buy supplies and equipment. These basic activities are necessary to keep any organization running smoothly and efficiently. Both of these organizations have to operate in an extremely time sensitive basis during the election year. And they have to be free to buy equipment and hire personnel as needed to do their jobs during that critical period.

"They can't afford to have an administrative bureaucracy hamper their ability to operate. And despite the Governor's fears, this will not allow the Campaign Spending Commission or the Office of Elections to operate above the law. They still need to operate consistently with personnel laws and sound procurement policies. And they can both be held accountable to do so.

"The fact is, operational independence would not only increase efficiency but it will also decrease the possibility that these agencies can be indirectly controlled by other government entities. Only those who seek total control would fear such independence.

"For the same reason, these organizations need to be able to hire their own lawyers. The Campaign Spending Commission and the Office of Elections are responsible for carrying out the laws and enforcement activities related to elections. On occasion, these attorneys for these organizations will work on cases dealing with sitting government officials. Consequently, these organizations need to have access to lawyers that are free from possible influence by political forces within government.

"In short, they need to be independent, they need independent analysis and counsel, and not someone working for and selected by the Governor's own appointed Attorney General.

"House Bill 267 also creates an Elections Commission to oversee the Office of Elections. The Commission consists of eight appointee members and a ninth member to be selected by the eight appointees. This ninth member serves as a chair of the Commission. The eight appointed members will be selected equally by the Minority and Majority Members of the House and Senate. It is two by the Speaker, two by the Minority Leader of the House, two by the Senate President, and two by the Senate Minority Leader. The eight appointed seats are divided equally among four counties.

"The Governor objects to this arguing that Oahu should have 80% of the seats because they have 80% of the population. While the Governor may have wanted more members from her own new hometown of Honolulu, on a board with only eight appointed members ..."

Representative Luke rose to yield her time, and the Chair, "so ordered."

Representative Hamakawa continued, stating:

"Thank you. Should be equally balanced to ensure that all counties, large and small, have a meaningful voice. Despite what the Governor may think, people on the Neighbor Islands also have concerns regarding elections and campaigns. Unlike the Governor, I'm confident that the Commission members from the Neighbor Islands will be fair and objective and will do what's best for the voters across the State.

"While these changes are fairly modest, House Bill 267 makes meaningful progress toward ensuring the integrity of our electoral process by increasing the independence of the agencies that oversee it. We cannot allow the Governor's desires to live in the past and maintain a status quo to stand in the way of this important measure. I urge everyone to stand for a free and independent election process and override this veto. Thank you, Mr. Speaker."

Representative B. Oshiro rose to speak in support of the motion to override, stating:

"Mr. Speaker, I rise in strong support.

"I wanted to really take a look at this bill as more of an overview because I believe one of the core fundamental tenets of our democracy really comes down to the right of the individual and citizens to vote. And I think voting is such a crucial part of our democracy that this is why we have taken up this bill and this is why we are overriding her veto. Because what we see are potential attacks to this fundamental right of voting.

"Specifically, when it comes to voting, there's two things. It's how you get the votes, and that's the Campaign Spending. And how you count the votes, and that's the Office of Elections.

"Some brief history. Last Session in 2003, Act 117, that was where we put Campaign Spending and Office of Elections under DAGS because we were advised by the Attorney General at that time that they could no longer reside with the Lieutenant Governor's office because under the Constitution only temporary agencies could stay there. So we needed to find a new place for them. A new place where they could be purely administratively attached. And that was the whole intent of Act 117. We wanted a new place for them just to be administratively attached.

"However, I think, unfortunately, since that time, what we've seen is more than just administrative attachment. What we've seen is direct influence into the way that they run their

operations. And moreover, in the way that they communicate with the Legislature when it comes to important issues such as legislation.

"One of the prior speakers had talked about we're taking away powers from the Governor. They have not seen any instances of abuses. And neither have they had any letters, nor have they had newspaper articles. I find that a bit strange because when I look at the newspaper articles, I see some that directly address this issue. On February 21, the *Star-Bulletin* reported that:

A key state department says Bob Watada, executive director of the semiautonomous Campaign Spending Commission must get administration permission to testify before the Legislature.

State Comptroller Russ Saito said yesterday that he gave Watada permission to testify against a Lingle campaign spending bill although the department supported it.

"I made it clear I was letting him testify against it," Saito said.

"Later on what we see in March 2, 2004, in a *Star-Bulletin* article, I guess Mr. Saito had changed his mind because it says:

Bob Watada, executive director of the Campaign Spending Commission, says the state has reversed its position, allowing him to testify before the Legislature without prior permission from Lingle administration officials.

Previously, Watada said he had to get the approval of state Comptroller Russ Saito before testifying before the Legislature.

Watada said Saito told him he wanted all testimony to go through his office. Saito acknowledged last month he told Watada that he would be the one to decide if Watada could testify.

Saito had said that because the semiautonomous Campaign Spending Commission is administratively attached to the Department of Accounting & General Services, which he runs, he would "permit Watada to testify."

Watada said he received a call yesterday from Saito saying "he would not constrain me from speaking on the bill relating to campaign spending."

"The idea that someone would be constraining Mr. Watada's free speech is a bit disturbing to me. Oftentimes I would say I don't agree with Mr. Watada. We have come to diametrically opposed views on campaign spending. But what we always appreciate is his ability to communicate the views because, while I may know something about First Amendment rights and how we need to balance those, Mr. Watada is quite apt about the practical effects on how campaign spending laws work.

"People have cited to Mr. Watada on this Floor. People have regaled Mr. Watada on this Floor. And I'm sorry if I'm calling him Mr. Watada because I've been corrected. He should be called Dr. Watada. They have even said that they rely on his opinions when it comes to whether we should be supporting a bill such as public financing, or opposing a bill. So I find it very strange that the Administration or Mr. Saito could feel that they have any ability to constrain his ability to communicate with us. And I think that's one of the main reasons why we are pushing for this bill.

"Secondly, when it comes to the issue again about the Elections Office, I think, again, people may have said they've not received any letters or seen any newspaper articles."

Representative Lee rose to yield her time, and the Chair, "so ordered."

Representative B. Oshiro continued, stating:

"Thank you very much. But as we've seen, there were issues again with regards to the Office of Elections. Specifically, there was an article in the *Honolulu Weekly* by Robert Rees dated September 17, 2003. And that goes into some extreme detail about the proceedings that happened when it came to the Chief Elections Officer and how he was going to be reappointed or whether they wanted to dismiss him. And much of those motivations are political in nature. And while I am not going to read this, and nor am I going to say it's 100% true, the idea that even half of it could be true, or the idea that even 25% of it could be true is very, very disturbing. Because what we need in a Chief Elections Officer is someone who is unbiased. Someone who will take a look at our system and make sure that it is accurate, that people can have confidence in it, and that the results come out and people will know that their vote counted.

"I think we actually have seen our Chief Elections Officer do some tremendous things. He led us out of punch-card voting. He led us into the idea that we need to have an electronic computerized system of voting, one of the first in the nation. And I think it's those reasons, the directions that our two agencies have moved in, why we feel that there's a need for us to separate them.

"There are questions that have arisen in just this one year, since Act 117 has passed. In just that short amount of time, questions have been raised as to undue influence being put on them and their ability to run their operations, their ability to communicate with us. And I think those are very, very disconcerting ideas. And that is why we need to support overriding H.B. 267."

Representative Fox rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. In opposition to the override.

"We have here the description of the new composition of the Elections Commission as if it constituted a substantial difference from the way things are now with the specific mention of the Minority Leaders in the House and Senate. Those appointments exist under the current system. The only real difference in that regard is that the ninth position, which is equivalent to the fifth position under the old system, is no longer appointed by the Governor. It's now appointed by the Chief Justice if the two sides cannot agree on a ninth member.

"And as the veto message points out, it's absolutely wrong to have the Chief Justice involved in making the appointment because the Supreme Court and the rest of the court system are involved in reviewing the decisions of the Elections Commission. So how can you put somebody into the job, perhaps the fulcrum, the key job, on that Commission if that person is part of the operation that reviews the process. And that's a true violation of the separation of powers. And completely avoidable by just keeping the situation we have now which has the Governor, an elected official, involved in the process along with the Legislature, which is made up of elected officials.

"Two branches of government, the two that get elected, involved with the Election Commission. The third branch of government independently, uninvolved reviewing the actions of

the Election Commission. That's the way it should be. This bill messes with that and reorders the relationship between the three branches.

"The Chair of the Judiciary Committee of the State House also referred to the fact that the Governor wants to dictate that 80% of the representation come from the Island of Oahu. That's just not so at all. It's the people who wrote this piece of legislation that want to dictate that 80% of the representation shall not come from the Island of Oahu. That's the only dictating that's going on. The Governor sensibly is saying, 'Why should that be?' We had a Baker v. Carr, 1964, one man, one vote. This provision absolutely violates Baker v. Carr. We used to have a Legislature that represented counties more than it did people in the Senate. That has been changed by direction of the Supreme Court. We are in the era of one person, one vote. Why in the world would we overturn it in this bill? This bill is a bad bill. It's correctly vetoed. We should sustain the Governor's veto. Thank you, Mr. Speaker."

Representative Marumoto rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I also, I rise in opposition to the override.

"At the risk of sounding a little like an echo, I feel that there are many reasons we should vote to sustain this veto. And I might agree with them all. It is specious to argue that this measure will provide autonomy to the Campaign Spending Commission and the Elections Office because they already have sufficient independence and autonomy now. They are only administratively attached. And everyone knows that no one can muzzle Dr. Bob Watada, Chair of the Campaign Spending Commission.

"This bill is but a ploy to take away one of the Governor's appointments to the Election Commission and exert legislative control over the Campaign Spending Commission and the Elections Office. In particular, I object to the role of the Judiciary in the selection of the Elections Office Commissioner. And perhaps even the Chair of the Commission. It was supposedly constituted of nine members, two from the Senate Majority, two from the House Majority, two from the Senate Minority, two from the House Minority. Those members elect a Chair. From where, I ask. It says, pursuant to paragraphs 1 through 4, which does not make any sense to me. I don't see how the members can elect a Chair by using paragraphs 1 from 4. From amongst themselves or from the outside? It must be from the outside to add up to nine, otherwise we have a case of two, plus two, plus two, plus two, equaling nine.

"If there is a vacancy, it is filled by the Chief Justice after fifteen days. And then when the Supreme Court rules on an election dispute, I think the Chief Justice will have to recuse him or herself. If my addition is wrong, please correct me. However, if this is a flaw in the bill, the Governor cannot veto it a second time.

"I feel that if you are going to override a veto, then you should have a solid bill. This bill does not warrant a yes vote to override. It deserves a no vote to sustain the veto."

Representative Halford rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. In opposition.

"Mr. Speaker, I'm rising only to correct a false impression, to correct a false indictment of Russ Saito as mentioned by the Vice Chair of Judiciary.

"Mr. Speaker, when our new Governor came aboard, she went to the community to find excellent department heads. She found incredibly fine department heads in the community as opposed to appointing veteran political insiders, which has been the past experience in Hawaii.

"Mr. Speaker, Russ Saito is a very competent person. He is not a political insider and did not come to the table being highly skilled in the innuendoes ..."

Representative Luke rose to a point of order, stating:

"Point of order. This discussion is not germane to the bill, and in fact, it's not the words of the Vice Chair. He was actually reading articles from the *Star-Bulletin*. So it's not his words."

The Chair responded, stating:

"Representative Halford, I believe you may proceed on, but you stand corrected. What was said by the Vice Chair was in reference to articles in our daily newspaper. So it's not a personal indictment by the Vice Chair of Mr. Saito."

Representative Halford: "If I could correct the printed article ..."

Speaker Say: "Please, if you want to correct the paper."

Representative Halford: "Mr. Speaker, in my opinion ..."

Representative Luke rose to a point of order, stating:

"Point of order. Maybe the time to do it is for him to set up a meeting with the editorial board if that's the case."

Representative Fox rose to a point of order, stating:

"Point of order, Mr. Speaker. These are absolutely ridiculous points of order coming from the Vice Speaker."

Speaker Say: "Representative Fox, I did not recognize you. Representative Fox, at this point you are recognized. You can restate what you just stated."

Representative Fox: "I know you'll make the right ruling but the material was introduced and he has every right to respond to it. It was introduced on the Floor of the House. He has to respond on the Floor of the House. Thank you, Mr. Speaker."

Speaker Say: "And the Chair will allow him to continue on, but ..."

Representative Fox: "As I knew you would. Thank you, Mr. Speaker."

Speaker Say: "Representative Fox. Representative Halford, you may continue on. But whatever was inferred to as motive by the Vice Chair, in saying that it was a personal indictment, that is not correct because he read it from the articles of our two dailies, the *Advertiser* and the *Star-Bulletin*. So you may proceed."

Representative Halford continued, stating:

"Thank you, Mr. Speaker. Mr. Speaker, I, and this is certainly my opinion, but in my in my opinion, when the issue came up regarding Dr. Watada's testimonies, the Department Head, Russ Saito was technically correct in saying, in observing the protocol of dealing with testifiers that fell under his purview of his Department. Mr. Speaker, he's technically

correct. However, in a larger view of the issue, Dr. Watada should have the freedom to speak. But Mr. Speaker, it did not take very long at all for Mr. Saito to understand that while he was technically correct, it was a misapplication. And all's well that ends well. No real harm came of it. There's a little bit of excitement on the press over the issue. Mr. Saito fully understands the situation now and the problem simply was not going to reappear.

"So Mr. Speaker, I think this is much ado about nothing. And generally I favor bringing highly qualified, high caliber people from the community to assist us in government rather than going back to hiring veteran political insiders. So thank you, Mr. Speaker."

Representative Leong rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. At this time, I wanted to express great opposition to this override. And I request the words of the Maunawili Representative, the Makakilo Representative, and the Kaimuki Representative entered in the Journal as my own. Thank you," and the Chair "so ordered." (By reference only.)

Representative Saiki rose to speak in support of the motion to override, stating:

"Thank you, Mr. Speaker. I rise in strong support of this override motion.

"I'd like to make three brief points. The first is that we should be more concerned about preserving the independence and integrity of the Office of Elections and the Campaign Spending Commission, more than controlling or maintaining the political power over these commissions. It is vital. It is vital that the public have confidence in the operation of our election function, as well as in the enforcement of our campaign spending laws. And this bill is intended to give those two entities the independence and autonomy that they require so that they can operate freely and attempt to preserve public confidence in their decision making and in their operations. That is the purpose of this bill.

"The second point that I want to make with respect to the structure of the Elections Commission, is that it is modeled after the Reapportionment Commission. As Members know, the Reapportionment Commission is designed to give equal weight to both political parties with respect to that function. Four members will be appointed by the Majority Party, four members will be appointed by the Minority, and collectively, those eight members will select the ninth member who will Chair the Elections Commission, which is what is done with the Reapportionment Commission. This model has worked. It has provided for fairness and for equity between both Parties. And that is why we modeled the Elections Commission after the reapportionment process.

"Two of the Representatives mentioned that this configuration violates the 'one person, one vote' rule. That is not correct because the 'one person, one vote' rule applies to reapportionment decisions. It requires that the voters in legislative districts be of equal number. That there be proportionality between the number of voters in all of the legislative districts.

"Baker v. Carr rule does not apply to a commission like the Elections Commission that is appointed by Member of the Legislature for the purpose of overseeing and maintaining elections or campaign spending functions. So those arguments are completely incorrect.

"If anything, I would assert that the Elections Commission composition upholds the principle of homerule. Because on the one hand, members across the aisle complain that 60% of the Commission should not be from Neighbor Islands. This bill is designed to give equal weight to all of the appointees from all of the Neighbor Islands. It is a homerule issue. It will give all of the counties an equal say in elections and elections process, notwithstanding the size of their respective counties.

"The third point is with respect to the argument that this bill violates the separation of powers. It is not correct because the Judiciary is currently involved in other types of commissions. And those powers that the Judiciary holds have not violated separation of powers. And I'd like to give two examples.

"First, the Judiciary, the Supreme Court is responsible for making appointments to the Ethics Commission and to the Campaign Spending Commission. The Supreme Court appoints fifteen members to the Judicial Council. The Judicial Council then screens individuals who are interested in applying for the Ethics Commission and for the Campaign Spending Commission. Those names then go to the Governor for a final appointment. That situation does not violate separation of powers, notwithstanding the fact that the Supreme Court may ultimately end up having to decide cases that arise from the Ethics Commission or from the Campaign Spending Commission. So in that respect, the separation of powers argument is not significant.

"In conclusion, Mr. Speaker, I support this motion because again, this bill, this legislation, is designed to give independence to two critical functions of State government, our elections function and campaign spending functions, it is important that the public has confidence in the operations. Thank you."

Representative Meyer rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I'm rising in opposition to the override.

"I don't want to be repetitive, but I do think having 67% of the members on this newly constituted commission from the Neighbor Islands is kind of 'out of whack' because of the large population, almost 80% of the people in the State of Hawaii live in the City and County of Honolulu.

"I think many of us have forgotten the flap that took place in 1998 after the '98 election. There was a legislative investigation as to how the new voting machines were selected. People had inadequate time for instructions on how those machines worked. There were a number of very close elections that were looked at, as there was concern that the votes were counted properly. And you add that to the fact that the voters were not well educated on how to use those machines. And the volunteers, well they're not volunteers, people working for elections in the various precincts had problems with the machines.

"I'm concerned about, I mean, I'm for a certain amount of autonomy but there has to be accountability. And having the Office of Elections and the Campaign Spending Commission have the freedom to hire personnel, make decisions on purchases, supplies, and equipment, and those are voting machines and do that outside of the law as far as public procurement codes is a concern to me and should be of concern to the voters in the State of Hawaii.

"When we went to the new machines, which were optical scanning, it was a no-bid contract. The Director of the Office of Elections simply went to one vendor. There were other

vendors that had various machines but only one vendor was selected. And there was a lot of controversy. And this does not help in that regard. This actually pushes the Office of Elections and Campaign Spending Commission to pretty much do what they feel like. And that's a little bit of concern.

"And of course the concern that the Supreme Court Justice appoints or can appoint members to the Commission. I think that creates a conflict of interest.

"And the final thing which has already been talked about, the fact that these Departments can hire their own attorneys. I think it's important that we have some kind of consistent advice, and that's normally done through the Attorney General's office. And there are many, many attorneys out there. And the usual procedure is that attorneys cover various departments. But by having these two Offices hire their own attorneys, they are like the employers and they're going to push for their point of view to be looked at over everything else instead of looking at the total picture of what is consistent for the State of Hawaii.

"I also think cost will go up because if we have the 66.7% membership of the Commission from the Neighbor Islands, we're going to have to pay a lot of airfares to bring these people in. Probably have to pay for them to stay in hotels. And also now, you're going to have the additional cost of paying for high priced attorneys. And this is going sort of the opposite direction that we want to go in, which is to have our departments run efficiently and economically. Thank you, Mr. Speaker."

The Chair then stated:

"Thank you very much. Members of this House, we've had a lot of debate on this particular motion to override the veto. And I would ask for your patience and indulgence to allow Representative Moses to give his second point, and that will be it."

Representative Moses rose to respond, stating:

"Thank you, Mr. Speaker. I'd like to submit additional comments and request a roll call vote at the appropriate time."

The Chair responded, stating:

"Representative Moses, for overrides, a roll call is in order."

Representative Moses continued, stating:

"Thank you. And I'd just like to say when these two Commissions basically worked for the past Administration, as a Republican, I never saw undue pressure from them. I thought they were fair. In fact, I didn't know at the time, and I really didn't know until this measure came up, that they even work for the Governor's office or worked for the Administration. I didn't know. So I never felt any undue pressure. And now, I never felt any undue benefits. I just mind my 'Ps and Qs' and obey the law because I'm afraid I'll go to jail if I don't.

"And what I just heard from the other side of the aisle, sorry for looking at them, I'll keep looking at you. Some of the votes carry more weight than others. That's what we're saying. Some voters get more influence than others the way this is set up.

"And we've heard so much about how important it is for people to vote and the right to vote. So why don't we give them the right to vote on things like local school boards? We withheld that from ..."

Speaker Say: "Representative Moses, you are out of order in that statement at this point in time."

Representative Moses: "Thank you, Mr. Speaker. I'm done."

Representative Moses' written remarks are as follows:

"Mr. Speaker, I rise in opposition to the override of the Governor's veto of this bill.

"Attached agencies, boards and commissions, such as the Office of Elections and the Campaign Spending Commission, were created to retain a degree of autonomy in their mission and functions. Current law is ambiguous in defining the level and nature of autonomous actions these "attached agencies" should enjoy.

"The current Administration has honored the intended ability of such agencies, boards and commissions to communicate freely with the legislative branch, the Executive branch, and the general public.

"In many instances boards, commissions, and attached agencies have developed a collaborative working relationship that has served the public well.

"The Governor has returned this bill because it denigrates those collaborative relationships, would significantly skew representation of the voting public in the election process, and would place two attached agencies, the Campaign Spending Commission, and the Office of Elections, outside the scope of the law.

"First, the bill gives appointment power and the power to oversee the Chief Election Officer to elections commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new elections commission must be residents of the Neighbor Island counties. As a result, eighty percent of the State's population, residing in the City and County of Honolulu, would be represented by as few as two and no more than three of the nine elections commissioners.

"Second, this bill deprives the Governor of any voice in the appointment of the State's Chief Election Officer. The Governor presently appoints one of the five members of the existing Elections Appointment and Review Panel. Under this measure, the Governor would not appoint any of the nine members of the elections commission, which would replace the Elections Appointment and Review Panel. Further, if the elections commission member positions are not filled by the legislators within the times specified, this bill provides that the Chief Justice of the Supreme Court of Hawaii, not the Governor, must appoint the members to fill the vacancies. Because the Supreme Court decides elections cases on a regular basis, it would be inappropriate for the Chief Justice to appoint members to the commission this bill would create, and could blur the separation of powers provisions established in the State Constitution.

"Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller. Further, the Office of Elections, Campaign Spending Commission, and Elections Commission could take these actions without complying with all applicable requirements of the Hawaii Public Procurement Code and applicable personnel laws. Attached agencies should not be allowed to be "above the law" when carrying out their administrative functions.

"Pursuant to section 26-38, Hawaii Revised Statutes, the Comptroller has the authority to delegate approval for personnel decisions and purchases to attached agencies, boards, and commissions. This bill's provisions would set an unwarranted precedent.

"Finally, this bill erodes consistency and objectivity in the State Government's legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. It is critical that the legal advice given to those agencies be consistent with that given to other State agencies and with the interests of the State of Hawaii. Retention of separate counsel would likely result in inconsistent advice. Also, because the subject matter of these agencies involves political issues that affect predominantly members of the Legislature, it is important to assure that legal advice is not unduly influenced by what the agencies want to hear, rather than by sound legal analysis. This bill increases the risks of undue influence, especially because the attorneys would serve at the agencies' pleasure and would be paid by the agencies.

"This bill sacrifices the welfare of the State and its residents for the sake of partisan politics. The Governor's veto was justified, and should be upheld. This bill should never become law."

Roll call having been approved, the motion to override the veto of H.B. No. 267, HD 2, SD 2, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," as contained in Gov. Msg. No. 222 was put to vote by the Chair and carried on the following show of Ayes and Noes:

Ayes, 35: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Tamayo, Wakai and Waters.

Noes, 15: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker and Thielen.

Excused, 1: Representative Kanoho.

At 11:07 o'clock a.m., the Chair noted that the motion to override the veto of H.B. No. 267, HD 2, SD 2, as contained in Gov. Msg. No. 222, was carried.

Gov. Msg. No. 223, returning House Bill No. 2608, HD 1, SD 1, without her approval and her statement of objections relating to the measure as follows:

"EXECUTIVE CHAMBERS
HONOLULU
May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2608

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2608, entitled "A Bill for an Act Relating to the Hawaii Tourism Authority."

The purpose of this bill is to authorize the Hawaii Tourism Authority (HTA) to hire attorneys independent of the Attorney General; to exempt the HTA from the Comptroller's

supervision; to authorize the appointment of a sports coordinator; to clarify the compensation package for the executive director of the HTA (\$274,500 per year); to increase the allowance for the HTA's administrative expenses from 3.5 percent to 5 percent of the Tourism Special Fund; and to appropriate funds from the Tourism Special Fund to cover a fiscal problem when HTA paid 18 months of a Hawaii Visitors and Convention Bureau (HVCB) contract with 12 months of funds.

This bill is objectionable because it allows the Hawaii Tourism Authority to operate outside the safeguards of State law, micromanages the personnel decisions of the Authority, diverts funds away from direct tourism activities, and potentially creates legal difficulties for the State.

First, House Bill No. 2608 would exempt the HTA from Chapter 40, Hawaii Revised Statutes, the accounting and audit statutes for the State of Hawaii. This exemption would allow the HTA to spend moneys without regard to the safeguards and control administered by the State Comptroller. It would allow disbursements from the Tourism Special Fund and Convention Center Enterprise Fund to be signed by the HTA Executive Director, in effect allowing this person to sign his own paychecks. The State Comptroller ensures the propriety of expenditures and imposes no extraordinary processing delays.

Second, this bill is another example of legislative micromanagement. It would place in statute the hiring of a "Sports Coordinator" by the HTA. This provision of the bill appears to contradict section 26-39 of the Hawaii Revised Statutes that provides for the establishment of positions as deemed necessary to carry out the functions of any department or agency.

Third, the bill would divert an additional \$915,000 away from direct tourism expenditures to cover the administrative expenses of HTA. Under current law HTA is allowed to expend 3.5 percent of the Tourism Special Fund for overhead. Based on a \$61 million appropriation, a total of \$2,315,000 is already permitted to finance HTA operations. This bill would raise that total to \$3,050,000. The Tourism Special Fund was created to provide a dedicated source of funding to develop and market tourism in the State of Hawaii. To use these funds for administrative expenses constitutes a type of "internal raid" on special funds that this Administration has consistently opposed.

Fourth, this bill would erode the consistency and objectivity in the State's legal interpretations by authorizing the Hawaii Tourism Authority to hire its own attorneys. It is important that legal advice given to an agency be consistent with the advice given other agencies and with the interests of the State as a whole. Retention of separate counsel by the HTA would likely result in inconsistent advice. Hiring outside counsel also would be another diversion of tourism funds into administrative expenditures when adequate counsel already exists in the Attorney General's office. Additionally, the Attorney General can hire special outside counsel when thorny or difficult legal issues arise and thus could accommodate any special legal needs the HTA might have.

For the foregoing reasons, I am returning House Bill No. 2608 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Representative Saiki moved to override the veto of H.B. No. 2608, HD 1, SD 1, as contained in Gov. Msg. No. 223, seconded by Representative Lee.

Representative Thielen rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. I'm rising to speak against the override of the Governor's veto.

"Mr. Speaker, I'm going to speak on just one aspect of the override and I believe that others will speak on other aspects of the veto itself.

"Mr. Speaker, the Governor's Statement of Objections to House Bill 2608, which is A Bill for an Act Relating to the Hawaii Tourism Authority. Her objections state in part, one of the purposes of the bill is to clarify the compensation package for the Executive Director of the HTA, the \$274,500 per year. I believe that what this means is that Rex Johnson, Executive Director of the HTA, receives \$274,500 per year. The Governor states that this House Bill 2608 would exempt the Hawaii Tourism Authority from Chapter 40, Hawaii Revised Statutes, the accounting and audits statutes for the State of Hawaii.

"The Governor's veto message continues, "This exemption would allow the HTA to spend moneys without regard to the safeguards and control administered by the State Comptroller. It would allow the disbursements from the Tourism Special Fund and Convention Center Enterprise Fund to be signed by this ..." very same Hawaii Tourism Authority Executive Director, in effect allowing Rex Johnson to sign his own paychecks.

"The Governor's veto message continues that the State Comptroller ensures the propriety of expenditures. And Mr. Speaker, that's why this veto is essential to ensure the propriety of expenditures, and not to allow the existing Executive Director to in essence, write his own paychecks. I think that is a very bad road to go down. Thank you."

Representative Leong rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. Also this bill would erode the consistency and objectivity. In opposition. Thank you, Sir.

"It would erode the consistency and objectivity in the State's legal interpretations by authorizing the HTA to hire its own attorney. It is important that legal advice given to an agency be consistent with the advice given other agencies and with the interests of the State as a whole. Retention of separate counsel by the HTA would likely result in inconsistent advice. Hiring outside counsel would also be another diversion of tourism funds into administrative expenditures when adequate counsel already exists in the Attorney General's office. Additionally, the Attorney General can hire special outside counsel when thorny or difficult legal services arise and thus could accommodate any special need the HTA might have.

"Thank you, Mr. Speaker."

Representative Chang rose to speak in support of the motion to override, stating:

"Mr. Speaker, I rise in strong support of the override.

"Mr. Speaker, this might be one of the only tourism industry bills still alive because the Governor just vetoed two of the other tourism bills. But this is the HTA Omnibus Bill. And this is a good bill, Mr. Speaker. A bill that the House and the

Senate worked very, very hard on for two years during two separate Legislative Sessions.

"We gave this bill extreme diligence and attention to address the many concerns the Governor expressed when she vetoed many of the proposals contained in this measure last year. In addition, this bill addresses concerns raised by the Legislature, by members of the HTA Board of Directors, the senior staff of the HTA, and the concerns of stakeholders in the visitor industry.

"It's unfortunate that even after the Governor hired a Tourism Liaison to advocate for the industry, she still does not see the importance of this measure and it's positive effect on our State's economic engine.

"Briefly, this bill addresses a number of issues. First, it allows the HTA to hire private attorneys solely in cases of contract negotiations in which the Attorney General lacks sufficient expertise. Second, it exempts the HTA from the supervision of accounts by the Comptroller pursuant to Chapters 38 and 40. Third, it permits the HTA to appoint a sports coordinator. Fourth, it allows the HTA to utilize 5%, which is up from the previous 3.5%, of the moneys in the Tourism Special Fund for administrative expenses. And most importantly, this veto would jeopardize the appropriation of \$8 million from the Tourism Special Fund to improve the operational and financial efficiencies and to enable HTA to correct the fiscal shortfall caused by the requirement that HTA fund 18 months of a HVCB contract with only 12 months of funding.

"Now, Mr. Speaker, in her veto message, the Governor had a 'bone to pick' on four of these issues. With regard to the HTA's ability to hire independent counsel, the Governor claims in her veto message that the Attorney General is authorized to hire special outside counsel to address "thorny or difficult legal issues that might arise." She asserts that legal advice provided by independent counsel might be inconsistent with legal advice the Attorney General gives to another State agency. And she contends that hiring independent counsel is an unnecessary use of funds.

"Mr. Speaker, the HTA is unlike any other State government agency. Its actions are sensitive to volatile events worldwide. The HTA requires and deserves proactive guidance from knowledgeable attorneys who are aware of world event affecting the tourism market, who can anticipate legal problems, and offer constructive solutions.

"Although HRS Chapter 28 allows the Attorney General to contract for other attorneys, this option creates unnecessary delays and subjects the HTA to the risks that a lawyer selected by the Attorney General may not be well versed in the HTA's mission and strategic plan. Trust and confidence suffers.

"In one case it took six months, and in another case, four months for the Attorney General's office to even submit a list of qualified attorneys to the HTA. In today's business environment, especially in international situations, time is of the essence.

"The Governor claims that giving the HTA the authority to hire private attorneys would erode the consistency and objectivity in the State's legal interpretations. Will legal advice provided by independent counsel be inconsistent with legal advice the Attorney General gives to another State agency?"

Representative Magaoay rose to yield his time, and the Chair, "so ordered."

Representative Chang continued, stating:

"Even with the Attorney General's office, differences of opinions exist as to the best course of actions. We are confident that independent counsel would not render advice that goes against the interests of our State as a whole.

"Without belaboring the point, Mr. Speaker, just prior to the passage of this bill on Third Reading, I pointed out at least 19 other instances where existing law already permits the department or agency to engage private attorneys.

"Finally, hiring independent counsel is a prudent use of funds. The HTA will continue to rely on the Attorney General's office for routine legal advice. Hiring outside counsel with special expertise solely in contract negotiations in which the Attorney General lacks sufficient expertise is no more costly just because the HTA makes an independent selection.

"Mr. Speaker, we must allow the HTA to select legal counsel best suited by training, experience, and temperament to move quickly and effectively in a fast-paced environment. The other provisions of this measure mentioned in the Governor's Statement of Objections are fiscal and operational, essentially for the Hawaii Tourism Authority to carry out its mission.

"Exempting the Hawaii Tourism Authority from the requirements of Chapter 40, Hawaii Revised Statutes, will enable the HTA to operate efficiently and responsibly with control over its own accounts. The Governor fails to understand what this provision requires. She views this as a case where the HTA Director can sign his own paychecks. This is far from the case and over-simplistic. Adequate fiscal safeguards remain in place. For example, the Comptroller will issue the warrants for the release of funds for operating costs in amounts mutually agreed upon by the Governor or Director of Finance, and the HTA.

"As with the University of Hawaii, autonomy is appropriate for the HTA because of its difference from other State agencies. This provision will still require that the HTA pre-audit all payments to determine the propriety of expenditures and compliance with applicable laws, make disbursements and maintain records and documents to support the disbursements, and deposit funds in accordance with the provisions of Chapter 38, which regulates the deposit of public funds.

"Existing law also requires that HTA submit an annual report to the Governor and the Legislature. This annual report must include a statement of all of its expenditures for the previous year. And of course, the HTA is also subject to periodic post-audits by the Auditor.

"On the subject of the appointment of a sports coordinator, the Governor accuses this Legislature of micromanaging. In this instance, it is the Governor and not the Legislature that is micromanaging. This bill will allow, but not require the HTA to appoint a Sports Coordinator. Authorizing a Sports Coordinator to be appointed demonstrates foresight and creativity that should be encouraged. The Sports Coordinator will ensure that the State receives the maximum marketing benefits from its investment in sporting events.

"Visitors come to Hawaii to take part in and observe marathons, golf tournaments, soccer tournaments, fishing tournaments, and other sporting events. Positive publicity generated from print and television coverage of these events promotes Hawaii as an attractive visitor destination.

"For several years, in acknowledgement of the great impacts sporting events can and have made on the visitor industry, the HTA has wanted to appoint a sport coordinator. It was the

Governor's micromanaging that prevented the HTA from appointing a Sports Coordinator last year.

"On the final point of the Governor's veto message, the Governor claims that raising the ceiling for HTA's administrative expenses from 3.5% to 5% of the Tourism Special Fund is a diversion of funds from a dedicated source of funding to develop and market tourism. The Governor views this as an internal raid of the special fund. On the contrary, Mr. Speaker, increasing the percentage of the Tourism Special Fund that may be used for administrative expenses will be money well spent.

"Hawaii's tourism industry must keep pace with consumer's changing desires and expectations without sacrificing Hawaii's culture and environment. The current funding level leaves the HTA without adequate resources to hire needed personnel to achieve its goal. The HTA has been saddled with many additional administrative duties and responsibilities by this Legislature, and this was recommended by the Auditor in the wake of last years well publicized audit of the Hawaii Visitors and Convention Bureau.

"This year the HTA will oversee not one, but five separate marketing contracts throughout the world. The HTA requires additional administrative resources for its expanded responsibilities.

"In short, Mr. Speaker, this bill would have a long-range favorable impact on our State. And for these reasons, I urge my colleagues to vote to override this veto."

Representative Fox rose to speak in opposition to the motion to override, stating:

"Thank you, Mr. Speaker. In opposition to the override.

"I'm going to mention three points and they go over ground that the Chair of Tourism has just covered. I think the thing that bothers me really most about this bill is the increase in the percentage that goes for administrative expenses. HTA is supposed to be a small, efficient operation that basically allows most of the money collected under the Tourism Fund to go for marketing.

"And it was originally envisioned as a lean, mean, privately controlled operation. And what's happening is it's turning into a bureaucracy and nothing could be more of a signal of this sad development than trying to increase the percentage of administrative expenses that go to HTA at a time when the actual revenue available to HTA is going up. So by sticking with the same percentage, they'd actually see a rise in absolute dollars. And the amount of money involved here is really far from insignificant. We're talking on the order of \$900,000 extra dollars for administrative expenses, for bureaucracy, for red tape, for tying things up instead of administering the money the way it should. And I consider this a really tragic turn of events for somebody who's been here from the beginning on the creation of HTA.

"We have to decide what kind of animal the HTA really is. I mean, that's where my second point comes in, this creation of the Sports Coordinator. I don't think there's anything wrong with doing Sports Coordinator work somewhere in the government. But HTA, the HTA is supposed to be overseeing marketing contracts. It's not supposed to be part of a bureaucracy. What we're seeing is HTA turning from an independent operation into a bureaucracy. Now if that's the case, if we are to make HTA a bureaucracy then why shouldn't it be under the same provisions for the creation of positions as the rest of the government? It should be under the provisions of Section 26-39 HRS. It shouldn't have positions created by

the Legislature. It should be able to handle that administratively under the conditions of existing law.

"And finally, I am just astounded as I think 51 Members of the Legislature should be, that this bill would make HTA independent from the Procurement Code operated by the Comptroller. We're talking about an agency that was audited just last year with a highly embarrassing audit that found really lax procurement controls. And this very bill is trying to deal with those lax procurement controls when it appropriates the money that HTA didn't give HVCB because it thought an 18-year contract was actually a 12-month contract. It's embarrassing. It's embarrassing that the HTA can't handle its finances. And it's embarrassing that 51 Members of this Legislature would actually contemplate allowing the HTA to exist independent of the Comptroller's procurement code.

"This is an easy bill to veto. A bad bill to vote for and override. We should sustain the Governor's veto. She's absolutely done the right thing. Thank you, Mr. Speaker."

Representative Herkes rose to speak in support of the motion to override, stating:

"In support. Just for the record, all 51 Members of the House voted for the procurement law on Monday, which exempted the HTA."

Representative Karamatsu rose to speak in support of the motion to override, stating:

"In support.

"Mr. Speaker, giving the HTA the ability to hire its own attorneys will make the agency much more efficient in its contract negotiations. Moreover, increasing the limits to be used for the HTA's administration expenses from 3.5% to 5% of the special fund will give the agency the flexibility to adapt to circumstances, especially when there are global events that affect our tourism industry.

"I would like to mention that last year I had a bill that would ask HTA to look into the contracts, but part of the problem was that they didn't have the administrative costs for the manpower to look into every single detailed contract. And that's something that I wanted to see happen in the future. This would help them to also do that and oversee their marketing contracts that's now broken up across in different regions such as Asia, and North America, etc. So for these reasons, I support our bill because it supports our number one industry, which is tourism, and I would like to incorporate the words of the Chair of Tourism as my own. Thanks."

The Chair then stated:

"Members, we have had a lot of discussion on this measure. With your indulgence, if you want to submit written comments, the Chair will allow you."

Representative Ching rose in opposition to the motion to override and asked that the remarks of Representative Fox be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Fox rose to respond, stating:

"I will submit an additional sentence in response to the Representative from Kau's comments. Thank you."

Representative Fox's written remarks are as follows:

"I have grave misgivings about the procurement bill, which wrongly attempts to include the UH and the Health Systems Corporation, and wrongly provides an exception to HTA, with its mixed record on the procurement front."

Roll call having been approved, the motion to override the veto of H.B. No. 2608, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TOURISM AUTHORITY," as contained in Gov. Msg. No. 223 was put to vote by the Chair and carried on the following show of Ayes and Noes:

Ayes, 35: Representatives Abinsay, Arakaki, Caldwell, Chang, Evans, Hale, Hamakawa, Herkes, Hiraki, Ito, Kahikina, Kaho'ohalahala, Kanoho, Karamatsu, Kawakami, Lee, Luke, Magaoay, Mindo, Morita, Nakasone, Nishimoto, B. Oshiro, M. Oshiro, Saiki, Say, Schatz, Shimabukuro, Sonson, Souki, Takai, Takamine, Takumi, Wakai and Waters.

Noes, 16: Representatives Blundell, Bukoski, Ching, Finnegan, Fox, Halford, Jernigan, Leong, Marumoto, Meyer, Moses, Ontai, Pendleton, Stonebraker, Tamayo and Thielen.

At 11:29 o'clock a.m., the Chair noted that the motion to override the veto of H.B. No. 2608, HD 1, SD 1, as contained in Gov. Msg. No. 223, was carried.

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 774 through 788) were received and announced by the Clerk:

Sen. Com. No. 774, transmitting H.C.R. No. 77, HD 2, entitled: "HOUSE CONCURRENT RESOLUTION URGING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO ENFORCE THE PROVISIONS OF ACT 44, SESSION LAWS OF HAWAII 2003, IN ACCORDANCE WITH THE LEGISLATURE'S INTENT," which was adopted by the Senate on May 3, 2004.

Sen. Com. No. 775, transmitting H.C.R. No. 112, HD 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM AND THE WORKFORCE DEVELOPMENT COUNCIL TO REPORT TO THE LEGISLATURE REGARDING THE IDENTIFICATION AND DEVELOPMENT OF LABOR SUPPLY AND DEMAND MATRICES, AND THE EXPANSION OF THE EDUCATIONAL PIPELINE SUBSEQUENT TO THE ENACTMENT OF ACT 148, SESSIONS LAWS OF HAWAII 2003," which was adopted by the Senate on May 3, 2004.

Sen. Com. No. 776, transmitting H.C.R. No. 149, entitled: "HOUSE CONCURRENT RESOLUTION URGING HAWAII'S CONGRESSIONAL DELEGATION TO HELP PREVENT THE INHUMANE TREATMENT OF THE YELLOWSTONE BUFFALO AND SUPPORT PASSAGE OF THE YELLOWSTONE BUFFALO PRESERVATION ACT, H.R. 3446," which was adopted by the Senate on May 3, 2004.

Sen. Com. No. 777, transmitting H.C.R. No. 179, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION TO STUDY THE FEASIBILITY OF, AND PROVIDE COST ESTIMATES FOR, THE INSTALLATION OF AN ACCESS ROAD ON THE SOUTHERN END OF KAWAIHAE HARBOR TO INCREASE ACCESS TO THE SMALL BOAT HARBOR AND BEACH AREA, AND FOR OTHER HARBOR

IMPROVEMENTS," which was adopted by the Senate on May 3, 2004.

Sen. Com. No. 778, transmitting H.C.R. No. 195, entitled: "HOUSE CONCURRENT RESOLUTION SUPPORTING THE EMPLOYEE FREE CHOICE ACT AND URGING CONGRESS TO PASS THIS MEASURE.," which was adopted by the Senate on May 3, 2004.

Sen. Com. No. 779, transmitting H.C.R. No. 251, entitled: "HOUSE CONCURRENT RESOLUTION DECLARING MAY 7, 2004, AS CLEANERS' APPRECIATION DAY IN THE STATE OF HAWAII," which was adopted by the Senate on May 3, 2004.

Sen. Com. No. 780, transmitting H.B. No. 2181, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HOUSING FINANCING PROGRAMS," which passed Third Reading in the Senate on May 3, 2004.

Sen. Com. No. 781, informing the House that the Senate has on April 30, 2004, reconsidered its action taken on April 15, 2004, in disagreeing to the amendments proposed by the House to the following Senate Bill, and have moved to agree to the amendments, and that said bill has this day passed Final Reading.

S.B. 2990, "RELATING TO THE INTEGRATED TAX INFORMATION MANAGEMENT SYSTEMS ACQUISITION BY THE DEPARTMENT OF TAXATION."

Sen. Com. No. 782, informing the House that the following bills have passed Final Reading in the Senate:

S.B. No. 2704, HD 1, CD 1
"RELATING TO MANDATORY SELLER DISCLOSURES."

S.B. No. 2909, SD 1, HD 1, CD 1
"RELATING TO APPLICATIONS SEEKING GENERAL RATE INCREASES FILED BY PUBLIC UTILITIES HAVING ANNUAL GROSS REVENUES OF LESS THAN \$2,000,000."

S.B. No. 2951, SD 1, HD 1, CD 1
"RELATING TO RADIOLOGIC TECHNOLOGY."

H.B. No. 2786, HD 1, SD 2, CD 1
"RELATING TO ARBITRATION."

S.B. No. 2834, SD 2, HD 2, CD 1
"MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES."

S.B. No. 2077, SD 2, HD 1, CD 1
"RELATING TO PLANNING."

S.B. No. 2926, SD 1, HD 2, CD 1
"RELATING TO THE HOUSING LOAN AND MORTGAGE PROGRAMS."

S.B. No. 473, SD 1, HD 3, CD 1
"RELATING TO HALFWAY HOUSES."

S.B. No. 2887, SD 2, HD 2, CD 1
"RELATING TO INTERSTATE INSURANCE COMPACT."

S.B. No. 2839, SD 2, HD 2, CD 1
"RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES."

S.B. No. 2606, SD 1, HD 2, CD 1
"RELATING TO BREWPUB LICENSES."

S.B. No. 3170, SD 2, HD 2, CD 1
"RELATING TO PETROLEUM PRODUCTS."

S.B. No. 1238, SD 2, HD 2, CD 1
"RELATING TO MENTAL HEALTH."

S.B. No. 2056, SD 1, HD 2, CD 1
"RELATING TO THE AUDITOR."

S.B. No. 2200, HD 1, CD 1
"RELATING TO EDUCATION."

S.B. No. 2425, SD 1, HD 1, CD 1
"RELATING TO EDUCATION."

S.B. No. 2716, SD 1, HD 2, CD 1
"RELATING TO EDUCATION."

S.B. No. 2538, SD 1, HD 1, CD 1
"RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR IOLANI SCHOOL."

S.B. No. 2671, SD 1, HD 1, CD 1
"RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR THE CONGREGATION OF CHRISTIAN BROTHERS, INC. DBA DAMIEN MEMORIAL HIGH SCHOOL."

S.B. No. 2790, SD 1, HD 1, CD 1
"RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR HALEAKALA WALDORF SCHOOL."

S.B. No. 2791, SD 1, HD 1, CD 1
"RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR MONTESSORI SCHOOL OF MAUI, INC."

S.B. No. 3086, HD 1, CD 1
"RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR ISLAND PACIFIC ACADEMY."

S.B. No. 2968, SD 1, HD 1, CD 1
"RELATING TO NATURAL RESOURCE VIOLATIONS."

S.B. No. 2063, SD 2, HD 2, CD 1
"RELATING TO EDUCATION."

S.B. No. 2358, SD 2, HD 1, CD 1
"RELATING TO CONSTRUCTION CLAIMS."

S.B. No. 3092, SD 1, HD 1, CD 1
"RELATING TO SOLID WASTE MANAGEMENT."

H.B. No. 1756, HD 2, SD 1, CD 1
"RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HIGH TECHNOLOGY INDUSTRIAL ENTERPRISES."

H.B. No. 1710, HD 2, SD 2, CD 1
"RELATING TO THE UNIVERSITY OF HAWAII."

H.B. No. 1786, HD 1, SD 2, CD 1
"RELATING TO EXEMPT EMPLOYEES."

H.B. No. 2911, HD 2, SD 1, CD 1
"RELATING TO CHARTER SCHOOLS."

H.B. No. 1929, HD 1, SD 2, CD 1
"RELATING TO SCHOOL REPAIR AND
MAINTENANCE."

H.B. No. 2049, HD 1, SD 2, CD 1
"RELATING TO ENERGY."

H.B. No. 1820, HD 1, SD 1, CD 1
"RELATING TO MOTOR VEHICLE INSURANCE."

H.B. No. 2143, HD 2, SD 1, CD 1
"RELATING TO BUSINESS REGULATION."

H.B. No. 2773, HD 1, SD 1, CD 1
"RELATING TO CONDOMINIUM PROPERTY
REGIMES."

H.B. No. 2774, HD 1, SD 1, CD 1
"RELATING TO SUBDIVISIONS."

H.B. No. 2074, HD 1, SD 1, CD 1
"RELATING TO PENALTIES OF HEALTH,
ENVIRONMENTAL, AND CULTURAL
PRESERVATION LAWS."

S.B. No. 2976, SD 1, HD 1, CD 1
"MAKING AN EMERGENCY APPROPRIATION FOR
THE DEPARTMENT OF PUBLIC SAFETY."

H.B. No. 680, HD 2, SD 1, CD 1
"RELATING TO ETHICS."

S.B. No. 1611, HD 2, CD 1
"RELATING TO THE DEPOSIT BEVERAGE
CONTAINER PROGRAM."

S.B. No. 17, SD 1, HD 1, CD 2
"RELATING TO EDUCATION."

S.B. No. 3182, HD 1, CD 1
"RELATING TO THE STATE OF HAWAII."

S.B. No. 2995, SD 2, HD 1, CD 1
"RELATING TO COMMERCIAL DRIVER LICENSING."

S.B. No. 3080, SD 2, HD 2, CD 1
"RELATING TO TRANSPORTATION."

S.B. No. 2281, SD 1, HD 1, CD 1
"RELATING TO THE HIGH TECHNOLOGY
DEVELOPMENT CORPORATION."

S.B. No. 2690, SD 2, HD 2, CD 1
"RELATING TO EMERGENCY MEDICAL SERVICES."

S.B. No. 2134, HD 1, CD 1
"RELATING TO THE ENVIRONMENT."

S.B. No. 2440, SD 1, HD 1, CD 1
"RELATING TO PUBLIC LANDS."

S.B. No. 3049, SD 2, HD 2, CD 1
"RELATING TO CHARITABLE ANNUITIES."

S.B. No. 2396, SD 1, HD 1, CD 1
"RELATING TO THE GENERAL EXCISE TAX."

S.B. No. 2529, HD 1, CD 1
"RELATING TO SECURITIES FOR THE PROTECTION
OF PUBLIC FUNDS."

S.B. No. 2045, SD 2, HD 1, CD 1
"MAKING AN APPROPRIATION TO THE HAWAII
CIVIL AIR PATROL."

S.B. No. 2165, SD 1, HD 1, CD 1
"RELATING TO CHILD ABUSE AND PROTECTION."

S.B. No. 2936, SD 2, HD 1, CD 1
"RELATING TO MEDICAL ASSISTANCE FOR
PREGNANT LEGAL IMMIGRANTS."

S.B. No. 779, SD 2, HD 2, CD 1
"RELATING TO THE EMPLOYEES' RETIREMENT
SYSTEM."

S.B. No. 2930, SD 2, HD 1, CD 1
"RELATING TO HOME AND COMMUNITY-BASED
SERVICES."

S.B. No. 3230, SD 2, HD 1, CD 1
"RELATING TO EARLY CHILDHOOD CARE."

S.B. No. 1239, SD 1, HD 2, CD 1
"RELATING TO ENERGY."

S.B. No. 3162, SD 1, HD 1, CD 1
"RELATING TO RENEWABLE ENERGY
TECHNOLOGIES INCOME TAX CREDIT."

S.B. No. 3153, SD 2, HD 2, CD 1
"MAKING AN APPROPRIATION FOR
BIOREMEDIATION RESEARCH."

S.B. No. 3148, SD 2, HD 3, CD 1
"RELATING TO EDUCATION."

S.B. No. 3020, HD 1, CD 1
"RELATING TO EDUCATION."

S.B. No. 2424, SD 2, HD 2, CD 1
"RELATING TO NEW CENTURY CONVERSION
CHARTER SCHOOLS."

S.B. No. 420, SD 1, HD 1, CD 1
"RELATING TO STATE FINANCES."

S.B. No. 214, SD 3, HD 2, CD 1
"RELATING TO WORKFORCE DEVELOPMENT."

S.B. No. 2073, SD 2, HD 2, CD 1
"RELATING TO THE UNIVERSITY OF HAWAII."

S.B. No. 2355, SD 2, HD 2, CD 1
"RELATING TO PUBLIC EMPLOYEE HEALTH
BENEFITS."

S.B. No. 2873, SD 1, HD 2, CD 1
"RELATING TO THE EMPLOYEES' RETIREMENT
SYSTEM."

S.B. No. 2878, SD 2, HD 2, CD 1
"RELATING TO THE FEDERAL TAX LIMIT ON
COMPENSATION APPLICABLE TO THE EMPLOYEES'
RETIREMENT SYSTEM."

S.B. No. 2879, SD 2, HD 2, CD 1
"RELATING TO FEDERAL TAX QUALIFICATION OF
THE EMPLOYEES' RETIREMENT SYSTEM."

S.B. No. 3106, SD 1, HD 2, CD 1
"RELATING TO COUNTIES."

S.B. No. 3018, SD 2, HD 1, CD 1
"RELATING TO PENSION AND RETIREMENT
SYSTEMS."

S.B. No. 3175, SD 2, HD 2, CD 1
"RELATING TO FEDERAL SOCIAL SECURITY FOR
PUBLIC EMPLOYEES."

S.B. No. 1318, SD 1, HD 2, CD 1
"RELATING TO BUSINESS REGISTRATION."

H.B. No. 2667, HD 2, SD 1, CD 1
"RELATING TO HAWAIIAN LANGUAGE MEDIUM
EDUCATION."

H.B. No. 2703, HD 1, SD 2, CD 1
"RELATING TO IMPACT FEES."

H.B. No. 2005, HD 1, SD 1, CD 1
"RELATING TO PRESCRIPTION DRUGS."

H.B. No. 2547, HD 2, SD 2, CD 1
"RELATING TO THE UNIVERSITY OF HAWAII."

H.B. No. 851, HD 1, SD 1, CD 1
"RELATING TO TAXATION APPEALS."

H.B. No. 2840, HD 1, SD 3, CD 1
"RELATING TO ENHANCING ECONOMIC
DIVERSITY."

H.B. No. 1848, HD 1, SD 1, CD 1
"RELATING TO EXCEPTIONAL TREES."

H.B. No. 2136, HD 1, SD 1, CD 1
"RELATING TO PROCUREMENT."

H.B. No. 1908, HD 2, SD 1, CD 1
"RELATING TO EDUCATION."

H.B. No. 2411, HD 1, SD 1, CD 1
"RELATING TO INSURANCE."

H.B. No. 2523, HD 1, SD 1, CD 1
"RELATING TO PASSENGER FACILITY CHARGES."

H.B. No. 2009, HD 1, SD 1, CD 1
"MAKING AN APPROPRIATION FOR
AGRICULTURAL RESEARCH AND MARKET
DEVELOPMENT."

H.B. No. 2883, HD 2, SD 2, CD 1
"RELATING TO WIRELESS ENHANCED 911
SERVICE."

H.B. No. 2137, HD 1, SD 1, CD 1
"RELATING TO A ONE CALL CENTER."

H.B. No. 1374, HD 2, SD 2, CD 1
"RELATING TO WORKERS' COMPENSATION."

H.B. No. 2511, SD 1, CD 1
"RELATING TO INCOME TAX WITHHOLDING."

H.B. No. 2396, HD 2, SD 2, CD 1
"RELATING TO CAPITAL INVESTMENTS."

S.B. No. 2550, HD 1, CD 1
"MAKING AN APPROPRIATION FOR COLLECTIVE
BARGAINING COST ITEMS."

S.B. No. 2528, SD 1, HD 1, CD 1
"RELATING TO INSURANCE."

S.B. No. 2595, SD 2, HD 2, CD 1
"RELATING TO PROFESSIONAL COUNSELORS."

S.B. No. 2906, SD 1, HD 2, CD 1
"RELATING TO CERTIFICATES OF GOOD
STANDING."

S.B. No. 2404, SD 2, HD 1, CD 1
"MAKING AN APPROPRIATION FOR EXPENSES OF
THE 2005 NATIONAL ASSOCIATION OF COUNTIES
MEETING IN HONOLULU."

S.B. No. 2210, SD 2, HD 1, CD 1
"RELATING TO CONDOMINIUMS."

H.B. No. 1904, HD 1, SD 2, CD 1
"RELATING TO TAXATION."

H.B. No. 2662, HD 1, SD 1, CD 1
"RELATING TO ECONOMIC DEVELOPMENT."

S.B. No. 1491, SD 1, HD 1, CD 1
"RELATING TO STATE GOVERNMENT."

S.B. No. 3193, SD 2, HD 2, CD 1
"RELATING TO CONSUMERS."

Sen. Com. No. 783, transmitting S.C.R. No. 127, SD 1, HD 1, CD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT TO DELAY THE IMPLEMENTATION OF THE ELIMINATION OF THE SOCIAL WORKER SERIES," which was adopted in Final form by the Senate on May 3, 2004.

Sen. Com. No. 784, informing the House that the Senate has on May 3, 2004 overridden the Governor's veto to S.B. 3238, SD 2, HD 2, CD 1, (Governor's Message No. 519) by a two-thirds vote of all members to which the Senate is entitled.

Sen. Com. No. 785, informing the House that the Senate has on May 3, 2004 overridden the Governor's veto to H.B. 2743, HD 2, SD 1, CD 1, (Governor's Message No. 526) by a two-thirds vote of all members to which the Senate is entitled.

Sen. Com. No. 786, informing the House that the Senate has on May 3, 2004 overridden the Governor's veto to H.B. 1043, SD 1, CD 1, (Governor's Message No. 530) by a two-thirds vote of all members to which the Senate is entitled.

Sen. Com. No. 787, informing the House that the Senate has on May 3, 2004 overridden the Governor's veto to H.B. 2608, HD 1, SD 1 (Governor's Message No. 534) by a two-thirds vote of all members to which the Senate is entitled.

Sen. Com. No. 788, informing the House that the Senate has on May 3, 2004 overridden the Governor's veto to H.B. 267, HD 2, SD 2, (Governor's Message No. 533) by a two-thirds vote of all members to which the Senate is entitled.

At this time, the Clerk noted that following bills have been designated with Act numbers by the Speaker of the House and the President of the Senate as follows:

S.B. No. 3238, SD 2, HD 2, CD 1	Act 51
H.B. No. 2743, HD 2, SD 1, CD 1	Act 52
H.B. No. 1043 SD 1, CD 1	Act 53

DEPARTMENTAL COMMUNICATION

The following departmental communication (Dept. Com. No. 32) was received by the Clerk and was placed on file:

Dept. Com. No. 32, from Marion M. Higa, State Auditor, Office of the Auditor, transmitting their report, Audit of the University of Hawaii Contract with the University of Hawaii Foundation.

MISCELLANEOUS COMMUNICATION

The following miscellaneous communication (Misc. Com. No. 6) was received by the Clerk and was placed on file:

Misc. Com. No. 6, from the Georgia State General Assembly, transmitting a copy of their House Resolution 1343, entitled: "A RESOLUTION RESCINDING, REPEALING, CANCELING, VOIDING, NULLIFYING, AND SUPERSEDING ANY AND ALL PRIOR APPLICATIONS BY THE GENERAL ASSEMBLY HERETOFORE MADE DURING ANY SESSION THEREOF TO THE CONGRESS OF THE UNITED STATES OF AMERICA TO CALL A CONVENTION PURSUANT TO THE TERMS OF ARTICLE V OF THE UNITED STATES CONSTITUTION FOR PROPOSING ONE OR MORE AMENDMENTS TO THAT CONSTITUTION AND URGING THE LEGISLATURES OF THE OTHER STATES TO DO THE SAME."

LATE INTRODUCTIONS

The following late introductions were made to the members of the House:

Representative Takai introduced his legislative office manager, Ms. Lisa Vargas; and staff members, Ms. Sandra Kim and Ms. Lenna Mulipola-Ayres.

Representative Mindo introduced his friend, Mr. Harold DeCosta.

Representative Pendleton introduced his constituent, Dr. Brennon Morioka.

ORDER OF THE DAY

COMMITTEE REASSIGNMENT

The following concurrent resolution was re-referred to committee by the Speaker:

S.C.R.

No. Re-referred to:

54	Committee on Human Services and Housing and the Committee on Health
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SUSPENSION OF RULES

On motion by Representative Lee, seconded by Representative Meyer and carried, the rules were suspended for the purpose of considering bills on Final Reading on the basis of a modified consent calendar

UNFINISHED BUSINESS

S.B. No. 2556, HD 1, CD 2:

Representative Saiki moved that S.B. No. 2556, HD 1, CD 2, pass Final Reading, seconded by Representative Lee.

Representative Souki rose to speak in support of the measure, stating:

"Mr. Speaker, I wish to speak in favor of this. I believe they're well-deserving of the pay increase. But I have only one caveat to mention here, and that is as we come into the next Session, and I'm sure most of us will, the next biennium, I hope we won't forget our legislative staff. I believe they need a raise too. Thank you very much."

The motion was put to vote by the Chair and carried, and S.B. No. 2556, HD 1, CD 2, entitled: "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS," passed Final Reading by a vote of 51 ayes.

At 11:32 o'clock a.m., the Chair noted that S.B. No. 2556, HD 1, CD 2, passed Final Reading.

H.B. No. 2002, HD 2, SD 1, CD 2:

Representative Saiki moved that H.B. No. 2002, HD 2, SD 1, CD 2, pass Final Reading, seconded by Representative Lee.

Representative Mindo rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support.

"Thank you, Mr. Speaker. This bill, this measure establishes a revolving fund for the after-school plus program or the A+ Program. The after-school program serves a vital service for parents in Hawaii as we have many single parent families or families with both parents working full-time and cannot leave work to pick up their children after school is out. The program provides additional educational services for many students who may need a little extra attention in school.

"The after school A+ Program was the nation's first subsidized statewide after school care program for public school students in Kindergarten to Grade 6. It is highly successful. And this measure will help ensure its continuation by creating a revolving fund for the after-school A+ Program. Mr. Speaker and esteemed colleagues, please support this measure. Thank you."

Representative Thielen rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I'm rising with very serious reservations, but I am going to vote for the bill, Mr. Speaker.

"Mr. Speaker, I would just like to give a quote from John Greenleaf Whittier that I think is very appropriate. "For of all sad words of tongue or pen, the saddest are these: 'It might have been!'" Mr. Speaker, this is a 'might have been' bill, but it isn't a bill that really accomplishes true education reform.

"I'm reluctantly voting in favor of House Bill 2002 because it amends the Majority's education bill, the Senate Bill 3238, and it makes it slightly less bad than the Majority's education bill.

"After reading the Governor's veto message on Senate Bill 3238, your Majority did reconsider that bill and you revised its backward steps, but unfortunately you've maintained the status quo. House Bill 2002 still doesn't achieve true education reform that we all worked for, or at least some of us worked for this Legislative Session.

"House Bill 2002, the bill we're voting on now, will not allow voters to decide if they want to replace the statewide Board of Education with local school boards. It will not allow the Neighbor Island voters to decide, if they want to have Neighbor Island boards of education. It prevents the voters from weighing in on the most important issue that they have wanted to weigh in on this year, education reform, and they're shut out of the process.

"Those of us who are interested in true reform had also hoped to empower our principals to develop their schools' financial and academic plans. House Bill 2002 that we will be voting on does allow principals to develop these plans with the input of school community councils. Principals currently have the power to set the academic plan; however, the bill is going to allow them to weigh in on the financial plan. But to encourage better financial plans, some of us tried to give the principals school level control over 90% of their operating budgets.

"Unfortunately, House Bill 2002 will in two years time grant them control over 70% which is equal basically, Mr. Speaker, to the school level fixed cost. It doesn't allow principals any real spending control. Until control for the 90% of the budget is granted, there will be no room for school level flexibility, responsiveness, and creativity. The creativity that we so desperately need to allow the principals to use and apply to education, that creativity which could lead to student achievement. House Bill 2002 and also fails to hold principals accountable for that student achievement.

"As I said before, Mr. Speaker, the bill actually fragments responsibility between five groups, the Department of Education, the DOE - the big bureaucracy, the single Board of Education, principals, and now school community councils, and the Legislature. And effectively, no one is accountable for student achievement.

"House Bill 2002 also fails to address the charter school situation. The bill does not remedy the lack of facilities allowance troubling existing charter schools. And even more important, it does not contain provisions for new charter schools or a new chartering authority. We desperately need a chartering authority that is outside the single bureaucratic Department of Education.

"Finally, implementation of the weighted student formula has been delayed until the 2006-2007 school year with only a small pilot project beginning in December 2005. That means that those more disadvantaged communities are just going to have to wait.

"And Mr. Speaker, at the most, HB 2002 is less bad than Senate Bill 3238 but, Mr. Speaker, it is tremendously disappointing that it leaves us with the status quo. And we think here again with the words, 'What might have been.' Thank you."

Representative Caldwell rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in strong support.

"Mr. Speaker, this is the final day of our Session and I would like to go back and reflect what was said at the beginning of this Session. It will help us better understand where we started and where we ended up.

"Mr. Speaker, the Governor in her State of the State Address on January 27, 2004 stated, "emotions are running high about how best to raise student achievement reform, and how to reform our education system. Let's lower the volume and look at the facts." So Mr. Speaker, let's lower the volume and look at those facts.

"Our education reform package, which the Governor vetoed, and which we have now overridden, does the following, and we've heard this before but I think it's important to emphasize it once again. It does establish a student weighted formula, a first in our State. It provides additional information technology. It empowers principals through the Hawaii's Principals Academy and by other means. It strengthens ..."

Representative Fox rose to a point of order, stating:

"Mr. Speaker, point of order. I appreciate the rendition of a bill that is not before us right now. He's doing a good job of summarizing another piece of legislation. I think it would be appropriate for him to stick to that part of HB 2002 that directly relates to the piece of legislation he is summarizing. He is summarizing points that don't have anything to do with HB 2002."

The Chair responded, stating:

"Representative Fox, the Chair will allow Representative Caldwell to continue on with his debate at this period in time because it does make reference to House Bill 2002 in correlation to other bills that we dealing with education.

"Representative Fox, the Chair did allow Representative Thielen to bring up the issue of another bill tied to local school boards and I did not deny her that right. So please proceed, Representative Caldwell."

Representative Caldwell continued, stating:

"Thank you very much, Mr. Speaker. It strengthens community involvement through School Community Councils and Parent Community Networking Centers. It provides more mathematics textbooks, Mr. Speaker. Something very much needed in our schools. It lowers class sizes in Kindergarten, Grade 1, and Grade 2, something everyone supports. It provides full-time, year-round student activity coordinators."

Representative Pendleton rose, stating:

"Point of inquiry. The gentleman is saying it provides, it refers to. What measure is he speaking to? The one before us?"

The Chair responded, stating:

"A bill that was before this Chamber. A bill that was before this Chamber that was adopted by this Chamber. So the Chair will allow him to make that correlation of the bill that was adopted with the bill that is before us."

Representative Caldwell continued, stating:

"Yes, thank you very much, Mr. Speaker. That bill is Senate Bill 3238 that was referred to by the good Representative from Kailua. Thank you very much.

"It provides support for students who need additional help to succeed in schools. It establishes a National Board Certification incentive program for teachers. It enhances teacher's education. It reduces the bureaucracies."

Representative Fox rose to a point of order, stating:

"Point of order. Mr. Speaker, I mean this is simply is a violation of our rules. He's talking about a bill that is not the bill before us."

Speaker Say: "Representative Fox, you are out of order. Representative Fox."

Representative Fox: "Why can't he state that part of the bill that relates to the bill."

At 11:42 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 11:48 o'clock a.m.

Representative Schatz rose to yield his time to Representative Caldwell, and the Chair, "so ordered."

Representative Caldwell continued, stating:

"Thank you very much, Representative Schatz. Mr. Speaker, perhaps I should start from the beginning because I kind of lost my train of thought, but I'm not going to do that. I just have a few other points to make regarding our great education reform package that I would like all of us to hear about including the public who may be listening.

"Mr. Speaker, as I was saying, it establishes a National Board Certification incentive program for teachers. It enhances teacher's education. It reduces the bureaucracy that hampers the effectiveness of the Department of Education. It improves the educational accountability system. And finally, Mr. Speaker, it requires that the Board of Education members hold community meetings in their district. Who would be opposed to these items?

"Now Mr. Speaker, in your speech on January 22, 2004, your Opening Day speech, you stated on the issue of education reform, "Let me begin by making a commitment to you Governor Lingle. By the end of this Session, we will approve legislation to make education reform a reality. We are not there yet, but we are getting closer."

"Mr. Speaker, you went on to state, "Already there's widespread agreement that tax dollars spent on education should be targeted directly to the classroom." And Mr. Speaker, we achieved that goal through the student weighted formula.

"You went on to say, "And we agree that local control of our schools is an important part of true reform but we're not yet agreed on how best to implement local control." Mr. Speaker, we have done that through the Community Advisory Councils.

"You conclude with, "I'm optimistic that we can come closer to our goal." And Mr. Speaker, this amendment that we're talking about today achieves this goal.

"Mr. Speaker, Superintendent Hamamoto in her unprecedented State of the Public Education Speech before a Joint Session of the House and Senate on January 28, 2004 stated, "In everything we do from this day forward as we go

about the business of reinventing our educational system, we need to focus not on school boards, or superintendents, or labor unions, not on Republicans or Democrats, but on the 184,000 students in our charge. The question isn't who is right, but what is right." Mr. Speaker, this amendment succeeds on this goal. It leaves politics at the door and addresses what is right.

"Mr. Speaker, it meets the Governor more than half way in addressing the concerns she expressed in her soft veto message. One, it calls for a study on whether principals should control more school spending which is currently set at 70% under the student weighted formula. Two, it gives charter schools their fair share of funding by participating in the student weighted formula. And three, it launches a student weighted formula earlier by establishing a pilot project for 15 schools next year.

"The other two issues, Mr. Speaker, empowering principals and setting standards; and two, community advisory councils, it also makes adjustments there.

"Mr. Speaker, John Dewey, the founder of the modern American education system said in 1897, "I believe that education is the fundamental method of social progress and reform. Through education, society can formulate its own purposes, can organize its own means and resources, and thus shape itself." Mr. Speaker, we continue on the course set by Mr. Dewey a social progress and reform today.

"The Governor, Mr. Speaker, quotes Thomas Edison, America's greatest inventor at the conclusion of her veto message, that to him, the fact that, "Every wrong corrected is another step forward." And Mr. Speaker, we are taking major steps forward through this amendment and through the other education reform bill that we have now passed.

"Mr. Speaker, with your leadership, we have put aside politics. And in a show of bipartisanship, we have met the Governor more than half way. And Mr. Speaker, we have kept the focus on students, teachers, principals, and parents.

"In conclusion, Mr. Speaker, I would like to quote Diogenes, that third century B.C. philosopher who said, "The foundation of every state is the education of its youth." Mr. Speaker, that foundation was laid in our State by the sons and daughters of plantation workers over half a century ago. A foundation that has allowed so many of Hawaii's youth to find and realize their full potential. We continue that work, that progress today, Mr. Speaker. With the passage of this legislation, we achieve even greater reform of Hawaii's public school system. Thank you very much, Mr. Speaker."

Representative Ontai rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"Mr. Speaker, I agree with many of my colleagues' words so far, that we have made some progress. But as you know, Mr. Speaker, I was looking for something bolder. And so I am a little bit disappointed. However, Mr. Speaker, I think my basic opposition, besides the fact that we didn't vote on local school boards, I thought that was one of the 'silver bullets' that was needed. But the key 'silver bullet' that I think we've missed is the part about unequivocal, clear authority given to the principal to spend his money as discretionary.

"And the reason I feel this, Mr. Speaker, is because education reform is really not that complicated and it should not be that complicated for us at the legislative level. Because our problem, the reason why it's complicated, is because we're trying to look in and see what the principals and the teachers are battling with. And we kind of see it. We might see bits and

pieces. An hour or two, an hour here. And we're trying to see. Okay, this must be why we have to buy math books for them. This must be why we have to do a Principals Academy for them. I think that's all wrong, Mr. Speaker. I think the key is they are the professionals and we have to give that money over to them.

"And my disappointment with this attempt, and I feel it's a noble attempt, but I feel it falls short. And my disappointment is that we need to give it to the professionals. Unequivocal authority to spend the money, to expend the funds. And that's where our authority comes in. We have complicated it by trying to figure out all the details of what that is. And that's my fundamental reason why I'm in opposition to this, Mr. Speaker. I applaud our efforts to look in that direction but I feel we have fallen short. So I ask my colleagues to vote no."

Representative Halford rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In a little bit of support.

"Mr. Speaker, I'm voting for this because I think it does maybe do a little bit to help our educational structure. Mr. Speaker, what we've done with education this Session is give the old Department of Education a new hairdo, maybe a new dress. But frankly, Mr. Speaker, I'm disappointed in the outcome. This is the most, I think almost all of Hawaii agreed that the most important thing we were going to do this Session was to have education reform, constructive education reform. And Mr. Speaker we did a lot of talking about education reform this Session and congratulations to us I guess for that. But at the final moment on this final day, this is a very disappointing bill.

"Mr. Speaker, there's a lot of nice words in here, which I guess is part of the hairdo and the new dress. The word 'giving', letting the principals expend funds, 70%. But Mr. Speaker, we're getting them to expend fixed funds. And the discretionary funds are still being decided upon in Downtown Honolulu.

"Mr. Speaker, we could have done more for charter schools. That's really an area that we could have made greater advances on. And one of our best credits is that we caught the mistake of under-funding them and then just brought it back to normal. I mean, the old insufficient normal.

"Mr. Speaker, I don't want to go through the laundry list of disappointments point by point, but I will say, Mr. Speaker, this is the last day of Session, I'm going to go home, I'm going to continue to support our schools. I'm not going to brag on this bill. But when I go home to my constituents, Mr. Speaker, I'm going to apologize for this bill. Thank you."

Representative Arakaki rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support.

"And a different perspective. Next year I will be celebrating 40 years since I graduated from Farrington High School. One of my classmates, Roger Takabayashi is now the president of HSTA. He chose to go into education. I chose to go into health and human services. Now we're both trying to influence public policy on education. But I think we both agree that schools have changed tremendously. The challenges are a lot different these days. And the way our information technology is changing, we almost have to reinvent education almost every year in order to prepare our students for their future.

"But I want to liken what we did to a family wanting to change vehicles. And I think we all agree that the vehicle that we had was not taking us far enough or fast enough. And there's always been a promise to our families that we're going to change cars. And that was always the promise of reform because I've served 16 years on the Education Committee. Three governors, about five superintendents, several Education Chairs. But those promises never came. I mean, we're always changing tires and windshield wipers and things like that but never changing vehicles.

"But I truly feel, I sincerely feel that this year, we are changing vehicles. And it is going to take us to a destination if we just allow it to. And I think we should give credit where credit is due. The difference I see over the past years, different from this year is that we had an Education Chair who truly listened to the people, who truly tried to respond to the many concerns that were being raised, and who worked well with our counterparts in the Senate. And I think we really ought to thank the Chair of the Education for the work that he did. And I also think we need to thank the Governor because she put our feet to the fire and she challenged us. And she may not have gotten what she wanted and maybe this bill is just a concession, but I think because of her, we were able to move reform forward and actually change vehicles.

"So now it's a matter of letting the vehicle go. Letting the drivers, the true drivers, like the previous speaker said, the professionals, our teachers, our principals, administrators, let them do the driving. Let them chart the course. As long as we can get to where we should be getting to for our students, that's the most important thing. And let's not be backseat drivers and try to take over the wheel. I think we all should remember, both the Governor and Legislators, that we are the visionaries. We set the course. We set the vision of what kind of future we want for Hawaii, for our children. And that's what's most important. But let them drive us. Let's provide them with a vehicle. It's not a Cadillac or a BMW, but I think it's a new vehicle that will take us to where we want to go. So I want to ask everybody to support this measure. Thank you."

Representative Fox rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"Earlier this week, David Shapiro writing in the *Advertiser* brought up a term that he applied to the work of the Legislature this year. It was acting on the 'layaway plan'. You say you're going to do something but you don't do it until a certain date. And that's really my problem with this bill fundamentally. Is that everything it asks for is more or less put off until a later date. Let's just look at the five easy fixes that the Governor called for.

"First, she wanted use of the weighted student formula to be moved up. We don't start the weighted student formula until 2006.

"Second, she wanted the principals to control 90% of the funding at the schools. In the words of the esteemed Representative from Manoa, what we give in this bill is we call for a study. That's a classic layaway plan maneuver.

"She asked for the principals to be put under performance contracts. And what we have is a situation in which we're not tying the principals' contracts to academic achievement, with the ability to replace those who will not perform up to the level of their contracts. That's not a part of this bill. We continue the process of putting a group together that will study what to do with performance-based contracts that will, appropriately or not, include the representative of HGEA bargaining unit

number 6 in deciding how much principals will be asked to respond to this.

"She asked for some real help with charter schools. And we're going to allow in what I see as the sole reform that's beneficial to charter schools. We're going to allow them to opt into the weighted student formula if they agree to as a body, collectively, but not until 2007, which is a considerable delay. A considerable operation in conjunction with the layaway plan.

"So if we're getting any reform at all, it's not starting for a few years. I don't see this as a reform measure at all. I see this as a blessing of the status quo. And I think that the key thing is we sort of all understood that to really get education reform, we had to give the power to the principal and this bill does not do it. It divides the power between the principal, school and community councils and all the members on it, the complex, school complex superintendent, the DOE, and the Legislature. It's a real disappointment. I think reform on the layaway plan is the same as preserving the status quo. And that's what we've done. Thank you, Mr. Speaker."

Representative Lee rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support of the measure.

"And I will be brief. The Governor's so-called veto message offered five amendments for our consideration. And this Conference Draft 2 does not incorporate all of those but the amendments we're making are noteworthy in their own right and represent an honest attempt at compromise and bipartisanship. And I think that's really very important.

"I have additional written comments to submit to the Journal, and I'd also like to submit the *Advertiser* editorial from Wednesday, May 5, 2004. It's called, 'Reinventing education: It's worth a sincere try.' And I think that's what we should do, make a sincere try. Thank you, Mr. Speaker."

Representative Lee's written remarks are as follows:

"Mr. Speaker, I rise in support of this measure.

"This measure will make several amendments to the Reinventing Education Act of 2004. The Governor's so-called "soft veto" message offered 5 amendments for our consideration. This Conference Draft 2 does not incorporate all of those amendments, but the amendments we are making are noteworthy in their own right and represent an honest attempt at compromise and bipartisanship.

"First, New Century Charter Schools and New Century Conversion Charter Schools will be able to decide as a group each fiscal biennium if they wish to receive funding by the weighted student formula. In the original Act, charter schools did not have this option; they were excluded from the weighted student formula. The Governor asked the legislature to "give charter schools their fair share of funding," and this bill provides an opportunity for that.

"Second, we have clarified that each individual performance contract for a school principal shall use performance criteria. This will hold principals accountable and provide a fair way for principals to know exactly where they need to focus their effort. Though short on specifics, the Governor's veto message asked for us to "empower principals, set standards for their performance, and hold them accountable." This measure will make this change possible.

"Third, this bill makes a significant change to the authority of principals and in their relationship with the school community

council. Originally the council would have helped to develop the academic and financial plan at each school. The Governor asked for us to "make the school community councils advisory in nature," and to thereby empower principals and make the lines of accountability more clear. This Conference Draft does just that. As amended, the principal will now develop the academic and financial plans relating to his or her school, and then the council will have the opportunity to review and evaluate these plans. The council will have significantly less authority than before, but each council will still have a very direct relationship with the school---a relationship much closer than the current statewide school board and, for that matter, any proposed number of local school boards.

"Fourth, this bill requires a report to the Legislature to discuss issues relating to the Governor's desire to have 90% of school operating budgets to be controlled by principals. This increase in control is a major change, and it will add significantly to the responsibilities of the principals in many ways that have not been fully explored. On this point, then, the Legislature did not accommodate the Governor, though it appears the difference is more a matter of expediency than of desire. It is prudent to proceed cautiously on this topic instead of rushing forward and dealing later with unforeseen consequences.

"Lastly, the Governor's veto message also asked for us to start the weighted student formula plan a year earlier. This is another area where the correct path is to make this significant change in an orderly, well-considered transition. On this point the legislature respectfully disagrees with the Governor.

"We can all be proud of this effort, Mr. Speaker, and I would like to thank the Education Chairs and Committee members for their tireless effort. This Conference Draft makes the Reinventing Education Act of 2004 even better. I urge my colleagues to support this measure. Thank you."

"EDITORIAL

Reinventing education: It's worth a sincere try

The next phase of the long education reform debate in Hawai'i will be about whether the "Reinventing Education Act of 2004" effectively advances that agenda.

This ambitious bill becomes law now that Gov. Linda Lingle's veto of it has been overridden by the Legislature.

We can't agree with critics, including Lingle, who say this new law, sponsored by the Legislature's Democratic majority, has come up empty.

Significant changes mandated by the bill include:

- Conversion to a weighted student formula, in which funding is distributed to the schools based on specific needs of their students.
- Community councils at each school, which will play a role in each school's academic and budget governance.
- Substantially more authority for principals, including oversight of no less than 70 percent of education operating funds spent at the school level (it's now less than 15 percent).

Republicans and other critics disparage the new law for many reasons, including:

- It doesn't include the governance solution they have demanded: smaller school boards.

- Full conversion to the weighted student formula doesn't occur until the 2006-07 school year.

- The local councils would be chaotic, with the potential to overpower a principal and hijack a school's education agenda.

- To give principals real power, they need discretion over 90 percent of their school's funding, not a mere 70 percent.

If smaller school boards are better, why stop at boards that still govern tens of thousands of students? The councils at each school should be the ultimate answer to decentralization — provided they are empowered.

Interestingly, then, Lingle has called for principals to have more clout than the councils. Democrats have moved to accommodate this and other wishes in a new bill expected to pass the Legislature tomorrow.

Democrats have decided, with ample reason, that the Department of Education is not capable of implementing weighted spending by the next school year. The DOE will have its hands full getting a pilot program of 15 or more schools up and running next year.

For similar reasons, Democrats did not give principals control over more than 70 percent of their budgets. The 90 percent figure puts principals in charge of minutiae like school buses, leaving them little time for educating.

Indeed, it appears few principals want — or are prepared for — that much fiscal responsibility.

There is much that can go wrong in putting the "Reinventing Education Act" to work — even if all factions agree to pull together. But the early indications are that there's substance in this new law — if everyone involved gives it a sincere try.

Anything less is a betrayal of the public's expectation."

The Honolulu Advertiser
Posted on: Wednesday, May 5, 2004

Representative Moses rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. With reservations.

"And I say with reservations because I do believe we took a baby step forward. Just a tiny, teeny step. I can remember when my children were just starting to walk. It's about that size step.

"The Governor provided five easy fixes in her veto message. And what did we do? Well as our leader already told us, we're not going to see true discretionary spending control by the principals at all because we're not going to reach the 90%.

"I'm not going to go through all of them. But we're not going to see any new charter school appointing authority. And of course they're going to get unequal funding. So that didn't do much good for them.

"And I believe Mr. Speaker, that we really didn't compromise at all. We talk a lot. We don't do a lot. I believe my colleagues across the aisle there, say it reduces the bureaucracy but it doesn't. We didn't reinvent education. We didn't reform it. We arranged the chairs in the auditorium so we can say we made a difference and provided a new building for the students. Maybe we put a little paint on the outside and we said it really changed what was inside. Well none of those things make any difference.

"And I guess, like Arnold Schwarzenegger said in his movie, 'I'll be back.' Well, Mr. Speaker, we'll be back time and time again until we make real changes for our schools. Thank you."

Representative Takumi rose to speak in support of the measure with reservations, stating:

"Thank you very much, Mr. Speaker. I rise in support of this measure with some reservations.

"I rise with some reservations because clearly the bill that we passed out earlier, the one that I don't want to mention because otherwise I'd get called out of order, but it reinvented education. It was true education reform. We really didn't need to do this. But let me give you the reasons why we went ahead.

"As I said on the Floor on Monday, Mr. Speaker, during this entire Session, the House and Senate leadership including your Education Chair was more than willing to sit down with the Administration. But again, as I said on Monday, this was extremely difficult. Because until last Friday, the Administration's position was unless you had any number of local elected school boards, then it was all for naught.

"But the Governor's latest position in her 'soft veto' said, and I said this again on Monday, that if we made five changes to that bill, which she vetoed, that this would result in significant improvements in our schools. So let me address the five points raised by the Governor.

"First, give charter schools their fair share of funding. We fully support the intent of charter schools. Another bill we passed out, Senate Bill 2425, does offer full and fair funding for charter schools. The total amount requested by the Governor in her supplemental budget, and the amount appropriated by the Legislature in House Bill 1800, Conference Draft 1, was roughly \$25.886 million. We then appropriated an additional \$2.47 million in Senate Bill 2425 to fulfill the request of the Board of Education.

"We also agree that the charters should have the option to come under the weighted student formula and have made amendments to the details of the bill to make this process more orderly and consistent. A previous speaker mentioned that it's delayed until 2007. That's because again, the charter schools themselves have opted out for the upcoming biennium. And I guess we could amend this bill to say that we'll ram it down your throats and you will come under it even though you've indicated that you do not want to come under it. I believe we should honor the wishes of the charter school community and have them stay out for this upcoming biennium, and they will have the opportunity to come in on the next biennium. I do not believe in forcing them to do it in a top down manner.

"Implement the weighted student formula by the '05-'06 school year was another one of the points. We applaud the Governor for endorsing the Legislature's adoption of a weighted student formula. A landmark change that will do much to bring fairness in funding based upon each student's unique learning needs. But to ensure the prompt execution of this crucial reform, Mr. Speaker, we have amended the bill to mandate that the Department begin a pilot program in every school complex, no less than fifteen, no later than January 1, 2005.

"Furthermore, we are mandating that the implementation to budget for the weighted student formula occur no later than January 1, 2006. I find it rather ironic that a previous speaker said it's just delayed. We're just stalling. If you recall the Governor's original bill ..."

Representative Moses rose to a point of order, stating:

"Point of order, Mr. Speaker. I'm sorry but the speaker referred to 'the previous speaker' twice and I didn't say either of those things."

The Chair responded, stating:

"He's not referring to you at this point in time. He's just talking as a generality."

Representative Takumi continued, stating:

"Thank you very much, Mr. Speaker. The Governor's original bill which called for if you recall, elected school boards and the implementation of the weighted student formula and so on, would have taken three to four years to implement. Our approach will implement it within two years. And the reason why you have to implement the weighted student formula by the '06 school year, and we sat down with the senior policy advisor for the Governor and had many discussions over the phone, we asked the Administration to come up with their timeline as to how we could implement this by the '05 school year and work backwards. They submitted a draft timeline for us which would have entailed a couple of things and I don't want to go over the whole timeline they submitted.

"But first of all, it would have meant that the Superintendent would have had to propose the weighted student formula, the names for these people, to the Board of Education this month and they would have had to approve it. And the Weighted Student Formula Committee would have had to start meeting this month. Fairly ambitious.

"Secondly, it called for, as you well know, in the bill, that once the weighted student formula is decided upon, because the Board of Education falls under Chapters 91 and 92, they would have to take this approach, this proposal ..."

Representative Luke rose to yield her time, and the Chair, "so ordered."

Representative Takumi continued, stating:

"Thank you very much. For statewide hearings. The Administration proposed that this could be done in two months. I have never heard of rule making occurring even on something far less significant than what the Department is being called upon to do, in that amount of time. That is too ambitious. In fact, you're designing it to fail.

"So when we talked about it with the Administration about how this timeline could work, they came back and said our approach was a fair one. And so we agreed with what you see in this floor amendment. In other words, Mr. Speaker, the administration no longer believes it is prudent for us to force this system to be adopted by the '05-'06 school year.

"Number three, give principals control over 70% of the operating budget initially, but phase in a plan that would allow them eventually to control 90% of the funds. Mr. Speaker, in the bill that was vetoed by the Governor, we already mandated that 70% minimum and we fully agreed that 70% is just the beginning, even though it represents a significant change from the status quo. Frankly Mr. Speaker, there is no state in the United States that has adopted the weighted student formula that we are about to embark on. And again as I have mentioned many times on this Floor, there is no school system in the United States that started with 70%. And in fact, I only know of one that is even beyond 70%.

"Efforts will be made to increase this amount over time in a manner that is prudent and that works to strengthen school achievement rather than an artificial number that we're going to shoot at even though it may have nothing to do with student achievement. Because here's the point, Mr. Speaker, of the 16,000 school districts in the United States, none allocates 90% to individual school principals today. There's a reason for this. And I mentioned it before. These districts do not want to burden principals with the bureaucratic details of managing such nonacademic tasks such as hiring bus companies and running cafeterias.

"Giving the principals these responsibilities does nothing to improve student achievement. Now someone can stand up and say, I believe if I give the principals the authority to hire buses, that will bring better student achievement. I beg to differ. And I really think our intent should be to give principals substantially more authority and autonomy over their school budget, which we are, which we will in this bill.

"And for the DOE to develop a system to ensure that its central functions are held accountable for furnishing timely and quality services schools in such areas as cafeteria, custodial, and transportation services. In other words, Mr. Speaker, that is why you see in this amendment, that we are calling on the Department to come back to us before the '05 school year and say in very specific terms. What are some of the challenges? What are some of the obstacles that you have to overcome in order to reach that 80%? In order to reach that 90%? Because frankly Mr. Speaker, I've been asking the Administration for months to come up with how this can work, and so far I have not heard anything. All I've heard is unless you give 90%, it's fake reform. Mr. Speaker, that's a slogan. That is not a policy proposal that I can take very seriously.

"Number four. Empower principals, set standards for their performance, and hold them accountable. We all agree that the role of the principal will be key to this. And the bill that was vetoed does exactly what the Governor is calling for. That was mentioned about this performance contracts and whether or not it should involve the HGEA. I certainly believe you have to involve the stakeholders and what they want to come up with, which are the performance contracts. We don't necessarily have to agree with it, but I do believe good public policy is accomplished by bringing the stakeholders and to have them sit at the table.

"Again, I would encourage Members to read the Governor's original bill about performance contracts for principals. It was two lines. It was not specific at all.

"Last point. Make the School Community Councils advisory in nature. That seems to be a big stumbling block here, Mr. Speaker. And the intent of the bill, the previous bill that we passed on the floor amendment, is to give parents and school communities more input into the academic and financial planning process for their individual schools.

"The growing trend in successful school districts throughout the country, Mr. Speaker, is toward a democratic, collaborative, and inclusive style of school leadership rather than a unilateral, top-down, one way approach. In fact, what we are proposing is no different than a governance structure that exists in corporations, nonprofit organizations, not to mention in the charter schools and private schools in the way they govern themselves.

"Our bill creates a new Principals Academy, that's in the previous bill, to build these leadership skills. And the principal needs to be accountable to involve parents and the community. The council will serve this function.

"Mr. Speaker, let me just read a couple of lines from the State Constitution."

Representative Hamakawa rose to yield his time, and the Chair, "so ordered."

Representative Takumi continued, stating:

"A couple lines from the State Constitution which I think is a fairly important document as we go about trying to figure out the different authority and power of these boards. As you well know, Mr. Speaker, the State Constitution says that, 'the Board of Education shall have the power as provided by law to formulate policy and exercise control over the public school system.'

"Furthermore, it says, 'the board shall have jurisdiction over the internal organization and management of the public school system as provided by law, and shall exercise its jurisdiction in a manner consistent with general laws.'

"Now here's the challenge we had when we looked at the proposal put forth by the Administration to take into account whether or not these councils should be advisory. And again, all of us read that proposed Conference Draft 1. There was a section that said that we would abolish the statewide standards. And each school would be governed by the principal's policies. That was a phrase that was used. In other words, the principal's policies, which the proposed Conference draft had no indication of how you formulate these. Does it come under Chapter 91? Does it come under Chapter 92? Who decides these policies? Does the principal develop his or her own? Do they take these policies with them when they transfer to another school? And if you read that section literally, it meant that each principal in the system will be able to decide how many credits you need to graduate. What kind of course you need to take. What kind of tests you need to take. And if you read the Constitution carefully, there was a very close call whether or not ..."

Representative Meyer rose, stating:

"Point of personal privilege. I don't think these bills talk about the things that the speaker is alluding to right now. It's not embodied in either bill that we've discussed today."

The Chair responded, stating:

"Representative Takumi, please proceed at this point in time."

Representative Takumi continued, stating:

"Thank you very much, Mr. Speaker. I was making reference to the proposed Conference draft the Administration submitted to us to be incorporated into House Bill 2002. It is germane to this discussion.

"So to more clearly delineate the roles of the principal in school council, we are offering this floor amendment to make it clearer that the principal will promulgate, develop and propose the academic and financial plans for the school for review and evaluation by the school community council and ultimate approval by the complex or a superintendent. Again, in the Governor's proposed draft, it said that the school principal will make the decision on the school's academic and financial plans even if the complex area or superintendent says this plan is not workable, this plan is not a good job, you did not do a good deal. The principal can say, well, that's too bad because I have the ultimate authority over you, the superintendent and the Board of Education. I just think that is not a wise way to approach this.

"We believe that this bill along with Senate Bill 3238 will bring true reform to our educational system. S.B. No. 3238 in my opinion stands on its own. And I appreciate the support that was shown for that measure. But I also believe that this measure enhances that bill and clarifies our intent.

"I would personally like to thank the Governor's Senior Policy Advisor, Linda Smith and her staff, for their willingness to sit down and exchange ideas to make school reform a cooperative effort. I think the bill before us today is a result of this effort. And I would also like to thank the staff. And generally I don't thank staff by name like some of my colleagues, maybe that's just a mistake on my part. But on this particular measure and on all the bill that we did on education this session, Mr. Speaker, I'd like to really focus on several staff that did a great job: Kate Stanley from the House Finance Committee; Aaron Dunn from HMSO, who unfortunately will be leaving HMSO this year. He's going to go to law school. Gayle Hirohata-Goto, my Committee clerk. And again the Governor's office. Thank you so much, Mr. Speaker."

Representative Marumoto rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I am rising in favor of this measure. I'd like to express some reservations.

"I voted for the original Majority Omnibus Education bill because the way I saw it, it was half a loaf. I thought it was a 50% step forward. I will be voting for this measure because I think it is maybe three-quarters of a loaf, 75%. It is still far from the 100% systemic reform, but it's the proverbial step in the right direction.

"I'd like to acknowledge the willingness of the House Education Chair in considering this compromise bill, House Bill 2002. Also the Administration should be recognized for meeting and working with the Education Chair to achieve improvement in education. I thank the Senior Policy Advisor to the Governor, Linda Smith for helping to negotiate this better bill. She is observing us today from the gallery. And I commend her for continuing to work long hours for the Administration despite the fact that House Bill 1800 took her salary out of the State budget. Thank you for your dedication and public service, Linda."

At this time, the Chair stated:

"Thank you very much. The Chair will allow Representative Finnegan and Representative Takai as the last two speakers since we have gone over ten Members, as far as this open debate. For those who would like to submit written comments, you may. And it's been close to 55 minutes of debate on this one particular issue. So Representative Finnegan, followed by Representative Takai."

Representative Finnegan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"Thank you, Mr. Speaker. First of all, I wanted to make clear as to the charter schools on whether they wanted to be a part of the weighted student formula or not. In regards to that, there was a conference call with all the principals except for one principal of the charter schools asking them that they had a choice to make. A choice to either be in the weighted student formula or not be in the weighted student formula. They could not choose to opt in once they found out what the weighted student formula looked like for them. And that is what they wanted. If they were given a choice of whether or not they

could opt in right from the beginning, they would have. But, and I've confirmed this with several charter school principals that were a part of this conference call, so we would not be ramming this down their throats if we asked them, if we put in the option to be a part of the weighted student formula. They just weren't given that choice.

"I'm upset with this bill because of some of the things that have been said. But what we're doing is, H.B. 2002 says that principals will develop and present to school councils the initial school academic and financial plans. The councils can review and comment on the plans. It also says if the school councils don't like the plan, they can ask the principal to change it. The principal can refuse. If they refuse, the council can appeal that decision to the complex area superintendent, the superintendent, and then the Board of Education.

"One thing that I found out with reading all about organizational structure and reading about educational reform is that leadership is key. And I think what we're doing is we're sending mixed signals to the principals, the leaders of each school. We're sending them signals like, yes, we want you to be the best leader that you can be. We want you to have all of the leadership skills. We even say that you need principal training to be a leader because we understand that some of you aren't prepared to be the leaders that we're asking you to be. But yet, in the same breath, we're saying you can go ahead and lead but, if you should take a risk or if you should make a decision that maybe the school council does not agree with, or maybe the DOE does not agree with, that we're going to correct that. And we're not going to let you lead.

"I learned in this marriage conference that I went to two weeks ago, and I realized one of the faults that I do in my own marriage which applies to leadership, is that I often undermine my husband's decisions. How is he supposed to become the leader that I want him to be in my family if I'm undermining his decisions and not letting him or giving him the ability to lead? But yet we're asking that of our principals.

"We're also saying, you can handle 70% of the operational expenses, but not 90%. And often I hear comments like, 'Well, what 90%?' Well, if you look at it, and if you look how DOE does their expenses and everything, it's under categorical expenses. And that's how they do their school-based budgeting, categorically. That's what the weighted student formula is for and that committee is for. It's because they end up saying, this is how much it costs. We're taking categorical funds, we're trying to figure out how that's going to apply to each student and how they're going to learn and what are their costs and their needs to learn.

"And basically with the 90%, it goes backwards in thinking. It says, Central, what's the 10% that is most important to you that you absolutely need to run and in the remainder of those funds, we're going to let the principals decide on how to run their schools with the remainder of those funds. Do they want to use that for buses or not be able to take on bus expense? Well you see that's the beauty of weighted student formula. The beauty of it is that if you have \$50,000 in bus expenses in a year or whatever it might be, I'm just thinking off the top of my head, and you happen to have a conversation with Roberts Hawaii who says, 'You know what? I can give you that for \$45,000.' You can choose to take the \$45,000. You don't need to take the \$50,000 Central expense. That's the beauty of it. You don't have to. You don't have to go ahead and take \$45,000. You can say, 'You know what? Even if I'm spending more money on buses, I'd rather go through Central because I seem to get better services that way.' But it's the decision that the principal makes."

Representative Bukoski rose to yield his time, and the Chair, "so ordered."

Representative Finnegan continued, stating:

"Mr. Speaker, we're rocking the roles of what the SCCs are supposed to be, the Superintendent is supposed to be. The roles are all muddled. And the principal, what is it supposed to be? He's supposed to be a leader, well maybe not. If I am confused. I wonder what they're going to say.

"And if I read this bill correctly, if it looks like an apple, and it tastes like an apple, it must be an apple. And I think that that's what the principals and teachers are going to get out of this bill. They're going to look at it and say, 'Is this change?' I don't know if this is change. The management responsibilities and policy responsibilities are very muddled.

"Mr. Speaker, I had a very difficult decision to make. I was going to vote with reservations because I thought maybe we should give it a try. Not only that, but maybe we should, it seems to be better than the bill prior, but I just can't. I can't bring myself to go yes on this bill. I'll be voting no. And thanks, Mr. Speaker."

Representative Bukoski rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Bukoski's written remarks are as follows:

"I am voting in opposition of this measure for several reasons. First, Part 1 of the bill creates a revolving fund that intends to sustain the after school A+ program. Currently the program is funded out of the general fund. After doing some research based on the info that was presented in Finance, I have concluded that the current system is more than adequate and this measure is not needed. If it ain't broke, don't fix it. I honestly believe that such a change will eventually result in increased rates to the parents of the children. I completely support the continuance of A+ as a single father who raised two children with the assistance of A+. If it weren't for this program I don't know how I would have made it as single parent.

"I also am opposed to Part 2 of this bill simply because although I believe the intentions of the proponents of this measure were good, I don't believe the measure goes far enough to make a positive impact on the system. It did not give the people the option of local school boards, which I largely have indicated."

Representative Takai rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this measure.

"Thank you. A previous speaker had mentioned that he is going to go back to his community and apologize on our behalf for what we didn't do in education. I disagree strongly."

Representative Halford interjected, stating:

"Mr. Speaker, I will not be speaking on behalf of the House of Representatives."

The Chair responded, stating:

"Correct. Representative Takai, confine your remarks to this proposed legislation."

Representative Takai continued, stating:

"Well, Mr. Speaker, I just wanted to say that as a Member of this Body, I will be going back to my community and telling them how proud I am for what we have delivered in terms of education reform. And the apology for me is not accepted."

Speaker Say: "Please proceed."

Representative Takai continued, stating:

"Thank you, Mr. Speaker. There's been much talk about this 90% versus 70%, and still today, people do not recognize the magnitude of creating the weighted student formula and the magnitude of giving the schools 70% of the operational budgets. If you take a look at House Bill 2002, CD 2, it talks about a reporting requirement, yes. It asks the Department to come back to us to help us understand the barriers, the impediments, and the laws that need to be changed in order for the Department to transition eventually to 80% and possibly even 90%. We don't even have set up in our Department of Education a buyback provision. So all this talk about schools going to the Central Service to buy back transportation, to buy back cafeteria services, to buy back custodial services. The provisions, the processes are not done yet. So we have asked the Department to, within the next six to eight months to come back to us with those plans in place so that we can understand and the principals, the leaders of our schools can understand how these buyback provisions will be.

"All this discussion about education reform has centered on what we think and what the community thinks, but I think it was time and last week we had an opportunity, Mr. Speaker, to send out an email to our principals, again our school leaders, all of them, all of our public school principals, and we've asked them five simple questions. Two of which, I'd like to mention today.

"The first question has to do with the statewide school boards as it was talked about. The question was: The Governor's proposal to replace the statewide school board with at least four or seven school boards will improve student achievement. Again, Mr. Speaker, this is a response from our school principals. In fact 60% responded to our survey. Only 2% of those that responded strongly agree or agree with this proposal. 88% clear, overwhelming majority, disagree or strongly disagree with this proposal. I only bring that up because as we move to reinvent education, as we move to re-energize what's going on in the field, we need to keep, I think, the concerns of our school principals in mind. They are the ones that will be implementing, along with our State level administrators and our complex area superintendents, the mandates that we put not only in Senate Bill 3238, but also in this bill as well.

"The other question, Mr. Speaker, I'd like to mention goes to the heart of this discussion on the 90% versus 70%. The question was simply this. I support the Governor's proposal that a minimum of 90% of the DOE's operating budget must be controlled by the principals. Again, of those principals who have responded, only 5%, Mr. Speaker, agreed with that statement. In other words, Mr. Speaker, in this particular question, nearly 80% of the principals, again our school leaders, said, 'No. Hold on. Don't do it. We don't want it.'

"In fact, Mr. Speaker, a number of them allowed the Chairman of Education and I to quote some of their comments on this particular question. And I would like to read a few of them so that we can kind of provide a context of, I think, the frustration, the struggle, the challenges, the pressures, everything that these school-level administrators are feeling right now. For example, Amy Martinson, Highlands Intermediate, says, 'I am a principal, not a business manager. Please let me focus on attaining high student achievement.'"

Representative B. Oshiro rose to yield his time, and the Chair, "so ordered."

Representative Takai continued, stating:

"Beverly McCall, Waiakea Waena Elementary says, 'These types of responsibilities would be an extra burden to an already demanding job. As it is, now, principals are stretching their health and family lives due to the existing demand.'

"Randall Miura, Leihoku Elementary, says, 'I already put in 13 hours a day in school plus a few hours at home. When am I expected to take on this additional responsibility? I'm tasked with being a manager of the school, as well as the instructional leader. Realistically, the demands of managing 90% of the operational budget, as well as being the instructional leader are unrealistic and unreasonable. This proposal demonstrates the lack of knowledge of what occurs at the school level and the level of responsibility that the principal is challenged with.'

"Annette Nishikawa, Kapolei Middle, says, 'There's no way that I want these responsibilities. There's no way that I can do service to the students and families if I was held responsible for everything. There's no way that I will remain an educator in that scenario. I have surpassed the requirements for retirement. I am here because I want to be. I do not want to be in that scenario.'

"Mr. Speaker, that principal, Annette Nishikawa, is not the only one who is of retirement age and has put in thirty-plus years in service. In fact, I asked the Department of Education to give me figures of how many of our principals today can retire tomorrow and get full retirement benefits. The answer, almost 50% of our school principals today can retire and get full retirement benefits.

"In fact, Mr. Speaker, the trend for retirement of those vice principals and principals of our schools over the past five years, in my perspective, does not look good. It's been trending upwards. Principals are retiring in droves. Last year we had 45 principals and vice principals retire. We estimate or the Department estimates maybe 50 principals, school level administrators, will be retiring. I tell you, if we added the additional burden of the 90% today, I can guarantee you that most of those 50% would quit. And what would we do? How would we be able to run our schools? How would we be able to teach our children?

"Mr. Speaker, I just wanted to mention something real short about the charters because I was involved in that discussion a few months ago. I would have preferred that the charters decide today to be part of the weighted student formula. They decided not to. You cannot ask the Committee on Weights, you cannot ask the Department of Education to hold off the decision whether we want to be part or not part of the weighted student formula when the weights and the formula is already done. You can't do it. The weights and the formula is done knowing who's part of that formula. In fact Mr. Speaker, we're not going to do it to any other school, any other public school. Why should we do it to charter schools? Why should we let our public schools across the State decide after the weights are done whether to opt in and opt out? It's not going to work. The reason why a weighted student formula process works is because we're going to dictate, we're going to mandate who's in and who's out from the very beginning. And instruct this Committee on Weights on how best to proceed. It is important, I think, that the charter schools be part of this weighted student formula. And I hope within the next year or so that these new charter schools, New Century Charter Schools and convergence schools will consider being part of the weight during the next biennium.

"I also wanted to mention something about the School Community Councils. There's been much talk about why these school community councils have been empowered by this and the other bill. And the reason is very simple. If you take a look at what the Governor has said from the very beginning and I agree with her, she has said that we need to create a system that provides the community with input and participation into our educational process. In fact, she called it and she called one of her earlier bills, the Local Control Act of this year. Local school boards don't do nearly as much as what we're doing in these two bills. What we're doing is empowering a school community. Empowering an entire community. Providing the opportunity for business ..."

Representative Ito rose to yield his time, and the Chair, "so ordered."

The Chair then stated:

"Representative Takai, this is your last five minutes."

Representative Takai continued, stating:

"Thank you. Couple more minutes, Mr. Speaker. Providing the business community, the community at large, the students, the teachers, the parents with an opportunity to play a pivotal role in the success of our schools. And Mr. Speaker, when you go out to the schools, the difference in a successful school and the difference in our success in the future will be the active participation of our students, our teachers, our other staff, but most importantly, the active participation of the parents and the community at large. Our model provides for that. And I think we have no reason to apologize for that as well.

"Mr. Speaker, I would like at this time to insert to the Journal the results of our survey done April 28 to May 4 with your permission. Thank you, Mr. Speaker. In addition, I would like to insert into the Journal the *Star-Bulletin* article of today talking about this bill, and also the survey. Finally, Mr. Speaker, I'd like the words of the Education Committee Chair entered into the Journal as if they were my own. And I would like to request additional written comments. Thank you, Mr. Speaker," and the Chair "so ordered."

Representative Takai submitted the following:

"Education bill adjusts principals' function
The changes give them stronger roles with school councils
By Susan Essoyan

Legislators plan to amend a new education law today in response to some of Gov. Linda Lingle's concerns but are postponing her push to give schools control of 90 percent of the education budget.

Rep. Roy Takumi (D, Pearl City-Pacific Palisades) and Rep. K. Mark Takai (D, Newtown-Pearl City) released yesterday the results of an unscientific survey that showed strong resistance among principals to the 90 percent figure, which would entail managing services such as school food and transportation in addition to academics.

"Principals are telling us the temperature of the food in the cafeteria doesn't have much to do with student achievement," Takumi said. "They don't want the responsibility for it."

The "Reinventing Education Act of 2004" calls for decentralizing the Department of Education by giving principals responsibility for at least 70 percent of school operating funds and creating school councils to give the community more say in their local schools.

Legislators overrode the governor's veto of that bill, and it is now law. But they worked with the administration to fashion several changes that are poised for final approval today as House Bill 2002, CD2. These include clarifying a stronger role for principals with the councils, testing a "weighted student formula" in 15 schools statewide starting in January, and allowing charter schools to choose to use that formula.

The bill says the school councils -- made up of parents, teachers and school staff -- will review and approve the school's academic and fiscal plan, rather than develop it, as the original legislation says. Takumi said the legislation will empower principals while allowing for collaboration.

"What we are proposing is no different than the governance structure that exists in corporations and nonprofit organizations, not to mention charter schools," he said.

Lingle had asked legislators to make the councils merely advisory. Her policy adviser, Linda Smith, said the new language is an improvement, but "it's clearly not as much as we had hoped for."

"We would have liked to have given the principals full scope in being able to manage the schools in the way they believe would result in student success," she said. "We really would have liked to have seen in statute going to the full 90 percent."

The bill has broad bipartisan support and is expected to be approved today. Only House Minority Leader Galen Fox (R, Waikiki-Ala Moana) voted against it on Monday.

The survey of principals was sent by e-mail on April 28 by Takumi and Takai to 252 public school principals statewide. Sixty percent, or 152 principals, responded.

Asked whether they agreed with the governor that principals should have control of 90 percent of the Department of Education's operating budget, 78 percent disagreed or strongly disagreed, with just 5 percent agreeing or strongly agreeing. A common theme in their written comments was their desire to be instructional leaders, rather than business managers.

"I am concerned that my time will be given to noneducational responsibilities and take away too much time from focusing on student achievement," wrote Lindsay Ball, principal of King Kamehameha III School in Lahaina. "I don't want to have to worry about the grass being mowed, bus services and other such items."

Eleanor Laszlo, principal of Kohala Elementary School on the Big Island, agreed. "Good grief! I have enough on my plate already," she said. "I want to focus on my students and my teachers and staff."

The principals also called for more training to help them handle their new responsibilities if they are given more resources and autonomy, with 89 percent in favor and 6 percent saying more training was not needed.

Sen. Bob Hogue (R, Kaneohe-Kailua) said the opinions expressed by the principals are to be expected because they are shaped by the system in which they work.

"I'm not surprised by the results of the survey because, let's be real honest here, the principals have been kind of indoctrinated by people within the system who don't want to see change," he said. "Whenever there's talk of change, there's going to be apprehension, anxiety and sometimes fear."

But Hogue said he was heartened by the cooperative spirit that emerged on education reform over the past week, after a contentious legislative session.

"The governor threw the ball on the other side of the court, and the players on the other side picked it up and worked with her to achieve some sort of compromise," Hogue said. "That's historic in Hawaii."

Principals give feedback

A survey was sent April 28 via e-mail by state Reps. K. Mark Takai and Roy Takumi to 252 principals in Hawaii's public schools, asking whether they agreed with the statements below. Sixty percent, or 152 principals, responded.

The governor's proposal to replace a statewide school board with at least four (or seven) school boards will improve student achievement.

Agree or strongly agree:	2 percent
Disagree or strongly disagree:	87.5 percent
Neither agree nor disagree, or blank:	10.5 percent

I support the governor's proposal that a minimum of 90 percent of the Department of Education's operating budget must be controlled by the principal. (This would mean that principals will be directly responsible for transportation, special education, food service, adult education, A+, etc.)

Agree or strongly agree:	5 percent
Disagree or strongly disagree:	78 percent
Neither agree nor disagree, or blank:	17 percent

Giving principals more resources and greater flexibility and autonomy will improve student achievement at my school.

Agree or strongly agree:	67 percent
Disagree or strongly disagree:	8 percent
Neither agree nor disagree, or blank:	25 percent

If schools receive more resources and greater flexibility and autonomy, there must be additional training provided for planning and managing the use of resources.

Agree or strongly agree:	89 percent
Disagree or strongly disagree:	6 percent
Neither agree nor disagree, or blank:	5 percent

Source: State Reps. K. Mark Takai and Roy Takumi"

Honolulu Star-Bulletin
May 6, 2004

Representative Meyer rose, stating:

"Point of personal privilege. If this Body sent out a survey, it seems very strange that all the Members of the House of Representatives didn't get the results of that survey or see the survey prior to this moment."

Representative B. Oshiro rose to a point of order, stating:

"Point of order. That doesn't constitute a personal privilege under Section 223 of *Mason's*."

At 12:43 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 12:45 o'clock p.m.

At this time, the Chair stated:

"At this time, the Chair will entertain written comments to be inserted in the Journal in support or in opposition."

Representative Meyer rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I'm rising in opposition to this measure which I believe is more symbolic than substantive. I would like to submit remarks. Thank you."

Representative Meyer's written remarks are as follows:

"Mr. Speaker, I'm in opposition to HB 2002. This bill is more about symbolism than substance and is meant to look like the Legislature is working with the Governor to accommodate some of her suggestions, but in reality the bill makes no significant changes to the substance of SB 3238.

"The Governor asked for performance contracts for principals but this bill only provides for the DOE to develop performance contracts, while the statute does not require that principals be evaluated based on student achievement and school success. The statute does not say principals will be removed if they fail to improve student achievement or school performance.

"The Governor requested that charter schools be funded for their facility costs. This was not included in HB 2002. The Governor asked that the Weighted Student Formula be implemented before 2006/07. In fact, HB 2002 delays WSF until 2006-07 for traditional schools, and a year later for charter schools. This delay is masked by a "pilot project" wherein 15 schools (one from each complex) will begin a pilot of school councils and principals developing academic and financial plans in January 2005.

"However, the BOE will not set WSF until December 2005. Therefore, the pilot will not have a WSF allocation. The statute is silent on how the 15 schools will set a financial plan. Essentially, the pilot is limited to starting principals working with school councils.

"The Governor asked for 90% control of funds to the school principals to be phased in over two or three years. This bill only provides for the DOE central office to report if it is feasible for the schools to control 90% of their budgets. The answer is predictable.

"Many in this Chamber today have suggested that it is virtually impossible to expect principals to manage 90% of the education budget for their schools. This is simply not true. Over 4800 charter schools across the country and 27 in the State of Hawaii are managing 100% of their budgets right now. As for the school-community councils being advisory, one can't be sure what this bill does with that arrangement. The teachers and staff on the councils are evaluated by the principal, but on the other hand, the councils will evaluate the principals. Who is in charge? It's hard to tell.

"This bill will not fix what is ailing our education system. A highly centralized, bureaucratic, unaccountable, and top down organization all under a single unresponsive Board of Education is what needs to be changed. For those reasons, Mr. Speaker, I cannot support this bill."

Representative Pendleton rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

Representative Blundell rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in serious opposition and I'd like the words of the Representative from Airport to be introduced in the Journal as my own." (By reference only.)

Representative M. Oshiro rose to speak in support of the measure, stating:

"Mr. Speaker. Strong support and ask that I can submit the words of the British poet/philosopher Mick Jagger as my own."

Representative Ching rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

Representative Kaho'ohalahala rose in support of the measure and asked that the remarks of Representatives Takumi and Takai be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Wakai rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support and ask for the same request and also be allowed to submit written comments into the Journal. Thank you."

Representative Wakai's written remarks are as follows:

"Mr. Speaker, I rise in support of this amendment.

"The Representative from Mililani referred to local school boards as the 'silver bullet'.

"There is no 'silver bullet'. There is no single solution that will send our students to college. This bill represents a collection of solid ideas that will forever benefit future generations.

"Surveys show the public agrees that governance is not the key to our educational success. We need to move this discussion forward.

"The Minority argues this bill doesn't do enough, they say we could have done more...Yes, we can always do more. We could have devoted the entire 3.8-billion dollar budget to the DOE, but prudent decisions have to be made.

"As a freshman lawmaker, I have been disappointed by the constant bickering in this Chamber over who has the better plan. Our debate often degenerates into, "My plan is better than your plan." The public demands results. Where is the spirit of collaboration?

"The collection of education bills we are passing this Session will have a dramatic impact on the way we educate our keiki.

"I am proud to support this measure -- it's not fake, it's genuine reform."

Representative Kanoho rose in support of the measure and asked that the remarks of Representatives Takumi and Takai be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Mindo rose in support of the measure and asked that the remarks of Representatives Takumi and Takai be

entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Meyer rose, stating:

"Point of clarification, Mr. Speaker. I wasn't sure whether the Representative from Salt Lake wanted the same remark about Mick Jagger."

The Chair responded, stating:

"I really don't know. I don't believe so. Representative Wakai, you had written comments?"

Representative Wakai responded, stating:

"I'm sure Mick is a fine representative of education, but no. My comments were specific to the Representative from Lanai, Molokai, and East Maui."

The motion was put to vote by the Chair and carried, and H.B. No. 2002, HD 2, SD 1, CD 2, entitled, "A BILL FOR AN ACT RELATING TO EDUCATION," passed Final Reading by a vote of 44 ayes and 7 noes with Representatives Blundell, Bukoski, Finnegan, Fox, Jernigan, Meyer, and Ontai voting no.

At 12:48 o'clock p.m., the Chair noted that H.B. No. 2002, HD 2, SD 1, CD 2, passed Final Reading.

Representative Saiki moved that the House reconsider action taken on May 3, 2004 in recommitting H.B. No. 1848, HD 1, SD 1, CD 1, to Conference Committee, seconded by Representative Lee and carried.

Conf. Com. Rep. No. 133-04 and H.B. No. 1848, HD 1, SD 1, CD 1:

Representative Saiki moved that the report of the Committee be adopted, and that H.B. No. 1848, HD 1, SD 1, CD 1, pass Final Reading, seconded by Representative Lee.

Representative Moses rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition.

"I believe every tree is exceptional. And I don't like to discriminate against any tree. Further, I believe that the county is going to designate which trees fall under this bill. And then the State's going to pay for it. I guess that's homerule in reverse. And because it's going to cost \$3,000 a year for every tree that is designated, that's a lot of money that we can't afford as a State because we know the problems we're having in our treasury. But also I think it's going to force people in the monetary sense at least, force them to look for trees in their property that may be designated, get them designated, and then it's going to really cost us. I have nothing against saving good trees but I think we should save them all. Thank you."

Representative Ching rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support.

"Thank you. I support this measure to give a tax deduction to taxpayers who own exceptional trees. This measure will give a deduction of up to \$3,000 per exceptional tree for expenditures made during the taxable year and it will only be through every three years.

"Why I believe this is a sensible bill, it's because trees often, though we will not initially recognize the value trees, give their character and beauty to our communities. They are of most value for neighborhoods. There's no mistake that real estate value, if you would look across the State, and other states, and I have traveled to Illinois. I have traveled to many, many different states. You will find that real estate is much higher in those that have distinguished and old trees. As we can say by the Gold Coast, which appreciates its beautiful ironwoods thereby exceptional planted by Mr. Cleghorn, who is the father of Princess Kaiulani, who may have been the inheritor of the throne.

"This is an opportunity to teach children about their past. And that is even one of the standards in our educational system. Is that through citizenship, we realize that children benefit from understanding about the past and the present. What more wonderful way to teach a child but through a living item?

"I'll give you two examples in my own district. Across from Maemae School, which was started over a hundred years ago as a private school by Mother Waterhouse, is a tree in front of the home of Mother Waterhouse. This tree, this old monkeypod tree is where Queen Liliuokalani used to read to the students of Maemae on a swing there on that tree. And thank goodness not only was the tree preserved, but as well its swing. And when children, now inhabited by the Girl Scouts Council, go to that tree, they are reminded that history becomes alive. That tree was there when Queen Liliuokalani was there. It makes them connect to their past.

"We also have another exceptional tree in my district. Many of you may be as old as I am and remember that Nuuanu Shopping Mall was once Chun Hoon Market, where a number of our people here in the islands of Chinese ancestry remember where you could go and you could have fresh meat prepared right there. And many of the families here in our islands trace their lineage back to some of the people associated including the Magoon family to the Chun Hoon Market, where the oldest lichee tree in the State of Hawaii still stands there at the former Chun Hoon Market. And when people pass by, and I mention that, they are astounded. They take interest. They might stop at that shopping mall. The fact is that trees enhance our communities, their character, their sense of place.

"And no, I disagree I hate to say, with my esteemed colleague. I don't believe all trees are equal. And I'm honest enough to say it. There are some architectural buildings. Not all architectural buildings are equal. I think this one is quite exceptional. And I hope that no one other decides to knock this one down. But trees are similar in that way. They tell stories.

"I remember when I was a teacher at Maemae, I would often sit underneath our monkeypod tree, which by the way is in our Maemae song, under the monkeypod tree, which is the original tree, and I would read books about trees. The fact is that we teach our children about tree to respect the environment."

Representative Meyer rose to yield her time, and the Chair, "so ordered."

Representative Ching continued, stating:

"Thank you so much. And there are a number of very beautiful, beautiful touching stories that used trees as metaphors.

"But however, trees do take money to maintain. And exceptional trees are particular in that way. When they are large, if a person who does not know what they are doing, it's like a philistine or a person who does not understand art, and doesn't treat art the right way. They might destroy it

unintentionally. They might drop the vase that is worth so much. It takes understanding. And there have been many trees lost because the person who maintains the tree maybe went with someone who didn't know what they were doing, cut the tree in such a manner that it uprooted. And that happened to my *popo*, my grandmother's neighbor, when they did not intend to cut down the tree. It was pruned improperly, it uprooted. And it ruined the entranceway to Manoa. I feel in some ways, I feel it ruined that one intersection because it was lost. So trees do need maintenance. They need good qualified maintenance. And it's expensive. And this bill addresses that because it gives an incentive for an owner to get a qualified person to maintain their tree and also maintain the character of their beautiful neighborhoods. Thank you, Mr. Speaker."

Representative Evans rose to disclose a potential conflict of interest, stating:

"I need a ruling on a potential conflict. I was president of the Waikoloa Village Outdoor Circle," and the Chair ruled "no conflict."

Representative Evans continued to speak in support of the measure, stating:

"Thank you. I want to stand in support.

"I just want to say that there aren't that many of these trees in the State. And to qualify for it, you have to go through the Arborist Advisory Committee at the county level. And I do believe that it is really important that some of these really, really old, big, historic trees do get saved. But it is a financial burden, I think, can be on people because there is disease, or root problems. And sometimes in storms, they break. So I think it's actually I was very pleased to see this bill because it means we understand the value of it. And I've been told that it's affecting about 65 trees as it states in this bill. Thank you."

Representative Souki rose to speak in support of the measure, stating:

"Mr. Speaker, thank you very much. I wish to speak very strongly in favor of this particular bill here on trees.

"Mr. Speaker, I've always been a lover of trees, especially *kiawe* trees. And Mr. Speaker, I would hope that the maker of this bill, and if it moves along any further, that the maker will advise the community group that will be making the decision on exceptional trees, that they look at my old, old guava tree in my yard. I think it has some spirit and value in there. And Mr. Speaker, if this bill is going to be passed by this House, I would hope that the maker of this bill would come up and recite the poem, Trees to all of us. Thank you very much."

Representative Luke rose, stating:

"Mr. Speaker, I was just going to call for the question because the debate has deteriorated."

The Chair responded, stating:

"Thank you very much. Your point is well taken. The question has been called. For those who would like to submit written comments for or against, you may at this point in time."

Representative Marumoto rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. As a member of the Outdoor Circle, I would like to submit remarks in favor of this measure which hails the recognition of exceptional trees."

Representative Marumoto's written remarks are as follows:

"As a member of the Outdoor Circle, I am happy to say that exceptional trees will now receive attention and recognition. In tribute to these trees I would like to submit the following poem for the Journal.

by Joyce Kilmer

I think that I shall never see
A poem as lovely as a tree.

A tree whose hungry mouth is prest
Against the earth's sweet flowing breast;

A tree that looks to God all day,
And lifts her leafy arms to pray;

A tree that may in summer wear
A nest of robins in her hair;

Upon whose bosom snow has lain;
Who intimately lives with rain.

Poems are made by fools like me,
But only God can make a tree."

Representative Caldwell rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Caldwell's written remarks are as follows:

"I rise in strong support.

"An exceptional tree is a tree with historic or cultural value, for example the Hau Tree planted in Manoa by Queen Kaahumanu in 1823, or that by reason of its age, rarity, location, size, esthetic quality, or endemic status, is worthy of preservation.

"These trees are found in all our communities: Waianae, Wahiawa, Wailuku Maui, Hilo, Kona, Lahaina, Molokai, Lanai and on Kauai.

"Such exceptional trees benefit the community at large, as well as the owners of the property upon which these trees grow.

"Although it is not always seen this way by the property owners some of whom look at such trees as an added expense because of the maintenance costs of taking care of such trees.

"The purpose of this bill is to address this issue and to provide property owners with a tax deduction to maintain any tree on their property that has been designated as an exceptional tree.

"This bill provides a tax deduction of up to \$3,000 per tree in a three-year cycle for tree maintenance, such as trimming branches, addressing diseases and parasites, and stabilizing the root systems.

"We have lost thousands of mature trees to development. We cannot afford to lose any more of our most precious natural resources.

"There are approximately 970 exceptional trees statewide. Only 65, or 6.7 % of these, are on private property.

"The majority of these people are elderly and on a fixed income, making the maintenance of an exceptional tree a financial burden.

"Only private property owners, as taxpayers, can take advantage of the tax deduction. The \$3,000 deduction is over a three-year period.

"It is anticipated that an owner of such a tree would use the deduction once in every 3 to 5 years, which equates to approximately \$600 per year per owner.

"This assumes property owners will use the full \$3,000 tax deduction.

"On the basis of tree maintenance, it is assumed that approximately 1/3 of tree owners would use the tax deduction in a given year.

"This would equate to no more than \$65,000 in tax deductions for private owners per year.

"As a comparison, tax deductions for dependent children equal \$1,000 per child on federal taxes plus \$1,040 per child on state taxes. This equates to \$2,040 per child per year, or over \$6,100 over a three-year period.

"This is a small price to pay to preserve our environmental heritage for our children and to be good stewards for future generations.

"Mature trees are a community and economic resource. They provide:

- Oxygen
- Absorb carbon dioxide
- Filter out dust
- Lower temperatures
- Slow down strong winds
- Prevent erosion
- Increase property values
- Enhance the beauty of our islands and the tourist industry

"We all benefit from the passage of this bill."

Representative Sonson rose in opposition to the measure, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Sonson's written remarks are as follows:

"We are sending the wrong message.

"On one hand, we are telling the public that we cannot fund our schools, roads, sewers, and other infrastructure that supports the public good, because 'no more money.' On the other hand, with this bill, we are telling our taxpayers that it's okay to use precious tax money to finance the care of trees located in private property.

"We really should be more sensitive to the voice and concerns of our citizens."

Representative Lee rose in support of the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Lee's written remarks are as follows:

"Mr. Speaker, I rise in support. There are about 65 exceptional trees State-wide which require expensive care, such as pruning and treatment of disease. Those which are on private lands can be a substantial economic burden to their owners. The exceptional trees in Hawaii are part of our legacy to the future. This tax deduction will ensure that the

exceptional trees of Hawaii continue to thrive. I urge the Members' approval."

Representative Bukoski rose in opposition to the measure, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Bukoski's written remarks are as follows:

"My opposition to this measure is simple. There are many more noteworthy projects that could use the tax credits. I am in favor of saving exceptional trees, but I feel offering a tax credit is going too far. If someone wants to save a tree, then their intent should be genuine and they shouldn't have a problem taking care of it without any kind of monetary compensation."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1848, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EXCEPTIONAL TREES," passed Final Reading by a vote of 39 ayes to 12 noes, with Representatives Bukoski, Finnegan, Halford, Kahikina, Moses, Nishimoto, Ontai, B. Oshiro, M. Oshiro, Sonson, Tamayo and Wakai voting no.

At 1:02 o'clock p.m., the Chair noted that H.B. No. 1848, HD 1, SD 1, CD 1, passed Final Reading.

The Chair then announced:

"Members, at this time, we are on Senate Concurrent Resolution Number 54. Members, please note that Senate Concurrent Resolution Number 54 was re-referred solely to the Committees on Human Services and Housing and Health per Committee Referral Sheet Number 57, that was placed on your desk this morning. The Committee on Finance waived its referral to this measure and therefore it is appropriate for this House to consider action for adoption at this point in time."

SUSPENSION OF RULES

On motion by Representative Saiki, seconded by Representative Lee and carried, the rules were suspended for the purpose of reconsidering action previously taken on S.C.R. No. 54.

RECONSIDERATION OF ACTION TAKEN

Representative Saiki moved that the House reconsider its previous action taken pursuant to the recommendation contained in Stand. Com. Rep. No. 1499-04 in referring S.C.R. No. 54 to the Committee on Finance, seconded by Representative Lee and carried.

Representative Saiki moved that S.C.R. No. 54 be adopted, seconded by Representative Lee.

Representative Finnegan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition to the measure.

"And I'd just like to read a portion of the testimony from the Department of Human Services. It says:

The Department's new policy on 'pinkie form' to expedite the processing of Medicaid applications for pregnant women has been operational for only three months. While it is still too early to draw definitive conclusions about the efficacy of our

new process, for the first full month of data that we have, February 2004, we are pleased to report that 97% of all 'pinkie' applications received from pregnant women were processed as we promised within five business days. Specifically, 303 out of 313 'pinkie' applications received in February 2004 were processed within five business days. The other ten applications had incomplete information or lacked the necessary citizenship or residency verifications. This 97% processing speed and efficiency exceeds our promise of a 95% success rate.

"Another portion of the 'pinkie form' is also in regards to application for children and getting insurance. And this has also lead to a few months, we've now increased our medically covered children in addition, by another 1,600 children being covered by good medical insurance.

"I guess my opposition to this is that we're asking or requesting an audit when we just started the program. And the initial information from this program so far is very successful. Last year, when the Department of Human Services, their Director made the promise to do this, well first of all, she delivered on that promise. And I think that when the Department and other workers in that Department work so hard to get something like this up and running within a year and Director Koller only took office at the beginning of last year. So I want to more or less be encouraging them to continue the success. And by requesting an audit, it just seems like we're not appreciating the type of quick response and quick action that they are doing.

"The other part about this is because right now we're looking at five business days in turnover for approved applications, this is being compared to presumptive eligibility. The thing with presumptive eligibility is that you still have to become eligible for the program. So what you're saying is, presumptive eligibility allows you basically five days of coverage because of the application process. If we are looking to try to cover every pregnant woman, this is not the measure. That's a different situation.

"And I just wanted to make that clear that this is not in regards to not covering pregnant women. But if we want to do that, then we change the guidelines or we put more State money into it or whatever, but this expedited 'pinkie' process, I don't think covers that issue. Thank you."

Representative Fox rose in opposition to the measure and asked that the remarks of Representative Finnegan be entered in the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Meyer rose in opposition to the measure and asked that the remarks of Representative Finnegan be entered in the Journal as her own, and the Chair "so ordered." (By reference only.)

The motion was put to vote by the Chair and carried, and S.C.R. No. 54, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE IMPACT OF THE DEPARTMENT OF HUMAN SERVICES' POLICY OF EXPEDITED PROCESSING OF APPLICATIONS RECEIVED FROM PREGNANT WOMEN USING THE 'MEDICAL ASSISTANCE APPLICATION FOR CHILDREN AND PREGNANT WOMEN ONLY' FORM ON EARLY ENTRY INTO PRENATAL CARE AND SUBSEQUENT BIRTH OUTCOMES," was Adopted, with Representatives Finnegan, Fox and Meyer voting no, and Representatives Kanoho, Nakasone and Tamayo being excused.

FINAL READING

The following bills were taken from the Clerk's desk and the following action taken:

Representative Saiki then moved to agree to the amendments proposed by the Senate to the following House bills, seconded by Representative Lee and carried. (Representative Nakasone was excused.)

H.B. No. 1780, HD 1, SD 1
H.B. No. 1987, HD 1, SD 1
H.B. No. 2025, HD 3, SD 2
H.B. No. 2408, HD 2, SD 1
H.B. No. 2459, HD 1, SD 2

The Chair addressed the Clerk who announced that the record of vote forms for the aforementioned bills had been received.

H.B. No. 1780, HD 1, SD 1:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 1780, HD 1, on the following showing of Ayes and Noes:

Ayes, 4 (M. Oshiro, Takamine, Mindo and Blundell). Noes, none. Excused, none.

On motion by Representative Saiki, seconded by Representative Lee and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 1780, HD 1 and H.B. No. 1780, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT," passed Final Reading by a vote of 50 ayes to 1 no, with Representative Jernigan voting no.

H.B. No. 1987, HD 1, SD 1:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 1987, HD 1, on the following showing of Ayes and Noes:

Ayes, 4 (Souki, Herkes, B. Oshiro and Caldwell). Noes, none. Excused, 1 (Pendleton).

On motion by Representative Saiki, seconded by Representative Lee and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 1987, HD 1 and H.B. No. 1987, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," passed Final Reading by a vote of 51 ayes.

H.B. No. 2025, HD 3, SD 2:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 2025, HD 3, on the following showing of Ayes and Noes:

Ayes, 3 (M. Oshiro, B. Oshiro and Nakasone). Noes, none. Excused, 1 (Blundell).

Representative Saiki moved that H.B. No. 2025, HD 3, SD 2, pass Final Reading, seconded by Representative Lee.

Representative Halford rose to speak in support of the measure, stating:

"Mr. Speaker, may I speak in favor of this?"

"Mr. Speaker, I'm in favor of equal pay, strongly in favor. I would just briefly like to point out in one instance with the public employee, where a male had a position for a long time, replaced by a woman, in House Bill 1800, we substantially cut the pay for the new female employee, Linda Smith."

The motion was put to vote by the Chair and carried, and the House agreed to the amendments proposed by the Senate to H.B. No. 2025, HD 3 and H.B. No. 2025, HD 3, SD 2, entitled: "A BILL FOR AN ACT RELATING TO EQUAL PAY," passed Final Reading by a vote of 51 ayes.

H.B. No. 2408, HD 2, SD 1:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 2408, HD 2, on the following showing of Ayes and Noes:

Ayes, 4 (M. Oshiro, Arakaki, Herkes and Takamine). Noes, none. Excused, 1 (Jernigan).

On motion by Representative Saiki, seconded by Representative Lee and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 2408, HD 2 and H.B. No. 2408, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Final Reading by a vote of 51 ayes.

H.B. No. 2459, HD 1, SD 2:

In accordance with the Conference Committee Procedures agreed upon by the House of Representatives and the Senate, the managers on the part of the House recommended that the House agree to the amendments proposed by the Senate to H.B. No. 2459, HD 1, on the following showing of Ayes and Noes:

Ayes, 4 (Kahikina, Takamine, Shimabukuro and Moses). Noes, none. Excused, 3 (Arakaki, Nishimoto and Stonebraker).

On motion by Representative Saiki, seconded by Representative Lee and carried, the House agreed to the amendments proposed by the Senate to H.B. No. 2459, HD 1 and H.B. No. 2459, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ASSISTANCE," passed Final Reading by a vote of 51 ayes.

At 1:11 o'clock p.m., the Chair noted that H.B. Nos. 1780, HD 1, SD 1; 1987, HD 1, SD 1; 2025, HD 3, SD 2; 2408, HD 2, SD 1; and 2459, HD 1, SD 2, passed Final Reading.

INTRODUCTION OF RESOLUTIONS

The following resolutions (H.R. Nos. 209 through 215) were announced by the Clerk and the following action taken:

H.R. No. 209, entitled: "HOUSE RESOLUTION HONORING THE MEMORY OF WESLEY J. BATALONA AND EXTENDING CONDOLENCES AND SYMPATHY TO HIS FAMILY," was jointly offered by Representatives Takamine, Hale, Herkes, Hamakawa, Evans, Marumoto, Shimabukuro, Mindo, Karamatsu, Waters, Kaho'ohalahala, Nishimoto, Say, Wakai, Kawakami, Blundell, Magaoay, Ito, Saiki, Pendleton, M. Oshiro, Ontai, Lee, Souki, Takumi, Takai, Halford, Morita, Bukoski, Fox and Arakaki.

Representative Takamine moved that H.R. No. 209 be adopted, seconded by Representative Kawakami.

The motion was put to vote by the Chair, and upon a vote of rising for a moment of silence in honor of Mr. Wesley J. Batalona, the motion was carried.

H.R. No. 210, entitled: "HOUSE RESOLUTION AUTHORIZING AND EMPOWERING THE SPEAKER TO EXPEND SUCH SUMS TO COMPLETE THE WORK OF THE TWENTY-SECOND LEGISLATURE, REGULAR SESSION OF 2004, INCLUDING THE CARRYING OUT OF ANY OFFICIAL LEGISLATIVE BUSINESS IN THE INTERIM BETWEEN THE 2004 AND 2005 SESSIONS," was jointly offered by Representatives Say, Luke, Saiki and Fox.

On motion by Representative Saiki, seconded by Representative Fox and carried, H.R. No. 210 was adopted.

H.R. No. 211, entitled: "HOUSE RESOLUTION AUTHORIZING THE SPEAKER TO APPROVE THE JOURNAL OF THIS HOUSE OF ANY LEGISLATIVE DAY BEING COMPILED AS OF THE 60TH DAY," was jointly offered by Representatives Say, Luke, Saiki and Fox.

On motion by Representative Saiki, seconded by Representative Fox and carried, H.R. No. 211 was adopted.

H.R. No. 212, entitled: "HOUSE RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JOURNAL TO COMPILE AND PRINT THE JOURNAL OF THE HOUSE OF REPRESENTATIVES, REGULAR SESSION OF 2004," was jointly offered by Representatives Say, Luke, Saiki and Fox.

On motion by Representative Saiki, seconded by Representative Fox and carried, H.R. No. 212 was adopted.

H.R. No. 213, entitled: "HOUSE RESOLUTION AUTHORIZING THE SPEAKER TO DESIGNATE WHICH OF THE EMPLOYEES AND OFFICERS OF THE HOUSE BE GIVEN ADDITIONAL EMPLOYMENT TO MEET THE WORK AFTER THE SESSION AND FURTHER AUTHORIZING THE SPEAKER TO DETERMINE THE PERIOD OF EMPLOYMENT," was jointly offered by Representatives Say, Luke, Saiki and Fox.

On motion by Representative Saiki, seconded by Representative Fox and carried, H.R. No. 213 was adopted.

H.R. No. 214, entitled: "HOUSE RESOLUTION RELATING TO STANDING, INTERIM, AND SPECIAL COMMITTEES AUTHORIZED TO CONDUCT HEARINGS DURING THE INTERIM BETWEEN THE ADJOURNMENT OF THE REGULAR SESSION OF 2004 AND THE CONVENING OF THE REGULAR SESSION OF 2005," was offered by Representative Say.

Representative Saiki moved that H.R. No. 214 be adopted.

At 1:15 o'clock p.m., Representative Fox requested a recess, and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:16 o'clock p.m.

At this time, Representative Thielen rose, stating:

"Mr. Speaker, I would like to give comments on House Resolution 214. Is the appropriate time now?"

Speaker Say: "Yes. Why don't we go on that right now, yes, because we did not vote with a voice vote. So you may."

Representative Thielen: "I don't believe we had a second to the motion."

Representative Fox then seconded the motion that H.R. No. 214 be adopted.

Representative Thielen rose to speak in support of the measure with reservations, stating:

"Thank you. Mr. Speaker, I'm rising in support of the resolution but I do have a caveat. This is relating to Standing Interim and Special Committees and you are authorized to appoint those committees during the interim, between the ending of our Regular Session today and the convening of the Regular Session in 2005.

"Mr. Speaker, I noticed in our Rules of the House of Representatives, any Interim Committee, you are required to appoint Minority Members after consulting with the Minority leadership of the House. The unfortunate thing is that under Special Committees, and this resolution applies to Special Committees, there's no requirement that you do appoint someone from the Minority Party. So I would like to request, Mr. Speaker, if any Special Committee is appointed, whether or not you will be appointing a Minority Member to that Committee."

The Chair responded, stating:

"Representative Thielen, for the past six years being the Speaker of this House, I've been fair to all of you who have been on this particular Floor. And I will continue on being fair as far as talking to your Minority Leader if there is a Special Committee set up, or an Interim Committee set up."

Representative Thielen: "Then I will assume that we would have Minority representation on any Special Committee."

Speaker Say: "Yes."

Representative Thielen: "Thank you, I appreciate that. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and H.R. No. 214 was adopted.

H.R. No. 215, entitled: "HOUSE RESOLUTION INFORMING THE SENATE AND THE GOVERNOR THAT THE HOUSE OF REPRESENTATIVES IS READY TO ADJOURN SINE DIE," was jointly offered by Representatives Say and Luke.

The Clerk then announced:

"Mr. Speaker, we have one final resolution for action and that's H.R. No. 215. We are not in the normal practice of adopting this resolution before the Senate so we did not have time to make copies for the Members on the Floor. I will read it to the Members in its total so you catch the drift of the entire resolution.

"House Resolution Number 215, Informing the Senate and the Governor that the House of Representatives is Ready to Adjourn Sine Die.

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2004, that the House of Representatives stands ready to adjourn Sine Die; and

Be it further resolved that certified copies of this Resolution be transmitted to the President of the Senate and the Governor forthwith.

"This resolution is offered by you, Mr. Speaker, and Vice Speaker Luke."

Representative Saiki moved that H.R. No. 215 be adopted, seconded by Representative Fox.

Representative Takai rose, stating:

"Point of information, Mr. Speaker. Does that mean that the House will be adjourning before the Senate this year?"

The Chair responded, stating:

"I've got my fingers crossed at this point."

Representative Takai then stated:

"Great, Mr. Speaker. I support this resolution and just that this kind of finally wraps up a great Session. Congratulations, Mr. Speaker."

The motion was put to vote by the Chair and carried, and H.R. No. 215 was adopted.

LATE INTRODUCTIONS

The following late introductions were made to the members of the House.

Representative Ching introduced her staff: Mr. Brody McClellan, Ms. Gaye Miyasaki, Ms. Berverlyn Ho, and Mr. Ryan Hew.

Representative Ito introduced Kaneohe Neighborhood Board member, Ms. Paulette Tam.

ANNOUNCEMENTS

Representative Thielen: "Thank you. Mr. Speaker, our colleague is too modest to announce this for himself so I would

like to announce it. Representative Brian Blundell won in both age categories for walking the furthest, the most steps during the last four weeks. He beat the under fifty year-olds, and he also won for the fifty and above. So if we could all give our wonderful fast-walking colleague a big round of applause.

"Mr. Speaker, that means he gets to take back \$1,500 from HMSA to schools in his district. So he really walked fast for the schools."

Representative Lee: "Mr. Speaker, in addition, I would like to announce the winners of all the categories if that's okay. In the under fifty age group, the top three walkers are: First place, Representative Blake Oshiro, who walked 402,885 steps; Second place goes to Representative Alex Sonson, who walked 368,430 steps; and Third place goes to Maile Shimabukuro, who walked 342,143 steps.

"Interestingly enough, those in the over fifty age group walked more steps. Representative Brian Blundell, who won first place, walked 555,169 steps. Second place, Representative Michael Magaoay walked 546,280 steps. And the Third place winner, I don't mean to be immodest but was Representative Marilyn Lee, who walked 418,103 steps. Congratulations to everybody."

Representative Mindo: "Thank you, Mr. Speaker. Your Committee on Labor has referred House Concurrent Resolution Number 251, entitled House Concurrent Resolution Declaring May 7, 2004, as Cleaners Appreciation Day in the State of Hawaii.

"The purpose of this measure is to declare May 7, 2004, Cleaners Appreciation Day in the State of Hawaii. Your Committee finds that these individuals who provide cleaning, custodial, and maintenance services throughout the State are often the unsung heroes of the workplace.

"The provision of a clean and tidy workplace facility affect the efficient and effective operation of any business or organization. At the Legislature, the work of these individuals is especially vital in providing a welcoming environment for visitors that is not only clean but also safe, while enabling our Legislature to operate. Without it, there are consequences. Although they work tirelessly behind the scenes on a daily basis, the efforts of these employees are often taken for granted.

"Your Committee further finds that the cheerful disposition of these hard working employees is an inspiration to all service oriented operations. Therefore, your Committee determines that in recognition of the dedicated service to providing a clean and healthy environment, May 7, 2004 should be declared as Cleaners' Appreciation Day in the State of Hawaii. Thank you, Mr. Speaker."

At this time, the Chair recognized Representative Fox on behalf of the Minority.

Representative Fox's closing remarks are as follows:

"Thank you, Mr. Speaker. Thank you for your leadership. Thank you as well for elements of the rapid timing that you introduced to enable us to wrap up business in a timely manner.

"The Governor was elected in 2002 to bring about change in Hawaii. Did we cooperate with her to bring about the bipartisan change in Hawaii that the people of Hawaii wanted? We certainly had a hopeful beginning in January of 2003.

"The Majority Leader announced to us all that, 'We get it.' That, 'We're going to do a few things and do them well.' He

said this House will insist that major school reforms be designed for full accountability. And he said that drug dealers must face swift and effective punishment.

"Unfortunately, Mr. Speaker, I believe that we've had a missed opportunity. First, we've had no real change in the accountability of the education system. Principal, school community councils, complex superintendents, the Miller Street DOE, the BOE, and the Legislature are all involved with nobody really responsible. Cathy Kalehuawehe, a teacher at Kamalii Elementary School, was quoted in the paper this morning saying, 'I would've liked to have seen a lot more school reform.' She supports giving principals more authority. She said, 'Principals should have the final say.' Of the reform measure, Kalehuawehe said, 'It's kind of like the status quo.' A missed opportunity.

"Second, on swift and effective punishment for ice dealers, the Law Enforcement Coalition asked for three tools at the beginning of this Session: an effective wiretap law like those in other states; the same 'walk and talk' and 'knock and talk' powers that all federal agents enjoy; and the assurance that habitual violent criminals would do hard time. The Legislature delivered on none of these priorities. We also failed to make prison time mandatory for habitual criminals who are on ice.

"Peter Ahuna of Ahuimanu noted the Legislature failed to give law enforcement the tools it needs. He said, 'Mandatory incarceration and treatment. That's the only way they're going to get rid of ice.'

"Mario Palabrica, Salt Lake's three time crime victim, said, 'Users need rehabilitation but only behind bars.' I quote Palabrica, 'He's gotta go to jail too, he's gotta be confined, from the user to the seller to the maker, the whole program.' Control of ice to help law enforcement, a missed opportunity.

"Finally, Mr. Speaker, A final missed opportunity is the one that you, Speaker, might have committed yourself to on another perhaps less partisan context: fiscal responsibility. The improved economic climate of this State allows us to look toward paying our ongoing expenses out of incoming revenue as we should. We could stop raiding retirement funds, highway funds, and other special funds. We could strategize to successfully deal with the difficult years like fiscal year 2006, when debt service rises by \$165 million in a single year and retirement system expenses rise by \$57 million in that same year. We should be ready for these changes and we are not. Three missed opportunities. Thank you, Mr. Speaker."

The Chair then recognized Representative Saiki on behalf of the Majority.

Representative Saiki's closing remarks are as follows:

"Thank you, Mr. Speaker. I'd actually like to thank four groups of people.

"First on behalf of all of us, I'm sure, I'd like to thank all of the residents of our respective districts for giving us the opportunity to represent them in the House of Representatives.

"Second, I'd like to thank the staff of the Legislature, the Clerk's Office, the Print Shop, the Sergeant-at-Arms, the Legislative Reference Bureau, our research office, and all of the staff members in our respective offices for serving, for working, and for being very committed to the work that we do here.

"Third, I'd like to thank our colleagues across the aisle for being a loyal Minority and for giving me an opportunity to learn more about points of order. I'd like to thank in particular,

my counterpart, the Minority Leader from Waikiki for the weekly radio show which we dubbed *The X-Files* because it became the search for the truth.

"And finally, Mr. Speaker, I'd like to thank the Members of your Majority Caucus for all of their diligence and their perseverance throughout the past two years. As a result of their work, we will reform our schools and we will increase achievement for over 180,000 public school students. We will restore hope for thousands of residents, families, and communities who are fighting ice. And we will make prescription drugs accessible and affordable for over 250,000 residents.

"The Members of your Majority Caucus achieved these results because they were always focused and they remained true to their Democratic values. It was a privilege to work with each and every one of them. And they can close this Session knowing that their work will make a difference for hundreds of thousands of Hawaii residents. Thank you very much."

The Chair then addressed the Members, stating:

"Well in my closing remarks, let me say this to all of you. In January, when this Session began, we spoke about improving our body of work by respecting and taking advantage of the diversity of opinions held by individuals within this Body. While it may not have always been easy or a smooth process, I believe we came together and passed some of our most historic legislation this Session. Thanks to all of you in this short span of time of sixty working days, we have given the State of Hawaii a new mandate. And the mandate today is change.

"We have changed the way our public schools are run. We have changed the way we deal with our ice epidemic. Going after the drug dealers and manufacturers, while helping the ice addicts in the communities. We all have changed our prescription drugs to make them much more affordable. We have changed the way our gas prices are set. We have changed our Office of Elections and Campaign Spending Commission to keep them independent. And we have changed campaign contributions and procurement methods to keep our government clean and free from undue influence.

"These are just a few of the many changes we mandated. To those of you who supported our historic changes, thank you very much. You have put the people's interest first. For all of us here however, we cannot rest on these accomplishments, which in many cases represent only the very beginning of a long process to improve our quality of life, our learning, and business throughout the State.

"Although this is our last meeting as the Twenty-Second Legislature, I trust that in the coming months, you will continue to do what you can to support these long-term changes to improve our State. Let us keep Hawaii, the kind of place your children will be proud of.

"It's been a privilege and an honor to serve you this Session. Thank you to all of you for your hard work, and I wish you all a warm aloha. Thank you."

ADJOURNMENT

Representative Saiki moved that the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, adjourn Sine Die, seconded Representative Fox.

The motion was put to vote by the Chair and carried, and at 1:34 o'clock p.m., the Speaker rapped his gavel and declared

the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, adjourned Sine Die.

HOUSE COMMUNICATIONS

House Communications dated May 4, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Governor Linda Lingle; the Honorable Lieutenant Governor James Duke Aiona, Jr.; and Ms. Myra Shozuya, Revisor of Statutes, Legislative Reference Bureau; transmitting a copy a document certifying that on April 30, 2004, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Hawaii State Senate and the Hawaii House of Representatives, reconsidered H.B. No. 2003, HD 1, SD 1, heretofore vetoed as set forth in a Governor's Message dated April 30, 2004, and approved said bill by an affirmative vote of two-thirds of the members to which each chamber is entitled. A copy of H.B. No. 2003, HD 1, SD 1, designated as Act 44 was also enclosed.

House Communications dated May 4, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Governor Linda Lingle; the Honorable Lieutenant Governor James Duke Aiona, Jr.; and Ms. Myra Shozuya, Revisor of Statutes, Legislative Reference Bureau; transmitting a copy a document certifying that on April 30, 2004, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Hawaii State Senate and the Hawaii House of Representatives, reconsidered H.B. No. 1797, heretofore vetoed as set forth in a Governor's Message dated April 27, 2004, and approved said bill by an affirmative vote of two-thirds of the members to which each chamber is entitled. A copy of H.B. No. 1797, designated as Act 46 was also enclosed.

House Communications dated May 4, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Governor Linda Lingle; the Honorable Lieutenant Governor James Duke Aiona, Jr.; and Ms. Myra Shozuya, Revisor of Statutes, Legislative Reference Bureau; transmitting a copy a document certifying that on May 3, 2004, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Hawaii State Senate and the Hawaii House of Representatives, reconsidered H.B. No. 2743, HD 2, SD 1, CD 1, heretofore line-item vetoed as set forth in a Governor's Message dated April 30, 2004, and approved said bill by an affirmative vote of two-thirds of the members to which each chamber is entitled. A copy of H.B. No. 2743, HD 2, SD 1, CD 1, designated as Act 52 was also enclosed.

House Communications dated May 4, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Governor Linda Lingle; the Honorable Lieutenant Governor James Duke Aiona, Jr.; and Ms. Myra Shozuya, Revisor of Statutes, Legislative Reference Bureau; transmitting a copy a document certifying that on May 3, 2004, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Hawaii State Senate and the Hawaii House of Representatives, reconsidered H.B. No. 1043, SD 1, CD 1, heretofore vetoed as set forth in a Governor's Message dated May 3, 2004, and approved said bill by an affirmative vote of two-thirds of the members to which each chamber is entitled. A copy of H.B. No. 1043, SD 1, CD 1, designated as Act 53 was also enclosed.

House Communication dated May 6, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered H.B. 267, HD 2, SD 2, heretofore vetoed as set forth in Governor's Message dated May 3, 2004, and approved said bill by an affirmative

vote of two-thirds of all members of which the House is entitled.

House Communication dated May 6, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has reconsidered H.B. 2608, HD 1, SD 1, heretofore vetoed as set forth in Governor's Message dated May 3, 2004, and approved said bill by an affirmative vote of two-thirds of all members of which the House is entitled.

House Communication dated May 6, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has passed on Final Reading the following bills:

H.B. 1848, HD 1, SD 1, CD 1
H.B. 2002, HD 2, SD 1, CD 2
S.B. 2556, HD 1, CD 2

House Communication dated May 6, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has agreed to the amendments made by the Senate on April 7, 2004, and has passed the following House bills on Final Reading:

H.B. 1987, HD 1, SD 1
H.B. 2408, HD 2, SD 1

House Communication dated May 6, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has agreed to the amendments made by the Senate on April 13, 2004, and has passed the following House bills on Final Reading:

H.B. 1780, HD 1, SD 1
H.B. 2025, HD 3, SD 2
H.B. 2459, HD 1, SD 2

House Communications dated May 7, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Governor Linda Lingle; the Honorable Lieutenant Governor James Duke Aiona, Jr.; and Ms. Myra Shozuya, Revisor of Statutes, Legislative Reference Bureau; transmitting a copy of a document certifying that pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Hawaii State Senate on May 3, 2004 and the Hawaii State House of Representatives on May 6, 2004, reconsidered House Bill No. 267, H.D. 2, S.D. 2, heretofore vetoed as set forth in a Governor's Message dated May 3, 2004, and approved said bill by an affirmative vote of two-thirds of the members to which each chamber is entitled. A copy of H.B. No. 267, HD 2, SD 2, designated as Act 57 was also enclosed.

House Communications dated May 7, 2004, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable Governor Linda Lingle; the Honorable Lieutenant Governor James Duke Aiona, Jr.; and Ms. Myra Shozuya, Revisor of Statutes, Legislative Reference Bureau; transmitting a copy of a document certifying that pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Hawaii State Senate on May 3, 2004 and the Hawaii State House of Representatives on May 6, 2004, reconsidered House Bill No. 2608, H.D. 1, S.D. 1, heretofore vetoed as set forth in a Governor's Message dated May 3, 2004, and approved said bill by an affirmative vote of two-thirds of the members to which each chamber is entitled. A copy of H.B. No. 2608, HD 1, SD 1, designated as Act 58 was also enclosed.

**GOVERNOR'S MESSAGES RECEIVED AFTER THE ADJOURNMENT
OF THE 2004 LEGISLATURE SINE DIE**

Gov. Msg. No. 233, returning S.B. No. 2395, S.D. 2, H.D. 1, without her approval and her statement of objections relating to the measure as follows:

"EXECUTIVE CHAMBERS
HONOLULU
May 6, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2395

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2395, entitled "A Bill for an Act Relating to Information Practices."

The purpose of this bill is to prohibit disclosure of booking records of Hawaii Convention Center licensees until ten days after the event has occurred or when it is canceled. The prohibition would apply when requested by a potential licensee if disclosure could reveal confidential business information or result in the loss of a convention center booking. Booking information could, however, be disclosed to the Legislature.

This bill is objectionable because, first, it would significantly change the public's ability to access records maintained by the Hawaii Tourism Authority (HTA). Presently, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes, commonly referred to as the "UIPA," the HTA's records are presumed to be public, and most of the records that could be withheld under this bill are not available upon request by members of the public.

Second, existing law allows the HTA to withhold records that must be confidential in order to avoid the frustration of a legitimate government function. Therefore, confidential business information that is submitted by convention center licensees may be withheld under existing law if the facts warrant.

Third, one of the primary purposes of the Uniform Information Practices Act is to open government processes to public scrutiny by allowing public access to government records. Contracts between convention center licensees and the HTA may contain incentives in the form of discounts and subsidies. The public's right to scrutinize HTA's operation and management of the Hawaii Convention Center will be greatly restricted if the public is denied timely access to the records.

Fourth, nondisclosure of records would require only finding that disclosure "may" result in loss of a convention center booking or disclosure of confidential information, without any determination that this would actually be the case or that the reasons provided outweigh the advantages of full disclosure.

Fifth, a licensee's name could be withheld under this bill even though such information is not normally considered to be confidential business information or proprietary information. Controversial organizations might, therefore, schedule conventions at the Hawaii Convention Center without the public being aware of the fact and having an

opportunity to object. By withholding licensees' names until after an event has occurred, members of the public would also be deprived of the ability to review information about an upcoming convention to, for example, compete with exhibitors, market products or services in connection with the event, or simply to examine how well the Hawaii Convention Center is doing in terms of advance bookings.

For the foregoing reasons, I am returning Senate Bill No. 2395 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 234, returning H.B. No. 2061, H.D. 2, S.D. 1, C.D. 1 without her approval and her statement of objections relating to the measure as follows:

"EXECUTIVE CHAMBERS
HONOLULU
May 6, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2061

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2061, entitled "A Bill for an Act Relating to Transient Accommodations Tax."

The purpose of this bill is to establish an "Aloha Aina Patrol" under the jurisdiction of the respective police departments in each county. The patrol would help curtail crime in high tourist traffic areas.

This bill proposes to fund the operating expenses of the Aloha Aina Patrol by diverting over \$1.1 million out of the counties' portion of the transient accommodations tax (TAT) revenues. Currently, section 237D-6.5(b)(3), Hawaii Revised Statutes, provides that 44.8 percent of TAT revenue is distributed to the respective counties. Under this bill, 1.3 percent of that 44.8 percent of TAT revenue is to be transferred to a sub-account in the tourism special fund for the Aloha Aina Patrol.

While I support measures to ensure Hawaii is safe for visitors and residents, including the concept of the Aloha Aina Patrol, this bill is objectionable for the following reasons:

1. This bill reduces the amount of TAT revenues currently distributed to the counties that can be designated for other county programs. If the counties so desired, the counties could use their TAT revenue allocations for additional security at beaches and parks without this bill. Moreover, this bill establishes a precedent for funding additional programs from the limited TAT revenues that could result in the eventual reduction of the TAT revenues distributed to the convention center enterprise special fund, the tourism special fund, and the respective counties.

2. Three of the four counties objected to this bill because it constitutes a violation of the principle of "Home Rule." It would place the Hawaii Tourism Authority in the position of telling the county police departments where they should deploy their officers. As stated by Mayor Jeremy Harris of Honolulu, "staffing and patrol determinations must fully remain with our police department and should not be dictated by the Hawaii Tourism Authority."

3. As pointed out by the Hawaii Tourism Authority, the cost of the Aloha Aina Patrol is unknown. The bill resulted from the Senate Tourism Committee gutting a House-passed measure and substituting the Aloha Aina Patrol language without giving adequate time for all parties to cost out and analyze the operational implications of this mandate. Further, the program duplicates similar efforts already underway on the islands of Kauai, Maui, and Oahu.

4. This bill requires that TAT revenues be distributed to the appropriate parties in four quarterly allotments, as opposed to semiannual allotments as is currently the practice. The Financial Administration Division of the Department of Budget and Finance has indicated that the State Treasury may be deprived of interest income due to the more frequent distributions. Further, there are no provisions to restore the TAT allocation to the counties to the former levels should the program not be continued.

For the foregoing reasons, I am returning House Bill No. 2061 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 235, transmitting the Department of Taxation's progress and expenditure report on the design, development, and implementation of the integrated tax information management system as required by Act 273, SLH 1996, and Act 155, SLH 1999.

Gov. Msg. No. 236, transmitting the Supplement to the 2004 Exempt Study Report as submitted by the Department of Human Resources Development. This supplement completes the work described in the initial report which was transmitted on January 20, 2004.

Gov. Msg. No. 237, transmitting the Report to the Twenty-second Legislature, State of Hawaii, 2004, pursuant to Act 200, Section 30, Session Laws of Hawaii 2003, Requesting Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree Made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or Any Other Agent of the United States Judiciary – For the Month of February 2004.

Gov. Msg. No. 238, transmitting the Report to the Twenty-second Legislature, State of Hawaii, 2004, pursuant to Act 200, Section 30, Session Laws of Hawaii 2003, Requesting Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree Made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or Any Other Agent of the United States Judiciary – For the Month of April 2004.

Gov. Msg. No. 239, informing the House that on May 10, 2004, the following bill was signed into law:

S.B. No. 2842, SD 1, HD 4, entitled: "A BILL FOR AN ACT RELATING TO CHAPTER 846E, HAWAII REVISED STATUTES." (ACT 059)

Gov. Msg. No. 240, informing the House that on May 10, 2004, the following bill was signed into law:

H.B. No. 2789, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT." (ACT 060)

Gov. Msg. No. 241, informing the House that on May 10, 2004, the following bill was signed into law:

H.B. No. 2254, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CHAPTER 707, HAWAII REVISED STATUTES." (ACT 061)

Gov. Msg. No. 242, informing the House that on May 10, 2004, the following bill was signed into law:

S.B. No. 2861, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE." (ACT 062)

Gov. Msg. No. 243, informing the House that on May 11, 2004, the following bill was signed into law:

S.B. 2424, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NEW CENTURY CONVERSION CHARTER SCHOOLS." (ACT 063)

Gov. Msg. No. 244, informing the House that on May 11, 2004, the following bill was signed into law:

H.B. No. 2446, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR COLLECTIVE BARGAINING INCREASES." (ACT 064)

Gov. Msg. No. 245, informing the House that on May 11, 2004, the following bill was signed into law:

S.B. No. 2976, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE DEPARTMENT OF PUBLIC SAFETY." (ACT 065)

Gov. Msg. No. 246, informing the House that on May 11, 2004, the following bill was signed into law:

H.B. No. 2354, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO RISK MANAGEMENT." (ACT 066)

Gov. Msg. No. 247, informing the House that on May 11, 2004, the following bill was signed into law:

H.B. No. 2397, HD 1, SD 1, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE HAWAII STATE DISASTER REVOLVING LOAN FUND." (ACT 067)

Gov. Msg. No. 248, in response to Senate Concurrent Resolution 76, requesting the Small Business Regulatory Review Board to develop and formulate a small business Bill of Rights, informing the House that:

"In 2003 I directed the Hawaii Small Business Regulatory Review Board to develop and formulate a "Small Business Bill of Rights," as stipulated in SCR 76 SD1.

The Board drafted legislation regarding a "Small Business Bill of Rights" which was submitted during the 2004 legislative session by Senator Baker as SB 2687. The bill

reached the Ways and Means Committee where issues of compatibility with current law and the functioning of current agencies were unresolved. The Board aims to continue to work on the issue and plans to resubmit a bill in the next legislative session in 2005.

I will direct all government agencies to work towards identifying appropriate operational changes that should be made in order to accommodate the concerns of small businesses with the goal of making the development of a bill similar to SB 2687 possible in the 2005 session."

Gov. Msg. No. 249, in response to Senate Concurrent Resolution 176 SD1 urging the U.S. Congress to discontinue military base closures, informing the House that:

"At this time my administration is still in discussions as the implementation of SCR 176 SD1, specifically the appointment of two members to the Base Realignment and Closing Committee. I hope to report back to the Legislature when these issues are resolved."

Gov. Msg. No. 250, transmitting the Report to the Twenty-second Legislature, State of Hawaii, 2004, pursuant to Act 200, Section 30, Session Laws of Hawaii 2003, Requesting Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree Made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or Any Other Agent of the United States Judiciary – For the Month of November 2003.

Gov. Msg. No. 251, transmitting the Report to the Twenty-second Legislature, State of Hawaii, 2004, pursuant to Act 200, Section 30, Session Laws of Hawaii 2003, Requesting Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree Made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or Any Other Agent of the United States Judiciary – For the Month of December 2003.

Gov. Msg. No. 252, transmitting a corrected copy of a letter informing the House that on May 10, 2004, the following bill was signed into law:

S.B. No. 2861, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE." (ACT 062)

Gov. Msg. No. 253, informing the House that on May 12, 2004, the following bill was signed into law:

S.B. No. 2556, HD 1, CD 2, entitled: "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS." (ACT 068)

Gov. Msg. No. 254, informing the House that on May 12, 2004, the following bill was signed into law:

S.B. No. 2897, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE DENTAL EXAMINATION." (ACT 069)

Gov. Msg. No. 255, informing the House that on May 13, 2004, the following bill was signed into law:

H.B. No. 1560, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO DISPOSITION OF VESSELS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES." (ACT 070)

Gov. Msg. No. 256, informing the House that on May 13, 2004, the following bill was signed into law:

H.B. No. 2296, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE USE OF CREDIT AND DEBIT CARDS." (ACT 071)

Gov. Msg. No. 257, informing the House that on May 13, 2004, the following bill was signed into law:

S.B. No. 2009, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES." (ACT 072)

Gov. Msg. No. 258, transmitting the report, Statistics of Hawaii Agriculture 2002, as submitted by the State and U.S. Departments of Agriculture.

Gov. Msg. No. 259, informing the House that on May 17, 2004, the following bill was signed into law:

S.B. No. 3135, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST ST. FRANCIS HEALTHCARE SYSTEM OF HAWAII AND ITS AFFILIATES." (ACT 073)

Gov. Msg. No. 260, informing the House that on May 17, 2004, the following bill was signed into law:

S.B. No. 2551, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS." (ACT 074)

Gov. Msg. No. 261, informing the House that on May 17, 2004, the following bill was signed into law:

S.B. No. 2550, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS." (ACT 075)

Gov. Msg. No. 262, informing the House that on May 17, 2004, the following bill was signed into law:

H.B. No. 2439, entitled: "A BILL FOR AN ACT RELATING TO CIVIL DEFENSE SIRENS." (ACT 076)

Gov. Msg. No. 263, informing the House that on May 17, 2004, the following bill was signed into law:

H.B. No. 2295, HD 1, entitled: "A BILL FOR AN ACT RELATING TO COLLECTIONS ON DELINQUENT COURT-ORDERED PAYMENTS." (ACT 077)

Gov. Msg. No. 264, transmitting the Hawaii Brownfields Cleanup Revolving Loan Fund Annual Report for two calendar years ending December 31, 2003, pursuant to Act 173, Session Laws of Hawaii, 2002, as submitted by the Department of Business, Economic Development and Tourism.

Gov. Msg. No. 265, informing the House that on May 18, 2004, the following bill was signed into law:

H.B. No. 2293, entitled: "A BILL FOR AN ACT RELATING TO INTERSTATE ADULT OFFENDER SUPERVISION." (ACT 078)

Gov. Msg. No. 266, informing the House that on May 18, 2004, the following bill was signed into law:

S.B. No. 1362, SD 3, HD 2, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH." (ACT 079)

Gov. Msg. No. 267, informing the House that on May 18, 2004, the following bill was signed into law:

H.B. No. 2385, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO ACCESS TO VITAL STATISTICS RECORDS BY CHILD SUPPORT ENFORCEMENT AGENCIES." (ACT 080)

Gov. Msg. No. 268, informing the House that on May 19, 2004, the following bill was signed into law:

H.B. No. 2337, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO NAME CHANGES." (ACT 081)

Gov. Msg. No. 269, informing the House that on May 19, 2004, the following bill was signed into law:

H.B. No. 2020, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PROSTITUTION." (ACT 082)

Gov. Msg. No. 270, informing the House that on May 19, 2004, the following bill was signed into law:

S.B. No. 2377, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PRIVACY." (ACT 083)

Gov. Msg. No. 271, informing the House that on May 19, 2004, the following bill was signed into law:

H.B. No. 1828, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ORDER." (ACT 084)

Gov. Msg. No. 272, informing the House that on May 25, 2004, the following bill was signed into law:

H.B. No. 2683, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO DEFERRED ACCEPTANCE OF GUILTY PLEA AND DEFERRED ACCEPTANCE OF NOLO CONTENDERE PLEA." (ACT 085)

Gov. Msg. No. 273, informing the House that on May 25, 2004, the following bill was signed into law:

S.B. No. 1302, SD 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS." (ACT 086)

Gov. Msg. No. 274, informing the House that on May 25, 2004, the following bill was signed into law:

H.B. 2871, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TOBACCO." (ACT 087)

Gov. Msg. No. 275, informing the House that on May 25, 2004, the following bill was signed into law:

S.B. No. 2899, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO NURSES." (ACT 088)

Gov. Msg. No. 276, transmitting the Business & Community Assistance Branch's Annual Report for fiscal year ending June 30, 2003, prepared by the Department of Business, Economic Development, and Tourism. The report details the activities of the Business Action Center, and the Community-Based Economic Development and Financial Assistance Programs.

Gov. Msg. No. 277, informing the House that on May 26, 2004, the following bill was signed into law:

S.B. No. 2983, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE." (ACT 089)

Gov. Msg. No. 278, informing the House that on May 26, 2004, the following bill was signed into law:

H.B. No. 2250, HD 2, SD 2, entitled: "A BILL FOR AN ACT RELATING TO HABITUAL OPERATION OF A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT." (ACT 090)

Gov. Msg. No. 279, informing the House that on May 28, 2004, the following bill was signed into law:

H.B. No. 2569, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO NIIHAU SHELL PRODUCTS." (ACT 091)

Gov. Msg. No. 280, informing the House that on May 28, 2004, the following bill was signed into law:

H.B. No. 2674, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO IDENTIFY THEFT." (ACT 092)

Gov. Msg. No. 281, informing the House that on May 28, 2004, the following bill was signed into law:

S.B. No. 2839, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES." (ACT 093)

Gov. Msg. No. 282, informing the House that on May 28, 2004, the following bill was signed into law:

H.B. No. 2421, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE LICENSING REQUIREMENTS FOR PRIVATE DETECTIVES AND GUARDS." (ACT 094)

Gov. Msg. No. 283, informing the House that on June 2, 2004, the following bill was signed into law:

S.B. No. 2474, SD 3, HD 2, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY." (ACT 95)

Gov. Msg. No. 284, informing the House that on June 2, 2004, the following bill was signed into law:

S.B. No. 1239, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY." (ACT 096)

Gov. Msg. No. 285, informing the House that on June 2, 2004, the following bill was signed into law:

S.B. No. 3162, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT." (ACT 097)

Gov. Msg. No. 286, informing the House that on June 2, 2004, the following bill was signed into law:

H.B. No. 2049, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY." (ACT 098)

Gov. Msg. No. 287, informing the House that on June 2, 2004, the following bill was signed into law:

H.B. No. 2048, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO NET ENERGY METERING." (ACT 099)

Gov. Msg. No. 288, informing the House that on June 3, 2004, the following bill was signed into law:

S.B. No. 3113, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO VOTING." (ACT 100)

Gov. Msg. No. 289, informing the House that on June 3, 2004, the following bill was signed into law:

H.B. No. 2523, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PASSENGER FACILITY CHARGES." (ACT 101)

Gov. Msg. No. 290, informing the House that on June 3, 2004, the following bill was signed into law:

H.B. No. 1770, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES." (ACT 102)

Gov. Msg. No. 291, informing the House that on June 3, 2004, the following bill was signed into law:

S.B. No. 2995, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER LICENSING." (ACT 103)

Gov. Msg. No. 292, informing the House that on June 3, 2004, the following bill was signed into law:

S.B. No. 2887, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INTERSTATE INSURANCE COMPACT." (ACT 104)

Gov. Msg. No. 293, informing the House that on June 9, 2004, the following bill was signed into law:

S.B. No. 3156, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES." (ACT 105)

Gov. Msg. No. 294, informing the House that on June 9, 2004, the following bill was signed into law:

S.B. No. 2791, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR MONTESSORI SCHOOL OF MAUI, INC." (ACT 106)

Gov. Msg. No. 295, informing the House that on June 9, 2004, the following bill was signed into law:

S.B. No. 2790, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR HALEAKALA WALDORF SCHOOL." (ACT 107)

Gov. Msg. No. 296, informing the House that on June 9, 2004, the following bill was signed into law:

S.B. No. 2538, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR IOLANI SCHOOL." (ACT 108)

Gov. Msg. No. 297, informing the House that on June 9, 2004, the following bill was signed into law:

S.B. No. 3086, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR ISLAND PACIFIC ACADEMY." (ACT 109)

Gov. Msg. No. 298, informing the House that on June 9, 2004, the following bill was signed into law:

S.B. No. 2671, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR THE CONGREGATION OF CHRISTIAN BROTHERS, INC. DBA DAMIEN MEMORIAL HIGH SCHOOL." (ACT 110)

Gov. Msg. No. 299, informing the House that on June 10, 2004, the following bill was signed into law:

H.B. No. 2578, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HONOLULU SEAWATER AIR CONDITIONING LLC PROJECTS ON THE ISLAND OF OAHU." (ACT 111)

Gov. Msg. No. 300, informing the House that on June 10, 2004, the following bill was signed into law:

H.B. No. 2170, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR REHABILITATION HOSPITAL OF THE PACIFIC." (ACT 112)

Gov. Msg. No. 301, informing the House that on June 10, 2004, the following bill was signed into law:

H.B. No. 2511, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INCOME TAX WITHHOLDING." (ACT 113)

Gov. Msg. No. 302, informing the House that on June 10, 2004, the following bill was signed into law:

S.B. No. 2994, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE USE TAX." (ACT 114)

Gov. Msg. No. 303, informing the House that on June 10, 2004, the following bill was signed into law:

S.B. No. 2990, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE INTEGRATED TAX INFORMATION MANAGEMENT SYSTEMS ACQUISITION BY THE DEPARTMENT OF TAXATION." (ACT 115)

Gov. Msg. No. 304, informing the House that on June 15, 2004, the following bill was signed into law:

S.B. No. 1318, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION." (ACT 116)

Gov. Msg. No. 305, informing the House that on June 15, 2004, the following bill was signed into law:

S.B. No. 2906, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CERTIFICATES OF GOOD STANDING." (ACT 117)

Gov. Msg. No. 306, informing the House that on June 15, 2004, the following bill was signed into law:

H.B. No. 2408, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE." (ACT 118)

Gov. Msg. No. 307, informing the House that on June 15, 2004, the following bill was signed into law:

S.B. No. 2358, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CONSTRUCTION CLAIMS." (ACT 119)

Gov. Msg. No. 308, informing the House that on June 15, 2004, the following bill was signed into law:

S.B. No. 2882, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ALIEN INSURERS." (ACT 120)

Gov. Msg. No. 309, informing the House that on June 15, 2004, the following bill was signed into law:

S.B. No. 2908, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION." (ACT 121)

Gov. Msg. No. 310, informing the House that on June 15, 2004, the following bill was signed into law:

H.B. No. 2411, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE." (ACT 122)

Gov. Msg. No. 311, informing the House that on June 15, 2004, the following bill was signed into law:

H.B. No. 851, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION APPEALS." (ACT 123)

Gov. Msg. No. 312, informing the House that on June 16, 2004, the following bill was signed into law:

H.B. No. 1820, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE INSURANCE." (ACT 124)

Gov. Msg. No. 313, informing the House that on June 16, 2004, the following bill was signed into law:

S.B. No. 2380, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE ART MUSEUM." (ACT 125)

Gov. Msg. No. 314, informing the House that on June 16, 2004, the following bill was signed into law:

S.B. No. 2021, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO STREET ROD VEHICLES." (ACT 126)

Gov. Msg. No. 315, informing the House that on June 16, 2004, the following bill was signed into law:

H.B. No. 1824, SD 1, entitled: "A BILL FOR AN ACT RELATING TO ELECTRICIANS AND PLUMBERS." (ACT 127)

Gov. Msg. No. 316, informing the House that on June 16, 2004, the following bill was signed into law:

H.B. No. 1786, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EXEMPT EMPLOYEES." (ACT 128)

Gov. Msg. No. 317, informing the House that on June 17, 2004, the following bill was signed into law:

H.B. No. 1756, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HIGH TECHNOLOGY INDUSTRIAL ENTERPRISES." (ACT 129)

Gov. Msg. No. 318, informing the House that on June 17, 2004, the following bill was signed into law:

H.B. No. 2739, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS BY THE TECHNOLOGY DEVELOPMENT CORPORATION." (ACT 130)

Gov. Msg. No. 319, informing the House that on June 17, 2004, the following bill was signed into law:

H.B. No. 2322, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST PROCESSING ENTERPRISES." (ACT 131)

Gov. Msg. No. 320, informing the House that on June 17, 2004, the following bill was signed into law:

S.B. No. 2425, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 132)

Gov. Msg. No. 321, informing the House that on June 18, 2004, the following bill was signed into law:

H.B. No. 2667, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIAN LANGUAGE MEDIUM EDUCATION." (ACT 133)

Gov. Msg. No. 322, informing the House that on June 18, 2004, the following bill was signed into law:

S.B. No. 3148, SD 2, HD 3, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 134)

Gov. Msg. No. 323, informing the House that on June 21, 2004, the following bill was signed into law:

H.B. No. 2223, SD 1, entitled: "A BILL FOR AN ACT RELATING TO BOXING." (ACT 135)

Gov. Msg. No. 324, informing the House that on June 21, 2004, the following bill was signed into law:

H.B. No. 2143, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BUSINESS REGULATION." (ACT 136)

Gov. Msg. No. 325, informing the House that on June 21, 2004, the following bill was signed into law:

H.B. No. 2645, HD 2, SD 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 137)

Gov. Msg. No. 326, informing the House that on June 21, 2004, the following bill was signed into law:

H.B. No. 1710, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII." (ACT 138)

Gov. Msg. No. 327, transmitting the 2003 Annual Report prepared by the Department of Hawaiian Home Lands, pursuant to Section 222, Hawaiian Homes Commission Act, 1920, as amended.

Gov. Msg. No. 328, informing the House that on June 22, 2004, the following bill was signed into law:

H.B. No. 1944, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST INDUSTRIAL ENTERPRISES." (ACT 139)

Gov. Msg. No. 329, informing the House that on June 22, 2004, the following bill was signed into law:

S.B. No. 3207, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ETHANOL TAX CREDIT." (ACT 140)

Gov. Msg. No. 330, informing the House that on June 22, 2004, the following bill was signed into law:

H.B. No. 2137, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO A ONE CALL CENTER." (ACT 141)

Gov. Msg. No. 331, informing the House that on June 23, 2004, the following bill was signed into law:

S.B. No. 2968, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NATURAL RESOURCE VIOLATIONS." (ACT 142)

Gov. Msg. No. 332, informing the House that on June 23, 2004, the following bill was signed into law:

H.B. No. 2375, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO SOLID WASTE CONTROL." (ACT 143)

Gov. Msg. No. 333, informing the House that on June 23, 2004, the following bill was signed into law:

S.B. No. 2782, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE FUNDING OF A HABITAT CONSERVATION PLAN." (ACT 144)

Gov. Msg. No. 334, informing the House that on June 24, 2004, the following bill was signed into law:

S.B. No. 3092, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SOLID WASTE MANAGEMENT." (ACT 145)

Gov. Msg. No. 335, informing the House that on June 24, 2004, the following bill was signed into law:

H.B. No. 2013, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO POLYBROMINATED DIPHENYL ETHERS." (ACT 146)

Gov. Msg. No. 336, informing the House that on June 24, 2004, the following bill was signed into law:

H.B. No. 1908, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 147)

Gov. Msg. No. 337, transmitting proclamations giving notice of her plan to return without her approval H.B. Nos. 1374, 1743, 1774, 1793, 1840, 1919, 2025, 2740, 2741, 2748, 2773, 2774, 2786, 2859, and 2911, with her objections.

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

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required

to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after the adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1374, entitled "A Bill for an Act Relating to Workers' Compensation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1374 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1374 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 1743, entitled "A Bill for an Act Relating to Light Pollution," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1743 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1743 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

or presented to the Governor after the adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1774, entitled "A Bill for an Act Relating to Unemployment Benefits," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1774 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1774 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 1793, entitled "A Bill for an Act Relating to Land Exchange," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1793 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1793 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 1840, entitled "A Bill for an Act Relating to Air Pollution Control," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1840 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1840 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 1919, entitled "A Bill for an Act Relating to Public Employees," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1919 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1919 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2025, entitled "A Bill for an Act Relating to Equal Pay," passed by the Legislature, was

presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2025 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2025 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2740, entitled "A Bill for an Act Relating to Notification of Employment Changes," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2740 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2740 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2741, entitled "A Bill for an Act Relating to Executive Departments," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2741 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2741 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2748, entitled "A Bill for an Act Relating to State Finances," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2748 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2748 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2773, entitled "A Bill for an Act Relating to Condominium Property Regimes," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2773 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2773 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2774, entitled "A Bill for an Act Relating to Subdivisions," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2774 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2774 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2786, entitled "A Bill for an Act Relating to Arbitration," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2786 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the

Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2786 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2859, entitled "A Bill for an Act Relating to the Development of an International Equestrian Facility," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2859 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2859 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, House Bill No. 2911, entitled "A Bill for an Act Relating to Charter Schools," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2911 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2911 with my objections thereon to

the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 338, transmitting proclamations giving notice of her plan to return without her approval S.B. Nos. 459, 469, 1491 (line item veto), 2056, 2077, 2134, 2281, 2528, 2608, 3020, 3025, 3170, and 3182, with her objections.

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

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

WHEREAS, Senate Bill No. 459, entitled "A Bill for an Act Relating to Campaign Spending," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 459 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 459 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 469, entitled "A Bill for an Act Relating to Employment Practices," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 469 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation,

pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 469 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 1491, entitled "A Bill for an Act Relating to State Government," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, under Section 16 of Article III, the Governor may veto any specific item or items, except for items to be expended by the Legislative and Judicial Branches, in any bill that appropriates money for specific purposes by striking out or reducing the same; and

WHEREAS, Senate Bill No. 1491 appropriates money for specific purposes and certain appropriation items in that bill are unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 1491 with my objections to certain appropriation items contained therein, to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 2056, entitled "A Bill for an Act Relating to the Auditor," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2056 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2056 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 2077, entitled "A Bill for an Act Relating to Planning," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2077 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2077 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 2134, entitled "A Bill for an Act Relating to the Environment," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2134 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2134 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 2281, entitled "A Bill for an Act Relating to the High Technology Development Corporation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2281 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2281 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 2528, entitled "A Bill for an Act Relating to Insurance," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2528 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the

Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2528 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 2608, entitled "A Bill for an Act Relating to Critical Access Hospitals," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2608 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2608 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 3020, entitled "A Bill for an Act Relating to Education," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 3020 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 3020 with my objections thereon to

the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 3025, entitled "A Bill for an Act Relating to the Office of Planning," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 3025 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 3025 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 3170, entitled "A Bill for an Act Relating to Petroleum Products," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 3170 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 3170 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

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

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

WHEREAS, Senate Bill No. 3182, entitled "A Bill for an Act Relating to the State of Hawaii," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 3182 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 3182 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu
State of Hawaii, this 25th day
of June, 2004.

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 339, informing the House that on June 27, 2004, the following bill was signed into law:

S.B. No. 2929, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAID REIMBURSEMENT." (ACT 148)

Gov. Msg. No. 340, informing the House that on June 29, 2004, the following bill was signed into law:

S.B. No. 2834, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES." (ACT 149)

Gov. Msg. No. 341, informing the House that on June 29, 2004, the following bill was signed into law:

S.B. No. 3085, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO NURSES." (ACT 150)

Gov. Msg. No. 342, informing the House that on June 29, 2004, the following bill was signed into law:

H.B. No. 2472, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE SALE OF STERILE SYRINGES FOR THE PREVENTION OF DISEASE." (ACT 151)

Gov. Msg. No. 343, informing the House that on June 29, 2004, the following bill was signed into law:

S.B. No. 2748, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO DRUG DEMAND REDUCTION ASSESSMENTS." (ACT 152)

Gov. Msg. No. 344, informing the House that on June 29, 2004, the following bill was signed into law:

S.B. No. 2930, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HOME AND COMMUNITY-BASED SERVICES." (ACT 153)

Gov. Msg. No. 345, informing the House that on June 30, 2004, the following bill was signed into law:

S.B. No. 1491, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE GOVERNMENT." (ACT 154)

Gov. Msg. No. 346, informing the House that on June 30, 2004, the following bill was signed into law:

H.B. No. 2703, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO IMPACT FEES." (ACT 155)

Gov. Msg. No. 347, informing the House that on June 30, 2004, the following bill was signed into law:

S.B. No. 2045, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII CIVIL AIR PATROL." (ACT 156)

Gov. Msg. No. 348, informing the House that on June 30, 2004, the following bill was signed into law:

S.B. No. 2840, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO TOBACCO." (ACT 157)

Gov. Msg. No. 349, informing the House that on July 1, 2004, the following bill was signed into law:

S.B. No. 2690, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES." (ACT 158)

Gov. Msg. No. 350, informing the House that on July 1, 2004, the following bill was signed into law:

H.B. No. 2883, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO WIRELESS ENHANCED 911 SERVICES." (ACT 159)

Gov. Msg. No. 351, informing the House that on July 1, 2004, the following bill was signed into law:

S.B. No. 2936, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL ASSISTANCE FOR PREGNANT LEGAL IMMIGRANTS." (ACT 160)

Gov. Msg. No. 352, informing the House that on July 2, 2004, the following bill was signed into law:

H.B. No. 2297, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO GUARDIANSHIP AND PROTECTIVE PROCEEDINGS." (ACT 161)

Gov. Msg. No. 353, informing the House that on July 2, 2004, the following bill was signed into law:

H.B. No. 1259, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE." (ACT 162)

Gov. Msg. No. 354, informing the House that on July 2, 2004, the following bill was signed into law:

H.B. No. 2147, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE." (ACT 163)

Gov. Msg. No. 355, informing the House that on July 2, 2004, the following bill was signed into law:

S.B. No. 2210, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS." (ACT 164)

Gov. Msg. No. 356, informing the House that on July 2, 2004, the following bill was signed into law:

H.B. No. 2140, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO MANDATORY CONTINUING EDUCATION FOR PHARMACISTS." (ACT 165)

Gov. Msg. No. 357, informing the House that on July 2, 2004, the following bill was signed into law:

S.B. No. 2586, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONAL AND VOCATIONAL LICENSING." (ACT 166)

Gov. Msg. No. 358, informing the House that on July 2, 2004, the following bill was signed into law:

S.B. No. 2951, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO RADIOLOGIC TECHNOLOGY." (ACT 167)

Gov. Msg. No. 359, informing the House that on July 6, 2004, the following bill was signed into law:

S.B. No. 2909, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO APPLICATIONS SEEKING GENERAL RATE INCREASES FILED BY PUBLIC UTILITIES HAVING ANNUAL GROSS REVENUES OF LESS THAN \$2,000,000." (ACT 168)

Gov. Msg. No. 360, informing the House that on July 6, 2004, the following bill was signed into law:

S.B. No. 3044, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC PROPERTY." (ACT 169)

Gov. Msg. No. 361, informing the House that on July 6, 2004, the following bill was signed into law:

S.B. No. 2246, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE." (ACT 170)

Gov. Msg. No. 362, informing the House that on July 6, 2004, the following bill was signed into law:

H.B. No. 2363, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC BENEFIT CORPORATIONS." (ACT 171)

Gov. Msg. No. 363, informing the House that on July 6, 2004, the following bill was signed into law:

S.B. No. 3049, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARITABLE ANNUITIES." (ACT 172)

Gov. Msg. No. 364, informing the House that on July 6, 2004, the following bill was signed into law:

S.B. No. 2948, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC HEALTH NURSING SERVICES." (ACT 173)

Gov. Msg. No. 365, informing the House that on July 6, 2004, the following bill was signed into law:

H.B. No. 2459, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ASSISTANCE." (ACT 174)

Gov. Msg. No. 366, informing the House that on July 6, 2004, the following bill was signed into law:

S.B. No. 2895, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PEST CONTROL." (ACT 175)

Gov. Msg. No. 367, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 3175, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES." (ACT 176)

Gov. Msg. No. 368, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 3018, SD 2, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PENSION AND RETIREMENT SYSTEMS." (ACT 177)

Gov. Msg. No. 369, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 3106, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTIES." (ACT 178)

Gov. Msg. No. 370, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 779, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM." (ACT 179)

Gov. Msg. No. 371, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 2073, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII." (ACT 180)

Gov. Msg. No. 372, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 2873, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM." (ACT 181)

Gov. Msg. No. 373, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 2879, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO FEDERAL TAX QUALIFICATIONS OF THE EMPLOYEES' RETIREMENT SYSTEM." (ACT 182)

Gov. Msg. No. 374, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 2878, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE FEDERAL TAX LIMIT ON COMPENSATION APPLICABLE TO THE EMPLOYEES' RETIREMENT SYSTEM." (ACT 183)

Gov. Msg. No. 375, informing the House that on July 7, 2004, the following bill was signed into law:

S.B. No. 2355, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEE HEALTH BENEFITS." (ACT 184)

Gov. Msg. No. 376, informing the House that on July 8, 2004, the following bill was signed into law:

S.B. No. 2926, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HOUSING LOAN AND MORTGAGE PROGRAMS." (ACT 185)

Gov. Msg. No. 377, informing the House that on July 8, 2004, the following bill was signed into law:

S.B. No. 2704, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MANDATORY SELLER DISCLOSURES." (ACT 186)

Gov. Msg. No. 378, informing the House that on July 8, 2004, the following bill was signed into law:

S.B. No. 2440, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS." (ACT 187)

Gov. Msg. No. 379, informing the House that on July 8, 2004, the following bill was signed into law:

S.B. No. 2869, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE MAINTENANCE OF PROPERTIES WITHIN THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT." (ACT 188)

Gov. Msg. No. 380, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 1839, HD 2, SD 2, entitled: "A BILL FOR AN ACT RELATING TO PAIN PATIENT'S BILL OF RIGHTS." (ACT 189)

Gov. Msg. No. 381, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 2005, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PRESCRIPTION DRUGS." (ACT 190)

Gov. Msg. No. 382, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 1991, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO AUTOMATIC EXTERNAL DEFIBRILLATORS." (ACT 191)

Gov. Msg. No. 383, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 2098, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL RECORDS." (ACT 192)

Gov. Msg. No. 384, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 2206, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES." (ACT 193)

Gov. Msg. No. 385, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 1780, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT." (ACT 194)

Gov. Msg. No. 386, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 1848, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EXCEPTIONAL TREES." (ACT 195)

Gov. Msg. No. 387, informing the House that on July 9, 2004, the following bill was signed into law:

H.B. No. 2547, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII." (ACT 196)

Gov. Msg. No. 388, informing the House that on July 10, 2004, the following bill was signed into law:

H.B. No. 1904, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION." (ACT 197)

Gov. Msg. No. 389, informing the House that on July 10, 2004, the following bill was signed into law:

H.B. No. 680, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ETHICS." (ACT 198)

Gov. Msg. No. 390, informing the House that on July 10, 2004, the following bill was signed into law:

S.B. No. 3190, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PUBLIC UTILITIES COMMISSION." (ACT 199)

Gov. Msg. No. 391, informing the House that on July 10, 2004, the following bill was signed into law:

S.B. No. 2606, SD 1, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO BREWPUB LICENSES." (ACT 200)

Gov. Msg. No. 392, informing the House that on July 10, 2004, the following bill was signed into law:

S.B. No. 3080, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION." (ACT 201)

Gov. Msg. No. 393, informing the House that on July 10, 2004, the following bill was signed into law:

H.B. No. 2301, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO APPELLATE JURISDICTION." (ACT 202)

Gov. Msg. No. 394, informing the House that on July 10, 2004, the following bill was signed into law:

H.B. No. 2749, SD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS." (ACT 203)

Gov. Msg. No. 395, informing the House that on July 10, 2004, the following bill was signed into law:

S.B. No. 2529, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SECURITIES FOR THE PROTECTION OF PUBLIC FUNDS." (ACT 204)

Gov. Msg. No. 396, informing the House that on July 12, 2004, the following bill was signed into law:

H.B. No. 2092, HD 2, SD 2, entitled: "A BILL FOR AN ACT RELATING TO MEDICINE AND SURGERY." (ACT 205)

Gov. Msg. No. 397, informing the House that on July 12, 2004, the following bill was signed into law:

H.B. No. 2074, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PENALTIES OF HEALTH, ENVIRONMENTAL, AND CULTURAL PRESERVATION LAWS." (ACT 206)

Gov. Msg. No. 398, informing the House that on July 12, 2004, the following bill was signed into law:

H.B. No. 2023, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ADMINISTRATIVE APPEALS." (ACT 207)

Gov. Msg. No. 399, informing the House that on July 12, 2004, the following bill was signed into law:

H.B. No. 2022, HD 2, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO GENERAL ASSISTANCE." (ACT 208)

Gov. Msg. No. 400, informing the House that on July 12, 2004, the following bill was signed into law:

S.B. No. 2595, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONAL COUNSELORS." (ACT 209)

Gov. Msg. No. 401, informing the House that on July 12, 2004, the following bill was signed into law:

S.B. No. 2165, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD ABUSE AND PROTECTION." (ACT 210)

Gov. Msg. No. 402, informing the House that on July 12, 2004, the following bill was signed into law:

H.B. No. 1980, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO FAMILY COURT." (ACT 211)

Gov. Msg. No. 403, informing the House that on July 12, 2004, the following bill was signed into law:

S.B. No. 473, SD 1, HD 3, CD 1, entitled: "A BILL FOR AN ACT RELATING TO HALFWAY HOUSES." (ACT 212)

Gov. Msg. No. 404, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 1929, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO SCHOOL REPAIR AND MAINTENANCE." (ACT 213)

Gov. Msg. No. 405, informing the House that on July 13, 2004, the following bill was signed into law:

S.B. No. 2396, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX." (ACT 214)

Gov. Msg. No. 406, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 2396, HD 2, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO CAPITAL INVESTMENTS." (ACT 215)

Gov. Msg. No. 407, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 2136, HD 1, SD 1, CD1, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT." (ACT 216)

Gov. Msg. No. 408, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 1893, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 217)

Gov. Msg. No. 409, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 2840, HD 1, SD 3, CD 1, entitled: "A BILL FOR AN ACT RELATING TO ENHANCING ECONOMIC DIVERSITY." (ACT 218)

Gov. Msg. No. 410, informing the House that on July 13, 2004, the following bill was signed into law:

S.B. No. 17, SD 1, HD 1, CD 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 219)

Gov. Msg. No. 411, informing the House that on July 13, 2004, the following bill was signed into law:

S.B. No. 2063, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 220)

Gov. Msg. No. 412, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 2002, HD 2, SD 1, CD 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 221)

Gov. Msg. No. 413, informing the House that on July 13, 2004, the following bill was signed into law:

S.B. No. 2200, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION." (ACT 222)

Gov. Msg. No. 414, informing the House that on July 13, 2004, the following bill was signed into law:

H.B. No. 2009, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR AGRICULTURAL RESEARCH AND MARKET DEVELOPMENT." (ACT 223)

Gov. Msg. No. 415, informing the House that on July 13, 2004, the following bill was signed into law:

S.B. No. 1238, SD 2, HD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO MENTAL HEALTH." (ACT 224)

Gov. Msg. No. 416, transmitting her statement of objections to H.B. No. 1374 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1374

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1374, entitled "A Bill for an Act Relating to Workers' Compensation."

The purposes of this bill are: (1) to amend section 386-98 (workers' compensation fraud violations and penalties), Hawaii Revised Statutes, to provide that: (A) when a party successfully investigates fraud and a determination is made that fraud has occurred, that party is entitled to recoup payments and attorney's fees and costs through administrative penalties; (B) when a person is charged with fraud and a determination is made that fraud has not occurred, the person is entitled to attorney's fees and costs from the initiating party, except in a criminal prosecution; and (C) no person, subject to administrative penalties in subsection (e), shall be subject to double jeopardy under another subsection; and (2) amend section 431:2-203 (enforcement regarding the insurance code), Hawaii Revised Statutes, to permit the Insurance Commissioner to investigate and enforce Hawaii Revised Statutes chapter 386 relating to workers' compensation fraud, provided that the Insurance Commissioner shall investigate and prosecute only complaints brought against an insurance carrier, a self-insured employer, or a fully insured employer.

This is another example of the Legislature proposing fake reform, which, in fact, only makes the problems worse. The people of Hawaii repeatedly asked the Legislature to reform the workers compensation system, to provide our workers with better care, to make the claim process more efficient and to ease the crushing burden on Hawaii's businesses. Such reforms benefit both workers and businesses. Workers benefit by having a system that processes their claims quickly and efficiently and provides them the rehabilitative care they need. Businesses benefit by having a system that is less costly.

Although this bill is meant to focus on and combat workers' compensation fraud, it does not address the biggest part of the problem. It targets only insurance companies and employers for punishment. Employees and others who commit workers' compensation fraud would not be subject to penalty under this measure. If an investigation of an employer also uncovered fraud by an employee, the Insurance Commissioner could only pursue the action against the employer. Limiting the bill's scope to insurance companies and employers is unfair and inefficient and will add fuel to the argument that Hawaii is anti-business.

The people of Hawaii want to be treated fairly and to have everyone play by the rules. A handful of people don't. Instead, they pursue fraudulent insurance schemes and that increases the cost of insurance for everyone.

The Administration proposed an anti-fraud bill to pursue those who don't play by the rules. The Legislature killed it. The Administration proposed a Comprehensive Workers Compensation Reform Bill and the Legislature chopped it up into nine pieces and, one by one, killed them until only this small piece remained. And this small piece that deals with workers compensation fraud was rewritten such that it ends up making things worse.

To be effective in combating fraud, one governmental unit must be given the authority to focus and pursue fraud

wherever it occurs. This bill divides the authority, giving part to the Insurance Division to investigate employers and insurance companies and part to the Department of Labor and Industrial Relations to investigate employees and care providers. This is a recipe for failure. Problems inevitably arise when authority and jurisdiction is split between departments, and this split will make this bill unworkable.

The bill is flawed in many other ways. For example, the Legislature ignored the advice of the Attorney General, the Insurance Commissioner, and others who repeatedly testified that the Insurance Fraud Branch could not pursue Motor Vehicle Insurance Fraud unless the Branch was moved to the General Powers section of the Insurance Code. The Legislature failed to make this important technical correction. Furthermore, the bill provides no resources, i.e., funding or positions, for the Insurance Commissioner to pursue the additional workload of investigating these workers' compensation matters. The Insurance Commissioner is mandated to pursue this area of fraud without additional resources.

We proposed real solutions to the real problems facing our workers and businesses in Hawaii. The Administration's Comprehensive Workers Compensation Reform Bill provided for a more efficient system, reducing costs for businesses while at the same time providing workers with the care they need. Additionally, our Anti-Fraud Bill provided the tools to effectively combat fraud and to pursue those who don't play by the rules. We all would benefit as a result.

We need to insist that our legislators work with us to provide real solutions, pay attention to the details to make laws that will really work, and listen to the people who take time from their jobs, businesses, and families to testify in support of those real solutions.

For the foregoing reasons, I am returning House Bill No. 1374 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 417, transmitting her statement of objections to H.B. No. 1743 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1743

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1743, entitled "A Bill for an Act Relating to Light Pollution."

The purpose of this bill is to protect avian and marine life by prohibiting within special management areas artificial lights that are "positioned toward or directly illuminate ocean waters," unless those lights are authorized and required for public safety or safe ocean navigation, or are located in a hotel/hotel-condo and under water or directed downward

illuminating a limited area of no more than thirty feet into ocean water.

While the intent to protect Hawaii's marine and bird life is laudable, the substantive provisions of this bill are objectionable, because they are vague and rely on determinations that will be subjective. For example, the determination as to whether an artificial light source is positioned towards or directly illuminating ocean waters is highly subjective. Enforcement of this statute would likely be difficult and inconsistent due to one person's interpretation of the phrase differing from another's. Similarly, the phrase "required for public safety" is open to subjective determinations. Also, the bill speaks of lights that are authorized without indicating what the source of that authorization would be.

This bill is objectionable because of the vagueness of much of its operative language. It fails to distinguish artificial light that is outdoors from that which is indoors in the section entitled prohibitions. Except for the part dealing with hotels/condos, the bill contains no standards concerning distances from shore or brightness of lights. Additionally, its substantive provisions will be amendments to chapter 205A, Hawaii Revised Statute, relating to coastal zone management. As such, alleged failures of state and county agencies to enforce these provisions would allow civil actions to be brought against such agencies pursuant to section 205A-6. Because certain terms of the bill are, as noted, seriously imprecise, it would not be fair to subject agencies to civil lawsuits alleging failure to enforce those provisions. For example, the prohibition of artificial lighting exists anywhere within a special management area so long as the light is "positioned toward" ocean waters. Because of the large size of some shoreline management areas, an artificial light source could be significantly removed from the immediate shoreline and still arguably be "positioned toward" ocean waters, at least in the view of some.

For the foregoing reasons, I am returning House Bill No. 1743 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 418, transmitting her statement of objections to H.B. No. 1774 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1774

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1774, entitled "A Bill for an Act Relating to Unemployment Benefits."

The purpose of this bill is to amend section 383-23, Hawaii Revised Statute, to allow unemployment insurance claimants to receive their entire weekly unemployment insurance benefit amount although they are employed and earning wages. Specifically, the bill permits an individual to retain

their weekly unemployment insurance benefit and add it to their weekly earnings if they work part-time and their earnings are less than their weekly unemployment insurance benefit. Additionally, the bill provides, if necessary, additional money may be allocated from the federal Reed Act funds and used for the payment of expenses incurred for the administration of unemployment benefits.

This bill is objectionable because the unemployment compensation system was established to provide jobless workers with a means of getting through a temporary period of unemployment and not to make individuals "whole" by replacing 100 percent or more of their prior income with unemployment benefits plus part-time wages.

This bill also is objectionable because it would apply retroactively to weeks beginning January 1, 2004, and cost approximately \$670,000 per month in benefits expended from the unemployment compensation trust fund, or a six percent increase from current levels. By permanently drawing from trust fund reserves, this bill would deplete the unemployment compensation trust fund reserves to below statutorily defined reserve levels, thus triggering an increase in the unemployment insurance tax rate for 2005 and beyond.

Additionally, the measure would create an incentive to work just enough hours so that a person's earnings are slightly less than their weekly benefit. This runs counter to the underlying philosophy of the unemployment insurance system to provide a bridge between periods of work that allows a person to meet their basic expenses while they seek new employment.

Further, the bill's own language acknowledges that the legislation may be in violation of federal statutes in that it would allow the use of federal Reed Act funds to supplement the cost of this measure. The bill acknowledges that its provisions could jeopardize the receipt of Reed Act federal funds and directs the Governor to "revise any such provision" and report back to the Legislature next session. I believe it is the Legislature's obligation to draft laws that do not potentially jeopardize federal funding and that is would be unwise to sign a bill that knowingly does so.

For the foregoing reasons, I am returning House Bill No. 1774 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 419, transmitting her statement of objections to H.B. No. 1793 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1793

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1793, entitled "A Bill for an Act Relating to Land Exchange."

This bill directs the Board of Land and Natural Resources and other appropriate state agencies to enter into land exchange negotiations with the George Galbraith Trust for lands situated north of Wahiawa, Oahu.

This bill is objectionable because section 2 of this bill appears to violate Section 5 of Article XI of the Hawaii Constitution, which in pertinent part provides: "The legislative power over the lands owned by or under the control of the State ... shall be exercised only by general laws[.]" The constitutional history of Section 5 of Article XI indicates that exchanges of public lands for private lands were the precise concerns that led to the adoption of this constitutional prohibition. Consequently, this bill, directing the Board of Land and Natural Resources and other appropriate state agencies to acquire specified private lands by means of exchange of public lands, appears to be the kind of special law prohibited under Section 5 of Article XI.

For the foregoing reasons, I am returning House Bill No. 1793 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 420, transmitting her statement of objections to H.B. No. 1840 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1840

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1840, entitled "A Bill for an Act Relating to Air Pollution Control."

The purpose of this bill is to authorize the Department of Health to adopt rules to control "fugitive" dust, both within and beyond a property lot boundary line, regardless whether the dust enters the outdoor air.

This bill is objectionable because it is unnecessary. The existing law currently allows the Department of Health to adopt rules to control "fugitive" dust within and beyond a property lot boundary line, whether or not the dust enters the outdoor air, and the Department of Health has already adopted such rules.

For the foregoing reason, I am returning House Bill No. 1840 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 421, transmitting her statement of objections to H.B. No. 1919 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1919

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1919, entitled "A Bill for an Act Relating to Public Employees."

This bill amends provisions relating to compensation and benefit adjustments for excluded managerial civil service employees. The bill provides that, in formulating recommendations to the appropriate authority, the respective director shall ensure that proposed adjustments are at least equal to the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the employer's jurisdiction.

This bill is objectionable and against public policy, because it deletes the statutory reference to adjustments commensurate with performance on the job and instead links the adjustments to benefits obtained by the Unions through negotiation. The bill reverses the legislative intent of the Civil Service Reform Act (Act 253, Session Laws of Hawaii 2000), which sought to improve managerial performance by basing pay raises for excluded managerial personnel on performance on the job and not on length of service. In addition, the bill creates a conflict of interest for excluded managers who participate in pay negotiations, and it is contrary to the underlying rationale for creating excluded employees that are not subject to collective bargaining.

For the foregoing reasons, I am returning House Bill No. 1919 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 422, transmitting her statement of objections to H.B. No. 2025 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2025

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2025, entitled "A Bill for an Act Relating to Equal Pay."

The purposes of this bill are to prohibit employers from discriminating against employees in the payment of wages because of gender and to establish a four-year pay equity task force under the Office of the Governor.

This bill is objectionable because state law already prohibits employers, including the State and its political subdivisions, from discriminating on the basis of sex. Section 378-2, Hawaii Revised Statutes, states that it shall be an unlawful discriminatory practice for any employer to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment on the basis of the employee's sex.

Federal law also prohibits employers from discriminating on the basis of gender when it comes to employees' compensation. Specifically, the Equal Pay Act of 1963 requires employers to pay men and women equal pay for equal work within the same establishment. In addition, Title VII of the Civil Rights Act of 1964, as amended, also prohibits discrimination on the basis of sex. In light of these existing laws proscribing discrimination on the basis of gender, this bill is unnecessary.

This bill also creates a four-year pay equity task force. The scope of review for this task force is broad and vague. As it relates to pay equity in public employment, it is unnecessary because compensation is usually tied to the government classification system. Under that system, female employees are paid the same compensation as male employees in the same classification.

For the foregoing reasons, I am returning House Bill No. 2025 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 423, transmitting her statement of objections to H.B. No. 2740 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2740

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2740, entitled "A Bill for an Act Relating to Notification of Employment Changes."

The purposes of this bill are to extend the time an employer in a covered establishment subject to chapter 394B, Hawaii Revised Statutes, must give each employee and the Director of Labor and Industrial Relations ("Director") written notification of a closing, partial closing, or relocation from at least sixty days to at least ninety days prior to its occurrence. The bill further requires notification of at least one hundred eighty days to employees who are provided with housing or housing assistance before discontinuance or termination of such housing or housing assistance.

This bill is objectionable because increasing the notification requirement from sixty to ninety days appears to place an unnecessary burden on employers. The Department of Labor reports that the current sixty-day period is sufficient for the Department of Labor and Industrial Relations to carry out its responsibilities in assisting dislocated workers.

Further, the current sixty-day notification requirement is consistent with federal law under the Worker Adjustment and Retraining Notification Act. Inconsistencies between federal and state law, without good reason, lead to unnecessary confusion both for employers and employees.

In addition, requiring employers to provide each employee written notification one hundred eighty days prior to the discontinuation or termination of housing assistance may discourage employers from offering this type of assistance. Because the housing or housing assistance discontinuation notification requirement is not limited to situations involving the closing, partial closing, or relocation of a business, even an ongoing business will be required to submit a notification.

For the foregoing reasons, I am returning House Bill No. 2740 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 424, transmitting her statement of objections to H.B. No. 2741 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2741

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2741, entitled "A Bill for an Act Relating to Executive Departments."

The purpose of this bill is to establish statutory requirements for position justifications and quarterly reporting for deputy director and special assistant positions within the Executive Branch, except those within the Department of Education and the University of Hawaii.

This bill is objectionable for the following reasons:

1. The statutory references to "deputy director" and "special assistant" are defined broadly to include any employee whose position is exempt from chapter 76, Hawaii Revised Statutes, and who has an annual salary that is not less than fifty percent of a department head's or executive officer's salary. Under this definition, any exempt employee who earns more than \$42,651 could be subject to the requirements of this bill. That amount will increase on July 1, 2004, and will differ from department to department. According to the Department of Human Resources Development, approximately 1,000 exempt positions could be affected by this legislation. Given the significant number of positions involved, and the requirement that quarterly reports be submitted to the Legislature for each position, this will impose an unreasonable and unnecessary administrative burden on Executive Branch personnel.

Some departments will be more significantly impacted than others. For example, in the Department of the Attorney General, all deputy attorney general and child support enforcement hearings officer positions and some non-lawyer

professional positions are positions exempt from the civil service positions, most of which are held by incumbents who earn more than \$42,651. To require the Attorney General to file position justification requirements for each of these deputies, hearings officers, and non-lawyer professionals and to submit quarterly reports to the Legislature will be unduly burdensome. The bill would also unduly burden certain departments such as the Department of Health where exempt positions have been added as a result of specific legal requirements, such as the Felix Decree and the Makin Settlement.

2. The bill infringes on the Executive Branch's ability to manage its workforce. The requirement for quarterly reports on 1,000 positions appears to constitute unnecessary micromanaging by the Legislature. Further, the bill does not do what it purports in addressing transparency concerns. Approximately 9% of all positions would be addressed in this issue, leaving 91% of the government position untouched by its transparency provisions. Furthermore the Department of Human Resources Development already prepares an annual report on appointed positions within the State Government. Thus the 9% of all positions addressed in this bill already are subject to transparency reporting requirements.

3. The bill does not impose the same reporting and justification requirements for civil service positions and other exempt positions within the Executive Branch and therefore appears to be arbitrary and capricious.

4. Finally Section 2 of the bill may impose an illegal transfer of monies. Section 2 says that "all unexpended funds relating to the funding of the abolished positions shall lapse to the credit of the general fund." Some of these exempt positions are paid for out of special funds including Federal funds. Thus the transfer mandate by this section of the bill could constitute an illegal transfer of federal money from a special fund to the state's general fund. This provision is troublesome and could jeopardize the State of Hawaii eligibility for future Federal funding.

For the foregoing reasons, I am returning House Bill No. 2741 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 425, transmitting her statement of objections to H.B. No. 2748 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2748

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2748, entitled "A Bill for an Act Relating to State Finances."

The purpose of this bill is to grant civil service status to the employees of the Department of Business, Economic Development, and Tourism's Business Action Center whose

employee position numbers are 102006, 102007, 102008, and 102009.

This bill is objectionable on constitutional grounds because the subject of this bill, as expressed in its title, is "state finances." Section 14 of Article III of the Hawaii Constitution provides that "[e]ach law shall embrace but one subject, which shall be expressed in its title." The provisions in this bill that grant civil service status to certain employees appear to be too remotely related to the expressed subject, "state finances." Additionally, this bill contains duplicate language to Senate Bill No. 3182 also passed by the Twenty-Second Legislature.

For the foregoing reasons, I am returning House Bill No. 2748 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 426, transmitting her statement of objections to H.B. No. 2773 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2773

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2773, entitled "A Bill for an Act Relating to Condominium Property Regimes."

The purpose of this bill is to give authority to the board of directors of a condominium association to permit apartment owners to install antennas for amateur radios in their apartments or their limited common element without the consent of the other apartment owners.

This bill is objectionable because it amounts to an inappropriate and unacceptable governmental intrusion into the contractual affairs of the apartment owners. This measure would allow the installation of antennas in a condominium's common element, notwithstanding objections by other apartment owners. Condominiums ordinarily have governing documents, such as the condominium's declaration, bylaws, and house rules, which contain covenants, conditions, and restrictions. Purchasers of condominium apartments should be able to rely upon those governing documents when deciding whether to purchase an apartment. They should not have to worry about subsequent legislative bills that trump the governing documents by permitting certain people to erect antennas within common elements.

For the foregoing reasons, I am returning House Bill No. 2773 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 427, transmitting her statement of objections to H.B. No. 2774 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO.
2774

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2774, entitled "A Bill for an Act Relating to Subdivisions."

The purpose of this bill is to give authority to the board of directors of a planned community association to permit owners of units to install antennas for amateur radios in their units located in agricultural districts, provided that no antenna shall be installed upon any common area without compliance with all association documents.

This bill is objectionable because it amounts to an inappropriate and unacceptable governmental intrusion into the contractual affairs of the property owners. This measure would allow the installation of antennas in an owner's unit, notwithstanding objections by other owners.

Planned community associations ordinarily have governing documents, such as the declaration, articles of incorporation, and bylaws, which contain covenants, conditions, and restrictions. Purchasers of property in planned community associations should be able to rely upon those governing documents when deciding whether to purchase a unit. They should not have to worry about subsequent legislative bills that trump the governing documents by permitting certain people to erect antennas on property within the subdivision.

For the foregoing reasons, I am returning House Bill No. 2774 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 428, transmitting her statement of objections to H.B. No. 2786 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO.
2786

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2786, entitled "A Bill for an Act Relating to Arbitration."

The purpose of this bill is to amend section 431:10-242, Hawaii Revised Statutes, to require that a policyholder, a beneficiary, or a person acquiring the rights of a policyholder or beneficiary be awarded attorney's fees and costs when an arbitrator or arbitration panel orders an insurer, who contested liability, to pay benefits under the policy.

This bill is objectionable because it would encourage litigation, especially in what are now relatively uncomplicated uninsured and underinsured motorist (UM and UIM) disputes and arbitrations, and would unfairly require that attorney's fees and costs be imposed on the insurer in every case in which an award is made, even if the demand on the insurer greatly exceeded the amount actually awarded.

As passed, language has been added to the original bill that expressly requires the awarding of attorney's fees and costs to a beneficiary or policyholder who successfully establishes an insurer's liability under an insurance policy in arbitration proceedings when the insurer has "contested its liability under a policy." This mandate would encourage a claimant to demand policy limits in every UM and UIM case, knowing that even if only a part of that limit is finally awarded, the claimant's attorney's fees and costs would be mandatorily imposed upon the insurer. The result would discourage reasonable and good faith efforts to compromise and settle claims, and would ultimately increase the cost of insurance to consumers.

For the foregoing reasons, I am returning House Bill No. 2786 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 429, transmitting her statement of objections to H.B. No. 2859 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO.
2859

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2859, entitled "A Bill for an Act Relating to the Development of an International Equestrian Facility."

The purpose of this bill is to require the Governor to convene a working group to study the feasibility of establishing a multi-purpose international equestrian facility. This working group would contain both public and private sector members, with the department of business, economic development, and tourism providing staff and support. The working group will consider potential sites, appropriate forms of funding, estimates of costs and job creation, and extent of community support. The working group must report its findings no later than twenty days before the convening of the regular legislative session 2005.

The bill is objectionable for three reasons. First, this is the type of issue that should be handled via a concurrent resolution rather than be codified as a law. The implication is that this working group would be temporary, yet there is no sunset date for the legislation.

Second, this bill is objectionable because it requires state resources to provide staff and support for the working group to conduct a study for a facility that is more appropriately researched and developed by the private sector. Third, the bill calls for an extensive market analysis and detailed business plan, but provides no funding to do the work. It is inappropriate to require a study of the depth required by this bill without appropriating the funding necessary.

For the foregoing reasons, I am returning House Bill No. 2859 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 430, transmitting her statement of objections to H.B. No. 2911 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2911

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2911, entitled "A Bill for an Act Relating to Charter Schools."

The purpose of House Bill No. 2911 is to improve accountability for charter schools by amending section 302A-1184 (exemptions relating to new century charter schools), Hawaii Revised Statutes, to expressly subject them to (i) state land use laws and county laws, codes, and rules governing land use and public health and safety; and (ii) audit and inspection by the charter school administrative office.

Even though the Legislature created charter schools to "free [them] from statutory and regulatory requirements that tend to inhibit or restrict [their] ability to make decisions relating to the provision of educational services," "nurture the ideal of more autonomous and flexible decision-making at the school level," and "define[] a new approach to education that is free of bureaucratic red tape and accomdat[es] the individual needs of students, see Section 1, Act 62, Haw. Sess. Laws 77 (1999), since their creation, charter schools have had to struggle under laws that are unclear, incomplete, uncoordinated, and sometimes so oblique as to be unreasonable.

The confused state of the law has resulted in inadequate funding that is disbursed late. Few, if any laws have been enacted to give charter schools access to state material, equipment, and expertise that other state agencies enjoy. In fact, charter schools' access to state resources has been minimal. They have had no opportunity to benefit from economies of scale, or the State's centralized processing systems. Instead, expenditures that charter schools should

not have had to be made – already stretched operating dollars have had to be used to pay for capital improvements, repair and maintenance, and many other expenses that individual state agencies ordinarily do not have to bear.

Questions and challenges have unnecessarily distracted the charter schools from fulfilling their purpose of providing alternative learning opportunities for the children of our community. Uncertainty has spawned litigation, and distracted several charter schools from implementing the Legislature's initial vision.

This bill does very little to relieve the inherent confusion and unfairness charter schools endure. The Attorney General has already advised that all state agencies, including public charter schools, are subject to the State's land use laws. There is already more than ample authority for the Board of Education, the Comptroller, and the Auditor to audit the accounts and operations of new century public charter schools.

Most distressingly, the bill compounds the unfairness charter schools already suffer by singling charter schools out from all other state agencies and subjecting them to county zoning ordinances with which other state agencies need not comply.

Charter schools deserve the Legislature's undivided attention. Without a comprehensive and coordinated overhaul of our charter schools laws, charter schools stand little chance of achieving their full potential.

For the foregoing reasons, I am returning House Bill No. 2911 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 431, transmitting her statement of objections to S.B. No. 459 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 459

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 459, entitled "A Bill for an Act Relating to Campaign Spending."

The purpose of this bill is to restore the public's confidence in the integrity of the election process by reducing the influence of reliance on campaign contributions.

This bill is objectionable for several reasons, including very serious technical errors in the bill that leave provisions of the bill vulnerable to serious and substantial constitutional challenges, which would lead to the virtually certain prospect of lawsuits, and leave the State open to adverse court judgments on the constitutionality of the bill and to large attorneys' fee awards against the State. Tied up with these very serious technical errors are provisions that would lead to

confusion, uncertainty, and serious questions about who is actually subject to many of the bill's provisions. It is crucial that a bill regulating campaign contributions be clear in its application, well thought out, and fair. The serious flaws in this bill make it abundantly clear that the bill is not clear in its application, not well thought out, and not fair.

In the order that they appear, the errors and concerns include:

1. In section 11-204(m) (3), Hawaii Revised Statutes, as amended at page 18, lines 12-15, the likely typographical omission of a "not" completely changes the apparent intent of the legislature. Subsection (m) (3) provides that the prohibition against contributions applies to "[a] noncandidate committee that has received contributions of \$10 or more from ten or more individuals registered to vote in this State during the one hundred and eighty days prior to an election, provided that this subsection does not apply to loans made in the ordinary course of business." (emphasis added). The intent of this provision was to bar contributions from a noncandidate committee that had not received at least ten contributions from Hawaii residents. The removal of the word "not" is a clear drafting error that would essentially bar contributions from almost all noncandidate committees whose donors are Hawaii residents.

2. Section 8 replaces what is a monitoring-by-registration process for regulating campaign contributions from entities that contract with State and county agencies, with a twenty-four-month ban on contributions from some but not all entities that contract with the State or counties, to candidates for some, but not all offices. This change is seriously flawed in several respects.

a. Despite several references, including a clear statement in section 1 of the bill, and in the Conference Committee Report, that the bill is intended to prohibit contributions by government contractors "selected by a nonbid process" who seek or hold contracts in excess of \$25,000, every reference to the Procurement Code for purposes of describing who is exempt from the restriction on contributions (i.e., who can contribute) is to section 103D-303, Hawaii Revised Statutes, the section for awarding contracts by competitive sealed proposals, rather than section 103D-302, Hawaii Revised Statutes, the section for awarding contracts by competitive sealed bidding. Thus, contractors awarded government contracts under the most objective basis—low prices (competitive sealed bidding)—are actually prohibited from making contributions, while contractors who receive contracts under substantially a more subjective procurement method, i.e., pre-established qualitative evaluation criteria which may or may not include price (competitive sealed proposals), may make contributions. If the legislature actually intended the bill to read as it does, it would be very difficult, if not impossible, to constitutionally defend the line the legislature has drawn against an equal protection and/or due process challenge, because it makes no sense to exclude from contributing those who bid via sealed bidding while allowing contributions from those who bid via sealed bidding proposals. And, if that actually was the intent of the legislature, it is appropriate to veto the bill on policy grounds alone. If the reference to section 103D-303 is simply an error, then the problem—of constitutional dimensions—needs to be fixed before the law can be allowed to go into effect, and vetoing the bill is the only way to accomplish that.

b. It appears to be the intent of the section to have the time limit run commencing with certain procurement activities that the particular government contractor at issue participates in by submitting a bid. However, the section does not state this, and terms critical to determining when the

twenty-four-month ban on contributions begins to run are vaguely described or not defined at all. For example, "procurement activity" is not even defined. At page 20, lines 20-22, and page 21, lines 1-8, the amendment to section 11-205.5, Hawaii Revised Statutes, defines the period of time during which contributions are unlawful as "commencing with any procurement activity conducted by a purchasing agency" and ending "Twenty four [sic] months after the termination of the procurement activity" or "after completion of the government contract if the procurement activity results in acceptance." In most instances, the public is wholly unaware of preliminary procurement activities, including, for example, deciding whether to issue a request for information or proceeding directly to developing specifications for a bid. It would have been far better if a more publicly discernible starting point (like the posting of an invitation for sealed proposals, or the creation of a selection committee for professional services) had been selected. "Notice of appropriation," the alternative clock-starter for the twenty-four-month contribution ban period, is also not defined. Nor is there a mechanism for determining which of the two clock-starters control. The contribution ban period should be tied to a procurement activity involving the government contractor at issue and is unnecessarily and inappropriately vague. This lack of notice risks very substantial constitutional challenges based upon due process. It is crucial that a law that bans activities like making political contributions be very clear in its application, so that those who may be subject to it are not forced to simply guess at what the law means.

c. Again, there appear to be several typographical errors that cloud the process and the meaning of the bill: at page 21, line 4, because "and" rather than "or" is used, both successful and unsuccessful bidders appear to be precluded from making contributions for the twenty-four-month contribution ban period; (at page 21, line 17, "though" should have been "through," and "disbarred" should have been "debarred.")

d. The bases for distinctions that the ban relies upon are not readily discernible. At page 21, lines 11-17, there is a provision that makes it unlawful for "any business against which debarment or suspension proceedings are commenced" to make a contribution through the period of debarment or suspension. Commencement of proceedings can, in some circumstances, occur without notice and an opportunity to be heard. Barring contributions based on an accusation without a hearing or finding of guilt or probable cause or reasonable grounds could in some circumstances deny a would-be contributor due process of law. At page 22, lines 1-7, an exception is made such that individuals employed by a government contractor can contribute so long as the contribution comes from the individual's personal funds. However, while an "officer or director" of the contractor cannot contribute, a major stockholder in the business who is not an officer or director, or a general partner in a partnership can contribute. This is an irrational distinction and creates a very large loophole. There must be a fair and level playing field, and if contributions by an officer and director are to be limited, so too must contributions by major stockholders or general partners, etc.

e. The prohibition against government contractor contribution is extremely vague in its application to contributions to candidates for State and county legislative offices (and even offices like Governor and Mayor in certain circumstances), and appears not to apply to entities with contracts with agencies headed by non-elected officials even though the contracts are funded by "appropriations." The language used at page 22, lines 10-20, provides very little notice in many circumstances of whether particular contributions are banned or not. Again, it is crucial that those

who are to be subject to a ban not be forced to guess at its application.

f. It is unclear if, when, or how the ban is to be effected when a "notice of appropriation" starts the clock for the twenty-four-month ban, or the "procurement activity" involves the acquisition of real property, see definitions of "government contract" at page 24, line 4, and "purchasing agency" at page 25, line 6.

3. The section concerning "coordinated activity," section 11-207, Hawaii Revised Statutes, as amended at page 27, lines 14-17, page 28, lines 21-22, and page 29, lines 1-5, that is, when an expenditure by a person will be considered a contribution to a candidate and subject to regulation, raises, serious constitutional issues based on vagueness and overbreadth.

"Coordinated activity," for example, means an expenditure "by a person ... who is actively engaged in coordination with that candidate" on any campaign activity. What does "actively engaged" mean? The bill does not define the term. The only way to be sure that one is not participating in a coordinated activity is by not interacting with a candidate or a candidate's committee or agent at all. Another example of a "coordinated activity" provides at page 28, lines 15-22: "A payment is made by a person if in the same election period the person making the payment ... (B) Has previously participated in discussions with the candidate, an agent of the candidate's authorized committee, or a committee of a political party which is coordinating with the candidate regarding the candidate's campaign strategy." Under this provision, it would appear that "any discussion," even marginally related to the campaign, would subject a campaign expenditure to regulation as a contribution. Thus, if a person discussed with a candidate, at a rally, any issue related to the campaign, an independent expenditure by that person is considered to be both a contribution to the candidate and an expenditure by the candidate." This section is both vague and overbroad.

Perhaps the sharpest example of overbreadth appears in subsection (b) (2) at page 28, lines 7-14. A "coordinated activity" (which means that the expenditure is counted as both a contribution to a candidate and an expenditure by a candidate) includes "a payment ... for the production, dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by a candidate, a candidate's authorized committee, or an agent of a candidate or authorized committee or a communication that expressly advocates for or against a candidate." (emphasis added). The highlighted portion of the provision literally subjects "express advocacy" to limitations that United States Supreme Court precedent unequivocally holds is violative of the First Amendment. Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604, 610, 116 S. Ct. 2309, 2313 (1996) ("Colorado I") and 533 U.S. 431, 121 S. Ct. 2351 (2001) ("Colorado II"), and more recently McConnell v. Federal Election Commission, 124 S. Ct. 619, 705-06 (2003), say clearly that it is unconstitutional to limit expressions in the form of expenditures that support the election of a candidate or issue that are made independently and separately from any input from a candidate, or person or entity associated with a candidate. Enforcement of the provision is likely to be enjoined as unconstitutionally violative of the First Amendment's prohibition against placing a limit on independent expenditures. In addition, in a circumstance in which there are more than two candidates, and a person advocates against one of the candidates, to which of the other candidates is the "contribution" attributed?

For the foregoing reasons, I am returning Senate Bill No. 459 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 432, transmitting her statement of objections to S.B. No. 469 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 469

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 469, entitled "A Bill for an Act Relating to Employment Practices."

The purpose of this bill is to add a new section to part I of chapter 378, titled "Discriminatory Practices," of the Hawaii Revised Statutes, which prohibits an employer or labor organization from discriminating against an employee who uses accrued and available sick leave in accordance with the terms of a valid collective bargaining agreement or an employer's employment policy.

This bill is objectionable because there is no identified need to legislate in this particular area. Matters pertaining to leave should be determined by collective bargaining negotiations or by company policies. This law could lead to extensive abuse of sick leave disrupting the operations and services of private firms, lead to increased costs, and discriminate against employees who abide by company rules.

Under federal Family and Medical Leave Act, employees who use leave pursuant to that Act are protected from discrimination; under the state Family Leave law, employees also have certain protections. This bill is also objectionable because it protects those employees who abuse sick leave benefits by preventing employers from disciplining employees for excessive absences if the absences qualify for sick leave under collective bargaining agreements or employers' policies. Finally, this bill may, in fact, discourage employers from providing sick leave to their employees.

For the foregoing reasons, I am returning Senate Bill No. 469 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 433, transmitting her statement of objections to S.B. No. 2056 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2056

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2056, entitled "A Bill for an Act Relating to the Auditor."

The purpose of this bill is to make the Legislative Auditor (hereinafter referred to as the "Auditor") an authorized representative of the Department of Education (DOE) and the Department of Health (DOH). The bill also gives the Auditor access to any student records that may be necessary in connection with any audit or evaluation of any federal or state supported educational program, or in connection with the enforcement of the federal or state legal requirements that relate to the educational program.

This bill is objectionable because there are serious legal concerns about making the Auditor an authorized representative of the DOE and the DOH. This bill is an attempt to circumvent federal law. The Auditor is seeking to become an authorized representative of the DOE and the DOH because of the Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. § 1232g, which prohibits the DOE from disclosing educational records or personally identifiable information without the written consent of the student or parent, except under specific exceptions listed in 20 U.S.C. § 1232g(b). One of the exceptions permits authorized representatives of state educational authorities to access education records without written consent of the student or parent. Specifically, this exception is for authorized representatives of state educational authorities acting in connection with an audit and evaluation of federally supported education programs or who are acting in connection with the enforcement of federal legal requirements relating to such programs.

The Family Policy Compliance Office, United States Department of Education, which is the federal agency authorized to administer FERPA, has informed us that the FERPA exception in question applies to an executive branch auditor or an outside auditor controlled by the educational agency, but would not apply to a legislative branch auditor. Therefore, the FERPA exception for "authorized representatives" does not permit the DOE to disclose education records to the Auditor.

In addition, this bill is unnecessary because the Auditor has the power to issue subpoenas duces tecum for education records under section 23-5(c) (2), Hawaii Revised Statutes. Under FERPA, the DOE may disclose the education records pursuant to a subpoena provided that parents of the children identified in the education records are notified of the subpoena so that they may act to quash the subpoena if they so choose. This bill also contains a parental notification provision so this bill does not expedite access by the Auditor.

This bill seeks to provide an alternative method for the Auditor to obtain education records without having to use her subpoena powers, but this alternative method involves significant risks to the State. The disclosure of education records without a subpoena could result in expensive lawsuits filed by parents challenging this bill as an attempt to circumvent federal law. There already is a valid means under FERPA by which the Auditor may access education records through her subpoena powers. The risk to the State in creating another access method with inherent legal problems

clearly outweighs any benefits that an alternative method of access may provide.

For the foregoing reasons, I am returning Senate Bill No. 2056 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 434, transmitting her statement of objections to S.B. No. 2077 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2077

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2077, entitled "A Bill for an Act Relating to Planning."

The purpose of this bill is to require state agencies to update their functional plans by June 30, 2006, and update those plans every ten years.

This bill is objectionable because it creates a mandate without additional resources and funding provided by the Legislature to carry it out.

The significant costs associated with updating functional plans have not been factored into the state financial plan, and no funds were appropriated for this project. Without additional staff and resources, existing staff and resources may have to be diverted from essential departmental programs.

Further, it is not apparent that the functional plans prepared in 1989 and 1991 have served as an effective decision-making tool for State agencies. Additionally, this bill would require duplicative work for areas such as recreation, where a State outdoor recreational plan was completed as recently as 2003.

Currently, the Hawaii State Planning Act, chapter 226, Hawaii Revised Statutes, does not mandate a required interval for updating functional plans. The fast-changing pace of local, national, and global events suggests that greater flexibility is needed. The Governor and executive branch agencies should be given discretion to undertake updates as circumstances may dictate and in the subject areas that reflect Executive Branch priorities.

For the foregoing reasons, I am returning Senate Bill No. 2077 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 435, transmitting her statement of objections to S.B. No. 2134 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2134

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2134, entitled "A Bill for an Act Relating to the Environment."

The purpose of the bill is to establish an emergency environmental workforce program to be administered by the Research Corporation of the University of Hawaii (RCUH) to assist the countries in their fight against invasive species throughout the State. The bill requires the environmental workforce to employ individuals who are not subject to civil service and collective bargaining laws. The bill further requires RCUH to submit an annual report to the Legislature on the status of the environmental workforce program.

This bill is objectionable for the following reasons:

1. Section 307-4, Hawaii Revised Statutes, exempts RCUH from state personnel statutes. Because RCUH has existing authority to hire employees exempt from the civil service law, chapter 76, HRS, this bill is unnecessary.

2. While earlier versions of the bill appropriated money to fund positions necessary for the workforce, the bill as passed does not contain an appropriation. Instead, the Legislature, via the budget bill, appropriated moneys to fund the workforce through moneys allocated to the Hawaii Invasive Species Council, an agency attached to Department of Land and Natural Resources (DLNR). The funding mechanism may limit the Hawaii Invasive Species Council to contracting with RCUH for its labor needs. Furthermore, due to the limited amount of funds available, DLNR has concerns as to whether the Hawaii Invasive Species Council will realistically be able to allocate adequate funds for the workforce. In addition, an awkward problem with the bill is that the moneys are dispersed to DLNR, yet, RCUH is responsible for administering the program.

3. Finally, administering an environmental workforce is not consistent with RCUH's fundamental mission of supporting research and training programs for the University of Hawaii, or enhancing research, development, and training for Hawaii's citizens in general.

For the foregoing reasons, I am returning Senate Bill No. 2134 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 436, transmitting her statement of objections to S.B. No. 2281 as follows:

"EXECUTIVE CHAMBERS
HONOLULU

July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2281

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2281, entitled "A Bill for an Act Relating to the High Technology Development Corporation."

The purpose of this bill is to allow the High Technology Development Corporation to deposit certain rents and fees received from its operations into a private trust account outside of the state treasury under the control of the High Technology Development Corporation. In addition, this bill repeals the \$3,000,000 cap on the fiscal-year-end balance of the High Technology Special Fund.

The establishment of a private trust account outside of the state treasury under the control of the High Technology Development Corporation is objectionable.

I am concerned about the fiscal accountability of receipts and disbursements of the private trust account. Since such activity would not be processed through the state treasury, the private trust account would not be subject to the supervision of the Department of Accounting and General Services to ensure the proper recording and expenditure of such moneys. The High Technology Development Corporation would have to develop internal controls to safeguard such moneys against potential abuse or wrong use. Because the state treasury can handle such moneys in an expeditious manner, I believe that the creation of a private trust account outside of the state treasury for the High Technology Development Corporation is not necessary.

For the foregoing reasons, I am returning Senate Bill No. 2281 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 437, transmitting her statement of objections to S.B. No. 2528 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2528

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2528, entitled "A Bill for an Act Relating to Insurance."

The purposes of this bill are to: (1) amend the standards of the loss mitigation grant program by changing the percentage of a grant reimbursement from fifty to thirty-five percent of the cost of purchasing and installing wind-resistive devices;

and (2) appropriate \$300,000 out of the general fund for the loss mitigation grant program.

This bill is objectionable because it would take money from the general fund to finance a pilot grant program that would provide inconsequential and meager benefit to the people of this State. The administrative costs that would be needed to establish that program, including costs for providing notice of the program, preparing application forms, processing applications, and other staffing functions that are not included in this bill, could use up much of the appropriation amount. The remaining grant funds would benefit too few property owners to justify setting up this new program.

Although hurricane mitigation is a worthwhile concept, during these difficult economic times the State must resist the urge to utilize general funds for a pilot program. A fully funded program of this nature, that would benefit a significant number of people and that would have an effect upon hurricane mitigation, could cost hundreds of millions of dollars. Thus, spending money for this pilot program at this time is not a wise choice.

Decisions like the one to veto this bill are not easy, but they are necessary. Without fiscal discipline and prudent management of the budget, it would be impossible to restore trust and integrity in government and expand and diversify the economy. These are things that we must do to achieve a true new beginning for the people of Hawaii.

For the foregoing reasons, I am returning Senate Bill No. 2528 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 438, transmitting her statement of objections to S.B. No. 2608 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2608

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2608, entitled "A Bill for an Act Relating to Critical Access Hospitals."

The purpose of this bill is to amend Act 226, Session Laws of Hawaii 2000, to eliminate the sunset of provisions exempting critical access hospitals from the revised reimbursement methodology for long-term care services, which requires hospital-based and nonhospital-based Medicaid reimbursement rates for institutionalized long-term care to be equal.

Senate Bill No. 2929, entitled "A Bill for an Act Relating to Medicaid Reimbursement," which I have approved, also achieves the same purpose. Therefore, this bill is unnecessary.

For the foregoing reason, I am returning Senate Bill No. 2608 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 439, transmitting her statement of objections to S.B. No. 3020 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3020

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3020, entitled "A Bill for an Act Relating to Education."

Senate Bill No. 3020 appropriates \$175,000 in general funds in fiscal year 2004-2005 for the conversion of one ten-month counselor position to a twelve-month term at Kapolei Elementary School, and for the conversion of eight ten-month teachers at Kapolei Middle School to year-round status.

The funds are unnecessary because:

1. Under the lump-sum budgeting approach, the Department of Education has the required flexibility to allocate its positions and funds to address enrollment fluctuations (increases and decreases) at various schools. With an annual general fund budget of over \$1.5 billion in fiscal year 2004-2005, the Department of Education can reallocate its resources from those schools with dwindling enrollment to address the needs of higher enrollment schools. It is also important to note that the Department of Education is currently authorized over 11,200 teaching (bargaining unit 5) positions, although only about 8,720 in fiscal year 2004-2005 are designated for classrooms. The other 2,480 teachers are designated for state and district offices and categorical and other programs. The department can reassign position counts and funds to Kapolei Elementary and Middle Schools within its existing resources.

2. Between fiscal year 2000-2001 and fiscal year 2002-2003, the Legislature authorized 35.5 additional counselor positions, increasing the number of counselors by 6.2 percent (from 576 to 611.5 positions), while student enrollment decreased 0.6 percent (from 180,563 to 179,448). The additional positions were authorized to address the department's request that the counselors' work exceeded national norms. In addition, with 18,881.60 authorized general fund positions and more than a \$1.2 billion (all means of financing) salary base, the department has the flexibility to reallocate payroll savings from vacant positions to address an additional two-month payroll extension.

3. The Department of Education lapsed \$19.9 million in unspent funds in the prior fiscal year. Historically, annual lapse rates have averaged \$25 million, thus the Department has monies it fails to spend each year which can be used for schools converting from 10-month to 12-month schedules.

July 13, 2004

The Department of Education should fund the additional payroll requirements within its existing budget, rather than place an additional financial burden on Hawaii's taxpayers.

For the foregoing reasons, I am returning Senate Bill No. 3020 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 440, transmitting her statement of objections to S.B. No. 3025 as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3025

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3025, entitled "A Bill for an Act Relating to the Office of Planning."

The purpose of this bill is to require the Office of Planning to report only to the Director of Business, Economic Development, and Tourism and to clarify that the Department of Business, Economic Development, and Tourism has the sole jurisdiction over the Land Use Commission, state planning, and the Hawaii State Planning Act.

This bill is objectionable because it limits my administration's flexibility in executing programs and functions to achieve maximum results. The Office of Planning's major statutory responsibilities of land use planning, coastal zone management, and geographic information systems are not consistent with the Department of Business, Economic development, and Tourism and complement the Department of Land and Natural Resources core functions of land management and protection of resources. My administrative directive to have the Office of Planning consult with and report to the Chairperson of the Board of Land and Natural Resources has resulted in meaningful, productive, and successful undertakings in land use planning issues, and the current working relationship is consistent with the Legislature's call for more prudent, efficient, and effective government operations.

For the foregoing reasons, I am returning Senate Bill No. 3025 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 441, transmitting her statement of objections to S.B. No. 3170 as follows:

"EXECUTIVE CHAMBERS
HONOLULU

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3170

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3170, entitled "A Bill for an Act Relating to Petroleum Products."

The purpose of this bill is to promote alternative energy resources in Hawaii by establishing new requirements for the blending of ethanol in gasoline, and requiring, by January 1, 2006, that not less than eighty-five percent of all gasoline sold for use in motor vehicles in Hawaii contain ten percent ethanol by volume. This measure also requires each distributor, within ninety days of the close of the calendar year, to file a statement for the previous year showing the amount of ethanol and non-ethanol blended gasoline sold by the distributor on forms prepared by the Director of Business, Economic Development, and Tourism. Any distributor violating these requirements is subject to a fine of not less than \$2 per gallon of non-conforming fuel.

This bill is objectionable because it allows the Director of Business, Economic Development, and Tourism to adopt rules for the administration and enforcement of the ethanol requirements, exempt from the requirements of chapter 91, Hawaii Revised Statutes. This chapter, the Hawaii Administrative Procedure Act, provides for giving public notice and holding a hearing on proposed rules. Exempting the ethanol rulemaking process from these procedural requirements is contrary to our policy of advocating open government and providing the public with opportunity for input.

Under current law, Section 486J-10, Hawaii Revised Statutes, which this bill seeks to amend, the State's petroleum commissioner is required to adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to require that gasoline sold in the State for use in motor vehicles contain ten percent ethanol by volume. I have reviewed and approved for public hearing the proposed rules entitled "Chapter 35 of Title 15, Hawaii Administrative Rules, regarding Ethanol Content in Gasoline." These rules were drafted and reviewed with care in a collaborative effort by all stakeholders. I believe that adopting the rules for Section 486J-10, Hawaii Revised Statutes, in a public hearing process is the proper approach for implementing the ethanol requirements. The public hearing process will provide the forum for issues to be examined and for all steps necessary to be taken to ensure that the State's ethanol requirements are implemented into an orderly manner and that the negative impact, if any, on gasoline is addressed.

For the foregoing reasons, I am returning Senate Bill No. 3170 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 442, transmitting her statement of objections to S.B. No. 3182 as follows:

"EXECUTIVE CHAMBERS

HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO.
3182

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3182, entitled "A Bill for an Act Relating to State of Hawaii."

The purpose of this bill is to grant civil service status to the employees of the Department of Business, Economic Development, and Tourism's Business Action Center whose employee position numbers are 102006, 102007, 102008, and 102009.

This bill is objectionable on policy grounds. This bill "grandfathers" in four temporary, exempt Business Action Center employees into civil service status, without loss of salary and seniority and without necessity of examination. This is contrary to civil service principles of merit and open competition. Additionally, with the state financial plan projecting a deficit by fiscal year 2005-2006, increasing the permanent position count at this time would not be appropriate, because this would constrain administrative flexibility if it becomes necessary to restructure government.

For the foregoing reasons, I am returning Senate Bill No. 3182 without my approval.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

Gov. Msg. No. 443, transmitting her statement of objections and S.B. No. 1491, SD 1, HD 1, CD 1, with specific items stricken as follows:

"EXECUTIVE CHAMBERS
HONOLULU
July 13, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO.
1491

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1491, entitled "A Bill for an Act Relating to State Government."

The purpose of this bill is to make appropriations for various purposes for fiscal year 2004-2005.

While the bill as a whole has merit, I object to the \$675,307 special fund appropriation for fiscal year 2004-2005 from the Hawaiian Home Administration Account for personnel operating expenses, designated in section 42 on pages 17-18 of the bill. This special fund appropriation of \$675,307 duplicates the special fund appropriation adjustment made in section 2 of the bill that increased the

special fund appropriation for fiscal year 2004-2005 from \$7,172,586 to \$7,847,893.

Section 16 of Article III of the State Constitution provides that, "[e]xcept for items appropriated to be expended by the judicial and legislative branches, the governor may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same." Because of the foregoing objection, pursuant to my line item veto authority, I have stricken out the duplicate \$675,307 special fund appropriation out of the Hawaiian Home Administration Account for fiscal year 2004-2005 for personnel operating expenses in section 42 (on page 17, line 19) and changed it to \$0.

For the foregoing reason, I am returning Senate Bill No. 1491 with the special fund appropriation of \$675,307 for fiscal year 2004-2005, described above, stricken from the bill.

Respectfully,

/s/
LINDA LINGLE
Governor of Hawaii"

[This section left blank.]

THE SENATE
NINETY-SECOND LEGISLATURE, 2004
STATE OF HAWAII

VETO
S.B. NO.

1491
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO STATE GOVERNMENT.

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

SECTION 1. The purpose of this Act is to make various appropriations for fiscal year 2004-2005.

SECTION 2. Act 200, Session Laws of Hawaii 2003, is amended by amending item F-32 of section 3 to read:

*HDL601 - PLANNING, DEVELOPMENT, MANAGEMENT, AND GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS			
		25.00*	(---25.00*)
			18.00*
OPERATING	HSL	1,297,007A	(---1,297,007A)
			275,293A
		89.00*	(---89.00*)
			100.00*
	HSL	7,115,343B	(---7,115,343B)
			7,847,893B
INVESTMENT CAPITAL	HSL	600,000C	C*

SECTION 3. Provided that no state funds appropriated for fiscal year 2004-2005 to purchase the one thousand one hundred and twenty-nine acre property on the north shore of Oahu bordered by Paumalu gulch, Pupukeya-Paumalu forest reserve, and Hunaikaaala gulch and stream shall be made available unless attached by:

- (1) The federal government on a 2:1 (federal/state) basis;
and

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- (2) The city and county of Honolulu on a 1:1
(county/state) basis.

SECTION 4. Provided that of the revolving fund appropriations for University of Hawaii, Manoa (UOH 100), the sum of \$2,521,561 for fiscal year 2004-2005 shall be used for the operations of the new medical school campus at Kakaako and the new Kakaako university health science library; provided further that the university may use funds from the research and training revolving fund or any other revolving fund of the University of Hawaii to provide for these expenses.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Filipino Centennial Celebration Commission.

The sum appropriated shall be expended by the ethnic group presentations program of the department of accounting and general services for the purposes of this section.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant

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1 pursuant to chapter 42F, Hawaii Revised Statutes, to the Friends
2 of Waipahu Cultural Garden Park.

3 The sum appropriated shall be expended by the performing
4 and visual arts events program of the department of accounting
5 and general services for the purposes of this section.

6 SECTION 7. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$150,000 or so much
8 thereof as may be necessary for fiscal year 2004-2005 as a grant
9 pursuant to chapter 42F, Hawaii Revised Statutes, to the Maui
10 Community Arts and Cultural Center.

11 The sum appropriated shall be expended by the performing
12 and visual arts events program of the department of accounting
13 and general services for the purposes of this section.

14 SECTION 8. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$50,000 or so much
16 thereof as may be necessary for fiscal year 2004-2005 as a grant
17 pursuant to chapter 42F, Hawaii Revised Statutes, to the Chamber
18 of Commerce of Hawaii for its Military Affairs Council.

19 The sum appropriated shall be expended by the business
20 development and marketing program of the department of business,

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1 economic development, and tourism for the purposes of this
2 section.

3 SECTION 9. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$20,000 or so much
5 thereof as may be necessary for fiscal year 2004-2005 as a grant
6 pursuant to chapter 42F, Hawaii Revised Statutes, to the 442nd
7 RCT Foundation.

8 The sum appropriated shall be expended by the services to
9 veterans program of the department of defense for the purposes
10 of this section.

11 SECTION 10. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$50,000 or so much
13 thereof as may be necessary for fiscal year 2004-2005 as a grant
14 pursuant to chapter 42F, Hawaii Revised Statutes, to the
15 Waikoloa Community Based Substance Abuse Rehabilitation and
16 Recovery Program.

17 The sum appropriated shall be expended by the alcohol and
18 drug abuse program of the department of health for the purposes
19 of this section.

20 SECTION 11. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$50,000 or so much

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1 thereof as may be necessary for fiscal year 2004-2005 as a grant
2 pursuant to Chapter 42F, Hawaii Revised Statutes, to the Legal
3 Aid Society of Hawaii.

4 The sum appropriated shall be expended by the judiciary for
5 the purposes of this section.

6 SECTION 11. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$100,000 or so much
8 thereof as may be necessary for fiscal year 2004-2005 as a grant
9 pursuant to Chapter 42F, Hawaii Revised Statutes, to the Hawaii
10 County Economic Opportunity Council.

11 The sum appropriated shall be expended by the office of
12 community services of the department of labor and industrial
13 relations for the purposes of this section.

14 SECTION 12. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$117,501 or so much
16 thereof as may be necessary for fiscal year 2004-2005 as a grant
17 pursuant to Chapter 42F, Hawaii Revised Statutes, to Kauai
18 Economic Opportunity, Inc.

19 The sum appropriated shall be expended by the office of
20 community services of the department of labor and industrial
21 relations for the purposes of this section.

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1 SECTION 14. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$20,000 or so much
3 thereof as may be necessary for fiscal year 2004-2005 as a grant
4 pursuant to Chapter 42F, Hawaii Revised Statutes, to Assistive
5 Technology Resource Centers of Hawaii.

6 The sum appropriated shall be expended by the office of
7 community services of the department of labor and industrial
8 relations for the purposes of this section.

9 SECTION 15. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$300,000 or so much
11 thereof as may be necessary for fiscal year 2004-2005 as a grant
12 pursuant to Chapter 42F, Hawaii Revised Statutes, to ORI Anuenue
13 Hale, Inc.

14 The sum appropriated shall be expended by the office of
15 community services of the department of labor and industrial
16 relations for the purposes of this section.

17 SECTION 16. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$25,000 or so much
19 thereof as may be necessary for fiscal year 2004-2005 as a grant
20 pursuant to Chapter 42F, Hawaii Revised Statutes, to the
21 Volunteer Resource Center of Hawaii.

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1 The sum appropriated shall be expended by the office of
2 community services of the department of labor and industrial
3 relations for the purposes of this section.

4 SECTION 17. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$50,000 or so much
6 thereof as may be necessary for fiscal year 2004-2005 as a grant
7 pursuant to Chapter 42F, Hawaii Revised Statutes, to Aha Hui E
8 Kala.

9 The sum appropriated shall be expended by the parks
10 administration program of the department of land and natural
11 resources for the purposes of this section.

12 SECTION 18. There is appropriated out of federal funds the
13 sum of \$55,232 or so much thereof as may be necessary for fiscal
14 year 2004-2005 for two temporary plant quarantine inspector I
15 (dog handler) positions for brown tree snake interdiction (AGR
16 122 - plant, pest, and disease control).

17 The sum appropriated shall be expended by the department of
18 agriculture for the purposes of this section.

19 SECTION 19. There is appropriated out of interdepartmental
20 transfer funds the sum of \$29,616 or so much thereof as may be
21 necessary for fiscal year 2004-2005 for one permanent plant

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1 quarantine inspector I (dog handler) position to meet the
2 requirements of the record of decision for Kahului airport
3 expansion (AGR 122 - plant, pest, and disease control).

4 The sum appropriated shall be expended by the department of
5 agriculture for the purposes of this section.

6 SECTION 20. There is appropriated out of:

7 (1) The irrigation system revolving fund the sum of
8 \$10,546; and

9 (2) The agricultural park special fund the sum of \$10,546,
10 or so much thereof as may be necessary for fiscal year 2004-2005
11 for one temporary clerk typist II position (.50 FTE per means of
12 financing) required for the operation of the irrigation systems
13 and agricultural park programs (AGR 141 - agricultural resource
14 management).

15 The sums appropriated shall be expended by the department
16 of agriculture for the purposes of this section.

17 SECTION 21. There is appropriated out of the certification
18 services revolving fund the sum of \$74,052 or so much thereof as
19 may be necessary for fiscal year 2004-2005 for three temporary
20 agricultural commodity aid I positions relating to seed

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certification and papaya export certification (AGE 151 - quality and price assurance).

The sum appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 22. There is appropriated out of the public utilities commission special fund the sum of \$104,664 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent engineer IV and one permanent investigator IV positions for the regulation of public utility service companies operating in the state (EUF 901 - transportation, communications, and utilities).

The sum appropriated shall be expended by the department of budget and finance for the purposes of this section.

SECTION 23. There is appropriated out of the compliance resolution fund the sum of \$1,891,438 or so much thereof as may be necessary for fiscal year 2004-2005 for four permanent positions and for other current expenses to operate the program (CCA 102 - cable television).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

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SECTION 24. There is appropriated out of the compliance resolution fund the sum of \$2,473,837 or so much thereof as may be necessary for fiscal year 2004-2005 for twenty-three permanent positions and for other current expenses to operate the program (CCA 103 - consumer advocate for communication, utilities, and transportation services).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 25. There is appropriated out of the compliance resolution fund the sum of \$2,153,836 or so much thereof as may be necessary for fiscal year 2004-2005 for twenty-nine permanent positions and for other current expenses to operate the program (CCA 104 - financial institution services).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 26. There is appropriated out of the compliance resolution fund the sum of \$7,315,818 or so much thereof as may be necessary for fiscal year 2004-2005 for seventy-six permanent positions and for other current expenses to operate the program (CCA 106 - insurance regulatory services).

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1 The sum appropriated shall be expended by the department of
2 commerce and consumer affairs for the purposes of this section.

3 SECTION 27. There is appropriated out of the compliance
4 resolution fund the sum of \$1,348,447 or so much thereof as may
5 be necessary for fiscal year 2004-2005 for sixteen permanent and
6 four temporary positions and for other current expenses to
7 operate the program (CCA 110 - office of consumer protection -
8 unfair and deceptive practices).

9 The sum appropriated shall be expended by the department of
10 commerce and consumer affairs for the purposes of this section.

11 SECTION 28. There is appropriated out of the compliance
12 resolution fund the sum of \$5,477,813 or so much thereof as may
13 be necessary for fiscal year 2004-2005 for seventy-one permanent
14 and ten temporary positions and for other current expenses to
15 operate the program (CCA 111 - business registration).

16 The sum appropriated shall be expended by the department of
17 commerce and consumer affairs for the purposes of this section.

18 SECTION 29. There is appropriated out of the compliance
19 resolution fund the sum of \$5,197,764 or so much thereof as may
20 be necessary for fiscal year 2004-2005 for seventeen permanent
21 and fifty-one temporary positions and for other current expenses

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1 to operate the program (CCA 112 - regulated industries
2 complaints office).

3 The sum appropriated shall be expended by the department of
4 commerce and consumer affairs for the purposes of this section.

5 SECTION 30. There is appropriated out of the compliance
6 resolution fund the sum of \$4,820,442 or so much thereof as may
7 be necessary for fiscal year 2004-2005 for forty permanent and
8 nine temporary positions and for other current expenses to
9 operate the program (CCA 121 - general support - protection of
10 the consumer).

11 The sum appropriated shall be expended by the department of
12 commerce and consumer affairs for the purposes of this section.

13 SECTION 31. There is appropriated out of the compliance
14 resolution fund the sum of \$60,960 or so much thereof as may be
15 necessary for fiscal year 2004-2005 for increases in fringe
16 benefit costs (CCA 105 - professional, vocational, and personal
17 services).

18 The sum appropriated shall be expended by the department of
19 commerce and consumer affairs for the purposes of this section.

20 SECTION 32. There is appropriated out of federal funds the
21 sum of \$367,548 or so much thereof as may be necessary for

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1 fiscal year 2004-2005 for two permanent building maintenance
2 helper, two permanent truck driver, one permanent plumber I, one
3 permanent carpenter I, one permanent general construction
4 maintenance supervisor, two permanent building maintenance
5 worker II, one permanent automotive mechanic I, one permanent
6 electrician I, and one permanent social services aid III
7 positions for the operation and maintenance of public housing
8 (HMS 220 - rental housing services).

9 The sum appropriated shall be expended by the department of
10 human services for the purposes of this section.

11 SECTION 33. There is appropriated out of the state low
12 income housing revolving fund the sum of \$125,340 or so much
13 thereof as may be necessary for fiscal year 2004-2005 for one
14 permanent building maintenance helper, one permanent general
15 construction maintenance supervisor I, one permanent procurement
16 and supply specialist III, and one permanent general laborer II
17 positions for the operation and maintenance of public housing
18 (HMS 220 - rental housing services).

19 The sum appropriated shall be expended by the department of
20 human services for the purposes of this section.

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SECTION 34. There is appropriated out of federal funds the sum of \$222,336 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent engineer IV, one permanent building construction inspector II, one permanent building engineer V, one permanent state housing development administrator, and one temporary housing development specialist I positions for facilities development of affordable housing (HMS 225 - private housing development and ownership).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 35. There is appropriated out of the private housing development and ownership revolving fund the sum of \$110,532 or so much thereof as may be necessary for fiscal year 2004-2005 for one temporary housing development specialist III and one temporary housing development specialist II positions for facilities development of affordable housing (HMS 225 - private housing development and ownership).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 36. There is appropriated out of revolving funds the sum of \$142,044 or so much thereof as may be necessary for

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1 fiscal year 2004-2005 for one permanent housing loan services
2 officer, three permanent clerk typist II, and one temporary loan
3 processing assistant I positions for the operation and delivery
4 of affordable housing (HMS 227 - housing finance).

5 The sum appropriated shall be expended by the department of
6 human services for the purposes of this section.

7 SECTION 27. There is appropriated out of federal funds the
8 sum of \$162,516 or so much thereof as may be necessary for
9 fiscal year 2004-2005 for six permanent positions to adjudicate
10 and process disability claims of Hawaii residents for social
11 security disability insurance and social security income (HMS
12 238 - disability determination).

13 The sum appropriated shall be expended by the department of
14 human services for the purposes of this section.

15 SECTION 38. There is appropriated out of:

16 (1) The general revenues of the State of Hawaii the sum of
17 \$45,144; and

18 (2) Federal funds the sum of \$45,144,
19 or so much thereof as may be necessary for fiscal year 2004-2005
20 for one permanent registered professional nurse V (\$33,294 in
21 general funds and \$33,294 in federal funds) and one permanent

[illegible]

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1 social service assistant IV (\$11,850 in general funds and
2 \$11,850 in federal funds) positions for the delivery of adult
3 medical services (HMS 601 - adult and community care services
4 branch).

5 The sums appropriated shall be expended by the department
6 of human services for the purposes of this section.

7 SECTION 39. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$114,293 or so much
9 thereof as may be necessary for fiscal year 2004-2005 for one
10 .50 temporary health care financing assistant, two .50 permanent
11 eligibility program specialist, one permanent .50 eligibility
12 worker III, one permanent .50 account clerk II, one permanent
13 .25 regular professional nurse VI, one temporary .50 clerk
14 typist II, and two permanent .50 clerk typist II positions for
15 the assistance of medical payments (HMS 902 - general support
16 for health care payments).

17 The sum appropriated shall be expended by the department of
18 human services for the purposes of this section.

19 SECTION 40. There is appropriated out of federal funds the
20 sum of \$142,077 or so much thereof as may be necessary for
21 fiscal year 2004-2005 for one .50 temporary health care

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1 The sum appropriated shall be expended by the department of
2 labor and industrial relations for the purposes of this section.

3 SECTION 99. There is appropriated out of federal funds the
4 sum of \$70,056 or so much thereof as may be necessary for fiscal
5 year 2004-2005 for one temporary accountant and three temporary
6 clerk positions for activities related to the accounting of
7 federal fund expenditures (LSR 902 - general administration).

8 The sum appropriated shall be expended by the department of
9 labor and industrial relations for the purposes of this section.

10 SECTION 50. There is appropriated out of federal funds the
11 sum of \$53,376 or so much thereof as may be necessary for fiscal
12 year 2004-2005 for one permanent program specialist position for
13 the delivery of services to the economically disadvantaged,
14 immigrants, and refugees (LBR 903 - office of community
15 services).

16 The sum appropriated shall be expended by the department of
17 labor and industrial relations for the purposes of this section.

18 SECTION 51. If any provision of this Act, or the
19 application thereof to any person or circumstance is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act which can be given effect without the

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1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 52. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 53. This Act shall take effect upon its approval.

[This section left blank.]

[This section left blank.]

APPROVED THIS _____ DAY OF _____, 2004

GOVERNOR OF THE STATE OF HAWAII

Gov. Msg. No. 444, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 214, S.D. 3, H.D. 2, C.D. 1

On July 13, 2004, Senate Bill No. 214, entitled "Relating to Workforce Development" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill authorizes Leeward Community College to develop a program to provide services to Freely Associated States (FAS) students, as well as to the Micronesian, Marshallese, and Palauan communities at large, to ensure their success in school through cultural education, language, employment, training, and legal services.

I support the general intent of this bill to establish a program to provide training for Micronesian, Marshallese, and Palauan immigrants in Hawaii to assist them in becoming productive, gainfully employed members of our community.

I have concerns regarding this bill because it prohibits the University of Hawaii from using general funds to finance the program and specifies that this exact program must be conducted at Leeward Community College. The funds restriction conflicts with the fiscal autonomy given to the University and the mandated program conflicts with the operational autonomy usually afforded the University. In addition, the bill sets forth broad ranging responsibilities without a secure funding stream, making it difficult for the University to assure success.

Therefore, I allowed Senate Bill No. 214, S.D. 3, H.D. 2, C.D. 1 to become law as Act 225, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 445, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 2716, S.D. 1, H.D. 2, C.D. 1

On July 13, 2004, Senate Bill No. 2716, entitled "Relating to Education" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill establishes a higher education statutory analysis interim study group to review existing state laws and recommend which statutes may be consolidated, amended, or repealed. I support the general intent of this bill to improve the organizational framework of the State's higher educational statutes and, therefore, allowed the bill to become law.

However, I did not sign the bill because I am concerned that this bill's mandate comes at a time when the University is dealing with other pressing issues. Convening a study group that includes the University's president or his designee is not the best use of the University's limited resources given

the many other important issues facing the University, including addressing maintenance needs of the existing infrastructure, the demand for adequate student housing and necessary courses, and updating the University's financial plan. Furthermore, the bill provides no resources for conducting the study and requires that the work be completed prior to the start of the next legislative session. There is current statutory authority for the University to undertake this work at a later date, making this measure unnecessary. Finally, the composition of the study group fails to include representation from the Executive Branch even though its work could have significant implications on executive branch operations.

Therefore, I allowed Senate Bill No. 2716, S.D. 1, H.D. 2, C.D. 1 to become law as Act 226, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 446, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1987, H.D. 1, S.D. 1

On July 13, 2004, House Bill No. 1987, entitled "Relating to Motor Vehicles" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

House Bill No. 1987 amends section 291-21.5, Hawaii Revised Statutes, by increasing fines for owners and sun screening device installers who violate the motor vehicle sun screening device law. The bill also requires the installer to issue a certificate of compliance to the vehicle owner at the time of installation and the certificate must be stored in the vehicle. Furthermore, the certificate of the installer would be prima facie evidence of the identity of the installer and aid law enforcement in the prosecution of businesses installing illegal sun screening devices.

This bill also requires the installer to reinstall, free of charge, a sun screening device that complies with section 291-21.5 or reimburse the owner for the cost of reinstallation. When the installer is a commercial business, there appears to be a federal preemption problem with the bill. Installers that are commercial businesses are subject to the Federal Motor Vehicle Safety Standards, which prohibit a manufacturer, distributor, dealer, or vehicle repair business from applying a glazing material that is darker than the federal standard of seventy percent light transmittance level. Section 291-21.5(d)(7) and (8), Hawaii Revised Statutes, permits the installation of darker sun screening devices that have a light transmittance of only thirty-five percent.

Consequently, this bill, while making changes that will benefit law enforcement, will also compound a pre-existing preemption problem. Additionally, the law appears to prevent the prosecution of the operator of the motor vehicle and instead prosecutes the owner, which is frequently a bank or finance company.

My recommendation is that a bill should be introduced in the next legislative session to eliminate the inconsistency with the federal requirements and address the issue of who should be prosecuted for violations.

Therefore, I allowed House Bill No. 1987, H.D. 1, S.D. 1 to become law as Act 227, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 447, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1860, H.D. 1, S.D. 2, C.D. 1

On July 13, 2004, House Bill No. 1860, entitled "Relating to Child Abuse and Neglect" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is laudable in that it attempts to provide additional revenue to enhance services for the prevention and intervention of domestic violence and child abuse, as well as to increase community awareness of the problem, by allowing taxpayers to designate \$5 of state income tax refunds to be paid into various funds.

Unfortunately, I must object to the administrative burdens and policy concern that would result from this well-intended bill. There is no equivalent voluntary designation for federal income tax purposes. This goes contrary to good tax practices of conforming state returns to federal standards, thereby simplifying and streamlining compliance with tax laws.

Under the current statute, check-off provisions are required to be in the income tax return form itself, as opposed to a separate schedule. The income tax return form already contains three other check-off provisions. There is currently no space on the income tax return form to include another check-off provision. Thus, this bill will require the revision of the individual state income tax return form and instructions.

Not only will this bill require the revision of the income tax return forms and instructions, it will also affect the tax return processing and computerized systems. The costs of processing the tax returns as well as the potential for processing errors will increase. The Department of Taxation's computer system will likely have to be reprogrammed.

The amount the bill will actually generate is difficult to predict. Further, based upon experience with existing check-off provisions, participation wanes over time and the small amounts collected usually do not justify the costs necessary to implement this bill. Additionally, this bill reinforces the precedent that organizations seek direct tax funding rather than be reviewed and evaluated in the context of the annual budgeting process. Moneys provided by a check-off system bypass the normal budget process and are difficult to incorporate into the State's six-year financial plan.

Therefore, I allowed House Bill No. 1860, H.D. 1, S.D. 2, C.D. 1 to become law as Act 228, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 448, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2662, H.D. 1, S.D. 1, C.D. 1

On July 13, 2004, House Bill No. 2662, entitled "Relating to Economic Development" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill appropriates \$100,000 out of the State's general fund for fiscal year 2004-2005 to provide loans to assist new and existing businesses threatened by military base closures and realignments that encounter difficulty when seeking assistance through private or conventional lenders. The funds appropriated are to be expended by the Department of Business, Economic Development, and Tourism.

I support the general intent to encourage a healthy business climate in Hawaii. However, the intent of this specific bill is unclear. The bill in its original form provided funding to develop infrastructure for communities near military bases. The bill as re-written authorizes loans to assist businesses to "develop infrastructure" but does not define this term. Normally infrastructure refers to roads, sewer systems, and public facilities, such as schools. An appropriation of \$100,000 would not be adequate to cover most, if any "infrastructure" type projects. Even if the monies were for general business assistance, the amounts are not substantial enough to provide major relief to businesses that may be experiencing difficulties.

Secondly, this bill is yet another example of appropriations by the Legislature approved outside of the normal budget process. These expenditures have not been factored into the State's financial plan and have not been weighed against other State priorities and the general fund expenditure ceiling.

Therefore, I allowed House Bill No. 2662, H.D. 1, S.D. 1, C.D. 1 to become law as Act 229, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 449, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2292, H.D. 1, S.D. 1

On July 13, 2004, House Bill No. 2292, entitled "Relating to Fees for Electronic Filing, Signing, Serving, Certification, and Verification of Court Documents" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill establishes that the State Supreme Court shall have the power to prescribe by rule, fees for electronic filing, signing, serving, certification, and verification of documents, and that those fees shall be deposited into the judiciary computer system special fund.

I support the general intent of this bill to provide funding for upgrading the judiciary information management system project to allow more efficient processing of documents through the judicial system. I have, however, a concern regarding this bill. The deposit of these new fees into the judiciary computer system special fund diverts funds that should, and would normally, be deposited into the State's general fund. This special fund already receives fees for traffic abstracts and fees for civil filings. I believe that funds to upgrade the judiciary's computer system should be appropriated through the normal budget process, subject to other State priorities, and the general fund expenditure ceiling. We must not allow this bill to be used as an unfortunate precedent for future removal of more funds from the normal budget review process.

Therefore, I allowed House Bill No. 2292, H.D. 1, S.D. 2 to become law as Act 230, effective July 13, 2004, without my signature.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 450, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2294

On July 13, 2004, House Bill No. 2294, entitled "Relating to Fees for Administrative Costs in Traffic Cases" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill increases the administration fees in certain traffic cases and requires that these new, additional fees shall be deposited into the judiciary computer system special fund.

I support the general intent of this bill to provide funding for upgrading the judiciary information management system project to allow more efficient processing of documents through the judicial system. I have, however, a concern regarding this bill. The special fund already receives fees for traffic abstracts, and recently new fees for civil filings were established that are also to be deposited into the special fund.

This bill doubles certain administrative fees, thus increasing even further the fiscal burdens on Hawaii's taxpayers. If the Judiciary finds that additional funds are required for their system upgrades, then current and planned expenditure levels should be re-examined, and, if necessary, funds should be appropriated through the normal budget process, subject to other State priorities and the general fund expenditure ceiling.

Therefore, I allowed House Bill No. 2294 to become law as Act 231, effective July 14, 2004, without my signature.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 451, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2814, H.D. 2, S.D. 1, C.D. 1

On July 13, 2004, House Bill No. 2814, entitled "Relating to Kalaupapa Settlement" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to require the Department of Health to report annually to the Legislature on its efforts to improve conditions for Kalaupapa residents. The report is to discuss improvement in addressing medical and other needs, improvement in the living environment, management of state resources including benefits given to employees, stewardship of State property, development of policies for the Kalaupapa store, establishment of a complaint system, the performance of the Kalaupapa administrator, and justification for employee air travel and trail pay. The bill also requires separate tracking of patient and nonpatient costs.

This bill raises three concerns. First, the Department of Health has already agreed to make the operational improvements required by this bill and, in fact, had begun implementing many of the recommended changes in 2003. The department expects that many of the improvements will have been addressed by the next legislative session or within the next two years. To require the department to report on these matters on a permanent basis is unnecessary and inappropriate. We encourage the Legislature to sunset this measure after corrective actions are taken.

Second, the bill impinges on the responsibilities of the State as an employer. Employee performance reports and approval of employee air travel requests are the responsibility of the employing agency within the Executive Branch. While the Legislature has the authority to ask for this kind of information, it is inappropriate to require annual reports on these matters.

Third, the bill requires separate tracking of patient and nonpatient costs. The Department of Health testified throughout the legislative session that the department is unable at this time to separate patient and employee utility costs such as electricity, phone, and water. Without the ability to produce this kind of reporting, it is inappropriate for the Legislature to mandate the Department of Health to produce a report they are incapable of generating. At best, the department will have to provide pro-rata estimates.

Therefore, I allowed House Bill No. 2814, H.D. 2, S.D. 1, C.D. 1 to become law as Act 232, effective July 13, 2004, without my signature. As stated above, we recommend legislation to sunset this measure as soon as the concerns raised in this bill have been properly and fully addressed.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 452, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 2404, S.D. 2, H.D. 1, C.D. 1

On July 13, 2004, Senate Bill No. 2404, entitled "Making an Appropriation for Expenses of the 2005 National Association of Counties Meeting in Honolulu," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill appropriates \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the City and County of Honolulu to host the 2005 National Association of Counties Annual Conference and Exposition. The State funds will be matched by the City and County of Honolulu on a dollar-for-dollar basis, according to the bill. The legislation also provides that the City and County of Honolulu shall be the expending entity for the State-appropriated monies.

I support the general intent of this bill to encourage the counties to attract businesses, meetings, and conventions to our state as a means of achieving increased visitor exposure and spending. However, I have several concerns with this bill and the precedent it may set. First, the bill makes an appropriation from the State's general fund, the source of capital that is reserved primarily for operations of the State. Further, this measure gives the County of Honolulu sole authority for expending these State monies. The counties have a variety of sources of funding for local events and those should be exhausted prior to seeking funding from the State.

Additionally, the appropriation was not considered in the State budget prioritizing process and, therefore, was approved by the Legislature outside of the normal budget cycle and was not considered under the annual appropriations review for inclusion in the State's six-year financial plan.

Therefore, I allowed Senate Bill No. 2404, S.D. 2, H.D. 1, C.D. 1 to become law as Act 233, effective July 13, 2004, without my signature.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 453, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1765, H.D. 1, S.D. 1, C.D. 1

On July 13, 2004, House Bill No. 1765, entitled "A Bill for an Act Relating to Government Boards, Commissions, and Agencies," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill requires the term of a member of certain boards, commissions, or agencies to expire upon the failure of the member, without valid excuse, to attend three consecutive meetings and where, due to the member's absence, the board failed to have a quorum and thus could not conduct its business. The bill allows the board chair or the chair's designee to determine if the board member had a valid excuse for the absence.

I support the general intent of this bill to encourage individuals who have agreed to serve as board members to take their board membership seriously by attending the board's meetings. However, I have several concerns that are raised, but not answered, by the bill. The bill does not provide standards for deciding what is an excusable absence. It leaves that determination entirely to the discretion of the board chair or the chair's designee. As a consequence, this bill may be unevenly applied to the various boards and commissions that conduct the State's business.

Moreover, the bill does not provide a mechanism or process for notifying the board member that the member's appointment is in jeopardy or has expired, nor does it provide mechanism for notifying the Governor of a vacancy in a timely manner. Finally, I am concerned as to the effectiveness of the bill. If the purpose is to encourage attendance at board meetings, then it should not be relevant whether the three consecutive absences result in lack of a quorum. Three consecutive absences may indicate a lack of interest on the member's part, even if the board is able to conduct its business in the member's absence.

Therefore, I allowed House Bill No. 1765, H.D. 1, S.D. 1, C.D. 1 to become law as Act 234, effective July 13, 2004, without my signature.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 454, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2181, H.D. 2

On July 13, 2004, House Bill No. 2181, entitled "Relating to Housing Financing Programs" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to allow the Housing and Community Development Corporation of Hawaii ("HCDCH") to issue bonds for any program whose primary purpose is to provide housing for active or retired United States military personnel and their families. Also, this bill limits the amount of such bond issuances to \$2,000,000,000.

This bill is objectionable because this bill does not constitute a legislative authorization for HCDCH to issue \$2,000,000,000 in housing revenue bonds for military housing projects. In Standing Committee Report No. 733-04, the House Committee on Finance specifically pointed out that the \$2,000,000,000 amount is not an authorization to issue bonds but a cap on the amount of housing revenue bonds that can be issued for military housing projects. As such, this increase has no actual effect to the amount of bonds that may be issued by HCDCH.

Therefore, I allowed House Bill No. 2181, H.D. 2 to become law as Act 235, effective July 13, 2004, without my signature.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 455, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2286, HD 1, SD 1

On July 13, 2004, House Bill No. 2286, entitled "Relating to the Hawaii Commission for National and Community Service," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

I allowed House Bill No. 2286, H.D. 1, S.D. 1 to become law as Act 236.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 456, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 3230, S.D. 2, H.D. 1, C.D. 1

On July 13, 2004, Senate Bill No. 3230, entitled "Relating to Early Childhood Care," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to appropriate \$200,000 to the Department of Human Services to establish a pilot project in East Hawaii to provide early childhood care services for children under age five and their families in critical need areas as determined by the department.

This bill is questionable because the proposed pilot project is based on Hui Imua O Koolauloa, a program that has been in operation utilizing a multi-year federal fund grant at a cost of about \$400,000 to \$500,000 a year. The intent of the Legislature was to establish a similar program using State funds but only appropriates \$200,000 for the pilot project and then prohibits the use of those funds for planning, studies, or other strategic functions such as coordination. Further, the bill fails to provide monies for the administrative costs of operating this program, thus creating a situation where the Department of Human Services may have to divert other departmental funds to cover the administration and management of this project. Also, the Legislature has failed to demonstrate how the State would find the funds to sustain this program on a permanent, statewide basis.

While the objectives of enriching early childhood care have merit, the use of general funds for a pilot project that has the potential to expand future program requirements without realizing the potential cost impact is not prudent. Given the State's current fiscal situation, the State must exercise sound fiscal discipline and give priority to those State programs already in operation, rather than implement new programs that the State will be unable to sustain.

Therefore, I allowed Senate Bill 3230, S.D. 2, H.D. 1, C.D. 1 to become law as Act 237, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 457, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 3153, S.D. 2, H.D. 2, C.D. 1

On July 13, 2004, Senate Bill No. 3153, entitled "Making an Appropriation for Bioremediation Research," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

Senate Bill No. 3153 appropriates funds in the amount of \$250,000 for fiscal year 2004-2005 to be expended by the Research Corporation of the University of Hawaii for a pilot project on soil renutrification research on former pineapple lands in West Maui to be conducted by Maui Ag Partners. The program is to be coordinated by the Pacific Cooperative Studies Unit of the College of Tropical Agriculture and Human Resources at the University of Hawaii, provided that the appropriated amount shall be matched by non-State funds through Maui Ag Partners.

While soil renutrification may have public benefits, this bill raises concerns because it redirects State taxpayer monies to the benefit of a single private entity. This entity, Maui Land and Pineapple Company, is partially owned by individuals with high net worth who have the financial means to undertake the research proposed in the bill.

Further, this bill appropriates \$250,000 outside of the normal budget process, thereby bypassing the checks and balances that occur during the appropriations discussions. Additionally, such a large appropriation raises fiscal concerns on the potential adverse impact this expenditure may have on other State spending priorities.

Therefore, I allowed Senate Bill No. 3153, S.D. 2, H.D. 2, C.D. 1 to become law as Act 238, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 458, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 2798, H.D. 1, S.D. 2

On July 13, 2004, House Bill No. 2798, entitled "Relating to the Practice of Pharmacy," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to allow pharmacists to administer drugs by intranasal delivery and vaccines orally and by intranasal delivery. Under the current law, a properly trained pharmacist is authorized to administer drugs both

orally or by injection and vaccinations by injection, but is not authorized to administer drugs or vaccinations by intranasal delivery.

I am concerned with allowing pharmacists to engage in the intranasal vaccination of clients without the individual's medical doctor prescribing the medication. Live attenuated influenza virus (LAIV) vaccines are relatively new and can be considered volatile.

The administration of such a product could serve public health goals by providing an alternative to inactivated vaccines for appropriate persons. However, the use of live virus vaccine requires selection of appropriate patients based on age, health status, and the health status of close contacts as stipulated in the prescribing information. House Bill No. 2798 could have been strengthened in specifying appropriate safeguards to assure patient safety.

I believe the Centers for Disease Control makes a sound recommendation in advising that the use of LAIV vaccine involve the patient's physician before administering the vaccine, at least for the time being. Thus, we would encourage pharmacists to work closely with the medical community as they undertake this new responsibility.

Therefore, I allowed House Bill No. 2798, H.D. 1, S.D. 2 to become law as Act 239, effective July 13, 2004, without my signature.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 459, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 420, S.D. 1, H.D. 1, C.D. 1

On July 13, 2004, Senate Bill No. 420, entitled "Relating to State Finances," became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

I allowed Senate Bill No. 420, S.D. 1, H.D. 1, C.D. 1 to become law as Act 240.

Sincerely,

/s/
LINDA LINGLE"

Gov. Msg. No. 460, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 1611, H.D. 2, C.D. 1

On July 13, 2004, Senate Bill No. 1611, entitled "Relating to the Deposit Beverage Container Program" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to amend Chapter 342G, Hawaii Revised Statutes, *Integrated Solid Waste Management*, Part VIII, *Deposit Beverage Container Program*. This bill makes substantive amendments to the Deposit Beverage Container Program. These amendments, or adjustments, are necessary to alleviate some of the obstacles to implementing the law. Among other things, this bill will exempt distributors who annually import or manufacture less than 100,000 deposit beverage containers per year from the onerous monthly reporting requirement currently mandated for all distributors. Small businesses will now have to submit reports to the department on a semi-annual basis and this will somewhat ease the burden on small businesses to comply with the law. Senate Bill No. 1611 extends the deadline for dealers to operate a redemption center at their place of business to July 1, 2005. This bill removes the requirement that redemption centers and reverse vending machines must crush or destroy all beverage containers and remove the quarterly reporting requirement for redemption centers. Simplifying the redemption process makes the program more convenient for consumers. Extending the timeline for retailers to comply with establishing redemption centers and relieving businesses of cumbersome reporting will make the program less burdensome for businesses. Senate Bill No. 1611 also clarifies requirements regarding labeling. These amendments increase the probability that deposit containers will be labeled properly by January 1, 2005. The Department of Health is required to provide sticker labels to businesses unable to comply with the labeling requirements before the deadline.

This bill raises four concerns. The first concern involves various deposit deadlines. The bill requires distributors to begin charging dealers and customers a deposit equal to the refund value of the container "...by January 1, 2005," [emphasis added]. Then the bill clarifies that the Department of Health "...may," [emphasis added] allow dealers to begin charging customers the refund value "...beginning November 1, 2004," [emphasis added] and requires the dealer to inform the customer that the deposits paid by the customer prior to January 1, 2005 shall not be redeemable until January 1, 2005. These dates raise two concerns. A distributor may charge dealers the deposit before November 1, 2004. However, the dealer will not be able to charge the consumer that deposit amount until November 1, 2004 at the earliest. Thus, dealers may bear the five cents per container cost for several months without being able to pass along this cost to the consumer.

Additionally, once dealers are allowed to charge consumers the deposit cost after November 1, 2004, the consumer cannot take the containers to redemption center to receive a refund until after January 1, 2005. The consumer must hold the beverage containers for at least two months before obtaining the deposit refund. Since the customers are responsible for returning and obtaining the refund on the container, by not allowing the redemption for two months, the measure actually is a disincentive for consumers to recycle and redeem beverage containers. It would have been more prudent to operate and fund a consumer-friendly program that encourages and supports voluntary participation by the people of Hawaii, while not placing the weight of responsibility on businesses to ensure the success of the program.

Second, the bill specifies that accumulated funds in the Deposit Beverage Container Deposit Special Fund shall be retained in the fund unless determined by the auditor to be in excess. The bill requires the auditor to conduct management and financial audits of the fund in fiscal years 2005 and 2006 and every even numbered fiscal year thereafter. This action runs contrary to the Legislature's customary practice of determining excess amounts in special funds every year and

lapsing the surplus aggregate to the general fund to balance their budget, regardless of auditor review. It is unclear whether the Legislature's intent is to maintain the solvency of the fund or to restrain my Administration from any flexibility in the use of the fund to implement the Deposit Beverage Container Program and ensure rational budgeting practices.

Third, the bill specifies procedures to be used by the Department of Health to implement and administer the Deposit Beverage Container Program and clarifies that the procedures are to be treated as rules of the department. While I have been advised that it is within the authority of the Legislature to incorporate proposed draft administrative rules into statute, it is extremely unusual and sets a disconcerting precedent. I recognize that this bill calls for the repeal of these administrative rules on March 1, 2005. However, Chapter 91, Hawaii Revised Statutes, Administrative Directive 99-02, and my October 10, 2003 memo to the Small Business Regulatory Review Board together form a comprehensive review process for proposed administrative rules that is transparent to the public and takes into consideration the impact of administrative rules on small business. All three of these steps were circumvented by the Legislature with the incorporation of administrative rules into this bill. The rules were placed into Senate Bill No. 1611 in the conference committee without community input and without a single public hearing.

Fourth, within the administrative rules included in this bill are penalties for non-compliance with the program. These penalties include up to a \$10,000 fine for each separate offense per day and allows for administrative, civil, or criminal actions to be taken in addition to the fines. The Deposit Beverage Container Program currently in law does not include any penalty provisions. These penalty provisions were placed into Senate Bill No. 1611 during the conference committee and were not discussed in the Legislature's public hearings prior to the passage of the final conference draft. Thus, community input on this rule was not gathered in a public hearing.

While I support efforts to engage our community in meaningful recycling efforts, a limited scope recycling program that addresses only 2% of Hawaii's solid waste while costing \$30 million in the first year of implementation will not make the difference Hawaii needs to reduce and eliminate litter. This single-purpose recycling program will only address beverage containers. A comprehensive statewide recycling program that addresses all forms of solid waste materials is a more competent course of action that will yield tangible results. The Legislature has the opportunity to consider statewide recycling programs in the next legislative session. In the meantime, this bill addresses some of the beverage industries' and Department of Health's concerns regarding the implementation of the existing Deposit Beverage Container Program.

Therefore, I allowed Senate Bill No. 1611, H.D. 2, C.D. 1 to become law as Act 241, effective July 13, 2004, without my signature. While this bill is not the comprehensive recycling program I would prefer, the alternative would be to let Act 176, Session Laws Hawaii, 2002 take effect unamended. Act 176, as currently written, has numerous flaws and obstacles that had to be addressed before implementation could occur. This bill will address some of those flaws.

Sincerely,

/s/

LINDA LINGLE

Gov. Msg. No. 461, informing the House that on July 13, 2004, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 3193, S.D. 2, H.D. 2, C.D. 1

On July 13, 2004, Senate Bill No. 3193, entitled "Relating to Consumers" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The main purposes of this bill are: (1) repeal the maximum pre-tax gasoline retail price cap originally enacted by Act 77, Session Laws of Hawaii 2002; (2) revise the formula for calculating the maximum pre-tax wholesale price cap and extend its applicability to all grades of gasoline; (3) change the implementation date for the maximum pre-tax wholesale price cap from July 1, 2004 to September 1, 2005; and (4) establish a legislative task force to investigate the petroleum industry and its operations on the neighbor islands.

In section 1 of Senate Bill No. 3193, the Legislature stated that, since the passage of Act 77, it has found that there is competition at the retail level. The Legislature stated that it also found that the problem of high gasoline prices is principally due to a lack of vigorous competition in the wholesale market. The Legislature, therefore, determined that revisions to Act 77 were necessary and decided to further delay the implementation of gas caps until September 1, 2005. The fact the Legislature passed a measure that will not take effect for over a year and this replaced a bill enacted in 2002 with a two-year delayed start indicates that even supporters of gas caps were not sure of what they were doing.

The revised price caps contained in this bill could create adverse effects for Hawaii's gasoline consumers. First, the price caps may bring unwanted and unwarranted volatility to the Hawaii market. The bill's price caps are benchmarked to gasoline spot prices in three volatile spot markets, namely the New York, Gulf Coast, and Los Angeles spot markets. These markets also exhibit seasonal pricing changes that have no factual nexus to Hawaii. In effect, the bill links Hawaii to external and unrelated markets.

Second, the new benchmark prices will increase the risk of supply shortages beyond the shortage risks posed by Act 77 price caps. The use of price caps, coupled with the low Location Adjustment Factor of \$.04 per gallon for shipping, may provide Hawaii refiners with the motivation to ship all grades of gasoline to the higher value West Coast markets. This motivation could bring serious consequences to the entire state.

Third, wholesale caps alone will not achieve the bill's objective "to enhance the consumer welfare by fostering the opportunity for prices that reflect and correlate with competitive market conditions." Even if the wholesale price caps could somehow lower wholesale prices, there is no guarantee that they would "enhance consumer welfare," which is presumed to mean lower retail prices. Indeed, it is more likely that integrated wholesale/retail marketers would recoup losses from capped wholesale prices by raising uncapped retail prices in their retail outlets.

Moreover, a common problem with price controls is that the price charged has a strong tendency to be at the price cap, even if costs are falling. The phenomenon occurs in order to make up for losses when the caps limit margins. In addition, price caps can legitimize this type of price setting, because the price caps are viewed as an "implied permission" to price at what government allows.

Fourth, the bill fails to recognize that Hawaii's wholesale gasoline market has a diverse, complicated, and intricate structure. An inaccurately differentiated wholesale price cap could cause major structural market changes. This could mean potential loss of service to small jobbers and re-concentrate the wholesale market, reducing or eliminating improvements in wholesale competition. In addition, the complicated nature of Hawaii's wholesale gasoline market makes it less transparent for purposes of monitoring and enforcing price caps.

The bill's logic, which attributes high gasoline price primarily to a lack of vigorous competition in Hawaii's wholesale market, fails to recognize changes in the market. For example, Aloha Petroleum's import terminal that opened in 1998 spurred wholesale competition in Hawaii. Aloha first imported gasoline and in 2001 used the terminal to leverage a supply agreement with Chevron at or below the import parity price. Increased competition is reflected in new market entrants, most notably Aloha and Costco.

Price controls cannot address the significant challenges Hawaii faces, such as increased crude oil prices buoyed by an unstable Middle East, strong international demand, stagnant local refining capacity, reduced import options, and a variety of national, regional and state environmental specifications that create requirements for specialty petroleum products.

Finally, price caps and the anti-business message they send are likely to discourage investments vital to the fostering and retention of a robust economy in this state. The main benefit of allowing SB 3193 to become law is the fact that this bill postpones the price caps until September 1, 2005.

Therefore, I allowed Senate Bill No. 3193, S.D. 2, H.D. 2, C.D. 1 to become law as Act 242, effective July 13, 2004, without my signature. My Administration will introduce legislation in the next session to repeal this act.

Sincerely,

/s/

LINDA LINGLE"

Gov. Msg. No. 462, transmitting the Housing and Community Development Corporation of Hawaii's Funds Report for fiscal year ending June 30, 2003.

Gov. Msg. No. 463, transmitting the Hawaii Income Patterns – Individuals 2002 prepared by the Department of Taxation.

Gov. Msg. No. 464, transmitting the Report to the Twenty-second Legislature, State of Hawaii, 2004, pursuant to Act 200, Section 30, Session Laws of Hawaii 2003, Requesting Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree Made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or Any Other Agent of the United States Judiciary – For the Month of March 2004.

Gov. Msg. No. 465, transmitting the report of the Status of the Environmental Health Education Fund, as submitted by the Department of Health.

SENATE COMMUNICATIONS RECEIVED AFTER ADJOURNMENT
OF THE 2004 LEGISLATURE SINE DIE

Sen. Com. No. 789, informing the House that the Senate has on May 6, 2004, reconsidered its action taken on April 13, 2004, in disagreeing to the amendments proposed by the House to the following Senate Bill, and has moved to agree to the amendments, and that said bill has this day passed Final Reading:

S.B. 2895 "RELATING TO PEST CONTROL."
SD 1, HD 1

Sen. Com. No. 790, informing the House that the following bills have passed Final Reading in the Senate:

S.B. No. 2551, HD 1, CD 1
"MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS."

S.B. No. 459, SD 1, HD 1, CD 2
"RELATING TO CAMPAIGN SPENDING."

S.B. No. 2556, HD 1, CD 2
"RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS."

H.B. No. 2002, HD 2, SD 1, CD 2
"RELATING TO EDUCATION."

Sen. Com. No. 791, informing the House that the Senate has on May 3, 2004, reconsidered its action taken on March 30, 2004 in disagreeing to the amendments proposed by the House to the following Senate Bill, and has moved to agree to the amendments, and that on May 6, 2004, said bill passed Final Reading:

S.B. 2983 "RELATING TO CONFORMITY OF THE
SD 2, HD 1 HAWAII INCOME TAX LAW TO THE
INTERNAL REVENUE CODE."

Sen. Com. No. 792, informing the House that the Senate has on May 3, 2004, reconsidered its action taken on April 15, 2004 in disagreeing to the amendments proposed by the House to the following Senate Bill, and has moved to agree to the amendments, and that on May 6, 2004, said bill passed Final Reading:

S.B. 2474 "RELATING TO RENEWABLE ENERGY."
SD 3, HD 2

Sen. Com. No. 793, informing the House that the Senate has on May 3, 2004, reconsidered its action taken on April 27, 2004 in disagreeing to the amendments proposed by the House to the following Senate Concurrent Resolution, and has moved to agree to the amendments, and that on May 6, 2004, said resolution was adopted:

S.C.R. 199 "REQUESTING THE HAWAII WORK
HD 1 FORCE DEVELOPMENT COUNCIL, THE
UNIVERSITY OF HAWAII, AND VSA
ARTS OF HAWAII-PACIFIC TO JOINTLY
CONVENE A TASK FORCE TO
EXAMINE STRATEGIES FOR SYSTEMS
CHANGE THAT WILL CREATE ACCESS
TO SMALL BUSINESS DEVELOPMENT
AND CAREERS IN CREATIVE
INDUSTRIES FOR PEOPLE WITH
DISABILITIES IN HAWAII."

Sen. Com. No. 794, transmitting S.R. No. 134, entitled: "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE," which was adopted by the Senate on May 6, 2004.

DEPARTMENTAL and MISCELLANEOUS COMMUNICATIONS RECEIVED
AFTER ADJOURNMENT OF THE 2004 LEGISLATURE SINE DIE

Departmental Communications

Dept. Com. No. 33, from Marion M. Higa, State Auditor, Office of the Auditor, transmitting their report, Follow-Up Audit of the Custodial Services Programs of the Department of Accounting and General Services, the Judiciary, the Department of Education, and the University of Hawaii.

Dept. Com. No. 34, from David Iha, Executive Administrator and Secretary of the Board of Regents, acknowledging receipt of House Concurrent Resolution No. 158, as adopted by the House of Representatives and the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004.

Dept. Com. No. 35, from D. B. Griffin III, Commissioner of Financial Institutions, Department of Commerce and Consumer Affairs, submitting the 2003 Annual Report and Directory of State-Chartered Financial Institutions compiled by the Division of Financial Institutions.

Dept. Com. No. 36, from David Iha, Executive Administrator and Secretary of the Board of Regents, University of Hawaii, acknowledging receipt of House Concurrent Resolution No. 84, as adopted by the House of Representatives and the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004.

Dept. Com. No. 37, from Aaron S. Fujioka, Administrator, State Procurement Office, compiling the fiscal year 2004 "Report of Health and Human Services Contracts Procured Pursuant to Chapter 103F, HRS."

Dept. Com. No. 38, from David McClain, Acting President, University of Hawaii, transmitting their response to the Annual Report to the Legislature on Tuition Waivers for 2002-2003, Section 304-16.5, Hawaii, Revised Statutes.

Dept. Com. No. 39, from Rodney K. Haraga, Director of Transportation, Department of Transportation, transmitting the PORT HAWAII Handbook.

Dept. Com. No. 40, from the Department of the Attorney General, Crime Prevention and Justice Assistance Division, transmitting the Crime in Hawaii 2003: A Review of Uniform Crime Reports.

Miscellaneous Communicaitons

Misc. Com. No. 7, from Matt Bettenhausen, Director for State and Territorial Coordination, U.S. Department of Homeland Security, acknowledging receipt of resolutions regarding Homeland Security.

Misc. Com. No. 8, from Brian K. Nakamura, Chair, Hawaii State Labor Relations Board, transmitting copies of HLRB Informational Bulletin No. 42, which provides, by employing jurisdictions, the number of public employees in each of the 13 collective bargaining units established by Hawaii Revised Statutes 89-6(a).

Misc. Com. No. 9, from Cynthia C. Dougherty, Director, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, acknowledging receipt of House Resolution No. 162, HD1, which was passed by the Hawaii House of Representatives during its 2004 Session.

Misc. Com. No. 10, from Jose Antonio Ocampo, Under Secretary-General, Department of Economic and Social Affairs, acknowledging the receipt of House Concurrent Resolution No. 153, HD 1, which was passed by the House of Representatives and Senate of the Twenty-second Legislature of the State of Hawaii.

Misc. Com. No. 11, from Janice K. Brewer, Secretary of State, State of Arizona, transmitting their House Concurrent Memorial 2003 as passed by the Forty-sixth Legislature of the State of Arizona, Second Regular Session.

Misc. Com. No. 12, from Pat Irons, Manager, Government Relations Response, United States Postal Service, responding on behalf of Postmaster General John E. Potter, acknowledging receipt of HCR No. 47 recommending that Honolulu be given consideration as the location for the first-day-of-issue ceremony being planned for the Lunar New Year Series "souvenir sheet" that will be issued in January 2005.

Misc. Com. No. 13, from Patricia Kuffler, Public Affairs Officer, United States Mission to the United Nations, acknowledging receipt of a resolution adopted by the Twenty-second Legislature of the State of Hawaii on establishing in Hawaii a center for the advancement of global health, welfare, education and peace for children and families.

Misc. Com. No. 14, from the U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, California Service Center, acknowledging receipt of HR No. 88, and stating the following:

"The California Service Center is responding to your inquiry from 5/11/2004 regarding the above petition for Bowpac Holding LLC. The petition was re-opened and approved. In addition, a new petition was filed and approved on 7/13/2004 extending the E2 visa until 1/11/2005. An approval notice was mailed to the petitioner, Bowpac Holding LLC, at the attention of Duncan Hamilton. This response concludes the Congressional Liaison Unit's action on your inquiry."