

**SCRep. 535-04      Judiciary on H.B. No. 2472**

The purpose of the bill is to allow the continued sale of syringes for the prevention of disease by making permanent the provisions of Act 292, Session Laws of Hawaii 2001 (SLH 2001).

The Department of Health, Harm Reduction Hawaii, Maui AIDS Foundation, CHOW Project, Life Foundation, Gregory House Programs, Association for Professionals in Infection Control and Epidemiology, Inc., and Hepatitis Prevention, Education, Treatment and Support Network of Hawaii, and two concerned individuals testified in support of this bill.

Your Committee finds that this measure will keep in effect a law that helps prevent the transmission of blood-borne diseases.

Your Committee has amended the bill by:

- (1) Providing that Act 292, SLH 2001, shall be permanent; and
- (2) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2472, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2472, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 536-04      Judiciary on H.B. No. 1892**

The purpose of this bill is to prohibit the exclusion or discrimination of students in public school athletics and educational or recreational programs on the basis of sexual orientation.

The Hawaii State Teachers Association, League of Women Voters of Hawaii, First Unitarian Church, PFLAG-Oahu, Civil Unions-Civil Rights Movement, and seven concerned citizens testified in support of this bill. The Hawaii Civil Rights Commission supported the intent of this measure and suggested amendments. The Department of Education opposed this bill.

Your Committee finds that discrimination against students in our public schools based on sexual orientation should not be tolerated. No student should be deprived of the benefits of any educational program, student activities and services, and extracurricular programs on the basis of race, sex, national origin, disability, sexual orientation, or religion. Moreover, students should be free from discriminatory harassment that interferes with their ability to participate in school programs.

Your Committee further finds that Article X, section 1 of the Constitution of the State of Hawaii prohibits discrimination in public educational institutions on the basis of race, religion, sex, or ancestry. However, statutory protection is also necessary for students who face discrimination based on national origin, disability, and sexual orientation. Your Committee further finds that the State's policy prohibiting discriminatory harassment in our public schools should be specifically stated in law, in the same manner that discriminatory harassment is prohibited in the employment setting in chapter 378, Hawaii Revised Statutes (HRS).

Your Committee has amended this bill by removing its contents and by:

- (1) Inserting a nondiscrimination policy that prohibits discrimination against students on the basis of race, religion, ancestry, national origin, disability, sex, or sexual orientation in any educational or recreational program, extracurricular activity, student services, or any other program or activity in the public schools;
- (2) Defining discrimination to include harassment and adding a definition for harassment;
- (3) Defining sexual orientation consistent with the definition used in employment practices under chapter 378, HRS; and
- (4) Clarifying that this nondiscrimination policy applies to students attending public schools, including new century chartered schools.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1892, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1892, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 537-04      Judiciary on H.B. No. 2385**

The purpose of this bill is to allow state and federal agencies that administer programs under Title IV-D of the Social Security Act to access vital statistics records maintained by the Department of Health's (DOH) Office of Health and Status Monitoring.

DOH, the Department of the Attorney General, and Department of Human Services testified in support of this bill.

Your Committee finds that this measure is designed to assist the Child Support Enforcement Agency in its efforts to enforce child support and comply with federal requirements.

Your Committee has amended this bill by making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2385, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2385, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 538-04      Judiciary on H.B. No. 2495**

The purpose of this bill is to enhance natural resource protection by:

- (1) Allowing federal agencies, with the approval of the Department of Land and Natural Resources (DLNR) and the landowner, to shoot animals and birds from aircraft for conservation programs; and
- (2) Changing the fine for the misdemeanor offense of hunting from aircraft from a maximum of \$1000 to a minimum of \$500.

DLNR, Coordinating Group on Alien Pest Species, Hawaii Audubon Society, Nature Conservancy of Hawai'i, and West Maui Mountains Watershed Partnership testified in support of this measure. Big Island Gun Dogs, Farm Sanctuary, Hawaii Hunters Advisory Council, Hawaii Rifle Association, Animal Rights Hawaii, and several concerned individuals testified in opposition to this measure. The Hawaiian Humane Society commented on the bill and suggested amending the bill to assure that animals are not allowed to suffer needlessly.

Your Committee finds that aerial control of feral animals, especially in remote forest locations inaccessible to public hunting, is warranted to protect watershed resources, but only as a last resort. This measure has the effect of authorizing skilled federal employees to assist in functions currently performed by state workers.

Several testifiers indicated that members of the hunting community stand ready, willing, and able to provide assistance in the control of feral animals, and expressed concern at being overlooked as an available resource. Your Committee reiterates that aerial animal control is a drastic measure, to be undertaken by the government agency as a last resort, if, after communication and consultation with private hunters, a determination is made that hunters would be unable to gain safe access.

Your Committee has amended this measure, using suggestions made by the Hawaiian Humane Society, by:

- (1) Requiring DLNR to promulgate guidelines to minimize the targeted animals' suffering; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2495, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2495, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.  
(Representative Herkes voted no.)

**SCRep. 539-04      Judiciary on H.B. No. 2375**

The purpose of the bill is to discourage illegal dumping by making it a class C felony offense for any person to:

- (1) Knowingly dispose of certain amounts of solid waste anywhere other than a permitted solid waste management system without the written approval of the Director of Health (Director); and
- (2) Knowingly dispose of solid waste anywhere other than a permitted solid waste management system without the written approval of the Director, for which the expense of recovering, removing, restoring, and lawfully disposing of the solid waste exceeds \$1,500.

The Department of the Attorney General and Department of Health supported this bill. The Sierra Club, Hawaii Chapter, and the Land Use Research Foundation of Hawaii supported the measure with amendments. The Office of the Public Defender submitted comments.

Your Committee has amended the bill by:

- (1) Adding a savings clause because the bill creates a new felony offense;
- (2) Inserting a defective effective date; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2375, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2375, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.  
(Representative Herkes voted no.)

**SCRep. 540-04      Judiciary on H.B. No. 1713**

The purpose of this bill is to prohibit net fishing in Kahului Harbor.

Your Committee received testimony and a petition in support of this bill signed by numerous concerned individuals. The Office of Hawaiian Affairs and a concerned individual testified in opposition to this measure. Your Committee received a separate petition opposing this bill that was signed by numerous concerned individuals. The Department of Land and Natural Resources (DLNR) testified in opposition to this measure, but expressed support for this bill's overall concept.

Your Committee has amended this bill by inserting:

- (1) An effective date of July 1, 2006, to allow DLNR to complete implementation of statewide regulations governing lay nets (panel gill nets that are fished passively); and
- (2) A drop dead provision to provide for automatic repeal of this measure in the event that the lay net regulations are adopted prior to the stated effective date.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1713, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1713, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.  
(Representative Thielen voted no.)

**SCRep. 541-04      Judiciary on H.B. No. 2985**

The purpose of this bill is to provide for a more diverse and balanced outlook of the Land Use Commission (LUC) when deliberating on important land use decisions in the State, by allowing the Governor to select LUC members from lists provided by:

- (1) The Board of Trustees of the Office of Hawaiian Affairs;
- (2) The Speaker of the House of Representatives;
- (3) The President of the Senate;
- (4) The House Minority Leader; and
- (5) The Senate Minority Leader.

This bill is to take effect upon ratification of a constitutional amendment changing the appointment process for LUC members.

The Office of Hawaiian Affairs submitted testimony in support of this measure. The Office of Planning of the Department of Business, Economic Development, and Tourism and Hawaii Leeward Planning Conference opposed this measure. The LUC offered comments.

Your Committee finds that:

- (1) The lists of nominees provided to the Governor should represent all of the counties to enable the Governor to maintain the required geographic diversity on the LUC; and
- (2) The changes effected by this bill do not require a constitutional amendment.

Your Committee has amended this bill by:

- (1) Specifying that each list of nominees should include at least one person from each county;
- (2) Removing the provision specifying that this bill take effect upon ratification of a constitutional amendment; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2985, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2985, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.  
(Representatives Finnegan, Marumoto and Thielen voted no.)

**SCRep. 542-04      Judiciary on H.B. No. 2250**

The purpose of the bill is to strengthen the law pertaining to driving under the influence of an intoxicant (DUI) by:

- (1) Requiring habitual DUI offenders to:
  - (a) Pay a driver education assessment;
  - (b) Be assessed for substance abuse or dependence; and
  - (c) Obtain treatment if necessary, at the offender's own expense;
- (2) Prohibiting the issuance of a new driver's license to habitual DUI offenders until the license revocation period expires;
- (3) Permitting the court to order a DUI offender to reimburse cost of blood or urine testing; and
- (4) Adding conforming references to the section concerning habitual DUI offenders, to the Use of Intoxicants law.

Testimony in support of the measure was provided by Department of Transportation, Department of the Prosecuting Attorney of the City and County of Honolulu, Police Department of the City and County of Honolulu, Police Department of the County of Maui, and Mothers Against Drunk Driving. The Office of the Public Defender opposed this measure.

Your Committee finds that although a separate statute was enacted for the habitual DUI offender, which was formerly subsumed within the regular DUI offender statute, conforming references to other DUI statutes were not made. This measure will make these conforming amendments.

Your Committee has amended this bill by making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2250, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2250, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 543-04      Judiciary on H.B. No. 1770**

The purpose of the bill is to increase fines for repeatedly allowing car alarms to sound for longer than five continuous minutes.

Concerned individuals testified in support of this measure.

Your Committee finds that this measure balances the legitimate interest of preventing automobile theft against the nuisance factor of repeated activation of car alarms.

Your Committee has amended this bill by:

- (1) Reducing the proposed increase in fines by 50 percent; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1770, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1770, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 544-04      Judiciary on H.B. No. 1901**

The purpose of the bill is to provide immunity from:

- (1) Prosecution for leaving an unharmed newborn at a hospital, fire station, or police station within 72 hours of birth; and
- (2) Liability for hospitals, fire stations, and police stations, and their personnel for receiving a newborn.

Testimony in support of the measure was provided by the National Council for Adoption with concerns and the Hawaii State Commission on the Status of Women. The Department of Human Services and a concerned individual opposed the measure.

Your Committee finds that this measure will provide an alternative to mothers contemplating abandoning their newborns in unsafe public places.

Your Committee has amended the bill by making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1901, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1901, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 545-04      Education on H.B. No. 2871**

The purpose of this bill is to promote the health and well-being of public school students by:

- (1) Prohibiting smoking by public employees in public schools, on school transport, and at school-sponsored functions; and
- (2) Excluding smoking in public schools as a negotiable item for all public employees.

The Department of Health, Department of Human Resources Development, American Lung Association, Hawaii Medical Service Association, Coalition for a Tobacco Free Hawaii, and several concerned citizens submitted testimony in support of this bill. The Department of Education and Hawaii State Teachers Association supported the intent of this bill.

Your Committee has amended this measure by:

- (1) Deleting the prohibition of smoking in public areas within 25 feet of entrance gates to any public school property; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2871, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2871, H.D. 2.



Signed by all members of the Committee except Representatives Arakaki and Kahikina.

**SCRep. 546-04 Education on H.B. No. 1926**

The purpose of this bill is to:

- (1) Identify the executive director of the Hawaii Teacher Standards Board (HTSB) as the "designated state official" for purposes of the Interstate Agreement on Qualification of Educational Personnel (IAQEP); and
- (2) Make other technical conforming amendments to the IAQEP.

The Department of Education, HTSB, and Hawaii Association of Independent Schools testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1926 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Arakaki, Kahikina, Blundell and Ching.

**SCRep. 547-04 Education on H.B. No. 1925**

The purpose of this bill is to implement the recommendations of the report published by The Accord Group, LLC, pursuant to Act 238, Session Laws of Hawaii 2000, to:

- (1) Establish academic achievement, safety and well-being, and civic responsibility as goals for Hawaii's public education accountability system; and
- (2) Define civic responsibility for the purposes of the accountability system.

The Hawaii State Teachers Association submitted testimony in support of this bill. The Department of Education supported the intent of this bill.

Your Committee finds that while the general intent of this bill is sound, the definition of civic responsibility should be addressed by the Board of Education rather than codified in statute.

Your Committee has amended this bill by:

- (1) Deleting the definition of civic responsibility; and
- (2) Making technical, nonsubstantive changes for purposes of style and clarity.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1925, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1925, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Arakaki, Kahikina, Blundell and Ching.

**SCRep. 548-04 Judiciary on H.B. No. 2379**

The purpose of this bill is to amend sections of the Hawaii Rules of Evidence regarding the admissibility of testimony to conform these sections with their federal counterparts.

The Department of the Attorney General, Hawaii Pacific Health, and three concerned individuals testified in support of this bill. The Judiciary, Office of the Public Defender, and Consumer Lawyers of Hawaii opposed this measure.

Your Committee finds that this bill inspires broadly divergent opinions and merits further discussion.

Your Committee has amended this bill by:

- (1) Adding a defective effective date of July 1, 2020, to allow further discussion on this measure; and
- (2) Making technical, nonsubstantive changes for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2379, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2379, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 549-04 Water, Land Use and Hawaiian Affairs on H.B. No. 2439**

The purpose of this bill is to increase public safety by exempting the construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens from being considered as "development" under coastal zone management guidelines.

The state Department of Defense testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2439 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Waters and Thielen.

**SCRep. 550-04      Water, Land Use and Hawaiian Affairs on H.C.R. No. 12**

The purpose of this concurrent resolution is to seek prior approval of the Legislature to permit the issuance of an easement for submerged lands at Spreckelsville, Wailuku, Maui, Hawaii, for maintenance of rock groin purposes.

The Department of Land and Natural Resources (DLNR) testified in support of this measure.

During the 1920s, the Baldwin family constructed three rock groins on state-owned fast and submerged lands at the same time their main beach house was under construction.

Arapahoe Financial Plaza, LLC, current owners of the property, submitted a request to DLNR for an easement to maintain the groins in order to obtain a shoreline certification as required by the County of Maui for future improvements on their parcel.

Site inspection by a University of Hawaii Sea Grant Coastal Processes Extension Service Specialist in December, 2001, and a subsequent visit by the DLNR Coastal Lands Program Specialist in January 2002, both confirmed that removal of the groins could lead to erosion in the area, potentially affecting the historic residence, and reduce the public's recreational opportunities.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 12 and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Thielen.

**SCRep. 551-04      Finance on H.B. No. 1856**

The purpose of this bill is to appropriate funds for the University of Hawaii (UH) student caucus to hold meetings with its member campuses and constituents.

UH, UH Student Caucus, the Associated Students of Maui Community College, the Graduate Student Organization, and two concerned individuals testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1856, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro and Meyer.

**SCRep. 552-04      Finance on H.B. No. 1875**

The purpose of this bill is to appropriate funds for the Department of Education (DOE) to purchase newer, updated textbooks, and to provide a sufficient number of textbooks for every student enrolled in public schools.

DOE, Hawaii State Teachers Association, ILWU Local 142, Hawaii State Student Council, and several delegates of the Hawaii Secondary Student Conference supported this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1875, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro, Takamine, Meyer and Moses.

**SCRep. 553-04      Finance on H.B. No. 1907**

The purpose of this bill is to appropriate funds for the provision of tuition assistance to members of the Hawaii National Guard who are undergraduate students working toward a degree on any campus of the University of Hawaii (UH) system.

The State of Hawaii Department of Defense and UH testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1907, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro and Meyer.

**SCRep. 554-04      Finance on H.B. No. 1928**

The purpose of this bill is to appropriate funds to enable the Hawaii Teacher Standards Board to conduct its functions and carry out its assigned responsibilities.

The Department of Education submitted testimony supporting the intent of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1928, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro, Takamine, Meyer and Moses.

**SCRep. 555-04      Finance on H.B. No. 2286**

The purpose of this bill is to appropriate marketing funds for the administration of the Hawaii Commission for National and Community Service.

The Hawaii Commission for National and Community Service, University of Hawaii, Youth Service Hawaii, and two concerned individuals testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2286, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro and Meyer.

**SCRep. 556-04 Finance on H.B. No. 2293**

The purpose of this bill is to repeal obsolete provisions concerning interstate compacts for the supervision of adult offenders, which have been replaced by the new interstate compact for the supervision of adult offenders.

The Judiciary supported this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2293 and recommends that it pass Third Reading.

Signed by all members of the Committee.

**SCRep. 557-04 Finance on H.B. No. 2295**

The purpose of this bill is to increase the Judiciary's ability to collect delinquent payments by authorizing it to:

- (1) Contract with bonded collection agencies or licensed attorneys to collect delinquent court-ordered payments; and
- (2) Add fees or costs associated with the collection efforts to the amount due, not to exceed fifty per cent of the amount collected.

The Judiciary testified in support of this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2295, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

**SCRep. 558-04 Finance on H.B. No. 2642**

The purpose of this bill is to repeal the requirement that the Department of Education (DOE) adopt administrative rules for the Running Start Program.

DOE supported the intent of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2642 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro, Takamine, Meyer and Moses.

**SCRep. 559-04 Finance on H.B. No. 2661**

The purpose of this bill is to assist individuals and businesses situated near military installations that are undergoing realignment or closure by directing the Department of Business, Economic Development, and Tourism (DBEDT) to assist in obtaining financing for economic development projects to address the impacts of changes on these businesses and individuals.

The Chamber of Commerce of Hawaii, Malama O Wahiawa, and concerned individuals testified in support of this bill. DBEDT supported the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2661, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Nakasone, Nishimoto and Shimabukuro.

**SCRep. 560-04 Finance on H.B. No. 2292**

The purpose of this bill is to improve court operations through the application of technological advances by depositing into the Judiciary Computer System Special Fund fees prescribed by the Hawaii Supreme Court for the electronic filing, signing, serving, certification, and verification of documents.

The Judiciary testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2292, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

**SCRep. 561-04 Finance on H.B. No. 2296**

The purpose of this bill is to improve efficiency in the courts by authorizing:

- (1) The use of debit cards for payments to the courts, including bail payments; and
- (2) Courts to charge a convenience fee for payments made with debit or credit cards to help cover the cost of service fees imposed on the Judiciary by credit card companies.

The Judiciary testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2296, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

**SCRep. 562-04 Finance on H.B. No. 2715**

The purpose of this bill is to limit the amount of a supersedeas bond that a court may require a Tobacco Master Settlement Agreement signatory, successor, or affiliate to post to obtain a stay of execution of judgment pending appeal.

Altria (formerly known as Philip Morris) testified in support of this bill. The Attorney General (AG) and Coalition for a Tobacco Free Hawaii opposed this measure.

Your Committee notes that the bond limit proposed in this measure is currently \$100,000,000. However, the AG recommended raising the limit to \$150,000,000 if the Legislature is inclined to pass this measure. Your Committee believes this issue warrants further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2715, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

**SCRep. 563-04 Finance on H.B. No. 2337**

The purpose of this bill is to reduce the \$100 filing fee of a petition for a name change filed by an individual to an unspecified amount.

The Office of the Lieutenant Governor testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2337, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

**SCRep. 564-04 Judiciary on H.B. No. 2074**

The purpose of this bill is to add violations of the law on historic preservation to those violations for which small businesses may not receive a waiver or reduction of civil penalties and fines, and to specify which environmental laws also fit into that category.

The Department of Land and Natural Resources, Hawaii Chapter of the Sierra Club, and Hawaii Audubon Society submitted testimony in support of this bill. The Office of Hawaiian Affairs supported the intent of this bill.

Your Committee agrees with the intent of this bill and finds that it will help to protect Hawaii's precious environmental and cultural resources.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2074, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 565-04 Consumer Protection and Commerce on H.B. No. 2092**

The purpose of this bill is to increase the number of qualified licensed physicians in this State by:

- (1) Allowing licensure of persons who served a residency in:
  - (A) A program approved by the College of Family Physicians of Canada (CFPC); or
  - (B) A program outside the United States (U.S.) or Canada whose standards are found by the Board of Medical Examiners (BME) to be substantially equivalent to those approved by CFPC or by the Accreditation Council for Graduate Medical Education (ACGME) in the U.S.;and
- (2) Allowing persons who have completed educational and residency requirements and passed the Medical Council of Canada Qualifying Examination to be licensed to practice medicine without any further examination.

Testimony in support of this measure was received from Island Urology and a physician. The Hawaii Medical Association and Hawaii Medical Service Association supported the bill and requested amendments. BME commented and requested amendments.

Your Committee finds that most U.S. medical educators recognize that residency training accredited by either the CFPC or the Royal College of Physicians and Surgeons of Canada (RCPSC), is equivalent to residency training accredited by the ACGME in the U.S.

Further, BME testified that both the CFPC and the RCPSC should be included in the bill. CFPC, which is presently included in the bill, accredits family practice residency programs in Canada. All other specialty residency programs are accredited by RCPSC.

Your Committee has amended this measure accordingly, by including references to the RCPSC. Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2092, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2092, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 566-04 Consumer Protection and Commerce on H.B. No. 2093**

The purpose of this bill is to address the unmet oral health needs of Hawaii's low-income and uninsured communities by increasing the number of dentists and dental hygienists providing dental services in nonprofit health centers. This bill authorizes the Board of Dental Examiners (BDE) to issue, without examination, a community service license for dentists and dental hygienists to practice in:

- (1) A federally qualified health center;
- (2) The native Hawaiian health care system; or
- (3) An accredited post-secondary dental auxiliary training program.

This bill also updates statutory references regarding the accrediting body for dental colleges.

The Department of Health, State Council on Developmental Disabilities, Hawaii Primary Care Association, Hawaii Dental Association, Hawaii Dental Hygienists Association, Hawaii Medical Service Association, Good Beginnings Alliance, and Hawaii Island Dental Task Force testified in unqualified support of this measure. BDE also supported this bill, but suggested amendments.

Your Committee finds that Hawaii's community health centers serve people with incomes mostly below poverty, who live in geographically remote areas and are linguistically and culturally isolated. In recent years, there has been an expansion of dental programs at these health centers, and more are expected to open in the near future. However, these programs have experienced difficulty in recruiting and retaining qualified dental care professionals. The federal government has designated all of the islands of Hawaii, Maui, Molokai, and Kauai, as well as Kalihi-Palama in Honolulu as dental health professional shortage areas.

This bill would expedite the licensing process by removing Hawaii from the list of only four states that do not grant licensure by credentials. It would thereby allow our population of dentist and dental hygienist retirees who have moved to Hawaii from other states, to practice in Hawaii's safety-net clinics. The bill would also help to recruit other eligible dentists and dental hygienists from out-of-state, and direct them to the specific organizations and areas in which they are most needed.

Your Committee finds that this bill is the collaborative effort of the members of the Hawaiian Islands Oral Health Task Force, who came together to provide solutions to the severe shortage of dental health providers willing to serve low income and uninsured patients in Hawaii.

Your Committee has amended the bill by:

- (1) Limiting license renewals to five consecutive years, so that the community service license does not become a means of avoiding standard licensure procedures;
- (2) Adding a repeal date of July 1, 2009; and
- (3) Making technical, nonsubstantive amendments for clarity and consistency.

Your Committee did not make the changes suggested by BDE in their testimony. This should not be taken as a reflection on the merit of the amendments, but rather, a decision made out of respect for the process by which the bill was crafted. It is anticipated that BDE's testimony will be reviewed by the other supporters of this bill, who will have an opportunity to endorse or challenge the amendments in future Senate hearings of this measure.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2093, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2093, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 567-04 Consumer Protection and Commerce on H.B. No. 2981**

The purpose of this bill is to increase consumer access to appropriate medical care by:

- (1) Removing the sunset date of certain provisions of Act 192, Session Laws of Hawaii 2002 (Act 192), to make permanent the Board of Nursing's (Board's) power to grant prescriptive authority to qualified, advanced practice registered nurses (APRNs);

- (2) Authorizing the Board, rather than the Board of Medical Examiners (BME), to designate the applicable APRN formularies; and
- (3) Establishing a committee to provide advice on the formularies.

Testimony in support of this bill was provided by an APRN with prescriptive authority. The Board supported the bill, but opposed Section 2 concerning establishment of the APRN formularies. BME commented.

Your Committee finds that Act 192 transferred the responsibility for granting prescriptive authority to qualified APRNs, from the Department of Commerce and Consumer Affairs to the Board. Your Committee heard testimony that this transfer of responsibility will help to remove unnecessarily cumbersome requirements for obtaining prescriptive authority, and will benefit consumers by increasing access to qualified APRNs who are able to prescribe appropriate medications.

Your Committee also finds that in 2002, Act 192 mandated the establishment of a Joint Formulary Advisory Committee (JFAC) composed of two APRNs, two physicians, three pharmacists, and a representative of a school of nursing with an APRN program. JFAC was to make recommendations on the APRN formulary, which were to be considered by BME in adopting the formulary. On September 30, 2003, JFAC submitted its final recommendations to BME.

Your Committee finds that, at least for now, the current system for establishing and amending the formularies should continue. Therefore, Section 2 of the bill was deleted.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2981, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2981, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

#### **SCRep. 568-04 Consumer Protection and Commerce on H.B. No. 2798**

The purpose of this bill is to allow qualified pharmacists to administer:

- (1) Immunizations, by oral and intranasal delivery, to persons 18 years of age or older; and
- (2) Drugs, pursuant to a physician's order, by intranasal delivery.

The Board of Pharmacy and MedImmune, Inc., testified in support of the bill. The Hawaii Medical Association (HMA) stated concerns.

Your Committee finds that pharmacists are currently permitted, pursuant to a physician's order, to administer drugs in three ways: orally, topically, or by injection. Pharmacists are currently permitted, without a physician's order, to administer immunizations by injection to persons 18 years of age or older. This bill adds intranasal delivery of drugs, and intranasal and oral delivery of immunizations.

Your Committee heard proponents of the bill testify that allowing oral and nasal delivery would improve the effectiveness of immunization programs by increasing the participation of persons who are afraid of needles. They also opined that the oral and nasal delivery of attenuated live viruses do not pose a danger to the community.

However, HMA testified that, while it is appropriate to administer immunization by injection without a physician's order, oral and nasal delivery should require a physician's order. HMA stated that these methods of delivery are associated with immunizations that use live, but attenuated, viruses. These weakened viruses still have the potential to affect persons with compromised immune systems. HMA also testified that the intranasal vaccination for the influenza virus was only recently approved by the Food and Drug Administration in 2003, and more time is needed to assess the vaccine's safety.

Your Committee is convinced that adding oral and intranasal vaccine delivery systems is warranted, and will provide an alternative means of protecting the public when vaccines delivered by injection are in short supply. However, there may be additional safeguards that should be reflected in the statute.

Your Committee has amended this bill by:

- (1) Providing that immunization by intranasal delivery is to be performed away from the general public; and
- (2) Changing the effective date to July 1, 2006, to provide time for discussion, study, and the consideration of additional safeguards.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2798, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2798, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

#### **SCRep. 569-04 Finance on H.B. No. 2547**

The purpose of this bill is to improve accountability over University of Hawaii (UH) moneys by:

- (1) Granting restricted oversight to the Auditor over state moneys provided to the UH Foundation;
- (2) Requiring UH to submit an expanded report regarding moneys provided to the UH Foundation; and
- (3) Clarifying that UH may use moneys in the Tuition and Fees Special Fund to:

- (A) Promote alumni activities; and
- (B) Maintain stewardship of state funds by the UH Foundation.

The Auditor and an individual submitted testimony in support of this bill. UH and the UH Foundation opposed this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2547, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2547, H.D. 2.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro and Meyer.

**SCRep. 570-04 Finance on H.B. No. 1893**

The purpose of this bill is to increase the number of low-income students who are prepared to enter and succeed in post secondary education by authorizing the University of Hawaii to establish a charitable trust fund to receive moneys and provide scholarships under the federal Gaining Early Awareness and Readiness for Undergraduate Programs program (GEAR UP).

GEAR UP Hawaii and the Hawaii State Teachers Association testified in support of this measure.

Your Committee has amended this bill by making technical, nonsubstantive amendments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1893, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1893, H.D. 2.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro and Meyer.

**SCRep. 571-04 Finance on H.B. No. 1904**

The purpose of this bill is to support our citizen-soldiers by raising the income tax deduction received by members of the reserves of the United States Armed Forces and the National Guard from the first \$1,750 of compensation from performance of duty to \$5,000 of such compensation.

The Chamber of Commerce of Hawaii testified in support of this bill. The Department of Taxation testified in opposition to this measure. The State of Hawaii Department of Defense and Tax Foundation of Hawaii submitted comments.

Your Committee has amended this bill by:

- (1) Changing the amount of the tax deduction from \$5,000 to a blank amount to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1904, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1904, H.D. 1.

Signed by all members of the Committee except Representatives Nakasone, Nishimoto and Shimabukuro.

**SCRep. 572-04 Finance on H.B. No. 2397**

The purpose of this bill is to make an emergency appropriation of \$1,000,000 from the State Disaster Revolving Loan Fund to assist with damage caused by heavy rains and flooding on December 7 and December 8, 2003.

The Department of Business, Economic Development, and Tourism testified in support of this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010 to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2397, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2397, H.D. 1.

Signed by all members of the Committee except Representatives Nakasone, Nishimoto and Shimabukuro.

**SCRep. 573-04 Finance on H.B. No. 2803**

The purpose of this bill is to appropriate funds to establish and fill nine new positions within the Drug Enforcement Division (Division) of the Department of Public Safety (DPS).

DPS supported the intent of this bill.

Your Committee has made a technical, nonsubstantive amendment to reflect that the Division's correct name is the Narcotics Enforcement Division.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2803, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2803, H.D. 1.

Signed by all members of the Committee except Representative Shimabukuro.

**SCRep. 574-04      Judiciary on H.B. No. 2493**

The purpose of this bill is to authorize the Department of Land and Natural Resources (DLNR) to implement an internal civil violations system through administrative rules.

Your Committee received testimony in support of this measure from DLNR and the Sierra Club, Hawaii Chapter.

Your Committee finds that this measure will provide a flexible and economical means to resolve regulatory violations.

Your Committee has amended this measure by:

- (1) Adding a savings clause; and
- (2) Making technical, nonsubstantive changes for purposes of clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2493, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2493, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 575-04      Judiciary on H.B. No. 2498**

The purpose of this bill is to authorize the Department of Land and Natural Resources (DLNR) to adopt interim rules not subject to chapter 91, Hawaii Revised Statutes (HRS), concerning the export, taking, possession, sale, delivery, or transport of indigenous species, where an imminent threat of local extermination or species extinction to native wildlife, plants, and aquatic life exists.

DLNR, Hawaii Audubon Society, and Sierra Club, Hawaii Chapter, testified in support of this bill.

Your Committee finds this measure will help to protect Hawaii's native species by improving the capacity of DLNR to address unexpected situations as they arise.

Your Committee has amended this bill by:

- (1) Providing for publication of rules adopted under this measure pursuant to section 1-28.5, HRS:
  - (A) In a daily or weekly publication of statewide circulation; or
  - (B) By publication in separate daily or weekly publications whose combined circulation is statewide; rather than by publication in each newspaper of general circulation in the State; and
- (2) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2498, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2498, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 576-04      Judiciary on H.B. No. 2341**

The purpose of this bill is to ensure continuity of policy and experience on the Board of Directors of the Agribusiness Development Corporation (ADC) by providing for staggered terms for its members. The Governor will be authorized to appoint members of the Board for reduced terms until all their terms are staggered.

The ADC submitted testimony in support of this measure.

Your Committee finds that providing overlapping terms for members will enhance continuity in ADC operations.

Your Committee has amended this measure by:

- (1) Incorporating the substance of this measure into section 163D-3(b), Hawaii Revised Statutes (HRS), which relates to the composition of the ADC Board of Directors;
- (2) Utilizing the procedures of section 26-34, HRS, to provide for staggered terms; and
- (3) Making other technical, nonsubstantive amendments for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2341, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2341, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 577-04      Judiciary on H.B. No. 2781**

The purpose of this bill is to allow the Hawaii Convention Center (Center) to enter into contracts with licensees requiring confidentiality as a condition to booking events. Specifically, this bill exempts the Center's booking records from the freedom of information law upon request of a licensee and if disclosure may result in:

- (1) Disclosure of booking information that would place the Center at a competitive disadvantage in negotiations with potential licensees;
- (2) Disclosure of a potential licensee's proprietary information or business strategy; or
- (3) The loss of a Center booking.

The Hawaii Tourism Authority testified in support of this bill. The Department of Business, Economic Development, and Tourism suggested amendments. The Office of Information Practices offered comments.

Your Committee finds that this measure will enhance opportunities for the Center to obtain bookings without unduly impeding public access to information on contracts between the Center and its licensees.

Your Committee has amended this measure by:

- (1) Removing as a reason for nondisclosure of booking records the possible disclosure of booking information that would place the Center at a competitive disadvantage in negotiations with potential licensees;
- (2) Replacing references to "booking business records" with "booking records";
- (3) Removing "confidential business information" from the definition of "booking records", and making the possible disclosure of confidential business information a reason for exempting booking records under this measure;
- (4) Requiring public disclosure of booking records ten days after an event occurs at the Center; and
- (5) Making technical, nonsubstantive changes for clarity and style.

Your Committee believes that this bill, as amended, represents a balance between the Center's business needs and the public's right to access information about government activities.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2781, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2781, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.

**SCRep. 578-04      Finance on H.B. No. 1929**

The purpose of this bill is to support the repair and maintenance of Hawaii's public schools by appropriating funds to the Department of Accounting and General Services (DAGS):

- (1) For the operations of the Hawaii 3R's program; and
- (2) To create a position to coordinate public and private efforts to repair and maintain public schools.

The Department of Education, DAGS, Hawaii 3R's, Hawaii State Teachers Association, Chamber of Commerce of Hawaii, General Contractors Association, Hawaiian Electric Company, American Society of Civil Engineers, Durus International Corporation, Pacific Resource Partnership, and five concerned individuals testified in support of this bill.

Your Committee has amended this bill by:

- (1) Replacing the amounts of the sums appropriated with amounts of \$1, to allow further determination of the amounts to be appropriated; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1929, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1929, H.D. 1.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro, Takamine, Meyer and Moses.

**SCRep. 579-04      Finance on H.B. No. 2009**

The purpose of this bill is to appropriate funds for the Hawaii Farm Bureau Federation (HFBF) to pursue efforts in agricultural research and market development that will keep Hawaii's agricultural industry competitive in the global market.

HFBF, Hawaii Agriculture Research Center, Maui County Farm Bureau, Hawaii Cattlemen's Council, Pineapple Growers Association of Hawaii, Hawaiian Commercial & Sugar Company, Gay & Robinson, Inc., East Kauai Water Users' Cooperative, Kauai Coffee Company, Maui Cattlemen's Association, and a concerned individual testified in support of this bill. The Department of Agriculture and University of Hawaii College of Tropical Agriculture and Human Resources supported the intent of this measure.

Your Committee has amended this bill by removing the appropriation amount to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2009, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2009, H.D. 1.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 580-04 Finance on H.B. No. 2314**

The purpose of this bill is to authorize the Office of Environmental Quality Control (OEQC) to review an agency's determination on the need for an environmental impact statement (EIS), consult with the agency, and make a final determination on whether a conflict of interest exists where the proposing agency and the agency making an EIS determination are the same.

The Sierra Club, Hawaii Chapter, testified in support of this bill. OEQC supported the intent of this measure. The City and County of Honolulu Department of Planning and Permitting opposed this bill. The Land Use Research Foundation of Hawaii offered comments.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2314, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2314, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 581-04 Finance on H.B. No. 2394**

The purpose of this bill is to ensure the proper maintenance of all properties within the Kalaeloa Community Development District (District) located in Leeward, Oahu, by clarifying the power of the Hawaii Community Development Authority (HCDA) to serve as an ombudsman.

Specifically, this bill authorizes HCDA to:

- (1) Receive and follow up on complaints with appropriate landowners within the District;
- (2) Take a proactive role in researching and monitoring problem areas; and
- (3) Report to the landowners in the District regarding the nature and number of complaints and inquiries to ensure proper notification at the highest levels.

The HCDA submitted testimony in support of this measure.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2394, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2394, H.D. 1.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 582-04 Finance on H.B. No. 2523**

The purpose of this bill is to ensure that the State passenger facility charges (PFC) law comply with the federal PFC law by:

- (1) Clarifying that passenger facility charges are exempt from transfers to pay for central service expenses; and
- (2) Renaming the Passenger Facility Charge Revenue Fund to the Passenger Facility Charge Special Fund.

The Department of Transportation and Airlines Committee of Hawaii testified in support of this bill.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2523, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2523, H.D. 1.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 583-04 Finance on H.B. No. 1908**

The purpose of this bill is to require the Department of Education (DOE) to set aside \$500,000 in federal impact aid to:

- (1) Establish a military liaison position within DOE; and

- (2) Provide funding for the Joint Venture Education Forum.

The DOE and a number of school administrators testified in support of this bill. The Hawaii State Teachers Association supported the intent of this measure. The Department of Budget and Finance opposed this bill.

Your Committee has amended this measure by:

- (1) Changing the amount of federal impact aid to establish a military liaison position within DOE and to provide funding for the Joint Venture Education Forum to \$1 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1908, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1908, H.D. 2.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro, Takamine, Meyer and Moses.

#### **SCRep. 584-04 Finance on H.B. No. 2109**

The purpose of this bill is to encourage residents to purchase long-term care insurance by providing a tax credit to resident taxpayers for long-term care insurance premiums for the lesser of:

- (1) \$2,500;
- (2) A percentage of the amount of the insurance premium paid, based on age; or
- (3) A phased-in percentage of the amount of the insurance premium paid, based on adjusted gross income.

The Hawaii Long Term Care Association, Chamber of Commerce of Hawaii, Healthcare Association of Hawaii, Hawaii Medical Association, and American Council of Life Insurers supported this bill. The Department of Taxation, Executive Office on Aging, and NAIFA Hawaii supported the intent of this measure. The Tax Foundation of Hawaii commented.

Your Committee has amended this bill by changing the effective date to January 1, 2010, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2109, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2109, H.D. 2.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Jernigan.

#### **SCRep. 585-04 Finance on H.B. No. 2840**

The purpose of this bill is to find alternative ways to diversify Hawaii's economy by appropriating \$100,000 to the Hawaii Community Development Authority (HCDA) to further study the feasibility of developing a technical park at Kalaeloa, Oahu.

HCDA testified in support of the intent of this bill.

Your Committee has amended this bill by:

- (1) Replacing the appropriation of \$100,000 with a blank amount to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2840, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2840, H.D. 1.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Jernigan.

#### **SCRep. 586-04 Finance on H.B. No. 1712**

The purpose of this bill is to provide taxpayers with a larger share of their available income that can be used to help stimulate our economy. This bill changes the maximum rate at which income taxes shall be withheld from eight percent to an unspecified amount.

The Tax Foundation of Hawaii offered comments, and the Department of Taxation opposed this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1712 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

#### **SCRep. 587-04 Finance on H.B. No. 2511**

The purpose of this bill is to conform the state tax withholding remittance date for employers with an annual state withholding tax liability exceeding \$40,000, to the remittance date required under federal employment tax provisions, which provides for a semi-weekly remittance date, as opposed to the current monthly remittance.

The Department of Taxation supported this bill with amendments. The Tax Foundation of Hawaii submitted comments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2511 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 588-04 Finance on H.B. No. 1784**

The purpose of this bill is to make adjustments to the standard deductions of Hawaii's income tax. Specifically, this bill raises the state income tax standard deduction and personal exemption amount to 80 percent of the federal amount for 2004, 90 percent for 2005, and 100 percent for 2006.

The Hawaii State Commission on the Status of Women, Hawaii Women's Coalition, National Federation of Independent Business-Hawaii, National Association of Social Workers, Welfare and Employment Rights Coalition, 3Point, and two concerned individuals testified in support of this bill. The Department of Taxation opposed this bill. The Tax Foundation of Hawaii commented on this measure.

Your Committee has amended this bill by:

- (1) Deleting specific language that indicate what percentage of the federal amount that the State standard deduction will be equivalent to; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1784, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1784, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 589-04 Finance on H.B. No. 2596**

The purpose of this bill is to assist low-income households by establishing an earned income tax credit. This bill sets the tax credit at 20 percent of the earned income tax credit allowed by the Internal Revenue Service. The tax credit applies to taxable years beginning after December 31, 2003.

The Hawaii State Commission on the Status of Women, Good Beginnings Alliance, National Association of Social Workers, Welfare and Employment Rights Coalition, Pacific Gateway Center, 3Point, and four individuals testified in support of this measure. The Department of Taxation supported the intent of this bill. The Tax Foundation of Hawaii and the National Federation of Independent Business offered comments.

Your Committee has amended this bill by:

- (1) Specifying the calculation of the tax credit for part-year residents;
- (2) Deleting the amount of the tax credit to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments to correct drafting errors.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2596, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2596, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 590-04 Finance on H.B. No. 1944**

The purpose of this bill is to support the construction of fuel grade ethanol production facilities and thereby promote energy self-sufficiency and economic development in this State. This bill extends the authorization to issue special purpose revenue bonds (SPRBs) on behalf of Worldwide Energy Group, Inc., from June 30, 2004, to June 30, 2008.

Worldwide Energy Group, Inc., Hawaii Renewable Energy Alliance, ILWU Local 142, and Gay & Robinson, Inc., testified in support of this measure.

Act 136, Session Laws of Hawaii 2000, authorized the issuance of SPRBs totaling \$50,000,000 for the Hawaii Sugar Ethanol Project, including a fuel grade ethanol facility on Kauai. However, the authorization to issue these bonds lapses on June 30, 2004.

Your Committee has amended this bill by changing its effective date to June 29, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1944, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1944, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Bukoski and Moses.

**SCRep. 591-04 Finance on H.B. No. 2057**

The purpose of this bill is to authorize the issuance of special purpose bonds to assist Covanta Honolulu Resource Recovery Venture, the operator of the HPOWER plant, with a new boiler, pollution control equipment, and associated equipment for the expansion of the HPOWER plant.

Covanta Energy Group testified in support of this bill. The Department of Budget and Finance provided comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for purposes of clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2057, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2057, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Moses.

**SCRep. 592-04 Finance on H.B. No. 2170**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds to assist the Rehabilitation Hospital of the Pacific in financing construction improvements and expanding in-patient and out-patient service capabilities to be able to accommodate new kinds of caseloads in response to changes in Medicare policy.

The Rehabilitation Hospital of the Pacific testified in support of this bill.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2170, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2170, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Moses.

**SCRep. 593-04 Finance on H.B. No. 2322**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds to assist Aloun Farms in building an agricultural plant.

Aloun Farms and Nalo Farms testified in support of this bill. The University of Hawaii College of Tropical Agriculture and Human Resources supported the intent of this measure.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2322, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2322, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Moses.

**SCRep. 594-04 Finance on H.B. No. 2739**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds by the High Technology Development Corporation to finance wet lab space and a biotech incubator.

The University of Hawaii John A. Burns School of Medicine testified in support of this bill. The Department of Business, Economic Development, and Tourism supported the intent of this measure. The Department of Budget and Finance commented on this bill.

Your Committee has amended this measure by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2739, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2739, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Moses.

**SCRep. 595-04 Consumer Protection and Commerce on H.B. No. 2773**

The purpose of this bill is to permit the installation of amateur radio equipment on condominium apartment units by an apartment owner licensed by the Federal Communications Commission (FCC), who installs equipment that:

- (1) Is approved by the FCC; and
- (2) Does not directly affect any other apartment owner in the project.

Your Committee heard testimony in support of the bill from many private individuals and testimony in opposition to the bill from the Princeville at Hanalei Community Association and the Legislative Action Committee of the Community Association Institute, Hawaii Chapter.

Proponents of the bill pointed out that federally licensed amateur radio operators are an important part of our emergency response safety network. Opponents of the bill countered with the argument that association members were aware of the restrictions before they became members and should abide by them. They note that members rely on the usage rules to preserve the aesthetic and monetary value of their investment. Absent compelling need, which they believe is not present in this case, they feel that government should not interfere with their private contractual agreements.

Both sides raise substantial arguments in support of their respective positions. In addition to these broader philosophical considerations, there are also technical issues concerning the scope of FCC regulation.

Your Committee is reporting out the bill to continue the dialogue, but to reflect that the bill is not yet ready for final passage, has amended the effective date to July 1, 2009. Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2773, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2773, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, M. Oshiro and Souki.

#### **SCRep. 596-04 Consumer Protection and Commerce on H.B. No. 2774**

The purpose of this bill is to permit the installation of amateur radio equipment in a subdivision:

- (1) If the operator is licensed by the Federal Communications Commission (FCC); and
- (2) The installed equipment is approved by the FCC.

Your Committee heard testimony in support of this bill from several individuals and testimony in opposition from the Princeville at Hanalei Community Association.

Proponents pointed out that federally licensed amateur radio operators are an important part of our emergency response network. The opponent countered that purchasers are made aware of the restrictions before they purchase, and should abide by them. Other owners rely on the restrictions to preserve the aesthetic and monetary value of their investment. Absent compelling need, which it is argued was not established, government should not interfere with private contractual agreements.

Your Committee finds that both sides raise substantial arguments in support of their respective positions. In addition to these broader considerations, there are also technical issues concerning the scope of FCC regulation of the equipment that is envisioned being installed. Your Committee is reporting out the bill to continue the dialogue, but has amended the effective date to July 1, 2009. This change is made to reflect that the bill is not yet ready for final passage.

Technical nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2774, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2774, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, M. Oshiro and Souki.

#### **SCRep. 597-04 Judiciary on H.B. No. 2297**

The purpose of this bill is to adopt the Uniform Guardianship and Protective Proceedings Act in place of existing Parts 1 through 4 of Article V of chapter 560, Hawaii Revised Statutes, the Hawaii Uniform Probate Code, relating to guardianship of the persons and property of minors and incapacitated persons. This measure also makes conforming amendments to other statutory sections.

Your Committee received testimony in support of this measure from the Judiciary, the Hawaii Disability Rights Center, and the State Commission to Promote Uniform Legislation. The State Council on Developmental Disabilities (SCDD) submitted testimony in support of the intent of this measure. The Department of Health (DOH) provided testimony in support and offered suggestions.

The Judiciary's Committee on the Uniform Probate Code and Probate Court Practices (Probate Committee) recommended adoption of this measure which is based upon the Uniform Guardianship and Protective Proceedings Act (1998)(UGPPA) adopted by the National Conference of Commissioners on Uniform State Laws in 1997. For future guidance, the Proposed Commentary prepared by the Probate Committee is included as follows:

#### **Commentary on JUD-04-06**

##### **A. Background**

*This proposed Act is based upon the Uniform Guardianship and Protective Proceedings Act (1998), which was adopted by the National Conference of Commissioners on Uniform State Laws in 1997.*

The topics covered in this Act include minors' guardianships, adults' guardianships, and conservatorships of minors and adults. The Act is divided into four articles. The four articles of the freestanding Act correspond to four "parts" within "article 5" of the Uniform Probate Code. Part 1 contains definitions and general provisions applicable to both guardianships and conservatorships, including provisions that relate to the office of guardian and conservator and to the jurisdiction of the courts, many of which were scattered in different sections of the prior Act. Part 2 contains provisions on guardianships for minors, whether by the court or the parent. Part 3 contains provisions for guardianships for incapacitated persons, who will most often be adults, but who may also be minors whose need for guardianship is unrelated to their age. Part 4 covers conservatorships and other protective arrangements for both minors and adults, including the procedures for appointment of conservators and the process for implementing a protective arrangement.

This revised Act emphasizes limited guardianship and conservatorships and the need to protect the ward's or protected person's rights as much as possible. It provides that guardianship and conservatorship should be viewed as a last resort, that limited guardianships and conservatorships should be used whenever possible, and that the guardian or conservator should always consult with the ward or protected person, to the extent feasible, when making decisions.

Among the significant changes in the revised Act is the concept of a "standby" guardian. A parent or spouse may appoint a guardian to take office immediately upon the need. In both Parts 2 and 3 are provisions for a parental or spousal appointment of a "standby" guardian: by a parent for a minor child under Part 2 and by a parent for an adult disabled child or by a spouse for an incapacitated spouse under Part 3. The addition of these provisions was spurred by the increasing number of single-parent families in the United States as well as by the recognition that adults are living longer and may need assistance in their later lives. The standby provisions are available in a wide variety of situations where there is a need for a guardian to step in immediately upon the occurrence of an event, without seeking prior court approval. The appointment may be used by all parents of minor children as well as for the spouse of an incapacitated adult or the parent of an adult disabled child.

Emphasized throughout the Act are the concepts of limited guardianship and limited conservatorship. Only when no alternative to guardianship or conservatorship is available should the court create a guardianship or conservatorship. Courts are directed to tailor the guardianship or conservatorship to fit the needs of the incapacitated person and only remove those rights that the incapacitated person no longer can exercise or manage. (Sections 311(b), 409(b)). If an unlimited guardianship or conservatorship is requested, the petition must state why a limited guardianship or conservatorship is not being sought. (Sections 304(b)(8), 403(c)(3)). The guardian or conservator must take the views of the ward or protected person into account when making decisions. The guardian must maintain sufficient contact with the ward so that the guardian knows of the capabilities, limitations, needs and opportunities of the ward (Sections 207(b)(1), 314(b)(1)). The guardian or conservator must encourage the ward or protected person to participate in decisions, to act on his or her own behalf, and to develop or regain capacity to manage personal or financial affairs. (Sections 314(a), 418(b)). The guardian must consider the ward's expressed desires and personal values when making decisions (Section 314(a)), while the conservator, in making decisions with respect to the protected person's estate plan, or the court, in deciding on a protective arrangement, must rely, when possible, on the decision the protected person would have made. (Sections 411(c), 412(b)).

#### **B. Proposed Modifications to Act**

The Committee on the Uniform Probate Codes and Probate Practices has made the following recommended changes to the Act.

#### **SECTION 560:5-102. DEFINITIONS.**

The definition of "incapacitated person" in subparagraph (5) of Section 102 focuses on the ability to receive and evaluate information or to make or communicate decisions to the point that the person's ability to care for his or her health, safety or self is compromised. This definition emphasizes the importance of functional assessment and recognizes that the more appropriate measure of a person's incapacity is a measurement of the person's abilities. Like other areas of the law where the concept of capacity is used, the required incapacity for the appointment of a guardian is no longer considered an all or nothing proposition but instead it is recognized as having varying degrees. This definition is designed to work with the concepts of least restrictive alternative and limited guardianship or conservatorship – only removing those rights that the incapacitated person cannot exercise, and not establishing a guardianship or conservatorship if a lesser restrictive alternative exists.

This Committee agrees with this definition (and its goals) with one exception. Under the Uniform Act, the court must take into consideration the respondent's abilities with "appropriate technological assistance," regardless of cost. Therefore, under the Uniform Law, if appropriate technological assistance exists that can meet the respondent's needs, then that assistance must be treated by the court as meeting the respondent's needs by a less restrictive means, even if the respondent cannot afford the technological assistance. Under those circumstances, according to the Uniform Law, the guardianship petition must be denied (even if the respondent will not be able to pay for and benefit from the technological assistance).

The result, in this Committee's opinion, is a catch-22 for the respondent – the respondent needs a guardian because he or she cannot afford a less restrictive measure (the technological assistance) but a guardian cannot be appointed because, if the respondent could afford technological assistance, the respondent could handle his or her personal affairs.

To avoid this result, this Committee has modified the reference to technological assistance such that it must not only be appropriate but also "reasonably available." This modification will allow the court to take into consideration the types and costs of technological assistance available and if it determines that such assistance is not reasonably available, it may grant the petition and appoint a guardian. This same modification is made throughout the Act (see Sections 560:5-311 and 560:5-401).



**SECTION 560:5-105. DELEGATION OF POWER BY PARENT OR GUARDIAN.**

*This section allows for a temporary delegation of powers by a parent or guardian. It does not create a guardianship or give a parent powers the parent does not already have. It simply allows a parent or guardian to use a power of attorney to delegate temporarily their existing powers. Such a delegation would be useful, for example, if a parent becomes ill and needs someone to care for their child temporarily or if a child is living with grandparents or other relatives for various reasons. The delegation will also be useful for parents in the military who are called to duty. Although the Uniform Act limits the delegation to six months, this Committee believes that a one-year limitation is more appropriate and will require fewer renewals, if any. A parent or guardian may also choose a shorter period of time or revoke the delegation before it expires by its own terms.*

**SECTION 560:5-106. SUBJECT-MATTER JURISDICTION.**

*Under current law, the Family Court has exclusive jurisdiction over guardianships of the person. Therefore, if both a guardian of the person and a guardian of the property (called a "conservator" under the new Act) are needed, there must be two different hearings in two different courts (especially in the Circuit Court of the First Circuit where the Probate Court Judge is not a Family Court Judge).*

*This section would vest the Probate Court with concurrent jurisdiction over guardianships of incapacitated adults so that guardianships of the person and conservatorship of the person's assets could be heard by the same court at the same time. This would save time and money for the family and be more economical for the courts as well. If a party wishes the Probate Court to consider both matters at the same time, the party should file one petition that requests the appointment of both a guardian and a conservator.*

*The Family Court would still retain exclusive jurisdiction over guardianships of minors because the Family Court would have the best access to any issues raised in divorce or other family court proceedings involving the minor.*

**SECTION 560:5-205. JUDICIAL APPOINTMENT OF GUARDIAN PROCEDURE.**

*This section tracks the Uniform Act except for subsection (a)(3). The Uniform Act would require notice of the proposed guardianship to each living parent of the minor. This Committee, however, believed that it was important that adult relatives on both sides of the family (e.g. a deceased mother's relatives or a deceased father's relatives) be given prior notice and an opportunity to be heard at guardianship proceedings. Therefore, this section has been revised to require notice to the closest adult relative of a deceased parent if only one parent is deceased. If both parents are deceased, then notice shall be given to the minor's adult siblings or, if none, to each parent's closest adult relative.*

**SECTION 560:5-209. RIGHTS AND IMMUNITIES OF GUARDIAN.**

*Although Section 209(a) of the Uniform Act provides that a guardian may be paid reasonable compensation without a court order if a conservator who is not affiliated with the guardian approves the compensation, this committee is concerned about the potential for abuse and, therefore, has deleted that provision. The committee believes that it is in the best interest of the ward if all guardianship compensation is subject to court approval.*

*This committee has also modified Section 209(b) of the Uniform Act to make it clear that a guardian is not personally liable on contracts entered into in the guardian's fiduciary capacity.*

**SECTION 560:5-305. JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.**

*This section describes the circumstances in which the court may appoint a "Kokua Kanawai" to assist in its analysis or an attorney to represent the respondent's interests at the hearing.*

*The role of the Kokua Kanawai is to act as the eyes and ears of the court and to provide the court with relevant information to assist it in determining the merits of the guardianship petition. As set forth in the section, the Kokua Kanawai is required to interview the Respondent and determine the Respondent's views about the proposed guardianship, interview the proposed guardian, and obtain relevant medical information. Although the Uniform Act requires that a Kokua Kanawai (referred to as "visitor" under the Uniform Act) be appointed in all cases, this Committee believes that the appointment of a Kokua Kanawai is not necessary in all cases and would simply add unnecessary expense to the process. For example, if the Respondent is in a coma and the spouse or only adult child is seeking guardianship, then a Kokua Kanawai is probably not necessary. There may be other instances where the incapacity is clear and there is no dispute about the suitability of the proposed guardian. In those cases, a Kokua Kanawai should not be necessary. Therefore, this Committee recommends against the mandatory appointment of a Kokua Kanawai and that, instead, the court have discretion to appoint of a Kokua Kanawai. Paragraph (a), therefore, has been revised accordingly.*

*The Uniform Law also provides that the Kokua Kanawai be an individual "having training or experience in the type of incapacity alleged" and contemplates the appointment of a physician, psychologist, or social worker as Kokua Kanawai. This Committee was concerned about the availability of doctors and social workers to serve in this capacity and that the Uniform Law as drafted would unnecessarily limit the pool of potential Kokua Kanawai. It is often difficult to find physicians or psychologists who will provide opinions in guardianship proceedings, let alone act as the information-gathering arm of the court. Therefore, subparagraph (a) of Section 305 was revised to state that the Kokua Kanawai "must be an individual having such training or experience as the court deems appropriate." If necessary, a Kokua Kanawai who does not have a medical background could ask the court for authority to retain an*



independent physician or psychologist to assist it in its analysis of the medical information obtained of the and Respondent's abilities.

With respect to the appointment of an attorney to act as an advocate for the Respondent, this Committee has adopted the Uniform Law's alternative 1, which requires the court to appoint counsel for the Respondent if 1) the Respondent requests counsel; 2) the Kokua Kanawai recommends counsel; or 3) the court determines the Respondent needs counsel.

**SECTION 560:5-310. WHO MAY BE GUARDIAN: PRIORITIES.**

This Committee has made a slight change to the priorities set forth in the Uniform Act, by switching the order of (2) and (3). Under the Uniform Law, a person nominated by the respondent in a durable power of attorney has priority over an agent appointed by the respondent under the Uniform Health-Care Decisions Act. This Committee has reversed this order because the primary role of the guardian is to make health care decisions for the respondent, and thus, it makes better sense to give priority to the agent the respondent named to make health care decisions, rather than to the agent the respondent may have named to make financial decisions. Naturally, if at the time of the hearing, the respondent has sufficient capacity to nominate another guardian, then the court can take such nomination into consideration.

This Committee also revised subparagraph (c) of Section 310 to allow an owner, operator, or employee of a long-term-care institution to act as guardian if the court orders such an appointment. This contrasts with the Uniform Law, which prohibits such an appointment unless the owner, operator, or employee is related to the respondent. The Uniform Law commissioners are concerned about the conflict of interest and potential abuse. While the Committee agrees that there is the potential for a conflict of interest between the long-term-care institution owner/employee and the respondent and that such persons should not be appointed except as a last resort, it is also aware of cases where there is simply no one available to act as guardian and the Office of Public Guardian may not have sufficient resources to act. Therefore, this Committee believes that the court should have discretion to appoint a long-term care owner, operator, or employee as guardian if absolutely necessary.

**SECTION 560:5-316. RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.**

This Committee has modified Section 316(b) to make it clear that a guardian is not personally liable on contracts entered into in the guardian's fiduciary capacity.

**SECTION 560:5-401. PROTECTIVE PROCEEDING.**

This section sets forth the standard and burdens of proof necessary to establish a conservatorship of an individual's property. Like guardianship of the person, the focus is upon the individual's functional abilities, taking into consideration technological assistance. This Committee has made the same change as in sections 102(5) and 311, modifying the court's consideration of technological assistance to that which is "reasonably available."

**SECTION 560:5-406. ORIGINAL PETITIONS: PRELIMINARIES TO HEARING.**

For the reasons set forth in the commentary to section 305, the appointment of a Kokua Kanawai is optional, not mandatory. In addition, the Kokua Kanawai need not be someone with training and experience in the type of incapacity alleged; the court has discretion to appoint individuals with such training and experience as the court deems appropriate.

**SECTION 560:5-408. ORIGINAL PETITION: PROCEDURE AT HEARING.**

Although the Uniform Act provides that the hearing may be closed only upon request by the respondent, this Committee believed that there may be other valid reasons to close the hearing (such as sensitive business matters) and, therefore, other interested parties (as well as the respondent) should have the right to request a closed hearing.

**SECTION 560:5-411. REQUIRED COURT APPROVAL.**

This section allows the conservator to make changes to the protected person's estate plan and beneficiary designations with prior court approval. This Committee has added retirement plans to the list of beneficiary designations that can be changed. Before allowing the conservator to make gifts or any changes to the protected person's estate plan and beneficiaries, the court must consider what decision the protected person would have made if such person had full capacity.

This committee has deleted subparagraph (d) of the Uniform Act, which does not allow the conservator to revoke or amend any durable powers of attorney of which the protected person was the principal. It is the Committee's view that the conservator should have the power to revoke financial powers of attorney so that there is no confusion about who has authority and control over the protected person's assets. The Committee, therefore, has added this express power in Section 421.

**SECTION 560:5-413. WHO MAY BE CONSERVATOR: PRIORITIES.**

For the reasons set forth in the commentary to section 310, this Committee believes that the court should have discretion to appoint a long-term care provider as conservator if no one else is available to act.

**SECTION 560:5-416. TERMS AND REQUIREMENTS OF BOND.**

*This section has been clarified to state that sureties and conservators are jointly and severally liable, no matter what their contract may state.*

**SECTION 560:5-418. GENERAL DUTIES OF CONSERVATOR.**

*The Uniform Act requires a conservator to not only file a financial plan with the court, but also a plan that includes "steps to develop or restore the person's ability to manage the person's property." This Committee has deleted these requirements for two reasons. First, the Hawaii Probate Rules presently provide that the proposed conservator must file a proposed budget with the initial petition seeking appointment. Therefore, the conservator should not be required to file another financial plan or budget after appointment. Second, while this Committee appreciates the goal of the Uniform Act to help the protected person regain the ability to handle his or her financial affairs, it believes that an additional reporting requirement will not necessarily promote that goal and will only add additional expense. Subparagraph (b) of this section requires the conservator to encourage the protected person to develop or regain the ability to manage the person's estate and the conservator should report to the court any progress in this regard when submitting its accounts for approval. However, requiring a separate report on this particular aspect of the conservatorship does not appear necessary.*

**SECTION 560:5-421. TITLE BY APPOINTMENT.**

*This section has been modified to make it clear that the conservator's authority and title to property supercedes that of a previously-appointed attorney-in-fact and that all agents must account to the conservator for their actions. An agent under a power of attorney is entitled to notice of the conservatorship and, other than a previously-appointed conservator, has priority to appointment as conservator. Presumably, if the court appoints someone other than the agent as conservator, it has valid reasons for doing so and the agent should no longer have any authority to act unless expressly authorized by the conservator. This section, as modified, is intended to avoid the confusion that would undoubtedly occur if both the conservator and a previously-appointed agent had control and authority over the protected person's assets.*

**SECTION 560:5-425. POWERS OF CONSERVATOR IN ADMINISTRATION.**

*Subparagraph (7) has been revised to make it clear that sales of real property must be confirmed pursuant to Haw. Rev. Stat. §531-29 (as is the current law).*

*This Committee has also followed Colorado's lead by adding subparagraph (c), which states that the conservator shall consider the person's estate plan in making investment and distribution decisions.*

**SECTION 560:5-428. DEATH OF AN INCAPACITED<sup>[sic]</sup> PERSON.**

*The Uniform Act includes a procedure that would allow the conservator to be appointed as Personal Representative of the deceased incapacitated person's estate and continue to administer the estate in the conservatorship proceeding. This Committee did not adopt those provisions because the provisions are not clear about the applicable procedures. The Committee also believes that all probates should be handled as probate proceedings. Therefore, the Committee retained existing law, which requires the conservator to deliver the will to any person who can secure its probate or, if none, to the court.*

**SECTION 560:5-429. PRESENTATION AND ALLOWANCE OF CLAIMS.**

*This section provides for a procedure for the expeditious resolution and payment of claims. Subparagraph (g) – which pertains to mortgage and liability insurance – has been added to be consistent with the claims procedure for decedent's estates.*

Your Committee has amended this measure by:

- (1) Inserting "but only" in section 560:5-209(a) to stress that a guardian's compensation, if any, is subject to court approval;
- (2) Adding to section 560:5-310(c) the owner, operator, or employee of an "other licensed care home" in addition to "long-term care institution" as a person ineligible to serve as a guardian, as requested by DOH;
- (3) Deleting an obsolete reference to Waimano Training School and Hospital from section 333F-11(a)(3), as requested by DOH and SCDD because that facility was closed; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2297, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2297, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 598-04 Finance on H.B. No. 2578**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds for Honolulu Seawater Air Conditioning LLC, for the design and construction of a seawater system for a district cooling system in downtown Honolulu.

Honolulu Seawater Air Conditioning LLC, testified in support of the bill. The Board of Water Supply supported the concept of this measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2578, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2578, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Moses.

**SCRep. 599-04 Finance on H.B. No. 2584**

The purpose of this bill is to fund all collective bargaining cost items for Collective Bargaining Unit 1.

In addition, this bill funds the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for certain state officers and employees excluded from collective bargaining.

The Hawaii Government Employees Association, Managerial and Confidential Employees Chapter, and UPW, Local 646, supported this bill. The Judiciary supported the measure with amendments.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2584, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2584, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 600-04 Finance on H.B. No. 1747**

The purpose of this bill is to provide additional flexibility and control to the University of Hawaii (UH) Board of Regents (Board) in financing and managing UH capital improvement projects by allowing the UH Board to issue up to \$25,000,000 in revenue bonds.

The University of Hawaii submitted testimony in support of this measure with amendments. The Department of Budget and Finance opposed this measure. The Department of the Attorney General commented on this measure.

Your Committee has amended this bill by:

- (1) Clarifying that the bill does not constitute a legislative authorization for the UH Board to issue up to \$25,000,000 in revenue bonds, but instead puts a cap on the amount of bonds that may be authorized and issued;
- (2) Clarifying that UH will impose rates, rents, fees, and charges sufficient to pay for the costs of all university projects, systems, and networks; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1747, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1747, H.D. 2.

Signed by all members of the Committee except Representatives Mindo, Shimabukuro and Meyer.

**SCRep. 601-04 Finance on H.B. No. 2849**

The purpose of this bill is to support the efforts of the Waianae Organic Agriculture Center (Center) to improve food security in the Waianae region of Oahu by appropriating \$75,000 to meet 50 percent of the Center's annual operating needs.

The Waianae Coast Comprehensive Health Center, Nalo Farms, and four individuals testified in support of this measure. Leeward Community College and the University of Hawaii (UH) at Manoa's College of Tropical Agriculture and Human Resources supported the intent of this bill, provided that its passage does not impact the priorities in UH's budget request.

Your Committee has amended this bill by:

- (1) Deleting the appropriated amount for the purpose of continued discussion; and
- (2) Making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2849, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2849, H.D. 1.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Nakasone and Wakai.

**SCRep. 602-04 Finance on H.B. No. 2859**

The purpose of this bill is to authorize the Hawaii Tourism Authority (HTA) to convene a working group to study the feasibility of an international equestrian facility in Hawaii to provide facilities and services for local residents and mainland and international visitors.

The Representative from the 4<sup>th</sup> House District, Dillingham Ranch, and several individuals supported this bill. The Hawaii Quarter Horse Association supported the intent of this measure. The Department of Business, Economic Development, and Tourism and HTA opposed this bill. Two individuals provided comments.

Your Committee has amended this bill by changing the effective date to January 1, 2010, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2859, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2859, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 603-04 Finance on H.B. No. 1756**

The purpose of this bill is to assist Electricore, Inc., in the planning, design, construction, and operation of facilities for the development and production of unmanned vehicle systems, unmanned aerial vehicles, and the technologies associated with integrated multiuse unmanned systems. This bill authorizes the High Technology Development Corporation to issue up to \$30,000,000 in special purpose revenue bonds.

Aerovironment Hawaii, Inc./Electricore, Inc., testified in support of this measure.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1756, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1756, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Moses.

**SCRep. 604-04 Finance on H.B. No. 1778**

The purpose of this bill is to allow employers to provide employees with electronic pay statements, upon receipt of authorization from the employee, in lieu of a printed record.

The Department of Labor and Industrial Relations and Verizon Hawaii testified in support of this bill.

Your Committee has amended this bill by making a technical, nonsubstantive amendment.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1778, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1778, H.D. 2.

Signed by all members of the Committee except Representatives Karamatsu and Meyer.

**SCRep. 605-04 Finance on H.B. No. 1860**

The purpose of this bill is to allow taxpayers to designate \$5 of state income tax refunds for any taxable year to the Hawaii Children's Trust Fund (HCTF), Domestic Violence Prevention Special Fund, and the respective Spouse and Child Abuse Special Accounts under the Departments of Health and Human Services and the Judiciary.

HCTF, Sex Abuse Treatment Center, National Association of Social Workers, Blueprint for Change, Hawaii State Coalition Against Domestic Violence, Molokai Family Support Center, and a concerned individual testified in support of this bill. The Department of Taxation opposed this measure.

Your Committee has amended this bill by:

- (1) Amending the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1860, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1860, H.D. 1.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Wakai.

**SCRep. 606-04 Finance on H.B. No. 1793**

The purpose of this bill is to enable the State to acquire additional agricultural lands by directing the Board of Land and Natural Resources to enter into negotiations for a land exchange involving private lands north of Wahiawa, Oahu.

ILWU Local 142 and several individuals submitted testimony in support of this bill. The Department of Land and Natural Resources and an individual submitted comments.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1793, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1793, H.D. 2.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.  
(Representative Bukoski voted no.)

**SCRep. 607-04 Finance on H.B. No. 2528**

The purpose of this bill is to establish a conservation land tax credit in the amount of a percentage of the appraised value of the land, not to exceed a certain value, for landowners who:

- (1) Donate conservation land to the State; or
- (2) Voluntarily reclassify residentially zoned land to conservation.

The Office of Hawaiian Affairs, Sierra Club, Hawaii Chapter, Hawaii Audubon Society, a Maui County Councilmember, and a concerned individual testified in support of this bill. The Department of Land and Natural Resources and several concerned citizens supported the intent of this measure. The Department of Taxation opposed this measure. The Tax Foundation of Hawaii provided comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2528, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2528, H.D. 2.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.  
(Representatives Jernigan and Moses voted no.)

**SCRep. 608-04 Finance on H.B. No. 1946**

The purpose of this bill is to authorize an income tax check-off for taxpayers to donate part of their income tax refund to the Beach Restoration Special Fund.

The Hawaii Chapter of the Sierra Club, Hawaii Audubon Society, Speckelsville Community Association, and Sugar Cove Owners Association submitted testimony in support of this bill. The Department of Land and Natural Resources and Department of Business, Economic Development, and Tourism supported the intent of this bill. The Department of Taxation opposed this bill. The Tax Foundation of Hawaii submitted comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive changes for purposes of style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1946, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1946, H.D. 1.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.  
(Representatives Jernigan, Meyer and Moses voted no.)

**SCRep. 609-04 Water, Land Use and Hawaiian Affairs on H.C.R. No. 10**

The purpose of this concurrent resolution is to provide the Legislature with an opportunity to review action on a land exchange to be consummated between the Board of Land and Natural Resources (BLNR) and Parker Ranch Land Trust.

The Department of Land and Natural Resources, Parker Ranch, and the Trustees of the Parker Ranch Land Trust testified in support of this measure.

The land exchange involves 4.988 acres in Waimea, Hawaii owned by Parker Ranch Land Trust and 0.78 acres of public land located in the same region. The acquisition of 4.988 acres would enable the Department of Education to build separate campuses for Waimea Elementary and Intermediate School. At the same time, the 0.78 acre parcel is needed to realign Lindsey Road to improve traffic flow through Waimea Town.

Section 171-50, Hawaii Revised Statutes, provides that land exchanges of public land for private land are subject to disapproval by the Legislature via resolution by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both in any regular or special session of the Legislature following the date of BLNR's approval in principle of the exchange.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 10 and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Thielen.

**SCRep. 610-04 Health on H.C.R. No. 4**

The purpose of this resolution is to request that the Auditor assess the social and financial effects of requiring health insurers to offer coverage for smoking cessation programs.

The Hawaii Medical Service Association and Kaiser Permanente testified in opposition.

Your Committee finds that smoking is directly responsible for eighty-seven per cent of lung cancer cases, causes most cases of emphysema and chronic bronchitis, and is a major factor in coronary heart disease and stroke. In addition, smoking by parents is associated with a wide range of adverse effects in their children. An impact assessment of mandating coverage for smoking cessation programs in health insurance plans will provide the Legislature with findings and recommendations for decision-making.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 4 and recommends that it be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representative Finnegan.

**SCRep. 611-04 Health on H.C.R. No. 5**

The purpose of this resolution is to request that the Auditor assess the social and financial effects of requiring health insurers to offer coverage for obesity reduction programs for children and adolescents.

Kaiser Permanente testified in opposition.

Your Committee finds that research indicates that there is more than a fifty percent probability that an obese child will continue to be obese as an adult. It has also been established that obesity substantially raises the risks of developing health problems such as high blood pressure, type II diabetes, heart disease, and breast, colon, and prostate cancers. An impact assessment of mandating coverage for obesity reduction programs for children and adolescents will provide the Legislature with findings and recommendations for decision-making.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 5 and recommends that it be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representative Finnegan.

**SCRep. 612-04 Finance on H.B. No. 2516**

The purpose of this bill is to reinstate the one-half percent general excise tax rate applied on wholesale transactions which was inadvertently repealed in Act 135, Session Laws of Hawaii 2003.

The Department of Taxation supported this bill. The Tax Foundation of Hawaii submitted comments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2516, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Jernigan.

**SCRep. 613-04 Finance on H.B. No. 2411**

The purpose of this bill is to:

- (1) Continue to update and streamline various insurance statutes to modernize regulation of insurance in conformity with the federal Gramm-Leach-Bliley Act and national standards; and
- (2) Make other substantive and technical amendments to improve the insurance laws and the efficiency of the Insurance Division's operations.

The Department of Commerce and Consumer Affairs and NAIFA Hawaii submitted testimony in support of this measure. State Farm Insurance Companies opposed a section of this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2411, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Jernigan.

**SCRep. 614-04 Finance on H.B. No. 2137**

The purpose of this bill is to avoid the cost, safety hazards, and inconvenience resulting from the unintentional rupturing of water mains, sewer lines, telecommunication cables, and other public utilities by establishing a statewide one call center. As a clearinghouse, this center will provide advance warning to excavators of the location of subsurface installations in the area of the excavation.

Hawaiian Electric Company, Inc., and its subsidiary utilities, Maui Electric Company and Hawaii Electric Light Company, the General Contractors Association of Hawaii, Land Use Research Foundation of Hawaii, Building Industry Association of Hawaii, and a concerned individual testified in support of this measure. Verizon Hawaii and The Gas Company also supported this bill and offered amendments. The Department of Transportation, Public Utilities Commission, and the Consumer Advocate supported the intent of this measure but expressed concerns. The City and County of Honolulu opposed this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2137, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 615-04 Finance on H.B. No. 2784**

The purpose of this bill is to amend the eligibility requirements of the Enterprise Zone Program (EZP) to allow more agricultural businesses the opportunity to participate by:

- (1) Extending the seven-year eligibility period by the number of months that a force majeure event would have prevented an agricultural business from maintaining its EZP eligibility;
- (2) Providing a revenue growth criteria option for an agricultural business that failed to meet the employment growth requirement of the EZP; and
- (3) Extending the seven years of tax credits by an additional seven years.

The Department of Agriculture with amendments, Department of Business, Economic Development, and Tourism, Hawaii Farm Bureau, Maui County Farm Bureau, Pineapple Growers Association of Hawaii, Hawaii Agriculture Research Center, Land Use Research Foundation of Hawaii, Hawaii Cattlemen's Council, Gay & Robinson, Inc., Nalo Farms, Inc., Local Island Fresh Edibles, Inc., and Hawaiian Commercial & Sugar Company testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2784, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 616-04 Finance on H.B. No. 2265**

The purpose of this bill is to adjust the statutorily established salaries of officials of the legislative service agencies and to appropriate general funds for these raises.

The Legislative Reference Bureau, Office of the Ombudsman, and the State Auditor testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2265 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.  
(Representatives Meyer and Moses voted no.)

**SCRep. 617-04 Finance on H.B. No. 2414**

The purpose of this bill is to continue to protect consumers and providers from insolvent dental insurers by extending the sunset date of Act 132, Session Laws of Hawaii 2001, to July 1, 2005.

The Department of Commerce and Consumer Affairs testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2414 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Jernigan.

**SCRep. 618-04 Consumer Protection and Commerce on H.B. No. 2048**

The purpose of this bill is to allow governmental agencies to participate as generators of renewable electricity under the net energy metering law and encourage more businesses to invest in renewable energy generation by:

- (1) Increasing the allowable generating capacity of net energy metered systems from 10 to 50 kilowatts; and
- (2) Including government entities in the definition of "eligible customer generator".

Testimony in support of this measure was received from the Department of Business, Economic Development, and Tourism, Public Utilities Commission, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, City Energy Coordinator of the City and County of Honolulu, Hawaii Solar Energy Association, Island Energy Solutions Inc., Powerlight Corporation, Hawaii PV Coalition, Integrated Architecture, and numerous interested residents. Sierra Club, Hawaii Chapter, and Hawaii Renewable Energy Alliance testified in support and suggested amendments. Hawaiian Electric Company, Inc., expressed concerns and requested amendments.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2048, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 619-04 Consumer Protection and Commerce on H.B. No. 2966**

The purpose of this bill is to encourage government agencies to produce renewable energy by allowing them to engage in "wheeling," a process by which electricity generated by a non-utility producer is transmitted over electric public utility transmission lines to another location.

The Department of Business, Economic Development, and Tourism, Division of Consumer Advocacy of the Department of Commerce and Community Affairs, City Energy Coordinator of the City and County of Honolulu, County of Maui Department of Management, several members of the Maui County Council, Powerlight Corporation, PV Suppliers, and Life of the Land testified in support of this measure. The Public Utilities Commission, Mayor of the County of Hawaii, and Office of Economic Development of the County of Kauai submitted testimony in support of this bill with amendments. Hawaii Renewable Energy Alliance supported this bill and offered comments. Hawaiian Electric Company opposed this bill.

Your Committee finds that this measure is an effective way to encourage government agencies to lead by example in the development of renewable energy resources. In addition, your Committee believes that electricity "wheeling" by government agencies may ultimately save electric utility ratepayers' money by enabling agencies to develop cost effective renewable energy systems that would otherwise not have been built. To this end, your Committee believes this measure is consistent with the State's statutory energy objectives.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2966, H.D. 2, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 620-04 Consumer Protection and Commerce on H.B. No. 2969**

The purpose of this bill is to reduce both Hawaii's dependence on fossil fuels and consumer energy costs by:

- (1) Allowing homeowners of single-family residences and townhouses to install solar energy devices on their homes, regardless of any declarations, bylaws, restrictions, deeds, leases, or similar binding agreements to the contrary;
- (2) Defining "private entity" as an association of homeowners, community association, condominium association, cooperative, or any other nongovernment entity that has covenants, bylaws, and administrative provisions to which a homeowner is subject, and with which the homeowner must comply;
- (3) Requiring every private entity to adopt rules that provide for the placement of solar energy devices;
- (4) Preventing private entities from assessing fees for the placement of any solar energy device;
- (5) Permitting homeowner installation of any solar energy device without prior approval, provided that the homeowner registers the device with the entity; and
- (6) Making the homeowner responsible for any common element or limited common element damages or maintenance, repair, replacement, and removal costs resulting from the device.

Testimony in support of this bill was received from the City Energy Coordinator of the City and County of Honolulu, Hawaii Renewable Energy Alliance, Hawaii Solar Energy Association, Integrated Architecture, Hawaii Chapter of the Sierra Club, Powerlight Corporation, and numerous concerned residents. The Department of Business, Economic Development, and Tourism supported the intent of this measure. The Hawaii Council of Associations of Apartment Owners testified in opposition to this bill.

Your Committee finds that solar energy is a viable source of alternative energy for single-family residences and townhouses in Hawaii. Your Committee further finds that this bill will assist the many homeowners in townhouses or planned communities who are prevented from installing solar panels on their homes.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2969, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 621-04 Finance on H.B. No. 2815**

The purpose of this bill is to improve school facilities and provide better learning environments for low- and moderate-income students by authorizing the issuance of general obligation bonds to allow the Department of Education to finance its statewide projects under the federal Qualified Zone Academy Bond program.

The Department of Education supported the intent of this bill and provided comments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2815 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.



**SCRep. 622-04 Finance on H.B. No. 2883**

The purpose of this bill is to protect the health, safety, and welfare of the public by funding and implementing an enhanced wireless 911 system designed to route a 911 call to a public safety answering point along with the caller's identification and location. Among other things, this bill establishes:

- (1) A monthly surcharge of 66 cents on mobile phone connections;
- (2) A special fund to receive the proceeds of the surcharge; and
- (3) A board to oversee the collection and distribution of the surcharge proceeds and that must report annually to the Legislature.

The Honolulu Police Department, Verizon Hawaii, Verizon Wireless, T-Mobile USA, Inc., American Heart Association, and AT&T Wireless testified in support of this bill. The Department of Accounting and General Services supported the intent of this measure. The Department of Health opposed this bill. The Office of Information Practices submitted comments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2883, H.D. 2, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 623-04 Finance on H.B. No. 1885**

The purpose of this bill is to encourage youth community involvement by appropriating funds for the Office of Youth Services and Department of Education to conduct a Youth Summit.

The Blueprint for Change and Hawaii Youth Services Network testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1885 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.

**SCRep. 624-04 Finance on H.B. No. 2716**

The purpose of this bill is to appropriate funds to conduct an appraisal of private lands within the South Kona Wilderness Area to be used as a basis for acquiring the lands either through purchase or a land exchange.

The Office of Hawaiian Affairs, the Trust for Public Land, and Sierra Club, Hawaii Chapter, testified in support of this bill. The Board of Land and Natural Resources opposed this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2716 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.

**SCRep. 625-04 Finance on H.B. No. 2156**

The purpose of this bill is to establish a Governor's School Readiness Commission to develop an early childhood education program known as the Open Doors Expansion Program that meets professionally accepted standards and that is delivered by well-trained early childhood educators in a variety of private and public settings.

The Hawaii Business Roundtable, Childcare Business Coalition, Waianae Coast Early Childhood Services, Inc., Hawaii Association for the Education of Young Children, Good Beginnings Alliance, Blueprint for Change, and a number of concerned individuals testified in support of this bill. The Department of Education, Department of Human Services, PATCH, and a concerned individual supported the intent of this measure. Blueprint for Change supported this with amendment.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2156, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.  
(Representative Jernigan voted no.)

**SCRep. 626-04 Finance on H.B. No. 2580**

The purpose of this bill is to fund salary increases and other cost adjustments authorized for employees of the following legislative agencies:

- (1) The Office of the Auditor;
- (2) The Hawaii State Ethics Commission;
- (3) The Legislative Reference Bureau (LRB); and
- (4) The Office of the Ombudsman,

by chapter 89C, Hawaii Revised Statutes, which relates to public officers and employees excluded from collective bargaining.

The Hawaii State Ethics Commission, Office of the Ombudsman, LRB, and Hawaii Government Employees Association, Managerial and Confidential Employees Chapter, testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2580 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 627-04 Finance on H.B. No. 2582**

The purpose of this bill is to fund all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of Collective Bargaining Unit 7.

In addition, this bill funds the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for public officers and employees excluded from collective bargaining.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2582 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 628-04 Finance on H.B. No. 2583**

The purpose of this bill is to fund all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of Collective Bargaining Unit 5.

In addition, this bill funds the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the DOE who are excluded from collective bargaining.

The Hawaii State Teachers Association testified in support of the measure.

Although no sums have been appropriated or authorized from the sources of funding indicated in this measure, your Committee believes that a vehicle for funding these collective bargaining cost items, including salary increases and other cost adjustments, should continue to advance in the Legislature as negotiations between the State and the exclusive bargaining representatives for Unit 5 will eventually produce a settlement.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2583 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 629-04 Finance on H.B. No. 2446**

The purpose of this bill is to make an emergency appropriation to fund wage increases for members of collective bargaining units 1 (nonsupervisory employees in blue collar positions) and 5 (teachers and other Department of Education (DOE) personnel under the same salary schedule).

Your Committee has received Governor's Message No. 126, requesting immediate consideration and passage of this bill, in accordance with Article VII, Section 9, of the State Constitution.

DOE and the Hawaii State Teachers Association supported this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2446 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Bukoski and Moses.

**SCRep. 630-04 Finance on H.B. No. 2354**

The purpose of this bill is to:

- (1) Make an emergency appropriation of \$1,550,000 to repair or replace damaged or destroyed state facilities; and
- (2) Increase the expenditure ceiling of the State Risk Management Revolving Fund to \$12,000,000 to facilitate payment of claims.

The Department of Accounting and General Services testified in support of this bill.

Your Committee has received Governor's Message No. 124 requesting immediate consideration and passage of this bill, in accordance with Article VII, Section 9, of the State Constitution.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2354 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Wakai and Moses.

**SCRep. 631-04 Finance on H.B. No. 2747**

The purpose of this bill is to clarify the powers and authority of Department of Taxation (DOTAX) investigators.

DOTAX testified in support of this bill. The Tax Foundation of Hawaii provided comments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2747 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Waters and Meyer.

**SCRep. 632-04 Health on H.B. No. 557**

The purpose of this bill is to protect consumers from tainted seafood products by:

- (1) Prohibiting the sale of fish that have been bruised, torn, or otherwise rendered liable to spoilage; and
- (2) Requiring the Department of Health (DOH) to adopt rules regarding the sale of fish.

The Hawaii Audubon Society and several concerned individuals submitted testimony in support of this bill. The Department of Health testified in opposition.

Your Committee finds that fish that have been speared are more likely to harbor bacteria and may cause human illness or death, particularly in the elderly. Your Committee received testimony stating that Hawaiian fish are particularly prone to poisoning and contamination.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 557, H.D. 1, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Finnegan.

**SCRep. 633-04 Labor and Public Employment on H.B. No. 2463**

The purpose of this bill is to clarify that performance appraisal systems are not to be used to evaluate whether employees meet license and other job qualifications for their position.

The Department of Human Resources Development submitted testimony in support of this measure. The Department of Human Resources of the City and County of Honolulu supported the intent of this measure with amendments.

Your Committee finds that licensure is often a qualification for public employment, and is not a performance requirement. Thus, statutory language relating to performance appraisals should not include reference to licensure requirements.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2463 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Caldwell, Ito, Souki and Pendleton.

**SCRep. 634-04 Consumer Protection and Commerce on H.B. No. 1729**

The purpose of this bill is to allow implementation of section 514A-13.4, Hawaii Revised Statutes, which was enacted in 2002 to facilitate the lease of common elements of a condominium for installation of television signal distribution and telecommunications equipment.

Testimony, in support of this bill was provided by T-Mobile USA, Inc., Nextel Partners, Inc., and a member of the Hawaii Legislative Action Committee of the Community Associations Institute. Testimony in opposition to the bill was submitted by another member of the Hawaii Legislative Action Committee of the Community Associations Institute.

Your Committee finds that the opponent of this bill raises the basic condominium governance issue that was decided in 2002, when Act 137 added section 514A-13.4 to the Condominium Property Regimes law. Proponents of this bill testify that Act 137 is apparently not clear enough to dissuade some individuals from asserting that the Act does not apply to leases whose duration is five years or more and that the lease must contain a provision allowing termination on 60-day notice.

Your Committee finds that Act 137 allows the board of directors of an association to install telecommunications equipment on association common elements. Act 137 is not limited to leases of five years or less, and the 60-day termination provision is also not required under the Act. In fact, imposing these limitations would eviscerate Act 137.

Normally, a statute is not amended simply because some individuals have misinterpreted it. However, the public benefit of a rapid deployment of telecommunications equipment, at optimal locations, warrants an exception in this case.

Proponents of this bill suggested amendments, which they feel add clarity. Those amendments were adopted. Other technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1729, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1729, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 635-04 Consumer Protection and Commerce on H.B. No. 1762**

The purpose of this bill is to allow insurance rate reductions to take effect when filed, subject to the subsequent approval of the State Insurance Commissioner.

Testimony in support of this bill was provided by State Farm Insurance Companies. The Insurance Commissioner of the Department of Commerce and Consumer Affairs supported the intent of this bill and stated concerns.

Your Committee finds that the Insurance Commissioner was specifically concerned about the consistency of terminology and felt that the 30-day review period was too short.

Your Committee has amended the bill to address these concerns. The review period will remain at 90 days and his suggestions on terminology were adopted.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1762, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1762, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 636-04 Consumer Protection and Commerce on H.B. No. 2974**

The purpose of this bill is to remove duplicative or irrelevant bases for disciplinary action against pest control operators in chapter 460J, Hawaii Revised Statutes (HRS), the Pest Control Operator licensing law (chapter 460J).

Testimony in support of this bill was provided by the Hawaii Pest Control Operators. The Department of Commerce and Consumer Affairs Regulated Industries Complaints Office and Pest Control Board opposed this measure.

Your Committee understands that licensees are concerned they may be subject to discipline twice for a single act, and that the state Departments of Agriculture and Commerce and Consumer Affairs are working to alleviate this concern by coordinating their activities and focusing on the most egregious pesticide law violations.

Your Committee has also addressed the industry's concerns, by amending this bill to:

- (1) Limit disciplinary action under chapter 460J to violations of laws or rules with a rational relationship to a pest control operator's qualifications, functions, duties, or responsibilities;
- (2) Remove the failure to complete construction repairs as a basis for disciplinary action, while continuing to require licensees to honor contracts for the agreed upon price; and
- (3) Remove, as redundant, conviction of offenses such as theft from the listed bases for disciplinary action, because conviction of a crime related to the licensee's profession is already included in the Uniform Professional and Vocational Licensing Act as a basis for license sanctions.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2974, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2974, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, M. Oshiro and Souki.

**SCRep. 637-04 Consumer Protection and Commerce on H.B. No. 2143**

The purpose of this bill is to protect gift certificate consumers by:

- (1) Updating the definition of "gift certificate" to include gift cards and other advances in technology;
- (2) Extending the minimum duration of a gift certificate from two years to seven years;
- (3) Providing for cash redemption when the balance on the certificate is 10 percent or less of the initial value;
- (4) Explicitly providing that service charges and dormancy fees are not permitted during the minimum duration period; and
- (5) Relieving merchants of the responsibility of reporting unredeemed gift certificates under the Unclaimed Property Act (UPA).

Your Committee heard testimony in support of this bill from a consumer. The Department of Budget and Finance (B&F) supported the bill in part, and opposed the bill in part. The Retail Merchants of Hawaii submitted concerns. The Department of Commerce and Consumer Affairs commented.

B&F opposed relieving merchants of their responsibility under the UPA but in response to questioning was unable to provide information on the extent of gift certificate issuer compliance with the UPA. B&F was also uncertain as to how they would respond where a consumer asked for the face value of an expired certificate, but the merchant had not reported it as unclaimed property. As this information is relevant to the question of whether the current system truly protects the interests of consumers, a

letter asking for a more formal response will be sent to B&F. Should Senators raise these same issues, it is hoped that the answers will be more complete.

Your Committee has been advised that DCCA has an ongoing dialogue with the Hawaii Retail Merchants Association (HRMA) regarding the bill and HRMA's many concerns. The hope was expressed that they would reach an understanding satisfactory to all concerned participants.

Your Committee appreciates the effort that is being made by the participants in the ongoing dialogue. To keep that dialogue going, while reflecting that the current version of the bill is likely to require substantial amendment at some later date, the effective date of the bill has been changed to July 1, 2009. No other substantive changes were made to the bill, to avoid reducing the number or permutations or combinations available to the participants in the ongoing dialogue.

Technical, nonsubstantive amendments were also made for consistency and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2143, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2143, H.D. 2, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, Lee, M. Oshiro and Souki.

#### **SCRep. 638-04 Labor and Public Employment on H.B. No. 2464**

The purpose of this bill is to clarify that whenever a civil servant who is promoted or transferred to another position fails to successfully complete the probationary period because of inefficiency, the civil servant shall be returned to the former position or a vacant comparable position as determined by the employer.

The Department of Human Resources Development submitted testimony in support of this measure. The Department of Human Resources of the City and County of Honolulu supported the intent of this measure with amendments. The Hawaii Government Employees Association, AFSCME Local 152 opposed this measure.

Your Committee finds that while an employer is often the best-suited to determine the most operationally-efficient solutions to staffing questions, policy-makers must balance the rights of civil servants with the need for efficiency in government.

As such, your Committee has grave concerns that the bill, as presently drafted, could conceivably allow the employer to use promotions and transfers to rid the workplace of certain employees who the employer may not be able to suspend, discharge, or demote under existing civil service laws, administrative rules, or employment policies. Your Committee acknowledges that the Legislature never intended promotions and transfers to be used to eliminate the workforce of disgruntled or inefficient civil servants.

After careful consideration, your Committee has amended this bill by:

- (1) Clarifying that if a civil servant is released from the new position for inefficiency during the probationary period, the civil servant shall be returned to the former position unless it no longer exists or is filled;
- (2) Clarifying further that if the civil servant cannot be returned to the former position, the employee shall be placed in a comparable position in accordance with reduction-in-force procedures authorized under a valid collective bargaining agreement;
- (3) Clarifying that if the employee is an excluded employee, the employee shall be returned to a vacant comparable position as determined by the employer;
- (4) Defining "comparable position" to mean a position in any class of work in the same salary range, same bargaining unit, and same department for which the employee meets the minimum qualification requirements; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2464, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2464, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Caldwell, Ito, Souki and Pendleton.

#### **SCRep. 639-04 Labor and Public Employment on H.B. No. 2740**

The purpose of this bill is to extend notification requirements of an impending closure, partial closure, or relocation of a business that employs 50 or more employees during the preceding 12 months. Specifically, this bill:

- (1) Extends from 60 to 90 days, the period by which an employer must notify employees and the Director of Labor and Industrial Relations (DLIR) of its intention to close, partially close, or relocate; and
- (2) Requires an employer to provide written notification to employees and the Director of DLIR at least 180 days prior to the discontinuance, termination, or reduction of housing or housing assistance.

ILWU Local 142 and two concerned individuals submitted testimony in support of this measure. DLIR and The Chamber of Commerce of Hawaii opposed this measure.

Your Committee finds that business decisions made by employers carry significant consequences for employees. Employees should have ample notice of significant decisions such as those affecting their employment status so they may seek or retrain for other employment.

While DLIR testified that the existing 60-day requirement is consistent with the federal plant closing notice requirement, known as the Federal Worker Adjustment and Retraining Notification Action, some states such as Maryland and Massachusetts have enacted laws to provide longer notification requirements where employers are required to provide notification to employees at least 90 days prior to closure.

Your Committee further finds that employers sometimes provide housing or housing assistance to their employees, as in the case of Del Monte's Poamoho Camp. These employees are often unable to afford housing at market rates, making them vulnerable to their employer's business decisions.

While your Committee recognizes that this measure will not help those at Poamoho Camp, your Committee notes that it would likely assist the 600-plus residents of Kunia Camp, which is also affiliated with Del Monte.

Accordingly, after careful consideration, your Committee has amended this bill by:

- (1) Defining the term "housing assistance" as any stipend, subsidy, relocation fee, sub-market lease, or other financial assistance provided by an employer to an employee toward housing; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2740, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2740, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Caldwell, Ito, Souki and Pendleton.

#### **SCRep. 640-04      Energy and Environmental Protection on H.B. No. 1840**

The purpose of this bill is to statutorily provide that Department of Health (DOH) rules which regulate fugitive dust shall cover both emissions that pass over a property lot line as well as those that pass into other buildings or facilities within the same property lot line, regardless of whether they enter the ambient air.

DOH supported the intent of this bill but opposed the bill itself. The Hawaii Agriculture Research Center opposed this measure.

Your Committee emphasizes that this measure is not intended to address agricultural concerns, but rather to clarify a gray area regarding industrial situations where dust from one tenant encroaches upon and enters into the facility of another tenant within the same property lot line.

Your Committee has amended this bill by:

- (1) Inserting the proposed amendments into section 321-11, Hawaii Revised Statutes (HRS), instead of section 342B-12, HRS, upon recommendation by DOH; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1840, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1840, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kanohe and Bukoski.

#### **SCRep. 641-04      Consumer Protection and Commerce/Judiciary on H.B. No. 2633**

The purpose of this bill is to clarify that the standards for granting a motion to dismiss, motion for summary judgment, or motion for judgment as a matter of law, including the burden of proof and the burden of providing evidence, shall be the same for actions under chapter 480, Hawaii Revised Statutes, as for other civil actions.

Three private attorneys testified in support of this bill. The Department of the Attorney General (AG) opposed the bill.

#### Federal Antitrust Law

Your Committees heard testimony about the difficulties faced by consumers in holding businesses accountable under the antitrust law. Specifically, starting with the seminal case of *Matsushita Electrical Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986) (*Matsushita*), federal courts have required plaintiffs to respond to motions for summary judgment by producing evidence that tends to exclude the possibility that the alleged conspirators acted independently.

This unusual requirement has allowed judges to prevent cases in which there is evidence of antitrust activity from ever being heard by a jury. In effect, the alleged conspirators need only say: "We all raised our prices at the same time, because we are all equally motivated by the desire to maximize our income." Then the plaintiff must exclude this possibility by producing a "smoking gun." For this reason, antitrust cases may effectively only be pursued when one of the conspirators turns state's evidence. This deprives plaintiffs of their right to their day in court.

While Hawaii courts have not yet addressed this issue under the State's antitrust law in chapter 480, Hawaii Revised Statutes (HRS), section 480-3, HRS, directs Hawaii courts to follow federal precedent. The benefit is that this allows Hawaii's courts and attorneys to look to the federal law when Hawaii's case law is silent. However, there are some federal cases, like *Matsushita*, that do not deserve to be followed.

#### Bill Title

Your Committee also heard concerns from the AG that the title of the bill might contain two subjects in violation of the State Constitution.

The concern about the title of the bill, which references the title of chapter 480, HRS, is technical, but critical. However, the AG's testimony represents a radical departure from historical interpretation. It is at odds with three formal opinions from two prior AGs: AG Opinion 57-23a of March 19, 1957, AG Opinion 72-16 of June 19, 1972, and AG Opinion 74-8 of March 15, 1974. It is also at odds with substantial case law.

The testimony is so inconsistent with precedent, that your Committees assumes it is simply an error. Such errors are understandable, given the timeframes for responding to hearing notices. However, because of the critical nature of such testimony, clarification by the AG has been requested.

#### Clarity of Amendment

The AG also provided persuasive testimony that the amendment proposed by the bill is unclear. To correct this, instead of creating a new section, your Committees have amended section 480-3, HRS. Hopefully, it is now clear that this amendment merely ensures that Hawaii will not follow the *Matsushita* line of cases and that plaintiffs will not be denied their right to a jury's decision.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2633, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2633, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Hamakawa, Ito, Kanoho, M. Oshiro, Pendleton and Thielen.

#### **SCRep. 642-04      Judiciary on H.B. No. 2378**

The purpose of this bill is to clarify that all administratively-attached boards and commissions are arms of the State and entitled to the same sovereign immunity as the State itself.

The Attorney General testified in support of this bill. The Consumer Lawyers of Hawaii offered comments and concerns regarding this measure.

Your Committee finds that this measure will provide an explicit provision expressing the State's intent to extend its sovereign immunity to boards and commissions.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2378 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 643-04      Judiciary on H.B. No. 2320**

The purpose of the bill is to:

- (1) Remove judicial discretion to mandate that defendants make restitution to victims;
- (2) Provide that a defendant's financial ability to make restitution payments may be considered only in connection with establishing a restitution payment schedule; and
- (3) Require payment of restitution as a precondition for release on parole without regard to ability to fulfill payment.

The Office of the Prosecuting Attorney of the County of Kauai, Victim/Witness Assistance Division of the Department of the Prosecuting Attorney of the County of Maui, Victim Assistance Program of the Office of the Prosecuting Attorney of the County of Hawaii, Sex Abuse Treatment Center, and Mothers Against Drunk Drivers submitted testimony in support of this measure. The Crime Victim Compensation Commission and Department of the Prosecuting Attorney of the City and County of Honolulu supported this measure with amendments. The Office of the Public Defender opposed this measure. The Judiciary and the Department of the Attorney General offered comments.

Your Committee finds that:

- (1) Whether or not courts order defendants to make restitution should not depend on the ability to pay;
- (2) Ability to make restitution should affect only the manner by which it will be accomplished, if at all; and
- (3) Inability to accomplish restitution should not be a barrier to releasing an imprisoned person on parole.

Your Committee has amended this bill by:

- (1) Deleting the reference to require payment of restitution as a precondition for release on parole without regard to ability to fulfill payment; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2320, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2320, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 644-04      Judiciary on H.B. No. 1765**

The purpose of this bill is to provide for the automatic expiration of the term of a board or commission member upon the adjournment of the second consecutive meeting at which the member was absent and the board failed to constitute a quorum.

The Department of Commerce and Consumer Affairs supported the intent of this bill. The Department of Human Resources Development supported this bill with amendments. The City and County of Honolulu Department of Human Resources and the Radiologic Technology Board opposed this measure. A concerned individual provided comments.

Your Committee finds that this measure will affect lesser committed board and commission members who hinder the attainment of quorum. Your Committee notes that in some instances permit approvals were automatically granted due to a lack of quorum at meetings.

Your Committee does not wish to penalize members whose absences are excused for valid reasons. Some members are appointed for their expertise in a specialized subject area, and the topics on a particular meeting agenda may not concern that area of expertise. Your Committee does not wish to discourage generous community members who serve without compensation from participating on boards and commissions.

Your Committee has amended this measure by:

- (1) Clarifying that it does not apply to members whose absences have been excused for a valid reason;
- (2) Restricting its application to members of state boards and commissions and excluding those of political subdivisions of the State; and
- (3) Excluding members of advisory boards that do not have decision-making authority.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1765, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1765, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 645-04      Judiciary on H.B. No. 2717**

The purpose of this bill is to clarify that a lien for services in a personal injury case shall be established pursuant to a settlement or judgment for damages for personal injury.

The Queen's Medical Center testified in support of this measure. The Consumer Lawyers of Hawaii testified in opposition.

Your Committee finds that section 663-10, Hawaii Revised Statutes (HRS), deals directly with the issue of lienholders' rights to tort settlements or judgments.

Your Committee has amended this bill by:

- (1) Amending section 663-10, HRS, to specifically include liens arising out of claims for "payment due a health care provider;"
- (2) Adding a reference to section 663-10, HRS, in section 507-4, HRS;
- (3) Inserting a savings clause; and
- (4) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2717, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2717, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 646-04      Judiciary on H.B. No. 2786**

The purpose of this bill is to award attorney's fees and costs of arbitration to the prevailing policyholder, beneficiary under the policy, or the person who has acquired the rights thereof (policyholder) in an arbitrated insurance dispute over liability when an arbitrator or arbitration panel (arbitrator) orders an insurer to pay benefits to the policyholder.

The Department of Commerce and Consumer Affairs and the Consumer Lawyers of Hawaii supported this bill. The Hawaii Insurers Council opposed this measure. State Farm Insurance Companies opposed this bill and suggested amendments.

Your Committee finds that while this measure has merit, there remains unresolved issues regarding its applicability to disputes over coverage, as opposed to questions of liability.

To generate further discussion and more clarification, your Committee has amended this measure by:

- (1) Segregating the arbitration provisions in this bill into a separate subsection;
- (2) Clarifying that where an arbitrator rules against an insurer who contested coverage under a policy, the policyholder shall be awarded attorney's fees and costs of arbitration;
- (3) Changing the effective date to July 1, 2345; and



- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2786, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2786, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 647-04 Judiciary on H.B. No. 2691**

The purpose of the bill is to create a new felony offense of aggravated animal cruelty for:

- (1) Repeated animal cruelty behavior; and
- (2) Harming pet animals for intimidation of persons.

The Department of the Prosecuting Attorney for the City and County of Honolulu, Hawaiian Humane Society, Maui Humane Society, Kauai Humane Society, and concerned individuals testified in support of this bill. The Office of the Public Defender, Animal CARE Foundation, and concerned individuals opposed the measure.

Your Committee finds that repeated cruelty to animals and harming pet animals to mentally injure the pet owner are behaviors that need special attention.

Your Committee has amended this bill by:

- (1) Exempting from the new class C felony certain offenses related to fighting animals; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2691, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2691, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Ito, Kanoho and Pendleton.  
(Representatives Chang, Herkes, Sonson and Souki voted no.)

**SCRep. 648-04 Water, Land Use and Hawaiian Affairs on H.B. No. 87**

The purpose of this bill is to perpetuate the Hawaiian beachboy tradition by authorizing the Board of Land and Natural Resources (BLNR) to enter into lease negotiations and enter into a lease allowing a beach services provider to operate in the Hawaiian beachboy tradition at the Duke Kahanamoku Beach in Waikiki, Oahu.

Specifically, this bill:

- (1) Authorizes BLNR to negotiate a direct lease to the existing beach services permittee, C&K Beach Services, Inc. (C&K); and
- (2) Establishes requirements for the leasing process, prospective lessee, and the lease.

Hui Malama o ke Kai, Waikiki Beach Activities, Ltd., the Estate of Nadine Kahanamoku, Hawai'i Pilot Association, C&K, and several concerned individuals submitted testimony in support of this measure. The Department of Land and Natural Resources, Star Beachboys, Inc., and several individuals opposed this measure. The Office of Hawaiian Affairs offered comments.

Testimony advocating an open bid process was carefully weighed against equally strong support for a long-term negotiated contract. While an open bid process appeared to be appropriate, your Committee was compelled to consider the intrinsic and immeasurable value of the world-renowned Hawaiian beachboy tradition so fondly and earnestly described by testifiers. Your Committee notes that this priceless asset of Hawaiiana may be lost through the open bid process.

Your Committee also considered the contributions of Hawaiian beachboy services, and more particularly the current provider at Duke Kahanamoku Beach, C&K, which has:

- (1) Provided 27 years of proven, quality services to visitors and residents, including lessons on the sea and Waikiki reefs;
- (2) Provided complimentary surfing and canoeing lessons to school children and at-risk youth; and
- (3) Saved countless lives through lifeguard services and ocean rescues at no cost to the State.

Your Committee also notes that this measure represents a work-in-progress. Constitutional concerns expressed by the Department of the Attorney General relating to the leasing process and other concerns expressed by testifiers on this bill must be addressed.

The alternative of "first right-of-refusal" was briefly discussed and may be subsequently pursued in the legislative process as a possible option.

Your Committee has amended this bill by:

- (1) Authorizing BLNR to negotiate a direct lease with Hawaii Beachboy Preservation Foundation, Inc., a nonprofit entity as required by section 102-2(b)(8), Hawaii Revised Statutes;

- (2) Authorizing a lease term of not less than 15 years;
- (3) Requiring that the director of the prospective lessee rather than the prospective lessee provide documentation proving operation of a beach service concession at Duke Kahanamoku Beach for at least 25 years; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 87, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 87, H.D. 2, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Morita and Bukoski.

**SCRep. 649-04      Judiciary on H.B. No. 1796**

The purpose of this bill is to protect individual privacy by:

- (1) Including digital recordings under the offense of violation of privacy; and
- (2) Amending the offense of violation of privacy in the second degree to include photographic images among the types of private communications that may not be intercepted or divulged without the consent of the sender or receiver.

The Hawaii State Commission on the Status of Women, Department of the Prosecuting Attorney for the City and County of Honolulu, Honolulu Police Department, and two concerned individuals testified in support of this bill. T-Mobile USA, Inc., expressed concerns over this measure and suggested amendments.

Your Committee finds that cellular telephones are capable of capturing photographic images and transmitting them in ways that invade individual privacy. This measure seeks to discourage such misuse of technology.

Your Committee has amended this bill by:

- (1) Exempting from the provisions of this measure the dissemination, distribution, or transfer of images by an electronic communication service provider or remote storage service in the ordinary course of its business; and
- (2) Making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1796, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1796, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 650-04      Consumer Protection and Commerce on H.B. No. 1259**

The purpose of this bill is to keep Hawaii abreast of National Conference of Commissioners on Uniform State Laws (NCCUSL) revisions to the Uniform Commercial Code (UCC) by replacing UCC Article 1, which provides the definitions and general provisions for the entire UCC, with a revised Article 1. Substantive changes to Article 1 in this bill include those that:

- (1) Amend the choice of laws provisions by allowing the parties to agree to use the law of any state to govern the transaction, provided that a consumer who is a party may not be deprived of legal protections of the consumer's state or country;
- (2) Change the definition of "good faith" throughout UCC except Article 5, from honesty in fact in the contract or transaction concerned, to honesty in fact and observance of reasonable commercial standards of fair dealing;
- (3) Narrow the scope of Article 1 to transactions within the scope of other UCC articles; and
- (4) Provide clearer distinctions about where the UCC is preemptive.

At the January 29, 2003, hearing of this bill, which carried over to the 2004 Regular Session, testimony in support of the bill was provided by the Hawaii's Commission to Promote Uniform Legislation (CPUL). The Hawaii Bankers Association (HBA) opposed the measure.

Your Committee finds that over the years, the various articles of the UCC have been revised and updated to recognize changes in technology and business practices, and to correct errors and ambiguities. In 2003, your Committee deferred decision making on this bill after HBA testified that few other states had enacted the amendments in this bill, and therefore, the interest in uniformity would not be served.

Your Committee now finds that Texas, Virginia and the Virgin Islands have adopted the new Article 1, which has also been approved by the American Bar Association. Six other states in addition to Hawaii are considering its adoption: Alabama, Idaho, Massachusetts, Minnesota, Oklahoma, and West Virginia.

Your Committee has amended this bill to reflect a consensus draft developed by HBA and CPUL, to address HBA's objections. As amended, this bill differs from NCCUSL's model act in that it:

- (1) Removes the amendment to "good faith" in section 490:1-201, and retains the current definition of honesty in fact in the contract or transaction concerned; and

- (2) Removes the amendment to the choice of laws provisions in section 490:1-301, and retains the current requirement that a transaction must bear a reasonable relation to the state whose law the parties agree should govern the transaction.

Your Committee finds that while this bill appears uncontroversial, a much closer look is warranted. Your Committee's review of the modified definition of "good faith" raises the possibility that this bill may effect a substantial change in both statutory and common law.

Until fairly recently, the current definition of "good faith" -- honesty in fact in the contract or transaction -- applied throughout the Code with the exception of Article 2 (Sales) which defined "good faith," in the case of a merchant, as honesty in fact and the observance of reasonable commercial standards of fair dealing.

However, in the late 1980s, this Article 2 definition was gradually incorporated throughout the Articles of the UCC as they were revised, with the exception of Article 5. In light of this emerging consensus, NCCUSL's Article 1 model act in the original draft of this bill, redefined "good faith" using the Article 2 definition.

The consensus draft developed by HBA and CPUL in the House Draft 1 of this bill returns to the original definition of "good faith": honesty in fact in the contract or transaction.

Your Committee finds that the testimony on this bill was so cursory, that it is not clear whether this change will substantially lower the standard of "good faith" as it applies in many consumer transactions in Hawaii, not to mention the potential effect on the common law principle that contracts contain an implied covenant of good faith and fair dealing. This apparently harmless bill may actually have serious negative consequences for Hawaii's consumers.

At this point, your Committee is not certain that it fully understands the true effect of this bill, and notes that a second amendment removing the NCCUSL's new choice of law provisions was also agreed to by the parties.

The issues raised in this committee report may ultimately prove ephemeral, but the testimony to date does not fully inform the Legislature and needs to be much more complete in any hearings that are held in the Senate. For that reason, the bill has been further amended to delay the effective date until July 1, 2009.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1259, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1259, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, Lee, M. Oshiro and Souki.

#### **SCRep. 651-04      Consumer Protection and Commerce on H.B. No. 1472**

The purpose of this bill is to permit an escrow agent to disburse a purchaser's funds, prior to closing, if the escrow agent has a bond or letter of credit from the developer which ensures payment of any refund to which a buyer may become entitled.

Your Committee notes that this bill was heard during, and carried over from the 2003 Regular Session. Your Committee rescheduled this bill for decision-making at the request of a party who wished to offer an amendment concerning the reselling of time share units. To better inform the public, and elicit more relevant testimony, your Committee explicitly stated in the hearing notice that this bill would be used as a vehicle to address issues relating to the resale of time share units, and that the amended bill was available for public review.

Your Committee received testimony supporting amendment of this bill from a time share developer who wishes to resell time share units and intervals that were previously sold at retail. The Hawaii Chapter of the American Resort Development Association (HARDA), a trade association of time share developers, expressed concerns about the amendment.

Your Committee heard concerns from HARDA that this bill was unclear and might have unintended consequences. HARDA offered to work with the proponent and your Committee to clarify and improve the bill. Your Committee deferred decision-making to provide an opportunity for this collaborative effort to produce results. After that deferral, and prior to decision-making, the time share administrator advised your Committee of several concerns.

Your Committee has amended this bill by replacing its substantive contents with the proposed amendment dealing with time share resales. Inasmuch as the collaborative process was not completed and the time share administrator's concerns were not fully addressed, the effective date of this bill has been delayed until July 1, 2009. This ensures that, even if the concerns are subsequently resolved to the satisfaction of the Senate, this bill will not reach the Governor's desk without the consent of the House of Representatives.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1472, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1472, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, Lee, M. Oshiro and Souki.

#### **SCRep. 652-04      Finance on H.B. No. 2749**

The purpose of this bill is to delete an obsolete date referring to the effective date of transfers for central services expenses under section 36-31, Hawaii Revised Statutes.

No testimony was received on this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2749 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Waters and Meyer.

**SCRep. 653-04 Finance on H.B. No. 2579**

The purpose of this bill is to fund:

- (1) All collective bargaining cost items in the agreement negotiated with the exclusive bargaining representatives of collective bargaining units 2, 3, 4, 6, 8, and 13; and
- (2) The salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees who are excluded from collective bargaining.

The Judiciary, Hawaii Government Employees Association (HGEA), and HGEA Managerial and Confidential Employees Chapter testified in support of this bill.

Although no sums have been appropriated or authorized from the sources of funding indicated in this measure, your Committee believes that a vehicle for funding these collective bargaining cost items, including salary increases and other cost adjustments, should continue to advance in the Legislature as negotiations between the State and the exclusive bargaining representatives for units 2, 3, 4, 6, 8, and 13 will eventually produce a settlement.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2579, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2579, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 654-04 Consumer Protection and Commerce/Judiciary on H.B. No. 2788**

The purpose of this bill is to protect home buyers from predatory lending practices of mortgage brokers and solicitors licensed under chapter 454, Hawaii Revised Statutes (chapter 454), by:

- (1) Providing that no mortgage is valid unless a broker provides a written summary of a borrower's rights;
- (2) Allowing license suspension if a licensee pursues a course of misrepresentation that targets a specific group of borrowers;
- (3) Increasing the licensure bond amount from \$15,000 to \$50,000;
- (4) Authorizing the Department of Commerce and Consumer Affairs (DCCA) to adopt rules requiring disclosure of marketing strategies and investments;
- (5) Requiring notice and a hearing for licensees to be sanctioned under chapter 454, and providing the Director of Commerce and Consumer Affairs with adjudicatory powers to implement the requirement; and
- (6) Increasing the fine for violations from \$1,000 to \$2,000 per occurrence.

The Legal Aid Society of Hawaii supported the intent of this measure. Hawaii Credit Union League, Hawaii Financial Services Association, Hawaii Bankers Association, Mortgage Bankers Association of Hawaii, and Ameriquest Mortgage Company opposed this bill. DCCA's Regulated Industries Complaints Office and Hawaii Association of Mortgage Brokers offered comments.

Your Committees have amended this bill by replacing its substance with the contents of H.B. No. 2973, which contains provisions similar to this bill. The amended bill differs in that it:

- (1) Requires that a written summary of borrowers rights be provided to the consumer, but no longer conditions the validity of a mortgage on provision of the summary;
- (2) Amends the specific list of activities subject to license revocation to:
  - (A) Remove pursuit of a course of misrepresentation targeting a particular category of borrowers; and
  - (B) Add door-to-door soliciting of mortgages and knowingly counseling a borrower to accept a loan at a higher cost;
- (3) Adds provisions that among other things permit the commissioner to impose fines and order forfeiture of the license for failure to maintain the \$50,000 bond;
- (4) Specifies the hours of continuing education required for license renewal, and provides that the licenses of those in noncompliance will be placed on "inactive" status;
- (5) Specifies the conditions under which a mortgage broker or solicitor may advertise and provides penalties;
- (6) In cases where a mortgage broker or solicitor violates advertising restrictions, exempts from liability:
  - (A) A public utility from regulatory action for disconnecting the broker or solicitor's telephone service; and
  - (B) A publisher or producer of a print or broadcast advertising medium for refusing the broker or solicitor's advertisement;

- (7) Adds a new definition for "designated solicitor in charge" and amends the definitions of "mortgage broker" and "mortgage solicitor";
- (8) Exempts credit union service organizations from the laws applicable to mortgage brokers and solicitors;
- (9) Provides an exception from the licensure requirement of two years of experience in financial transactions, for licensed insurance producers, under specific conditions;
- (10) Changes the effective date to January 1, 2020, to permit further discussion on this measure; and
- (11) Makes technical, nonsubstantive changes for clarity, style, and consistency.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2788, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2788, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, Lee and M. Oshiro.  
(Representative Stonebraker voted no.)

**SCRep. 655-04      Judiciary on H.B. No. 2254**

The purpose of this bill is to clarify that the definition of "sexual penetration" includes the acts of cunnilingus and anilingus whether or not actual penetration has occurred.

The Department of the Prosecuting Attorney for the City and County of Honolulu, Department of the Prosecuting Attorney for the County of Maui, Honolulu Police Department, Sex Abuse Treatment Center, and a concerned individual testified in support of this bill.

Your Committee finds that contrary to an earlier Hawaii Supreme Court decision that cunnilingus and anilingus did not require actual penetration to be considered "sexual penetration", a recent interpretation by the Hawaii Supreme Court held that actual penetration is required. This measure will conform statutory language to the earlier interpretation of "sexual penetration".

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2254 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 656-04      Judiciary on H.B. No. 2259**

The purpose of the bill is to create a misdemeanor offense for using the 911 emergency telephone number to make a false alarm, false complaint, or report of false information.

The Police Department of the City and County of Honolulu and the Maui County Police Department submitted testimony in support of this measure.

Your Committee finds that operations of the 911 call centers experience a large volume of calls, each of which they are required to process. False reports, false complaints, or false information made to 911 call centers consume limited resources that should be focused on legitimate emergency situations.

Your Committee has amended this bill by:

- (1) Clarifying that the misdemeanor involves the misuse of a 911 call in reckless disregard of the risk that a public safety agency will respond by dispatching emergency services;
- (2) Defining "public safety agency" as any federal, state, or county police, fire, emergency medical service, or civil defense relief agency; and
- (3) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2259, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2259, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 657-04      Judiciary on H.B. No. 1980**

The purpose of this bill is to:

- (1) Open Family Court hearings to the public;
- (2) Require the Supreme Court to review Family Court judges every two years; and
- (3) Require Family Court judges to strictly enforce perjury statutes.

Many concerned individuals testified in support of this bill. The Judiciary provided comments.

Your Committee finds that many people are frustrated with Child Protective Services (CPS) and are seeking legislation that will move CPS in a positive direction. Your Committee understands Family Court's concerns, but hopes that this bill, as amended,

will spark discussion and bring together interested parties, including the Family Court and the Department of Human Services, so they might work together to improve the system.

Your Committee has amended this bill by:

- (1) Only allowing public access to Family Court hearings initiated pursuant to the Child Protection Act;
- (2) Allowing parents involved in CPS cases to bring a non-lawyer advocate to court or any other adult;
- (3) Changing the effective date to July 1, 2345, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1980, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1980, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 658-04      Judiciary on H.B. No. 537**

The purpose of this bill is to:

- (1) Prohibit discriminatory practices in real property transactions on the basis of sexual orientation; and
- (2) Add familial status as a protected category in the anti-blockbusting law to correct an inadvertent omission in 1992.

This bill also exempts rental of housing accommodations on property used for church purposes from the application of discriminatory practice requirements.

Your Committee received testimony in support of this measure from the Hawaii State Commission on the Status of Women, the University of Hawaii Women's Center, Hawaii Citizens for the Separation of State and Church, Hawaii Women Lawyers, the League of Women Voters of Hawaii, the National Lesbian and Gay Journalists Association, Planned Parenthood of Hawaii, the Social Justice Council of the First Unitarian Church of Honolulu, RE/MAX Properties, the Board of Directors of Lambda Aloha, Hula's Bar & Lei Stand, and numerous individuals. Testifying in support of this bill with amendments were Civil Unions–Civil Rights Movement and Hawaii Citizens for the Separation of State and Church.

The Hawaii Civil Rights Commission testified in support of this measure and offered alternative language for the religious exemption provisions. The Gay and Lesbian Education and Advocacy Foundation, the Gay Lesbian Bisexual Transgendered Caucus of the Democratic Party of Hawaii, and PFLAG also supported this measure but opposed the exemption for religious organizations.

Brigham Young University-Hawaii (BYU-Hawaii) commented on this bill and proposed alternative language for the religious exemption provision.

Your Committee finds that no legitimate reason exists to permit landlords to deny renters housing or to evict them because they are gay or lesbian. Your Committee finds that this bill implements the public policy of the Legislature against housing discrimination on the basis of sexual orientation as expressed in section 368-1, Hawaii Revised Statutes (HRS).

Your Committee believes that the religious exemption provision is overly broad, because it applies to all bases for discrimination prohibited under section 515-3, HRS. BYU-Hawaii expressed concern that these provisions would hamper its off-campus housing program, which permits eviction of students for noncompliance with BYU-Hawaii's Residential Living Standards, which, in turn, require students to conduct themselves in a manner consistent with the principles of The Church of Jesus Christ of Latter-day Saints and the BYU-Hawaii Honor Code. Upon further consideration, your Committee has amended this bill by more narrowly crafting the religious exemption provisions to address the concerns of BYU-Hawaii.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 537, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 537, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 659-04      Judiciary on H.B. No. 698**

The purpose of the bill is to more effectively prevent persons from illegally entering or residing on beaches and campgrounds by:

- (1) Making these persons subject to the offense of criminal trespass in the second degree, and thereby increasing the penalty from a violation to a petty misdemeanor; and
- (2) Changing from one year, to an unspecified period of time, the period that a person caught trespassing must stay off the property under the terms of a written warning provided to the person.

The Mokuleia Community Association, Hawaii Reserves, Inc., and three concerned individuals supported this bill. The Honolulu Police Department supported the measure with amendments. The Office of the Public Defender, Affordable Housing and Homeless Alliance, Partners in Care, and a concerned citizen opposed this bill. The Department of the Prosecuting Attorney for the City and County of Honolulu submitted comments.

Your Committee finds that some homeless people set up illegal shelters on public beaches to the detriment of the beaches' recreational users. However, there is no indication of a need to extend protection to private property, or to extend the warning period beyond one year.

Your Committee has amended the bill by:

- (1) Deleting the references to private property;
- (2) Retaining the one year time period for which the warning is applicable; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 698, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 698, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 660-04 Finance on H.B. No. 634**

The purpose of this bill is to support health services on the Waianae Coast of Oahu by making an appropriation to the Waianae Coast Comprehensive Health Center (WCCHC) for emergency services.

WCCHC supported this bill. The Department of Health supported the intent of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 634 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 661-04 Finance on H.B. No. 2280**

The purpose of this bill is to authorize the issuance of general obligation bonds to finance projects for the Executive Branch and Judiciary.

This bill also makes findings and declarations, as required by Article VII, Section 13, of the Constitution of the State of Hawaii, that the total amount of principal and interest, estimated for general obligation bonds and all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance.

The Department of Budget and Finance testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2280 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 662-04 Finance on H.B. No. 2748**

The purpose of this bill is to make technical amendments for clarity and style to section 39-17, Hawaii Revised Statutes, pertaining to general obligation bonds.

No testimony was received on this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2748 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Waters and Meyer.

**SCRep. 663-04 Finance on H.B. No. 2136**

The purpose of this bill is to clarify the debarment provisions relating to the procurement of professional services to reduce abuse of the system. This bill:

- (1) Requires that debarment and suspension be imposed only in the public interest for a governmental body's protection and not for punishment purposes;
- (2) Requires the chief procurement officer to consider specific factors before deciding on debarment, including the seriousness of the contractor's acts and any remedial measure or mitigating factors;
- (3) If a cause for debarment exists, places the burden of proof on the contractor to convince the chief procurement officer that debarment is not necessary; and
- (4) Specifies that the recommendations of the procurement selection committee in ranking qualified individuals shall not be overturned without due cause unless there is evidence of fraud in the selection process.

Supporting testimony was submitted by General Contractors Association of Hawaii, Structural Engineers Association of Hawaii, Hawaii Society of Professional Engineers, American Society of Civil Engineers, Coalition of Hawaii Engineering & Architectural Professionals, American Council of Engineering Companies of Hawaii, Paul Louie & Associates, Inc., Ronald N.S. Ho & Associates, Inc., Architects Pacific, Inc., MKEngineers, Controlpoint Surveying, Inc., Pacific Structural Consultants, Inc., Bills Engineering, Inc., Tanimura & Associates, Inc., and two individuals. The Department of Accounting and General Services and the American Public Works Association supported the intent of this measure. The State Procurement Office opposed this bill.

Your Committee has amended this bill by:

- (1) Clarifying that fraud should not be the only cause for overturning a procurement selection committee's recommendation;
- (2) Changing the effective date to July 1, 2010, for continued discussion; and
- (3) Making technical, nonsubstantive amendments for clarity and to correct drafting errors.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2136, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2136, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 664-04 Finance on H.B. No. 432**

The purpose of this bill is to protect public health and safety by:

- (1) Appropriating funds to the Department of Land and Natural Resources (DLNR) to conduct an erosion control study of the banks of Kawa stream on Oahu; and
- (2) Requiring DLNR to identify applicable federal and state funding sources to undertake and complete repairs and renovation of the banks of Kawa stream to prevent further erosion.

Two concerned individuals testified in support of this measure. DLNR opposed this measure.

Your Committee finds that erosion is a major problem along the banks of Kawa stream in Kaneohe, Oahu. However, your Committee also finds that bank erosion is a problem for a number of other streams, a problem exacerbated by the recent rainstorms.

Accordingly, your Committee has amended this bill by:

- (1) Including Heeia, Kealahala/Keolaa, and Kaneohe streams in the erosion control study;
- (2) Changing the effective date to July 1, 2004; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee requests that DLNR also consider including Waikane stream in their erosion control study and take any necessary steps to mitigate erosion along its banks.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 432, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 432, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 665-04 Finance on H.B. No. 2581**

The purpose of this bill is to fund all collective bargaining cost items in the arbitration award for state employees in Collective Bargaining Unit 10.

The Judiciary, Hawaii Government Employees Association, and United Public Workers, AFSCME, Local 646, AFL-CIO testified in support of this bill.

In addition, this bill funds the salary increases for certain state officers and employees who are excluded from collective bargaining.

Your Committee has amended this measure by making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2581, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2581, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Karamatsu.

**SCRep. 666-04 Finance on H.B. No. 2703**

The purpose of this bill is to provide for state highway improvements by:

- (1) Establishing the Highway Development Special Fund; and
- (2) Authorizing counties with a population in excess of 500,000 to assess impact fees.

The Department of Transportation (DOT), Estate of James Campbell, Leeward Oahu Transportation Management Association, a member of the Honolulu City Council, and a concerned individual testified in support of this bill. The City and County of Honolulu Department of Planning and Permitting, Land Use Research Foundation of Hawaii, and a concerned individual supported this measure with amendments. A concerned individual opposed this bill.



Your Committee has amended this bill by:

- (1) Clarifying that the funds received should be expended for improvements in the county in which the fees were collected;
- (2) Adding the definition of "department" and amending other definitions and provisions of the existing county impact fee law to include the department;
- (3) Allowing DOT to receive and expend the fees collected;
- (4) Authorizing the counties to transfer impact fees to DOT and requiring the transfer pursuant to a needs assessment study and an intergovernmental agreement;
- (5) Allowing impact fees not expended or encumbered within six years or refunded to be transferred to the Highway Development Special Fund; and
- (6) Making other technical, nonsubstantive amendments for clarity, style, and conformity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2703, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2703, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Bukoski and Moses.

**SCRep. 667-04 Finance on H.B. No. 2722**

The purpose of this bill is to authorize the issuance of general obligation bonds and appropriate funds for:

- (1) The design and construction of retention basins for Manoa and Palolo streams; and
- (2) The construction of vegetative cover to reduce erosion within the Ala Wai Watershed.

The Waikiki Improvement Association testified in support of this measure. The Board of Land and Natural Resources and Ala Wai Watershed Association provided comments.

Your Committee has amended this bill by:

- (1) Removing the appropriation amounts;
- (2) Changing the effective date to July 1, 2010; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2722, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2722, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

**SCRep. 668-04 Finance on H.B. No. 2759**

The purpose of this bill is to appropriate funds to purchase 1,110 acres of land in the Pupukea-Paumalu area on Oahu.

The North Shore Community Land Trust, North Shore Catamaran Charters, Vietnam Veterans V.F.W. Post 10583, Trust for Public Land, Hawaii Audubon Society, Sierra Club-Hawaii Chapter, Life of the Land, and numerous individuals testified in support of this bill. The Department of Land and Natural Resources (DLNR) supported the intent of the measure.

Your Committee has amended this bill by:

- (1) Changing the number of acres to be purchased from 1,110 to 1,129 to accurately reflect the parcel size;
- (2) Requiring DLNR to consider protection of the agricultural and conservation uses of the parcel when determining the best option to purchase the Pupukea-Paumalu area;
- (3) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2759, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2759, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Wakai and Moses.  
(Representative Jernigan voted no.)

**SCRep. 669-04 Finance on H.B. No. 2573**

The purpose of this bill is to stimulate economic and community development by allowing the Director of Finance to invest up to 10 percent of State short-term investment moneys in linked investments, which are certificates of deposit placed with eligible lending institutions within the State. Specifically, each loan is:

- (1) Limited to a certain amount; and
- (2) May be used for the financing of:
  - (A) Plant construction or expansion;
  - (B) Purchase of equipment and materials; or
  - (C) Working capital.

The Department of Budget and Finance submitted testimony in opposition to this measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2573, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2573, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.  
(Representatives Meyer and Moses voted no.)

#### **SCRep. 670-04      Judiciary on H.B. No. 2361**

The purpose of this bill is to clarify which government entities are subject to the Sunshine Law.

Your Committee received testimony in support of this measure from the Attorney General.

Advocates for Consumer Rights, the Community Television Producers Association, League of Women Voters of Hawaii, Life of the Land, Society of Professional Journalists Hawaii Chapter, several members of the Maui County Council, and two concerned individuals testified in opposition to this measure.

The Office of Information Practices submitted testimony taking no position on the measure, but offered comments.

Your Committee finds that clarifying whether various volunteer advisory board are required to comply with the public meetings requirements of chapter 92, Hawaii Revised Statutes (HRS), will enhance public participation in these worthwhile entities.

Your Committee adopted several suggestions from the Office of Information Practices. Specifically, your Committee has amended this bill by:

- (1) Deleting the provision that would have added a new section to Chapter 92, HRS;
- (2) Amending the definition of "board" to:
  - (A) Include a provision that subordinate entities of a board are deemed a board except as provided in section 92-2.5, HRS;
  - (B) Refer to the board as an entity, rather than a group entity; and
  - (C) Specify that the entity is to consist of two or more persons;
 and
- (4)[sic] Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2361, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2361, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 671-04      Judiciary on H.B. No. 2370**

The purpose of this measure is to enhance Hawaii law enforcement agencies' criminal investigation capabilities by making Hawaii's electronic surveillance laws consistent with federal electronic surveillance laws. Specifically, this bill:

- (1) Establishes a surveillance review unit within the Department of the Attorney General (AG);
- (2) Prohibits:
  - (a) Interception and disclosure with certain exceptions;
  - (b) Manufacture, distribution, possession, or advertising of intercepting devices, with certain exceptions; and
  - (c) Use of contents or evidence derived from wire, oral, or electronic communication;

- (3) Allows designated authorities to authorize or approve the interception of wire, electronic, or oral communications, and authorizes their disclosure and use for investigative purposes;
- (4) Regulates the procedure for interception;
- (5) Provides for recovery of civil damages in cases where communication has been illegally intercepted, disclosed, or used;
- (6) Provides for injunction against illegal interception;
- (7) Allows a governmental entity to require disclosure by a provider of electronic communication service of the contents of an electronic communication that is in electronic storage in an electronic communications system; and
- (8) Establishes regulations for use of a mobile tracking device, pen register or trap and trace device.

The AG, Department of Public Safety, Department of the Prosecuting Attorney of the City and County of Honolulu, the Hawaii County Police Department, Department of the Prosecuting Attorney of the County of Maui, Office of the Prosecuting Attorney of the County of Hawaii, Police Department of the City and County of Honolulu, Hawaii Tourism Authority, and High Intensity Drug Trafficking Area task force submitted testimony in support of this measure. The Office of the Public Defender opposed this measure.

Your Committee notes that no appropriation has been provided to create a Surveillance Review Unit (Surveillance Unit) within the Department of the AG. Your Committee also notes that deletion of the section establishing the Surveillance Unit would not impede implementation of this bill's substantive provisions, according to the AG's testimony.

Your Committee finds that while electronic eavesdropping may be one of law enforcement's most effective investigative tools, it also has great potential to intrude on innocent, private, and personal communications among law-abiding citizens. Your Committee also finds that orders issued in federal courts that apply federal law are not subject to the protection of individual privacy that our State Constitution provides. Therefore, several provisions in the existing statute relating to electronic eavesdropping provide greater privacy protection than this measure, which is based on federal law.

Accordingly, your Committee has amended this bill by:

- (1) Deleting language that establishes a Surveillance Review Unit within the Department of the AG;
- (2) Deleting provisions that permit an investigative or law enforcement officer, in an emergency situation, to:
  - (a) Intercept wire, oral, or electronic communication; and
  - (b) Install or use a pen register or trap and trace device
 and seek retroactive court approval within forty-eight hours;
- (3) Increasing from ten days to thirty days, unless waived, the time period before which each party must be furnished with a copy of the court order and accompanying application that authorizes or approves an interception if any intercepted wire, oral, or electronic communication or evidence derived therefrom is to be received in evidence or disclosed in a trial, hearing, or other court proceeding;
- (4) Including all of the information presently required in an application for an order that authorizes or approves the interception of communication (section 803-46(a)(1) through (a)(7), Hawaii Revised Statutes) in the list of information for this bill;
- (5) Including existing provisions for minimizing the invasion of privacy that results from interception of communication (section 803-46(e)(1) and (e)(2), Hawaii Revised Statutes); and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2370, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2370, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### SCRep. 672-04      Judiciary on H.B. No. 2301

The purpose of this bill is to change the appellate structure of the state courts to require appeals from the circuit courts and decisions of administrative agencies to be heard by the intermediate appellate court. Under this bill, the Supreme Court will retain original jurisdiction only in certain cases and, in all other cases, will hear appeals only upon acceptance of a writ of certiorari or transfer application from the intermediate appellate court. This bill also makes changes in court administration and the appellate review process, repeals obsolete language, and makes other technical, nonsubstantive changes for conformance.

The Judiciary supported this bill. The Office of the Public Defender and a concerned citizen opposed this measure. The Attorney General submitted comments and proposed amendments.

Your Committee finds that the certiorari form of appellate review could be an appropriate change in the appellate structure of the courts for many cases. Your Committee further finds that while Hawaii's court system was established over a hundred years ago, its structure has not been reviewed substantively for over 30 years. Changes in laws during that time have created additional burdens on the judicial system, with dramatic increases in contested proceedings.

Your Committee finds that a three-tiered system of review as proposed by the Judiciary is a sound approach to meet the increased burdens on the courts. However, your Committee has concerns that:

- (1) Certain cases should be reviewed by the Supreme Court directly;

- (2) Certain appeals of administrative agency decisions should be reviewed by the circuit courts rather than the appellate court; and
- (3) There should be a comprehensive analysis of the process of review for administrative and board decisions to ensure timely and efficient use of judicial resources.

Your Committee is further concerned about the overall impact on the organization of the Judiciary as a result of the changes in this bill.

Your Committee has amended the bill by:

- (1) Changing the effective date to July 1, 2006, to:
  - (A) Allow further discussion on the changes implemented by the bill; and
  - (B) Provide time for the development of a comprehensive plan for the judicial system; and
- (2) Appointing a task force to:
  - (A) Review the changes implemented by the bill;
  - (B) Make recommendations to the Legislature regarding the structure of the Judiciary; and
  - (C) Create a comprehensive implementation plan.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2301, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2301, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 673-04      Judiciary/Consumer Protection and Commerce on H.B. No. 2674**

The purpose of this bill as received by your Committees is to deter identity theft by requiring financial institutions to:

- (1) Take steps to protect private personal information of its consumers;
- (2) Notify consumers of any breaches of security of consumer records; and
- (3) Obtain permission from consumers for disclosure of personal information.

For the purpose of receiving public testimony, your Committees circulated a proposed H.D. 1 version of this bill. As amended, this proposed draft adds provisions that:

- (1) Require businesses to:
  - (A) Adopt practices that limit the use of social security numbers;
  - (B) Destroy records that contain personal information; and
  - (C) Refrain from printing credit card account numbers on receipts;
- (3) Prohibit retail merchant club card issuers from requesting social security numbers or driver's license numbers except in limited circumstances and restrict their use of consumer information;
- (4) Require businesses that own or license computer data to notify consumers of security breaches; and
- (5) Exempt disclosure of social security numbers from payroll records that would otherwise be government public records;
- (6) Specify that an individual has a significant privacy interest in protecting the individual's social security number from disclosure in government public records; and
- (7) Establish criminal penalties for:
  - (A) Information trafficking;
  - (B) Using a false name to obtain government identification; and
  - (C) Fraudulently obtaining personal information through public utilities.

The Office of Information Practices and Legal Aid Society of Hawaii supported this bill. The Hawaii Medical Services Association supported the intent of this bill. The Office of the Public Defender, Hawaii Bankers Association, Hawaii Financial Services Association, Retail Merchants of Hawaii, Consumer Data Industry Association, Hawaii Association of Realtors, American Council of Life Insurers, and T-Mobile USA, Inc., opposed this bill. The Department of Commerce and Consumer Affairs, ILWU Local 142, State Farm, and an individual submitted comments.

Your Committees find that identity theft is a matter of significant concern for the residents of Hawaii. In 2003, Hawaii ranked 25<sup>th</sup> in the nation on the number of identity theft complaints filed with the Federal Trade Commission. However, many claims

go unreported to government agencies, as victims struggle directly with credit agencies, banks, or other businesses to clear their names and financial records.

While Hawaii enacted criminal laws to address identity theft two years ago, it has been slow to enact consumer protection legislation in this area due to concerns raised by the business community. While many businesses are regulated by federal laws and regulations that protect consumer information and provide procedures for consumers to challenge financial records when they are the victims of identity theft, most businesses remain unregulated with respect to the collection and dissemination of personal information of consumers.

The primary method to avoid being a victim of identity theft is protection of personal confidential information. Consumers and businesses must both be vigilant to ensure that certain types of information are secure from unlawful information trafficking. However, most consumers have no knowledge about how information about them is collected or shared with others, and for what purposes such information is being used.

Your Committees find that this bill is a small first step toward protecting the consumer against unnecessary collection and unauthorized or unknowing dissemination of personal information.

Upon further consideration, your Committees have amended this proposed H.D. 1 by deleting its contents except for provisions relating to retail merchant club cards and government records and further:

- (1) Clarifying that a retail merchant club card is not a credit card, charge card, or check cashing card; and
- (2) Specifying that a retail merchant club card issuer can ask for the last four digits of an applicant's social security number.

As affirmed by the records of votes of the members of your Committees on Judiciary and Consumer Protection and Commerce that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2674, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2674, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Stonebraker.

#### **SCRep. 674-04 Consumer Protection and Commerce/Judiciary on H.B. No. 2768**

The purpose of this bill is to continue to improve indirect purchaser remedies under chapter 480, Hawaii Revised Statutes (chapter 480), by:

- (1) Amending the definition of "consumer," to clarify that indirect purchasers of a product or service through an intermediary are consumers who may bring actions for unfair and deceptive acts or practices;
- (2) Allowing indirect purchasers to recover the full amount paid for a product or service in indirect purchaser class actions brought under chapter 480; and
- (3) Allowing indirect purchasers who bring private actions under chapter 480, to recover treble damages.

Your Committees heard testimony in support of this bill from three private attorneys.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2768 and recommend that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Hamakawa, Ito, Kanoho, M. Oshiro, Pendleton and Thielen.

#### **SCRep. 675-04 Finance on H.B. No. 2742**

The purpose of this bill is to repeal the Compliance Resolution Fund and redirect fees to the General Fund.

The Tax Foundation of Hawaii, Hawaii Medical Service Association, The Gas Company, and the Conference of State Bank Supervisors provided comments. The Department of Commerce and Consumer Affairs (DCCA), Insurance Division of DCCA, Department of Human Resources Development, National Federation of Independent Business, IBEW Local 1186, Hawaii Medical Association, American Council of Life Insurers, Hawaii Credit Union League, Hawaii Association of Realtors, Community Associations Institute Hawaii Chapter, Hawaii Business League, Board of Medical Examiners, Board of Examiners in Optometry, Board of Nursing, Board of Dental Examiners, Board of Electricians and Plumbers, Contractors License Board, Real Estate Commission, Pest Control Board, State Boxing Commission, Hawaii Information Consortium, Hawaii Council of Associations of Apartment Owners, General Contractors Association of Hawaii, Hawaii Bankers Association, Plumbing and Mechanical Contractors Association of Hawaii, Honolulu Board of Realtors, Hawaii Independent Insurance Agents Association, Hawaii Financial Services Association, NAIFA Hawaii, Hawaii Dental Hygienists' Association, Hawaiian Electric Company, Hawaii Electric Light Company, Maui Electric Company, Ltd., Kauai Island Utility Cooperative, American Resort Development Association of Hawaii, Investment Company Institute, State Farm Insurance Companies, and several concerned individuals opposed this measure.

Your Committee has amended this bill by:

- (1) Requiring the return of excess fees if the fees collected by DCCA are 110 percent greater than the prior year;
- (2) Requiring DCCA to increase fees upon a decrease of ten percent of the fees collected from the prior year; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2742, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2742, H.D. 2, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan, Meyer and Moses voted no.)

**SCRep. 676-04 Finance on H.B. No. 2743**

The purpose of this bill is to

- (1) Transfer various amounts from various non-general funds to the general fund; and
- (2) Provide for the automatic transfer of certain funds at the end of the fiscal year.

The Tax Foundation of Hawaii commented on this bill. The Department of Accounting and General Services, Department of Human Resources Development, Department of the Attorney General, Department of Health, Board of Agriculture, Department of Land and Natural Resources, Department of Business, Economic Development, and Tourism, Department of Public Safety, Hawaii Tourism Authority, Hawaii Community Development Authority, and Hawaii Farm Bureau opposed various provisions of the bill transferring moneys out of certain funds.

Your Committee has amended this measure by:

- (1) Changing the amounts of funding the Director of Finance is authorized to transfer to the general fund as follows:
  - (A) From \$1,000,000 to \$900,000 from the Agriculture Loan Reserve Fund;
  - (B) From \$500,000 to \$300,000 from the Medicaid Investigations Recovery Fund;
  - (C) From \$200,000 to \$300,000 from the State Identification Revolving Fund;
  - (D) From \$500,000 to \$400,000 from the Foreign Trade Zones Special Fund;
  - (E) From \$1,000,000 to \$200,000 from the Research Subaccount of the Tourism Special Fund;
  - (F) From \$2,000,000 to \$3,000,000 from the Environmental Management Special Fund; and
  - (G) From \$3,000,000 to \$2,000,000 from the Mental Health and Substance Abuse Special Fund;
- (2) Deleting language authorizing the Director of Finance to transfer funds from Commercial Fisheries Special Fund and Na Ala Hele (Hawaii Statewide Trail and Access Program) into the general fund;
- (3) Changing the ceiling limit for moneys in the Tobacco Enforcement Special Fund to automatically transfer to the general fund at the end of the fiscal year to \$500,000; and
- (4) Deleting language changing the ceiling limit for moneys in the Environmental Health Education Fund that triggers an automatic transfer to the general fund; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2743, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2743, H.D. 2, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan, Meyer and Moses voted no.)

**SCRep. 677-04 Judiciary on H.B. No. 862**

The purpose of this bill is to allow a competent adult diagnosed with a terminal illness to exercise a degree of control over the manner of impending, inevitable death. A patient diagnosed with an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months, is allowed to ask a physician for medication for the purpose of ending life in a humane and dignified manner.

Like the Oregon Death with Dignity law after which this measure is patterned, this bill contains significant safeguards to prevent abuse. Only the patient can initiate the request for assistance. The request must be made three times, with a 15-day waiting period between the first and second request. The third request must be in writing and witnessed by two persons who know the patient personally, but are not family members or primary caregivers. The prescribing physician must provide information to the patient concerning such options as palliative and hospice care, and pain management. A patient may rescind the request at any time and need not use the medication at all.

Your Committee received testimony in support of this bill from the Hawaii State Commission on the Status of Women, ACLU of Hawaii, Americans for Democratic Action/Hawaii, Compassion In Dying of Hawaii, Death with Dignity Hawaii Coalition, Death with Dignity National Center, Hawaii Physicians For Assisted Dying, ILWU Local 142, Interfaith Alliance, PFLAG-Oahu, National Association of Social Workers, Hawaii Chapter, Parents And Children Together, Planned Parenthood of Hawaii, Public Health Law Organization, Religious Leaders for Assisted Dying, Advocates for Consumer Rights, and numerous concerned individuals.

The American Cancer Society, American Center for Law and Justice of Hawaii, the Roman Catholic Church in the State of Hawaii, Hawaii Family Forum, Hawaii Medical Association, Healthcare Association of Hawaii, Hospice Hawaii, Pro-Family Hawaii,

the Reverence Life Educational Institute, St. Francis Healthcare System of Hawaii, and numerous concerned individuals testified in opposition to this measure.

The Office of Information Practices took no position on the substance of this measure, but expressed concerns about provisions in this bill relating to government records.

Your Committee finds that, in keeping with Hawaii's reputation for kindness, caring, and compassion, this measure creates options that may, depending on unforeseen events, provide precious relief in our loved ones' final hours.

Your Committee has amended this measure by:

- (1) Amending the residency requirement provision to:
  - (A) Clarify that residents permitted to request relief under this measure must have been domiciled or physically present in the state for a continuous period of at least six months prior to the initial oral request; and
  - (B) Allow legal residency in the State to be established by documentation other than a driver's license, tax return, or proof of voter registration or property ownership;
- (2) Deleting the provision that information collected by the Department of Health regarding compliance with this measure "shall not be a government record under chapter 92F, Hawaii Revised Statutes, and may not be made available for inspection by the public" based on the testimony of the Office of Information Practices indicating that the federal Health Information Portability and Accountability Act (HIPAA) medical privacy rules adequately address this matter; and
- (3) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 862, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 862, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.  
(Representatives Herkes, Ito, Sonson, Finnegan and Pendleton voted no.)

#### **SCRep. 678-04      Judiciary on H.B. No. 2158**

The purpose of this bill is to require elected officials, candidates for elective office, and appointed officers and employees to disclose out-of-state business and real estate interests, in addition to disclosure of in-state interests required under current law.

The Department of the Attorney General, Hawaii State Ethics Commission, and The League of Women Voters of Hawaii supported this bill.

Your Committee intends for this measure to encourage open and honest government. Our constituents recognize that business and property interests outside of the State may have a potential influence on decision-making. As stated in the testimony of the Attorney General, "In a complex society where financial interests and relationships often cross state boundaries, out-of-state holdings may affect the public in Hawaii. The fact that a holding is not 'in the State,' therefore, should not shield the holding from disclosure."

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2158 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 679-04      Judiciary on H.B. No. 2251**

The purpose of this bill is to protect the health, safety, and welfare of the motoring public. Specifically, this bill clarifies that:

- (1) Section 291E-62, Hawaii Revised Statutes (HRS), has been violated if a person operates a motor vehicle after the person's license has been suspended or revoked for operating a vehicle while under the influence of an intoxicant under the same section; and
- (2) When determining repeat offenses for purposes of sentencing, prior convictions under section 291-4.5, HRS, which were replaced by section 291E-62, HRS, shall be counted.

The Department of Transportation, Department of the Prosecuting Attorney for the City and County of Honolulu, Honolulu Police Department, Maui County Police Department, and Mothers Against Drunk Drivers testified in support of this bill.

Your Committee finds that this measure will assure that the offense under section 291E-62, HRS, and its predecessor offense under section 291E-4.5, HRS, will have the same effect on sanctions for subsequent offenses.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2251 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 680-04      Finance on H.B. No. 1786**

The purpose of this bill is to:

- (1) Allow employees in exempt positions who have performed satisfactory work for five or more consecutive years to apply for intradepartmental and interdepartmental transfers and promotional exams for which they meet the minimum qualifications;
- (2) Limit the number of exempt positions to a certain percentage of the number of full-time equivalent civil service positions;
- (3) Require the Legislative Reference Bureau to compile a list of all statutory references to exempt positions and submit a report to the 2005 Legislature; and
- (4) Require the Department of Human Resources Development to complete its review of all exempt positions and submit a report to the 2005 Legislature.

The Department of Education submitted testimony in support of this measure. The Department of Human Resources Development supported the intent of this measure with amendments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1786, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Jernigan and Meyer.

**SCRep. 681-04 Finance on H.B. No. 2659**

The purpose of this bill is expedite workers' entry into the workforce by appropriating funds to establish two new positions in the Disability Compensation Division of the Department of Labor and Industrial Relations (DLIR) to process vocational rehabilitation plans.

ILWU Local 142 and Hawaii Employers' Mutual Insurance Company, Inc., submitted testimony in support of this measure. DLIR and the Department of Human Resources Development supported the intent of this measure with amendments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2659, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.  
(Representative Jernigan voted no.)

**SCRep. 682-04 Finance on H.B. No. 2294**

The purpose of this bill is to improve service and access to information of the Judiciary by doubling the fees for administrative costs imposed for processing traffic cases and depositing half of the moneys collected into the Judiciary Computer System Special Fund.

The Judiciary testified in support of this bill. The Department of Budget and Finance opposed this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2294 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Waters, Bukoski and Meyer.  
(Representatives Jernigan and Moses voted no.)

**SCRep. 683-04 Finance on H.B. No. 2462**

The purpose of this bill is to eliminate temporary civil service membership.

The Department of Human Resources Development testified in support of this bill. The Department of Education supported the measure with amendments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2462, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Jernigan and Meyer.

**SCRep. 684-04 Finance on H.B. No. 2466**

The purpose of this bill is to appropriate \$3,055,896 in emergency funds for the payment of workers' compensation claims.

Your Committee has received Governor's Message No. 127 requesting immediate consideration and passage of this bill, in accordance with Article VII, Section 9, of the State Constitution.

The Department of Human Resources Development submitted testimony in support of this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2466 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 685-04 Finance on H.B. No. 2273**



The purpose of this bill is to support after-school programs of the Department of Education (DOE) by:

- (1) Creating the After-school Plus Program Revolving Fund (Fund);
- (2) Appropriating moneys into the Fund; and
- (3) Authorizing the expenditure of moneys from the Fund.

The Board of Education, DOE, Hawaii State Teachers Association, YMCA of Honolulu, and Island of Hawaii YMCA testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2273 and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 686-04 Finance on H.B. No. 2467**

The purpose of this bill is to:

- (1) Retain seven positions that have a salary range identical to the salary range of a deputy director or assistant on par with the deputy director's or assistant's pay, if the latter increases; and
- (2) Remove five statutorily-set salaries and allow the appointing authority to set the salary for those positions.

The Department of Human Resources Development, Department of Budget and Finance, Department of Defense, Office of Veterans Services, and Advisory Board on Veterans Services submitted testimony in support of this measure. The League of Women Voters of Hawaii supported this measure with amendments. The Housing and Community Development Corporation of Hawaii (HCDCH) supported the intent of this measure. The Hawaii State Ethics Commission and Department of Health offered comments.

Your Committee acknowledges the testimony of HCDCH, which requests that its board of directors be allowed to set the salaries for the executive director and executive assistant of HCDCH.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2467, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee except Representatives Jernigan and Meyer.

**SCRep. 687-04 Finance on H.B. No. 2529**

The purpose of this bill is to require each county to:

- (1) Inventory all lands within the urban or conservation district or subject to a petition for placement in the urban district, to determine whether they are hazardous land areas;
- (2) Adopt standards for urban development in hazardous land areas; and
- (3) Enact zoning, subdivision, and building ordinances to implement those standards.

Six concerned individuals testified in support of this bill. The Department of Planning and Permitting of the City and County of Honolulu, Kamehameha Schools, and three members of the Maui County Council opposed this measure. The Land Use Research Foundation of Hawaii provided comments.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2529, H.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.  
(Representatives Jernigan, Meyer and Moses voted no.)

**SCRep. 688-04 Education on H.B. No. 1937**

The purpose of this bill is to allow the military representative to the Board of Education (BOE) to be seated with BOE members during official meetings and to participate in discussions about board matters, except for executive sessions.

The Hawaii State Teachers Association and the United States Pacific Command submitted testimony in support of this bill.

Your Committee has amended this bill by specifying that the military representative is only required to participate in discussions and debates about board matters that impact or affect public school students of active-duty military families.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1937, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1937, H.D. 2.

Signed by all members of the Committee except Representatives Arakaki, Kahikina, Schatz and Ching.

**SCRep. 689-04 Labor and Public Employment on H.B. No. 2645**

The purpose of this bill is to exempt retired Department of Education (DOE) teachers who hold a valid teaching license from any prerequisite coursework that DOE requires of other substitute teachers.

The Hawaii State Teachers Association and a concerned individual testified in support of this bill. DOE opposed the measure.

Your Committee finds that there is a shortage of qualified substitute teachers that could be addressed by the hiring of retired teachers who are experienced, knowledgeable, and well-equipped for the demands of substitute teaching. However, your Committee also shares the concerns of DOE that highly qualified teachers need to be placed in the classroom. Noting that the educational system is a dynamic one that changes constantly with the times, your Committee understands the present policy of DOE that requires retired teachers to receive prerequisite coursework in substitute teaching after being retired for five or more years.

Although your Committee has concerns with this measure, the importance of the education of our youth warrants that this attempt to address the shortage of qualified substitute teachers be discussed further. Accordingly, your Committee has amended this measure by:

- (1) Changing the effective date to February 31, 2004 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2645, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2645, H.D. 2.

Signed by all members of the Committee except Representatives Caldwell, Ito, Souki and Pendleton.

**SCRep. 690-04 Consumer Protection and Commerce on H.B. No. 2539**

The purpose of this bill is to delay the imposition of the requirement of a certificate of need (CON), or determination that a CON is not required, until a health care facility or service seeks a building permit, but only for existing health care facilities or services.

Your Committee heard testimony in support of this bill from the State Health Planning and Development Agency and from Kusao & Kurahashi, Inc., planning and zoning consultants.

The current statute has been interpreted as requiring the submission of a CON, or a determination that a CON is not required, when the planning is quite preliminary — specifically, when seeking a Plan Review Use (PRU) permit. This approach has unfortunate consequences. Sometimes it forces the health care facility to obtain unnecessary CONs for plans that are eventually not implemented, and sometimes it forces the health care facility to obtain multiple CONs to accommodate changes in a plan. By delaying the CON requirement until a building permit is required, these unfortunate consequences are avoided.

The bill has been amended to limit its application to hospitals, as dictated by the title of the bill. The change in the law is specifically limited to existing hospitals.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2539, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2539, H.D. 2.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, Lee, M. Oshiro and Souki.

**SCRep. 691-04 Consumer Protection and Commerce on H.B. No. 2229**

The purpose of this bill is to protect the integrity of employment records held by the central personnel agency or central payroll agency of the State or County. This is accomplished by:

- (1) Defining "employment record";
- (2) Establishing mandatory guidelines for the employment records management system; and
- (3) Requiring that the system not be subject to collective bargaining negotiations.

Testimony in support of the bill was received from the Department of Human Resources Development and City and County of Honolulu's Department of Human Resources. Testimony in opposition was received from the United Public Workers and Hawaii Government Employees Association, AFSCME, Local 152, the sole collective bargaining representative of employees in bargaining units 2, 3, 4, 6, 8, 9, and 13.

Your Committee heard testimony that the bill was an attempt by management to take back, by legislation, what labor unions had negotiated for in collective bargaining.

Your Committee delayed the effective date of the bill until July 1, 2009, to reflect that the Committee needs additional time to further research the relationship between this bill and prior collective bargaining agreements.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2229, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2229, H.D. 2.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, Lee, M. Oshiro and Souki.

**SCRep. 692-04 Consumer Protection and Commerce/Judiciary on H.B. No. 1987**

The purpose of this bill is to:

- (1) Increase the range of fines for both the owners and operators of motor vehicles with illegal sunscreens, and the installers of illegal sunscreens; and
- (2) Require installers to reinstall legal sunscreens or reimburse the owner for the installation of legal sunscreens. The current law merely requires the removal of the illegal sunscreen.

Your Committees received testimony in unqualified support of this bill from the Hawaii Business League and T&T Tinting Specialists, Inc. The Honolulu Police Department testified in support of the intent of the bill, but requested amendments. The Department of Transportation (DOT) testified in opposition to part of the bill.

DOT testified that the provisions of the bill relating to installers conflicted with federal law and were preempted. While DOT is to be commended for its diligence, its position on preemption has not been confirmed by the Attorney General (AG) and is apparently based upon conversations with federal counterparts. While such communication is frequently useful, its hearsay nature makes it impossible to determine the basis for the opinion.

Your Committees hope that the AG will be able to assist DOT on this issue, because the argument appears to apply to the existing law as well as to the proposed amendments.

To minimize DOT's concern, your Committees have amended the bill by simply increasing the dollar amounts in the current penalty section. As the bill progresses, the issue of federal preemption may be assessed as it applies to the current law and as it circumscribes the possible amendments of the current law.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1987, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 1987, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho, Lee and M. Oshiro.

#### **SCRep. 693-04 Consumer Protection and Commerce/Judiciary on H.B. No. 2098**

The purpose of this bill is to prescribe the circumstances under which a health care provider is permitted to release the medical records of a deceased person.

Testimony in support of this bill was received from Queen's Medical Center, Healthcare Association of Hawaii, Kaiser Permanente, Hawaii Pacific Health, and Health Information Management Association of Hawaii.

Your Committees find that under federal regulations implementing patient privacy standards under the Health Insurance Portability and Accountability Act (HIPAA), effective April 14, 2003, only an executor, administrator, or a person authorized by law to act on behalf of a deceased or the deceased's estate may access or authorize release of the deceased's health information.

This aspect of the federal law creates problems for the deceased's family when the deceased does not have a will naming an executor or administrator. It can be very time consuming and expensive for a family in this situation to gain access to the medical records.

This bill, consistent with HIPAA, establishes the "deceased person's next of kin," as a class of persons authorized by law to access health records or authorize their release.

Your Committees have amended this bill by:

- (1) Adding a new provision that requires a health care provider to honor a deceased person's written request that the person's medical records not be released to the next of kin;
- (2) Specifying that when a health care provider refuses requests for release of records containing specially protected health information, the refusal of the request may be in whole or in part; and
- (3) Removing the requirement that the documentation verifying a personal representative's authority be signed by the personal representative.

To facilitate implementation and application of the bill, other technical, nonsubstantive amendments were made for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2098, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 2098, H.D. 1.

Signed by all members of the Committee except Representatives Ito, Kanoho, Lee and M. Oshiro.

#### **SCRep. 694-04 Judiciary on H.B. No. 2527**

The purpose of the bill is to repeal the statute that regulates special interest vehicles.

Mr. Sandman, Inc., Fred's Auto Top Shop, Inc., Kaimuki Ace Hardware & Home Improvement Center, Security Alarm Shop, and several concerned individuals submitted testimony in support of amending the special interest vehicle statute and did not support the repeal of the statute. The Department of Transportation opposed this measure.

Your Committee has amended this bill by deleting the contents of the H.D. 1 and reinserting the language of the original bill, which:

- (1) Expands the definitions of "street rod replica vehicle" and "street rod vehicle" to include vehicles manufactured before 1968, or manufactured after 1967 to resemble a vehicle manufactured before 1968; and

- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2527, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2527, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 695-04      Judiciary on H.B. No. 1991**

The purpose of this bill is to save the lives of more cardiac arrest victims by expanding the use and availability of automated external defibrillators (AED). This bill provides immunity from liability for:

- (1) Any physician who administers free AED programs; and
- (2) Any person responsible for a site where an AED is located;

except as may result from gross negligence or wanton acts or omissions.

The Judiciary, American Heart Association, and a concerned individual submitted testimony in support of this measure. The Consumer Lawyers of Hawaii offered comments.

Your Committee finds that this measure will help remove barriers to implementing life-saving AED programs.

Your Committee has amended this bill by:

- (1) Clarifying that a person trained to use an AED is immune from liability regardless of where the AED that is used is located; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1991, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1991, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 696-04      Judiciary on H.B. No. 680**

The purpose of this bill is to require ethics training for elected officials and directors and deputy directors of executive departments.

The Office of Hawaiian Affairs, Board of Education, Hawaii Ethics Commission, and the League of Women Voters of Hawaii testified in support of this measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to January 1, 2005; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 680, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 680, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 697-04      Judiciary on H.B. No. 2964**

The purpose of this bill is to enhance the ability of inspectors to enforce state laws and regulations relating to aquatic resources by conforming the State's aquatic laws with the State's hunting laws regarding probable cause for state inspections. Specifically, this bill:

- (1) Removes the probable cause requirement for state inspections of bags, containers, vehicles, or conveyances used to carry aquatic life, to determine compliance with state laws and regulations; and
- (2) Makes consent to inspection a condition of any license or permit issued by the Department of Land and Natural Resources (DLNR).

DLNR, Hawaii Audubon Society, Ocean Law & Policy Institute, and the Sierra Club, Hawaii Chapter, testified in support of this bill.

Your Committee finds that this measure is important to the protection of Hawaii's marine resources. Your Committee was informed that collectors of marine aquarium fish and invertebrates have been able to avoid compliance with laws and regulations designed to enable Hawaii's aquatic resources to thrive. This measure conforms the State's aquatic laws to state hunting laws that do not require probable cause to inspect a hunter's game bag.

Your Committee does not intend the removal of the probable cause requirement to authorize warrantless searches for evidence of crime unrelated to aquatic resources. Accordingly, your Committee has amended this measure by:

- (1) Narrowing the focus of inspection from "compliance with state laws and regulations" to violations of subtitle 5 of title 12, relating to aquatic resources and wildlife, or any rule adopted thereunder; and
- (2) Restricting the authority to inspect without probable cause to DLNR agents conferred with police powers, and not to "any other enforcement officer of the State."

Your Committee has also made technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2964, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2964, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 698-04      Judiciary on H.B. No. 1769**

The purpose of this bill is to protect the employment rights of broadcast employees from contract provisions that restrict the ability to seek and accept employment with a competitor broadcasting company.

IBEW State Federation, Hawaii State AFL-CIO, Screen Actors Guild Hawaii Branch, American Federation of Musicians, Hawaii Local 677, Hawaii Government Employees Association, International Brotherhood of Electrical Workers, Local 1260, and several concerned individuals testified in support of the measure. Hearst-Argyle Television, Inc., Clear Channel Communications, Emmis Communications, Raycom Media, Clear Channel Radio, KHNL/KFVE, and a concerned individual testified in opposition to the bill.

Your Committee finds that contract terms commonly used in the Hawaii broadcast industry restrict employees from working for competitors. Broadcast employers contend that such clauses are necessary to protect their investment in "on air" personalities who develop brand identity. Your Committee finds that this may be true for those on air personalities that are marketed by the broadcast stations, but it is not true for those employees who are breaking into the industry and paid at the bottom of the industry standard. Your Committee was particularly disturbed about the lower-paid on air employees who have been required to remain out of the employment market when terminated or upon the expiration of their contracts.

Your Committee has amended this bill by:

- (1) Deleting the contract restrictions as defined by the term "prospective employment access restriction";
- (2) Amending the definition of "broadcast employee" to mean an individual who was hired primarily as an on air personality;
- (3) Prohibiting broadcast employers from inserting contract terms that prevent a broadcast employee from accepting and commencing employment with another broadcast employer upon termination of employment;
- (4) Changing the amount of damages that may be recovered to \$25,000;
- (5) Specifying that the provisions of the bill would apply to contracts executed after the effective date of this bill; and
- (6) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1769, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1769, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.  
(Representative Thielen voted no.)

**SCRep. 699-04      Judiciary on H.B. No. 2023**

The purpose of this bill is to provide public assistance recipients and applicants with an opportunity for a fair hearing when appealing to the Director of Human Services by requiring that the hearing be a hearing de novo.

The Legal Aid Society of Hawaii testified in support of this measure. The Attorney General and the Department of Human Services opposed this bill.

Your Committee understands, based on the Legal Aid Society's testimony, that applicants who are denied general assistance because of a medical examiner's adverse determination on the issue of disability may find daunting the process of appealing to the circuit court from a hearing officer's determination that upholds the medical examiner's determination. The proponents of this measure seek to encourage hearing officers to consider both sides without giving undue deference to the medical examiner's determination.

Your Committee has amended this bill by:

- (1) Providing that no evidentiary presumptions apply at the hearing de novo; and
- (2) Making technical, nonsubstantive revisions for clarity and style.

Your Committee notes that the effective date of this bill is July 1, 2020, understanding that this will encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2023, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2023, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 700-04      Judiciary on H.B. No. 2142**

The purpose of this bill is to protect from public disclosure the trade secrets or confidential or proprietary information contained in government records made or received by the Natural Energy Laboratory of Hawaii Authority (NELHA) including business plans attached to a lease of state land.

The Department of Business, Economic Development, and Tourism (DBEDT), Office of Information Practices, and NELHA submitted testimony in support of this measure and offered revisions.

Your Committee finds that protection of trade secrets and proprietary information of the tenants of NELHA is appropriate to encourage further business development activities through this agency.

Your Committee has amended this bill by making the revisions suggested by all three testifiers. Specifically, your Committee amended the bill by:

- (1) Specifying that the protection from public disclosure of trade secrets or proprietary information applies only to tenants and prospective tenants of NELHA; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2142, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2142, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 701-04      Judiciary on H.B. No. 2206**

The purpose of the bill is to:

- (1) Amend the law regulating chemical precursors of controlled substances by requiring reporting of certain data relating to transactions in specific chemicals;
- (2) Establish a procedure for adding to the list of regulated chemicals; and
- (3) Authorize additional penalties for violations relating to precursor chemicals.

The Department of Public Safety and Honolulu Police Department testified in support of this bill. The Consumer Healthcare Products Association, Legislative Information Services of Hawaii, and Hawaii Food Industry Association opposed this measure. Orphan Medical provided comments.

Your Committee finds that:

- (1) Controls on substances must not be overburdensome to commercial enterprise;
- (2) Penalties and enforcement provisions must be reasonable; and
- (3) Medical gamma hydroxybutyric acid has a legitimate pharmaceutical use that must be protected from misuse as an illicit drug.

Your Committee has amended this bill by:

- (1) Deleting the burdensome sales, recordkeeping, and reporting requirements regarding the sale of specific chemicals and deleting related new penalties;
- (2) Inserting provisions to make medical gamma hydroxybutyric acid a schedule 3 depressant and making conforming amendments to the definition of "dangerous and harmful drugs" so as to make nonmedical use of gamma hydroxybutyric acid an appropriately severe crime;
- (3) Inserting an exemption from chapter 91 for the designation process of list 1 and list 2 chemicals;
- (4) Deleting the provisions adding sales, recordkeeping, and reporting requirements for the sale of the liquid or solid dosage form of certain substances; and
- (5) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2206, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2206, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 702-04      Judiciary on H.B. No. 706**

The purpose of this bill is to protect the health, safety, and welfare of health care professionals and deter inmates and other patients from committing acts of violence against health care professionals by:

- (1) Making violence committed against a health care professional who is engaged in the performance of a duty or is within a health care facility, the offense of assault in the second degree; and
- (2) Providing that a person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening against a health care professional as defined in the second degree assault statute.

The Department of Public Safety, the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO and concerned individuals testified in support of this bill. The Office of the Public Defender opposed this measure.

Your Committee finds that a serious shortage of staff exists at the Hawaii State Hospital, which gives patients the opportunity to physically abuse the staff. This measure will provide a deterrent to patients committed to mental healthcare facilities from assaulting their caretakers.

Your Committee has amended this bill by:

- (1) Changing its effective date to February 31, 2525, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 706, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 706, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 703-04      Judiciary on H.B. No. 2792**

The purpose of this bill is to establish the duties and remedies of owners relating to the maintenance of private roads. Specifically, this bill:

- (1) Requires the owner of any private road, or of any land to which an easement to use a private road is attached, to maintain the private road in good repair;
- (2) Permits an owner to bring an action, in the circuit court of the judicial circuit where the road is located, for specific performance or contribution against any other owner obligated to share the cost of repair under a private road maintenance agreement, who refuses to perform or, after written demand, fails to pay the owner's share of the cost; and
- (3) Provides that, in the absence of a road maintenance agreement:
  - (A) Costs shall be shared proportionately according to the use made of the private road by each owner;
  - (B) An owner may apply to the circuit court of the judicial circuit where the road is located and that has jurisdiction over the amount in controversy, for the appointment of an arbitrator to apportion the cost; and
  - (C) An aggrieved party may direct compliance with any judgment the court may enter determining the proportionate liability of each owner.

The Hawaii Association of Realtors and a concerned individual testified in support of this bill.

Your Committee was informed that a major obstacle to obtaining financing exists because lenders are reluctant to loan funds for properties with private roads for which private road maintenance agreements do not exist. Your Committee understands that in Hawaii County an ordinance is in effect that addresses this matter.

Your Committee has amended this measure by:

- (1) Providing that any county ordinance governing this matter takes precedence over this measure; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2792, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2792, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.  
(Representatives Caldwell and M. Oshiro voted no.)

#### **SCRep. 704-04      Legislative Management on H.B. No. 1898**

The purpose of this bill is to raise public awareness of the importance of developing personal financial management skills in our youth by designating April as "Financial Literacy for Youth Month".

The Department of Education, Hawaii Council on Economic Education (HCEE), Hawaii Credit Union League, Hawaii Financial Services Association, and one individual testified in support of this measure.

Your Committee has inserted provisions in section 1 of this bill to clarify that:

- (1) Although personal finance is a part of the State's educational standards, courses on personal finance are not required, and students are not tested on this subject;

- (2) According to a 2003 economic literacy survey of Hawaii's workforce, ages 16 and older, over 50 percent did not realize that money loses value during periods of inflation; and
- (3) HCEE advocates financial literacy for all of Hawaii's citizens and supports teacher training to include financial literacy in Hawaii's schools.

Technical, nonsubstantive amendments were also made for style and clarity.

As affirmed by the record of votes of the members of your Committee on Legislative Management that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1898, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1898, H.D. 1.

Signed by all members of the Committee except Representatives Luke and Saiki.

**SCRep. 705-04 Finance on H.B. No. 1780**

The purpose of this bill is to increase parent involvement in the education of their children by clarifying statutory language pertaining to paid leave for parents who attend parent-teacher and parent-caregiver conferences. More specifically, this measure:

- (1) Limits paid leave for government employees who attend a parent-teacher or parent-caregiver conference to two hours; and
- (2) Clarifies that government employees are eligible to receive paid leave to attend parent-teacher conferences of any child who is attending a public or private school in grades kindergarten through twelve.

The Department of Human Resources Development, Department of Education, Department of Human Resources of the City and County of Honolulu, and Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO submitted testimony in support of this measure.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1780, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1780, H.D. 1.

Signed by all members of the Committee except Representatives Karamatsu and Meyer.

**SCRep. 706-04 Finance on H.B. No. 2191**

The purpose of this bill is to remove provisions that prevent certain types of telecommunication service providers from being designated as a qualified business under the Enterprise Zone (EZ) Program by:

- (1) Amending the definition of "telecommunication services" to include consumer services;
- (2) Specifying that a qualified service does not have to be sold within the EZ but shall originate or be processed within the EZ; and
- (3) Clarifying that a qualified service does not have to deliver services in the same EZ they are sold in.

Sandwich Isles Communications, Inc., testified in support of this measure. The Department of Business, Economic Development, and Tourism supported the intent of this bill. The Department of Taxation offered comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, for the purpose of continued discussion; and
- (2) Making technical, nonsubstantive amendments for clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2191, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2191, H.D. 1.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Wakai.

**SCRep. 707-04 Finance on H.B. No. 2359**

The purpose of this bill is to appropriate funds to settle claims against the State, its officers, or its employees.

The Attorney General testified in support of this bill.

Your Committee has amended this bill by:

- (1) Clarifying an inadvertent reference to the Department of Education that should have referenced the Hawaii Tourism Authority of the Department of Business, Economic Development, and Tourism; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2359, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2359, H.D. 1.

Signed by all members of the Committee.



**SCRep. 708-04 Finance on H.B. No. 2403**

The purpose of this bill is to preserve the tax-qualified status of the State Employees' Retirement System (ERS) by conforming state law to the provisions of Section 401(a)(17) of the Internal Revenue Code.

The Department of Budget and Finance and ERS Board of Trustees supported the intent of this bill.

Your Committee has amended this bill by:

- (1) Deleting the appropriation amount;
- (2) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2403, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2403, H.D. 1.

Signed by all members of the Committee except Representative Moses.

**SCRep. 709-04 Finance on H.B. No. 2025**

The purpose of this bill is to prohibit employers from paying disparate wages based on gender to employees who perform the same work, except when the disparity is based on a seniority system, merit system, system that measures earnings based on quantity or quality of production, bona fide occupational qualification, or any other factor other than sex.

ILWU Local 142, the Hawaii State Commission on the Status of Women, and two concerned individuals submitted testimony in support of this measure. The Hawaii Civil Rights Commission supported the intent of this measure. The Department of Labor and Industrial Relations offered comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2025, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2025, H.D. 3.

Signed by all members of the Committee except Representatives Karamatsu and Meyer.

**SCRep. 710-04 Finance on H.B. No. 2172**

The purpose of this bill is to exempt telecommunications carriers from the requirement of obtaining prior approval from the Public Utilities Commission (PUC) before issuing securities.

Verizon Hawaii testified in support of this measure. The Consumer Advocate and PUC opposed this bill.

Your Committee has amended this bill by changing the effective date to July 1, 2010, for the purpose of continued discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2172, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2172, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.  
(Representative Jernigan voted no.)

**SCRep. 711-04 Finance on H.B. No. 2796**

The purpose of this bill is to maintain the levels of programs that are essential to the public health, safety, and welfare by appropriating funds from:

- (1) The Emergency and Budget Reserve Fund to support various health and human services programs; and
- (2) The general revenues to develop a plan to implement the Hawaii Rx Program.

The Judiciary, University of Hawaii, National Association of Social Workers, The Sex Abuse Treatment Center, Molokai General Hospital, Hawaii Youth Services Network, and a concerned individual testified in support of this bill. The Department of Budget and Finance and Department of Human services opposed this measure. The Department of Health offered comments.

Your Committee has amended this bill by:

- (1) Removing the amounts of all appropriations to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2796, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2796, H.D. 1.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Wakai.  
(Representative Moses voted no.)

**SCRep. 712-04 Finance on H.B. No. 1335**

The purpose of this bill is to provide partial to full tuition waivers throughout the University of Hawaii (UH) system for students of Hawaiian ancestry.

The Office of Hawaiian Affairs supported this bill. UH supported the intent of this measure.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to promote further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1335, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1335, H.D. 3.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Wakai.  
(Representatives Jernigan and Moses voted no.)

**SCRep. 713-04 Finance on H.B. No. 1924**

The purpose of this bill is to require that teachers receive their normal annual increment or longevity increase, as the case may be, for a year's satisfactory service in any fiscal year that an increase in the appropriate salary schedule is effected.

The Hawaii State Teachers Association testified in support of this measure. The Department of Education supported the intent of the measure. The Department of Budget and Finance opposed the bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1924, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1924, H.D. 1.

Signed by all members of the Committee except Representatives Karamatsu and Meyer.  
(Representatives Jernigan and Moses voted no.)

**SCRep. 714-04 Finance on H.B. No. 2911**

The purpose of this bill is to enhance accountability of charter schools by requiring that they be subject to:

- (1) County laws, codes, and rules governing land use and public health and safety to the extent that the laws, codes, and rules apply to other public schools;
- (2) State land use laws;
- (3) The Uniform Information Practices Act; and
- (4) Audit by the Department of Education (DOE) and the State Auditor.

DOE, Chair of the Hawaii County Council, Hawaii State Teachers Association, and Hawaii Government Employees Association testified in support of this bill. The County of Hawaii Planning Department supported the intent of this measure. The Hawaii Charter Schools Network and Office of Information Practices commented on this bill.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2911, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2911, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.  
(Representatives Bukoski and Jernigan voted no.)

**SCRep. 715-04 Finance on H.B. No. 2404**

The purpose of this bill is to preserve the Employees' Retirement System's (ERS) tax-qualified status by:

- (1) Making various amendments to the law on pension and retirement systems to comply with the requirements of the Internal Revenue Code; and
- (2) Granting expedited rulemaking authority to the ERS Board of Trustees.

The ERS Board of Trustees testified in support of this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2404, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2404, H.D. 1.

Signed by all members of the Committee except Representative Moses.

**SCRep. 716-04 Finance on H.B. No. 2408**

The purpose of this bill is to allow bona fide trade association (BFTA) members to obtain group rates for health insurance and stronger negotiating positions with health insurers by:

- (1) Requiring health insurers to treat a BFTA and its members as a group for the purpose of issuing a health insurance policy;
- (2) Prohibiting health insurers from restricting the number or types of health plans issued by another insurance entity that the BFTA may offer to its members; and
- (3) Prohibiting health insurers from requiring BFTA members to be insured under the group policy.

The Insurance Division of the Department of Commerce and Consumer Affairs, Department of Labor and Industrial Relations, Chamber of Commerce of Hawaii, Legislative Information Services of Hawaii, H2O Transportation, LLC, National Federation of Independent Business-Hawaii, Hawaii State Bar Association, Retail Merchants of Hawaii, Hawaii Coalition of Care Home Administrators, Hawaii Association of Realtors, and a concerned individual testified in support of this bill. Kaiser Permanente supported the intent of this measure. The Hawaii Medical Service Association opposed this bill.

Your Committee has amended this measure by:

- (1) Replacing references to "health insurance policy" with their respective technical terms under sections in Hawaii Revised Statutes (HRS):
  - (A) "Group disability insurance" in chapter 431:10A, HRS, relating to accident and health or sickness insurance contracts;
  - (B) "Group hospital or medical service plan contract" Article I of chapter 432, HRS, relating to mutual benefit societies; and
  - (C) "Group contract" in chapter 432D, HRS, relating to the Health Maintenance Organization Act;

and
- (2) Making other technical, nonsubstantive amendments for clarity, consistency and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2408, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2408, H.D. 2.

Signed by all members of the Committee except Representatives Karamatsu and Meyer.

**SCRep. 717-04 Finance on H.B. No. 1805**

The purpose of this bill is to support, as part of the State Plan, the military's presence in Hawaii consistent with the military's goals and the State's goals.

The state Department of Defense and Office of Planning of the Department of Business, Economic Development, and Tourism supported this bill. The Office of Hawaiian Affairs and Chamber of Commerce of Hawaii supported the intent of the measure.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1805, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1805, H.D. 3.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Wakai and Moses.  
(Representative Shimabukuro voted no.)

**SCRep. 718-04 Finance on H.B. No. 1806**

The purpose of this bill is to require sufficient notice to commanding officers of military installations in the state of:

- (1) Proposed zoning changes on lands; and
- (2) Any petitions for land-use district boundary amendments,

for lands within 3,000 feet or two miles of any military installation, depending on the population size of the county.

The state Department of Defense testified in support of this bill. The Land Use Commission and Chamber of Commerce of Hawaii supported the intent of this measure. The Office of Hawaiian Affairs and Land Use Research Foundation of Hawaii testified in opposition to this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1806, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1806, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Wakai and Moses.  
(Representative Shimabukuro voted no.)

**SCRep. 719-04 Finance on H.B. No. 2662**

The purpose of this bill is to help military communities develop infrastructure to minimize the possibility of or the adverse effects of the closure or reduction in capacity of military installations, by establishing a Military Community Infrastructure Development Revolving Loan Fund.

Two concerned individuals testified in support of this bill. The Department of Business, Economic Development, and Tourism supported the intent of this bill and suggested amendments.

Your Committee has amended this bill by redefining a "person" as a for-profit business organized as a sole proprietorship, corporation, or partnership, and a nonprofit organization or association, whether or not incorporated.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2662, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2662, H.D. 1.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Wakai.  
(Representatives Jernigan and Meyer voted no.)

**SCRep. 720-04 Finance on H.B. No. 2088**

The purpose of this bill is to:

- (1) Replace the Hawaii Health Systems Corporation (HHSC) with the Department of Health (DOH) as the source of the State's share of matching funds for critical access hospitals; and
- (2) Make permanent Act 226, Session Laws of Hawaii (SLH) 2000, which contains provisions that reimburse critical access hospitals on a cost basis under the Medicaid program using matching federal funds.

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO, and Healthcare Association of Hawaii submitted testimony in support of this measure. DOH, Department of Human Services, Department of Budget and Finance, HHSC, and Kauai Region of the HHSC supported removing the sunset date but opposed substituting DOH for HHSC as the source of the State's share of matching funds.

Your Committee has amended this bill by:

- (1) Reinstating HHSC as the source of the State's share of matching funds for critical access hospitals, instead of DOH;
- (2) Establishing a sunset date of June 30, 2006, for Act 226, SLH 2000; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2088, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2088, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala and Wakai.

**SCRep. 721-04 Finance on H.B. No. 2215**

The purpose of this bill is to assist the State in meeting personnel shortage needs by clarifying that an employee who receives a special retirement incentive benefit may be reemployed with the State in a contract-for-service capacity for a period not to exceed one year without forfeiture of benefits.

The Department of Education testified in support of this bill. The Department of Human Resources Development supported this measure with amendments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2215, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2215, H.D. 2.

Signed by all members of the Committee except Representative Moses.

**SCRep. 722-04 Finance on H.B. No. 2262**

The purpose of this bill is to allow police officers who have been permanently medically disqualified from police work due to a service-related disability to maintain, under certain conditions, their 2.5 percent retirement benefit for the years they served as a police officer.

The Department of Human Resources of the City and County of Honolulu, Police Department of the City and County of Honolulu, and State of Hawaii Organization of Police Officers submitted testimony in support of this measure. The Employees' Retirement System and Department of Budget and Finance offered comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2262, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2262, H.D. 1.

Signed by all members of the Committee except Representative Moses.

**SCRep. 723-04 Finance on H.B. No. 2398**

The purpose of this bill is to standardize employer contributions to the Employees' Retirement System (ERS) by:

- (1) Setting employer contributions to ERS beginning with the 2005-2006 fiscal year at:
  - (A) 15.75 percent of compensation for police officers, firefighters, and corrections officers; and
  - (B) 13.75 percent of compensation for other employees;and
- (2) Eliminating the separate calculation of contributions for the Early Incentive Retirement Plan.

This bill also allows the State to retain amounts owed by a county for ERS contributions from Transient Accommodations Taxes collected.

The Department of Budget and Finance, ERS, Hawaii County Department of Finance, and Maui County Department of Finance supported this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2398, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2398, H.D. 2.

Signed by all members of the Committee except Representative Moses.

**SCRep. 724-04 Finance on H.B. No. 2444**

The purpose of this bill is to:

- (1) Establish an Assistant Adjutant General position for a newly established joint headquarters component of the State National Guard;

- (2) Raise the maximum grade level for this position and comparable positions in the Army and Air Force divisions from a brigadier general to a major general; and
- (3) Require the joint headquarters to be staffed, organized, and equipped as directed by the secretaries of the Army and Air Force.

The Adjutant General submitted testimony in support of this measure.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2444, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2444, H.D. 1.

Signed by all members of the Committee except Representatives Jernigan and Meyer.

**SCRep. 725-04 Finance on H.B. No. 2713**

The purpose of this bill is to:

- (1) Allow approximately 30 employees of the East-West Center (Center) to receive Medicare benefits upon their retirement; and
- (2) Provide that the Center will reimburse the appropriate agencies for costs incurred in implementing the provisions of this bill as they apply to the Center.

The Center and East-West Center Employees Association AFSCME Local 928 submitted testimony in support of this measure. The Employee's Retirement System offered comments.

Your Committee has amended this bill by:

- (1) Eliminating new language allowing the Center to enter into agreements on behalf of the State;
- (2) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2713, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2713, H.D. 2.

Signed by all members of the Committee except Representative Moses.

**SCRep. 726-04 Finance on H.B. No. 2864**

The purpose of this bill is to address:

- (1) The overcrowded situation of correctional facilities in Hawaii; and
- (2) The substance abuse and mental health problems afflicting a large portion of the prison population.

This bill:

- (1) Requires the Director of Public Safety (Director) to enter into a contract for the planning and design of a correctional treatment facility within 90 days of the effective date of this Act;
- (2) Establishes guidelines for the selection of an operator of the new facility;
- (3) Requires the Director to report on the plan, design, operation, location, development, and financing of the facility to the Legislature by February 1, 2005; and
- (4) Requires that a feasibility study for the future use, disposition, or development of the existing Oahu Community Correctional Center site be conducted by the Director, with the assistance of the Department of Business, Economic Development, and Tourism.

The GEO Group testified in support of this bill. The Department of Public Safety testified in opposition to this measure.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2864, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2864, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 727-04 Finance on H.B. No. 2814**

The purpose of this bill is to effectively care for the residents of Kalaupapa Settlement by requiring the Department of Health (DOH) to:

- (1) Submit annual reports to the Legislature that detail DOH's efforts to improve the financial and management operations of Kalaupapa; and
- (2) Track separately, whenever possible, patient and nonpatient costs.

The State Auditor, Office of Hawaiian Affairs, and numerous residents of Kalaupapa testified in support of this bill. DOH supported the intent of the measure.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2814, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2814, H.D. 2.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Waters and Meyer.

**SCRep. 728-04 Finance on H.B. No. 2956**

The purpose of this bill is to begin the process of alleviating traffic congestion in Hawaii through a mass transit system by:

- (1) Establishing a Mass Transit Planning Account (Account) with a cap of \$3,600,000;
- (2) Requiring the Director of Finance (Director) to transfer \$600,000 from the Account to an account of the highway fund established for each county with a population of greater than 500,000 residents;
- (3) Requiring the county to use, upon receipt from the Director, the \$600,000 to develop and finalize a mass transit work plan that includes the use of a fixed guideway mass transit system;
- (4) Requiring the Director to transfer the remaining \$3,000,000 from the Account to the county to execute an environmental impact study and financial plan, if the county council approves the mass transit work plan; and
- (5) Providing that a portion of the state gasoline tax be paid into the Account.

The City and County of Honolulu Department of Transportation Services, Leeward Oahu Transportation Management Association, and a concerned individual testified in support of this bill. The Department of Transportation, Department of Taxation, and a concerned individual opposed this measure. The Tax Foundation of Hawaii, Land Use Research Foundation of Hawaii, and Chamber of Commerce of Hawaii provided comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2956, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2956, H.D. 1.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.  
(Representative Jernigan voted no.)

**SCRep. 729-04 Finance on H.B. No. 1774**

The purpose of this bill is to encourage eligible claimants of unemployment insurance to seek gainful employment by permitting claimants to receive their weekly benefit amount without reductions for wages earned by the claimant during that week.

ILWU Local 142 submitted testimony in support of this measure. The Department of Labor and Industrial Relations opposed this measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1774, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1774, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.  
(Representatives Bukoski and Jernigan voted no.)

**SCRep. 730-04 Finance on H.B. No. 2061**

The purpose of this bill is to:

- (1) Repeal the Transient Accommodations Tax (TAT) Trust Fund into which TAT revenues are paid;
- (2) Remove the \$31,000,000 limit on deposits into the Convention Center Enterprise Special Fund;
- (3) Raise the percentage of TAT revenues deposited into the Tourism Special Fund (TSF) from 32.6 to 36.7 percent;
- (4) Remove the \$62,292,000 threshold at which TAT funds are diverted from the TSF into the State Parks Special Fund (SPSF) and the Special Land and Development Fund (SLDF) for the Statewide Trail and Access Program (Program);
- (5) Require \$1,000,000 from the TSF be deposited into the SPSF and the SLDF for the Program; and
- (6) Provide that 1.2 percent of TAT revenues be deposited into the General Fund.

The Hawaii Business Roundtable, Waikiki Improvement Association, Hawaii Hotel & Lodging Association, and Hawaii Tourism Authority submitted testimony in support of this measure. The Department of Business, Economic Development, and Tourism, Department of Taxation, and Department of Budget and Finance opposed this measure. The Tax Foundation of Hawaii offered comments.

Your Committee has amended this bill by:

- (1) Removing the proposed percentage amounts to facilitate further discussion;
- (2) Changing the effective date to July 1, 2010, also to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2061, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2061, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Wakai and Moses.  
(Representatives Shimabukuro, Bukoski and Meyer voted no.)

#### **SCRep. 731-04 Finance on H.B. No. 2291**

The purpose of this bill is to provide further economic relief to airport concessionaires still suffering from the effects of September 11, 2001, by:

- (1) Providing retroactive relief for previously qualified airport concessionaires who have not negotiated relief with the Department of Transportation (DOT) and whose gross receipts are still reduced by fifteen percent or more when compared to pre-September 11, 2001, gross receipts; and
- (2) Helping ensure that DOT as a landlord treats all of its airport tenants fairly and does not provide benefits to some tenants while not providing similar benefits to other tenants.

The Airport Concessionaires Committee and Greeters of Hawaii testified in support of this bill. The Department of the Attorney General, DOT, and Airlines Committee of Hawaii testified in opposition of this measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2291, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2291, H.D. 2.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Wakai and Moses.

#### **SCRep. 732-04 Finance on H.B. No. 2022**

The purpose of this bill is to clarify eligibility requirements for individuals with disabilities who receive general assistance benefits.

The Department of Human Services, Legal Aid Society of Hawaii, and several concerned individuals testified in support of this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2022, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2022, H.D. 2.



Signed by all members of the Committee.

**SCRep. 733-04 Finance on H.B. No. 2181**

The purpose of this bill is to specifically provide that the Housing and Community Development Corporation of Hawaii's (HCDCH) authorization to issue bonds includes issuance for any program to provide housing for active or retired United States military personnel, their families, and other authorized persons, up to \$2,000,000.

The HCDCH submitted testimony in support of the intent of this measure. The Attorney General offered comments.

Your Committee has amended this bill by:

- (1) Clarifying that the \$2,000,000,000 in revenue bonds that HCDCH may issue for military housing projects is a cap, rather than legislative authorization to HCDCH to issue the bonds; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2181, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2181, H.D. 2.

Signed by all members of the Committee.

**SCRep. 734-04 Finance on H.B. No. 2960**

The purpose of this bill is to promote the use of renewable energy technologies in Hawaii by:

- (1) Providing that when tax credits for the installation of renewable energy technology systems exceed a taxpayer's income tax liability, the excess amount of credit may be claimed in subsequent taxable years until exhausted;
- (2) Requiring that the system for which the credit is claimed must be new in order to receive the tax credit;
- (3) Clarifying the eligibility of partnerships, S corporations, estates, and trusts for the tax credit; and
- (4) Further clarifying other eligibility requirements for the tax credit.

Hawaii PV Coalition and Hawaii Renewable Energy Alliance supported this bill. The Department of Taxation, Hawaii Bankers Association, Hawaii Solar Energy Association, and City Bank supported the measure with amendments. The Tax Foundation of Hawaii submitted comments.

Your Committee has amended this bill by:

- (1) Amending section 241-4.6, Hawaii Revised Statutes, to allow financial institutions to claim the tax credit; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2960, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2960, H.D. 2.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Jernigan.

**SCRep. 735-04 Finance on H.B. No. 2230**

The purpose of this bill is to improve the classification, recruitment, and retention of public employees by:

- (1) Establishing a shortage category employment class; and
- (2) Enabling public employers to adjust hiring rates for recruitment and retention purposes.

The Hawaii Psychological Association and an individual supported this bill. The Department of Human Resources Development, Department of Human Resources of the City and County of Honolulu, Hawaii Government Employees Association, and several individuals supported this bill with proposed amendments. The Department of Education supported the intent of the measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2230, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2230, H.D. 2.

Signed by all members of the Committee except Representatives Jernigan and Meyer.

**SCRep. 736-04 Finance on H.B. No. 1717**

The purpose of this bill is to include naturopathic treatment among the required personal injury protection benefits in a motor vehicle insurance policy.

The Hawaii Insurers Council, Hawaii Society of Naturopathic Physicians, Hawaii Society of Naturopathic Medicine, and several individuals supported this bill. The Department of Commerce and Consumer Affairs and State Farm submitted comments.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1717, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1717, H.D. 2.

Signed by all members of the Committee.

**SCRep. 737-04 Finance on H.B. No. 1919**

The purpose of this bill is to require that proposed adjustments in the compensation and benefit packages of excluded civil service employees are at least equivalent to adjustments provided within the employer's jurisdiction.

The Managerial and Confidential Employees Chapter (MCEC) of the Hawaii Government Employees Association (HGEA) testified in support of this measure. Your Committee also received supporting testimony from:

- (1) 32 County of Kauai employees excluded from collective bargaining and who are members of HGEA's MCEC; and
- (2) 47 employees on Maui excluded from collective bargaining.

The Department of Human Resources Development opposed this measure.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1919, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1919, H.D. 1.

Signed by all members of the Committee except Representatives Jernigan and Meyer.  
(Representative Moses voted no.)

**SCRep. 738-04 Finance on H.B. No. 1894**

The purpose of this bill is to provide children and adolescents access to quality, affordable health care in a convenient, encouraging environment by, among other things:

- (1) Establishing a school-based Student Health Services Program (Program);
- (2) Convening a planning committee to plan and coordinate the provisions for the Program to complement the Department of Education's (DOE) Comprehensive School Support Services Program; and
- (3) Appropriating \$500,000 for comprehensive student health services.

The American Heart Association, Kokua Kalihi Valley Comprehensive Family Services, and several concerned individuals testified in support of this bill. The Department of Education and Hawaii Government Employees Association supported the intent of this measure. The Department of Health opposed this bill.

Your Committee has amended this bill by:

- (1) Changing the appropriation of \$500,000 for comprehensive student health services to an unspecified amount;
- (2) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1894, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1894, H.D. 2.

Signed by all members of the Committee.  
(Representatives Jernigan and Moses voted no.)

**SCRep. 739-04 Finance on H.B. No. 2321**

The purpose of this bill is to improve traffic on Oahu by appropriating funds for a permanent intra-island water ferry system.

The Department of Transportation Services of the City and County of Honolulu, Land Use Research Foundation of Hawaii, Gentry Homes, Ltd., Leeward Oahu Transportation Management Association, and two individuals supported this bill. The Department of Transportation opposed the measure.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2321, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2321, H.D. 2.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan and Meyer voted no.)

**SCRep. 740-04 Finance on H.B. No. 2015**

The purpose of this bill is to reduce rising long-term care costs and support family caregivers by:

- (1) Authorizing the Department of Health (DOH) and the Department of Human Services (DHS) to reimburse family caregivers who provide care to qualified relatives who are suffering from dementia or need assistance with some of the activities of daily living;
- (2) Requiring DOH and DHS to establish a sliding scale for reimbursements; and
- (3) Appropriating funds for reimbursements.

The Kokua Council, Policy Advisory Board for Elder Affairs, and several individuals supported this bill. DHS and the Executive Office on Aging supported the intent of this bill.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2015, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2015, H.D. 2.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan, Meyer and Moses voted no.)

**SCRep. 741-04 Finance on H.B. No. 1071**

The purpose of this bill is to promote the conversion of overhead utility lines to underground lines by:

- (1) Establishing the Underground Conversion Fund (Fund); and
- (2) Allowing state income taxpayers to make a voluntary contribution to the Fund.

Na Leo Pohai, the Kaneohe Outdoor Circle, Lanikai Committee for Underground Utilities, and an individual supported this bill. The Public Utilities Commission supported the intent of this bill. The Department of Budget and Finance opposed this bill. The Department of Taxation, the Consumer Advocate, Tax Foundation of Hawaii, and Verizon Hawaii submitted comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010; and
- (2) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1071, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1071, H.D. 2.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan, Meyer and Moses voted no.)

**SCRep. 742-04 Finance on H.B. No. 1906**

The purpose of this bill is to support students who serve our state and nation by requiring the University of Hawaii (UH) to refund semester tuition in full to:

- (1) A member of the Hawaii National Guard or United States military reserves who is ordered to active duty and unable to attend school for more than 60 days during the semester because of the member's military or National Guard service; and
- (2) A full-time member of the United States military on active duty who is unable to attend school for more than 60 days during the semester because of the member's military service.

The state Department of Defense and Chamber of Commerce of Hawaii testified in support of this bill. UH opposed the measure.

Your Committee has amended this bill by clarifying that a tuition refund for an eligible student is only available upon request by the student.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1906, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1906, H.D. 2.

Signed by all members of the Committee.

**SCRep. 743-04 Finance on H.B. No. 2186**

The purpose of this bill is to appropriate funds to the Filipino Centennial Celebration Commission (Commission) for events commemorating the one-hundredth anniversary of the arrival in Hawaii of the first immigrants from the Philippines.

The Commission, Filipino Community Center, Inc., Congress of Visayan Organizations, and several individuals supported this bill.

Your Committee has amended this bill by changing the appropriation amount to \$1 to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2186, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2186, H.D. 2.

Signed by all members of the Committee except Representative Meyer.

**SCRep. 744-04 Finance on H.B. No. 2459**

The purpose of this bill is to clarify that a covered loss deductible of motor vehicle insurance does not include benefits paid under any public assistance program.

The Department of Human Services and Department of Commerce and Consumer Affairs testified in support of this bill. The Hawaii Insurers Council opposed this measure.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2459, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2459, H.D. 1.

Signed by all members of the Committee except Representative Meyer.

**SCRep. 745-04 Finance on H.B. No. 2667**

The purpose of this bill is to help preserve and promote the Hawaiian Language by establishing a Hawaiian Language Medium Education Program.

An individual supported this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2667, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2667, H.D. 2.

Signed by all members of the Committee except Representative Meyer.

**SCRep. 746-04 Finance on H.B. No. 2976**

The purpose of this bill is to help protect and revitalize Hawaii's communities by making an appropriation for the Weed and Seed Strategy.

The Downtown Neighborhood Board No. 13 and Waipahu Community Association supported this bill. The Honolulu Weed and Seed Program submitted comments.

Your Committee has amended this bill by:

- (1) Deleting the appropriation amount; and
- (2) Changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2976, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2976, H.D. 1.

Signed by all members of the Committee except Representative Meyer.

**SCRep. 747-04 Finance on H.B. No. 1710**

The purpose of this bill is to enable more University of Hawaii (UH) students to take advantage of the HOPE scholarship tax credit by:

- (1) Establishing the Student Scholarship and Assistance Special Fund (Special Fund) to provide scholarship money in lieu of tuition waivers; and
- (2) Appropriating \$20,000,000 to the Special Fund.

UH testified in support of this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1710, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1710, H.D. 2.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Waters and Meyer.

**SCRep. 748-04 Finance on H.B. No. 1792**

The purpose of this bill is to:

- (1) Conform state statutory provisions to the Temporary Extended Unemployment Compensation Act of 2002; and
- (2) Eliminate the restrictions on the use of Reed Act moneys to allow use of the moneys for employment security purposes.

This bill further directs the Department of Labor and Industrial Relations (DLIR) to use for fiscal year 2003-2004:

- (1) \$1,473,900 in federal Reed Act funds for unemployment compensation; and
- (2) \$1,473,900 in other federal funds to supplant general fund appropriations for general administration.

DLIR testified in opposition to this measure.

Your Committee has amended this bill by:

- (1) Changing to unspecified amounts:
  - (a) The federal Reed Act funds to be used for unemployment compensation; and
  - (b) The other federal funds to be used to supplant general fund appropriations for general administration to encourage further discussion of these provisions;
- (2) Changing the effective date to July 1, 2010 to ensure further discussing; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1792, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1792, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 749-04 Finance on H.B. No. 1848**

The purpose of this bill is to help preserve Hawaii's natural environment by establishing a tax deduction for exceptional trees.

The Department of Planning and Permitting of the City and County of Honolulu, Na Leo Pohai, Sierra Club, Hawaii Chapter, Malama o Manoa, Arbor Global LLC, Kona Outdoor Circle, and several concerned individuals testified in support of this bill. The Department of Taxation opposed the measure. The Tax Foundation of Hawaii submitted comments.

Your Committee notes that the section of the law that this bill proposes to amend deals with income tax exclusions, while this measure proposes a tax deduction.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1848, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1848, H.D. 1.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan and Moses voted no.)

**SCRep. 750-04 Finance on H.B. No. 2741**

The purpose of this bill is to enhance accountability in government by requiring that all deputy director and special assistant positions within the Executive Branch that are not specifically authorized by statute shall be subject to position justification requirements and legislative review.

The Hawaii Government Employees Association and Hawaii State Teachers Association supported this bill. The departments of Human Resources Development, Budget and Finance, Taxation, and Labor and Industrial Relations opposed this measure. The Department of Business, Economic Development, and Tourism offered comments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2741, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2741, H.D. 1.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan, Meyer and Moses voted no.)

#### **SCRep. 751-04      Judiciary on H.B. No. 2458**

The purpose of this bill is to clarify and expand the ability of the Department of Human Services (DHS) to use alternatives to bringing children into the formal Child Protective Services (CPS) system.

DHS, the Child Welfare Services State Advisory Council, Blueprint for Change, and several concerned individuals testified in support of this bill. The Judiciary took no position but raised numerous concerns regarding this bill.

Your Committee finds the definition for "diversion services" is vague and broad, and the amended definitions of "harm" and "threatened harm" are likewise vague and may have unintended consequences, including due process issues.

Your Committee acknowledges the concerns raised by Family Court, but also finds that many people are frustrated with the CPS system and want strict legislation that will move that system in a positive direction. With that in mind, your Committee hopes that this bill, as amended, will spark discussion and bring together interested parties, including Family Court and DHS to work together to improve the system.

Your Committee has amended this bill by:

- (1) Deleting the definition of "diversion services;"
- (2) Deleting the amendments to the definitions of "harm" and "threatened harm;"
- (3) Changing the effective date to July 1, 2345, to facilitate further discussion; and
- (4) Making technical nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2458, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2458, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 752-04      Judiciary on H.B. No. 2894**

The purpose of this bill is to require a seller to disclose, in writing, to a prospective buyer of residential or agricultural real property, the existence of any legal access and known traditional public access that may burden the real property being sold. Enumerated types of transfers of agricultural real property are exempt from the required disclosure.

Your Committee received testimony in support of this measure from the Native Hawaiian Legal Corporation. The Land Use Research Foundation of Hawaii testified in opposition to this measure.

Your Committee finds that full disclosure of legal or known traditional public access may help avoid litigation over access rights.

Your Committee has amended this bill by:

- (1) Clarifying that the seller's written disclosure instrument is the disclosure statement;
- (2) Clarifying that any disclosure required under this measure for agricultural real property is to be made in accordance with section 508D-1, Hawaii Revised Statutes; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2894, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2894, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 753-04      Judiciary on H.B. No. 1743**

The purpose of this bill is to protect aquatic resources from artificial light pollution by:

- (1) Authorizing the Department of Land and Natural Resources (DLNR) to adopt rules to limit or prohibit the emanation of light onto ocean waters by residential properties adjacent to ocean waters in coastal areas of the conservation district; and
- (2) Prohibiting structures within special management areas from allowing artificial light to be directed toward or emanating on ocean waters unless authorized and required for safe ocean navigation.

The U.S. Fish and Wildlife Service, Office of Hawaiian Affairs (OHA), Hawaii Audubon Society, Portlock Community Association, Sierra Club, Hawaii Chapter, and numerous concerned individuals testified in support of this bill. The Land Use Research Foundation of Hawaii, DLNR, and the Hawaii Hotel and Lodging Association opposed this measure. The Hawaii Tourism Authority offered comments.

Your Committee heard persuasive testimony concerning the destructive impact on sea life caused by high-intensity light beaming toward the ocean from private residences.

OHA testified that:

*"Bright lights mimic the full moon, and sometimes even daylight, to such an extent that nesting turtles and their progeny can be led astray, fish do not come out to feed, already slow-growing corals try to spawn before they are ready, and nocturnal and migrating birds can be fatally confused. . . . These lights, in affecting the life and feeding cycles of sea life, also impact fishers whose sustenance and livelihoods rely on those life forms."*

OHA noted that many species, including aweoweo, white eels, menpachi, ala`ihi, u`u, he`e, akule, opelu, opah, and ulua, are fished at night, and artificial lighting affects their feeding, mating, and resting cycles.

A concerned citizen testified that he has observed in his experience as a fisherman that very little marine life exists where residents shine floodlights into the water. Numerous concerned citizens testified that "Light pollution disrupts the marine ecosystem and its effect on our already delicate shoreline may be more far reaching than we can imagine. Fishermen have known for generations that phases of the moon radically alter the behavior of marine species. The effects of unnaturally intense and constant lighting may be devastating if not brought under control."

The U.S. Fish and Wildlife Service provided the following comments:

*"Lighting has a demonstrated negative impact on some of Hawaii's wildlife, including federally listed threatened and endangered species. Even when lighting is at a great distance from the beach, endangered hawksbill sea turtles (Eretmochelys imbricata) may be deterred from nesting on a beach. Lights can also confuse turtle hatchlings and they may be drawn toward streets and houses instead of dispersing to the ocean. In this manner, a single bright light near a sea turtle nesting beach can misdirect and cause the death of hundreds of turtle hatchlings. Seabirds, including the endangered Hawaiian petrel (Pterodroma sandwichensis) and the threatened Newell's shearwater (Puffinus auricularis newelli), are often attracted to bright lights and may circle around the lights until they become exhausted and fall to the ground where they become injured or killed by vehicles or predators. While the wedge-tailed shearwater (Puffinus pacificus) is not listed as threatened or endangered, it is protected under the Migratory Bird Treaty Act, and also suffers the negative impacts of lighting as described above. These protected seabirds are found in many areas throughout the State, and still transit coastal areas that are already developed."*

As summarized in the testimony of one concerned citizen, "For oceanfront homeowners and businesses, shining lights into the ocean is simply a matter of aesthetics. It is unnecessary. For birds and sea turtles, it's a matter of survival."

The Hawaii Hotel and Lodging Association testified, however, that under this measure as drafted "[e]ssentially all coastal structures would be required to have blackout curtains and outdoor security lighting would be greatly curtailed."

Your Committee finds that this measure is necessary to curtail the harmful effects of light pollution on our ocean resources. Your Committee recognizes that this bill in its present form might require a hotel to apply for a special management area permit, and that further clarification is needed as this bill progresses to clarify how its provisions apply to residences and hotels. Your Committee's objective is not directed at the hotel industry in Waikiki or other areas of our State, but primarily seeks to address the problem of unnecessary lighting beamed outward toward the ocean for decorative purposes that affects ocean life forms, including birds and turtles that need protection.

Your Committee also notes that this measure is not intended to regulate lights such as pyrotechnic displays or torches used for night fishing.

Your Committee has amended this measure by:

- (1) Deleting the provision authorizing DLNR to adopt rules to limit or prohibit the emanation of any light onto ocean waters by adjacent residential properties in coastal areas of the conservation district, to allow the special management area use permit process to regulate light pollution;
- (2) Moving the definition of "light pollution" from the deleted provision to the remaining provision relating to special management areas;
- (3) Providing that the prohibition applies to artificial light positioned toward or that directly illuminate shoreline, nearshore or ocean waters, unless the light is necessary for public safety or safe ocean navigation; and
- (4) Inserting a defective date to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1743, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1743, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.  
(Representatives Chang, Marumoto and Pendleton voted no.)

**SCRep. 754-04      Judiciary on H.B. No. 2290**

The purpose of the bill is to:

- (1) Establish a three-stage graduated driver licensing system for persons under the age of 18;
- (2) Require drivers under the age of 18 to be accompanied by a licensed parent or guardian when driving between the hours of 10:00 p.m. and 4:00 a.m., except under specific circumstances;
- (3) Provide exceptions for working individuals and individuals attending school; and
- (4) Require temporary permit holders to be accompanied by a licensed individual who is at least 21 years of age, instead of 18 years of age, when driving.

The Department of Health, the Department of Transportation, Keiki Injury Prevention Coalition, State Farm Mutual Automobile Insurance Company, Hawaii Insurers Council, Kona Traffic Safety Committee, American Academy of Pediatrics, and several concerned individuals submitted testimony in support of this measure. Mothers Against Drunk Driving Hawaii and the Police Department of the City and County of Honolulu supported this measure with amendments. The Office of the Public Defender and two concerned individuals opposed the measure. The Judiciary and Hawaii Youth Service Network offered comments.

Your Committee finds that this measure can promote safety of and among young drivers.

Your Committee has amended this bill by:

- (1) Changing the restrictive period for a provisional licensee to drive to between 11:00 p.m. and 5:00 a.m., instead of 10:00 p.m. and 4:00 a.m.;
- (2) Requiring that the signed statement allowing the licensee to drive during the restricted hours must include the name, address, and telephone number of a licensed parent or legal guardian, or an employer;
- (3) Deleting vehicle collision from the list of reasons for suspension or revocation of the provisional license;
- (4) Clarifying that these provisions do not apply to motorcycle or motor scooter drivers;
- (5) Making violation of provisional license requirements a status offense that is to be reviewed by family court;
- (6) Reaffirming that a licensed driver who is the licensee's parent or guardian must be in the motor vehicle and occupy a seat near the driver;
- (7) Including driving at speeds exceeding 90 miles per hour as a reason for revocation of a driver's license;
- (8) Changing the effective date to February 31, 2525, to facilitate further discussion; and
- (9) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2290, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2290, H.D. 1.

Signed by all members of the Committee except Representative Kanoho.  
(Representative Herkes voted no.)

**SCRep. 755-04      Judiciary on H.B. No. 267**

The purpose of this bill is to establish limited immunity:

- (1) For counties from liability arising out of county public parks, including skateboard parks; and
- (2) For the State and counties from liability arising out of hazardous recreational activities.

Your Committee made available to the public a proposed H.B. No. 267, H.D. 2, prior to the hearing and received testimony on the proposed draft bill. The proposed House draft:

- (1) Transferred the Office of Elections, Elections Appointment and Review Panel, and Campaign Spending Commission from the Department of Accounting and General Services to the Judiciary for administrative purposes;
- (2) Transferred the State Ethics Commission from the Office of the Auditor to the Judiciary for administrative purposes; and
- (3) Changed the selection process for the Judicial Council.

The Campaign Spending Commission and the Hawaii Clean Elections Coalition testified in support of the bill. The League of Women Voters offered strong support for the bill, except as it applied to the Ethics Commission and Judicial Council. The State Ethics Commission opposed the bill as it applied to the Ethics Commission itself and the Judicial Council. The Attorney General



testified in opposition to the bill. The Judiciary offered their concerns regarding the bill. The Council of Governmental Ethics Laws offered comments.

Your Committee has amended this bill by deleting its contents and replacing it with language that provides for:

- (1) Transfer of the Office of Elections, Elections Appointment and Review Panel, and Campaign Spending Commission from the Department of Accounting and General Services to the Judiciary for administrative purposes;
- (2) Modification of the number of members, their terms, and the appointment process for the Judicial Council; and
- (3) Technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee finds it appropriate to attach the Office of Elections, Elections Appointment and Review Panel, and Campaign Spending Commission to the Judiciary for administrative purposes. As a separate and independent branch of government, the Judiciary has no elected officials and conducts significant administrative duties in addition to its judicial functions. Therefore, the Judiciary is an ideal environment in which these agencies may maintain their independence while still ensuring administrative accountability.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 267, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 267, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.  
(Representatives Finnegan, Marumoto and Pendleton voted no.)

**SCRep. 756-04 Finance on H.B. No. 1103**

The purpose of this bill is to ensure fairness and openness in the procurement process by:

- (1) Mandating the establishment of a Hawaii Procurement Institute in cooperation with the University of Hawaii law school and other public and private entities or persons to, among other things, improve the procurement laws and provide education and training for Hawaii's contractors;
- (2) Allowing greater flexibility by the heads of purchasing agencies in designating members of the review and selection committees for professional services applicants and contracts;
- (3) Allowing selection committees to rank a minimum of three applicants based on selection criteria and send the ranking to the heads of the purchasing agencies;
- (4) Allowing only professional contracts worth \$25,000 or more to be posted electronically for a year;
- (5) Providing for the procurement of design professional services through procedures that meet national standards; and
- (6) Requiring the Department of Accounting and General Services (DAGS), in cooperation with the State Procurement Office (SPO) and Procurement Policy Board, to study preferences and set-asides for small businesses and other groups and draft proposed legislation for the 2004 Regular Session of the Legislature.

DAGS and SPO supported the intent of this bill.

After careful consideration, your Committee has amended this bill by deleting its contents and replacing it with language that requires policy boards to adopt rules to promote the growth and development of small businesses and consider for inclusion provisions that:

- (1) Provide set-asides to small businesses in appropriate classifications of requirements susceptible to performance by small businesses; and
- (2) Impose mandatory evaluation criteria designed to encourage the use of small businesses as subcontractors on large contracts not susceptible to performance by small businesses.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1103, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1103, H.D. 2.

Signed by all members of the Committee.

**SCRep. 757-04 Finance on H.B. No. 2455**

The purpose of this bill is to, among other things:

- (1) Extend the life of the statutory authority for the licensing of home and community-based management agencies and community care foster family homes from 2004 to 2006;
- (2) Create a single demonstration project applicable statewide;
- (3) Allow the Department of Human Services (DHS) to delegate the responsibility of certifying community care foster family homes to separate certification of these homes from licensing of home and community-based case management agencies;

- (4) Authorize DHS to obtain adult protective services background checks in addition to criminal history record checks on operators and employees of home and community-based case management agencies and community care foster family homes; and
- (5) Appropriate funds.

DHS submitted testimony in support of this measure.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2455, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2455, H.D. 1.

Signed by all members of the Committee except Representative Meyer.

**SCRep. 758-04 Finance on H.B. No. 2520**

The purpose of this bill is to improve commercial motor vehicle safety and continue to qualify for federal funds by adopting congressionally mandated changes to the Motor Carrier Safety Improvement Act of 1999.

The Department of Transportation, Department of Human Resources Development, and Honolulu Police Department testified in support of this bill. The Department of Customer Services of the City and County of Honolulu and Hawaii Transportation Association supported the intent of the measure. The Judiciary submitted comments.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2520, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2520, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 759-04 Finance on H.B. No. 2961**

The purpose of this bill is to:

- (1) Change the existing ethanol investment tax credit to a facility tax credit that provides an incentive based on a minimum production capacity of 500,000 gallons at a facility, provided that:
  - (a) The credit does not exceed the amount invested in the facility;
  - (b) The facility operated in the taxable year at a production level of at least 75 per cent of its nameplate capacity on an annualized basis; and
  - (c) The taxpayer does not claim or receive both this credit and the high technology business investment tax credit;
- (2) Clarify the definitions of "investment," "nameplate capacity," "owner," and "qualifying ethanol production";
- (3) Require the Department of Business, Economic Development, and Tourism (DBEDT) to maintain records of investments of qualifying ethanol production facilities and to certify the amount of the tax credit; and
- (4) Cap the total amount of all credits certified by DBEDT at \$12,000,000 per year.

ILWU Local 142 and Hawaii Agriculture Research Center submitted testimony in support of this measure. Clean Fuels Hawaii, Maui Ethanol LLC, and DBEDT supported this measure with amendments. The Department of Taxation (DoTax) supported the intent of this measure with amendments. The Tax Foundation of Hawaii offered comments.

Your Committee has amended this bill by:

- (1) Incorporating the latest definition of "investment" as negotiated by DoTax and the proponents of this measure;
- (2) Removing the definition of "owner";
- (3) Clarifying that in the case of a taxable year in which the credit exceeds the amount invested in the facility, only the portion that does not exceed the investment can be claimed and allowed;
- (4) Specifying the bill's applicability to the taxpayer rather than the facility owner;
- (5) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2961, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2961, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 760-04 Finance on H.B. No. 2968**

The purpose of this bill is to clarify and increase the effectiveness of the Deposit Beverage Container Program.

The Department of Health (DOH), Department of Environmental Services of the City and County of Honolulu, Department of Environmental Management of the County of Hawaii, Sierra Club, Hawaii Chapter, and a concerned individual supported this bill. Anheuser Busch Companies supported the measure's intent. The Chamber of Commerce of Hawaii, Retail Merchants of Hawaii, ABC Stores, and Coca-Cola Bottling Company of Hawaii supported the intent of the bill and suggested amendments. The Department of Taxation opposed this measure. The Office of Information Practices, Tax Foundation of Hawaii, Hawaii Food Industry Association, Times Super Market, KTA Super Stores, Big Save, Inc., Longs Drugs, Pepsi Bottling Group, and Tamura's Wahiawa submitted comments.

Your Committee has amended this bill by:

- (1) Clarifying that DOH must notify distributors in writing of changes to the amount of the deposit beverage container fee;
- (2) Extending the date by which a dealer must operate a redemption center to July 1, 2005; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2968, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2968, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 761-04 Finance on H.B. No. 2034**

The purpose of this bill is to help protect Hawaii's biological resources and diversity by:

- (1) Prohibiting the conveyance of the rights, interest, and title of biological resources or biological diversity on public lands;
- (2) Establishing a Temporary Bioprospecting Advisory Commission (Commission) to, among other things:
  - A) Identify issues and develop policies related to bioprospecting, including the equitable sharing of benefits;
  - B) Review policies, laws, and models of other jurisdictions;
  - C) Prepare a comprehensive report addressing the issues in paragraphs (A) and (B) above; and
  - D) Conduct an inventory of current biotechnology research projects and activities;
- (3) Appropriating funds to enable the Commission to develop a comprehensive bioprospecting plan.

The Office of Hawaiian Affairs, Hawaii State Commission on the Status of Women, Sierra Club-Hawaii Chapter, Oahu Council of the Association of Hawaiian Civic Clubs, Waikiki Hawaiian Civic Club, King Kamehameha Hawaiian Civic Club, Ali'i Pauahi Hawaiian Civic Club, Pearl Harbor Hawaiian Civic Club, Association of Hawaiian Civic Clubs, Native Hawaiian Legal Corporation, Keala Pono, Life of the Land, Ilioulaokalani Coalition, and more than twenty concerned individuals supported this bill. The Department of Business, Economic Development, and Tourism and the High Technology Development Corporation supported the intent of the measure. The University of Hawaii and Hawaii Technology Trade Association supported the intent of the bill and suggested amendments.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2010; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2034, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2034, H.D. 3.

Signed by all members of the Committee.

**SCRep. 762-04 Finance on H.B. No. 2611**

The purpose of this bill is to provide incentives to attract film, video, and sound recording production companies to the state by:

- (1) Expanding the provisions for the motion picture and film production income tax credit (production tax credit) to include digital media and sound recording productions;

- (2) Increasing the current production tax credit from four percent to 15 percent of costs incurred;
- (3) Clarifying the requirements a production must have to qualify for the production tax credit, such as a minimum amount of expenditure and a minimum percentage of labor hired from within the State of Hawaii;
- (4) Requiring qualifying taxpayers to submit to the Department of Business, Economic Development, and Tourism (DBEDT) a report detailing the costs incurred and tax credit claimed, after which DBEDT will issue a certificate of verification; and
- (5) Establishing requirements that must be met by businesses producing performing arts products that are claiming the High Technology Business Investment Tax Credit.

DBEDT, Big Island Film Office of the County of Hawaii Department of Research and Development, Roy Sakuma Productions, Inc., Ohe Records, Punahale Productions, and several concerned individuals testified in support of this bill. The Department of Taxation supported the intent of the measure. The Office of Information Practices and Tax Foundation of Hawaii commented on the bill.

Your Committee has amended this bill by:

- (1) Changing the percentages of the tax credits to an unspecified amount;
- (2) Changing its effective date to July 1, 2010, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee would like it noted that it has chosen to change the percentages of the various tax credits to an unspecified amount to take a cautious approach to the fiscal situation of the State, especially in anticipation of the next estimates by the Council on Revenues.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2611, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2611, H.D. 2.

Signed by all members of the Committee.  
(Representative Meyer voted no.)

#### **SCRep. 763-04 Finance on H.B. No. 1634**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds to assist Jacoby Development, Inc., to develop a plasma municipal solid waste processing system to convert solid wastes into electricity, and chemically and biologically inert slag on Oahu.

Jacoby Development, Inc., and its subsidiary, Geoplasma, LLC, and several concerned individuals testified in support of this bill.

Your Committee has amended this bill by changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1634, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1634, H.D. 1.

Signed by all members of the Committee.  
(Representatives Bukoski and Jernigan voted no.)

#### **SCRep. 764-04 Finance on H.B. No. 1374**

The purpose of this bill is to amend Hawaii's workers' compensation statute to:

- (1) Authorize the Insurance Fraud Investigations Unit of the Department of Commerce and Consumer Affairs (DCCA) to investigate and prosecute workers' compensation fraud related to self-insured employers;
- (2) Facilitate the fair and reasonable investigation and prosecution of workers' compensation fraud; and
- (3) Provide that a party who successfully investigates fraud may receive part of the administrative penalties assessed against the guilty party.

The Department of Human Resources Development, Chamber of Commerce of Hawaii, National Federation of Independent Business-Hawaii, Hawaii Employers' Mutual Insurance Company, Inc., and Iron Workers Stabilization Fund supported this bill. The Department of Labor and Industrial Relations supported this bill with proposed amendments. An individual supported the intent of the measure.

The Hawaii Government Employees Association, ILWU Local 142, and Hawaii State AFL-CIO opposed this bill. DCCA and Hawaii Insurers Council submitted comments.

Your Committee has amended this bill in the interest of fair play and to remedy a defect on the effective date.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1374, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1374, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 765-04 Finance on H.B. No. 2657**

The purpose of this bill is to authorize the voluntary arbitration of disputes in workers' compensation cases under the Uniform Arbitration Act, chapter 658A, Hawaii Revised Statutes (HRS).

The Hawaii Employers' Mutual Insurance Company, Inc., testified in support of this bill. The Chamber of Commerce of Hawaii supported the intent of this measure. The Department of Labor and Industrial Relations, Department of Human Resources Development, ILWU, Local 142, Hawaii State AFL-CIO, and a concerned individual opposed this measure as currently written. Hawaii Government Employees Association provided testimony in opposition.

Your Committee has amended this bill by replacing its substance with language that provides for the arbitration of all workers' compensation disputes under a policy negotiated between an employer and union. Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

Since arbitration is a recognized dispute resolution procedure in collective bargaining, it offers a meaningful alternative to the administrative process currently established under chapter 386, HRS. In most agreements, the cost of arbitrating a dispute is paid for equally by the parties. Arbitration promotes stable relations and your Committee believes claims arising under chapter 386, HRS may be expeditiously resolved through such an established process and procedure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2657, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2657, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.

**SCRep. 766-04 Finance on H.B. No. 2873**

The purpose of this bill is to promote the health of Hawaii's people by establishing a Health Savings Program to enable residents to save for certain health-related expenses through Health Savings Accounts that are eligible for certain tax incentives.

The National Federation of Independent Business and Hawaii Medical Service Association testified in support of this bill. The Chamber of Commerce of Hawaii, Kaiser Permanente, and a concerned individual supported the intent of this measure. The Department of Commerce and Consumer Affairs, Department of Budget and Finance, and Hawaii Medical Association provided comments.

Your Committee has amended this bill by making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2873, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2873, H.D. 2.

Signed by all members of the Committee except Representatives Karamatsu and Meyer.

**SCRep. 767-04 Finance on H.B. No. 2809**

The purpose of this bill is to establish a qualified hotel project income tax credit in the amount of a percentage of qualified costs.

The Land Use Research Foundation of Hawaii, Outrigger Hotels, Hawaii Hotel and Lodging Association, Hawaii Reserves, Inc., Hawaii Chapter of the American Resort Development Association, and Cendant/Fairfield testified in support of this bill. The Hawaii Tourism Authority and Ko Olina Resort and Marina supported this bill with amendments. The Department of Taxation opposed this bill. The Tax Foundation of Hawaii and Waikiki Improvement Association provided comments.

Your Committee has chosen to blank out the percentages of the tax credits to take a cautious approach, especially in anticipation of the next estimates by the Council on Revenues.

Accordingly, your Committee has amended this bill by:

- (1) Leaving the percentages of the tax credits blank;
- (2) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2809, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2809, H.D. 2.

Signed by all members of the Committee.

**SCRep. 768-04 Finance on H.B. No. 1758**

The purpose of this bill is to amend the provisions relating to the Housing and Community Development Corporation of Hawaii (HCDCH) by:

- (1) Requiring that any housing project developed by HCDCH conform to the general plan of the county in which the project is situated;

- (2) Allowing the legislative body of that county 75 days instead of 45 days to approve or disapprove these projects; and
- (3) Removing the exemption of such projects from zoning and planning requirements.

Four Maui County Council members testified in support of this bill. HCDCH, Offices of Community Assistance of the Kauai County Housing Agency, Office of Housing and Community Development of the County of Hawaii, Hawaii Island Community Development Corporation, and Pacific Housing Assistance Corporation opposed the measure. Kaanapali Development Corporation offered comments.

Your Committee has amended this bill by making technical, nonsubstantive amendments to correct drafting errors.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1758, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1758, H.D. 2.

Signed by all members of the Committee except Representative Meyer.  
(Representatives Bukoski and Moses voted no.)

**SCRep. 769-04 Finance on H.B. No. 2608**

The purpose of this bill is to improve the overall efficiency of the Hawaii Tourism Authority (HTA). Among other things, this bill:

- (1) Allows HTA to retain its own attorney independent of the Attorney General (AG) until June 30, 2006;
- (2) Allows HTA to have control over its own accounts, thereby giving it the same standing as the Department of Education and the University of Hawaii;
- (3) Exempts the executive director of HTA from the state retirement system;
- (4) Increases the limit to be used for HTA's administrative expenses from 3.5 to 5 percent of the Tourism Special Fund (Fund);
- (5) Changes HTA's executive director's compensation package formula to not exceed 9 percent of the 5 percent of Fund moneys authorized for administrative expenses, rather than 15 percent of the 3.5 percent authorized;
- (6) Authorizes the hiring of a sports coordinator to provide management services for all sporting events supported through HTA;
- (7) Specifies that all interest and revenues or receipts derived by HTA from any project or project agreements shall be deposited into the Fund; and
- (8) Appropriates \$8,000,000 from the Fund to enable HTA to correct a fiscal shortfall caused by the requirement that HTA fund 18 months of a HVCB contract with 12 months of funding.

The Hawaii Hotel & Lodging Association submitted testimony in support of this measure. The Department of Business, Economic Development, and Tourism and Department of Accounting and General Services opposed this measure. The Department of the AG opposed the bill in part.

Your Committee has amended this bill by:

- (1) Clarifying the business and commercial areas for which attorneys may be contracted to provide legal services for the HTA;
- (2) Changing the effective date to July 1, 2010, to facilitate further discussion;
- (3) Making technical amendments to the other effective date provisions of the bill; and
- (4) Making other technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2608, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2608, H.D. 1.

Signed by all members of the Committee.  
(Representatives Bukoski, Jernigan, Meyer and Moses voted no.)

**SCRep. 770-04 Finance on H.B. No. 2396**

The purpose of this bill is to further efforts that encourage the development and growth of new technology-intensive businesses by, among other things:

- (1) Establishing a business-research institute tax credit;
- (2) Clarifying the existing High Technology Business Investment Tax Credit (Tax Credit) by establishing that a presumption exists that a transaction satisfies the doctrine of economic substance and business purpose if the Tax Credit has an investment tax credit ratio of 2.0 or less of credit for every dollar invested;
- (3) Extending the Technology Infrastructure Renovation Tax Credit;

- (4) Establishing a refundable tax credit for scientific research by qualified research and development companies that are limited to qualified high technology businesses as defined in the section relating to the Tax Credit;
- (5) Creating the Hawaii Private Investment Fund (HPIF) Program to increase the availability of equity and debt capital for emerging, expanding, and restructuring enterprises in Hawaii;
- (6) Requiring taxpayers who claim a tax credit for research activities to submit a written, certified statement to the Director of Business, Economic Development, and Tourism (DBEDT) identifying qualified expenditures and the amount of tax credits;
- (7) Establishing record-keeping requirements and procedures for the DBEDT;
- (8) Giving the Department of Taxation (DoTax) latitude to qualify companies for tax credits pursuant to Act 221, Session Laws of Hawaii 2001; and
- (9) Appropriating funds from the Hawaii Strategic Development Corporation Revolving Fund for the 2005-2006 fiscal year to operate the HPIF Program.

The Department of Agriculture submitted testimony in support of this measure. The Hawaii Technology Trade Association, Hawaii Venture Capital Association, University of Hawaii, and a concerned individual supported this measure with amendments. The Chamber of Commerce of Hawaii supported the intent of this measure. DoTax and a concerned individual supported the intent of this measure with amendments. DBEDT, High Technology Development Corporation, Office of Information Practices, Tax Foundation of Hawaii, and PacifiCap Group offered comments.

Your Committee has amended this bill by:

- (1) Blanking out the amounts of the Business-Research Institute tax credit and the Hawaii Private Investment Fund tax credit;
- (2) Changing the tax credit for scientific research by qualified research and development companies from a refundable to a nonrefundable tax credit; and
- (3) Changing the effective date to July 1, 2010,

to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2396, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2396, H.D. 2.

Signed by all members of the Committee.

#### **SCRep. 771-04 Consumer Protection and Commerce/Judiciary on H.B. No. 1839**

The purpose of this bill is to improve end-of-life care by establishing the Pain Patient's Bill of Rights which would, among other things:

- (1) Give rights to pain patients;
- (2) Authorize doctors to prescribe medically necessary doses of a controlled substance to treat intractable pain; and
- (3) Allow doctors to refuse to prescribe controlled substances and require them to refer pain patients to physicians qualified to treat intractable pain.

Hospice Hawaii, Healthcare Association of Hawaii, and the Hawaii Board of Medical Examiners testified in support of this measure.

Your Committees have amended this bill to reflect a current professional standard of behavior regarding patient referrals. Your Committees noted that there are few physicians who by reputation are in pain management practice. Your Committees have therefore deleted the obligatory requirement for doctors to refer certain patients to such physicians and has replaced it with language that allows doctors to inform the patient of other doctors who use opiates to treat chronic intractable pain.

Your Committees have also changed the effective date from "upon approval" to July 1, 2009, to facilitate further discussion.

Technical, nonsubstantive amendments were made for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1839, H.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 1839, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho, Lee and M. Oshiro.

#### **SCRep. 772-04 Finance on H.B. No. 2184**

The purpose of this bill is to improve school governance and student outcomes by:

- (1) Proposing an amendment to the State Constitution to provide for the election of Board of Education (BOE) members from districts as provided by law;
- (2) Providing for the establishment of 17 school districts, with each comprising three representative districts;

- (3) Establishing a School District Commission to draw up the initial districts;
- (4) Establishing School District Advisory Councils to assist the Commission;
- (5) Requiring one BOE member to be elected from each school district; and
- (6) Providing for the redrawing of school districts upon reapportionment.

BOE, ILWU Local 142, The Koolau News, and an individual supported this bill. The Hawaii Government Employees Association supported the intent of this bill. The State Representative from the Fourth Representative District opposed this bill.

Your Committee has amended this bill by:

- (1) Changing all references to "school districts" to read "school member districts";
- (2) Amending Article IV, Section 2, of the State Constitution to allow the Reapportionment Commission to redraw school member district boundaries;
- (3) Clarifying the temporary nature of the school district commission;
- (4) Removing the school district advisory councils;
- (5) Deleting the requirement that school member districts comprise three representative districts; and
- (6) Making technical, nonsubstantive changes for purposes of style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2184, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2184, H.D. 2.

Signed by all members of the Committee except Representatives Magaoay, Mindo, Meyer and Moses.  
(Representatives Nishimoto and Jernigan voted no.)

**SCRep. 773-04 Finance on H.B. No. 2002**

The purpose of this bill is to improve educational outcomes in public schools by:

- (1) Requiring the Department of Education (DOE) to apply a student weighted formula in allocating operating moneys to all public schools;
- (2) Replacing the current School/Community-Based Management (SCBM) system with a mandatory school community council (SCC) system that is to be implemented at each public school;
- (3) Providing DOE with additional fiscal flexibility;
- (4) Appropriating moneys to expand the SCBM system and prepare for the implementation of SCCs;
- (5) Appropriating moneys for principals' training;
- (6) Establishing the Advisory Group on Student Weighted Funding to address issues relating to the implementation of the student weighted formula;
- (7) Establishing the Committee on Weights within DOE to determine student weights;
- (8) Creating a National Board Certification Incentive Program for public school teachers; and
- (9) Providing for the orderly transfer of various functions from state agencies to DOE.

The Board of Education, DOE, and ILWU Local 142 supported this bill. The Department of Health, Hawaii State Teachers Association, and Hawaii Government Employees Association supported the intent of this bill. The Office of the Governor, Department of Budget and Finance, Department of the Attorney General, and several individuals opposed this bill. The Department of Accounting and General Services (DAGS), Department of Human Resources Development, State Procurement Office, and Hawaii Charter Schools Network submitted comments.

Your Committee has amended this bill by, among other things:

- (1) Adding appropriations to:
  - (A) Reduce the average class size in Kindergarten, first grade, and second grade;
  - (B) Operate and expand Parent-Community Networking Centers; and
  - (C) Provide textbooks and other learning materials;
- (2) Deleting the Working Group on Interagency Relations;
- (3) Deleting the Advisory Group on Student Weighted Funding;
- (4) Requiring DOE to convene an interagency task force to address systemic impediments to the effective management of schools;
- (5) Clarifying the authority and duties granted to Principals and SCCs, respectively;



- (6) Clarifying the composition of SCCs
- (7) Transferring the management of school repair and maintenance projects from DAGS to DOE, effective July 1, 2004;
- (8) Requiring the DOE to adopt a unified school calendar for all schools except multi-track schools to apply to the 2006-2007 school year;
- (9) Changing all references to "student weighted formula" to read "weighted student formula"; and
- (10) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2002, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2002, H.D. 2.

Signed by all members of the Committee.  
(Representatives Bukoski and Jernigan voted no.)

#### **SCRep. 774-04 Finance on H.B. No. 1800**

The purpose of this bill is to amend the General Appropriations Act of 2003 (Act 200, Session Laws of Hawaii 2003), which appropriated funds for the operating expenses and capital improvement costs of the Executive Branch for the fiscal biennium from July 1, 2003, through June 30, 2005 (FB 2003-2005).

Your Committee has labored to craft a balanced budget that is responsive to the needs and demands of our communities. A clear message evolved throughout the past legislative interim:

- The education system must be reformed to improve student achievement;
- The crystal methamphetamine ("ice") epidemic must be confronted; and
- Residents must have relief from the skyrocketing prices of prescription drugs.

The status quo is unacceptable. This budget ensures that the State will answer the call in each of these priority areas. In addition, this is a budget that is balanced without any tax increases.

In considering this bill and other bills that affect state finances, your Committee worked closely with the Administration to identify additional resources to fund the priority programs and services called for by Hawaii's residents. Your Committee has balanced the budget while ensuring the availability of adequate resources to:

- Reform our public school system with a focus on the factors that truly improve student achievement;
- Fight the ice crisis with comprehensive and balanced initiatives; and
- Make prescription drugs affordable and accessible to as many as 300,000 persons who lack adequate medical insurance by approving the Hawaii Rx Plus Program.

Although economic indicators suggest strong economic growth and the Council on Revenues continues to project strong revenue growth, your Committee took a prudent and fiscally responsible approach to balancing competing demands for resources in the development of this Executive Supplemental Budget.

### **BUDGET PRIORITIES**

#### **Education**

Enhancing and reinventing the public education system is critically important for ensuring a bright future for Hawaii's children and continuing to improve the State's economy. Your Committee agrees with your Committee on Education that these efforts to reform education must put students first, and must focus on actions that will clearly improve student achievement. Accordingly, your Committee strongly supports the steps taken in H.B. No. 2002, H.D. 2, to restructure the public education funding system. H.B. No. 2002, H.D. 2, recognizes that every community is deeply concerned and passionate about their children. No special interest group or political party can claim that it alone has all the answers to the question of educational reform; it is clear that reform is the people's priority.

There is broad consensus that the cornerstone of improving the delivery of educational services to our children is to move funds directly to the school through a weighted student formula that allocates funds based on each student's unique learning needs. The Governor, the Legislature, the Hawaii Business Roundtable, and private citizens throughout the state have all endorsed this plan.

Your Committee worked closely with your Committee on Education and has listened to many experts in the field. The reform actions and programs in H.B. No. 2002, H.D. 2, put students first by:

- Ensuring that textbooks and other necessary resources reach the classroom;
- Lowering class size;
- Placing governance in the hands of the school's community;

- Encouraging parent involvement in the schools;
- Training school leaders;
- Rewarding teacher excellence; and
- Streamlining the state bureaucracy.

This approach is designed to improve student achievement, the ultimate goal of any meaningful reform. To achieve reform, H.B. No. 2002, H.D. 2, includes:

- \$3,000,000 for textbooks and learning materials doubling the current appropriation for schools;
- \$2,143,350 to lower average class-size for kindergarten, first grade, and second grade;
- \$250,000 for the new School Community Councils to enhance school-community joint decision-making;
- \$1,743,900 to establish Parent-Community Networking Centers (PCNCs) at every school and ensure adequate funding at existing PCNC sites;
- \$10,000 for the operations of the Committee on Weights, which will be instrumental in implementing the weighted student formula;
- \$500,000 for a Principals Academy to provide leadership training, and training in the school level budgeting required to implement the weighted student formula;
- \$183,780 for the Administrators Certification for Excellence Program which is an essential part of principal training; and
- \$480,000 to support and reward teachers seeking National Board Certification.

Student achievement will improve when we have smaller classes, adequate textbooks, quality teachers, strong school leadership, participation from parents, and a sense of ownership and responsibility within the community. The actions taken and the programs funded in H.B. No. 2002, H.D. 2, put students first, and are important steps toward educational excellence.

#### **Ice Crisis Response**

Your Committee recognizes the work of the Joint House and Senate Task Force on Ice and Drug Abuse Abatement (Ice Task Force), and its laborious efforts to research the issues, travel statewide to listen to diverse communities, and boldly put forth a plan to address the ice crisis. While the Administration may believe that additional studies are needed, the current situation is unacceptable. The status quo is unacceptable. Over 6,000 ice users need treatment, and of these, fewer than 3,000 are able to access publicly funded treatment. The Ice Task Force found that women of childbearing age, pregnant women, parents with young children in the home, and Hawaiians are underserved, and should be given priority in receiving publicly funded substance abuse treatment.

The Ice Task Force recommended diverting drug offenders into treatment rather than prison as a more effective and successful means of reducing recidivism. It found that funding treatment services for nonviolent, first-time drug offenders will avoid imposing a greater burden on the State's prison system and will reduce the costs of incarcerating offenders. Your Committee refers to President Bush's radio address on February 28, 2004, where he stated that "the best way to cut drug use is to cut demand for drugs at the ground level." Consistent with the President's plans to deal with drugs at the high school and community level, H.B. No. 2004, H.D. 1, provides funding to address the ice epidemic through community- and school-based prevention and treatment.

Your Committee has identified additional resources to begin the serious effort required to deal with the crystal methamphetamine crisis that has burdened every community in our state. To respond to the call heard clearly from communities across the state, your Committee appropriates funds, through H.B. No. 2004, H.D. 1, for a multipronged approach to the crisis. This approach improves and extends the State's drug use prevention, drug abuse treatment, and public safety programs. Appropriations in H.B. No. 2004, H.D. 1, include:

- \$7,000,000 for adult treatment services, including family counseling, with priority given to women of childbearing age, pregnant women, parents with young children in the home, and Hawaiians;
- \$4,500,000 for school-based treatment programs in high schools and middle schools/intermediate schools;
- \$2,000,000 for substance abuse prevention, with priority given to drug education and awareness in the schools, community partnerships, nonschool youth activities in communities with the greatest need, education and support for families and parenting women, and community mobilization;
- \$1,430,000 for treatment of first-time, nonviolent drug offenders and any such drug offender sentenced to probation under sections 706-622.5 and 706-625, Hawaii Revised Statutes(HRS);

- \$1,200,000 for the expansion of drug court programs, including those of juvenile and family drug courts;
- \$1,000,000 as a grant-in-aid to the various counties to fund community-based substance abuse prevention programs, with priority given to drug education and awareness in the schools, community partnerships, non-school youth activities in communities with the greatest need, and education and support for families and parenting women, to be matched by federal or private funds;
- \$300,000 for a study and analysis of the effects of clandestine methamphetamine laboratories on the environment (particularly ground water), disposal of toxic waste materials found at the laboratory site and site removal, and recommendations for action;
- \$150,000 and \$250,000 to implement the Substance Abuse Treatment Monitoring Program, to be expended by the Departments of Health (DOH) and Public Safety (DPS), respectively;
- \$200,000 for the coordination of community-based drug abatement and mobilization efforts;
- \$190,000 for the Canine Drug Interdiction Program;
- \$170,000 for the treatment of paroled drug offenders under the jurisdiction of the Hawaii Paroling Authority under section 353-66, HRS; and
- \$125,000 as a grant-in-aid to each county to fund grassroots community efforts to sustain their anti-drug campaigns.

### **Prescription Drugs**

Your Committee has supported the efforts of the Legislature to refine and improve the Hawaii Rx Program (Program), renamed the Hawaii Rx Plus Program (Rx Plus) in H.B. No. 2005, H.D. 1. Rx Plus employs the purchasing power of consumers to negotiate lower prices and rebate agreements from pharmaceutical companies for residents who lack drug coverage under Medicaid or other government or private programs.

In 2002, Hawaii passed groundbreaking prescription drug legislation to establish the Program and provide Hawaii's citizens access to medically necessary prescription drugs at the lowest possible prices. The Program creates a state purchasing pool and encourages drug manufacturers to offer lower prices by leveraging Medicaid-based pharmacy expenditures. The State negotiates a rebate agreement with drug manufacturers allowing discounted drug prices for Program members.

Under the revised law, Rx Plus will provide drug coverage for people with incomes up to 350 percent of the federal poverty level, approximately \$74,500 for a family of four, or \$36,000 for a single person. Eligible Hawaii residents would apply for a Hawaii Rx Plus card and use it to qualify for reduced drug prices between 10 and 60 percent below the retail price at their local participating pharmacy.

Your Committee has put the people of Hawaii first. Whether it is on the issue of education reform, ice use abatement, or affordable prescription drugs, your Committee has taken immediate action to address the issues important to Hawaii's people.

### **BUDGET PRINCIPLES**

This year, the Administration laid out four principles to abide by in developing its budget:

- The State must learn to live within its means;
- The budget should have structural balance where recurring expenses are matched with recurring revenues;
- The budget should adhere to sound budgeting principles and its reporting format should be clear and simple; and
- Adequate reserves should be maintained to even out fluctuations in revenues and expenditures and help preserve fiscal stability.

Your Committee has always used such principles in developing recommendations for the budgets of the Executive Branch, the Judicial Branch, the Legislative Branch, and the Office of Hawaiian Affairs. The economic chaos that ensued following the events of September 11, 2001, made the application of some of these principles difficult. Over the past two and a half years, however, tough fiscal decisions made by the prior Administration and the Legislature have put the State back on solid footing and on target to align all budgets with these sound budgeting principles.

Unfortunately, the budget and financial plan submitted by the current Administration appears to be heading in the opposite direction. The budget and financial plan submitted by the Administration on December 22, 2003, clearly indicates that expenditures will outpace revenues, peaking at a deficit of over \$80 million in Fiscal Year (FY) 2006.

Despite the promotion of the principles of sound budgeting by the Administration, your Committee notes that:

- Much of the Administration's request for \$120 million in new recurring expenditures was based on one-time savings attributable to debt service payments and an adjustment to the payroll

remittance law requiring employers to submit taxes earlier, resulting in a one-time boost to the general fund of about \$80 million;

- Large general fund revenue adjustments, to the tune of \$99.8 million over two years, were made by the Administration, but not endorsed by the nonpartisan Council on Revenues. These assumptions were not revealed to the Legislature

or the public until the State of the State address by the Governor, which occurred over a month after the Administration submitted its budget and financial plan; and

- Despite submitting and advocating for legislation that could guarantee collective bargaining awards of 1.5 percent on an annual basis, the Administration's financial plan did not provide for any collective bargaining increases.

Your Committee notes that the financial plan submitted by the Governor in December called for an ending balance of \$11.0 million in FY 2006. In addition, the financial plan did not include any assumption for potential collective bargaining increases, despite the Administration sponsoring legislation that could have guaranteed collective bargaining awards of at least 1.5 percent on an annual basis. Finally, the Governor withheld details concerning \$99.8 million in revenue proposals for a full month after the statutorily required deadline for submitting the budget. These three factors undermine the ability of the Legislature and the general public to fully evaluate the budget proposal of the Administration to determine whether it meets the constitutional requirement to be balanced. Your Committee hopes that this practice will not be repeated in the future as it impairs transparency and accountability in developing a balanced budget.

Despite the Administration's shortcomings in adhering to its stated budget principles, your Committee has used these principles to guide deliberations and decisions on this budget. Your Committee remains committed to continue working with the Administration to ensure that the departments' budgets are adjusted using the best information available and, to the extent possible, that they adhere to the four budgeting principles.

### EXECUTION OF ACT 200, SESSION LAWS OF HAWAII 2003

Your Committee also notes that the Administration's inexperience with the budget extends beyond its 2004 supplemental submittal to include its execution of the General Appropriations Act of 2003.

On June 23, 2003, the Governor announced that, "the State will not have enough resources to finance expenditures authorized by the 2003 Legislature for fiscal year 2004, much less for fiscal year 2005, the second year of the biennium." As a result, the Governor imposed a 20 percent across-the-board restriction on first quarter spending for all State agencies. In addition, in anticipation of economic fallout caused by the war with Iraq, the Governor announced on April 1, 2003, that the spending moratorium imposed on motor vehicles, training, purchases of furniture and equipment, and consultant contracts, would be continued. On June 30, 2003, the fiscal year ended with a general fund ending cash balance of \$117.2 million. Despite the Governor's initial claim that the budget authorized by the Legislature was unbalanced, by September 15, 2003, the Governor rescinded her spending moratorium and notified all departments that, "no statewide restrictions on funding will be extended nor imposed on full-year fiscal year 2004 departmental allocations at this time."

Your Committee is very relieved that the impact of the war with Iraq was not as long or as deep as was initially anticipated and is grateful that, in the end, the Governor decided not to cut spending for our public schools by 20 percent. As a result of the Governor's September 15, 2003, Executive Memorandum, all State programs were authorized to expend all general funds authorized by the Legislature in the General Appropriations Act of 2003. The only control over spending currently being utilized by the Administration is a hiring approval process for a limited number of positions.

### BUDGET DEVELOPMENT

#### Working with Departments

In January, your Committee held 28 public briefings to hear from leading economists, the Council on Revenues, the Counties, the Judiciary, and each of the Executive Branch departments. These briefings provided the foundation for your Committee's review of this Executive Supplemental Budget.

At these briefings, department directors provided summaries of the Administration's proposed changes for each department. The directors were also encouraged to provide information on the actions taken to realize savings. Your Committee found that:

- No actions had been taken for which budget reductions could be realized by the vast majority of the departments; and
- The Governor's hiring freeze, which had been in effect for over a year, had an adverse impact on the departmental operations of only four State departments: The DOH, Department of Education (DOE), Department of Land and Natural Resources (DLNR), and Department of Taxation (DOTAX). The other departments reported no adverse impact from the hiring freeze on their operations.

#### Working with All House Members

Your Committee has invited suggestions to identify revenue enhancement measures and expenditure reduction proposals. On February 9, 2004, all House members were invited to contribute suggestions that would ultimately aid in the passage of a balanced budget. Several of the suggestions have been incorporated into this Executive Supplemental Budget, but your Committee is still open to, and awaiting additional suggestions.

#### Challenges to Obtaining Access to Information

It is imperative that budget and financial plan related information be received on a timely basis to achieve the goals of government transparency and accountability. Unfortunately, there has been a lack of response from many departments to budget provisos in the General Appropriations Act of 2003. Your Committee has also been experiencing difficulties with obtaining timely responses to requests for information from several agencies.

In particular, the Department of Human Services (DHS) has not provided the Legislature with a single report, despite eight provisos requesting information that were in the General Appropriations Act of 2003. The information requested includes chore payments, prescription drug costs, and child out-of-home payments, which are all areas of fiscal concern this legislative session. Your Committee has not received responses to other requests for information as well.

Despite grave concerns about this lack of information, your Committee has done its best to make prudent decisions to appropriate additional funding for DHS, and hopes that existing barriers to transparency and accountability will be addressed by the time your Committee receives the budget from the Senate in preparation for the Conference portion of the legislative session.

Another department that has demonstrated a pattern of unresponsiveness to requests for information is the Department of Labor and Industrial Relations (DLIR). Although requests for information were sent to DLIR on January 20, 2004, and February 4, 2004, your Committee just received a response on March 4, 2004, a month after the second request for information was made. The response arrived before budgetary decisions were finalized, but the delay of information and subsequent lack of time to review and analyze the information left your Committee no choice but to deny DLIR's request for additional positions in its administrative division.

Your Committee will continue to review the information from DLIR in preparation for decision-making during the Conference process. However, your Committee hopes that this lack of cooperation from DLIR is not a harbinger of further attempts to withhold information from the Legislature.

Your Committee would note that it is quite satisfied with the information received from many other departments.

The current Administration's policy requires that:

- All requests for information be made in writing via email, fax, or memorandum to avoid confusion; and
- Policy questions must be directed to the respective director of the department by way of a memorandum from the Chair of your Committee.

Your Committee understands this policy in regards to clarity, but has concerns that limiting communications to written requests unnecessarily restricts the review and evaluation of the Administration's proposed budget changes. An open and unrestricted dialogue is important to the pursuit of transparency and accountability in government and your Committee hopes that department policies will be modified to allow for this.

### **Balancing the Budget**

As in previous years, your Committee has made the difficult decisions that are necessary to balance the budget with available resources. These actions include:

#### **Elimination of Vacant Positions**

During January budget briefings before your Committee, each department, with the exception of DOE, DOH, DLNR, and DOTAX, testified that the hiring slow-down imposed by the Administration had no impact on its operations. Therefore, all general funded positions that have been vacant since December 31, 2002, have been eliminated. If departments have been able to function for over a year without filling these positions, your Committee can find no justifiable reason to allow such departments to retain these amounts in their budgets. The exceptions to this policy were the public schools and the University of Hawaii (UH) system, departments whose operations require greater budget flexibility and autonomy. In addition, due to the nature of corrections, only Adult Corrections Officer positions within DPS that had been vacant for over two years were eliminated.

#### **Targeted Base Reductions**

Your Committee scrutinized the prior year's spending patterns and reduced funds accordingly. These adjustments include a reduction for unemployment insurance for the Department of Human Resources Development (DHRD). In FY 2002, \$1.0 million went unused by the department. In FY 2003, \$1.2 million of the funds appropriated for this item were not needed. Your Committee believes that the current level of \$2.2 million budgeted for this item exceeds requirements and makes a \$600,000 reduction accordingly. In addition, \$1 million was reduced from the \$5.8 million budgeted for the Department of Budget and Finance (B&F) for court-appointed counsel and witness fees, which again represents an amount in excess of historical requirements.

#### **Supplemental Requests Denied**

Your Committee also scrutinized the Administration's request for \$120 million in new general fund spending. Your Committee found that several of the items requested could be reduced or eliminated altogether, given the reality of departments' limited ability to implement new programs, alternative methods of funding items, and a lack of justification or information from agencies to substantiate the need to fund items. The details of the supplemental request items reduced or eliminated and a brief statement as to why each adjustment was made may be found in the Budget Worksheets, which are available on line at <http://www.capitol.hawaii.gov>.

#### **Non-General Funds Transferred**

Your Committee would note that last year the Administration transferred \$75.9 million from various non-general funds to the general fund to maintain program operations. Given the continuing fiscal challenges, your Committee has again examined the operation of all non-general funds. Your Committee has identified \$11.3 million in excess non-general fund cash balances to be transferred to the general fund via H.B. No. 2743, H.D. 2. While your Committee finds no pleasure in taking this course of action, it believes it is necessary to ensure that priority programs in departments such as DOE, DOH, DHS, DPS, UH, and DLNR are, and will continue to be, funded at a level appropriate for their core goals.

**MAJOR AREAS OF EXECUTIVE BRANCH BUDGET****Administration's Proposals**

Your Committee approves \$104 million of the departments' requests of a total of \$120 million in additional general funds. These include many of the Governor's priority program initiatives for education, the economy, environment, healthcare, and public safety. In addition, your Committee approves \$306 million of the \$308 million additional non-general funds proposed by the Administration.

Your Committee also appropriates funds for over 80 percent of the construction projects requested by the Administration, and provides the departments with more authority to implement additional capital improvement projects (CIPs) to provide better facilities for public use. Over 80 percent of the additional projects target:

- Improving the quality of our public school and UH facilities;
- Expanding the capacity of drug abuse treatment facilities; and
- Protecting and preserving agricultural lands for future use.

**Department of Education**

Your Committee has made major funding decisions to support the educational reform efforts contained in H.B. No. 2002, H.D. 2. Funding has been appropriated in this bill (H.B. No. 1800, H.D. 1) to support students in charter schools, increase student safety, meet statutory requirements to raise the pay of coaches, provide restroom supplies, adequately fund student transportation services, and support the A+ After-School Program. Additional federal funds have been appropriated to meet the requirements of the No Child Left Behind Act (NCLB) and the Individuals with Disabilities Education Act (IDEA). More specifically, your Committee:

- Provides an additional \$2,262,614 for charter schools;
- Establishes 15 additional school security attendant positions;
- Provides an additional \$500,000 for coaches' salaries;
- Provides \$1,000,000 for restroom supplies for school restrooms statewide;
- Increases student transportation funds by \$2,500,000 to meet the costs of increased ridership and operational expenses;
- Provides an additional \$3,464,418 for the A+ After-School Program for services for the entire school year; and
- Appropriates federal funds for programs required under NCLB (\$8,914,664) and IDEA (\$3,464,418).

Your Committee also provides \$1,000,000 for additional library books and materials to be purchased for the 51 statewide public libraries.

While your Committee has been able to increase funding for public education and public libraries by \$10.9 million in general funds and \$12 million in federal funds in this bill, and increase funding for public schools by \$8.3 million in H.B. No. 2002, H.D. 2, there are still many unmet educational needs. The Board of Education (BOE) had requested that the Governor include requests for \$51 million in the Executive Supplemental Budget, of which only \$3.7 million was approved by the Governor for inclusion in her budget request. With the financial limitations discussed elsewhere in this committee report, your Committee has been unable to meet all the needs identified by the BOE.

For reform to work and student achievement to improve, the Governor and the Legislature will have to address the needs of individual schools and find new and creative ways to meet them. Your Committee believes that an excellent public education system, where parents and communities are engaged with the school, teachers are of the highest quality, principals are effective leaders, and students are high achievers, cannot exist without proper funding.

**Department of Health**

Your Committee's funding decisions for DOH were heavily influenced by the need to meet the federal court requirements that direct the State to implement the Plan for Community Mental Health Services (Plan). The Plan was adopted as an order by the United States District Court in January 2003, and requires the State to provide community-based services to individuals discharged, transferred, or diverted from the Hawaii State Hospital (Human Services and Housing), as well as those at risk of hospitalization at Human Services and Housing. The 2002 Hawaii State Hospital Remedial Plan for Compliance (Human Services and Housing Plan) also had an impact on your Committee's funding decisions concerning the Adult Mental Health Division.

Your Committee appropriates \$18.4 million in additional general funds to support the implementation of the Plan and Human Services and Housing Plan. \$14,473,455 is appropriated for purchase of service contracts and to support Community Mental Health Centers statewide. In addition, \$4,036,902 is appropriated for the purchase of service contract with Kahi Mohala to address overcrowding issues at Human Services and Housing. The additional funds will increase the number of beds available for individuals in need of inpatient mental health services.

Your Committee believes that all individuals should have access to comprehensive primary healthcare services. Therefore, an additional \$2,695,560 is appropriated to provide healthcare services for uninsured individuals and families throughout the state.

The additional funds will allow up to 46,200 uninsured clinical visits and 6,871 uninsured dental visits to be provided in FY 2005. These funds will be distributed among 16 health facilities located throughout the state.

The Title XIX Home and Community-Based Waiver Services Program provides a variety of services to support developmentally disabled individuals in the community. The \$2,750,820 in state funds appropriated by your Committee will be matched by federal funds to provide developmentally disabled individuals with services such as personal assistance, habilitation-supported employment, adult day health, respite, and skilled nursing.

#### **Hawaii Health Systems Corporation**

Since its establishment in 1996, the Hawaii Health Systems Corporation (HHSC) has faced many well-documented challenges. Despite these challenges, HHSC has made significant improvements in providing healthcare services to the indigent, underinsured, and uninsured. Through its 12 community hospitals, HHSC provides long-term, rural health, and primary acute care to all who require medical assistance. Although it has made positive strides, HHSC continues to rely on state funding to subsidize its cash flow shortfall.

While your Committee fully supports the need to fund the healthcare services provided by HHSC, it has concerns regarding HHSC's FY 2005 supplemental budget requests and justifications for a \$31.2 million general fund operating subsidy. In addition to the \$31.2 million in general funds, HHSC is requesting a special fund ceiling increase of \$42.2 million. HHSC testified that it has made significant improvements in its operations through improved collections, implementation of cost-cutting programs, and other methods. HHSC states it has saved money for the State. At the same time, HHSC requests additional funds and attributes its cash flow shortfall to issues including collective bargaining, payment contributions to the Employees' Retirement System, ineligibility for Disproportionate Share Hospital payments from Medicaid, and the loss of a malpractice insurer. Your Committee finds it perplexing that HHSC touts its cost-savings efficiencies at certain times while decrying its lack of resources at others.

As in the past, HHSC's budget requests and justifications for funding offered neither specifics nor a basis for its funding requests. Despite discussions with representatives from HHSC and B&F, your Committee has received no rational explanation as to how the \$31.2 million general fund subsidy request was determined. Furthermore, HHSC's chief financial officer and accountant also failed to provide a reasonable explanation for this funding request.

In an effort to properly and responsibly evaluate HHSC's supplemental budget request and determine an adequate level of funding, your Committee utilized the Uniform Cash Analysis (UCA) method as its primary means of analyzing HHSC's cash flow. This method of analyzing cash flow is the standard used by financial institutions to determine a company's repayment ability. Accordingly, in the case of HHSC, the cash flow analysis provided a means of analyzing its actual cash flow shortfall.

Based on a UCA cash flow analysis using HHSC's audited financial statements prepared by Deloitte and Touche for FYs 2002 and 2003, your Committee has determined that \$20 million is an adequate level of funding. In arriving at this figure, your Committee considered HHSC's projected beginning cash balance of \$15.3 million for FY 2005. In previous years, HHSC showed beginning cash balances of \$11.9 million for FY 2002, \$6.9 million for FY 2003, and \$15.2 million for FY 2004. Your Committee is confident that \$20 million in general funds, plus a ceiling increase of \$65 million in special funds, based on previous years in which HHSC's expenditure ceiling was exceeded, is sufficient to cover and support HHSC's projected cash flow shortfall for FY 2005.

#### **Department of Land and Natural Resources**

Your Committee shares DLNR's concerns regarding the entry of invasive species into our State. In response to the threats of invasive species, the 2003 Legislature established the Hawaii Invasive Species Council (HISC). To assist HISC in protecting against these threats to Hawaii's economy, natural environment, and to the health and lifestyle of Hawaii's people, your Committee provides appropriations in the total sum of \$5,000,000 for FY 2005, subject to a one-to-one, nonstate matching of funds or services. The amount combines a general fund appropriation of \$4,000,000, and an appropriation from the Natural Area Reserve Fund of \$1,000,000.

The similarity in the amount of funding by your Committee, although by a different funding mechanism, and the Administration's initial request of \$5,000,000 in general funds, reflects your Committee's intent to be prudent in adopting many of the Administration's budget requests. The difference in the source of the appropriation demonstrates the flexible manner in which your Committee provides resources during times of fiscal limitations. Your Committee has also included a proviso which includes among its requirements, a request that DLNR report to the Legislature prior to the convening of the 2005 legislative session to allow the Legislature to complete its review of the efficacy of HISC.

#### **Department of Public Safety**

Your Committee is acutely aware of the many challenges faced by DPS to mitigate overcrowding in our prisons and rehabilitate inmates before their release back into our communities. Reducing overcrowding and providing substance abuse treatment and sex offender treatment to inmates and parolees is also of utmost importance to your Committee.

Your Committee authorizes \$5,947,981 for the transfer of additional inmates to out-of-state facilities and to the Federal Detention Center on Oahu. Funding for increases in the basic daily costs for inmates already housed at out-of-state facilities and at the Federal Detention Center in the amount of \$2,054,858 is also approved.

Additional funding of \$340,000 is approved for substance abuse treatment. Your Committee notes that \$100,000 in additional resources for sex offender treatment, which a sex offender must complete to gain eligibility for parole, is also authorized. In its final report, the Ice Task Force described not only the necessity but also the effectiveness of substance abuse treatment in counteracting crystal methamphetamine addiction.

#### **University of Hawaii**

Dedicated to quality higher education, your Committee recognizes UH as an important component in transforming and diversifying the State's economy. Your Committee believes the University will play a vital role in the current and future economic health of Hawaii and appropriates the necessary funds to achieve this goal.

Your Committee appropriates funds to hire staff and operate the University's new John A. Burns School of Medicine and Health Sciences Library located in Kakaako. This new campus will include an education/administration building to house faculty and staff offices, classrooms, a patient simulation center, a lecture hall, and the University Health Sciences Library. The new campus will also be the location of the biomedical research building with state-of-the-art research laboratories to attract research funding and grants.



Furthermore, your Committee provides funding to establish a creative media program. The creation of the Academy of Creative Media will help to establish the University's film school and generate a new source of revenue for the State from the film and television industries.

Finally, to help meet the demand for construction workers for the current and projected construction boom in Hawaii as well as to create a pool of new apprentices for the Pearl Harbor Naval Shipyard, your Committee appropriates funds to support and expand the apprenticeship training program offered at the community colleges. The apprenticeship program will be vital in producing trained construction workers and apprentices who can meet future demand.

#### **Capital Improvements Program**

Last session, in an attempt to bolster the economy and address needs for new and improved facilities, the new Administration proposed a construction plan calling for an additional \$554 million in new general obligation bond funded construction spending for FY 2003-2005. Given the substantial uncertainties created by geopolitical events such as the war in Iraq and concerns over the resiliency of the local economy, your Committee took a fiscally conservative approach and reduced that amount to approximately \$404 million. However, with the passage of time and the dissipation of much of last year's uncertainties, your Committee has reconsidered the Administration's proposal by including an additional \$215 million to provide for new general obligation bond funded capital expenditures requested by the Administration. The low interest rates and availability of federal matching funds makes this the ideal time to move forward on these public construction projects. At the same time, your Committee found it appropriate and fiscally prudent to withhold funding for projects totaling approximately \$43 million that either lacked justification or can be financed using alternate means.

The majority of new capital expenditures approved by your Committee is to be directly invested in the State's educational infrastructure. Your Committee approves an additional \$155 million to be deposited into the State Educational Facilities Improvement Special Fund to construct new school facilities, modernize classrooms, and address health and safety concerns.

To enhance higher education in this State, \$25 million is added to modernize facilities and address health and safety concerns at all UH campuses. In addition, your Committee approves nearly \$91 million for the development of facilities at the community colleges and UH-Hilo.

Acknowledging the community outcry to address Hawaii's drug abuse problem, your Committee appropriates \$10 million to expand the capacity of drug abuse treatment facilities. This increased capacity will enable the Administration to better provide needed services to those in the community who are at risk.

#### **ECONOMIC OUTLOOK**

At the beginning of 2004, the Department of Business, Economic Development, and Tourism (DBEDT) reported that all of Hawaii's economic indicators were positive, investment in construction and real estate continued to provide strong support for growth, and the sector of the economy supported by tourism had been relatively solid in the face of continuing international uncertainty.

As the effect of recent distressing geopolitical events such as the war with Iraq and the SARS outbreak has subsided, it appears that Hawaii's economy has stabilized and is beginning to progress toward recovery. According to the latest figures from DBEDT, unemployment in the State fell to 3.9 percent in January, and the economy currently employs an all-time high of 603,200 people. Nominal personal income has risen by \$1.9 billion, or 5 percent, and wages and salaries in the private sector grew roughly 6.0 percent. The number of bankruptcy filings has decreased, with 19.2 percent fewer filings in the third quarter of 2003.

The visitor industry, the major driver of the State's economy, has reason to be optimistic. As the continental U.S. economy continues to strengthen, Hawaii's domestic arrivals have remained strong, and compared to the same quarter in 2002, were up 4.4 percent in the third quarter of 2003. During the same period, hotel occupancy rates increased by 5 percent. However, the total number of visitors arriving by air increased by only 0.6 percent, indicative of a 7.8 percent decrease in the number of international arrivals.

Factors are pointing to a recovery in the international stock markets. Indicators reveal that the corporate restructuring and governmental reforms of its banking sector are allowing Japan to emerge from its decade-long economic stagnation. In the fourth quarter of 2003, Japan's economy expanded by 1.7 percent, its fastest growth rate in 13 years. As bad bank loans have been cleared out, investments in the securities markets have increased, allowing the benchmark Nikkei Stock Average to recently hit its highest close in 20 months. Despite the decrease in international arrivals, the State has benefited from the strength of the yen relative to the dollar, as Japanese visitor spending has increased with increases in the purchasing power of their currency.

Although economic indicators are optimistic, your Committee recognizes the continued existence of risks in the geopolitical environment that could distress the economy at a moment's notice. The situation in Iraq remains unstable, North Korea has continued its provocative statements regarding nuclear armament, and the threat of terrorism is very real. These factors could disrupt the global economy and affect the leisure travel that currently drives Hawaii's economy.

Despite the positive economic outlook, your Committee is also concerned about the future impact of the diminished purchasing power of Hawaii's citizens. According to the Federal Bureau of Labor Statistics, the rate of inflation in Hawaii has risen 2.9 percent, exceeding the national average of 2.0 percent. Recently, the median price for a single-family home on Oahu rose to a record \$410,000. Gasoline prices have hovered around \$2 a gallon, 19.4 percent higher than in the second half of 2002.

Your Committee believes that the signs of economic recovery are a reflection of prudent steps taken by the Legislature in recent years that have set the stage for a vibrant, diversified economy. Efforts to maintain tax reductions, protect our consumers, and continue to streamline government remain critical to stimulating our economy.

#### **Projection by the Council on Revenues**

On January 6, 2004, the Chair of the Council on Revenues (Council) presented the Council's December 22, 2003, projection to your Committee. The presentation, which focused on current economic and tax revenue trends and on the forecast for the State's general fund tax revenues, included the following reports:

- FY 2003-2004 ended with a 4.4 percent increase in State general fund tax revenues. The Council attributed the increase to fairly strong economic growth that offset a decline in



individual and corporate income taxes, resulting in a solid increase in general excise tax receipts.

- The general fund tax revenue growth rate forecast for FY 2004-2005 was revised from 6.2 percent to 5.2 percent in December 2003, based on the Council's review of tax revenue growth trends.
- The general fund tax revenues forecast for FY 2005-2006 and beyond remained unchanged.
- The Council found that the factors driving Hawaii's economy, such as visitor arrivals, construction, real estate activity, and consumer spending, all appear to be very strong and that the outlook for revenue growth remained high. The Council forecasted:
  - Strong 5.2 percent growth for FY 2005-2006;
  - 7.9 percent growth for FY 2006-2007;
  - 5.3 percent growth for FY 2007-2008; and
  - 6.8 percent growth for FY 2008-2009.

#### **Concern over the Cement Strike**

Hundreds of millions of dollars of construction projects on Oahu are currently on hold due to unsuccessful contract negotiations between the management and employees of Ameron Hawaii and Hawaiian Cement. The impact of this impasse will undoubtedly be felt statewide. Although initial analysis by economists indicated that the impact of the cement strike would be minimal due to optimism that the construction industry would be able to redouble its efforts and make up for lost time, a prolonged strike diminishes the likelihood of this outcome.

Ultimately it will be up to the Council to reevaluate revenue projections in light of the strike, and if necessary, adjust revenue projections accordingly. Your Committee is prepared to work with the Administration and the Senate to create a balanced budget if projections are reduced.

#### **Public Employees**

A company's most vital asset is its work force, and your Committee recognizes the important role of public workers in state government. However, concerns remain about the budget adjustments that will be required to fully fund future collective bargaining contracts. Both your Committee and the Administration recognize that fair compensation is critical to attract qualified employees and retain and maintain the morale of existing public servants.

Several options were reviewed to address funding requirements for employee pay raises. Both your Committee and the Administration understand the need to responsibly plan for and prepare to adjust the State's financial plan so as to minimize impacts on critical public services. Your Committee will be waiting for proposals from the Administration when the contracts for employee compensation are finalized. Your Committee requests that the Administration develop its proposals in a timely and open manner to allow for legislative and public consideration of possible impacts on the delivery of public services.

#### **CONCLUSION**

This measure allocates limited available resources to areas of the highest priority, namely education reform, ice abatement, and affordable prescription drugs, while it recognizes the fiscal constraints and uncertainties of the future. This budget not only meets the State's financial obligations and social responsibilities, but is balanced as required by the Hawaii State Constitution and HRS. Your Committee realizes that there is still much work to be done before the end of the 2004 legislative session, and is prepared to work with the Administration and Senate with a steadfast commitment to produce an equitable and balanced budget.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1800, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1800, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Meyer.

#### **SCRep. 775-04      Finance on H.B. No. 2300**

The purpose of this bill is to amend the Judiciary Appropriations Act of 2003 that provided necessary funds for the operation and capital improvement costs for the Judiciary for fiscal biennium July 1, 2003, through June 30, 2005.

Your Committee appreciates the Judiciary's effort to produce a supplemental budget that recognizes the need for fiscal restraint. The Judiciary submitted a supplemental general fund budget request that is \$4.9 million below the Judiciary's general fund appropriation ceiling, based upon the Council on Revenues' November 15, 2003, estimated state growth rate of 4.66 percent. Your Committee demonstrated its support of the needs of the Judiciary and the indispensable services it provides to the citizens of the State by approving \$3,573,664 of the Judiciary's budget requests to bring the Judiciary's total budget for fiscal year (FY) 2005 to \$121,570,263.

To stem the use of crystal methamphetamine and its resultant deleterious effects on our State, your Committee approved \$1,144,864 in additional funding to expand the Drug Court Program on the neighbor islands. The Drug Court Program has a record of success: the recidivism rate for graduates of the First Circuit Drug Court Program is a remarkably low 5 percent. As this budget makes evident, your Committee is committed to fostering this success. The current appropriation for the Drug Court Program is \$2,604,571, or 2.3 percent of the Judiciary's FY 2004 appropriation. With the additional funding, the total appropriation for the Drug Court Program for FY 2005 reflects an increase of 44 percent to \$3,749,435. This increase demonstrates your Committee's commitment to this highly effective program.

In the Second Circuit, an additional \$439,233 will provide Drug Court substance abuse counselors and substance abuse treatment to rehabilitate clients, 80 percent of whom are addicted to crystal methamphetamine. Eighty-one clients will receive close court supervision and essential substance abuse treatment, as well as training in relapse prevention, cognitive restructuring, life skills, and educational/vocational skills.

According to the Department of Health, the substance abuse problem is particularly acute on the Big Island. As such, \$376,996 in additional funding for social workers and substance abuse treatment was approved for the Third Circuit. The Judiciary has estimated that through this funding, the Circuit's Drug Court Program will be able to double its client capacity to serve an additional 41 clients.

There is currently only one Drug Court-dedicated judgeship in the entire Judiciary, and that one is assigned to the First Circuit. To address this situation, your Committee approved two additional judgeships – one for Family Court and the other for Drug Court. These two judgeships will ensure that Drug Court cases receive the time and attention they need.

Your Committee is also mindful of the increasing number and complexity of cases involving families that the Judiciary has been receiving. Therefore, your Committee approved \$500,000 in additional funding for:

- (1) Guardians ad litem to represent children involved in child protective proceedings; and
- (2) Legal counsel to represent indigent parents.

Your Committee also authorized continued funding for the Children's Justice Center's treatment of victims of intra-familial child abuse and juvenile sex offenders under the age of twelve.

In a year where every branch of state government has made explicit its unconditional commitment to curtail the use and the effects of crystal methamphetamine in our communities, this budget demonstrates the Legislature's intent to partner with the Judiciary in fulfilling this commitment.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2300, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2300, H.D. 1.

Signed by all members of the Committee except Representative Meyer.

#### **SCRep. 776-04      Health on H.C.R. No. 16**

The purpose of this resolution is to request that the Auditor assess the social and financial effects of requiring health insurers to offer coverage for cognitive rehabilitation.

The Disability and Communication Access Board, Hawaii Disability Rights Center, and a concerned individual testified in support of the bill. The Department of Commerce and Consumer Affairs and Hawaii Medical Services Association provided comments.

Your Committee finds that traumatic brain injury is a leading cause of death and disability among children and young adults. However, survivors of traumatic brain injury can lead full lives with appropriate medical attention and rehabilitation services. An impact assessment of mandating coverage for cognitive rehabilitation services in health insurance plans will provide the Legislature with findings and recommendations for decision-making.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 16 and recommends that it be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Kahikina, Ching and Stonebraker.

#### **SCRep. 777-04      Water, Land Use and Hawaiian Affairs on H.R. No. 25**

The purpose of this resolution is to increase awareness about our forests by requesting the Department of Land and Natural Resources (DLNR) to annually identify ten areas or issues that are of current and urgent concern regarding the forests and to publish them in the Environmental Council's annual reports.

DLNR supported the intent of this measure with concerns.

Your Committee has amended this measure by:

- (1) Requesting the Chairperson of the Board of Land and Natural Resources, through the Forest Stewardship Committee rather than the Administrator of the Forestry and Wildlife Division, to annually survey various groups and organizations to identify ten areas or issues of current concern;
- (2) Changing the title of this resolution to read:  
"REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES, THROUGH THE FOREST STEWARDSHIP COMMITTEE, TO IDENTIFY TEN AREAS OR ISSUES THAT ARE OF CURRENT AND URGENT CONCERN REGARDING THE FORESTS OF THE STATE";
- (3) Clarifying that non-sustainable logging practices rather than timber threaten the health and vitality of the forests; and
- (4) Making technical, nonsubstantive amendments for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee concurs with the intent and purpose of H.R. No. 25, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as H.R. No. 25, H.D. 1.

Signed by all members of the Committee except Representatives Morita and Bukoski.

**SCRep. 778-04 Water, Land Use and Hawaiian Affairs on H.C.R. No. 42**

The purpose of this concurrent resolution is to increase awareness about our forests by requesting the Department of Land and Natural Resources (DLNR) to annually identify ten areas or issues that are of current and urgent concern regarding the forests and to publish them in the Environmental Council's annual reports.

DLNR supported the intent of this measure with concerns.

Your Committee has amended this measure by:

- (1) Requesting the Chairperson of the Board of Land and Natural Resources, through the Forest Stewardship Committee rather than the Administrator of the Forestry and Wildlife Division, to annually survey various groups and organizations to identify ten areas or issues of current concern;
- (2) Changing the title of this concurrent resolution to read:  
  
"REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES, THROUGH THE FOREST STEWARDSHIP COMMITTEE, TO IDENTIFY TEN AREAS OR ISSUES THAT ARE OF CURRENT AND URGENT CONCERN REGARDING THE FORESTS OF THE STATE";
- (3) Clarifying that non-sustainable logging practices rather than timber threaten the health and vitality of the forests; and
- (4) Making technical, nonsubstantive amendments for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 42, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as H.C.R. No. 42, H.D. 1.

Signed by all members of the Committee except Representatives Morita and Bukoski.

**SCRep. 779-04 Water, Land Use and Hawaiian Affairs on H.C.R. No. 41**

The purpose of this concurrent resolution is to request the Department of Land and Natural Resources (DLNR) to conduct a feasibility study to develop a park in the Kapoho area of Hawaii, to include the Kumukahi Lighthouse.

This concurrent resolution further requests that DLNR address the following in the study:

- (1) Public access to the shoreline;
- (2) Plans and designs for parks, roadway, campsites, and shower and toilet facilities;
- (3) Restoration and maintenance of beach shorelines and historical sites in Kapoho;
- (4) Timetable for implementation of improvements and projected expense; and
- (5) Other issues deemed necessary or desirable by the department.

Malama O Puna testified in support of this concurrent resolution. DLNR opposed this measure.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 41 and recommends its adoption.

Signed by all members of the Committee except Representatives Morita and Bukoski.

**SCRep. 780-04 Economic Development and Business Concerns on S.B. No. 2909**

The purpose of this bill is to reduce costs and expedite the general rate increase filing process for public utility companies with annual gross revenues of less than \$2,000,000 by:

- (1) Requiring the filing of a standard form application developed by the Public Utilities Commission (PUC) and a public hearing at which consumers may testify on the proposed rate increase;
- (2) Establishing time periods for decisions on general rate increase applications; and
- (3) Requiring public utilities to file annual financial statements in accordance with the standard chart of accounts to be approved by the PUC for financial reports.

The PUC, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, Kukio Utility Company, Princeville Utilities Company, Inc., Molokai Properties Limited dba Molokai Ranch, Olowalu Water Co., LLC, Launiupoko Water Co., LLC, Launiupoko Irrigation Co., LLC, and U. Development testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2909, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson and Ontai.

**SCRep. 781-04 Labor and Public Employment on S.B. No. 14**

The purpose of this bill is to address the shortage of school administrators currently facing the Department of Education (DOE) by allowing the Department of Education (DOE) to hire qualified retired principals and vice principals to fill vacant principal and vice principal positions in DOE identified shortage areas. This bill further clarifies that in the hiring of retired principals and vice principals, the following requirements shall apply:

- (1) Persons hired by the DOE shall have been retired for at least one year before being reemployed by DOE;
- (2) Retired principals and vice principals who are rehired shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of their reemployment;
- (3) Retired principals and vice principals shall receive their entitled normal retirement benefits without being penalized as a result of their reemployment;
- (4) Vacant principal and vice principal positions shall be advertised when there are no applicants for the vacancy; and
- (5) Upon re-employment, retired principals and vice principals shall be compensated at the entry level pay rate.

DOE testified in support of this bill. The Department of Budget and Finance and the Hawaii Government Employees Association supported the intent of this bill.

Your Committee finds that the DOE is facing a serious problem with administrative vacancies over the next five years and that this bill will help address this shortage.

After careful consideration, your Committee has amended this bill by:

- (1) Clarifying that the DOE may hire retired principals and vice principals without affecting their retirement benefits beginning July 1, 2004;
- (2) Inserting a sunset provision of June 30, 2009; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 14, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 14, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Ito, Nakasone, Souki and Pendleton.

**SCRep. 782-04 Labor and Public Employment on S.B. No. 1638**

The purpose of this bill is to clarify laws pertaining to workers' compensation appeals by:

- (1) Authorizing the Labor and Industrial Relations Appeals Board (Board) and the Supreme Court to assess the costs of proceedings and reasonable attorney's fees against the employer if the employer loses an appeal brought by an employee; and
- (2) Setting standards for the Board and the Supreme Court to use in determining assessments against the employer.

The ILWU, Local 142, and a concerned individual testified in support of this bill. The Department of Human Resources Development, Department of Labor and Industrial Relations, Hawaii Insurers Council, Society for Human Resource Management, and the Chamber of Commerce of Hawaii opposed this measure.

Your Committee finds that this measure should be advanced for further discussion and has amended this bill by:

- (1) Authorizing the Supreme Court or the Board to award reasonable attorney's fees and costs to the prevailing party in an appeal brought by an employee;
- (2) Changing the effective date to February 31, 3004; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1638, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1638, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Ito, Mindo, Souki and Pendleton.

**SCRep. 783-04 Labor and Public Employment/Higher Education on S.B. No. 214**

The purpose of this bill is to require Leeward Community College to develop a program to provide services to Freely Associated States students, including cultural education and integration, language, employment, training, and legal services.

The Volunteer Resource Center of Hawaii and the Chancellor of Leeward Community College testified in support of this bill. The Department of Budget and Finance opposed this measure.

After careful consideration, your Committees have amended this bill by:

- (1) Clarifying that funding for the establishment of pilot programs in Waipahu and Kalihi to serve the Micronesian, Marshallese, and Palauan communities shall come from funds appropriated to the State by the Compact of Free Association Amendments of 2003, P.L. 108-188, 11 Stat. 2027 rather than any available federal funds;
- (2) Changing its effective date to February 31, 3004, to facilitate continued discussions; and
- (3) Making technical, nonsubstantive revisions for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Labor and Public Employment and Higher Education that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 214, S.D. 3, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 214, S.D. 3, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ito, Kahikina, Morita, Schatz, Souki, Ching and Pendleton.

**SCRep. 784-04 Health/Human Services and Housing on S.B. No. 3136**

The purpose of this bill is to require medical assistance programs including Medicaid and QUEST to provide chiropractic services.

Two concerned individuals provided testimony in support of the bill. The Department of Human Services (DHS) supported the intent of this measure.

Your Committees find that chiropractic care is an important form of medical care for an individual's health and well being. Your Committees received testimony stating that chiropractic care may actually save money in the long-term because other medical costs would be reduced or eliminated.

Your Committees have amended this bill by:

- (1) Adding a provision that this measure will sunset in four years; and
- (2) Requiring DHS to report on the impacts of this measure to the Legislature prior to sunset date.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3136, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3136, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representative Ching.

**SCRep. 785-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2438**

The purpose of this bill is to promote aquaculture by appropriating funds to the Department of Agriculture's (DOA) Aquaculture Development Program to conduct a study on shark migratory activity along the Leeward coast of Oahu, from Ewa Beach to Kaena Point, by tagging sharks and monitoring their movements.

A concerned individual testified in support of this bill. DOA commented on this measure.

Your Committee finds that DOA does not have the programmatic expertise in shark attacks, shark activity, or the science of collecting and interpreting data on shark movements in the islands. Further, your Committee finds that studying the migratory activities of sharks will support the fish farms and increase the safety of engaging in marine activity along the Leeward coast. Accordingly, your Committee has amended this measure by:

- (1) Changing the state agency designated to conduct the study to the Division of Aquatic Resources Division of the Department of Land and Natural Resources;
- (2) Appropriating \$25,000 to conduct the study; and
- (3) Making technical, nonsubstantive amendments for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2438, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2438, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Bukoski and Thielen.

**SCRep. 786-04 Water, Land Use and Hawaiian Affairs on S.B. No. 3129**

The purpose of this bill is to prevent the flooding of Lake Wilson by appropriating funds to:

- (1) Conduct a study to determine the best mitigation measure to control peak flows entering Lake Wilson from storms; and
- (2) Plan, design, and construct the improvements to implement the mitigation measure.

The Department of Land and Natural Resources could not support this bill due to budgetary concerns.

Your Committee finds that severe storms cause massive volumes of water to flow into Lake Wilson causing flooding to the surrounding area and significant damage to residents living downstream. It is urgent that mitigation measures be put into place to

avoid the possible heavy cost in lost property or even lives due to further flooding, especially in light of the recent heavy rains experienced statewide.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3129, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Thielen.

**SCRep. 787-04 Water, Land Use and Hawaiian Affairs on S.B. No. 3044**

The purpose of this bill is to protect public access to coastal, inland, and recreational areas by establishing penalties for any person obstructing access to the sea, the shoreline, or any inland recreational area, public right-of-way, transit area, or public transit corridor.

The Department of Land and Natural Resources and a concerned citizen testified in support of this measure.

Your Committee finds that protecting access to public coastal areas by discouraging residents from attempting to block public access will help preserve an important aspect of our island heritage.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3044 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Bukoski and Thielen.

**SCRep. 788-04 Economic Development and Business Concerns on S.B. No. 195**

The purpose of this bill is to prevent the public disclosure of business trade secrets and other confidential or proprietary business information of tenants or prospective tenants of the Natural Energy Laboratory of Hawaii Authority (NELHA).

The Department of Business, Economic Development, and Tourism, Office of Information Practices, and NELHA testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 195, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson and Ontai.

**SCRep. 789-04 Economic Development and Business Concerns on S.B. No. 2869**

The purpose of this bill is to encourage landowner maintenance of properties within the Kalaeloa community development district by clarifying that the Hawaii Community Development Authority (HCDA) may act as an ombudsman for issues of concern within that district. Specifically, this bill clarifies that the HCDA has the power and duty to:

- (1) Establish procedures for receiving and processing complaints relating to the district, including investigations, research, and monitoring of complaints;
- (2) Notify complainants of decisions on whether the HCDA will research a complaint, and report on any actions taken;
- (3) Consult with landowners or persons who are the subject of the complaint on the best means to a solution; and
- (4) Present its opinions and recommendations to the governor, the Legislature, or the public, and report to the district landowners on the HCDA's district-related activities.

HCDA testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2869, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Water, Land Use, and Hawaiian Affairs.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson and Ontai.

**SCRep. 790-04 Economic Development and Business Concerns on S.B. No. 3002**

The purpose of this bill is to help prepare students for technology-based jobs by appropriating funds to continue and expand the Environmental and Spatial Technology Project program statewide.

The Hawaii State Teachers Association submitted testimony in support of this measure. The Department of Business, Economic Development, and Tourism (DBEDT) testified in support of this bill, provided that appropriations from this measure do not replace or adversely impact current priorities indicated in the Executive Biennium Budget.

Your Committee notes DBEDT's suggestion at the hearing of public-private matching funds in determining the amount of state funds allocated under this measure.

Your Committee has amended this bill by:

- (1) Amending the sum to be appropriated to \$1, to encourage further discussion; and

- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3002, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3002, H.D. 1, and be referred to the Committee on Education.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson and Ontai.

**SCRep. 791-04 Human Services and Housing on S.B. No. 1000**

The purpose of this bill is to require:

- (1) Members of the clergy or persons who perform similar functions for a religious organization; and
- (2) The staff of any church, synagogue, temple, mosque, or other religious institution,

to report cases of child abuse or neglect to the police or Department of Human Services (DHS), except when the information is gained from confidential clergy communication.

The Child Welfare Services State Advisory Council, United Methodist Church of Hawaii, Roman Catholic Church in the State of Hawaii, Hawaii Coalition Against Sexual Assault, Sex Abuse Treatment Center, Hawaii Catholic Conference, Christian Science Committee on Publication for Hawaii, Friends of the Children's Justice Center of Kauai, and a concerned individual testified in support of this measure. DHS supported the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1000, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Nishimoto, Ching, Finnegan and Stonebraker.

**SCRep. 792-04 Human Services and Housing on S.B. No. 2630**

The purpose of this bill is to increase the possibility for a child to be placed with a relative by requiring the Department of Human Services (DHS) to make a good faith effort to locate relatives of a child about to be placed in foster care.

A concerned individual testified in support of this measure. DHS supported the concept of this bill.

Your Committee finds that there have been situations where children have been placed in foster families with no family connection even though relatives were available and willing to care for the child. Some relatives claim that they were never given the opportunity, and others say they were not notified that the child was being placed in foster care.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2630, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 793-04 Water, Land Use and Hawaiian Affairs/Human Services and Housing on S.B. No. 2440**

The purpose of this bill is to clarify "family" with respect to the transfer of 999-year homestead leases to members of the occupier's or lessee's family by specifying that "family" also includes cousins.

The Hawaiian Political Action Council of Hawaii supported this bill. The Department of Land and Natural Resources did not have any objections to this measure, but offered clarifying amendments.

In addition to clarifying the qualified assignees of a homestead lease, your Committees believe an in-depth analysis of the assignability of these 999-year leases should be conducted. Accordingly, your Committees have amended this measure by:

- (1) Clarifying "family" to include aunts, uncles, and the children of an aunt or uncle; and
- (2) Changing the effective date to July 1, 2010, to facilitate further discussion.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2440, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2440, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kahikina, Kaho'ohalahala, Kawakami, Bukoski, Ching, Stonebraker and Thielen.

**SCRep. 794-04 Transportation on S.B. No. 2015**

The purpose of this bill is to preserve the beauty of Hawaii and improve the safety of communities by clarifying that vehicles left on a public highway that are without proper registration and a current safety inspection may be considered abandoned thus providing a mechanism for immediate removal of the vehicle.

The Department of Customer Services of the City and County of Honolulu and Department of Environmental Management of the County of Hawaii testified in support of this bill.



Concerns have been raised regarding the growing number of abandoned vehicles left on public highways throughout communities in the State. This not only destroys the beauty of our island state but can become a safety issue as more and more of these abandoned vehicles are being used for illegal activities.

Your Committee agrees that current statutes allowing for vehicles to be declared as abandoned only if a vehicle is left unattended for more than 24 hours allows individuals to use public highways as storage facilities and that something needs to be done to combat the proliferation of abandoned vehicles on our highways.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2015 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives M. Oshiro and Pendleton.

**SCRep. 795-04      Transportation on S.B. No. 2017**

The purpose of this bill is to increase traffic safety by increasing the penalties for persons convicted of racing on a highway at speeds greater than 30 miles per hour over the posted speed limit.

The Department of Transportation testified in support of this bill. Two members of the City Council of the City and County of Honolulu supported the intent of this measure. The Honolulu Police Department (HPD) and Office of the Public Defender opposed this measure.

Racing and speeding contribute to the frequency and severity of motor vehicle crashes since there is less time to react and less time to stop. Too many tragedies on Hawaii's roadways have been attributed to speed and racing and this measure will help curb such extreme activities in Hawaii.

However, your Committee understands the concerns raised by the Office of the Public Defender on upgrading the offense of racing to a C felony for a third offense occurring within five years of two prior convictions. Accordingly, your Committee has amended this measure by:

- (1) Deleting the class C felony provision for a third offense that occurs within five years of two prior convictions; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Although concerns were also raised by HPD regarding the difficulties they will face with storage and maintenance of forfeited vehicles, your Committee finds that it is in the best interest of public health and safety that the forfeiture provision be included as a possible penalty for violation of Hawaii's racing laws. Moreover, your Committee urges HPD to review the possible use of "car boot" type vehicle restriction devices that are placed on a vehicle's tires rendering the vehicle inoperable. This will allow for a vehicle to be stored at the owner's place of residence until forfeiture proceedings are finalized and the vehicle can be sold at auction.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2017, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2017, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives M. Oshiro and Pendleton.

**SCRep. 796-04      Economic Development and Business Concerns on S.B. No. 2392**

The purpose of this bill is to assist Electricore, Inc., in the planning, design, construction, and operation of facilities for the development and production of unmanned vehicle systems, unmanned aerial vehicles, and the technologies associated with integrated multiuse unmanned systems. This bill authorizes the High Technology Development Corporation to issue up to \$30,000,000 in special purpose revenue bonds.

The Honolulu Community College of the University of Hawaii System and Aerovironment Hawaii, Inc./Electricore, Inc., submitted testimony in support of this measure. The Department of the Attorney General offered comments.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2392, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson and Ontai.

**SCRep. 797-04      Economic Development and Business Concerns on S.B. No. 2242**

The purpose of this bill is to remove tax barriers to the reorganization of the business structure of professional medical services firms that wish to establish an employee stock ownership plan.

The Legislative Information Services of Hawaii, Clinical Laboratories of Hawaii, LLP, and a concerned individual submitted testimony in support of this measure. The Department of Taxation (DOT) supported the intent of this measure. The Tax Foundation of Hawaii offered comments.

Your Committee recommends DOT to work with the proponents of this measure to further specify conditions for obtaining exemptions to the general excise tax.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2025, to facilitate further discussion; and



- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2242, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2242, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson and Ontai.

**SCRep. 798-04 Consumer Protection and Commerce/Judiciary on S.B. No. 2839**

The purpose of this bill is to transfer, from the Department of Commerce and Consumer Affairs to the Department of the Attorney General (AG), the duty to oversee the registration of charitable organizations and their professional solicitors and professional fundraising counsel. The AG already has the duty of overseeing the activities of public charities and private charitable foundations.

In addition to the transfer of registration, the bill:

- (1) Requires that contracts between charities and professional fundraisers be in writing and filed with the AG;
- (2) Requires that the contract identify the percentage of gross revenue that the professional fundraisers will receive;
- (3) Authorizes charitable organizations to cancel any contract with a professional fundraiser within 10 days and provides that any funds subsequently raised must be held in trust for the charitable organization, without deduction for fundraising costs;
- (4) Requires professional solicitors to file a financial report, within 90 days of the completion of a fundraising campaign, that includes the gross revenue and an itemization of all of the expenses incurred, which information will be compiled and made available to the public;
- (5) Permits the AG to refuse to register, to suspend a registration, or to revoke a registration when the professional fundraiser or charitable organization violates a requirement of registration, fails to produce required records, or makes a false statement in any required report;
- (6) Increases the existing bond requirement, from \$5,000 to \$25,000, and registration fee, from \$50 to \$250. The registration fee in other states ranges from \$200 to \$1,000; and
- (7) Creates a Solicitation of Funds for Charitable Purposes Special Fund, into which the fees will be paid, to enforce the law and disseminate information to the general public.

Your Committees heard testimony in support of this bill from the AG and the National Association of State Charities Officials. The Association for Healthcare Philanthropy (AHP) opposed the bill.

AHP expressed concern that the transfer to AG reflected a philosophical shift, from regulation to enforcement, that may prove unhelpful to smaller charities that will struggle to meet the new requirements. However, that is clearly not the intent of this bill.

In addition, Myerberg Shain & Associates, professional consultant to charitable organizations, informally contacted your Committees to say that the current draft of the bill addresses its previously expressed concerns and to commend the AG's openness and willingness to work collaboratively.

Your Committees were favorably impressed by the willingness of the AG to embrace additional responsibility and are confident that the authority that is granted will be exercised with sound judgment and an appreciation for the importance of the work of Hawaii's charitable organizations, irrespective of their size and sophistication.

Your Committees have made technical, nonsubstantive amendments to the bill for clarity, consistency, and style that include:

- (1) Amending the definition of "professional fund-raising counsel" to include the alternate spelling, "professional fundraising counsel;" and
- (2) Moving several subsections of the first new section established by the bill, to more appropriate locations in existing sections of chapter 467B, Hawaii Revised Statutes.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2839, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2839, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Hamakawa, Ito, M. Oshiro, Sonson, Marumoto, Pendleton and Stonebraker.

**SCRep. 799-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2972**

The purpose of this bill is to strengthen the Department of Land and Natural Resources' (DLNR's) ability to enforce the State historic preservation law (law) by:

- (1) Specifying that all penalties, fines, and other administrative charges for violations of the law be deposited into the Hawaii Historic Preservation Special Fund (Fund); and

- (2) Expanding the permissible expenditures from the Fund to include permanent and temporary staff positions, as well as administrative and operational costs relating to the historic preservation program.

DLNR testified in support of this measure with amendments.

This bill will bring the Fund into conformance with other special funds administered by DLNR. Most statutes establishing comparable special funds include provisions allowing the deposition of penalties, fines, and other administrative charges into these special funds.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2972, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Bukoski and Thielen.

**SCRep. 800-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2097**

The purpose of this bill is to:

- (1) Cap the use permit fee at three percent of gross revenues beginning on July 1, 2040, for commercial vessels moored at small boat harbors; and
- (2) Require that all fees and penalties imposed by the Department of Land and Natural Resources (DLNR) be deposited into the Boating Special Fund to help fund improvements to our deteriorating small boat facilities.

The Ocean Tourism Coalition, Maui-Molokai Sea Cruises, Paradise Cruise, Ltd., Trilogy Excursions, Fair Wind Cruises, Expeditions, Sailing Ships Ltd. dba Gemini Charters, Aqualung Pacific, and Makena Boat Partners testified in support of this bill. DLNR, Hawaii Boaters Political Action Association, Ala Wai Marina Board, and a concerned individual opposed this measure.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2097, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Evans and Bukoski.  
(Representatives Morita and Thielen voted no.)

**SCRep. 801-04 Transportation on S.B. No. 2018**

The purpose of this bill is to increase the safety of Hawaii's children by amending Hawaii's child passenger restraint law. Among other things, this bill:

- (1) Requires children younger than four years to be restrained by a child passenger restraint system that meets the requirements of the Federal Motor Vehicle Safety Standards at the time of its manufacture;
- (2) Requires children four years of age or older, but younger than eight years, to be restrained in a child safety seat or booster seat that meets the requirements of the Federal Motor Vehicle Safety Standards at the time of its manufacture;
- (3) Provides exceptions to item (2) for:
  - (A) Children weighing more than 80 pounds;
  - (B) Children weighing more than 40 pounds in vehicles equipped only with lap belts in the rear seat; and
  - (C) Children taller than four feet nine inches in height;
- (4) Provides a general exception for children in the rear seat of a motor vehicle in which the number of persons traveling in the motor vehicle exceeds the number of seat belt assemblies;
- (5) Eliminates consideration of failure of a child under the age of eight years to be restrained or failure to restrain a child in a child passenger restraint system, a booster seat, or a seat belt assembly as contributory negligence, comparative negligence, or negligence per se; and
- (6) Defines the term "restrained" to mean that the seat belt assembly is worn as it was designated and intended to be worn.

The Department of Transportation, Department of Health, Honolulu Police Department, Maui Police Department, Mothers Against Drunk Driving, Keiki Injury Prevention Coalition, American Medical Response, Good Beginnings Alliance, Hawaii Pacific Health, State Farm Mutual Automobile Insurance Company, a member of the Hawaii County Council, Disability and Communications Access Board, EMS Division of the Hawaii County Fire Department, numerous concerned individuals of the Waianae Coast Comprehensive Health Center, and several concerned residents supported this measure.

Motor vehicle crashes are the leading cause of death for children and youth between the age of four and 14. Many of those fatally or seriously injured in these crashes were not wearing seat belts or were not properly restrained. In fact, a study conducted in 2001 found that 90 percent of four- to eight-year-old children who were seriously injured in a crash were not properly restrained. This measure will protect Hawaii's keiki from injury.

Your Committee notes that seat belts were designed for older children and adults and that the size and physical development of children under eight make seat belts less effective and, at times, even dangerous. The National Highway Traffic Safety Administration, National Transportation Safety Board, and American Academy of Pediatrics all recommend that children ages four through seven years old be properly restrained in either a car seat or booster seat.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2018, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives M. Oshiro and Pendleton.

**SCRep. 802-04      Transportation on S.B. No. 2021**

The purpose of this bill is to allow owners of special interest vehicles to legally operate their vehicles on Oahu. Specifically, this bill expands the definitions of "street rod vehicle" and "street rod replica vehicle" to include vehicles manufactured before 1968 or manufactured after 1968 to resemble a vehicle manufactured before 1968.

Mr. Sandman Inc., Security Alarm Shop, Kaimuki ACE Hardware, Fred's Auto Top Shop, Inc., and numerous concerned individuals testified in support of this bill. The Department of Transportation (DOT) supported the intent of this measure. The Department of Customer Services of the City and County of Honolulu commented on this bill.

Current law does not allow any resident of the City and County of Honolulu to register a vehicle that is a "street rod" or "street rod replica vehicle" manufactured between 1949 and 1967, or to register a "dune buggy replica vehicle." Other counties throughout the State are exempted from this law. Your Committee notes that replica vehicle owners are generally professionals who are contributing members of society and often invest thousands of dollars in their vehicles only to be denied the ability to register their vehicles and drive them legally on Oahu's streets.

Accordingly, your Committee has amended this bill by:

- (1) Including "dune buggy replica vehicles" as vehicles encompassed under the Special Interest Vehicle Law;
- (2) Establishing registration standards for "dune buggy replica vehicles";
- (3) Requiring seatbelts for "dune buggy replica vehicles";
- (4) Limiting the number of vehicle identification numbers for "street rods," "street rod replica vehicles," and "dune buggy replica vehicles" issued by the Director of Finance of the county in which the vehicle resides to 100 annually per vehicle type; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee notes that owners of "dune buggy replica vehicles" also face difficulty in registering their vehicles due to registration requirements implemented under the reconstructed vehicle law, which requires that their vehicles be subject to inspection by an automotive engineering specialist. Since no such individual exists in Hawaii, registration of their vehicles is almost impossible and your Committee urges DOT to assist these vehicle owners in this matter.

Your Committee also has concerns that commercial operations may have the ability to purchase a substantial number of "kit cars" and rent these vehicles to the general public. It is not the intent of your Committee on Transportation for this measure to be used for such a purpose and respectfully requests the Committee on Judiciary to study this matter further.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2021, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2021, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives M. Oshiro and Pendleton.

**SCRep. 803-04      Human Services and Housing/Health on S.B. No. 2165**

The purpose of this bill is to enhance the medical treatment of newborn infants affected by prenatal drug exposure by requiring the Department of Human Services (DHS) to:

- (1) Develop a statewide program relating to child abuse and neglect including policies and procedures to address the needs of infants born and identified as being affected by illegal substance abuse and appropriate referrals to services for affected families; and
- (2) Seek federal grants.

DHS and Blueprint for Change testified in support of this measure.

Your Committees find that the federal Child Abuse Prevention and Treatment Act contain certain requirements to protect drug-affected newborns and their families, and would like to hold DHS accountable by codifying the federal requirements in state statutes.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2165, S.D. 1, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale, Ching and Stonebraker.

**SCRep. 804-04      Human Services and Housing/Health on S.B. No. 2605**

The purpose of this bill is to ensure the continued operation and expansion of Adult Residential Care Home (ARCHs) by:

- (1) Amending the level of care payments for Type I and Type II ARCHs; and

- (2) Appropriating unspecified funds to pay for any increase in payments.

The Coalition of Care Home Administrators and Policy Advisory Board for Elderly Affairs testified in support of this measure. The Department of Human Services opposed this measure.

Your Committees find that ARCHs have not received an increase in level of care payments in ten years. ARCHs provide 24-hour care, and testimony stated that it is estimated that ARCH operators earn less than \$2 per hour. Additionally, costs have risen dramatically in recent years and ARCH operators find it difficult to care for residents with current levels of payment.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2605 and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Stonebraker.

**SCRep. 805-04 Human Services and Housing/Health on S.B. No. 2936**

The purpose of this bill is to provide state-funded medical assistance to pregnant legal immigrant women aged 19 or older whose family income does not exceed 185 percent of the federal poverty level.

The Department of Human Services, Kokua Council, Hawaii Primary Care Association, Kalihi-Palama Health Center, MothersCare For Tomorrow's Children, Healthcare Association of Hawaii, Na Loio-Immigrant Rights and Public Interest Legal Center, March of Dimes Hawaii Chapter, and Kokua Kalihi Valley testified in support of this measure.

Your Committees find that income-eligible pregnant legal immigrants who have lived in the United States for less than five years currently are not eligible for medical assistance. Prenatal care enhances the birth of a healthy baby, and prevents costly additional medically necessary services.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2936, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale, Ching and Stonebraker.

**SCRep. 806-04 Human Services and Housing/Health on S.B. No. 3134**

The purpose of this bill is to:

- (1) Require the Department of Human Services to establish cost reports for payments to long-term care providers for dialysis patients; and
- (2) Appropriate funds for reimbursements for skilled nursing services for dialysis patients.

St. Francis Medical Center and the Healthcare Association of Hawaii testified in support of this bill. The Department of Human Services supported the intent of this measure.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3134, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale, Ching and Stonebraker.

**SCRep. 807-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2693**

The purpose of this bill is to direct the Department of Land and Natural Resources (DLNR) to investigate various types of community-based sponsorship options prior to the commencement of the U.S. Army Corps of Engineers' planned Helemano-Paukaiula-Kaukonahua watershed management project in the North Shore of Oahu.

This bill requires DLNR to:

- (1) Conduct a community-based information campaign in Waialua and Haleiwa to identify concerns and gather flood-related information; and
- (2) Report its findings to the 2005 Legislature, and submit a financial plan for the creation of an agency-business-community partnership that focuses on serving local community needs.

An unspecified sum is also appropriated for a graduate assistant to assist DLNR in developing and transferring watershed stewardship information and technologies.

An individual testified in support of this measure. DLNR opposed this bill because of its adverse impact on other priorities contained in the executive budget.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2693, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Bukoski and Thielen.

**SCRep. 808-04 Legislative Management on S.B. No. 2482**

The purpose of this bill is to prohibit any person or organization from sending campaign communications regarding contributions for political purposes in any state office or building. This bill sets a fine of not more than \$500 for violations.

The State Ethics Commission, the League of Women Voters of Hawaii, and an individual testified in support of this measure. The Campaign Spending Commission supported the intent of this bill.

Your Committee respectfully requests the Committee on Judiciary to carefully review any amendments proposed by the State Ethics Commission to address First Amendment concerns.

As affirmed by the record of votes of the members of your Committee on Legislative Management that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2482, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Saiki and Halford.

**SCRep. 809-04      Legislative Management on S.B. No. 2718**

The purpose of this bill is to increase the compensation of officials of the legislative service agencies by amending their statutorily established salaries and appropriating general funds for those raises.

This bill raises to an unspecified level the salaries of the Auditor, the Director of the Legislative Reference Bureau (LRB), and the Ombudsman, as well as that of their respective first assistants or first deputies.

The Auditor, LRB, and the Ombudsman testified in support of this measure.

Your Committee finds that there have been no raises in salary for these legislative officials since 1989, resulting in an eroding pay differential with the staff of their offices and the potential loss of parity with their counterparts in the other branches of state government.

As affirmed by the record of votes of the members of your Committee on Legislative Management that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2718, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Saiki and Halford.

**SCRep. 810-04      Legislative Management/Judiciary on S.B. No. 3069**

The purpose of this bill is to address management concerns regarding the operations of the state capitol building by transferring exclusive management and control of the entire state capitol building and grounds, including its parking facilities, to the Joint Legislative Management Committee.

An individual testified in support of this measure. The Department of Accounting and General Services (DAGS) opposed this bill.

DAGS testified that it currently assigns blocks of space to the various occupants of the state capitol building. It is also responsible for assigning parking stalls.

As affirmed by the records of votes of the members of your Committees on Legislative Management and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3069, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Lee, Saiki, Sonson, Halford, Marumoto, Pendleton and Thielen.  
(Representative Finnegan voted no.)

**SCRep. 811-04      Water, Land Use and Hawaiian Affairs/Energy and Environmental Protection on S.B. No. 2968**

The purpose of this bill is to give the Department of Land and Natural Resources (DLNR) authority to implement a mandatory department-wide administrative hearing system.

For purposes of the public hearing and receiving testimony, your Committees circulated and made available for public review a proposed H.D. 1, that deleted the contents of this bill and inserted the provisions of H.B. No. 2496. The purpose of the proposed H.D. 1, is to clarify the conservation and resources enforcement authority of DLNR. Specifically, the proposed H.D. 1 clarifies:

- (1) DLNR's enforcement authority over the protection of caves, historic preservation, and the Kahoolawe Island Reserve; and
- (2) That DLNR's conservation and resources enforcement officers may enforce all other state laws and rules and county ordinances, within all lands and waters of the state.

The Board of Land and Natural Resources and the Office of Hawaiian Affairs testified in support of the proposed H.D. 1.

Your Committees find that this measure corrects inconsistencies and prior legislative oversights and clarifies DLNR's jurisdiction and enforcement authority which will further the conservation and resources enforcement activities of the State.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Energy and Environmental Protection that are attached to this report, your Committees are in accord with the intent and purpose of

S.B. No. 2968, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2968, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Evans and Bukoski.

**SCRep. 812-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2973**

The purpose of this bill is to help protect Hawaii's natural resources by authorizing the Department of Land and Natural Resources (DLNR) to adopt interim rules to protect native species threatened with imminent destruction or extinction.

DLNR, Sierra Club-Hawaii Chapter, and Hawaii Audubon Society testified in support of this bill.

Your Committee finds that Hawaii's unique natural resources demand the highest level of protection from extinction. Hawaii bears the unfortunate distinction of being recognized as the "Endangered Species Capital" of the world. This situation is due, in large part, to the uniqueness of our land and aquatic species, our high biodiversity relative to our limited land and coastal areas, and the proximity to inhabited areas of many of our complex habitats and ecosystems.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2973, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Evans and Bukoski.

**SCRep. 813-04 Water, Land Use and Hawaiian Affairs on S.B. No. 643**

The purpose of this bill is to take the first steps in acknowledging that the State has a trust obligation to ensure the preservation and sustainable use and equitable sharing of benefits of Hawaii's biological resources.

This bill:

- (1) Prohibits the sale or transfer of the biological diversity and the biological resources on trust lands, except as it applies to certain activities of the University of Hawaii (UH);
- (2) Establishes a temporary Bioprospecting Advisory Commission (Commission) within the Office of Hawaiian Affairs (OHA) to identify issues and policies for the Legislature; and
- (3) Appropriates an unspecified sum for the Commission to fulfill its mandate.

The Hawaii State Commission on the Status of Women and an individual testified in support of this measure. The Hawaii Audubon Society supported this bill with amendments. Sierra Club, Hawaii Chapter, supported the intent of this bill with amendments. The Oahu Council of Hawaiian Civic Clubs opposed this measure.

For purposes of receiving public comment on proposed amendments to this measure, your Committee circulated and made available for public review a proposed draft for consideration. UH and the Native Hawaiian Legal Corporation supported this proposed draft. OHA also supported this draft with amendments. The Department of Business, Economic Development, and Tourism (DBEDT), Department of Agriculture (DOA), and an individual offered comments.

Upon further consideration, your Committee has amended this bill by deleting its substance and inserting the substance of the proposed draft with additional amendments. As amended, this bill differs from the Senate draft in the following manner:

- (1) The definition of "bioprospecting" applies to resources and substances found within the public lands rather than the ceded land trust;
- (2) Definitions of "biological resources" and "public lands" are added, and the definition of "trust lands" is deleted;
- (3) The prohibition applies to the exclusive possession or conveyance of the rights, interest, and title to the biological resources from public lands as opposed to the sale or transfer of the biological resources and biological diversity on trust lands;
- (4) The exception to the prohibition in item (3) applies to any existing, permitted farming and research operations whose products are neither indigenous nor endemic to the state;
- (5) The prohibition in item (3) does not affect any research or prevent the State from entering into joint research or commercial development agreements that:
  - (a) Protect the State's title to its biological trust resources;
  - (b) Ensure best practices and bio-safety protocols; and
  - (c) Contribute to either:
    - (i) Research and educational opportunities for Hawaii's students and faculty; or
    - (ii) Hawaii's biotechnology industry;
- (6) The State may enter into agreements that advance biotechnology education, the biological sciences, and medicine in the State;
- (7) The penalty provision is deleted;
- (8) The Commission is placed within DBEDT rather than OHA for administrative purposes;

- (9) The membership of the Commission is increased from ten to 15 by adding:
  - (a) The chairperson of the Board of Agriculture;
  - (b) The Director of Health;
  - (c) Two representatives from the scientific community consisting of an ecologist and a geneticist; and
  - (d) A representative of the Hawaii Institute for Public Affairs;
- (10) In identifying and developing issues and policies, the Commission is to include the rights of traditional, indigenous knowledge-holders;
- (11) The Commission is to conduct an inventory of current biotechnology research projects and activities;
- (12) All Commission meetings are to be subject to chapter 92, Hawaii Revised Statutes;
- (13) A savings clause is added; and
- (14) The due dates for the interim and final reports are postponed by a year, and the date when the Commission ceases to exist is pushed back two years.

Finally, the purpose section has been rewritten, and technical, nonsubstantive amendments have also been made for clarity and style.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 643, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 643, S.D. 2, H.D. 1, and be referred to the Committee on Economic Development and Business Concerns.

Signed by all members of the Committee except Representative Evans.  
(Representative Thielen voted no.)

#### **SCRep. 814-04      Public Safety and Military Affairs on S.B. No. 2979**

The purpose of this bill is to transfer the functions and authority of uniformed security employees and security contracts at health facilities from the Department of Public Safety to the Hawaii Health Systems Corporation.

Testimony in support of the measure was received from the Department of Public Safety, the Hawaii Health Systems Corporation, and the Hawaii Government Employees Association.

Currently, the Department of Public Safety is responsible for the thirteen civil service security personnel who are assigned to Maui Memorial Medical Center. Hospital security is provided in all other Hawaii Health Systems Corporation hospitals by private vendors under contract to the Hawaii Health Systems Corporation.

Your Committee finds that hospital security is a very important issue to patients, their visitors, health care providers, and hospital employees. This measure would provide the Hawaii Health Systems Corporation with direct control over security functions in the Corporation's entire hospital system, which should result in greater uniformity and more efficient supervision and management of all elements of hospital security. Your Committee believes that this bill will improve hospital security and will not negatively impact the Hawaii Health Systems Corporation's ability to use private contractor security forces at other hospitals in the system.

As affirmed by the records of votes of the members of your Committees on Public Safety and Military Affairs and Labor and Public Employment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2979, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Caldwell and Blundell.

#### **SCRep. 815-04      Public Safety and Military Affairs on S.B. No. 2975**

The purpose of this measure is to change the two part-time board members of the Hawaii Paroling Authority to full-time board members.

Testimony in support of this measure was submitted by the Department of Public Safety and the Hawaii Paroling Authority.

Your committees find that, currently, only the Chair of the Hawaii Paroling Authority is a full-time board member. There are two part-time board members, and the status of the board members has remained unchanged since the inception of the paroling authority in 1976.

Your Committees further find that the workload of the Authority has increased tremendously over time. Since 1980, the parole population has grown from four hundred thirty-seven to 2,622 in 2003. Similarly, the number of annual parole-related hearings has increased from approximately three hundred fifty to 2,936. As a result of this increased workload, the part-time members of the Hawaii Paroling Authority have been doing full-time work for part-time pay. Accordingly, your committees believe that changing the two part-time positions to full-time status will more fairly compensate those members and aid the paroling authority in effectively and efficiently performing its duties.

As affirmed by the records of votes of the members of your committees on Public Safety and Military Affairs and Labor and Public Employment that are attached to this report, your committees are in accord with the intent and purpose of S.B. No. 2975, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Caldwell and Blundell.

**SCRep. 816-04      Public Safety and Military Affairs on S.B. No. 2975**

The purpose of this measure is to statutorily establish a joint headquarters in the state Department of Defense.

Additionally, this measure:

- (1) Allows the Adjutant General to appoint an Assistant Adjutant General at a rank not higher than major general to command the joint headquarters; and
- (2) Raises the grades of the Assistant Adjutant Generals in charge of the Army and Air Divisions (i.e., the Hawaii Army and Air National Guards, respectively), from a grade no higher than that of a brigadier (one star) general to that of a major (two star) general.

Your Committees received testimony in support of this measure from the state Department of Defense.

Your Committees find that the state Department of Defense has taken a proactive role in preparing for and protecting against potential terrorist attacks. This measure will assist the Department of Defense in its mission by establishing a joint headquarters, which along with the Army Division and Air Division of the National Guard will each be headed by an Assistant Adjutant General who shall have a grade no higher than major general.

As affirmed by the records of votes of the members of your Committees on Public Safety and Military Affairs and Labor and Public Employment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2919, S.D. 1, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Caldwell and Blundell.

**SCRep. 817-04      Public Safety and Military Affairs on S.B. No. 2044**

The purpose of this bill is to establish a Junior Reserve Officers' Training Corps Program (Program) at Waipahu High School by appropriating funds for the Program, to be matched by funding from the federal government.

Several concerned individuals submitted testimony in support of this bill. The Department of Education supported the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2044, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Education.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 818-04      Public Safety and Military Affairs on S.B. No. 3043**

The purpose of this bill is to provide security and assistance to tourists in heavily-frequented areas of Oahu by establishing a three-year pilot program known as the Aloha Aina Patrol to be funded through an appropriation from the Transient Accommodations Tax Trust Fund.

Ko Olina Resort & Marina and two members of the Maui County Council testified in support of this measure. The City and County of Honolulu Police Department supported this measure with amendments, and the Hawaii Tourism Authority supported the intent of this bill. The Waikiki Improvement Association and Tax Foundation of Hawaii offered comments, and the Department of Business, Economic Development, and Tourism opposed this measure.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3043, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Tourism and Culture.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 819-04      Public Safety and Military Affairs on S.B. No. 2842**

The purpose of this bill is to provide greater protection to children by requiring child pornographers to register as sex offenders with the chief of police of the county where the sex offender resides or is present.

This bill also:

- (1) Redrafts the penalty provisions of the sex offender registration law (chapter 846E, Hawaii Revised Statutes) to conform to the drafting conventions of the Model Penal Code; and
- (2) Makes nonsubstantive "housekeeping" amendments to the chapter.

The Department of the Attorney General (AG), City and County of Honolulu Department of the Prosecuting Attorney, County of Maui Department of the Prosecuting Attorney, County of Hawaii Police Department, Hawaii Family Forum, and the Sex Abuse Treatment Center testified in support of this measure. The Office of the Public Defender offered comments.

Your Committee has amended this bill by:

- (1) Requiring that an actual address be used rather than only the street name and zip code when sex offenders register with the AG; and
- (2) Making technical, nonsubstantive amendments to correct drafting errors.



As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2842, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2842, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 820-04      Public Safety and Military Affairs on S.B. No. 2436**

The purpose of this bill is to enact special sentencing provisions for habitual violent felons.

The Department of the Attorney General, Department of the Prosecuting Attorney of the City and County of Honolulu, and Honolulu Police Department testified in support of this bill. The Office of the Public Defender commented on this measure.

Your Committee notes that this bill is a result of the work of the Three Strikes Law Task Force (Task Force) established by Senate Concurrent Resolution No. 86, Regular Session of 2003, that was charged with the responsibility of determining the feasibility of enacting a "three strikes" law in Hawaii. Although the Task Force's final recommendation was that Hawaii should not enact a "three strikes" law, the Task Force did find a need to enact tougher sentencing laws for habitual violent felons.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2436 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 821-04      Public Safety and Military Affairs on S.B. No. 2843**

The purpose of this bill is to propose a constitutional amendment to allow public access to registration information regarding persons convicted of sexual offenses and crimes against children, as determined by the Legislature.

The Department of the Attorney General, Hawaii Law Enforcement Coalition, Department of the Prosecuting Attorney of the City and County of Honolulu, Victim Witness Kokua Services Division of the Department of the Prosecuting Attorney of the City and County of Honolulu, Maui Department of the Prosecuting Attorney, County of Hawaii Police Department, Sex Abuse Treatment Center, Hawaii Family Forum, Honolulu Police Department, and a concerned individual submitted testimony in support of this bill. The Office of the Public Defender opposed this measure.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2843, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 822-04      Public Safety and Military Affairs on S.B. No. 3228**

The purpose of this bill is to ensure that residents or businesses receive prompt emergency relief for damages sustained from a natural disaster.

This bill authorizes the Governor, upon the declaration of an emergency, to release up to ten percent of the moneys available in the Emergency and Budget Reserve Fund to provide assistance to residents and businesses that have sustained damage from a natural disaster.

The Hawaii Farm Bureau Federation testified in support of this measure.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3228, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Health.

Signed by all members of the Committee except Representative Pendleton.  
(Representative Moses voted no.)

**SCRep. 823-04      Energy and Environmental Protection on S.B. No. 2996**

The purpose of this bill is to encourage the development and production of alternative fuels by reducing the fuel tax on alternative fuels by an unspecified amount for a five-year period.

The Department of Transportation and Department of Business, Economic Development, and Tourism supported this bill. The Gas Company and Pacific Biodiesel supported this measure with amendments. The Department of Taxation and Tax Foundation of Hawaii submitted comments.

Your Committee finds that the production and use of alternative fuels should be encouraged because of their social and economic benefits to the State, in part because Hawaii remains vulnerable to disruptions in the oil supply and a significant portion of motor fuel expenditures (an estimated \$679 million in 1995) leaves the State. Moreover, locally produced alternative fuels contribute to the economic growth of Hawaii, since monies spent on alternative fuels would not leave the State. Diversification of its energy supply has long been an important part of Hawaii's energy policy. Furthermore, the use of alternative fuels also helps protect the environment and promote public health by lowering emissions produced by gasoline and diesel.

Upon further consideration, your Committee has amended this bill by:

- (1) Deleting its substance and inserting the substance of H.B. No. 2521, which suspended, rather than reduced, all state fuel taxes on alternative fuels for a five-year period from July 1, 2004, to June 30, 2009; and

- (2) Making technical, nonsubstantive amendments to the inserted language for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2996, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2996, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Thielen.

**SCRep. 824-04 Economic Development and Business Concerns on S.B. No. 2908**

The purpose of this bill is to update and increase the effectiveness of Hawaii's business registration law by, among other things:

- (1) Clarifying ambiguities and correcting errors that exist due to drafting errors, changes in division policies and procedures, and changes in federal and common law;
- (2) Promoting uniformity throughout the business registration chapters by adding or amending definitions and other language;
- (3) Clarifying that Hawaii corporations have an alternative way for internal decisions to be made by way of shareholder agreements that will help the corporations avoid the expense and inflexibility associated with shareholder meetings;
- (4) Providing for the appointment of a trustee or receiver for dissolved nonprofit corporations;
- (5) Repealing the requirement that operating agreements for limited liability companies be in writing;
- (6) Conforming the Uniform Limited Partnership Act to current state business registration practices; and
- (7) Requiring limited and foreign limited partnerships to provide the names and addresses of each general partner in their annual statement filed with the Department of Commerce and Consumer Affairs (DCCA).

DCCA and concerned individuals submitted testimony in support of this measure. A concerned individual supported this measure with amendments. A concerned individual opposed a section of this bill.

Your Committee notes that concerns have been raised that deleting the requirement of conspicuous notice on stock certificates of unusual provisions regarding corporate governance would make it difficult, if not impossible, for the investing public to determine that these provisions exist. However, your Committee finds that these concerns are more properly addressed by your Committee on Consumer Protection and Commerce.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2908, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson, Jernigan and Ontai.

**SCRep. 825-04 Economic Development and Business Concerns on S.B. No. 2281**

The purpose of this bill is to permit the High Technology Development Corporation (HTDC) to deposit into a private trust account in a Hawaii bank or financial institution moneys collected or received from or on behalf of clients for projects under a contract for services. The bill also removes the \$3,000,000 cap on the total amount of moneys that the High Technology Special Fund can contain.

HTDC supported this bill with amendments.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2009, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2281, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2281, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson, Jernigan and Ontai.

**SCRep. 826-04 Economic Development and Business Concerns on S.B. No. 2377**

The purpose of this bill is to protect individual privacy by:

- (1) Including digital recordings under the offense of violation of privacy; and
- (2) Amending the offense of violation of privacy in the second degree to include photographic images among the types of private communications that may not be intercepted or divulged without the consent of the sender or receiver, except when the images are disseminated, distributed, or transferred by electronic communication service providers or remote storage services in the ordinary course of their business.

The Honolulu Department of the Prosecuting Attorney, Honolulu Police Department, Commission on the Status of Women, and League of Women Voters of Hawaii submitted testimony in support of this measure. T-Mobile USA, Inc. supported this measure with amendments.

Your Committee has amended this bill by:

- (1) Adding the definitions of "electronic communication," "electronic communication service," "electronic communication service provider," "remote storage device," and "electronic communication system"; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2377, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2377, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson, Jernigan and Ontai.

**SCRep. 827-04 Economic Development and Business Concerns on S.B. No. 2606**

The purpose of this bill is to allow brewpubs to sell malt beverages for consumption off-premises. Among other things, this bill permits the sale to consumers of malt beverages that are:

- (1) Manufactured on the premises, or manufactured in Hawaii by the owner of the brewpub at another location, if the owner is licensed to do so; and
- (2) In brewery-sealed containers not to exceed one gallon per container.

Kona Brewing Company, Fish & Game Brewing Company, and several concerned individuals submitted testimony in support of this measure.

Your Committee has amended this bill by:

- (1) Clarifying that malt beverages manufactured on the licensed premises may be sold to consumers for off-premises consumption in any type of container as long as it is sealed by the brewery; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2606, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2606, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives B. Oshiro, Sonson, Jernigan and Ontai.

**SCRep. 828-04 Health/Human Services and Housing on S.B. No. 2621**

The purpose of this bill is to ensure that medically fragile children receive proper health care by creating a Medically Fragile Children's Trust Fund to help pay for medical expenses as well as caregiver expenses for these children.

The State Council on Developmental Disabilities, American Physical Therapy Association-Hawaii Chapter, Hawaii Disability Rights Center, and a concerned individual testified in support of this bill. The Department of the Attorney General and Department of Budget and Finance provided comments.

Your Committees find that families who provide care to medically fragile children face tremendous financial and emotional burdens. This bill provides a small measure of assistance for these families.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2621, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Ching.

**SCRep. 829-04 Health/Human Services and Housing on S.B. No. 2592**

The purpose of this bill is to support victims of sexual assault by appropriating funds to the Department of Health (DOH) to provide sexual assault services.

The City and County of Honolulu Department of the Prosecuting Attorney, Hawaii State Commission on the Status of Women, Sex Abuse Treatment Center, League of Women Voters of Hawaii, Hawaii Coalition Against Sexual Assault, YWCA of Kauai, and YWCA of Hawaii Island supported this measure. DOH testified in opposition to this measure.

Your Committees find that providing and maintaining access to comprehensive services is the most effective community response to sexual assault. Additional funding will help ensure that emergency medical care, 24-hour coverage for crisis intervention and outreach services, therapy services, comprehensive sexual assault awareness and prevention and education programs, and coordinated planning for standardized, sexual assault services are sustained on a statewide basis.

Your Committees have amended this bill by:

- (1) Inserting an appropriation amount of \$1;

- (2) Removing the appropriation from the Domestic Violence Prevention Special Fund; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2592, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2592, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Ching.

**SCRep. 830-04 Health on S.B. No. 2890**

The purpose of this bill is to assist the Department of Commerce and Consumer Affairs (DCCA) in securing qualified medical experts to serve on external review panels by:

- (1) Authorizing DCCA to provide a flat fee of \$200 to physicians as compensation for serving on external review panels; and
- (2) Exempting payment of the fee and the selection of review panel members from the state Procurement Code.

DCCA and Kaiser Permanente supported this bill.

Your Committee finds that external review panels were established to review health plan coverage disputes. Physicians currently serving on these panels are uncompensated, and this lack of compensation has contributed to the reluctance of many physicians to leave their medical practices to participate on these panels.

Your Committee believes that compensation of these physicians, as well as exemption of their selection from the Procurement Code will help facilitate participation by specialist physicians on these panels and contribute to review hearings occurring on a more timely basis.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2890, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 831-04 Health on S.B. No. 2957**

The purpose of this bill is to allow the Hawaii Health Systems Corporation (HHSC) to organize a domestic captive insurance company to provide malpractice insurance coverage to the Department of Health, John A. Burns School of Medicine (UH Med School), and other governmental entities or quasi-governmental entities of the State involved in the provision of health care.

The Department of Health (DOH), Department of Commerce and Consumer Affairs, HHSC, UH Med School, and a member of the Maui County Council supported this bill.

Your Committee finds that the cost of purchasing medical malpractice and hospital professional and general liability coverage is becoming prohibitive and increasingly unavailable. The establishment of a captive insurance company domiciled in the State will help to reduce costs, control losses, and provide a viable and essential alternative to commercial malpractice and liability insurance coverage for government and quasi-government entities of the State that are involved in providing health care.

Your Committee has amended this measure by:

- (1) Limiting availability of malpractice coverage under the State's captive insurance company to only HHSC, DOH, and the UH Med School;
- (2) Providing that the board of directors of the captive insurance company include at least one member of DOH and one member of the UH Med School, if the agencies are covered by the captive insurance company;
- (3) Inserting an appropriation amount of \$9,000,000; and
- (4) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2957, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2957, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 832-04 Health on S.B. No. 1362**

The purpose of this bill is to help protect individuals receiving mental health services by:

- (1) Allowing the Department of Health (DOH) to conduct criminal history record checks on employees, potential employees, and contracted providers in positions requiring direct contact with clients receiving non-witnessed direct mental health services; and
- (2) Requiring DOH to develop an annual statewide comprehensive integrated service plan of the mental health system.

DOH and two concerned individuals testified in support of this bill.

Your Committee finds that investigating the criminal histories of potential employees and contract providers who work with individuals receiving mental health services from DOH will help to ensure the safety of clients.

Your Committee finds that the amendments made on the Senate floor are technical revisions that bring the statutes in alignment with the federally court-ordered Community Plan for Mental Health Services.

Your Committee has amended this measure by:

- (1) Amending the effective date to July 1, 2020; and
- (2) Making other technical, nonsubstantive amendments for clarity and drafting style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1362, S.D. 3, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1362, S.D. 3, H.D. 1, and be referred to the Committee on Labor and Public Employment.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 833-04 Labor and Public Employment on S.B. No. 2424**

The purpose of this bill is to preserve and extend civil service rights, privileges, and benefits to employees in applicable positions in New Century Conversion Charter Schools (NCCCS). Among other things, this bill:

- (1) Allows all applicable employees of the Department of Education (DOE) to retain their civil service status upon conversion of their school into a NCCCS;
- (2) Allows NCCCS to offer civil service status to applicable employees hired after the school's conversion;
- (3) Requires the Department of Human Resources Development (DHRD) to develop and implement procedures to ensure that employees hired after a school's conversion to a NCCCS are provided with a choice of their civil service status; and
- (4) Requires that any applicable employee with civil service status at a NCCCS who transfers to a DOE school that is not a charter school be entitled to all the rights, privileges, and benefits of continuous, uninterrupted civil service.

DHRD, Hawaii Association of Independent Schools, Hawaii Business Roundtable, Hawaii State Teachers Association, Ho'okoko'o Corporation, Waimea Middle School, Kualapuu Elementary School, Good Beginnings Alliance, Charter School Administrative Office, and a concerned individual testified in support of this bill. DOE and Hawaii Government Employees Association (HGEA) supported the intent of this measure.

Act 2, Session Laws of Hawaii 2002, enabled a nonprofit corporation to partner with an existing public school to become an entity known as a "New Century Conversion Charter School." NCCCS were established to offer a new model of hope by offering a choice in the public school system of a school that was empowered with more direct control of school management decisions, greater flexibility to focus on improved student achievement, and greater accountability.

Currently, a number of schools are exploring the possibility of becoming a NCCCS. However, your Committees note that the single, most important and recurring issue facing these schools is whether personnel at the school will be allowed to keep the benefits, rights, and privileges afforded to them by the civil service system. In a recent position issued by DHRD, it was determined that upon conversion to a NCCCS, employees lose their civil service status and any requisite benefits. Subsequently, DHRD and DOE reached a one-year agreement to allow NCCCS employees to continue their civil service status with the hope that a legislative solution would ensue.

Your Committees believe that the loss of civil service benefits, privileges, and rights was an unintended consequence of the charter school conversion process and that this oversight should be corrected.

As such, your Committees have amended this measure by:

- (1) Removing language that preserves and extends civil service rights, privileges, and benefits to employees in applicable positions within NCCCS from the Civil Service Law (Chapter 76, HRS) and placing this language within the NCCCS law (Chapter 302A, HRS);
- (2) Clarifying that certain employees hired after the conversion of a school to a NCCCS shall be civil service employees;
- (3) Deleting the requirement that DHRD develop and implement procedures to ensure that employees hired after a school's conversion to a NCCCS are provided with a choice of civil service status; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committees understand the concerns raised by HGEA regarding certain individuals at two schools that have already converted to charter schools, namely Waialae and Lanikai Charter Schools, who are not assured civil service retention status under this measure. DOE, DHRD, and the Department of the Attorney General are urged to work together to resolve this situation as soon as possible.

As affirmed by the records of votes of the members of your Committees on Labor and Public Employment and Education that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2424, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2424, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Kahikina, Morita, Souki, Blundell, Ontai and Pendleton

**SCRep. 834-04 Water, Land Use and Hawaiian Affairs on S.B. No. 1615**

The purpose of this bill is to provide public access to the Kohala Historical Sites State Monument in North Kohala, Hawaii, and to protect this historical site by providing adequate buffers.

This bill:

- (1) Directs the Department of Land and Natural Resources (DLNR) to purchase additional lands through its eminent domain powers; and
- (2) Appropriates an unspecified sum for acquisition purposes.

Mookini Luakini, Inc., the Office of Hawaiian Affairs, and Kamehameha Schools testified in support of this measure. DLNR opposed this bill.

Act 166, Session Laws of Hawaii 1992, established the Kohala Historical Sites State Monument which consisted of the following State properties: Mookini Luakini, Kamehameha birthsite, and Kukuipahu Heiau. Act 166 also directed the State to acquire additional parcels of land through gifts or land exchanges to preserve and protect the historical sites with adequate buffers and public access. Since then, however, the State has been unable to acquire these parcels from the private landowner through either a purchase or land exchange.

Your Committee notes that DLNR opposed this measure on the basis that an administrative solution can be arranged and that legislation is not necessary to achieve the stated purpose of this bill. However, the inability to administratively resolve this issue since similar legislation was enacted but vetoed last year indicates that legislation may be required to help promote needed action.

Your Committee finds that the eight parcels identified for acquisition total about 250.5 acres. While such a sizable buffer area may be desirable or deemed necessary, the inability to acquire these lands in the past through exchange or purchase strongly suggests that other alternatives should be explored. One option is to initially reduce the size of the area to be acquired to those lands immediately abutting the monument. Acquisition would be less difficult and if successful, assures a minimum buffer in perpetuity. Subsequent acquisition may be effected as the state's financial situation improves.

It is your Committee's understanding that Kamehameha Schools, in recognition of the heiau's historical significance, as well as its cultural and educational value, may be considering a land exchange or purchase to provide the needed access and buffers.

Accordingly, your Committee has amended this bill by deleting its contents and replacing it with language that:

- (1) Directs DLNR to acquire the lands adjacent to the Kohala Historical Sites State Monument through a land exchange; and
- (2) Designates the Mo'okini Luakini Corporation as the official protector and caretaker of Mo'okini Heiau.

Your Committee suggests that DLNR consult and share any information with Kamehameha Schools which may assist in the acquisition of these lands.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1615, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1615, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Evans and Bukoski.

**SCRep. 835-04 Public Safety and Military Affairs on S.B. No. 2914**

The purpose of this measure is to expedite the construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.

Specifically, this measure excludes civil defense warning or signal devices and sirens from the definition of "development" for purposes of the coastal management zone.

Your Committee finds that civil defense warning or signal devices and sirens are critical to alert the public to and warn them of potentially dangerous events. When these devices and sirens are placed within the coastal zone, the permitting process often leads to delays in the construction, installation, maintenance, repair, and replacement of these devices and sirens. As they are critical to communication and to the safety and well-being of the public during emergency periods, your Committee believes that all efforts should be made to expedite the construction, installation, maintenance, repair and replacement of these devices and sirens by excluding them from the definition of "development" for purposes of the coastal zone management program.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2914, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Water, Land Use, and Hawaiian Affairs.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 836-04 Health on S.B. No. 2579**

The purpose of this bill is to expand the definition of "serious mental illness" and to increase the minimum coverage for alcohol and drug dependence benefits.

The Department of Health, Department of Commerce and Consumer Affairs, Kaiser Permanente, National Association of Social Workers-Hawaii Chapter, Hawaii Government Employees Association, Hawaii Youth Services Network, Hawaii Substance Abuse Coalition, Hawaii Disability Rights Center, Hawaii Psychiatric Medical Association, NAMI Oahu, Equal Insurance Coalition,

Blueprint for Change, Hawaii Medical Association, Hawaii Psychological Association, MADD-Hawaii, and numerous concerned individuals supported this bill. NAMI Hawaii supported the intent of this measure. The Chamber of Commerce of Hawaii testified in opposition. The Hawaii Medical Service Association provided comments.

Your Committee finds that requiring mental health parity represents sound public policy and that insurers should view the treatment of mental illness and alcohol or drug dependence in the same manner as they view the treatment of a physical health condition.

National trends in mental health care are towards expansion of mental health and substance abuse treatment benefits to ensure parity with other physical illnesses. A very small percentage of the population uses mental health and substance abuse treatment services. It is estimated that only 4 percent of the population use mental health services, compared to 65 percent who use physical health care services.

Your Committee has amended this bill by deleting its contents and replacing it with substance that, among other things:

- (1) Establishes a Mental Health Parity Supplemental Coverage Tax Credit for employers who provide their employees with mental health benefits;
- (2) Requires insurance policies to include supplemental mental illness and alcohol and drug dependence benefits upon written authorization by an employer;
- (3) Amends definitions;
- (4) Provides parity for mental illness and alcohol and drug dependence benefits, including crystal methamphetamine dependency; and
- (5) Requires the Insurance Commissioner to report to the Legislature the effects of this measure.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2579, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2579, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

#### **SCRep. 837-04      Health on S.B. No. 2090**

The purpose of this bill is to provide a prescription drug repository to receive and dispense donated prescription drugs to needy persons.

Testimony in support of this measure was submitted by the American Cancer Society. The Department of Health (DOH) and Department of Human Services provided testimony in support of this measure with amendments.

Your Committee finds that substantial amounts of unused prescription drugs are currently discarded, and could instead be donated and provided to needy persons. However, there is also a need to ensure the public's safety and well-being, and the integrity of items dispensed through a prescription drug repository.

Your Committee understands the intent of this legislation, and also recognizes its limitations. It is currently not feasible to consider donations of unused drugs from private individuals because it is difficult to ascertain whether the drugs were properly maintained. However, testimony indicated that technology in packaging prescription drugs is improving rapidly, and hopefully in the near future proper packaging will allow for the donation of unused drugs from private individuals. In future deliberations, your Committee suggests the inclusion of provisions that would allow donations of unused prescription drugs from individual members of the public.

Your Committee has amended this measure by:

- (1) Establishing a new chapter containing procedures for institutional facilities to return-for-credit-and-reuse prescription drugs;
- (2) Amending the recordkeeping requirements for donated drugs;
- (3) Repealing certain definitions in chapter 328C, Hawaii Revised Statutes;
- (4) Requiring DOH to submit a report to the 2006 Legislature describing:
  - (a) Any difficulties with the implementation and operation of the prescription drug repository program;
  - (b) The potential for expansion to include drugs donated by private individuals; and
  - (c) Suggested legislation;
- (5) Establishing a sunset date of July 1, 2006; and
- (6) Making other technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2090, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2090, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.



**SCRep. 838-04 Consumer Protection and Commerce on S.B. No. 1533**

The purpose of this bill is to provide a general excise tax exemption for amounts received in reimbursement of sums paid for common expenses by the manager or board of directors of an association of owners for a time share plan subject to chapter 514E, Hawaii Revised Statutes (HRS).

When your Committee heard this bill on March 12, 2003, Pacific Management Consultants, Inc., and PAHIO Resorts supported the intent of the bill but asked that decision-making be deferred to allow further discussion of the measure by the interested parties. The Department of Taxation opposed the bill.

Your Committee notes that similar exemptions already exist for a condominium association of apartment owners under chapter 514A, HRS, and a nonprofit homeowners or community association incorporated under chapter 414D, HRS. This provision would provide parity for time share plans.

Your Committee finds that reimbursement for common expenses in this situation should not be taxable because no specific good or service is being purchased.

Your Committee has amended this bill by changing the effective date to July 1, 2009. Technical, nonsubstantive amendments were also made for consistency.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1533, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1533, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 839-04 Consumer Protection and Commerce on S.B. No. 1553**

The purpose of this bill is to provide an exemption from the provisions of the mortgage brokers and solicitors licensing laws for developers of time share plans who make monetary loans to purchasers of time share interests.

When your Committee heard this bill on March 12, 2003, PAHIO Resorts supported the intent of the bill but requested that decision be deferred to provide time to work with the Department of Commerce and Consumer Affairs on an appropriate regulatory mechanism.

Your Committee finds that there is ambiguity in current regulatory laws as to whether time share developers should be licensed as mortgage brokers or solicitors when making loans to purchasers of time share interests.

While the purchase of residential property through residential mortgages is clearly regulated by state and federal law, loans associated with purchases of time share interests, which are regulated under a separate state law, may not need the same protections as are provided for residential mortgages. Your Committee agrees that further dialogue is needed to clarify the appropriate regulatory mechanism for loans made by time share developers to individuals who purchase time share interests.

Your Committee has amended this measure, which is to take effect on July 1, 2009, by:

- (1) Clarifying that the license exemption is provided to a developer of a time share plan, or an affiliate of the developer who makes purchase money loans to purchasers, under certain conditions; and
- (2) Defining "affiliate."

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1553, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1553, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 840-04 Consumer Protection and Commerce on S.B. No. 2105**

The purpose of this bill is to establish a procedure allowing the prompt resolution of condominium management disputes.

Testimony in support of this bill was received from numerous concerned individuals, many of them condominium owners. Testimony in opposition was provided by the Department of Commerce and Consumer Affairs, Real Estate Commission, Hawaii Association of Realtors, and an individual. The Judiciary expressed concerns regarding the mediation provisions of the bill. The Community Associations Institute and Hawaii Council of Associations of Apartment Owners commented.

Your Committee finds that the current procedure for the resolution of condominium management disputes appears to need improvement. However, many concerns were expressed about this bill, in its current form.

Your Committee believes that the issues raised by this bill merit further discussion and has therefore amended the bill to change its effective date to July 1, 2009. Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2105, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2105, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 841-04 Consumer Protection and Commerce on S.B. No. 2906**



The purpose of this bill is to reduce the filing fee for the issuance of certificates of good standing from \$25 to \$10.

Testimony supporting the intent of this bill and requesting amendments was submitted by the Department of Commerce and Consumer Affairs (DCCA), Chamber of Commerce of Hawaii, and Retail Merchants of Hawaii.

Your Committee notes that businesses obtain certificates of good standing from DCCA to demonstrate to third parties that they have properly registered with the State and are current in their annual filings. Both foreign and domestic entities, including corporations, nonprofit corporations, partnerships, limited liability partnerships, limited partnerships, and limited liability companies, request certificates of good standing.

Last session, the Legislature directed DCCA to align expenditures with its revenue collection and develop plans to lower fees to appropriate levels. S.B. No. 2906, as first introduced in the Senate, would have eliminated fees for certificates of good standing, altogether, and was part of DCCA's effort to reduce its surplus and bring revenues in line with expenses.

Your Committee finds that a business that has played by the rules and maintained its good standing under state law, should not have to pay for a document evidencing that good standing.

Accordingly, your Committee has amended this bill to repeal the fees charged for the issuance of certificates of good standing.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2906, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2906, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

#### **SCRep. 842-04 Consumer Protection and Commerce on S.B. No. 2911**

The purpose of this bill is to encourage professionals to serve on advisory committees by authorizing the payment of \$100 for each consultation or case review completed by an advisory committee member. This measure also requires that lists of potential advisory committee members, for appointment by the Director of Commerce and Consumer Affairs (Director), be submitted on a biennial rather than an annual basis.

Testimony in support of this bill was provided by the Department of Commerce and Consumer Affairs (DCCA) and the Hawaii Association of Realtors.

Your Committee finds that advisory committee members serve as experts and consultants to professional and vocational boards and the Director, in their review of licensees for possible disciplinary action, and in other licensing matters. This measure recognizes the importance of these individuals, who currently serve without compensation, and whose expertise assists the DCCA in conducting prompt investigations of complaints.

Your Committee finds that the expense of compensating advisory committee members, whether at the current \$100 or the DCCA's preferred level of \$200, will not be substantial, and is a choice better left to the discretion of the Finance Committee.

Your Committee has amended this bill to clarify that the payments will come from the Compliance Resolution Fund.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2911, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2911, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, B. Oshiro, M. Oshiro and Sonson.

#### **SCRep. 843-04 Consumer Protection and Commerce on S.B. No. 3222**

The purpose of this bill is to include naturopathy among the required personal injury protection benefits in a motor vehicle insurance policy, with the same limitations as are imposed on chiropractic and acupuncture treatment.

Your Committee heard testimony in support of this bill from the Hawaii Insurers Council, Hawaii Society of Naturopathic Physicians, seven naturopathic physicians, and two patients of naturopathic physicians. The Insurance Commissioner of the Department of Commerce and Consumer Affairs (Insurance Commissioner) and State Farm Insurance Companies commented.

The Insurance Commissioner testified that the impact on premiums was likely to be minimal. However, State Farm Insurance Companies, while not opposing the bill, cautioned that it could result in a demand for equal treatment by other alternative health care providers.

Your Committee has amended this bill by replacing its substance with that of H.B. No. 1717, H.D. 2, a similar bill that was reported out of this Committee earlier in the session.

As amended, the bill:

- (1) Contains technical differences from S.B. No. 3222, S.D. 2, that provide consistency in the language of section 431:10C-103.6, Hawaii Revised Statutes (HRS);
- (2) Adds a conforming reference to the new naturopathy benefit to section 431:10C-103.5(a), HRS; and
- (3) Is effective upon its approval.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3222, S.D. 2, as amended herein, and

recommends that it pass Second Reading in the form attached hereto as S.B. No. 3222, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 844-04 Higher Education on S.B. No. 2066**

The purpose of this bill is to provide the University of Hawaii (UH) with the same flexibility to manage the Medical Education Special Fund (Fund) in a manner consistent with other UH special funds by:

- (1) Transferring the administration of the Fund from the UH Medical Council to UH; and
- (2) Deleting the establishment of the Fund in the State Treasury.

UH testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2066, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 845-04 Higher Education on S.B. No. 2067**

The purpose of this bill is to appropriate an unspecified sum to the University of Hawaii (UH) to match funds obtained through grants received from the National Science Foundation's Experimental Program to Stimulate Competitive Research.

UH testified in support of this measure.

Your Committee has amended this bill by inserting \$1 as state matching funds to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2067, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2067, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 846-04 Higher Education on S.B. No. 2072**

The purpose of this bill is to provide the University of Hawaii (UH) with the same flexibility to manage the Center for Nursing Special Fund (Fund) in a manner consistent with other UH special funds by:

- (1) Placing the administration of the Fund from the UH Board of Regents to UH; and
- (2) Deleting the requirement of establishing the Fund in the State Treasury.

The Board of Nursing testified in support of this bill. UH School of Nursing and Dental Hygiene (UH School) supported the intent of this bill.

Your Committee finds that allowing UH to administer the Special Fund will enable the UH School of Nursing and Dental Hygiene to better respond to nursing workforce shortage issues.

Based on the testimony of UH School, your Committee has amended this bill by reinserting language establishing the Special Fund in the State Treasury. Other technical, nonsubstantive amendments were made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2072, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2072, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 847-04 Higher Education on S.B. No. 2114**

The purpose of this bill is to appropriate funds to improve safety and security on University of Hawaii (UH) campuses.

UH, the Associated Students of UH, and the UH Student Caucus supported this bill.

Safety and security issues have been long-standing concerns on UH campuses statewide. While this measure will help address these issues, your Committee notes the concerns of the UH Student Caucus that funding for increased safety and security measures on UH campuses statewide should be established at \$2,544,294.

Your Committee has amended this bill by:

- (1) Inserting an appropriation of \$1 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2114, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2114, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 848-04 Higher Education on S.B. No. 2222**

The purpose of this bill is to:

- (1) Allow participants in the Temporary Assistance to Other Needy Families (TAONF) program, which supports low-income, two-parent families, to obtain benefits under the Bridge to Hope Program (BTH), which expands existing student employment opportunities at University of Hawaii campuses; and
- (2) Appropriate funds to BTH for the 2004-2005 fiscal year for its operation, including one position for outreach.

The University of Hawaii, Hawaii State Commission on the Status of Women, National Association of Social Workers, Welfare and Employment Rights Coalition, Kokua Council, Advocates For Consumer Rights, Commission on Diversity of the University of Hawaii at Manoa, First Unitarian Church of Honolulu, University of Hawaii Student Caucus, and several concerned individuals supported this measure. The Department of Human Services offered comments.

Your Committee has amended this bill by:

- (1) Changing the unspecified appropriation amount to \$1 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2222, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2222, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 849-04 Higher Education on S.B. No. 2264**

The purpose of this bill is to address the State's shortage of social workers, particularly in neighbor islands and remote and rural areas, by appropriating funds for the School of Social Work at the University of Hawaii (UH) to operate a Master of Social Work distance education program.

The National Association of Social Workers, Hawaii Youth Services Network, and concerned individuals testified in support of this bill.

Your Committee finds that the shortage of social workers in the state is particularly acute on the neighbor islands. The lack of adequately trained social work professionals and social services is a major factor contributing to the prevalence of social problems such as drug and alcohol abuse, domestic problems, child abuse and neglect, school dropout, and elder neglect. Distance learning would provide access to social worker education for those who cannot travel to Oahu to obtain the coursework necessary for their degree, and would help to increase the number of qualified social workers living on the neighbor islands, and available to provide social services to their communities.

Your Committee has amended this measure by:

- (1) Inserting an appropriation of \$1 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2264, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2264, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 850-04 Higher Education on S.B. No. 2429**

The purpose of this bill is to support the efforts of the University of Hawaii (UH) Student Caucus by appropriating an unspecified sum to enable it to hold meetings with its member campuses and constituents.

The UH Student Caucus testified in support of this measure. UH also supported this bill, provided that its passage does not replace or adversely impact priorities in the executive biennium budget.

Upon further consideration, your Committee has amended this bill by deleting its substance and inserting the substance of H.B. No. 1710, H.D. 1, which was reported out earlier this session by your Committee. Technical, nonsubstantive amendments were also made to correct drafting errors. As amended, this bill enables more UH students to take advantage of the HOPE scholarship tax credit by:

- (1) Establishing the Student Scholarship and Assistance Special Fund (Fund) to provide scholarship money in lieu of tuition waivers; and
- (2) Appropriating \$20,000,000 to the Fund.

Currently, UH provides tuition waivers to qualified students in lieu of scholarships. As amended, this bill will allow UH to provide scholarships which will then be paid back to UH as tuition. Providing scholarships instead of tuition waivers will have the additional benefit of allowing students or their families to take advantage of the federal HOPE Scholarship tax credit program, which counts scholarships, but not tuition waivers, as eligible expenses for the purpose of claiming the tax credit.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2429, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2429, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 851-04 Higher Education on S.B. No. 2563**

The purpose of this bill is to promote sustainable economic development in the state by:

- (1) Exempting leveraged small business investment companies (SBICs) licensed by the United States Small Business Administration from the franchise tax; and
- (2) Appropriating funds for various programs of the Small Business Development Center (SBDC) relating to consulting and training services, as well as the Hawaii business research library.

The Hawaii SBDC Network testified in support of this measure. The Department of Business, Economic Development, and Tourism (DBEDT) supported the intent of this bill. The Tax Foundation of Hawaii offered comments.

According to DBEDT, part of the reason why there are no leveraged SBICs in Hawaii is due to the franchise tax that SBICs are required to pay.

Upon further consideration, your Committee has amended this bill by deleting its substance and inserting the substance of H.B. No. 2044, H.D. 1, the companion bill which was reported out earlier this session by your Committee. As amended, the net changes to the bill include:

- (1) Earmarking funds for SBDC to establish consulting and training centers in both Leeward and Windward Oahu;
- (2) Appropriating funds for a new, second research position at the Hawaii Business Research Library;
- (3) Appropriating funds to establish a Hawaii award of excellence center to promote sustainability by training businesses statewide in continuous quality improvement;
- (4) Replacing references to "a leveraged SBIC" with "a SBIC licensed ... to issue leverage";
- (5) Inserting \$1 appropriations to promote continued discussion on this measure;
- (6) Inserting additional provisions to the purpose section; and
- (7) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2563, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2563, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 852-04 Higher Education on S.B. No. 3013**

The purpose of this bill is to improve accountability over moneys expended by the University of Hawaii (UH) Foundation by:

- (1) Making moneys transferred from the UH Tuition and Fees Special Fund (Special Fund) to the UH Foundation subject to audit; and
- (2) Requiring increased reporting regarding the transfer of such funds to the UH Foundation.

The State Auditor submitted testimony in support of this bill. UH and the UH Foundation opposed this bill.

Your Committee has amended this bill by:

- (1) Clarifying the purposes for which moneys may be transferred from the Special Fund to the UH Foundation;
- (2) Placing an annual cap of \$2,000,000 on moneys transferred from the Special Fund to the UH Foundation;
- (3) Clarifying that the UH Board of Regents shall be the recipient of gifts to UH;
- (4) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (5) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3013, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3013, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.  
(Representative Schatz voted no.)

**SCRep. 853-04 Higher Education on S.B. No. 3039**

The purpose of this bill is to promote community service throughout the state by appropriating funds for the administration of the Hawaii Commission for National and Community Service so it may receive federal matching funds.

Hawaii Commission for National and Community Service and several concerned individuals supported this measure. The University of Hawaii offered comments.

Your Committee has amended this bill by:

- (1) Changing the unspecified dollar amount of the appropriation to \$1 to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3039, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3039, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

**SCRep. 854-04 Higher Education on S.B. No. 2426**

The purpose of this bill is to facilitate the effective redesign of public high schools by:

- (1) Establishing the Center for School Redesign (Center) at the University of Hawaii (UH) at Manoa; and
- (2) Appropriating funds for the Center.

UH and the Department of Education supported this bill.

Your Committee has amended this bill by making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2426, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2426, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.  
(Representatives Blundell, Leong and Ontai voted no.)

**SCRep. 855-04 Higher Education on S.B. No. 2716**

The purpose of this bill is to establish a Candidate Advisory Council to assist the Governor in identifying and recruiting qualified candidates for the University of Hawaii (UH) Board of Regents.

The UH Professional Assembly, UH Student Caucus, and League of Women Voters of Hawaii supported this bill.

Your Committee has inserted the contents of this bill into another vehicle. Accordingly, Your Committee has amended this bill by deleting its contents and inserting provisions that:

- (1) Establish the Higher Education Statutory Revision Interim Study Group (Study Group) to examine statutes relating to higher education and the University of Hawaii;
- (2) Require the Study Group, with the assistance of the Legislative Reference Bureau, to determine an improved organizational framework for these statutes and recommend statutes that may be consolidated, amended, or repealed; and
- (3) Require the Study Group to report its findings to the Legislature before the 2005 Regular Session.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2716, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2716, S.D. 1, H.D. 1, and be referred to the Committee on Legislative Management.

Signed by all members of the Committee except Representatives Arakaki, Hale, Kahikina and Morita.

**SCRep. 856-04 Higher Education/Labor and Public Employment on S.B. No. 2073**

The purpose of this bill is to enable the University of Hawaii (UH) to implement an optional retirement system (ORS) for its employees by:

- (1) Clarifying which employees are eligible for membership in the ORS;
- (2) Requiring UH to offer at least three investment vendors for the ORS; and
- (3) Specifying the State's contribution requirements to the ORS.

UH, the UH Professional Assembly, and AIG VALIC supported this bill. The Hawaii Government Employees Association and TIAA-CREF supported the intent of this bill. The Department of Budget and Finance opposed this bill. The Employees' Retirement System (ERS) submitted comments.

Your Committees have amended this bill by:

- (1) Restricting ORS membership to new employees;
- (2) Making UH employees who are members of collective bargaining unit (8) eligible for membership in the ORS;
- (3) Making UH Board of Regents appointees who are eligible for membership in ERS eligible for membership in the ORS;
- (4) Clarifying that any "lag" or "smoothing" arrangements in effect with regard to appropriations to ERS are to be taken into account by the State in making contributions to the ORS;
- (5) Specifying that contributions for an employee participating in the ORS shall not exceed contributions made on behalf of the Governor to ERS;
- (6) Specifying that new UH employees shall be automatically enrolled in ERS and shall be given 90 days to choose to enroll in the ORS; and
- (7) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the records of votes of the members of your Committees on Higher Education and Labor and Public Employment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2073, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2073, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ito, Kahikina, Morita, Schatz, Souki, Ching and Pendleton.

**SCRep. 857-04      Energy and Environmental Protection on S.B. No. 2474**

The purpose of this bill is to require:

- (1) Electric utilities to establish renewable portfolio standards of 20 percent by December 31, 2015, and 30 percent by December 31, 2020; and
- (2) The Public Utility Commission (PUC) to study the feasibility of implementing a rate structure and an incentives program to encourage the use of renewable energy.

Smith Development, Hawaii Solar Energy Association, and Life of the Land supported this bill. Powerlight, Hawaii Renewable Energy Alliance, and Sierra Club, Hawaii Chapter, supported this measure with amendments. The PUC and Hawaii Business Roundtable supported the intent of this bill. The Department of Business, Economic Development, and Tourism (DBEDT), Division of Consumer Advocacy, and Hawaiian Electric Company (HECO) supported the intent of this measure and suggested amendments. The Chamber of Commerce of Hawaii opposed this bill.

Your Committee has carefully considered the testimonies of all parties in an attempt to balance the objections and concerns of HECO and the Chamber of Commerce of Hawaii, along with the need to take bold action to chart a progressive energy strategy for the State. This strategy will guarantee the integration of Hawaii's indigenous renewable energy resources in electricity production to promote economic stability, enhance energy security, and demonstrate environmental stewardship.

The concerns raised by the utility over a mandatory renewable portfolio standard (RPS) can generally be grouped into two categories. First, discomfort has been expressed over the uncertainty of the availability of economically viable and technically sound economic renewable energy resources beyond 2010, and, second, that enforcing such mandates by penalties puts the utility at financial risk.

Your Committee has addressed these concerns and has amended this bill by:

- (1) Adopting a suggestion offered by HECO that any standard beyond 2010 be based on sound science, by requiring the PUC to contract an independent, peer-reviewed assessment that can be used to adjust and establish the RPS beyond 2010. Furthermore, this measure establishes a 20 percent RPS goal for 2020, with results from the independent review process to be used to evaluate the goal as a future standard;
- (2) Authorizing the PUC to use "off-ramps" to deviate from the RPS in the event of circumstances beyond the control of the utility that could not have been reasonably anticipated or ameliorated, to address concerns expressed by HECO, where they do not want to be penalized for good faith efforts that result in falling short of the RPS in any given year. The intent of this language also gives discretion to the PUC to disallow any proposed projects that are determined to have untenable impacts on utility rates;
- (3) Adding additional language in the bill authorizing the PUC to develop a performance-based rate structure that addresses a concern regarding the profitability of the utility, but more significantly, retains language authorizing incentives as a means to stimulate utility acquisition of renewable energy resources. Your Committee believes that the authorization of incentives is a first among renewable energy portfolio legislation for states with RPS laws, and is evidence of a strong legislative commitment to send the proper market signals to both the electric utility and the affected public.

Technical, nonsubstantive amendments have also been made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2474, S.D. 3, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2474, S.D. 3, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Evans and Thielen.

**SCRep. 858-04      Energy and Environmental Protection on S.B. No. 3170**

The purpose of this bill is to require that 85 percent of all gasoline sold for use in motor vehicles contain ten percent ethanol by volume, beginning January 1, 2006.

A concerned individual supported this bill. ILWU Local 142, Maui Ethanol, LLC, and a concerned individual supported this measure with amendments. Western States Petroleum Association opposed this bill. Tesoro Hawaii opposed this measure and suggested amendments. The Department of Business, Economic Development, and Tourism (DBEDT) commented and suggested amendments.

Your Committee has amended this bill by:

- (1) Replacing all references to "commissioner" in this amended measure with "director";
- (2) Clarifying that the 85 percent requirement is a minimum requirement to be calculated on an annual basis;
- (3) Amending other subsections of section 486J-10, Hawaii Revised Statutes (HRS), to:
  - (A) Delete the provision allowing gasoline blended with an ethanol-based product to fall within section requirements;
  - (B) Allow the director to authorize the sale of gasoline that does not meet specified requirements when insufficient ethanol production capacity exists;
  - (C) Amend the reporting and filing requirements, upon DBEDT's recommendation to streamline the law and reduce the potential for conflict with the gasoline price cap law;
  - (D) Remove the cap on the amount of the per infraction for violations of the section; and
  - (E) Allow the director the discretion to adopt rules exempt from the requirements of chapter 91, HRS;
- (4) Changing the effective date to upon approval; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3170, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3170, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Evans and Thielen.

#### **SCRep. 859-04 Energy and Environmental Protection on S.B. No. 3193**

The purpose of this measure is to make certain amendments to Act 77, Session Laws of Hawaii 2002, that imposed maximum pre-tax wholesale and retail prices on regular unleaded gasoline sold in the State, which take effect on July 1, 2004.

Specifically, your Committee finds that this measure:

- (1) Changes the manner in which the baseline price of unleaded gasoline is determined by utilizing the national average spot price as reported by the Oil Price Information Service rather than the average spot prices for unleaded gasoline in the Los Angeles, San Francisco, and Pacific Northwest markets;
- (2) Amends Act 77 by imposing price limits on mid-grade and premium gasoline and diesel fuel;
- (3) Repeals the maximum pre-tax retail price of gasoline;
- (4) Repeals the maximum pre-tax wholesale price of gasoline for the islands of Molokai and Lanai; and
- (5) Provides a Neighbor Island wholesale adjustment factor for qualified jobbers on the islands of Kauai, Maui, and Hawaii.

Your Committee received testimony in opposition to this measure from the Department of Business, Economic Development, and Tourism, Aloha Petroleum, Ltd., Chevron Hawaii, Tesoro Hawaii Corporation, and the Western States Petroleum Association. Also offering testimony in opposition were three jobbers, eleven retail gasoline dealers, and several individuals. The Public Utilities Commission expressed some concerns with this measure.

Your Committee received testimony in favor of this measure from the Advocates for Consumer Rights and five individuals.

While your Committee is in agreement that the West Coast markets may be too volatile for establishing a baseline gasoline price and that a national weighted average spot price of selected unleaded gasoline, as reported by the Oil Price Information Service, may be more appropriate, your Committee feels that the Auditor should be directed to address the question as to what may be the most appropriate method of determining the baseline price of unleaded gasoline. The Auditor should further address whether there may be more appropriate methods for establishing and adjusting the location adjustment factor, the marketing margin factor, the Neighbor Island location and marketing factors, the mid-grade adjustment factor, and the premium adjustment factor.

Your Committee finds that a basis for the imposition of price limits for diesel fuel has not been established. The Auditor should be directed to address this issue along with reviewing the need for price limits on the retail sale of gasoline. For these and other reasons, your Committee believes that the imposition of the gasoline price limits should be delayed until July 1, 2005.

Your Committee also believes that, due to the lack of adequate highway access in the district of Hana on the island of Maui, the Hana district should not be subject to the imposition of gasoline price limits.



Your Committee further finds that Act 77 gave the responsibility of collecting and analyzing data received from the petroleum industry and performing periodic audits of the petroleum industry to the Department of Business, Economic Development, and Tourism. However, your Committee believes that the responsibility of collecting and analyzing this data and performing periodic audits correctly belongs to the Auditor.

Your Committee further believes that, in fairness to gasoline retailers, no seller of gasoline products to retailers should be permitted to discriminate and offer a lower price or discounts or provide an uneven supply in time of shortage to any favored retailer.

Your committee further finds that in Act 257, Session Laws of 1997, the Department of Business, Economic Development, and Tourism was directed to adopt rules pursuant to Chapter 91, Hawaii Revised Statutes, requiring that gasoline sold in the State contain ten per cent ethanol by volume. However, no time constraint was imposed and, to date, no rules implementing the requirement of the inclusion of ethanol in gasoline have been adopted.

Finally, your Committee finds that the petroleum industry and its operations on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii differ from its operations on Oahu, thereby warranting a special legislative task force to study the petroleum industry, its infrastructure, facilities, and operations on the Neighbor Islands and the resultant impact on gasoline consumers on those islands.

Accordingly, your Committee has amended this measure by:

- (1) Directing the Auditor to undertake a study addressing whether there may be a more appropriate method of establishing a baseline unleaded gasoline price;
- (2) Directing the Auditor to further address whether there may be more appropriate methods for establishing and adjusting the location adjustment factor, the marketing margin factor, the Neighbor Island location and marketing adjustment factors, the mid-grade adjustment factor, and the premium adjustment factor;
- (3) Deleting the maximum pre-tax wholesale price for diesel fuel; but directing the Auditor to determine whether a price limit for diesel fuel is warranted;
- (4) Delaying the imposition of the gasoline price limits until July 1, 2005;
- (5) Removing the gasoline price limits for the Hana district on the island of Maui;
- (6) Transferring the responsibility for collecting and analyzing the data received from the petroleum industry and performing periodic audits of the petroleum industry pursuant to Chapter 486J, Hawaii Revised Statutes, from the Department of Business, Economic Development, and Tourism to the Auditor;
- (7) Making it improper for any seller of petroleum products to any retail gasoline dealer to discriminate and offer a lower price or discount or provide an uneven supply in time of shortage to any favored retailer;
- (8) Requiring, that beginning January 1, 2006, not less than eighty-five per cent of all gasoline sold in the State shall contain ten per cent ethanol by volume;
- (9) Establishing a legislative task force to study the petroleum industry, its infrastructure, facilities, and operations on the Neighbor Islands;
- (10) Making an appropriation to be expended by the Auditor to carry out the purposes of this measure; and
- (11) Making other technical nonsubstantive changes for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3193, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3193, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representative Evans.  
(Representatives Bukoski and Thielen voted no.)

#### **SCRep. 860-04 Consumer Protection and Commerce on S.B. No. 1318**

The purpose of this bill is to facilitate the administration of the State's business registration laws by clarifying ambiguities and correcting errors, repealing unnecessary requirements, aligning requirements among different types of business entities, and conforming business registration laws to other business-related statutes.

Your Committee heard testimony from the Department of Commerce and Consumer Affairs (DCCA) requesting that this bill be amended.

The bill was received by your Committee in 2003 and was a companion bill to H.B. No. 1165, which in 2003 became Act 124. It therefore became available as a vehicle for current needs and is being used to revive two important measures referred to this Committee that were not heard earlier in the session due to time constraints and unrealized expectations.

The substance of this bill was replaced with the substance of H.B. No. 2406 and H.B. No. 2432, to the extent permitted by the bill's title. As amended, the bill allows DCCA to reduce or increase business registration fees by 50 percent in order to maintain a reasonable relationship between revenues and the services rendered. DCCA is already permitted to do this with respect to the majority of the chapters under its jurisdiction, and H.B. No. 2406 would have completed the list. The amended bill incorporates those provisions from H.B. No. 2406 that relate to business registration.

The balance of the amended bill incorporates provisions from H.B. No. 2432 that reduce business registration fees, as requested by the Legislature in 2003 to align revenue with cost.

Technical, nonsubstantive amendments were also made for purposes of consistency and style.



As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1318, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1318, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 861-04 Consumer Protection and Commerce on S.B. No. 1322**

The purpose of this bill is to encourage competition in the health insurance market by eliminating the premium tax on health insurers who have for at least 200 consecutive days maintained a Hawaii office or branch, 80 percent of the employees of which are state residents.

Testimony in support of this bill was received from the Department of Commerce and Consumer Affairs, Summerlin Life & Health Insurance Co., Times Super Market, Hawaii Transportation Association, H2O Transportation, Hawaii Financial Store, Inc., PSH Insurance, Olsten Staffing Services, ProService Hawaii, Akahi Services, Inc., Kona Paradise Candies, Alice's Barber Shop, HTH Corporation, Alaka'i Mechanical Corporation, Retail Merchants of Hawaii, the National Federation of Independent Businesses, PKF Hawaii LLP, Hawaii Automobile Dealers' Association, Queen Kapiolani Hotel, and concerned individuals.

Kaiser Permanente supported the intent of this bill. Testimony in opposition was received from HMAA and the Hawaii Primary Care Association. Aloha Care commented and expressed concerns. The Tax Foundation of Hawaii commented.

Your Committee finds that the cost of employee health insurance coverage in Hawaii continues to rise, and is increasingly difficult for small companies and employers to afford. The elimination of the premium tax on health insurers may be a sufficient incentive for additional health insurers to enter the Hawaii market. If so, any consequent increase in competition should help to stabilize the cost of health insurance. In any event, the State currently generates no income from the premium tax and therefore risks nothing by this gambit.

Your Committee has amended the bill by redefining "health care plan contract" to exclude agreements "relating to health care services furnished through the QUEST medical assistance program." The effect is to retain the premium tax on health insurers that furnish their services through the QUEST program. Mutual benefit societies, organized under Chapter 432, Hawaii Revised Statutes (HRS), and health maintenance organizations, organized under Chapter 432D, HRS, are not currently subject to the premium tax and will not become subject to the premium tax for services furnished through QUEST.

In addition, an amendment has been made to sunset the premium tax exemption in five years to allow a review of the effect of the exemption on Hawaii's health insurance market.

Technical, nonsubstantive amendments were also made for consistency and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1322, S.D. 1, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 1322, S.D. 1, H.D. 2.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 862-04 Water, Land Use and Hawaiian Affairs on S.B. No. 1556**

The purpose of this bill is to increase the accuracy of determining shorelines for shoreline certification and setback purposes by:

- (1) Redefining "shoreline" as the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs; provided that for public utilities, the "shoreline" means the upper reaches of the wash of the waves;
- (2) Designating qualified DLNR employees as the "state shoreline locators" to determine the location of the shoreline;
- (3) Providing an appeal process for shoreline certifications;
- (4) Appropriating funds for a videographic study of the upper reaches of high seasonal surf around the State; and
- (5) Requiring:
  - (A) The Board of Land and Natural Resources (BLNR) and the University of Hawaii to develop guidelines for determining and certifying the shoreline, which must be used by state shoreline locators;
  - (B) Public notice be given when a locator goes on-site;
  - (C) Registered land surveyors to map and survey shorelines; and
  - (D) Shoreline certification applicants to provide notice of the application to various parties, including abutting shoreline property owners and the state Surveyor's Office.

For purposes of the public hearing and receiving testimony, your Committee circulated and made available for public review a proposed H.D. 1 that deleted the contents of this bill and inserted the provisions of H.B. No. 1275 H.D. 1, with revisions. The purposes of the proposed H.D. 1 are to:

- (1) Clarify the definition of "shoreline" and to protect resources that rightfully belong within the public trust;
- (2) Require notice of shoreline certification applications; and

- (3) Provide for the revocation of a certain shoreline certifications.

Specifically, the proposed H.D. 1:

- (1) Redefines "shoreline" as the uppermost reach of the wash of the waves, other than storm or seismic waves, during the season of the year in which the highest wash of the waves occurs, usually evidenced by the resultant debris line or the first stable vegetation, whichever is furthest mauka or inland; provided that the vegetation is not influenced or modified by human intervention;
- (2) Requires an applicant for shoreline certification to provide copies of the application, including maps and photographs, to:
  - (A) Abutting shoreline property owners;
  - (B) The Office of Environmental Quality Control for publication in its periodic bulletin; and
  - (C) The county planning agency;
- (3) Increases the shoreline certification validity period to 18 months; and
- (4) Authorizes the state Surveyor to review any shoreline certification during its validity period and rescind the certification if there is a substantial misrepresentation of a material fact in the original application, whether intentional or unintentional.

The Sierra Club, Hawaii Chapter, Hawaii Reserves, Inc., and a concerned individual supported this bill. The Hawaii Audubon Society and two concerned individuals supported this measure with amendments. BLNR, Office of Planning (OP), Office of Hawaiian Affairs, Hawaii Association of Realtors, and the Land Use Research Foundation of Hawaii opposed this bill. The Hawaii Leeward Planning Conference and a concerned individual submitted comments on this measure.

Your Committee finds disturbing DLNR's rules and its implementation relating to the determination of the shoreline. Its rules and practices, contrary to section 205A-1, Hawaii Revised Statutes (HRS), prefer the vegetation line in determining the shoreline. There should be no preference in implementing existing section 205A-1, HRS, which reads in pertinent part:

*"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.*

DLNR's rules, defining "shoreline," section 13-222-2, Hawaii Administrative Rules, reads in pertinent part:

*"Shoreline" means the upper reaches of the wash of the waves, other than storm or tidal waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or where there is no vegetation in the immediate vicinity, the upper limit of debris left by the wash of the waves. (emphasis added)*

By adding the words "or where there is no vegetation in the immediate vicinity," DLNR created an inadmissible preference for the vegetation line over the debris line in locating the shoreline.

It is axiomatic that an administrative rule cannot contradict or conflict with the statute it attempts to implement. However, your Committee finds that DLNR's rules defining "shoreline" violates statutory provisions all to the detriment of an important public trust resource, Hawaii beaches and shoreline, thereby exceeding the statutory authority of the agency. Based on the public trust doctrine, it is paramount that the long standing public policy to extend to public use and ownership as much of Hawaii's shoreline as is reasonably possible be reiterated and reinforced.

Upon further consideration, your Committee has incorporated the contents of the proposed H.D. 1 and further amended this bill by:

- (1) Redefining "shoreline" to mean the uppermost reach of the wash of the waves, other than storm and seismic waves, during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, whichever is furthest mauka or inland; provided that the vegetation is not influenced or modified by human intervention;
- (2) Prohibiting the growing of vegetation by human intervention to establish a shoreline and prohibiting that vegetation line from consideration in the shoreline certification process;
- (3) Changing the shoreline certification validity period back to twelve months; and
- (4) Making technical, nonsubstantive amendments for clarity, style, and consistency.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1556, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1556, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Evans and Bukoski.

#### SCRep. 863-04 Education on S.B. No. 3148

The purpose of this bill is to enable the establishment of, and appropriate funds for, a Host Culture Charter School District (District) as a five-year pilot demonstration project in which the District shall:

- (1) Qualify as a local educational agency for the purposes of receiving federal funding;

- (2) Collaborate with, but not be directly supervised or controlled by, the Board of Education, the Department of Education (DOE), and the charter school executive director; and
- (3) Be governed by a Host Culture District Council.

The Office of Hawaiian Affairs, Hawaii Charter Schools Network, and numerous teachers, administrators, and students from charter schools and other individuals supported this bill. The Hawaii State Teachers Association supported the intent of this bill. DOE and the Hawaii Government Employees Association submitted comments.

Your Committee has amended this bill by making technical, nonsubstantive changes for purposes of style and clarity.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3148, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3148, S.D. 2, H.D. 1, and be referred to the Committee on Water, Land Use, and Hawaiian Affairs.

Signed by all members of the Committee except Representatives Arakaki, Hale, Kahikina, Morita, Blundell and Ontai.

**SCRep. 864-04 Finance on S.B. No. 2529**

The purpose of this bill is to improve the administration of state finances by authorizing the use of certificates of deposit (CDs) issued through the Certificate of Deposit Account Registry Service to secure public funds.

City Bank supported this bill. The Department of Budget and Finance supported the intent of the measure.

After careful consideration, your Committee has amended this bill by:

- (1) Authorizing the use of CDs that use a network of financial institutions to share deposits insured by the Federal Deposit Insurance Corporation instead of using a specific product name;
- (2) Amending section 36-21(a), Hawaii Revised Statutes, to allow the Director of Finance to make short-term investments of state moneys in the CDs described in paragraph (1) above; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2529, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2529, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Mindo, Takamine, Waters, Bukoski and Jernigan.

**SCRep. 865-04 Finance on S.B. No. 3098**

The purpose of this bill is to continue efforts to provide assistance to lessees at Kikala-Keokea on the island of Hawaii by providing low-interest loans. Specifically, this bill:

- (1) Clarifies the purposes of the Kikala-Keokea Housing Revolving Fund (Revolving Fund); and
- (2) Authorizes the issuance of general obligation bonds and appropriates moneys to fund the Revolving Fund.

The Office of Hawaiian Affairs testified in support of this bill. The senator from the 2<sup>nd</sup> Senate District supported the intent of this measure. The Housing and Community Development Corporation of Hawaii opposed this bill.

Your Committee has amended this bill by:

- (1) Incorporating language that explicitly states the public purpose of this bill into the preamble;
- (2) Changing the amount of general obligation bonds that the Director of Finance is authorized to issue from \$2,000,000 to \$1 to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3098, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3098, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho`ohalahala, Mindo, Takamine, Waters, Bukoski and Jernigan.

**SCRep. 866-04 Finance on S.B. No. 2983**

The purpose of this bill is to conform Hawaii's income tax law to changes in the Internal Revenue Code as required under section 235-2.5, Hawaii Revised Statutes.

The Department of Taxation testified in support of this bill. The Tax Foundation of Hawaii submitted comments.

Your Committee has amended this measure by:

- (1) Inserting language to also conform Hawaii's income tax law to the tax filing deadline extensions provided by the Military Family Tax Relief Act of 2003; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2983, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2983, S.D. 2, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Kaho'ohalahala, Mindo, Takamine, Waters, Bukoski and Jernigan.

**SCRep. 867-04 Finance on S.B. No. 3162**

The purpose of this bill is to promote the use of renewable energy in Hawaii by providing that when tax credits for the installation of renewable energy technology systems exceed a taxpayer's income tax liability in a particular year, the excess may be carried over and used as a credit toward the taxpayer's liability in subsequent years, until the tax credit is exhausted.

The Hawaiian Electric Company, Hawaii Bankers Association, Hawaii Solar Energy Association, PowerLight Corporation, and Smith Development supported this bill. The Department of Taxation and the Department of Business, Economic Development, and Tourism, supported the intent of the measure. The Tax Foundation of Hawaii submitted comments.

Your Committee has amended this bill by, among other things:

- (1) Clarifying that the tax credit shall apply to a renewable energy technology system that is installed and placed in service by a taxpayer during the taxable year;
- (2) Specifying that in the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service by the entity;
- (3) Specifying that the tax credit shall be operative with respect to the taxation of banks and other financial corporations; provided the renewable energy technology system was installed after June 30, 2003;
- (4) Limiting the tax credits to new renewable energy technology systems;
- (5) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3162, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3162, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Mindo, Takamine, Waters, Bukoski and Jernigan.

**SCRep. 868-04 Human Services and Housing on H.R. No. 2**

The purpose of this resolution is to request the Legislature to convene a task force to reevaluate the appropriate placement of the Office of the Public Guardian, which is currently placed within the Judiciary.

The State Council on Developmental Disabilities, Judiciary, and Hawaii Disability Rights Center testified in support of this measure. The Department of Health (DOH) supported the intent of this measure.

Your Committee finds that the Office of the Public Guardian should be placed in an executive department that has no conflict of interest with the services it provides. However, no agency has currently agreed to assume responsibility for the program. The Judiciary, DOH, and Department of Human Services (DHS) all provide services to those who are served by the Office of the Public Guardian.

Your Committee has amended this resolution by:

- (1) Changing its title to read, "REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO REEVALUATE THE PLACEMENT OF THE OFFICE OF THE PUBLIC GUARDIAN";
- (2) Requesting the Judiciary to convene the task force instead of the Legislature;
- (3) Designating only one representative from DOH and one representative from DHS instead of representatives from several divisions of those agencies;
- (4) Clarifying the proper name of the State Council on Developmental Disabilities; and
- (5) Making other technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee concurs with the intent and purpose of H.R. No. 2, as amended herein, and recommends that it be referred to the Committee on Judiciary in the form attached hereto as H.R. No. 2, H.D. 1.

Signed by all members of the Committee except Representatives Nishimoto, Ching, Finnegan and Stonebraker.

**SCRep. 869-04 Human Services and Housing on H.C.R. No. 7**

The purpose of this concurrent resolution is to request the Legislature to convene a task force to reevaluate the appropriate placement of the Office of the Public Guardian, which is currently placed within the Judiciary.

The State Council on Developmental Disabilities, Judiciary, and Hawaii Disability Rights Center testified in support of this measure. The Department of Health (DOH) supported the intent of this measure.

Your Committee finds that the Office of the Public Guardian should be placed in an executive department that has no conflict of interest with the services it provides. However, no agency has currently agreed to assume responsibility for the program. The Judiciary, DOH, and Department of Human Services (DHS) all provide services to those who are served by the Office of the Public Guardian.

Your Committee has amended this concurrent resolution by:

- (1) Changing its title to read, "REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO REEVALUATE THE PLACEMENT OF THE OFFICE OF THE PUBLIC GUARDIAN";
- (2) Requesting the Judiciary to convene the task force instead of the Legislature;
- (3) Designating only one representative from DOH and one representative from DHS instead of representatives from several divisions of those agencies;
- (4) Clarifying the proper name of the State Council on Developmental Disabilities; and
- (5) Making other technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 7, as amended herein, and recommends that it be referred to the Committee on Judiciary in the form attached hereto as H.C.R. No. 7, H.D. 1.

Signed by all members of the Committee except Representatives Nishimoto, Ching, Finnegan and Stonebraker.

**SCRep. 870-04 Legislative Management/International Affairs on H.C.R. No. 23**

The purpose of this concurrent resolution is to request the Governor to take all necessary actions to establish a sister-state affiliation with the Province of Thua Thien-Hue in the Socialist Republic of Vietnam.

Your Committees find that the historical relationship between the United States and the Socialist Republic of Vietnam provides a compelling reason to promote international friendship and mutual understanding that will serve the common interests of both countries to achieve lasting peace and prosperity. A state-province relationship between Hawaii and the Province of Thua Thien-Hue, whereby exchanges and cooperation could be established in the areas of business, trade, agriculture, environmentally and culturally sensitive tourism, sports, public health, education, economic development, and humanitarian assistance, would reinforce and cement this common bridge of understanding and mutual assistance between the ethnic Vietnamese of both the State and the Province of Thua Thien-Hue.

In addition, your Committees further find that the Mayor of Hue City, Chairman Nguyen Van Me, met with Mayor Jeremy Harris in 1995 to initiate the process that culminated in the signing of the Sister-City Agreement between Honolulu and Hue City in 2000. Your Committees also find that:

- (1) Hue City also signed a Sister-City Agreement with New Haven, Connecticut in 1995;
- (2) Ho Chi Minh City and San Francisco, California have a Sister-City relationship;
- (3) Hai Phong and Seattle, Washington have a Sister-City relationship;
- (4) Vung Tau Ba Ria City and Newport Beach, California have a Sister-City relationship; and
- (5) DaNang and Pittsburgh, Pennsylvania are considering establishing a Sister-City relationship.

As affirmed by the records of votes of the members of your Committees on Legislative Management and International Affairs that are attached to this report, your Committees concur with the intent and purpose of H.C.R. No. 23 and recommend its adoption.

Signed by all members of the Committee except Representatives Nakasone, Ching, Finnegan, Halford and Stonebraker.

**SCRep. 871-04 Legislative Management/International Affairs on H.R. No. 8**

The purpose of this resolution is to endorse and support the Spirit of Hawaii Goodwill and Friendship Coastal Korea Visit and urge the North Korean Government to support Jae Kwon Lee and Jonathan Cowles on their journey to North Korea.

The United Korean Association of Hawaii, the Korean Sports Association of Hawaii, the Korean Friendship Association, and concerned citizens testified in support this resolution.

The Spirit of Hawaii Goodwill and Friendship Coastal Korea, submitted written testimony in support of this measure.

Congressman Ed Case submitted written comments on this measure.

Your Committees find that the efforts made by Jonathan Cowles and Jae Kwon Lee will promote greater understanding between the United States and Korea. This is an historic project that will:

- (1) Enhance economic ties, relations, and mutual understanding between the United States and Korea;

- (2) Support and enhance stability on the Korean Peninsula, as well as peaceful reconciliation, and propriety;
- (3) Improve the public relations image of the United States in Korea while at the same time increasing the understanding in the United States about Korea's current events, points of view and culture; and
- (4) Help promote Hawaii business development initiatives in Northeast Asia (Korea, Japan, China) in order to help Hawaii's recovering economy.

Your Committees have amended this measure by noting a request for a fifteen per cent matching financial support and endorsement from the Maine State Legislature.

As affirmed by the records of votes of the members of your Committees on Legislative Management and International Affairs that are attached to this report, your Committees concur with the intent and purpose of H.R. No. 8, as amended herein, and recommend its adoption in the form attached hereto as H.R. No. 8, H.D. 1.

Signed by all members of the Committee except Representatives Nakasone, Ching, Finnegan, Halford and Stonebraker.

**SCRep. 872-04      Legislative Management/International Affairs on H.C.R. No. 21**

The purpose of this concurrent resolution is to endorse and support the Spirit of Hawaii Goodwill and Friendship Coastal Korea Visit and urge the North Korean Government to support Jae Kwon Lee and Jonathan Cowles on their journey to North Korea.

The United Korean Association of Hawaii, the Korean Sports Association of Hawaii, the Korean Friendship Association, and concerned citizens testified in support this concurrent resolution.

The Spirit of Hawaii Goodwill and Friendship Coastal Korea, submitted written testimony in support of this measure.

Congressman Ed Case submitted written comments on this measure.

Your Committees find that the efforts made by Jonathan Cowles and Jae Kwon Lee will promote greater understanding between the United States and Korea. This is an historic project that will:

- (1) Enhance economic ties, relations, and mutual understanding between the United States and Korea;
- (2) Support and enhance stability on the Korean Peninsula, as well as peaceful reconciliation, and propriety;
- (3) Improve the public relations image of the United States in Korea while at the same time increasing the understanding in the United States about Korea's current events, points of view and culture; and
- (4) Help promote Hawaii business development initiatives in Northeast Asia (Korea, Japan, China) in order to help Hawaii's recovering economy.

Your Committees have amended this measure by noting a request for a fifteen per cent matching financial support and endorsement from the Maine State Legislature.

As affirmed by the records of votes of the members of your Committees on Legislative Management and International Affairs that are attached to this report, your Committees concur with the intent and purpose of H.C.R. No. 21, as amended herein, and recommend its adoption in the form attached hereto as H.C.R. No. 21, H.D. 1.

Signed by all members of the Committee except Representatives Nakasone, Ching, Finnegan, Halford and Stonebraker.

**SCRep. 873-04      Public Safety and Military Affairs on S.B. No. 2976**

The purpose of this bill is to address the issue of overcrowding at Hawaii's correctional facilities. Specifically, this measure requests an emergency appropriation for the Department of Public Safety (DPS) to:

- (1) Contract for additional correctional beds on the mainland and at the federal detention center in Honolulu; and
- (2) Pay for transportation costs to transfer inmates to correctional facilities on the mainland.

Your Committee received a recommendation from the Governor requesting immediate consideration and passage of this bill, in accordance with Article VII, Section 9, of the State Constitution.

DPS and the Department of the Prosecuting Attorney of the City and County of Honolulu testified in support of this bill.

Prison overcrowding has long been an issue at the State's correctional facilities. DPS has attempted to address the situation by transferring inmates to correctional facilities on the mainland and to the federal detention center in Honolulu. This emergency appropriation is needed to assist DPS in effectively managing the inmate population.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2976, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 874-04      Judiciary on S.B. No. 2748**

The purpose of this bill is to make permanent the drug demand reduction assessments enacted in Act 205, Session Laws of Hawaii 1995. Among other things, this bill:

- (1) Expands the number of offenses for which assessments may be imposed;

- (2) Makes assessments mandatory;
- (3) Provides that interest accrued on assessments be deposited in the Drug Demand Reduction Assessments Special Fund (Fund);
- (4) Provides that probation and crime victim compensation fees are to be paid before the drug demand reduction assessment;
- (5) Places the burden on a defendant to show inability to pay the assessment; and
- (6) Deletes the sunset provision by which the authority to impose drug demand reduction assessments would otherwise expire on June 30, 2004.

The Department of Health, Department of the Prosecuting Attorney of the City and County of Honolulu, High Intensity Drug Trafficking Area Task Force, Honolulu Police Department, and the Crime Victim Compensation Commission testified in support of this bill.

Your Committee finds that the assessments levied against defendants convicted of offenses relating to drugs and alcohol use are necessary to offset some of the costs borne by the taxpayers for substance abuse treatment programs. Your Committee agrees with the intent of this bill that offenders who are involved with drug trafficking play a significant role in creating the demand for illegal drugs and the need to provide treatment programs for drug abusers and addicts. The assessments are not intended to impose a fine or exact punishment on the offender; rather, they are a remedial measure to help abate the effects of drug use and dependency for which the offender is partly responsible.

However, your Committee finds that the first priority is for the offender to receive substance abuse treatment at their expense if they can afford to pay for such treatment. The second priority is for the offender to pay assessments into the Fund.

Accordingly, your Committee has amended this bill by:

- (1) Allowing the court discretion to order the offender into treatment at the offender's expense if the court determines that the offender is eligible for probation or will not be sentenced to prison. If the offender undergoes substance abuse treatment, the court may reduce or waive the assessment; and
- (2) Clarifying that the Fund shall be used to supplement substance abuse treatment and demand reduction programs.

In addition, your Committee has made technical, nonsubstantive changes for clarity, consistency, and style, including an amendment to subsection (5) on page 3 of this bill, to reinstate the language limiting restitution, to the crimes "enumerated in subsection (1)".

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2748, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2748, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Herkes, Ito, M. Oshiro, Sonson and Finnegan.

#### **SCRep. 875-04      Judiciary on S.B. No. 2834**

The purpose of this bill is to appropriate funds to satisfy claims against the State for tax refunds, judgments, settlements, and miscellaneous claims.

The Department of the Attorney General testified in support of this measure.

Your Committee has amended this measure by:

- (1) Including six additional claims totaling \$561,818.84, that have been resolved since the passage of S.B. No. 2834, S.D. 1;
- (2) Correcting the civil case number for Tapaoan, et al. v. State of Hawaii; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Including the new amendments, the appropriation request totals \$6,961,806.94 allocated among 35 claims. Your Committee notes for clarity that the \$20,000 settlement amount in Gay v. Department of Education, Civil No. 02-00454 DAE-KSC, USDC, is split between a \$10,000 appropriation from the general fund (section 1 of this bill), and a \$10,000 appropriation from the Department of Education's operating budget (section 4).

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2834, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2834, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Herkes, Kanoho, Sonson and Pendleton.

#### **SCRep. 876-04      Judiciary on S.B. No. 2835**

The purpose of this bill is to provide the Department of the Attorney General with available funds to pursue state claims as they may arise. Specifically, this bill:

- (1) Provides for proceeds from any civil action or settlement of a civil claim initiated by or filed by the Attorney General (other than recoveries on behalf of the Antitrust Trust Fund, Tobacco Enforcement Special Fund, Medicaid Investigations Recovery Fund, Hawaii Tobacco Settlement Special Fund, or Criminal Forfeiture

Fund), to be deposited in the Litigation Deposits Trust Fund (Trust Fund), unless inconsistent with the court order or settlement agreement relating to the deposit amount;

- (2) Permits the Attorney General to retain 33 percent of the recovered funds to support the Attorney General's investigation and prosecution efforts;
- (3) Requires the Attorney General, in a recovery relating to a non-general fund action or claim, to remit to the non-general fund from the balance remaining after the allocation to the Attorney General, a sum up to the amount of any loss incurred by the non-general fund relating to the action or claim;
- (4) Allows investment earnings to be credited to the Trust Fund; and
- (5) Provides for all unencumbered and unexpended moneys in excess of \$1,000,000 remaining in the Trust Fund at the close of June 30 of each year to lapse into the general fund.

The Department of the Attorney General testified in support of this bill. A concerned individual opposed this measure.

Your Committee finds this measure will streamline the prosecution of civil fraud claims and allow the Attorney General to respond rapidly to such cases without having to make unnecessarily burdensome and time-consuming budgetary requests. Your Committee does not, however, see a pressing need for training and equipment expenditures bypassing the routine planning and budgeting process.

Your Committee has amended this measure by:

- (1) Restricting the Attorney General's use of funds under this measure for investigation and prosecution efforts in *qui tam* (false claim) cases and deleting the use of funds for "training, equipment purchases, and educational resources";
- (2) Clarifying that State recoveries in civil actions for false claims shall be deposited into the Trust Fund established by section 28-16, Hawaii Revised Statutes; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

Your Committee notes that the effective date of this measure as received is July 1, 2040. Your Committee has retained that effective date to allow further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2835, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2835, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Herkes, Kanoho, Sonson and Pendleton.

#### SCRep. 877-04      Judiciary on S.B. No. 2989

The purpose of this bill is to provide the Department of Taxation (DoTAX) with the authority to impose civil penalties and injunctions on tax return preparers (preparer) who support unrealistic positions on tax returns and on promoters of abusive tax shelters.

DoTAX testified in support of this measure. The Tax Foundation of Hawaii provided comments.

Your Committee finds that there are no laws that currently hold a preparer responsible for making reasonable inquiry into whether the taxpayer can substantiate tax claims. This bill would penalize and/or enjoin a preparer who makes understatements of tax liability based on unrealistic positions that would have been disclosed upon reasonable inquiry.

Similarly, there are no laws that currently hold a person liable for promoting abusive tax shelters. This bill would penalize and/or enjoin a person from such activities.

Your Committee has amended this bill by:

- (1) Clarifying the language providing that the preparer is liable for enhanced penalties for willfully understating a tax liability or recklessly disregarding tax laws or rules;
- (2) Removing reference to the enhanced penalty for preparers who intentionally disregard any tax law or rule, because the term "reckless" is a lower standard that would include intentional and knowing violations of the tax laws or rules;
- (3) Clarifying that a court proceeding to collect the penalty from the preparer may be commenced 30 days after the preparer fails to file an appeal to the tax court:
  - (a) Within 30 days after DoTAX denies the preparer's claim for refund of the partial penalty paid; or
  - (b) For the determination of the preparer's liability within six months after the day on which the claim for refund of penalties paid was filed;
- (4) Specifying that the penalty is void when there is an administrative or judicial determination that no understatement of liability exists in the tax return;
- (5) Placing the new section relating to promoting abusive tax shelters in the administrative section of the tax law, under chapter 231, Hawaii Revised Statutes;
- (6) Amending the definition of "income tax return preparer" to include persons preparing tax returns or claims without compensation; and
- (7) Making technical, nonsubstantive changes for style, clarity, and consistency.



As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2989, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2989, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Herkes, Ito, M. Oshiro, Sonson and Finnegan.

**SCRep. 878-04      Judiciary on S.B. No. 1044**

The purpose of this bill is to increase public access to executive branch government records by:

- (1) Providing notice of every executive order, gubernatorial proclamation, and executive message to the Legislature, by publication in a newspaper of general circulation in the state, or in another manner reaching the general public, within five days of issuance; and
- (2) Making these records available in hard copy and on the Internet within the same time period.

A concerned individual testified in support of this bill. The League of Women Voters of Hawaii testified in support of the intent of this measure.

Your Committee believes that ready public access to executive orders, gubernatorial proclamations, and executive messages to the Legislature will enhance public understanding of and confidence in the workings of government.

Your Committee has amended this measure by:

- (1) Specifying that the notice to be published statewide shall contain, at a minimum, the title of the document and a brief summary of its contents;
- (2) Requiring that statewide notice be given under section 1-28.5, Hawaii Revised Statutes:
  - (A) In a daily or weekly publication of statewide circulation; or
  - (B) By publication in separate daily or weekly publications with combined statewide circulation;
 and
- (3) Making technical, nonsubstantive changes for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1044, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1044, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Kanoho.

**SCRep. 879-04      Judiciary on S.B. No. 2995**

The purpose of this bill is to improve commercial motor vehicle safety and continue to qualify for federal funds by adopting congressionally mandated changes to the Motor Carrier Safety Improvement Act of 1999.

The Department of Human Resources Development and the Honolulu Police Department testified in support of this bill. The Department of Transportation supported this measure, suggesting amendments. The Hawaii Transportation Association supported the intent of this bill, suggesting amendments. The Judiciary submitted comments.

Your Committee has amended this bill by:

- (1) Inserting a definition for "driving a commercial motor vehicle while under the influence of an intoxicant";
- (2) Inserting provisions for checks of applicants' driving records into section 286-102, Hawaii Revised Statutes (HRS), relating to motor vehicle driver licensing;
- (3) Clarifying that an individual who provides proof in the court having proper jurisdiction that the individual held a valid driver's license on the date of the citation shall not be guilty of driving a commercial motor vehicle without a commercial driver's license in the driver's possession;
- (4) Inserting provisions that allows the examiner of drivers to waive the driving skills test for a commercial driver's license applicant who meets the requirements of 49 Code of Federal Regulations, Section 383.77 or 383.123(b);
- (5) Clarifying that a person is disqualified from driving a commercial motor vehicle for at least one year if convicted of a first violation of driving a commercial motor vehicle, rather than any motor vehicle, with a blood alcohol content of 0.04 per cent;
- (6) Clarifying that disqualification from driving a commercial motor vehicle applies to persons causing a fatality by operation of the vehicle only when such action constitutes a crime, including murder;
- (7) Removing the requirement that the examiner of drivers shall notify within 10 days the licensing authority of the state that issued a nonresident commercial driver's license that has been suspended, revoked, or canceled;
- (8) Inserting a new subsection (b) to section 286-244, HRS, to provide notification of convictions of commercial motor vehicle violations committed by persons who do not hold commercial driver's licenses, to states who issued driver's licenses to those persons;

- (9) Amending from 10 days to a reasonable period of time the period within which the judiciary or the examiner of drivers shall make available to designated users any driving record information involving commercial motor vehicles, licenses, and drivers;
- (10) Clarifying that a prospective motor carrier may obtain information of a driver or prospective driver, if the request is made by the driver;
- (11) Clarifying those commercial driver's licensees from whom a conditional license permit may be withheld;
- (12) Changing the effective date to July 1, 2010, to facilitate further discussion; and
- (13) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2995, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2995, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Herkes, Kanoho, Sonson and Pendleton.

**SCRep. 880-04 Water, Land Use and Hawaiian Affairs/Health on S.B. No. 2779**

The purpose of this bill is to advance to the practice of traditional Hawaiian healing by:

- (1) Clarifying the healing practices to be traditional native Hawaiian healing practices by traditional Hawaiian healers;
- (2) Directing Papa Ola Lokahi to convene an Elders' Council (Council) rather than a panel of traditional native Hawaiian healers to certify these healers;
- (3) Providing that the Council:
  - (a) Be independent and not a component of any branch of State government; and
  - (b) Not be subject to the Administrative Procedure Act or Sunshine Law;
- (4) Not holding persons or organizations liable for causes of action resulting from their participation in the selection or convening of the Council, or the certification process;
- (5) Providing for the convening of subsequent Councils in the event that Papa Ola Lokahi ceases to exist or is unable to act; and
- (6) Directing all Councils to develop their own policies, procedures, and rules so that they are consistent with Papa Ola Lokahi's original policies.

The Office of Hawaiian Affairs and Papa Ola Lokahi testified in support of this measure. An individual offered comments.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2779, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Kahikina, Kaho`ohalahala, Bukoski, Ching, Stonebraker and Thielen.

**SCRep. 881-04 Health on S.B. No. 2841**

The purpose of this bill is to establish permit requirements to regulate the retail sale of tobacco products. Among other things, this bill:

- (1) Requires every retailer engaged in the retail sale of cigarettes and other tobacco products to obtain a retail tobacco permit;
- (2) Establishes criminal sanctions to be imposed for sales made without a retail tobacco permit;
- (3) Establishes new definitions to clarify terms incorporated into the retail permit requirements; and
- (4) Provides a mechanism to suspend or revoke a wholesaler or dealer license.

The Department of the Attorney General, Department of Health, American Heart Association of Hawaii, American Lung Association of Hawaii, American Cancer Society, Coalition for a Tobacco Free Hawaii, Healthy Mothers Healthy Babies, Sestak Rehabilitation Services, and numerous concerned individuals testified in support of this measure. The Hawaii Food Industry Association supported the intent of this measure.

Your Committee finds that there is a need to establish permitting procedures and penalties to ensure the collection of tobacco tax revenues.

Enforcing compliance by retailers of the tobacco tax law has been difficult, and legitimate retailers face unfair competition by unlicensed sellers and illegally imported cigarettes that do not have the appropriate tax stamps on the packaging. Your Committee also finds that 40 states have some form of retail tobacco permit requirement and that this measure will help address the issue of access to tobacco products by our youth.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2841, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 882-04 Health on S.B. No. 2948**

The purpose of this bill is to establish the Public Health Nursing Services Program (Program) within the Department of Health (DOH) and set forth the roles and functions of the Program in its delivery of direct clinical nursing services.

DOH, the Hawaii Chapter of the American Academy of Pediatrics, Child Welfare Services State Advisory Council, HGEA, Easter Seals, Hawaii Early Intervention Coordinating Council, East Kauai Lions Club, and numerous concerned individuals testified in support of this bill. The Hawaii Government Employees Association and Maui Memorial Medical Center supported the intent of this measure.

Your Committee finds that public health nurses provide communities with health services that include:

- (1) Prevention of communicable diseases such as tuberculosis;
- (2) Immediate response and mobilization of resources during epidemics and catastrophic disasters;
- (3) Delivery of health services in public schools; and
- (4) Coordination of care services to our most vulnerable populations.

Statutorily establishing this program will ensure that these services will be continued.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2948, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 883-04 Health/Human Services and Housing on S.B. No. 2161**

The purpose of this bill is to authorize a minor's caregiver to consent to health care services for the minor.

The ILWU Local 142, Kokua Council, Child Welfare Services State Advisory council, Na Tutu, Grandparents Raising Grandchildren, and several concerned individuals supported this bill. The Department of Human Services (DHS) supported the bill's intent and suggested amendments.

Your Committees find that there are many situations where grandparents or caregivers, other than parents or guardians, may need to seek medical care for a minor. This measure would facilitate the provision of that medical care.

Your Committees have amended this bill by:

- (1) Exempting DHS from the requirement to present an affidavit to consent to health care; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

There is an ongoing problem that home assessments required by DHS are of the residence of a child's parents, and not of the caregiver's home. The unintended result is possible removal of a child from a hanai caregiver. On this, your Committees concur with DHS in their support of S.B. No. 2933 and H.B. No. 2458, which effectively address this issue.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2161, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2161, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representative Ching.

**SCRep. 884-04 Human Services and Housing/Health on S.B. No. 2929**

The purpose of this bill is to:

- (1) Extend from June 30, 2003, to July 1, 2008, the deadline by which hospital-based and nonhospital-based Medicaid reimbursement rates for institutionalized long-term care must be made equal; and
- (2) Make permanent the provision that payments to critical access hospitals be calculated on a cost basis using Medicare reasonable cost principles.

The Department of Human Services (DHS), Hawaii Long Term Care Association, Hawaii Health Systems Corporation, and Healthcare Association of Hawaii testified in support of this measure.

Your Committees find that implementing equity in Medicaid reimbursement rates will not be accomplished by the original deadline date of June 30, 2003. The extension will allow DHS time to allow for a gradual phase-in of the required change in reimbursement methodology.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2929, S.D. 1, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale, Ching and Stonebraker.

**SCRep. 885-04 Human Services and Housing/Health on S.B. No. 2930**

The purpose of this bill is to, among other things:

- (1) Extend the statutory authority for the licensing of home- and community-based management agencies and community care foster family homes from 2004 to 2006;
- (2) Create a single demonstration project applicable statewide;
- (3) Allow the Department of Human Services (DHS) to delegate the responsibility of certifying community care foster family homes to separate the process of certifying these homes from the licensing of home- and community-based case management agencies;
- (4) Authorize DHS to obtain adult protective services background checks in addition to criminal history record checks on operators and employees of home- and community-based case management agencies and community care foster family homes; and
- (5) Appropriate funds.

DHS, Kokua Council, and the Policy Advisory Board for Elder Affairs testified in support of this measure.

Your Committees find that home- and community-based case management agencies and community care foster family homes have been invaluable in providing care to individuals, and have been cost-effective care alternatives to institutional long-term care.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2930, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale, Ching and Stonebraker.

**SCRep. 886-04 Human Services and Housing/Health on S.B. No. 2654**

The purpose of this bill is to appropriate funds to ensure that low-income, uninsured immigrants have access to primary and preventive health care services.

The Department of Human Services, Hawaii Primary Care Association, Kalihi-Palama Health Center, Kokua Kalihi Valley, Na Loio – Immigrant Rights and Public Interest Legal Center, and the Healthcare Association of Hawaii testified in support of this measure.

Your Committees find that Hawaii has among the highest percentage of immigrant residents in the United States. However, many immigrants work low-paying jobs or have part-time work schedules that leave them uninsured. Some low-income immigrants are also not eligible for public assistance.

Your Committees have amended this bill by inserting provisions:

- (1) Requiring a feasibility study of establishing Program of All-Inclusive Care for the Elderly-based programs in rural communities within the State;
- (2) Appropriating \$50,000 to fund the feasibility study; and
- (3) Making technical, nonsubstantive amendments for consistency and style.

As affirmed by the records of votes of the members of your Committees on Human Services and Housing and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2654, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2654, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale, Ching and Stonebraker.

**SCRep. 887-04 Human Services and Housing on S.B. No. 2226**

The purpose of this bill is to establish a dedicated source of funding for homeless assistance by earmarking an unspecified amount of funds from the unencumbered and unexpended moneys in excess of \$1,300,000 in the Unclaimed Property Trust Fund to provide outreach, housing placement, and case management for homeless individuals and families.

The City and County of Honolulu Department of Community Services, Institute for Human Services, Inc., Hawaii Catholic Conference, Catholic Charities Elderly Services, Affordable Housing and Homeless Alliance, and a concerned citizen testified in support of this bill. The Honolulu Police Department supported the intent of this measure. The Housing and Community Development Corporation of Hawaii and Department of Budget and Finance opposed this measure.

Your Committee is very concerned about the rapid increase in Hawaii's homeless population. Existing homeless assistance programs are unable to keep up with the demand for services, particularly because funding is lacking. Your Committee believes a dedicated source of funding needs to be established to provide assistance to the homeless to obtain necessary services and to eventually become self-sufficient.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2226, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 888-04 Human Services and Housing on S.B. No. 2349**

The purpose of this bill is to help strengthen relationships between children and their incarcerated parents by:

- (1) Establishing a Child-friendly Visitation Center Task Force (Task Force) to develop a pilot project to facilitate the development of appropriate child visitation of incarcerated parents;
- (2) Authorizing the issuance of general obligation bonds for the design and construction of a Child-friendly Visitation Center at a state correctional facility; and
- (3) Appropriating funds for the statewide implementation of parenting classes and after-care services for incarcerated parents.

The Office of Youth Services, Hawaii Youth Services Network, Good Beginnings Alliance, Community Alliance on Prisons, Blueprint for Change, and a concerned individual testified in support of this bill. The Department of Public Safety supported the intent of this measure.

Your Committee recognizes that when a parent is arrested and incarcerated, the impact on their children is tremendous. These children are prone to develop psychological and behavioral problems. Visitation policies and procedures can be frightening to children, and a Child-friendly Visitation Center would create a more family-friendly atmosphere and would enable parents to maintain familial bonds, while lessening the emotional impact on the children.

Your Committee has amended this bill by:

- (1) Adding as members of the Task Force, representatives from:
  - (a) Hawaii Youth Services Network;
  - (b) Child and Family Services; and
  - (c) A Blueprint for Change Neighborhood Place,and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2349, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2349, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Nishimoto and Ching.

**SCRep. 889-04 Human Services and Housing on S.B. No. 2926**

The purpose of this bill is to facilitate the development or rehabilitation of affordable rental housing projects by increasing the bond authorization amount under the Hula Mae Multi-Family Rental Housing Program (Housing Program).

The Housing and Community Development Corporation of Hawaii (HCDCH) and Department of Community Services of the City and County of Honolulu testified in support of this measure.

Your Committee recognizes that a substantial need exists for affordable rental housing throughout the State, with an ever-increasing demand on limited resources available to finance the development or rehabilitation of such housing. Your Committee finds that increasing the bond authorization limit for HCDCH will assist in the development of badly-needed housing units under the Housing Program.

Your Committee has amended this bill by:

- (1) Increasing the bond authorization limit to \$300,000,000;
- (2) Changing the effective date to upon approval; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2926, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2926, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 890-04 Human Services and Housing on S.B. No. 2928**

The purpose of this bill is to eliminate redundancy and duplication in rental housing trust fund awards by abolishing the Rental Housing Trust Fund Advisory Commission (Advisory Commission).

The Housing and Community Development Corporation of Hawaii (HCDCH) and Affordable Housing and Homeless Alliance testified in support of this measure. A concerned individual opposed this measure.

Your Committee notes that the Advisory Commission was established when the Hawaii Housing Authority, Housing Finance and Development Corporation, and the Rental Housing Trust Fund Commission were consolidated into HCDCH, and is no longer necessary because it duplicates functions already performed by HCDCH.

Your Committee has amended this bill by:

- (1) Replacing the Chairperson of the Advisory Commission on the HCDCH Board with a representative of low-income housing; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2928, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2928, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 891-04 Human Services and Housing on S.B. No. 2931**

The purpose of this bill is to further protect individuals receiving home- and community-based care by:

- (1) Authorizing the Department of Human Services (DHS) to require certain background and criminal history record checks on service providers of various home- and community-based services; and
- (2) Appropriating funds to conduct background and criminal history record checks.

DHS, Kokua Council, Policy Advisory Board for Elderly Affairs, and Hawaii Alliance for Retired Americans testified in support of this bill.

Your Committee finds that this bill will protect children and the frail and vulnerable elderly by screening for predatory, criminal, and other undesirable caregivers.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2931, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Arakaki, Hale, Nishimoto and Ching.

**SCRep. 892-04 Human Services and Housing on S.B. No. 2978**

The purpose of this bill is to better protect children from abuse by:

- (1) Requiring certain employees of the Department of Public Safety (DPS) and the Department of the Attorney General (AG) to report cases of child abuse; and
- (2) Authorizing those employees to take child victims into protective custody.

The Department of Human Services, DPS, and AG testified in support of this bill.

Your Committee finds that there have been situations where DPS sheriffs and narcotics enforcement officers and AG investigators have witnessed child abuse in the course of their work. Under current law, these law enforcement officers are not specifically named as mandated reporters and thus lack the authority to assume protective custody of the child. This measure would protect children by authorizing DPS and AG law enforcement officers to remove a child from a potentially dangerous situation in an efficient manner.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2978 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Arakaki, Hale, Nishimoto and Ching.

**SCRep. 893-04 Human Services and Housing on S.B. No. 2607**

The purpose of this bill is to protect families by preventing the adoption of a child of a Marshallese citizen within the State without prior written approval of the appropriate court of the Republic of the Marshall Islands.

The Department of Human Services, Kaiser Permanente, Healthy Mothers, Healthy Babies Coalition of Hawaii, Ethica, and a concerned individual testified in support of this measure. A concerned individual provided comments.

Your Committee has amended this bill by:

- (1) Requiring relinquishment proceedings to occur in court and requiring the court to ensure that certain conditions are met;
- (2) Prohibiting adoption agencies from charging fees to any adoptive family that meets the specified requirements; and

- (3) Requiring the court to withhold acknowledgment of the relinquishment if the parent is in violation of any laws, or the requirements of the relinquishment proceeding have not been met.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2607, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2607, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 894-04 Human Services and Housing on S.B. No. 2927**

The purpose of this bill is to:

- (1) Revise the notice requirements of a mortgagee of property encumbered by Housing and Community Development Corporation of Hawaii's (HCDCH) first option to purchase right to a 30-day prior notice of intent to commence foreclosure proceedings;
- (2) For purposes of foreclosure actions, establish government agencies as "mortgage creditors" with respect to their rights to recover the value of their shared appreciation equity, excess proceeds in lieu of buyback, or deferred sales price lien; and
- (3) Authorize HCDCH at public sale to purchase qualified property by offset or credit.

HCDCH, City and County of Honolulu Department of Budget and Fiscal Services, County of Maui Department of Housing and Human Concerns, Offices of Community Assistance Kauai County Housing Agency, County of Hawaii Office of Housing and Community Development, and several members of the Maui County Council testified in support of this measure.

Your Committee has amended this bill by:

- (1) Changing its effective date to be effective upon its approval; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2927, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2927, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 895-04 Human Services and Housing on S.B. No. 3230**

The purpose of this bill is to establish a pilot project to provide community-based, collaborative, comprehensive early childhood care direct services for children under age five and their families.

Hui Imua O Koolauloa (Hui Imua), Good Beginnings Alliance, Hawaii Family Support Institute, and a concerned individual testified in support of this bill. The Department of Human Services supported the intent of this measure. Blueprint for Change provided comments.

Your Committee finds that Hui Imua is a community-based collaborative service model that breaks down the divisions between agencies and disciplines. The Hui Imua model has proved successful at reaching and retaining underserved, high-risk families.

Accordingly, your Committee has amended this bill by:

- (1) Requiring the pilot project to be based on the Hui Imua model; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3230, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3230, S.D. 2, H.D. 1, and be referred to the Committee on Education.

Signed by all members of the Committee except Representatives Arakaki, Hale, Ching and Stonebraker.

**SCRep. 896-04 Transportation on S.B. No. 2998**

The purpose of this bill is to ensure that the state passenger facility charges (PFC) law complies with the federal PFC law by:

- (1) Renaming the Passenger Facility Charge Revenue Fund (Revenue Fund) to the Passenger Facility Charge Special Fund (Fund);
- (2) Clarifying that passenger facility charges are exempt from transfers to pay for central service and administrative expenses; and
- (3) Exempting the Fund from transfers to the Works of Art Special Fund and Airport Revenue Fund.

The Department of Transportation (DOT) and Airlines Committee of Hawaii testified in support of this bill.

In 2003, the Revenue Fund was established and DOT was authorized to collect PFCs from enplaning overseas domestic and international passengers. Federal regulations regarding PFCs require that these funds only be used to finance approved projects. Your Committee finds that payment of central service expenses from the Fund would be a violation of federal regulations and could result in the State being found in noncompliance, thus resulting in the termination of the PFC program and a future inability to receive Federal Airport Improvement Program grants.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2998, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Moses and Pendleton.

**SCRep. 897-04      Health on S.B. No. 2595**

The purpose of this bill is increase the availability of mental health and case management services by:

- (1) Establishing the Mental Health Counselors Licensing Program (Program) that:
  - (a) Establishes qualifications and procedures for licensure of mental health counselors by the Department of Commerce and Consumer Affairs (DCCA);
  - (b) Authorizes DCCA to assess fees to support the Program; and
  - (c) Exempts certain individuals from licensing;

and
- (2) Appropriating funds to implement the Program.

Kaiser Permanente, Alliance for Professional Counselor Licensure, Hawaii Youth Services Network, Child and Family Service, Hawaii Vocational Services, Sestak Rehabilitation Services, National Association of Social Workers, University of Phoenix – Hawaii Campus, and many concerned individuals supported this bill. The State Auditor and DCCA provided comments.

Your Committee finds that a greater supply of qualified mental health professionals is needed to enable the State to meet the demands imposed by the Felix Consent Decree. This bill establishes regulatory measures for the licensure of mental health counselors, and criteria to assure that mental health counselors are qualified and trained, thereby protecting consumers of mental health services.

Your Committee has amended this bill by:

- (1) Adding a repeal date of December 31, 2008, to ensure continued review of the Program by the Legislature; and
- (2) Making technical and nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2595, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2595, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 898-04      Energy and Environmental Protection on S.B. No. 2134**

The purpose of this bill is to protect Hawaii's environment from invasive species by establishing the Emergency Environmental Workforce (Workforce) to provide labor to assist the counties in combating invasive species throughout the state. This bill appropriates an unspecified sum to support the activities of the Workforce which would be attached to the Research Corporation of the University of Hawaii (RCUH) for administrative purposes.

The Office of Hawaiian Affairs, four members of the Maui County Council, Hawaii Audubon Society, Sierra Club, Hawaii Chapter, Board of Directors and Owners at Kihei Akahi, and two individuals testified in support of this measure. RCUH also supported this bill with amendments. The Nature Conservancy, Coordinating Group on Alien Pest Species, and Department of Land and Natural Resources supported the intent of this measure. The Department of Agriculture offered comments.

This bill provides an additional tool in the eradication of invasive species. In 2002, Executive Order No. 2002-03 established the Hawaii Invasive Species Council (Council) to provide policy-level direction and planning for combating harmful invasive species infestations throughout the State. Last year, to ensure its continuation, the Legislature codified the Council through Act 85, Session Laws of Hawaii 2003 (Act 85). The purposes of Act 85 are to:

- (1) Provide statutory authority to the Council to continue its special purpose of fostering and organizing coordinated approaches among various executive departments, federal agencies, and international and local initiatives for the prevention and control of invasive species; and
- (2) Affirm the objective of the State to rid Hawaii of invasive species.

Your Committee respectfully requests the Committee on Finance to consider clarifying that the State and not RCUH shall be responsible for covering the unemployment claims of Workforce employees.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2134 and recommends that it pass Second Reading and be referred to the Committee on Finance.



Signed by all members of the Committee except Representatives Evans and Thielen.

**SCRep. 899-04 Labor and Public Employment on S.B. No. 3180**

The purpose of this bill is to enhance accountability in government by requiring that all deputy director and special assistant positions within the Executive Branch that are not specifically authorized by statute be subject to position justification requirements and legislative review.

The Hawaii Government Employees Association testified in support of the intent of this bill. The Departments of Human Resources Development (DHRD), Budget and Finance, Labor and Industrial Relations, Taxation, and Business, Economic Development, and Tourism testified in opposition to this measure.

After careful consideration, your Committee has amended this bill by deleting its substance and inserting the provisions of House Bill No. 2741, House Draft 1, a measure previously reported by your Committee, and approved by the House on Third Reading.

As amended, this bill is substantively the same as Senate Bill No. 3180, Senate Draft 1. As amended, this bill would enhance accountability in government by requiring that all deputy director and special assistant positions within the Executive Branch that are not specifically authorized by statute be subject to position justification requirements and legislative review.

However, your Committee understands the concerns raised by DHRD. Accordingly, this bill has been further amended by:

- (1) Requiring the Governor to submit the report to the Legislature by September 30, 2004, and deleting the requirement to disclose funding sources;
- (2) Clarifying that "deputy directors" and "special assistants" include individuals exempt from Chapter 76, Hawaii Revised Statutes, employed by an executive department or agency:
  - (A) Whose annual salary is not less than 50 percent of a department head's or executive officer's salary; or
  - (B) Who is filling a position within an executive department or agency and is assigned to work in the director's office on loan for at least 75 percent of a calendar year from within that executive department or agency or from another executive department of agency;
- (3) Changing the effective date of July 1, 2010, to "upon approval"; and
- (4) Making technical, nonsubstantive amendments for clarity, style, and conformity.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3180, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3180, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.  
(Representative Moses voted no.)

**SCRep. 900-04 Economic Development and Business Concerns on S.B. No. 2269**

The purpose of this bill is to remove provisions that prevent certain telecommunications business activity from being designated as a qualified business under the Enterprise Zone (EZ) Program by:

- (1) Amending the definition of "telecommunication services"; and
- (2) Clarifying that a qualified service business does not have to deliver services in the same EZ in which they are sold.

The Department of Hawaiian Home Lands, Sandwich Isles Communications, Inc., Ho'akea LLC, and Nanakuli Housing Corporation testified in support of this bill. The Department of Business, Economic Development, and Tourism supported this measure with amendments. The Department of Taxation offered comments.

Your Committee has amended this bill by:

- (1) Adding a definition for "broad band distributed network" rather than amending the definitions of "telecommunication services" and "qualified business";
- (2) Adding a new provision that exempts broad band distributed networks from the requirement that services must be delivered in the same EZ in which the services are sold, rather than amending the requirement; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2269, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2269, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, B. Oshiro, Sonson and Ontai.

**SCRep. 901-04 Judiciary on S.B. No. 2294**

The purpose of this bill is to protect public and private property from trespassers by:

- (1) Applying the offense of criminal trespass in the second degree, a petty misdemeanor, to persons who enter or remain unlawfully on any public or private property after a reasonable warning or request to leave has been given by the owner or lessee of the property; and
- (2) Amending from one year to "a specified period of time" the period during which a trespasser must stay off property after receiving a written warning to do so.

Hawaii Reserves, Inc., and a concerned individual testified in support of this bill. The Office of the Public Defender and Affordable Housing and Homeless Alliance opposed this measure. The Honolulu Police Department opposed this bill as written and suggested amendments. The Department of the Prosecuting Attorney for the City and County of Honolulu provided comments.

Your Committee finds that some homeless people set up illegal shelters on public beaches to the detriment of recreational users. However, there are no indications of a need to apply this bill's provisions to private property or to extend the warning period beyond one year.

Your Committee has amended this bill by:

- (1) Deleting the applicability of this measure to private property;
- (2) Retaining the one-year period during which the warning remains valid; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2294, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2294, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Herkes, Kanoho, Sonson and Pendleton.

#### **SCRep. 902-04      Judiciary on S.B. No. 2844**

The purpose of this bill is to:

- (1) Establish the offense of habitual property crime, a class C felony; and
- (2) Amend the eligibility provisions for deferred acceptance of guilty and no contest pleas (DAG and DANC Pleas).

The Department of the Prosecuting Attorney for the City and County of Honolulu, Honolulu Police Department, and two concerned individuals testified in support of this bill. The Department of the Attorney General supported this measure, suggesting amendments. The Office of the Public Defender and Community Alliance on Prisons opposed this bill.

Your Committee finds that this measure will punish repeat offenders of property crime.

Your Committee has amended this bill by:

- (1) Deleting the provisions relating to DAG and DANC Pleas;
- (2) Requiring that prior convictions under this measure must be for incidents that are separate and distinct in time, event, and occurrence; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2844, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2844, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Herkes, Kanoho, Sonson and Pendleton.

#### **SCRep. 903-04      Public Safety and Military Affairs on S.B. No. 2045**

The purpose of this measure is to make an appropriation to the Civil Air Patrol, Hawaii Wing.

Specifically, the bill appropriates an unspecified amount of funds, to be matched dollar for dollar by the Hawaii Department of Defense, for purposes of operational expenses of the Hawaii Civil Air Patrol.

Testimony in support of the measure was received by the state Department of Defense, the Civil Air Patrol, Hawaii Wing, and an individual.

Members of the Civil Air Patrol are the official volunteer auxiliary of the United States Air Force. In Hawaii, the Civil Air Patrol provides a number of services to the State of Hawaii, including search and rescue missions, tsunami patrols and warnings, and drug enforcement activities. The Cadet Program provides education for Hawaii's youth in leadership, military science, aerospace education, and citizenship. In addition, the Civil Air Patrol participates in Hawaii homeland defense activities and supports a number of local community activities.

Your Committee finds that this measure will assist the Civil Air Patrol to provide a full range of services that benefit the people of Hawaii.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2045, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 904-04      Public Safety and Military Affairs on S.B. No. 2131**

The purpose of this bill is to make an appropriation to enable the Office of Veterans' Services to publish a Hawaii veterans newsletter.

Your Committee finds that a reliable and effective method of communicating important information to Hawaii's veterans is lacking. This appropriation will allow the Office of Veterans' Services to publish a newsletter to inform veterans and their families of important outreach services available to veterans and their families, upcoming veteran-related events, and the dates of various military ceremonies.

Your Committee received testimony in support of this measure from the Office of Veterans' Services, the Advisory Board of Veterans' Services, the Disabled American Veterans, and the Oahu Veterans Council.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2131, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 905-04      Public Safety and Military Affairs on S.B. No. 2647**

The purpose of this measure is to update the composition of the panel charged with nominating members of the Hawaii Paroling Authority.

Specifically, this measure would replace the reference to the Hawaii Council of Churches with a reference to the Interfaith Alliance Hawaii. This measure would also replace the reference to the Hawaii Correctional Association with a reference to the Hawaii Criminal Justice Association.

Testimony in support of this measure was received from the Department of Public Safety.

Your Committee finds that the Interfaith Alliance Hawaii should replace the Hawaii Council of Churches, which has disbanded. Your Committee also finds that the Hawaii Criminal Justice Association should replace the Hawaii Correctional Association as the latter has effectively ceased to exist and the Hawaii Criminal Justice Association is its successor.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2647, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 906-04      Consumer Protection and Commerce/Judiciary on S.B. No. 2877**

The purpose of this bill is to provide consistency between the administration of unclaimed funds and the intent of the unclaimed property law by:

- (1) Repealing statutory provisions that provide for the escheatment of unclaimed property to the State;
- (2) Including a savings clause to ensure that previous dispositions of unclaimed property under the repealed law are not affected; and
- (3) Continuing to transfer funds in excess of \$1,300,000 in the Unclaimed Trust Fund to the general fund at the end of each fiscal year.

Testimony in support of this administration measure was received from the Department of Budget and Finance.

Your Committees find that the present statute, section 523A-3.5, Hawaii Revised Statutes, provides that funds or property held for a period of two to six years, depending upon the value of the property being held, shall permanently escheat to the State. Your Committees further find that this law conflicts with the intent of the State's unclaimed property program, which requires the State to serve as custodian of unclaimed property until it is claimed by the rightful owner.

It should be noted that section 523A-3.5, HRS, was enacted in 1996 but has never been implemented, and the failure to implement this section has not had a negative impact on the public.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2877, S.D. 1, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hamakawa, Ito, M. Oshiro, Sonson, Marumoto, Pendleton and Stonebraker.

**SCRep. 907-04      Consumer Protection and Commerce/Judiciary on S.B. No. 2903**

The purpose of this bill is to ensure that money transmitter businesses are not used to launder the proceeds of drug, gambling, prostitution, and other illegal activities, and to enhance the government's ability to detect the movement of terrorist funds, by establishing a new chapter:

- (1) Requiring money transmitters to register with the state Commissioner of Financial Institutions;

- (2) Requiring money transmitters to follow specified procedures and consumer protections;
- (3) Authorizing fees to cover the costs of regulating money transmitters; and
- (4) Providing a consumer right of action as well as administrative fines and other civil sanctions and remedies to enforce the chapter.

Testimony in support of this measure was submitted by the Office of the Lieutenant Governor, Department of Commerce and Consumer Affairs, Department of the Attorney General, Department of the Prosecuting Attorney of the City and County of Honolulu, Non-Bank Funds Transmitters Group, and Philippine National Bank - Honolulu Agency.

Your Committees find that nationally, two money transmitters dominate the marketplace, and there are approximately 8,000 other businesses in the industry. Locally, it is not possible to quantify the number of money transmitters because no system of registration or regulation of money transmitters currently exists.

Your Committees appreciate the seriousness of the connection between money transmission, drug trafficking, and international terrorism, and note that these are national problems that may not benefit from piecemeal state regulation. In addition, the federal government appears to be moving preemptively in this area.

Your Committees further recognize that the bill as received contained sections that went beyond registration and would have subjected the previously unregulated vocation of money transmitter to regulatory controls. Your Committees therefore felt that it was appropriate to utilize the normal "sunrise" review process, established by section 26H-6, Hawaii Revised Statutes (HRS).

For this reason, a concurrent resolution is being drafted by the Commissioner of Financial Institutions to initiate a sunrise study by the State Auditor that will address the need for regulation and assess alternative forms of regulation. Your Committees find that any state regulation of money transmitters should be carefully designed to complement federal efforts, and that this objective may be appropriately accomplished by utilizing the process established in section 26H-6, HRS.

Your Committees have amended this bill by:

- (1) Deleting the sections authorizing fees to cover the costs of regulating money transmitters;
- (2) Amending the effective date to provide for an automatic repeal, after two years; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Thus, after the issuance of the State Auditor's report, it will be incumbent upon the proponents of this bill to reenact such provisions as are determined to be useful.

As affirmed by the records of votes of the members of your Committees on Consumer Protection and Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2903, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2903, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Hamakawa, Ito, M. Oshiro, Sonson, Marumoto, Pendleton and Stonebraker.

#### **SCRep. 908-04 Consumer Protection and Commerce on S.B. No. 2912**

The purpose of this measure is to increase access to public, educational, and governmental (PEG) cable television equipment and facilities for the residents of underserved areas of the State by:

- (1) Authorizing the Department of Commerce and Consumer Affairs (DCCA) to begin a three-year pilot program that will provide supplemental funding for PEG cable television access in underserved areas of the State; and
- (2) Making an unspecified appropriation from the DCCA's Compliance Resolution Fund (CRF) for the initial year of the program.

Your Committee heard testimony in support of this measure from DCCA, the Education and Outreach Director for the Akaku Molokai Media Center, Akaku: Maui Community Television, and three residents from rural communities on Oahu.

Your Committee finds that PEG access organizations currently receive funding based on the gross revenues of the cable television operators in their respective counties. The level of funding is presently three percent of the cable operator's gross revenues, which is paid directly to the PEG organization.

Due to low population density and geographic remoteness from existing PEG access centers, some communities do not have effective access to basic PEG services. This measure will permit DCCA to use a new source of funds, the CRF, to temporarily provide better PEG access in these underserved communities. The pilot program is planned to extend for two addition years, subject to funding in the next biennium budget.

Your Committee amended the bill as requested by DCCA by:

- (1) Specifying that the appropriation for the program for fiscal 2004-2005 will be \$800,000;
- (2) Explicitly permitting the use of the funds for equipment and operations, as well as facilities;
- (3) Clarifying DCCA's authority to establish standards and conditions for the use of the pilot program funds by decision and order, without being subject to the requirements of chapter 91, Hawaii Revised Statutes (HRS), Administrative Procedure;
- (4) Clarifying that the use of the funds is not subject to chapter 42F, HRS, Grants and Subsidies; and

- (5) Changing the effective date to reflect July 1, 2004, while retaining the three year sunset date.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2912, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2912, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 909-04 Consumer Protection and Commerce on S.B. No. 2210**

The purpose of this bill is to repeal the current condominium law and enact a comprehensively revised and updated version. The bill also makes a \$150,000 appropriation from the Condominium Management Education Fund, to conduct educational activities.

Testimony in support of this bill was received from the Real Estate Commission (Commission), American Resort Development Association-Hawaii, A&B Properties, Inc., Community Associations Institute Hawaii, Hawaii Association of Realtors, Honolulu Board of Realtors, Guaranty Escrow Services, Inc., Title Guaranty of Hawaii, Inc., Neely & Anderson LLP, Hawaii Chapter of the National Association of Industrial and Office Properties, Pacific Realty Consultants, and several individuals.

The Hawaii Council of Associations of Apartment Owners and an individual testified in support and suggested amendments. The Judiciary supported the mediation provisions of the bill and suggested amendments. The Hawaii Bankers Association supported the bill but opposed language allowing the deposit of association funds out-of-state.

The Sierra Club, Hawaii Chapter, opposed the portion of the bill regarding the installation of solar devices. The Hawaii Independent Condominium & Cooperative Owners and a number of concerned individuals opposed the bill stated concerns, and requested amendments. Yacht Harbor Towers and a number of individuals commented and requested amendments.

Your Committee finds that this legislation was prepared in response to Act 213, Session Laws of Hawaii 2000. Act 213 directed the Commission to conduct a review of Hawaii's condominium property regimes law, make findings, formulate recommendations for recodification of the law, and develop draft legislation consistent with its review and recommendations. The Commission published its final report on December 31, 2003.

Your Committee heard hours of testimony from condominium developers, managers, and owners, as well as from members of the legal and financial community who are experienced in this area. It was clear that the bill represents an enormous effort by a very talented collection of hardworking individuals.

It was also obvious that an undertaking of this magnitude, which affects 25 percent of Hawaii's households, will not easily achieve a consensus on all issues. Such a consensus is particularly unlikely to occur in the relatively short time that the report has been available.

Your Committee has amended this bill by deleting all of the bill's substantive provisions, except for the appropriation for educational purposes. This is a tactical decision and not a judgment on the bill's merits. By deleting these provisions, your Committee maximized the differences between the House and Senate versions and thereby maximized the areas that can continue to be discussed through the balance of this legislative session.

In addition, an amendment was made to reflect that this House draft was reported out by your Committee. Finally, the effective date of this bill was changed to July 1, 2009.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2210, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2210, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 910-04 Tourism and Culture on S.B. No. 2395**

The purpose of this bill is to facilitate the Hawaii Convention Center's (Center) competitive posture by giving the Center the flexibility to enter into contracts with potential licensees who require confidentiality as a condition to booking a meeting or executing a license agreement.

Specifically, this bill exempts the Center's booking business records from the freedom of information law until ten days after an event has occurred, if a potential licensee requests nondisclosure of the license agreement and disclosure may result in:

- (1) The loss of the Center booking; or
- (2) Disclosure of the potential licensee's confidential business or proprietary information.

The Hawaii Tourism Authority and the Department of Business, Economic Development and Tourism supported this measure. The Society of Professional Journalists Hawaii Chapter, and two concerned individuals opposed this measure. The Office of Information Practices offered comments.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2395, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Herkes, B. Oshiro, Leong and Ontai.

**SCRep. 911-04 Tourism and Culture on S.B. No. 2302**

The purpose of this bill is to appropriate funds to the Filipino Centennial Celebration Commission (Commission) for events commemorating the one-hundredth anniversary of the arrival in Hawaii of the first immigrants from the Philippines.

The Filipino Centennial Celebration Commission, Congress of Visayan Organizations, Hawaii Chapter of the University of the Philippines Alumni Association, and several concerned individuals submitted testimony in support of this measure. The State Foundation on Culture and the Arts supported the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2302, S.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, B. Oshiro, Leong and Ontai.

**SCRep. 912-04 Tourism and Culture on S.B. No. 2380**

The purpose of this bill is to implement the operations of the State Art Museum (Museum) and its amenities by:

- (1) Incorporating the Museum and the Art in Public Places and Relocatable Works of Art programs (Programs) into the duties of The State Foundation on Culture and the Arts (SFCA);
- (2) Creating a nonprofit citizens' group, called the Friends of the Hawaii State Art Museum, to enhance and support the work of the Museum; and
- (3) Clarifying the duties of SFCA as they relate to the operations of the Museum and the Programs.

SFCA submitted testimony in support of this bill.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2380, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, B. Oshiro, Leong and Ontai.

**SCRep. 913-04 Tourism and Culture on S.B. No. 2396**

The purpose of this bill is to exempt from the general excise tax income derived by associations or organizations from private contributions and from registration, exhibit, or advertising fees associated with conventions, conferences, and trade shows.

The Hawaii Tourism Authority, Hawaii Hotel & Lodging Association, and The Legislative Center submitted testimony in support of this measure. The Department of Business, Economic Development, and Tourism and the Department of Taxation supported the intent of this measure, but opposed it because the potential loss in revenue would be too costly for their available budget resources. The Tax Foundation of Hawaii offered comments.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2396, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, B. Oshiro, Leong and Ontai.

**SCRep. 914-04 Energy and Environmental Protection on S.B. No. 2247**

The purpose of this bill is to assist Hawaii's agricultural industry by appropriating funds to fight specific invasive species.

The Pineapple Growers Association of Hawaii, Hawaii Farm Bureau, Hawaii Audubon Society, Sierra Club-Hawaii Chapter, Kihei Akahi AOA, and a concerned individual supported this bill. The Department of Land and Natural Resources, Department of Agriculture, Coordinating Group on Alien Pest Species, and the Nature Conservancy of Hawaii supported the intent of this measure.

Your Committee finds that invasive species cause great harm to Hawaii's agricultural industry. Destructive insects, diseases, and weeds wreak havoc on the viability of farmers, ranchers, livestock, and nursery operations. Further, invasive species also adversely affect human health; our natural environment, including Hawaii's native species; and other areas of the state economy. Thus, there is a need to combat invasive species through a comprehensive, across-the-board approach.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2247, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Evans and Thielen.

**SCRep. 915-04 Transportation on S.B. No. 3190**

The purpose of this bill is to improve traffic safety. Among other things, this bill:

- (1) Requires the Public Utilities Commission (PUC) to revoke the certificate or permit of a motor carrier that knowingly and willfully engages the services of a driver who is not licensed as a commercial driver;

- (2) Prohibits a motor carrier whose certificate or permit has been revoked for knowingly or willfully engaging the services of a driver who is not licensed as a commercial driver from applying for a new permit or certificate for a period of five years after revocation;
- (3) Makes it a misdemeanor to knowingly or willfully engage the services of an individual not licensed as a commercial driver; and
- (4) Requires the Department of Transportation (DOT), at the request of the PUC, to assign a motor vehicle safety officer to assist in the enforcement of these requirements and sanctions.

PUC and the Hawaii Transportation Association testified in support of this bill.

Your Committee finds that it is in the interest of public safety that motor carriers be regulated in a manner that promotes safe, adequate, economical, and efficient motor carrier service. A motor carrier who knowingly and willfully employs a driver who does not hold a commercial driver's license may endanger the safety of the motoring public and should be subject to revocation of its permit or certificate of operation.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3190, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representatives Moses and Pendleton.

#### **SCRep. 916-04      Transportation on S.B. No. 2003**

The purpose of this bill is to increase traffic safety by repealing a provision in Hawaii's seat belt law that exempts passengers from the seat belt requirement when the number of passengers exceeds the number of seat belt assemblies in the vehicle.

The Honolulu Police Department, State Farm Mutual Automobile Insurance Company, and Disability and Communications Access Board testified in support of this bill. The Department of Transportation supported the intent of the measure.

Recent motor vehicle crashes in Hawaii in which individuals who were not wearing passenger restraints were ejected from the vehicle and received fatal injuries have shown the need for an end to seat belt law exemptions. Your Committee finds that data from the National Highway Traffic Safety Administration show that adults wearing a seat belt are 45 percent more likely to survive a serious motor vehicle crash than if they are unrestrained, with the percentage for infants and toddlers being even higher.

Although this measure is in the best interest of the health and safety of the public, your Committee understands that some older model vehicles, especially those manufactured prior to 1968, may lack the necessary hardware to accommodate a proper restraint system in the rear of a vehicle, making it impossible for the vehicle's owner to comply with this law. Accordingly, your Committee has amended this measure by:

- (1) Deleting language that does not allow the lack of an available seat belt or restraint system in the rear of a vehicle to be used as justification for noncompliance with this law; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee requests that the Judiciary Committee consider combining sections 291-11.5 and 291-11.6 to harmonize the seat belt and booster seat provisions into a single statute.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2003, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2003, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives M. Oshiro and Pendleton.

#### **SCRep. 917-04      Transportation on S.B. No. 2023**

The purpose of this bill is to increase traffic safety. Among other things, this bill:

- (1) Establishes a three-stage graduated driver licensing system for persons under the age of 18;
- (2) Requires drivers under the age of 18 to be accompanied by a licensed parent or guardian when driving between the hours of 11:00 p.m. and 5:00 a.m., except under specific circumstances;
- (3) Provides exceptions for working individuals and individuals attending school; and
- (4) Requires temporary permit holders to be accompanied by a licensed individual who is at least 21 years of age, instead of 18 years of age, when driving.

The Department of Transportation, Department of Health, Honolulu Police Department (HPD), Mothers Against Drunk Driving-Hawaii (MADD-Hawaii), Keiki Injury Prevention Coalition, American Academy of Pediatrics-Hawaii Chapter, Hawaii Insurers Council, and State Farm Mutual Automobile Insurance Company testified in support of this measure. The Judiciary commented on this measure.

Research, studies, and statistics have shown that young, novice drivers have an extremely high crash risk with factors such as inexperience and immaturity being major contributors. This is especially true at night. In fact, in Hawaii, 9.7 percent of all reported traffic crashes involved individuals between the ages of 15 and 18 in 2001, and 38 percent of all fatal crashes in 2002 involving drivers between 16 and 17 years of age occurred at night.

Your Committee finds that previous legislation to increase driving restrictions on younger drivers has significantly reduced the proportion of traffic crashes involving teen drivers. Nighttime restrictions on drivers in the younger age group are designed to



develop the skills necessary for safe driving under these conditions and should also result in an increase in traffic safety, especially among teenagers.

Your Committee has amended this measure by deleting its contents and replacing it with the language from H.B. No. 2290, H.D. 1, similar to the current bill with a few differences such as:

- (1) Allowing the licensee to drive during the restricted hours for school or work purposes provided the licensee carries a signed statement, including the name, address, and telephone number of a licensed parent or legal guardian, or an employer verifying the necessity of driving at that time;
- (2) Making a violation of provisional license requirements a status offense to be reviewed by family court;
- (3) Including a provision that the penalty for driving at speeds exceeding 90 miles per hour can include revocation of a driver's license; and
- (4) Changing the effective date to February 31, 2525, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2023, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2023, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Moses and Pendleton.

#### **SCRep. 918-04      Transportation on S.B. No. 2024**

The purpose of this bill is to promote traffic and pedestrian safety. Among other things, this bill:

- (1) Enacts new penalties for those who violate part VII of the Statewide Traffic Code (Pedestrians' Rights and Duties), chapter 291C, Hawaii Revised Statutes;
- (2) Clarifies drivers' and pedestrians' duties when pedestrians are crossing at crosswalks that do not have traffic-control signals or the traffic-control signals at a crosswalk are inoperable;
- (3) Requires that whenever a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection, to allow a pedestrian to cross the roadway, the driver of another vehicle approaching from the adjacent lanes to the rear of the stopped vehicle must come to a complete stop and may proceed no further than the front bumper of the stopped vehicle; and
- (4) Prohibits pedestrians from crossing, among other places:
  - (A) Outside of a marked crosswalk;
  - (B) Outside of an unmarked crosswalk at an intersection;
  - (C) Within 200 feet of an intersection or marked crosswalk in a residential area; and
  - (D) A roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided.

The Department of Transportation, Honolulu Police Department, and Hawaii Bicycling League testified in support of this bill.

Your Committee finds that pedestrians crossing the street are experiencing too many injuries and fatalities and that these numbers continue to increase every year. These incidents are often caused by inattentive drivers, but pedestrians also share some of the blame. Although many of these incidences occur outside of a marked crosswalk, far too many occur while a pedestrian is crossing the street in a marked crosswalk.

Although this is a serious issue and deserves the utmost attention, your Committee finds that the sentences of imprisonment provided for in this measure for violations of the pedestrian rights and duties section of the Statewide Traffic Code may be extreme. Accordingly, your Committee has amended this bill by, among other things:

- (1) Removing references to imprisonment as a penalty for violating part VII of the Statewide Traffic Code (Pedestrians' Rights and Duties);
- (2) Clarifying that vehicles stopping in adjacent lanes to a vehicle that has stopped to allow a pedestrian to cross the roadway shall not proceed further than the front of the vehicle rather than the vehicle's front bumper;
- (3) Prohibiting vehicles directly in the same lane to the rear of the stopped vehicle yielding to a crossing pedestrian from overtaking the vehicle stopped for the pedestrian; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2024, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2024, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Moses and Pendleton.

#### **SCRep. 919-04      Transportation on S.B. No. 3080**

The purpose of this bill is to provide further economic relief to airport concessionaires. Among other things, this bill:



- (1) Provides retroactive relief for previously qualified airport concessionaires still suffering from the events of September 11, 2001, who have not negotiated relief with the Department of Transportation (DOT) and whose gross receipts are still 15 percent or more below their gross receipts prior to September 11, 2001;
- (2) Allows airport concessionaires suffering from the events of September 11, 2001, whose agreements were terminated and who were replaced by a new concession operator to recover their bonds and deposits and not be barred from doing business with the State for a period of five years as provided by present law;
- (3) Ensures that DOT, as landlord, treats all airport tenants fairly;
- (4) Clarifies that lei vendors may also sell Hawaii floral products;
- (5) Provides DOT with the flexibility to negotiate lei greeting service contracts;
- (6) Clarifies that the period from which relief may be measured is the date a person submits a bid;
- (7) Provides flexibility to DOT to grant economic relief to concessionaires if a number of conditions are met; and
- (8) Gives DOT the flexibility to further extend revocable permits for an additional period of up to one year.

The Airport Concessionaires Committee and Greeters of Hawaii testified in support of this bill. The Department of the Attorney General, DOT, and Airlines Committee of Hawaii testified in opposition to this measure.

Your Committee finds that some airport concessionaires have never fully recovered from the events of September 11, 2001. Continued restricted access to areas of the airport due to increased security measures has resulted in a large loss of customers for concessionaires, which translates into lost earnings for these companies. Moreover, recent global events and the war in Iraq continue to affect these concessionaires.

In 2003, the Legislature passed legislation to provide further economic relief to qualified, multi-year airport tenants. Although that measure was eventually vetoed by the Governor, many concessionaires were able to negotiate either direct or indirect relief with DOT. Your Committee understands that one vendor still remains in negotiations with DOT.

Your Committee was informed by DOT and proponents of this measure, mainly Greeters of Hawaii and Airport Concessionaires Committee, that agreement has been reached on a compromise draft of this bill that addresses the needs of both the State and lei vendors. Accordingly, your Committee has amended this measure by deleting its contents and replacing it with language that:

- (1) Gives the Governor the ability to grant relief by waiving or modifying any term of concessionaire's lease for airport concession leases that do not contain provisions for relief; and
- (2) Provides DOT with flexibility to negotiate airport florist and lei greeting service concession leases.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3080, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3080, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Moses and Pendleton.

#### **SCRep. 920-04      Health on S.B. No. 2690**

The purpose of this bill is to improve emergency medical services for the safety of Hawaii's residents and visitors by:

- (1) Establishing the Emergency Medical Services Special Fund (EMS Fund);
- (2) Increasing the vehicle registration fee from \$20 to \$30;
- (3) Depositing \$20 of the fee to the State Highway Fund (Highway Fund) and \$10 to the EMS Fund;
- (4) Appropriating funds to provide a variety of emergency services in rural areas throughout the state; and
- (5) Appropriating funds to provide professional development and training to paramedics statewide.

The Honolulu Emergency Services Department of the City and County of Honolulu, EMS Division of the Hawaii County Fire Department, American Medical Response, several members of the Maui County Council, and many concerned individuals supported this measure. Catrala-Hawaii opposed this measure. The Department of Health and Tax Foundation of Hawaii provided comments.

Rapid response by emergency medical services is critical to positive outcomes for emergency patients. Professional development and training for paramedics and new recruits will help to ensure the best possible emergency medical services.

Your Committee finds that there is only one ambulance serving over 40,000 residents living on the Waianae Coast of Oahu.

Your Committee notes that the EMS Fund is intended to be used to fund additional services and is not intended to provide for the entire operation of the emergency medical services. Any additional funds in the EMS Fund should be allocated towards emergency medical services in rural areas, particularly on the Neighbor Islands.

Upon further consideration, your Committee has amended this measure by:

- (1) Clarifying that the EMS Fund moneys will be used to provide additional EMS services;
- (2) Only appropriating funds for services in Waianae and Nanakuli;

- (3) Leaving the amount of the vehicle registration fee and amounts deposited into the EMS Fund and Highway Fund blank; and
- (4) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2690, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2690, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Shimabukuro, Ching and Stonebraker.

**SCRep. 921-04      Health on S.B. No. 2005**

The purpose of this bill is to clarify that a health provider may submit mental health records to a patient's insurer without the patient's consent, under certain circumstances, for purposes of reimbursement.

The Department of Health, Queen's Medical Center, Kaiser Permanente, Health Information Management Association of Hawaii, Hawaii Medical Service Association, and Healthcare Association of Hawaii testified in support of this bill.

Your Committee finds that the language changed by this measure is of a technical, nonsubstantive nature and necessary for implementation of the statute.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2005 and recommends that it pass Second Reading and be referred to the Committees on Consumer Protection and Commerce and Judiciary.

Signed by all members of the Committee.

**SCRep. 922-04      Health on S.B. No. 2950**

The purpose of this bill is to clarify the law pertaining to substitution of generic prescription drugs by, among other things:

- (1) Adding and amending definitions;
- (2) Replacing the state drug formulary with the Hawaii additions and deletions list or compendia of therapeutically equivalent generic drug products; and
- (3) Removing the provision that prohibits the substitution of anti-epileptic drugs without consent.

The Department of Health, Hawaii Pharmacists Association, Kaiser Permanente, and Hawaii Medical Service Association testified in support of this bill.

Your Committee finds that products approved by the Food and Drug Administration as safe, effective, and therapeutically equivalent should be allowed to be used as therapeutically equivalent generic substitutes. This bill will enhance the public's access to safe, low-cost drug products.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2950, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 923-04      Health on S.B. No. 2586**

The purpose of this bill is to increase the number of dentists and dental hygienists qualified to provide dental services in nonprofit health centers that serve low-income and uninsured communities. This bill authorizes the Board of Dental Examiners (BDE) to issue, without examination, a community service license for dentists and dental hygienists to practice in:

- (1) A federally qualified health center;
- (2) The native Hawaiian health care system; or
- (3) An accredited post-secondary dental auxiliary training program.

This bill also updates statutory references regarding the accreditation of dental colleges, which is currently handled by the American Dental Association Commission on Dental Accreditation.

The Department of Health, State Council on Developmental Disabilities, Hawaii Dental Hygienists' Association, Hawaii Island Dental Task Force, Hawaii Primary Care Association, Good Beginnings Alliance, Kokua Council, Papa Ola Lokahi, Hawaii Medical Service Association, and Hawaii Dental Association supported this measure. The BDE supported this bill with amendments.

Your Committee finds that the prevalence of tooth decay in Hawaii is more than twice the national average, and that Hawaii's children have nearly three times the national average of baby bottle tooth decay, double the number of dental caries, and 60 percent more decayed and filled teeth. Although the State maintains the highest per capita rate of dentists in the country, there is a severe shortage of dental professionals who work in nonprofit health centers.

Community health centers serve populations that are low-income, largely uninsured, and are often in geographically remote areas. This bill will encourage participation by dental professionals from other states to provide dental care services in these communities. Currently, Hawaii is one of only four states that do not grant licensure by credentials.

Your Committee has amended this bill by making technical and nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2586, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2586, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 924-04 Consumer Protection and Commerce on S.B. No. 2887**

The purpose of this bill is to adopt the National Association of Insurance Commissioners (NAIC) Interstate Insurance Compact, while exempting long-term care insurance from the provisions of the compact.

Testimony in support of this bill was received from the Department of Commerce and Consumer Affairs. NAIFA Hawaii and the American Council of Life Insurers supported the bill and requested amendments. The Department of the Attorney General provided comments and concerns.

Your Committee finds that this bill must be viewed in the context of changes occurring in the insurance industry over the past two decades. Many products sold by life insurers have evolved to become, in significant part, investment products. Consequently, competition among insurers, depository institutions, and securities firms has dramatically increased.

Unlike their federally regulated competitors, only insurance companies must run the gauntlet of inconsistent regulation by 50 individual states. This places the industry at a serious competitive disadvantage both within the United States and in the global marketplace, and the result is growing support in Congress for federalization of insurance regulation. In short, state legislatures across the country are being advised that the status quo in insurance regulation is unsustainable.

In response to the threat of being dispossessed of their authority over insurance, the NAIC has proposed an interstate compact to improve insurance regulation and insurers' ability to compete, by increasing consistency of regulation and reducing the regulatory burden on the insurance industry. The interstate compact creates an interstate commission to be overseen by the states that will operationally consolidate insurance product review and approval functions previously conducted in each state. Hawaii joins the interstate compact by enacting this bill.

Your Committee supports the interstate compact alternative to federalization provided by this bill. Your Committee finds that under this bill, state regulation of certain aspects of the insurance industry will be attenuated in the interest of efficient filings and approvals; however, other aspects of local regulation will be retained. This approach is consistent with your Committee's belief that state regulation, to the extent possible, is preferable, because it is more responsive to local conditions and consumer needs. Moreover, this bill will promote high product standards, while giving consumers quicker access to a broader choice of investment products.

Your Committee notes that the NAIC proposal has been endorsed by the National Conference of Insurance Legislators and the National Council of State Legislatures.

Your Committee has amended this bill:

- (1) Based on the persuasive arguments of the Association of Insurance and Financial Advisors and the American Council of Life Insurers, to include long-term care insurance;
- (2) To change the effective date to January 1, 2005; and
- (3) To make technical, nonsubstantive amendments to fully conform this bill with the NAIC Model Act, and for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2887, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2887, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Souki, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 925-04 Consumer Protection and Commerce on S.B. No. 2904**

The purpose of this bill is to comprehensively update the laws governing the licensing and regulation of escrow depositories. The amendments recognize changes in the industry, and reduce the regulatory burden and increase flexibility in supervision of the industry while ensuring adequate protection for consumers. Among other things, the bill:

- (1) Allows limited liability companies to be licensed as escrow depositories;
- (2) Strengthens confidentiality requirements consistent with standards applicable to state-regulated financial institutions;
- (3) Authorizes criminal background checks and the fingerprinting of escrow depository officers and directors;
- (4) Increases bonding requirements;
- (5) Requires the disclosure of potential risks to customers of escrow depositories that are eligible to deposit escrow funds in sweep accounts;
- (6) Establishes procedures for receivership; and
- (7) Simplifies the process for voluntary termination of an escrow depository.

Your Committee heard testimony in support of this bill with amendments from the Commissioner of Financial Institutions (Commissioner) of the Department of Commerce and Consumer Affairs and Title Guaranty Escrow Services. The Hawaii Association of Realtors (HAR) opposed the bill.

HAR acknowledged the need for updating the law, but expressed concern that several provisions would discourage the formation of new escrow companies, which they believe are sorely needed in the current housing market.

Your Committee has made the following three amendments, without the specific concurrence of the Commissioner, to address the concerns of HAR:

- (1) A licensed escrow depository, provided it is not a limited liability corporation, is permitted to be the manager of an escrow depository that is a limited liability company;
- (2) Escrow depositories are given five days to notify the Commissioner when there is an unanticipated vacancy in the position of designated principal escrow officer; and
- (3) The requirement of a designated branch escrow officer is made optional.

Your Committee anticipates that the interested parties will continue their discussions on these three issues, and believes that including the changes in the current draft will promote that dialogue.

Your Committee has also amended the bill to delay the effective date until July 1, 2009 to assure that there will be a Conference Committee to further consider the bill in light of the ongoing discussions.

Finally, technical, nonsubstantive amendments were made as requested by the Commissioner and for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2904, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2904, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 926-04      Public Safety and Military Affairs on S.B. No. 2004**

The purpose of this measure is to appropriate funds for the care and maintenance of veterans cemeteries on the island of Maui.

Your Committee finds that the cost of care and maintenance of veterans cemeteries on Maui has risen two hundred per cent but state assistance for these cemeteries has increased only eleven per cent from 1981 to 2003.

Your Committee has decided to honor these brave men and women by supporting funding for maintenance of these veterans cemeteries. Due consideration will be given to the funding amount pending final disposition of the state budget.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2004, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 927-04      Public Safety and Military Affairs on S.B. No. 2043**

The purpose of this measure is to appropriate funds, as yet unspecified, for the restoration and exhibits of a new air museum to be built on Ford Island, Oahu.

The measure further provides that such funding is subject to the Military Aviation Museum of the Pacific providing an unspecified amount for this purpose. Your Committee defers to your Committee on Finance to determine the appropriate amounts to insert into the measure.

Your Committee finds that a new Military Aviation Museum of the Pacific will not only showcase United States military aviation in the Pacific, but will also perpetuate the important role of aviation in our country's history. The planned museum will memorialize the events (i.e. the U.S.S. Arizona, the U.S.S. Missouri, and the U.S.S. Bowfin) that occurred during the attack on Pearl Harbor, as well as pay tribute to our country's efforts in the South Pacific and Asia.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2043, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 928-04      Public Safety and Military Affairs on S.B. No. 2364**

The purpose of this bill is to increase the income tax deduction provided to national guard members and other reservists.

Your Committee supports a strong military presence locally as the global uncertainties of our nation's war on terrorism requires heightened homeland security measures statewide. A strong military presence also benefits Hawaii during times of natural disasters and other emergencies.

This bill provides an excellent incentive for the recruitment and retention of qualified and motivated national guard members and military reserve personnel. The bill provides a blank amount to be excluded from gross income, for the purpose of continued discussion and pending final disposition of the state budget.

As affirmed by the record of votes of the members of your Committee on Public Safety and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2364, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

#### **SCRep. 929-04      Tourism and Culture/Legislative Management on S.B. No. 2404**

The purpose of this bill is to benefit the economy through visitor spending and tax revenues by appropriating funds to the City and County of Honolulu (City and County) to host the 2005 National Association of Counties Annual Conference and Exposition from July 15, 2005, to July 19, 2005, at the Hawaii Convention Center.

Several members of the Maui County Council, a member of the Kauai County Council, and the City and County submitted testimony in support of this measure. The Department of Business, Economic Development, and Tourism opposed this measure.

Your Committees note that \$532,000, to be matched dollar-for-dollar by City and County funds, is needed for the City and County to host the conference and exposition.

As affirmed by the records of votes of the members of your Committees on Tourism and Culture and Legislative Management that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2404, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Abinsay, Nakasone, B. Oshiro, Saiki, Wakai, Leong and Ontai.

#### **SCRep. 930-04      Transportation/Public Safety and Military Affairs on S.B. No. 2344**

The purpose of this bill, as received by your Committees, is to prevent the State and counties from prohibiting the transfer of military munitions through interstate vehicular tunnels if the transfer adheres to specific safety standards.

Although your Committees understand the need of the military to be able to transfer munitions between the Marine Corps Base Hawaii, Kaneohe, and the Naval Magazine at Pearl Harbor, greater safety issues face Hawaii motorists from law breakers who speed on Hawaii's highways and run red lights on Hawaii's roadways.

Accordingly, to facilitate further review of this important issue, a proposed house draft that deleted the contents of S.B. No. 2344, S.D. 1, and inserted language authorizing the counties to establish photo red light and photo speed imaging detector system programs was circulated prior to the public hearing and was heard for purposes of receiving testimony and public comment.

The proposed new contents of Senate Bill No. 2344 would:

- (1) Establish a photo red light imaging and photo speed imaging detector systems program to improve enforcement of the speed and traffic signal laws; and
- (2) Allow counties to implement the photo red light imaging and photo speed imaging detector systems program.

The Department of the Prosecuting Attorney of the City and County of Honolulu, Department of Transportation Services of the City and County of Honolulu, and the Councilmember from the Honolulu Council District IX testified in support of the intent of this bill. A concerned individual opposed this measure.

Your Committees find that the prevalence of drivers violating Hawaii's speed and traffic signal laws, especially on the Island of Oahu, has become intolerable. These violations endanger the lives of motorists and pedestrians and compound the already hazardous conditions on Hawaii's roads and highways. Racing and speeding contribute to the frequency and severity of motor vehicle crashes since there is less time to react and less time to stop. Too many tragedies on Hawaii's roadways, many of them recent ones, have been attributed to speed and racing. This measure will help curb such extreme activities in Hawaii and protect the health, safety, and welfare of the people of this State.

After careful consideration, your Committees have amended this measure by:

- (1) Inserting the provisions of the proposed house draft;
- (2) Clarifying that a photo speed imaging detector and photo red light imaging detector must produce a photographic, digital, or other visual image of the driver of the vehicle, as well as the vehicle;
- (3) Deleting the provision requiring warning notices of a violation of the photo red light imaging and photo speed imaging detector systems be issued for one year;
- (4) Authorizing fines to be deposited into a special general fund account;
- (5) Authorizing counties to expend funds from this general fund account for the establishment, operation, management, and maintenance of the photo red light imaging and photo speed imaging detector program;
- (6) Deleting the requirement that the State Department of Transportation, in conjunction with the counties, submit reports to the Legislature;
- (7) Inserting language amending the summons and citations provision of the Statewide Traffic Code (Section 291C-165) to allow red light and speeding citations to be issued by mail; and
- (8) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Although this measure is in the best interest of the health and safety of the public, your Committees are cognizant of the fact that the motoring public may need time to adjust their driving habits and to acclimate themselves to photo speed imaging detector and photo red light imaging systems initiated by the counties. Therefore, your Committees would respectfully urge the county councils that choose to implement such programs to allow the issuance of warning citations prior to the actual implementation of these programs.

As affirmed by the records of votes of the members of your Committees on Transportation and Public Safety and Military Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2344, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2344, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Moses and Pendleton.

**SCRep. 931-04      Health on S.B. No. 2589**

The purpose of this bill is to extend from 45 days to 60 days the time frame for managed care plans to determine the outcome of enrollee complaints and appeals not classified as expedited.

The Department of Commerce and Consumer Affairs, Kaiser Permanente, Hawaii Medical Service Association, and Hawaii Association of Health Plans testified in support of this bill.

Your Committee finds that this bill would amend the current statute to mirror federal regulations.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2589, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 932-04      Health on S.B. No. 2897**

The purpose of this bill is to:

- (1) Authorize the Board of Dental Examiners (BDE) to accept for licensing purposes, dental and dental hygienist examination results from regional or state testing agencies if Hawaii's examinations cannot be administered; and
- (2) Update statutory references pertaining to the accreditation of dental colleges.

The BDE and Hawaii Dental Hygienists Association supported this bill.

Your Committee finds that the Hawaii dental and dental hygienist licensure examinations are administered at the Pearl Harbor Dental Clinic, and civilian access to the facility is subject to military security measures. In the event that licensure examinations cannot be held, this bill allows an alternative method for continuing the licensure process and meeting the oral health needs of the State.

Your Committee further finds that as of January 1, 2004, Hawaii will be the only state that accepts applications from graduates of foreign dental schools without additional dentistry training from an American Dental Association Commission on Dental Accreditation accredited program.

Accordingly, your Committee has amended this bill by:

- (1) Repealing the provisions that allowed graduates of foreign medical schools not accredited by the American Dental Association to be eligible to take the dental examination; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2897, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2897, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 933-04      Health on S.B. No. 3085**

The purpose of this bill is to:

- (1) Require the Department of Commerce and Consumer Affairs to establish an advisory committee to recommend the advanced practice registered nurse (APRN) formulary to the Board of Medical Examiners (BME);
- (2) Require the advisory committee to report its activities and recommendations in regards to the prescriptive authority formulary, including justification by BME as to the denial of any advisory committee recommendation, to the Legislature; and
- (3) Make permanent APRNs' prescriptive authority.

The Hawaii Pharmacists Association, Hawaii Nurses Association, and a concerned individual testified in support of this bill. The Board of Nursing supported this bill with amendments. The Hawaii Medical Association opposed this measure. BME provided comments.

Your Committee finds that APRNs are held to the same standard of care as physicians for the conditions they treat, but that APRNs' prescriptive authority is regulated by a formulary developed by BME.

Your Committee has amended this bill by:

- (1) Clarifying that BME shall submit in their annual report to the Board of Nursing all amendments made to the formularies; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3085, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3085, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 934-04 Health on S.B. No. 2577**

The purpose of this bill is to encourage full and open reporting and discussion of medical errors and adverse outcomes by protecting the proceedings and records of health care review organizations (HCRO) from discovery. Specifically this bill:

- (1) Defines HCROs and extends the same no-discovery protection applicable to peer review and quality assurance committees to HCRO proceedings and records; and
- (2) Broadens the scope of matters included in "proceedings and records" that are not discoverable.

The Hawaii Health Systems Corporation, Hawaii Pacific Health, Hawaii Long Term Care Association, and Hawaii Medical Association testified in support of this bill. The Healthcare Association of Hawaii supported this bill with amendments. The Department of Health supported the intent of this measure with amendments. The Consumer Lawyers of Hawaii opposed this bill. The Hawaii Association of Health Plans provided comments.

Your Committee finds that the causes of medical errors in most cases are procedural, organizational, or structural deficiencies rather than the mistakes of individuals, and that the purpose of the peer review process is to identify errors that are systemic in nature and to improve health care. In order for this process to be effective and candid, hospitals and healthcare providers should not be penalized for providing information to medical error reporting systems.

Your Committee has amended this bill by, among other things:

- (1) Expanding the definition of "quality assurance committee" to include interdisciplinary committees established by long-term care facilities, skilled nursing facilities, assisted living facilities, home care agencies, and hospices;
- (2) Specifying that information and data compiled and submitted by a medical provider to an HCRO for the purpose of evaluating and improving the quality and efficiency of health care, when done through a peer review committee or of hospital quality assurance committee, is not subject to discovery; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2577, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2577, S.D. 1, H.D. 1, and be referred to the Committees on Judiciary and Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 935-04 Health on S.B. No. 3041**

The purpose of this bill is to allow, under certain conditions, parents or legal guardians to admit into nonemergency treatment facilities individuals under the age of 18 without the minor's consent or countersignature.

The Department of Health, Hawaii Psychiatric Medical Association, and two concerned individuals testified in support this bill. One individual testified in opposition.

Your Committee finds that there are situations that require parents or legal guardians to intervene on behalf of a seriously ill minor, without the minor's consent. Your Committee also recognizes the need for a periodic and independent review by a neutral factfinder to ensure that a child's input into decisions concerning admission to hospitals is considered.

Your Committee has amended this bill by:

- (1) Changing the effective date to July 1, 2020, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3041, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3041, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee.

**SCRep. 936-04 Health/Human Services and Housing on S.B. No. 2591**

The purpose of this bill is to require the Department of Health (DOH) to provide services to maintain and enhance caregiving for persons 60 years of age and older who reside in community-based homes that are not fee for service businesses, within the limits of available resources.

The ILWU Local 142, Kokua Council, Eldercare Support Group, and numerous concerned individuals testified in support of this measure. The Executive Office on Aging opposed this measure.

Your Committees find that long-term care for Hawaii's elderly is provided primarily through caregivers and their families. This measure recognizes the contribution for caregiving families and directs DOH to provide family and caregiver support, within the limits of state and federal resources that are available for this purpose.

Your Committees have amended this bill by:

- (1) Clarifying that available resources should come from funds dedicated to family and caregiver support and services only; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2591, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2591, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee.

**SCRep. 937-04 Health/Human Services and Housing on S.B. No. 2608**

The purpose of this bill is to make permanent:

- (1) The methodology for payments to critical access hospitals using Medicare reasonable cost principles; and
- (2) Exemption of critical access hospitals from Medicaid reimbursement equity, by repealing the sunset date of the Act in which these provisions were first adopted.

The Hawaii Health Systems Corporation, Kauai Veterans Memorial Hospital, Healthcare Association of Hawaii, and Hawaii Government Employees Association supported this bill. The Department of Health and Department of Human Services supported this bill with amendments.

Your Committees find that the designation of a hospital as a critical access hospital allows greater flexibility in operating requirements and increases Medicare payments, which helps to ensure the fiscal viability of hospitals in rural and remote areas.

Your Committees have amended this bill by:

- (1) Extending the sunset date of the payment methodology for critical access hospitals to June 30, 2006; and
- (2) Making permanent the provision that exempts critical access hospitals from Medicaid reimbursement equity.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2608, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2608, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee.

**SCRep. 938-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2280**

The purpose of this bill is to improve flood disaster preparedness by appropriating funds, to be matched by federal funds, for a flood warning system at Lake Wilson, which will:

- (1) Cost of \$100,000 to purchase and install; and
- (2) Be operated and maintained at a yearly cost of \$50,000.

Your Committee finds that the flood warning system will provide officials with advance information that can be translated into response actions to save lives. The warning system will also provide increased community awareness of the threat of floods and improved public responses to flood warnings.

The Department of Land and Natural Resources supported the intent of this measure, but opposed the bill due to budgetary concerns.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2280, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Waters.



**SCRep. 939-04 Water, Land Use and Hawaiian Affairs on S.B. No. 3025**

The purpose of this bill is to:

- (1) Clarify that the Department of Business, Economic Development, and Tourism (DBEDT) has sole jurisdiction over the Land Use Commission, Office of Planning, and the Hawaii State Planning Act, and because development, planning, and land use are inherently interdependent functions, these functions may not be transferred to any other department by executive order; and
- (2) Require the Office of Planning to report to the director of DBEDT.

A concerned individual submitted testimony in support of this measure. The Department of Business, Economic Development, and Tourism (DBEDT), Office of Planning of DBEDT, and Department of Land and Natural Resources opposed this measure.

Your Committee finds that the Office of Planning is being placed under the jurisdiction of DBEDT due to the commonality of their functions and purposes which are essential to the State's business, economic development, and tourism objectives.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3025 and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Waters.  
(Representatives Bukoski and Thielen voted no.)

**SCRep. 940-04 Water, Land Use and Hawaiian Affairs/Agriculture on S.B. No. 2820**

The purpose of this bill is to facilitate the transfer of agricultural land from the Department of Land and Natural Resources to the Department of Agriculture (DOA) by:

- (1) Deleting the provision requiring that all transferred lands be geographically adjacent; and
- (2) Amending section 166E-5, Hawaii Revised Statutes, for consistency with the rest of the chapter and to clarify that the term of the lease or rents of qualified and encumbered nonagricultural park lands transferred to DOA is not to be reduced over the remaining fixed term of the encumbrances.

DOA testified in support of this measure.

Your Committees find that current law allows the transfer of multiple parcels but provides that all parcels must be geographically adjacent to one another. This restriction severely limits the availability of transferable lands and renders the nonagricultural parks program inoperable.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2820 and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee.

**SCRep. 941-04 Water, Land Use and Hawaiian Affairs/Agriculture on S.B. No. 3051**

The purpose of this bill is to:

- (1) Establish a state agricultural land protection program for the voluntary acquisition of agricultural easements on lands identified as important agricultural land to the State;
- (2) Support continued growth of Hawaii's agricultural industry by appropriating funds to the Hawaii Farm Bureau Federation for agricultural research and market development; and
- (3) Appropriate funds to the College of Tropical Agriculture and Human Resources of the University of Hawaii at Manoa (CTAHR) to maintain and expand its activity in the areas of:
  - (a) Research and development of high-value agricultural products and practices;
  - (b) Tropical forage and beef improvement to revitalize Hawaii's cattle industry;
  - (c) Healthy food and nutrition programs to encourage greater production and consumption of healthy, safe, and locally grown food to improve the nutritional status of Pacific people and to enhance Hawaii's food security; and
  - (d) Research and testing of bioremediation, which are biological methods for cleaning contaminated waters and sediments.

The Board of Advisors of CTAHR, U.S. Army Corps of Engineers, Hawaii Cattlemen's Council, Inc., Hawaiian Host, Inc., Nalo Farms, Inc., Big Island Candies, HPC Foods, Ltd., Green Point Nurseries, Inc., Pineapple Growers Association of Hawaii, and several concerned individuals supported this measure in part. The Hawaii Farm Bureau Federation and Maui County Farm Bureau supported this measure with amendments. Ashford & Wriston LLP, supported the intent of this measure with amendments. The Department of Agriculture and a concerned individual supported the intent of this measure, but had budgetary concerns. The Department of Business, Economic Development, and Tourism supported the intent of this measure, but opposed it due to budgetary concerns. Protect Keopuka Ohana and a concerned individual opposed this measure. Life of the Land offered comments.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3051, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Chang.

**SCRep. 942-04 Health on S.B. No. 2899**

The purpose of this bill is to repeal obsolete provisions, and clarify the licensure, renewal, and reporting requirements in the state nursing laws.

The Hawaii Nurses Association testified in support of this bill. The Board of Nursing (Board) supported this bill with an amendment.

This bill amends the nursing laws to reflect recognition of advanced practice registered nurses and revises licensing and other provisions regulating the nursing profession for consistency in statutory language. In addition, this measure:

- (1) Requires proof of eligibility from graduates of foreign nursing programs;
- (2) Requires that the Board retain applicant documents for two years;
- (3) Revises annual formulary reporting requirements; and
- (4) Adds Board provisions for inactive license renewal.

Your Committee has amended this bill by:

- (1) Allowing the Board more discretion in determining the competency requirements for inactive nurses; and
- (2) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2899, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2899, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee.

**SCRep. 943-04 Health/Human Services and Housing on S.B. No. 3068**

The purpose of this bill is to provide for the health, safety, and welfare of Hawaii's residents by appropriating funds from the Emergency and Budget Reserve Fund (EBR Fund) to a variety of essential health and human services programs.

The State Council on Developmental Disabilities, Judiciary, Mayor of the County of Maui, Domestic Violence Clearinghouse and Legal Hotline, Parents and Children Together, Maui AIDS Foundation, Child Welfare Services State Advisory Council, National Association of Social Workers, Bridge To Hope, American Academy of Pediatrics Hawaii Chapter, Kapiolani Medical Center for Women and Children, Kaiser Permanente, Hawaii Primary Care Association, AlohaCare, Hawaii Coalition Against Sexual Assault, Sex Abuse Treatment Center, Waianae Coast Comprehensive Health Center, Kokua Council, Hawaii Youth Services Network, Ho'ola Lahui Hawaii, Kauai Community Health Center, Hana Community Health Center, Papa Ola Lokahi, and numerous concerned individuals testified in support of this bill. The Disability and Communication Access Board and Blueprint for Change supported the intent of this measure. The Department of Human Services and Department of Budget and Finance opposed this measure. The Department of Health provided comments.

Your Committees find that the EBR Fund is an appropriate source of funding for the various health and human services programs in this measure. Many of these programs have suffered cutbacks in staff or funding, or have experienced an increase in clientele, without an appropriate increase in funding. While Hawaii's economic outlook seems to be improving, the State budget cannot accommodate all of the funding requests for essential services.

Your Committees recognize that some of the programs in this measure have been provided for in other measures that are moving through the legislative process, including the State budget, and some programs have secured adequate funding from other sources.

Accordingly, your Committees have amended this bill by:

- (1) Removing the appropriations for:
  - (a) Mental and behavioral health services for Hana High and Elementary School;
  - (b) A nutrition training center for Hana Community Health Center;
  - (c) Lamalama Ka 'Ili Community Health Services programs at Molokai General Hospital;
  - (d) The personal care program at Hale Mahaolu on Maui;
  - (e) Treatment services for child victims of intrafamilial sexual abuse;
  - (f) Forensic medical examinations of children in foster custody placements;
  - (g) The Hawaii Youth Services Network Transitional Living Program for Unserved Street Youth;
  - (h) Substance abuse services for youth and adolescents;

- (i) The Residential Alternative Community Care Program;
- (j) Bridge to Hope;
- (k) Volunteer Legal Services Hawaii Na Keiki Law Center;
- (l) Kaneohe Community Family Center's core services;
- (m) Kuhio Park Terrace Family Center's core services;
- (n) The Waipahu Community Adult Day Health Center and Youth Day Care Center Pilot Project;
- (o) The Domestic Violence Clearinghouse and Legal Hotline for Maui program services;
- (p) Blueprint for Change;
- (q) Kalihi area youth service centers;
- (r) St. Francis Medical Center bone marrow registry;
- (s) The Maui AIDS Foundation case management program;
- (t) Community-based health care providers to care for the uninsured;
- (u) Kapiolani Medical Center for Women and Children Sex Abuse Treatment Center master contract;
- (v) The establishment of an Adolescent treatment center to treat poly-drug abuse on the Big Island;
- (w) A grant-in-aid to Hawaii County for anti-drug efforts; and
- (x) The Hawaii Rx Program;
- (2) Adding appropriations for:
  - (a) A feasibility study for the establishment of Program of All-Inclusive Care for the Elderly-based programs in rural communities;
  - (b) Comprehensive student health services; and
  - (c) Hawaii Health Systems Corporation to organize a domestic captive insurance company to provide malpractice coverage to governmental entities or quasi-governmental entities;
 and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Housing that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3068, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3068, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Ching.

**SCRep. 944-04 Labor and Public Employment on S.B. No. 2941**

The purpose of this bill is to make an emergency appropriation of \$3,055,896 for the State Workers' Compensation Program for fiscal year 2003-2004.

The Legislature received a message from the Governor requesting immediate consideration and passage of this bill, in accordance with Article VII, section 9, of the State Constitution.

The Department of Human Resources Development testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2941 and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 945-04 Labor and Public Employment on S.B. No. 3018**

The purpose of this bill is to allow a police officer who:

- (1) Has at least ten years of credited service;
- (2) Suffers from a service-connected disability; and
- (3) Continues public service in any position other than as a police officer,

to receive a retirement allowance of 2-1/2 percent of the average final compensation for each year of credited service as a police officer.

The State of Hawaii Organization of Police Officers, Department of Human Resources of the City and County of Honolulu, Honolulu Police Department, and Employees' Retirement System testified in support of this bill. The Department of Budget and Finance commented on this measure.

After careful consideration, your Committee has amended this bill by deleting its substance, and inserting the provisions of House Bill No. 2262, House Draft 1, a measure previously reported out from your Committee and passed by the House on Third Reading.

As amended, this bill is substantially similar to Senate Bill No. 3018, Senate Draft 2, with the following differences:

- (1) The effective date of July 1, 2010, to facilitate continued discussions; and
- (2) Technical, nonsubstantive differences.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3018, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3018, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

#### **SCRep. 946-04 Labor and Public Employment on S.B. No. 3017**

The purpose of this bill is to protect the constitutional and statutory rights of law enforcement officers by establishing a "Law Enforcement Officers' Bill of Rights" within the Hawaii Revised Statutes.

The State of Hawaii Organization of Police Officers and a concerned citizen testified in support of this bill. The Honolulu Police Department, Department of Human Resources of the City and County of Honolulu, Department of Personnel Services of the County of Maui, Maui County Police Department, County of Hawaii Police Department, a member of the Maui County Council, and a concerned individual testified in opposition to this measure.

Your Committee finds that law enforcement officers risk their lives to serve our citizens. As such, we have a duty to assure that their interests are protected. However, many issues regarding the scope and enforceability of this measure remain, which are beyond the scope of this Committee.

Your Committee therefore, respectfully requests the Committee on Judiciary to closely review these important issues.

After careful consideration, your Committee has amended this bill by:

- (1) Changing the effective date to February 31, 3004, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3017, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3017, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representative Pendleton.  
(Representative Blundell voted no.)

#### **SCRep. 947-04 Water, Land Use and Hawaiian Affairs/Energy and Environmental Protection on S.B. No. 2782**

The purpose of this bill is to provide the Department of Land and Natural Resources (DLNR) with the same financial flexibility in administering its habitat conservation plans as federal guidelines provide for habitat conservation plans administered by the U.S. Fish and Wildlife Service (USFWS).

DLNR, the Office of Hawaiian Affairs, Kauai Island Utility Cooperative, Planning Solutions, the Gas Company, the Nature Conservancy, On Solid Ground Consulting, and the Land Use Research Foundation of Hawaii testified in support of this bill.

Your Committees find that current laws require landowners applying for a habitat conservation plan to post a bond or deposit money into a fund administered by DLNR to assure the habitat conservation plan will be carried out and monitored. However, few bonding companies will issue bonds of this nature, and many small companies and individual landowners lack the necessary funds to apply for approval of the habitat conservation plans.

This bill proposes a variety of different financial tools to meet the need of habitat conservation plans should anything happen to the applicant. The USFWS has similar flexibility in their process as the federal guidelines state that the "completion of mitigation requirements should be ensured through a letter of Credit or other means." This measure would give DLNR comparable flexibility and compatibility with the USFWS when working with landowners in Hawaii.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Energy and Environmental Protection that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2782, S.D. 1, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee.

#### **SCRep. 948-04 Education on S.B. No. 2200**

The purpose of this bill is to repeal the administrative rulemaking requirements for the Running Start program.

The Department of Education (DOE) supported the intent of this measure.

Your Committee finds that to properly operate the Running Start program, DOE and the University of Hawaii (UH) need added flexibility to efficiently establish mutually agreeable programs without conflicting with existing statutes and policies. Eliminating administrative rulemaking requirements will help the DOE and UH to institute more effective educational programs under this important program.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2200 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Morita and Tamayo.

**SCRep. 949-04      Education on S.B. No. 3020**

The purpose of this bill is to provide staffing and facilities to ensure that multi-track schools provide a high-quality learning environment in communities with high population growth.

Your Committee received testimony in support of this measure from the Department of Education, Hawaii State Teachers Association, and Hawaii Government Employees Association.

Your Committee finds that adequate funding remains an issue for schools that implement multi-track schooling. One of the major purposes of the multi-track initiative is to save money through the efficiencies of the system. Accordingly, some of the revenues saved on behalf of the public school system should be transferred to multi-track schools, which should not be left to struggle for funding for staffing and facilities.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3020 and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita and Tamayo.

**SCRep. 950-04      Education on S.B. No. 2538**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds (SPRBs) to assist Iolani School.

This measure authorizes the issuance of SPRBs, pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, in a total amount not to exceed \$30,000,000 to assist Iolani School in the planning, construction, and improvement of its facilities.

Iolani School and the Hawaii Association of Independent Schools supported this bill. The Hawaii State Teachers Association opposed this measure.

Your Committee finds that the public interest is served by providing the youth of the State with quality educational services, which cannot be delivered effectively without a safe and appealing physical environment. In addition, these costs will not be borne by the State. Pursuant to the authorizing legislation, Act 257, Session Laws of Hawaii 2002, and the constitutional amendment approved by the voters, the bonds are not a general obligation of the State, and the schools are unconditionally obligated to pay the principal and interest.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2538, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 951-04      Education on S.B. No. 2671**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds for Damien Memorial High School to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities.

Damien Memorial High School and the Hawaii Association of Independent Schools supported this bill. The Hawaii State Teachers Association opposed this measure.

Your Committee finds that the public interest is served by providing the youth of the State with quality educational services, which cannot be delivered effectively without a safe and appealing physical environment. In addition, these costs will not be borne by the State. Pursuant to the authorizing legislation, Act 257, Session Laws of Hawaii 2002, and the constitutional amendment approved by the voters, the bonds are not a general obligation of the State, and the schools are unconditionally obligated to pay the principal and interest.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2671, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 952-04      Education on S.B. No. 2790**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds for Haleakala Waldorf School to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities.

Haleakala Waldorf School and the Hawaii Association of Independent Schools supported this bill. The Hawaii State Teachers Association opposed this bill.

Your Committee finds that the public interest is served by providing the youth of the State with quality educational services, which cannot be delivered effectively without a safe and appealing physical environment. In addition, these costs will not be borne by the State. Pursuant to the authorizing legislation, Act 257, Session Laws of Hawaii 2002, and the constitutional amendment approved by the voters, the bonds are not a general obligation of the State, and the schools are unconditionally obligated to pay the principal and interest.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2790, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 953-04      Education on S.B. No. 2791**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds for Montessori School of Maui, Inc., to finance or refinance the planning, acquisition, construction or improvement of its educational facilities.

Montessori School of Maui and the Hawaii Association of Independent Schools supported this bill. The Hawaii State Teachers Association opposed the measure.

Your Committee finds that the public interest is served by providing the youth of the State with quality educational services, which cannot be delivered effectively without a safe and appealing physical environment. In addition, these costs will not be borne by the State. Pursuant to the authorizing legislation, Act 257, Session Laws of Hawaii 2002, and the constitutional amendment approved by the voters, the bonds are not a general obligation of the State, and the schools are unconditionally obligated to pay the principal and interest.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2791, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 954-04      Education on S.B. No. 3086**

The purpose of this bill is to authorize the issuance of special purpose revenue bonds for Island Pacific Academy for the planning and construction of its educational facilities.

Island Pacific Academy and the Hawaii Association of Independent Schools supported this bill. The Hawaii State Teachers Association opposed this measure.

Your Committee finds that the public interest is served by providing the youth of the State with quality educational services, which cannot be delivered effectively without a safe and appealing physical environment. In addition, these costs will not be borne by the State. Pursuant to the authorizing legislation, Act 257, Session Laws of Hawaii 2002, and the constitutional amendment approved by the voters, the bonds are not a general obligation of the State, and the schools are unconditionally obligated to pay the principal and interest.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3086 and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 955-04      Labor and Public Employment on S.B. No. 2895**

The purpose of this bill is to require a pest control operator to obtain and maintain continuous workers' compensation and liability insurance coverage as a condition of licensure under chapter 460J, Hawaii Revised Statutes.

The Pest Control Board (Board) and Hawaii Pest Control Association supported this bill.

After careful consideration, your Committee has amended this bill by deleting its substance, and inserting the provisions of House Bill No. 2420, House Draft 1, a measure previously reported from your Committee.

As amended, House Bill No. 2420, House Draft 1, is substantively the same as Senate Bill No. 2895, Senate Draft 1 except for technical, nonsubstantive differences relating to clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2895, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2895, S.D. 1, H.D. 1, and be referred to the Committee on Consumer Protection and Commerce.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 956-04      Labor and Public Employment on S.B. No. 2355**

The purpose of this bill is to clarify certain issues concerning a public retiree's qualifications for health insurance benefits. More specifically, this bill reduces ambiguity in the treatment by the Employer-Union Health Benefits Trust Fund of an employee who has experienced a break in service and has decided to resume employment with the State.

The Hawaii Government Employees Association (HGEA) testified in support of this bill. The Department of Budget and Finance (B&F) and Department of the Attorney General (AG) commented on this measure.

Your Committee finds that technical issues with this bill, as received, might unintentionally cause a retiree's benefits to be reduced by 50 percent. As such, your Committee, together with representatives of B&F, AG, and HGEA, crafted language to address these issues.

Accordingly, your Committee has amended this bill by:

- (1) Adding language to section 87A-36, Hawaii Revised Statutes, that an employee hired after June 30, 1996, and prior to July 1, 2001, and who cumulatively accrues at least ten years of credited service shall receive health benefits upon retirement; and
- (2) Making various other technical, nonsubstantive revisions for clarity, style, and conformity.

Although it was suggested that this measure be applied to certain other employees, your Committee had legal concerns on broadening the scope of this measure and the possible ramifications this action may have on all employees of the State, including fiscal implications. As these issues are beyond the purview of your Committee on Labor, your Committee respectfully requests that the Committee on Finance study these issues further as this measure continues through the legislative process.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2355, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2355, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 957-04 Labor and Public Employment on S.B. No. 2873**

The purpose of this bill is to standardize employer contributions to the Employees' Retirement System (ERS) by:

- (1) Setting employer contributions to ERS beginning with the 2005-2006 fiscal year at:
  - (A) 15.75 percent of compensation for police officers, firefighters, and corrections officers; and
  - (B) 13.75 percent of compensation for other employees;
 and
- (2) Eliminating the separate calculation of contributions for the Early Incentive Retirement Plan.

This bill also allows the State to retain amounts owed by a county for ERS contributions from transient accommodations taxes collected.

ERS, the Department of Budget and Finance, and the County of Hawaii Finance Department testified in support of this bill.

Upon further consideration, your Committee has amended this measure by deleting its substance and inserting the substance of H.B. No. 2398, H.D. 2, the companion bill, which passed the House on Third Reading earlier this session.

As amended, this bill is substantively the same with the exception of various technical, nonsubstantive differences.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2873, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2873, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 958-04 Labor and Public Employment on S.B. No. 2879**

The purpose of this bill is to conform the Employees' Retirement System to the federal Internal Revenue Code (IRC) by amending chapter 88, Hawaii Revised Statutes, Pension and Retirement Systems, to:

- (1) Incorporate federal tax provisions relating to pension plans of State and local government;
- (2) Authorize the Board of Trustees (Board) of the Employees' Retirement System (ERS) to adopt as rules various requirements that are not presently part of the ERS' administrative rules; and
- (3) Provide the Board with expedited rulemaking authority for the limited purpose of adopting rules to comply with the requirements of IRC Section 401(a).

Supportive testimony was submitted by the ERS.

Your Committee finds that the enactment of this bill is essential for the State to retain its tax-exempt status with regard to ERS investment income and retirement benefits.

After careful consideration, your Committee has amended this bill by deleting its substance, and inserting the provisions of House Bill No. 2404, H.D. 1, a measure that was previously reported out of your Committee and approved by the House on Third Reading.

As amended, this bill is substantively the same as Senate Bill No. 2879, S.D. 2, with the following exceptions:

- (1) A defective effective date of July 1, 2010, was added to facilitate continued discussion; and
- (2) There are technical, nonsubstantive differences.

This bill, as amended, also has technical, nonsubstantive differences from House Bill No. 2404, H.D. 1.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2879, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2879, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 959-04 Labor and Public Employment on S.B. No. 3106**

The purpose of this bill is to 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.

The Mayor of Maui County, members of the Maui County Council, and County of Maui supported this bill. The Department of Human Resources Development supported the intent of this measure.

Your Committee finds that this measure would allow counties to offer deferred compensation plans without the duplication of effort involved in establishing and maintaining separate plans in each county. However, your Committee also recognizes that the State may incur additional costs because of this measure.

Accordingly, your Committee has amended this bill by:

- (1) Allowing the State to levy fees on the counties to cover the additional costs it incurs for extending the State's deferred compensation plan to the counties; and
- (2) Making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3106, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3106, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Ito and Pendleton.

**SCRep. 960-04 Labor and Public Employment on S.B. No. 3175**

The purpose of this bill is to authorize the Employees Retirement System, with the approval of the Governor, to enter into an agreement with the federal Secretary of Health and Human Services for the extension of benefits of the hospital insurance system to employees of the State and its political subdivisions.

Specifically, this bill would:

- (1) Allow benefits under Titles II and XVIII of the Social Security Act to be extended to employees of the political subdivisions of the State; and
- (2) Require the East-West Center to fund costs associated with implementation this Act as it applies to East-West Center employees.

Supportive testimony was received from the Employees' Retirement System, the East-West Center, and the East-West Center Employees Association.

After careful consideration, your Committee has amended this bill by replacing its substance with the substance of H.B. No. 2713, H.D. 2, a measure previously reported from your Committee and approved by the House on Third Reading.

As amended, this bill is effective July 1, 2010, and allows Medicaid benefits under Title XVIII of the Social Security Act to be extended to the employees of the East-West Center.

In addition, your Committee has made technical, nonsubstantive amendments to place the substance of this bill in the Session Laws of Hawaii and to make clear that its provisions only apply to the East-West Center.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3175, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3175, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 961-04 Labor and Public Employment on S.B. No. 762**

The purpose of this bill, as received by your Committee, is to remove the cap on the employer's monthly contribution for health benefits plans for retirees.

For purposes of receiving testimony and facilitating discussion, your Committee heard a proposed House Draft 1 that deleted the original contents of the bill and inserted new language that would expand the eligibility for health insurance benefits of part-time, temporary, and seasonal or casual employees of the State who work at least 20 hours per week for at least four consecutive weeks.

The ILWU, Local 142 testified in support of this bill. The Department of Budget and Finance opposed the measure.

Your Committee finds that because state and county governments are exempt from the Prepaid Health Care Act, the State need not offer health insurance coverage to part-time employees. In its attempt to address the problem of increasing numbers of uninsured individuals in the State, the State should lead by example and offer health insurance benefits to their part-time employees.



Accordingly, your Committee has amended this bill by deleting its contents and inserting the provisions of the proposed House Draft 1. As amended, this bill would require the Board of Trustees of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) to offer medical, hospital, or surgical benefits to part-time, temporary, and seasonal or casual employees.

Your Committee notes that as amended, this bill will not require the State to contribute toward the part-time, temporary, and seasonal or casual employee's health insurance coverage. However, these employees should receive considerable premium savings through the pooling of risks with other employees provided coverage under the EUTF.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 762, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 762, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Ito and Pendleton.  
(Representative Blundell voted no.)

**SCRep. 962-04 Labor and Public Employment on S.B. No. 3019**

The purpose of this bill is to establish a refundable tax credit of \$960 per year for single health coverage and \$2,400 per month for family health coverage for members of collective bargaining unit 12 (police officers).

The State of Hawaii Organization of Police Officers (SHOPO) and Honolulu Police Department (HPD) testified in support of this bill. The Department of Taxation (DOTAX) and Hawaii Government Employees Association testified in opposition to this measure. The Tax Foundation of Hawaii offered comments.

Your Committee finds that despite approval of a new contract with the City and County of Honolulu which included a salary increase, HPD officers experienced a net financial loss due to increases in member health insurance premiums. This situation compounds the exceedingly difficult task of recruiting and retaining police officers that is experienced by all of the counties throughout the State.

As such, this bill would serve as another tool to assist the counties with the recruitment and retention of qualified police officers throughout the State.

Although valid concerns were raised by DOTAX regarding the fiscal implications of this bill, your Committee has received assurances from SHOPO that the City and County of Honolulu has expressed interest in accepting the financial responsibility for the estimated revenue loss that would be realized by the State.

Accordingly, your Committee has amended this bill by deleting its contents and replacing it with language that:

- (1) Establishes a health care tax credit (Tax Credit) for members of collective bargaining unit 12 who are not claimed or not otherwise eligible to be claimed as a dependent by another taxpayer for Hawaii state income tax purposes;
- (2) Requires the Director of Taxation to adopt rules, prepare necessary forms, and require proof of the claim for claiming this Tax Credit;
- (3) Requires all claims for the Tax Credit to be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed;
- (4) Requires the Director of Taxation to report the total cost of the Tax Credit experienced by a particular county to that county's Director of Finance; and
- (5) Requires the counties to reimburse the State for the loss in revenue experienced from the implementation of the tax credit no later than six months after the end of the fiscal year.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3019, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3019, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 963-04 Labor and Public Employment on S.B. No. 1155**

The purpose of this bill is to allow certain trustees of the Office of Hawaiian Affairs (OHA) to make a lump sum contribution payment to the state Employees' Retirement System (ERS) to acquire credit for prior service.

OHA testified in support of this bill. ERS opposed this measure.

Your Committee finds that some OHA trustees are not able to acquire full credit for past service under Act 183, Session Laws of Hawaii 2002. Further, your Committee finds that the situation pertaining to these OHA trustees is analogous to other elected salaried officials, and that these trustees should also be able to make a lump sum contribution payment to ERS.

After careful consideration, your Committee has amended the measure by deleting its contents and replacing it with language that:

- (1) Places the provisions authorizing certain OHA trustees to make a lump sum contribution payment to the ERS to acquire credit for prior service in Session Laws rather than codifying the provisions in statute; and
- (2) Makes technical, nonsubstantive amendments.

Your Committee's intent in amending this measure by placing the substantive provisions of S.B. No. 1155, S.D. 1, in Session Laws rather than in statute is to recognize the unique circumstances applicable to OHA trustees while

addressing the concerns raised by opponents of this measure regarding the codification of the provisions of this bill and the setting of legal precedent.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1155, S.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 1155, S.D. 1, H.D. 1.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 964-04 Labor and Public Employment on S.B. No. 2878**

The purpose of this bill is to preserve the tax-qualified status of the state Employees Retirement System (ERS) by conforming state law to the provisions of Section 401(a)(17) of the Internal Revenue Code (IRC). This bill:

- (1) Applies the federal tax limits on pension compensation effective July 1, 1996;
- (2) Adds a nontax-qualified arrangement to protect benefits accrued in excess of the federal tax limits for the period July 1, 1996, through June 30, 2004; and
- (3) Appropriates \$357,350 to pay the nontax-qualified benefits.

The Department of Budget and Finance and Board of Trustees of ERS testified in support of this measure.

Your Committee finds that the enactment of this bill is essential for the State to retain its tax-exempt status on ERS investment income and retirement benefits. While your Committee has concerns on whether the State will be obligated to continue to pay for the benefits of 19 individuals out of the general fund well after this bill is enacted, your Committee understands that the financial ramifications these 19 individuals pose cannot compare to the millions in revenue that would be lost if the State is deemed not to be in compliance with the IRC.

After careful consideration, your Committee has amended this bill by deleting its substance, and inserting the provisions of House Bill No. 2403, House Draft 1.

As amended, this bill is substantively the same as Senate Bill No. 2878, Senate Draft 2, except that:

- (1) The appropriation amount was left blank to facilitate continued discussion; and
- (2) Various technical, nonsubstantive revisions were made for clarity, consistency, and style.

Your Committee urges the State to negotiate a settlement with the 19 individuals so that this loophole will effectively be closed.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2878, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2878, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Pendleton.

**SCRep. 965-04 Energy and Environmental Protection on S.B. No. 3092**

The purpose of this bill is to appropriate an unspecified amount of funds to the Department of Health (DOH) to expand its solid waste management enforcement and monitoring capabilities.

The Sierra Club-Hawaii Chapter supported this bill with amendments. DOH opposed this measure.

Your Committee finds that solid waste and illegal dumping are issues of statewide importance. Furthermore, aggressive enforcement of solid waste laws, monitoring of illegal dumping, and the apprehension of violators should be priorities of this state.

Your Committee has amended this bill by adding a provision that rewards a person who reports a violation of section 342H-30, Hawaii Revised Statutes, 50 percent of the fines collected when such a report results in a conviction.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3092, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3092, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Evans and Thielen.

**SCRep. 966-04 Energy and Environmental Protection on S.B. No. 3207**

The purpose of this bill is to encourage the construction of large-capacity ethanol production facilities in the state by changing the ethanol investment tax credit to an ethanol facility tax credit.

ILWU Local 142 and a concerned individual supported this bill. The Department of Taxation (DOTax) and Maui Ethanol supported this measure with amendments. The Department of Business, Economic Development, and Tourism and the Tax Foundation of Hawaii submitted comments.

Your Committee has amended this bill by:

- (1) Calculating the tax credit according to the nameplate capacity of the facility instead of by the investment amount;

- (2) Clarifying references to section 263A of the Internal Revenue Code, as recommended by DOTax;
- (3) Deleting the definition of "qualifying ethanol production" and inserting the substance of its contents into the definition of "qualifying ethanol production facility";
- (4) Changing its effective date; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3207, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3207, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Kaho'ohalahala and Thielen.

**SCRep. 967-04 Economic Development and Business Concerns/Tourism and Culture on S.B. No. 2558**

The purpose of this bill is to provide incentives to attract film, video, and sound recording production companies to the state by:

- (1) Expanding the provisions for the motion picture and film production income tax credit (production tax credit) to include digital media and sound recording productions;
- (2) Increasing the current production tax credit from four percent to 15 percent of costs incurred on Oahu and 20 percent of costs incurred on the Neighbor Islands;
- (3) Clarifying the requirements a production must have to qualify for the production tax credit, such as a minimum amount of expenditure and a minimum percentage of labor hired from within the State of Hawaii;
- (4) Requiring qualifying taxpayers to submit to the Department of Business, Economic Development, and Tourism (DBEDT) a report detailing the costs incurred and tax credit claimed, after which DBEDT will issue a certificate of verification; and
- (5) Establishing requirements that must be met by businesses producing performing arts products that are claiming the High Technology Business Investment Tax Credit.

The Department of Business, Economic Development, and Tourism, Film Commission of the Office of Economic Development of the County of Kauai, Sprite Entertainment, Big Island Film Office of the Department of Research and Development of the County of Hawaii, and Hawaii Film Authority, Inc., submitted testimony in support of this measure. The Screen Actors Guild Hawaii Branch, the International Alliance of Theatrical and State Employees, Local 665, the American Federation of Musicians, Local 667, and a concerned individual supported this measure with amendments. The Department of Taxation, Honolulu Film Office, and two concerned individuals supported the intent of this measure with amendments. The Office of Information Practices, Tax Foundation of Hawaii, and TalkStory Productions offered comments.

Your Committees note that concerns have been raised that the definition of a "qualified taxpayer" for purposes of this tax credit may be overly broad.

Your Committees also respectfully request the Department of Taxation and Department of Business, Economic Development, and Tourism to work with your Committee on Finance to ensure that the language in this bill does not include activities that are already occurring locally, in particular, print and advertising agencies.

Your Committee has amended this bill by:

- (1) Removing all numbers and amounts relating to:
  - (a) Amounts and percentages of production costs;
  - (b) Population of the counties in which production activity takes place;
  - (c) Certain numbers and percentages of local hires and jobs created;
  - (d) The percentage of production activity that must take place within the state; and
  - (e) Dates to give your Committee on Finance maximum flexibility to determine appropriate thresholds to qualify for the tax credit; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Economic Development and Business Concerns and Tourism and Culture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2558, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2558, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, B. Oshiro, Sonson and Ontai.

**SCRep. 968-04 Health/Economic Development and Business Concerns on S.B. No. 2686**

The purpose of this bill is to promote technological advances in detecting and treating cancer by:

- (1) Emphasizing the importance of early cancer detection;

- (2) Specifying that the Cancer Detection Development Revolving Fund (Fund) should also be used for treatment; and
- (3) Appropriating funds to the Fund.

Science and Technology International testified in support of this measure.

Your Committees have amended this bill by:

- (1) Clarifying further that the Fund be used for treatment in addition to detection, including changing the name of the Fund to the Cancer Detection and Treatment Development Revolving Fund;
- (2) Inserting an appropriation amount of \$1 to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the records of votes of the members of your Committees on Health and Economic Development and Business Concerns that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2686, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2686, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Abinsay, Herkes, B. Oshiro, Sonson, Leong and Ontai

**SCRep. 969-04 Water, Land Use and Hawaiian Affairs/Agriculture on S.B. No. 3052**

The purpose of this bill is to implement Article XI, section 3, of the State Constitution, that mandates the Legislature to identify important agricultural lands (IALs). This bill, among other things:

- (1) Establishes:
  - (A) Policies and procedures for identifying and managing important agricultural lands (IALs);
  - (B) Standards and criteria for the identification of IALs;
  - (C) Establishes standards and criteria for the reclassification or rezoning of IALs;
  - (D) Policies for incentives for the long-term or permanent retention of IALs for agricultural use; and
  - (E) A process by which the Land Use Commission (LUC) considers the county's identification and mapping of IALs in designating IALs;
- (2) Requires the county to submit its IAL recommendations to the LUC within two years after receiving state funds for the identification and mapping of IALs; and
- (3) Permits holiday or agriculture-related special event activities and agricultural tourism on agricultural lands for the enjoyment, education, and involvement of visitors;
- (4) Directs the Agribusiness Development Corporation to convene a task force to develop incentives to promote the viability of IALs and appropriates an unspecified sum for that purpose;
- (5) Appropriates to each county an unspecified amount for the identification and mapping of IALs; and
- (6) Expresses the intent that the designation of IALs by the LUC take effect only upon the enactment of incentives for IALs.

The Hawaii Leeward Planning Conference, Big Island Council, and Matsuda Fukuyama Farms, supported this bill. The American Planning Association, Hawaii Chapter, Hawaii Association of Realtors, Nalo Farms, and an individual supported the intent of this measure. The Board of Land and Natural Resources, Department of Agriculture (DOA), LUC, Office of Planning (OP), Hawaii Farm Bureau Federation, and the Department of Planning and Permitting of the City and County of Honolulu supported the intent of this bill with amendments. The Office of Hawaiian Affairs, Castle & Cooke Land Company, Dole Food Company, Life of the Land, and Alexander & Baldwin, Inc., opposed this bill. Kamehameha Schools, Land Use Research Foundation of Hawaii, Maui Land & Pineapple Company, Inc., Sierra Club, Hawaii Chapter, Planning Department of the County of Hawaii, Hawaii Cattlemen's Council, Inc., and the Maui County Farm Bureau commented on this measure.

Testimony on this bill indicates strong support and a preference for H.B. 2800, H.D.1., which is based on the outstanding work of the Agricultural Working Group (Working Group). Your Committees again express their deep appreciation to the Working Group and its approximately 120 statewide participants, including representatives from state and county governments, private organizations, farm groups, landowners, conservationists, and individual farmers, who contributed countless hours to further the resolution of the complex and long-standing issues surrounding IALs.

Although it is problematic in light of the legislative process to link the effectuation of the designation of IALs to the establishment of incentives, your Committees recognize that incentives will contribute to the overall success of the IAL designation process. While a voluntary IAL designation system where landowners select and designate all or portions of their lands as IALs appears reasonable in concept, for who better than the landowners would know whether their lands are IALs, your Committees have reservations on the total acceptance of such a system. A system where a regulated state agency, such as the LUC, is the ultimate designator of IALs has a number of cogent merits. It would comply with the constitutional mandate that the State identify IALs. The LUC with its knowledge and expertise in the regulation of land matters would significantly contribute to an IAL designation process that is state-wide, coordinated, and in the best interest of the State as a whole.

Your Committees have given much consideration in attempting to balance the interest of all stakeholders and agree that H.B. No. 2800, H.D. 1, with further amendments, is the vehicle that will cover the greatest distance and addresses the most issues in this work in progress. Accordingly, your Committees have amended this bill by incorporating provisions of H.B. No. 2800, H.D. 1, with additional amendments. The amended bill, among other things:

- (1) Provides an additional IAL designation process that allows landowners to volunteer lands for IAL designation to the county and LUC within 18 months after the enactment of this bill and authorizes the county to adopt rules to govern the process;
- (2) With respect to the incentive program:
  - (A) Provides that the identification of IALs by the LUC is contingent upon the enactment of legislation enacting incentives for IALs;
  - (B) Provides an agricultural infrastructure improvement tax credit for improvements made to agricultural infrastructure on IALs;
  - (C) Requires DOA with the assistance of the Hawaii Farm Bureau Federation, rather than the Agribusiness Development Corporation task force, to develop and recommend agricultural incentive proposals; and
  - (D) Reduces from five to three years when state and county agencies must review the effectiveness of protection and incentive measures enacted for IALs;
- (3) Expands the standards and criteria for identification of IALs to include:
  - (A) Land fitting any one of the standards and volunteered by the landowner for IAL designation; and
  - (B) Land producing sustained high agricultural yields for crops, livestock, or timber, when treated and managed according to accepted farming methods and technology;
- (4) Prohibits lands that have been designated for urban use by the State or county from being identified and mapped as IALs by the county;
- (5) Clarifies that the county planning department's report on its IALs recommendations to the county council shall show how its map relates to, supports, and is consistent with:
  - (A) The IAL standards and criteria;
  - (B) The comments received from government agencies and other participants in the county IALs designating process;
  - (C) The viability of existing and emerging agribusinesses; and
  - (D) The county's adopted land use plans, as applied to both the identification of and exclusion of IALs from the designation;
- (6) Lengthens the time from 90 days to 120 days that the LUC has to act upon a county's IALs map and report;
- (7) Adds the requirement that the LUC shall include in its report of IAL maps adopted, a finding relating to the availability of IALs incentives enacted by the Legislature;
- (8) Authorizes the LUC to designate other IALs in accordance with established standards and criteria, if the LUC finds that the county has failed to:
  - (A) Identify IALs using the IALs' criteria;
  - (B) Follow public process requirements; and
  - (C) Make its IALs recommendations in a timely manner;
- (9) Requires the county to refer any special permit application involving IALs to the DOA and OP for review and comment;
- (10) Revises standards and criteria relating to land use district boundary amendments or rezoning actions that involve IALs, including deleting:
  - (A) Whether the action involves lands no longer in agriculture production or for which a supply of nonpotable water is not readily available; and
  - (B) The degree to which the action adversely impacts IALs' use policies and growth patterns as reflected in the county general, development, and community plans;
- (11) Requires the periodic review of IALs maps to seriously consider the removal of IAL designation for lands that have insufficient available water;
- (12) Requires the LUC to:
  - (A) Process district boundary amendments involving IALs;
  - (B) Approve county special permits for land designated as an IAL; and
  - (C) Consider the established IAL standards and criteria in reviewing a petition for reclassification of district boundaries;
- (13) Clarifies that the county has jurisdiction over land less than 15 acres in the agriculture district that is not designated IALs;

- (14) Makes county special permits affecting IALs subject to the approval of the LUC and requires the county to transmit a copy of the special permit records;
- (15) Provides that IALs may be subdivided into leasehold lots for solely agricultural uses and are exempted from county subdivision ordinances;
- (16) Deletes provisions permitting agricultural tourism activities and holiday or agriculture-related special events in agricultural districts;
- (17) Replaces the unspecified sums appropriated to each county for the cost of identifying IALs with a \$2,000,000 appropriation to DOA to disburse to counties that submit satisfactory work plans for the identification of IALs; and
- (18) Changes the effective date of the Act to July 1, 2004.

Your Committees have also amended this bill by making technical, nonsubstantive amendments for style, clarity, and consistency.

Lastly, your Committees, recognizing the lands in the agricultural district as a valuable resource and realizing that lands in the agricultural district will be designated IALs, declare that it is the intent of this bill that the lands remaining in the agricultural district after the designation of IALs remain in the agricultural district.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3052, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3052, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Chang, Morita, Schatz.

#### **SCRep. 970-04 Higher Education on S.B. No. 2175**

The purpose of this bill is to authorize the University of Hawaii (UH) to establish a Hawaii Scholarship Trust Fund (Trust Fund) to dispense scholarships as a requirement of the State's participation in the federal Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP).

UH testified in support of this measure. The Department of Education supported the intent of this measure.

Your Committee recognizes the importance of establishing the Trust Fund and notes its establishment in another vehicle that is going through the legislative process.

Upon further consideration, your Committee has amended this bill by deleting its contents and inserting language that:

- (1) Provides tuition waivers for:
  - (a) Qualified enlisted members of the Hawaii National Guard; and
  - (b) Children of:
    - (i) Law enforcement officers, firefighters, emergency medical services personnel, and water safety officers who have been permanently or totally disabled or killed in the line of duty;
    - (ii) Qualified disabled Hawaii veterans; and
    - (iii) Veterans declared prisoners of war or missing in action;

and
- (2) Requires tuition refunds for members of the Hawaii National Guard or military reserves who are ordered to active duty, and full-time active duty members of the military who are unable to attend school for more than 60 days during the semester due to requirements of military service.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2175, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2175, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hale and Morita.

#### **SCRep. 971-04 Agriculture on S.B. No. 3153**

The purpose of this bill is to appropriate funds, to be matched by funds through Maui Ag Partners, for a pilot project in bioremediation research on former pineapple lands in West Maui, to be conducted by Maui Ag Partners and coordinated by the Pacific Cooperative Studies unit of the College of Natural Sciences and College of Tropical Agriculture and Human Resources of the University of Hawaii.

The Department of Agriculture and College of Natural Sciences of the University of Hawaii submitted testimony in support of the intent of this bill with budgetary concerns. Maui Land & Pineapple Company, Inc., testified in support of the intent of this measure with amendments.

Your Committee has amended this bill by:

- (1) Specifying that the type of bioremediation to be done on the lands in West Maui is soil re-nutrition;

- (2) Clarifying that "bioremediation" includes soil re-nutritication; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3153, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3153, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang and Schatz.

**SCRep. 972-04 Consumer Protection and Commerce on S.B. No. 2090**

The purpose of this bill is to establish a prescription drug repository for the purpose of receiving and dispensing donated prescription drugs to needy persons.

Testimony in support of this bill was submitted by the American Cancer Society, Hawaii Long Term Care Association, and The Medicine Bank. The Board of Pharmacy supported the intent of this bill. Testimony conveying concerns was submitted by the Department of the Attorney General.

Your Committee finds that there are substantial amounts of unused yet safe prescription drugs that can be donated and provided to needy persons, and finds that this measure is intended to benefit persons in Hawaii who must choose between expensive prescription drugs, or their next meal. Your Committee recognizes that concerns were expressed about this measure, and believes that moving this bill forward in the legislative process will facilitate further discussion that serves to resolve those concerns.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2090, S.D. 2, H.D. 1, and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Ito, Kanoho, M. Oshiro and Sonson.

**SCRep. 973-04 Consumer Protection and Commerce on S.B. No. 2890**

The purpose of this bill is to assist the Department of Commerce and Consumer Affairs (DCCA) in securing qualified medical experts to serve on external review panels by:

- (1) Authorizing the payment of \$200 to physicians as compensation for serving on external review panels; and
- (2) Exempting payment and the selection of external review panel members from the state Procurement Code.

DCCA and Kaiser Permanente supported this bill.

Your Committee finds that external review panels were established to review health plan coverage disputes. Physicians currently serving on these panels are currently uncompensated. This lack of compensation contributes to the reluctance of some physicians to participate on these panels.

Your Committee believes that compensation of these physicians as well as exemption of their selection from the Procurement Code will improve the rate of participation by specialist physicians and contribute to more timely review hearings.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2890, S.D. 1, and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Ito, Kanoho and M. Oshiro.

**SCRep. 974-04 Consumer Protection and Commerce on S.B. No. 2909**

The purpose of this bill is to streamline the general rate increase filing process for public utility companies with annual gross revenues of less than \$2,000,000, by:

- (1) Requiring the filing of a standard form application developed by the Public Utilities Commission (PUC) and a public hearing at which consumers may testify on the proposed rate increase;
- (2) Establishing time periods for decisions on general rate increase applications; and
- (3) Requiring public utilities to file annual financial statements in accordance with the standard chart of accounts approved by the PUC.

The PUC, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Kealia Water Company Holdings, LLC, testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2909, S.D. 1, and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, M. Oshiro and Stonebraker.

**SCRep. 975-04 Consumer Protection and Commerce on S.B. No. 3049**

The purpose of this bill is to allow more of Hawaii's charitable organizations to raise funds through the issuance of charitable gift annuities, under which an annuity is provided to the donor, by modifying net worth and reserve requirements under the State's insurance laws for organizations that issue these annuities.

Specifically, this bill:

- (1) Reduces the minimum organization net worth requirement from \$5,000,000 to \$100,000;
- (2) Replaces the current requirement that separate annuity funds equal to at least one-half of the value of the annuity be maintained, with the requirement that the organization maintain segregated assets in a Hawaii institution equal to the sum of the reserves on its outstanding annuity agreements, calculated in accordance with accepted actuarial standards, plus the larger of \$100,000 or ten percent of the reserves; and
- (3) Provides that an organization issuing charitable gift annuities:
  - (A) Must have conducted business in Hawaii continuously for at least ten years;
  - (B) File an annual statement of compliance with the Department of Commerce and Consumer Affairs (DCCA); and
  - (C) Prominently disclose in writing that the gift annuity is not insurance, is not subject to regulation by the DCCA Insurance Division, and is not protected by any state guaranty fund.

Your Committee finds that current \$5,000,000 net worth requirement precludes smaller local nonprofit organizations from using charitable gift annuity agreements as a fundraising tool. This bill will enable more of Hawaii's grassroots nonprofit organizations to enter into charitable gift annuity agreements and encourage more citizens to donate to these organizations, while protecting donors.

Your Committee has amended this measure by:

- (1) Changing its effective date to July 1, 2009, to promote further discussion by interested parties;
- (2) Deleting the requirement that the segregated assets be maintained within this State, to give charitable organizations the flexibility to maximize returns, which will ultimately be returned to the community in the form of charitable services; and
- (3) Making technical, nonsubstantive amendments for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3049, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3049, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

#### **SCRep. 976-04 Consumer Protection and Commerce on S.B. No. 2957**

The purpose of this bill is to allow the Hawaii Health Systems Corporation (HHSC) to organize a domestic captive insurance company to provide HHSC with medical malpractice and hospital professional and general liability insurance coverage and also offer such coverage to the Department of Health (DOH) and the John A. Burns School of Medicine (JABSOM).

DOH, HHSC, and JABSOM testified in support of this bill. The Department of Commerce and Consumer Affairs supported the intent of this bill.

Your Committee finds that the cost of purchasing medical malpractice and hospital professional and general liability coverage is becoming prohibitively expensive and, even at very high prices, is becoming less available. The establishment of a captive insurance company to provide this coverage will help to reduce costs, control losses, and provide a viable and essential alternative for agencies of the State that are involved in providing health care.

Your Committee has amended this measure by:

- (1) Clarifying that the captive insurance company will be able to provide both medical malpractice and hospital professional and general liability coverage to HHSC, DOH, and JABSOM;
- (2) Reducing the appropriation by \$2,300,000, to \$6,700,000. This reflects the Insurance Commissioner's willingness to exercise his authority to accept a note or guarantee, in lieu of the capital and surplus requirement of \$2,283,333 previously included in the cost projections; and
- (3) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2957, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 2957, S.D. 2, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and M. Oshiro.

#### **SCRep. 977-04 Consumer Protection and Commerce on S.B. No. 3136**

The purpose of this bill is to require chiropractic services to be covered under Medicaid and QUEST.

Testimony in support of this bill was received from the Department of Human Services and seven individuals.



Your Committee finds that chiropractic services are an accepted part of the health care delivery system across the United States. The federal government currently covers chiropractic services through Medicare and certain programs for veterans. Providing chiropractic services under QUEST and Medicaid would bring Hawaii into accord with the majority of other states.

Your Committee has made technical, nonsubstantive amendments to this bill for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3136, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 3136, H.D. 2.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho and M. Oshiro.  
(Representative Marumoto voted no.)

**SCRep. 978-04      Consumer Protection and Commerce on S.B. No. 3193**

The purpose of this measure is to make certain amendments to Act 77, Session Laws of Hawaii 2002, which imposed maximum pre-tax wholesale and retail gasoline prices on the sale of gasoline in the State.

Your Committee finds that Act 77 established a baseline price for regular unleaded gasoline by taking an average of the spot price for regular unleaded gasoline in the Los Angeles, San Francisco, and Pacific Northwest markets. To this baseline price were added certain adjustment factors, including a location adjustment factor, a market margin adjustment factor, a neighbor island location adjustment factor, and a neighbor island marketing factor, which resulted in the maximum pre-tax wholesale gasoline price. To this maximum pre-tax wholesale gasoline price was added a retail marketing margin factor to arrive at the maximum pre-tax retail gasoline price.

For reasons set forth in section 1 of this measure, this measure:

- (1) Changes the baseline for regular unleaded gasoline from the West Coast average to the national weighted average spot price of unleaded gasoline as reported by the Oil Price Information Service;
- (2) Extends the maximum pre-tax wholesale price to mid-grade and premium gasoline;
- (3) Repeals the price limits on the sale of gasoline on the islands of Molokai and Lanai, and the Hana district on the island of Maui;
- (4) Repeals the maximum pre-tax retail gasoline price;
- (5) Provides a neighbor island wholesale location and marketing factor for the islands of Kauai, Maui, and Hawaii;
- (6) Requires that, beginning January 1, 2006, not less than eighty-five per cent of all gasoline sold in the State shall contain ten per cent ethanol by volume;
- (7) Transfers the responsibility for collecting and analyzing information received from the petroleum industry from the Department of Business, Economic Development, and Tourism to the Auditor;
- (8) Establishes a legislative task force to investigate the petroleum industry and its operations on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii;
- (9) Directs the Auditor to undertake a study to determine the most appropriate method of establishing a baseline gasoline price;
- (10) Extends the effective date for the imposition of the maximum pre-tax wholesale gasoline price limit until July 1, 2005; and
- (11) Makes an appropriation, to be expended by the Auditor, to carry out the purposes of chapter 486J.

Your Committee received testimony in opposition to this measure from the Department of Business, Economic Development, and Tourism based on empirical, technical, and analytic evidence contained in the September 2003 report, mandated by Act 77. Testimony in opposition was also received from Aloha Petroleum, Ltd., Tesoro Hawaii Corporation, Western States Petroleum Association, Chamber of Commerce of Hawaii, Hawaii Island Portuguese Chamber of Commerce, and Hawaii Transportation Association.

Five jobbers and nineteen retail gas dealers submitted testimony in opposition, expressing concern for their businesses and livelihoods. A number of individuals, including employees of the petroleum industry, submitted testimony in opposition to this measure.

Testimony in support of this measure was received from the Hawaii Government Employees Association, Advocates for Consumer Rights, and three individuals.

The Public Utilities Commission expressed concern with this measure, although it supports section 10 of this measure, which requires a report from the Public Utilities Commission recommending the number of new staff positions, the costs of the new positions, and other anticipated costs required for the implementation and operation of Chapter 486H, Hawaii Revised Statutes, twenty days before the convening of the Regular Session of 2005.

Your Committee finds that a more readily available and appropriate baseline for gasoline prices, rather than the national weighted average spot price for selected unleaded gasoline, would be the national unweighted average spot price of all regular unleaded gasoline as reported by the Oil Price Information Service. Further, by removing the baseline from the West Coast average spot price to a national weighted average spot price, the amounts stated in this measure for the location adjustment factor, the neighbor island location adjustment factor, the mid-grade adjustment factor, and the premium adjustment factor may require further adjustment.

Your Committee further finds that, since the Auditor is to undertake a study to determine the most appropriate baseline for determining the maximum pre-tax wholesale gasoline price and the most appropriate location, market margin, neighbor island location

and marketing margin, mid-grade, and premium adjustment factors, the imposition of the gasoline price limits on July 1, 2004, may not be advisable.

Your Committee is informed that the requirement that at least eighty-five per cent of all gasoline sold in the State by January 1, 2006, contain ten per cent ethanol by volume, is set forth in another measure under consideration in this House.

Finally, your Committee believes that the legislative task force to be established pursuant to section 8 of this measure to investigate the petroleum industry and its operations and impacts on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii should be composed of legislators from those islands.

Accordingly, your Committee has amended this measure by:

- (1) Changing the baseline gasoline price to the national unweighted average spot price of all regular unleaded gasoline as reported by the Oil Price Information Service;
- (2) Deleting the effective date for the imposition of the gasoline price limits;
- (3) Deleting the specific amounts for the location adjustment factor, the neighbor island location adjustment factor, the mid-grade adjustment factor, and the premium adjustment factor;
- (4) Deleting the language requiring that, by January 1, 2006, not less than eighty-five per cent of all gasoline sold in the State contain ten per cent ethanol by volume;
- (5) Requiring all members of the task force established pursuant to section 8 of this measure be from districts on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii;
- (6) Changing the effective date to facilitate further discussion of this measure; and
- (7) Making other technical nonsubstantive changes for clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3193, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 3193, S.D. 2, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.  
(Representatives Finnegan and Stonebraker voted no.)

#### **SCRep. 979-04 Water, Land Use and Hawaiian Affairs on S.B. No. 2869**

The purpose of this bill is to encourage proper maintenance of all properties within the Kalaeloa Community Development District (District) and protect public health and safety in the area. Specifically, this bill clarifies that the Hawaii Community Development Authority (HCDA) may act as an ombudsman for issues of concern within the District and provides the HCDA with the power and duty to:

- (1) Receive, process, and follow-up on complaints within the District;
- (2) Investigate these complaints;
- (3) Consult with a landowner or subject of a complaint to determine the best means to remedy the situation;
- (4) Present its opinion and recommendation to the Governor, Legislature, or public; and
- (5) Issue quarterly reports detailing HDCA's activities to the landowners within the District.

HCDA testified in support of this bill.

Your Committee finds that for various reasons, many parcels of property conveyed from the Navy to agencies of the federal government, the State, and City and County have fallen into disrepair and continue to deteriorate. Over the past two years, complaints to HCDA have mounted with regard to overgrown weeds, rubbish near roadways, and unkempt appearance within the District.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2869, S.D. 2, and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Morita.

#### **SCRep. 980-04 Water, Land Use and Hawaiian Affairs on S.B. No. 3062**

The purpose of this bill is to clarify that schools and transportation infrastructure are types of public facilities for which impact fees are to be expended.

The Department of Education and two members of the Maui County Council testified in support of this bill. The City and County of Honolulu Department of Planning and Permitting and Department of Transportation supported the intent of this measure and . The Land Use Research Foundation of Hawaii provided comments.

Your Committee has amended this bill by:

- (1) Inserting provisions that clarify county authority to assess impact fees for state highway improvements;

- (2) Establishing the Highway Development Special Fund to receive county impact fees and to be expended for state highway improvements;
- (3) Clarifying that collection and expenditure of fees should be used for the benefit of the development for which the fees were assessed;
- (4) Changing the effective date to be effective upon approval, and making the portion of the bill that authorizes counties to assess impact fees for state highway projects retroactive to October 1, 2002; and
- (5) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3062, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3062, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Morita.

**SCRep. 981-04 Labor and Public Employment on S.B. No. 921**

The purpose of this bill is to establish a procedure for employers to obtain temporary restraining orders to protect against violence and harassment at the worksite.

The Hawaii Medical Service Association, Retail Merchants of Hawaii Security Management Committee, Domestic Violence Clearinghouse and Legal Hotline (DVCLH), and an individual testified in support of this measure. The Society for Human Resource Management (SHRM) supported the intent of this bill. ILWU Local 142 opposed this measure.

Last session, a similar measure, H.B. No. 385, H.D. 2, passed Third Reading in the House and is currently in conference committee. Discussions on this draft stalled last year primarily because of concerns on how the bill would:

- (1) Be applied to other employees; and
- (2) Apply to other laws and protections, namely section 378-2, Hawaii Revised Statutes (HRS) (the employment discrimination statute), which prohibits discrimination in employment on the basis of an employee's arrest and court record.

Based on these concerns, and for purposes of collecting information on various technical issues, your Committee circulated a proposed H.D. 1 that was similar to S.B. No. 921, S.D. 2, except that it did not allow the employer to obtain a temporary restraining order against an employer's employee.

The Department of Human Resources Development, Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited, supported the proposed H.D. 1. The Department of Labor and Industrial Relations, SHRM, Chamber of Commerce, and the Hawaii Hotel and Lodging Association supported the intent of this proposed draft.

During the public hearing, the Civil Rights Commission commented that potential conflicts with the employment discrimination statute would appear to be mitigated based on the its interpretation that "arrest and court record" applies to criminal, rather than civil adjudications.

Your Committee also learned that SHRM and DVCLH, the organizations that have been primarily involved with this issue over the past two years, had arrived at a tentative agreement on the measure.

While your Committee is unsure whether any movement has been made toward rectifying the Senate's concerns on H.B. No. 385, H.D. 2, your Committee believes that significant progress has been made by the parties on this issue.

Accordingly, your Committee has amended this bill by:

- (1) Defining "invitee" as any natural person invited or authorized by the employer to be on the premises of the employer's workplace;
- (2) Allowing an employer to petition for a temporary restraining order on behalf of an invitee who has been subjected to harassment at the worksite;
- (3) Clarifying that the provisions of this bill not be construed to:
  - (A) Create, expand, diminish, alter, or modify the duty, if any, of an employer to provide a safe workplace for employees;
  - (B) Limit any other rights or remedies available to an employer or employee under existing law, including but not limited to the seeking of injunctive relief through methods other than the procedures set forth in this bill; and
  - (C) Affect or in any way limit the workers' compensation exclusivity provision under chapter 386, HRS;
- (4) Clarifying that no civil liability shall attach or be imposed on an employer for:
  - (A) Initiating a proceeding under this bill; or
  - (B) Conducting an investigation of any alleged act or threat of violence or harassment in the workplace for purposes of determining the feasibility of or initiating a proceeding under this bill;

- (5) Establishing a good faith defense for an employer or an employer's agent for actions taken under this bill, and clarifying that no liability shall attach to the employer or employer's agent for not utilizing the procedures under this bill; and
- (6) Clarifying that no civil liability shall attach or be imposed on the employee or witness for:
  - (A) Participating in an employer's investigation for purposes of initiating a proceeding under this bill; and
  - (B) Presenting statements or evidence in a judicial proceeding.

Finally, technical, nonsubstantive amendments were made for clarity, style, and consistency. A purpose section was inserted to clarify that the provisions of this bill fit within the scope of its title.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 921, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 921, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Ito and Pendleton.

**SCRep. 982-04      Agriculture/Economic Development and Business Concerns on S.B. No. 2413**

The purpose of this bill is to amend eligibility requirements of the Enterprise Zone Program (EZIP) to allow more agricultural businesses to participate in the EZIP, by:

- (1) Allowing an agricultural business to maintain its EZIP eligibility during the period of a force majeure event;
- (2) Providing a revenue growth criteria option for an agricultural business that failed to meet the employment growth requirement of the EZIP; and
- (3) Extending the seven years of tax credits by an additional seven years.

The Hawaii Farm Bureau Federation, Hawaii Agriculture Research Center, Land Use Research Foundation of Hawaii, Pineapple Growers Association of Hawaii, Hawaii Cattlemen's Council, and Maui County Farm Bureau testified in support of this bill. The Department of Agriculture supported this measure with amendments. The Department of Business, Economic Development, and Tourism supported the intent of this measure with amendments. The Department of Taxation supported the intent of this measure but opposed it due to budgetary concerns.

Your Committees recognize that while agricultural businesses are confronted by challenges similar to those faced by other small businesses, agricultural businesses labor under circumstances beyond their control that make it more difficult to build a successful business, including the unpredictable activity of weather conditions and national and international markets. These circumstances make EZIP eligibility more difficult to achieve. Your Committees believe this bill will provide the incentives needed for the growth and viability of agricultural businesses in the State.

Your Committees have amended this bill by:

- (1) Extending the seven-year eligibility period by the number of months of the duration of a force majeure event, rather than seven years, to allow agricultural businesses to recover after such an event;
- (2) Clarifying the revenue growth criteria option for an agricultural business that failed to meet the employment growth requirement of the EZIP;
- (3) Clarifying the description of a force majeure event; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Agriculture and Economic Development and Business Concerns that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2413, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2413, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Schatz and Leong.

**SCRep. 983-04      Economic Development and Business Concerns on S.B. No. 3024**

The purpose of this measure is to assist the high technology industry by establishing a State Private Investment Fund and enhancing several high technology industry tax credits.

Your Committee finds that the fledgling high technology industry's financing needs have outgrown the capabilities of the local market. Even the economic benefits provided under Act 221, Session Laws of Hawaii 2001, cannot provide the necessary capital to take established high tech companies to the next level in the industry. Thus, in order to support continued industry growth and to allow the industry to stay rooted in Hawaii, this bill establishes the state Private Investment Fund. The Fund provides the financing tools necessary to meet the continued needs and objectives of the high technology industry.

The bill also clarifies and enhances other tax incentives developed to assist the high technology industry, including the high technology business investment tax credit, the technology infrastructure renovation tax credit, and the tax credit for research activities.

Your Committee has amended the bill by removing the contents of S.B. No. 3024, S.D.2, and replacing it with H.B. No. 2396, H.D. 2, with several important modifications in the following parts of the bill:

Private Investment Fund

- (1) Establishing a separate and autonomous Fund with its own Board of Directors to administer the private investment financing program that is attached to the Hawaii Strategic Development Corporation;
- (2) Requiring the disclosure of non-confidential information from persons receiving tax credits; and
- (3) Removing the appropriation for the Fund.

Section 235-110.51 Technology Infrastructure Renovation Tax Credit

- (1) Deleting the definition for "technology-enabled infrastructure" for purposes of furthering discussion.

Section 235-110.9 High Technology Business Investment Tax Credit

- (1) Adding a definition of "investment tax credit allocation ratio" for purposes of clarity; and
- (2) Reassuring taxpayers with Department of Taxation "comfort" rulings that they can depend on such rulings despite changes to the law.

Section 235-110.91 Tax Credit for Research Activities

- (1) Adding definitions of "corporate" and "qualified high technology business" for purposes of clarity and consistency;
- (2) Generally, changing the reporting requirements, but not requiring any non-confidential information from qualified high technology businesses; and
- (3) Requiring the disclosure of the identities of corporate investors and qualifying corporations under the proposed Hawaii business-research institutes tax credit, applicable to the entire bill and Act 221, Session Laws of Hawaii 2001;

Other changes to the bill:

- (1) Adding a tax credit for Hawaii business-research institutes;
- (2) Requiring Act 221 to be "neutrally" construed;
- (3) Clarifying the intent of the Legislature in interpreting Act 221 and tightening eligibility requirements;
- (4) Changing all dollar amounts, percentages, ratios, and dates to "blanks";
- (5) Adding eight full-time auditor positions for the Department of Taxation to establish a "Corporate Investigation Team"; and
- (6) Adding a limitation of liability provision to protect the State with respect to tax credits.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3024, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3024, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Sonson, Tamayo and Ontai.

**SCRep. 984-04 Water, Land Use and Hawaiian Affairs on S.B. No. 3148**

The purpose of this bill is to authorize the establishment of a Host Culture Charter School District (District) as a five-year pilot demonstration project in which the District shall:

- (1) Have local educational agency status to qualify for equitable federal funding;
- (2) Work collaboratively with the Board of Education, the Superintendent of Education, and the Charter School Executive Director; and
- (3) Be monitored by a Host Culture District Council;

The Hawaii Charter Schools Network, the Office of Hawaiian Affairs, Halau Ku Mana Public Charter School, and numerous individuals testified in support of this measure. The Hawaii Government Employees Association offered comments, and the Department of Education opposed this bill.

Your Committee has amended this bill by changing the effective date to July 1, 2010, for the purpose of continuing discussion.

As affirmed by the record of votes of the members of your Committee on Water, Land Use, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3148, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 3148, S.D. 2, H.D. 2.

Signed by all members of the Committee except Representative Morita.

**SCRep. 985-04 Water, Land Use and Hawaiian Affairs/Economic Development and Business Concerns on S.B. No. 2922**

The purpose of this bill is to allow the Department of Hawaiian Home Lands (DHHL) to enter into business relationships.

DHHL testified in support of this bill. An individual commented on this measure.

Although your Committees find that this measure has the potential to benefit DHHL, native Hawaiians, and the State, concerns were raised that the broad scope of this measure would not allow for proper oversight and accountability.

Accordingly, your Committees have amended this bill by deleting its substance and replacing it with language that:

- (1) Authorizes DHHL to investigate the feasibility of entering into business relationships;
- (2) Requires DHHL to establish mechanisms for accepting community input regarding its contemplated business relationships and legislative oversight;
- (3) Requires DHHL to submit a report to the Legislature no later than 20 days prior to the convening of the Regular Session of 2005 detailing its findings and recommendations and any proposed legislation it deems necessary to carry out the establishment of business relationships and legislative oversight; and
- (4) Prohibits DHHL from entering into any agreement or commitments without legislative approval.

As amended, your Committees have removed the language statutorily codifying the provisions of this bill and placed the substance of this measure into Session Laws.

As affirmed by the records of votes of the members of your Committees on Water, Land Use, and Hawaiian Affairs and Economic Development and Business Concerns that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2922, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2922, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representative Chang.  
(Representative Ontai and Evans voted no.)

#### **SCRep. 986-04      Judiciary on S.B. No. 473**

The purpose of this bill is to require public informational meetings as part of the county zoning permit process for group living facilities (halfway houses) for convicted sexual offenders or people convicted of other violent offenses.

The Department of Public Safety and the Waianae Neighborhood Board testified in support of this bill.

Your Committee has amended this bill by making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 473, S.D. 1, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 473, S.D. 1, H.D. 2.

Signed by all members of the Committee except Representative Kanoho.

#### **SCRep. 987-04      Judiciary on S.B. No. 2842**

The purpose of this bill is to provide greater protection to children by:

- (1) Defining child pornographers as sex offenders; and
- (2) Requiring sex offenders to register with the chief of police of the county where the sex offender resides or is present.

This bill also:

- (1) Redrafts the penalty provisions of the sex offender registration law (chapter 846E, Hawaii Revised Statutes) to conform to the drafting conventions of the Model Penal Code; and
- (2) Makes nonsubstantive "housekeeping" amendments to the chapter.

The Department of the Attorney General, County of Hawaii Police Department, City and County of Honolulu Department of the Prosecuting Attorney, and Sex Abuse Treatment Center testified in support of this measure. The Office of the Public Defender opposed this bill.

Your Committee has amended this bill by:

- (1) Clarifying that a sex offender means any person convicted of child pornography that involves:
  - (a) Sexual conduct;
  - (b) Attempted sexual conduct; or
  - (c) A proposal to engage in sexual conduct;
 and
- (2) Making technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2842, S.D. 1, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 2842, S.D. 1, H.D. 2.

Signed by all members of the Committee except Representatives Herkes, Ito, Kanoho, Souki and Pendleton.

**SCRep. 988-04      Agriculture on S.B. No. 2816**

The purpose of this bill is to ensure continuity of policy and experience on the Board of Directors of the Agribusiness Development Corporation (Board) by providing for staggered terms for its members. Furthermore, the Governor will be authorized to appoint members of the Board for reduced terms until all their terms are staggered.

The Agribusiness Development Corporation and Hawaii Agriculture Research Center supported this bill.

As affirmed by the record of votes of the members of your Committee on Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2816, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Chang and Schatz.

**SCRep. 989-04      Agriculture on S.B. No. 2818**

The purpose of this bill is to:

- (1) Clarify the rulemaking powers of the Department of Agriculture (DOA) over:
  - (A) Coffee weighing; and
  - (B) Regulation of the advertisement of fresh fruit and vegetables and coffee; and
- (2) Allow the use of the Certification Services Revolving Fund to hire temporary employees to assist in certifying meat and chicken eggs.

DOA supported this bill with amendments.

Your Committee has amended this bill by:

- (1) Preserving the rules adopted by DOA pursuant to Section 148-2, Hawaii Revised Statutes; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2818, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2818, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang and Schatz.

**SCRep. 990-04      Energy and Environmental Protection on S.B. No. 2470**

The purpose of this bill is to update the energy performance contracting statute by:

- (1) Clarifying the financing options for energy performance contracts to more accurately reflect current state financing practices;
- (2) Increasing the contract term limits from 15 to 20 years;
- (3) Including water saving and other utility conservation enhancing retrofits in the definition of "energy conservation retrofits"; and
- (4) Limiting the amount payable under the contract to the verified energy cost savings amount.

The Hawaii Renewable Energy Alliance, Powerlight, and Life of the Land supported this bill. The County of Kauai supported this measure with amendments. The Department of Business, Economic Development, and Tourism supported this bill's intent. The Department of Budget and Finance and Hawaiian Electric Company opposed this bill. The Department of Commerce and Consumer Affairs, Public Utilities Commission, and County of Maui commented.

A proposed draft which gutted this measure's contents and replaced it with a comprehensive energy omnibus package was circulated prior to the public hearing on this bill. Based on public comments, your Committee has amended the proposed draft by, among other things:

- (1) Allowing the PUC to adopt tariffs to assist in its regulation of wheeling;
- (2) Authorizing the Director of Budget and Finance to issue special purpose revenue bonds, instead of general revenue bonds, to assist renewable energy cooperative associations; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2470, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2470, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee.

**SCRep. 991-04      Energy and Environmental Protection on S.B. No. 2949**

The purpose of this bill is to make the Voluntary Response Program (VRP) stronger, easier to use and administer, and to increase its availability by, among other things:

- (1) Clarifying that the exemption from future liability to the State under the VRP applies to VRP actions in accord with the state Environmental Response Law (ERL), and includes non-carcinogenic substances;
- (2) Allowing the Director of Health to reduce fees for public and nonprofit agencies;
- (3) Permitting the Director of Health (Director) to make exceptions for naturally occurring substances; and
- (4) Permitting the use of exempt positions to support other voluntary activities under the ERL.

The Department of Health (DOH) and a concerned individual testified in support of this bill. The Hawaii Community Development Authority supported the intent of this measure. The Sierra Club-Hawaii Chapter, testified in opposition to this bill.

Your Committee finds that the VRP was established to encourage owners and prospective purchasers of contaminated property to work voluntarily and cooperatively with DOH to ensure that investigation and clean-up of contaminated property occurred prior to the selling or purchasing of the property. This bill will make the VRP more accessible and feasible to organizations that may have otherwise found "clean-up" of a property cost prohibitive.

Although this measure warrants further discussion, your Committee still has some concerns over certain provisions contained within the bill. Accordingly, your Committee has amended this bill by clarifying that:

- (1) The Director is responsible for determining the standards to be used when considering granting an exemption from future liability for naturally occurring substances;
- (2) The party requesting the exemption shall be responsible for demonstrating to the Director that assistance from the VRP will achieve the risk level required by the Director; and
- (3) Best scientific data shall be used in determining the levels of a hazardous substance that are naturally occurring.

Other technical, nonsubstantive amendments were made for clarity, consistency, and style.

Your Committee notes that the issue of liability is beyond the purview of the Committee on Energy and Environmental Protection and respectfully requests the Committee on Judiciary to further examine these issues. Your Committee also respectfully requests that, should this measure be passed on to a conference committee, that the Chair of the Committee on Judiciary be assigned as a co-chair of the conference committee.

As affirmed by the record of votes of the members of your Committee on Energy and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2949, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2949, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee.

#### **SCRep. 992-04 Labor and Public Employment on S.B. No. 2033**

The purpose of this bill is to require contractors on public works construction contracts to comply with the Department of Labor and Industrial Relations' specifications for staffing requirements.

For the purpose of receiving testimony and facilitating public discussion, your Committee heard both a proposed House draft and the original version of this measure. As amended, the proposed draft clarified the statutory requirement that the payment of prevailing wages must apply to all laborers, mechanics, and their required assistants, helpers, tenders, and apprentices on a public works project, and not only to those who work at the job site.

The Hawaii Operating Engineers Industry Stabilization Fund submitted testimony in support of the proposed measure. The Department of Labor and Industrial Relations (DLIR), Department of Accounting and General Services (DAGS), and the Plumbing & Mechanical Contractors Association of Hawaii opposed the proposed measure.

The Hawaii Operating Engineers Industry Stabilization Fund submitted testimony in support of the measure as received by your Committee. DLIR and DAGS opposed it.

Your Committee notes that federal case law relating to the transportation of materials and supplies to or from the building or worksite by the employees of the construction contractor or construction subcontractor may preclude the state from applying the prevailing wage to work on a public works project other than those on the job site (See, Building & Construction Trades Dept., AFL-CIO v. U.S. Department of Labor and Midway Excavators, Inc., 932 F.2d 985 (D.C. Cir. 1991)). To ensure that state law will not conflict with this federal case law, your Committee amended the proposed draft by confining the prevailing wage requirement to work performed on the job site.

Your Committee has amended the bill, as received by your Committee, as follows:

- (1) Inserting language to clarify the statutory requirement that the payment of wages and overtime compensation under the terms of a contract must apply to all laborers, mechanics, and their required assistants, helpers, tenders, and apprentices on a public works project;
- (2) Changing the effective date to February 31, 3004, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor and Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2033, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2033, S.D. 1, H.D. 1, and be referred to the Committee on Finance.



Signed by all members of the Committee except Representatives Ito and Pendleton.  
(Representatives Blundell and Moses voted no.)

**SCRep. 993-04 Agriculture/Energy and Environmental Protection on S.B. No. 2477**

The purpose of this bill is to help protect Hawaii's natural environment by authorizing the Department of Agriculture (DOA) to restrict entry into the State of any items originating from Guam that have not been certified as having been inspected by the Animal and Plant Health Inspection Service-Wildlife Services of the U.S. Department of Agriculture or other approved agency prior to departure from Guam.

DOA, the Nature Conservancy of Hawaii, Sierra Club Hawaii Chapter, and Hawaii Audubon Society supported this bill. Matson Navigation Company and Horizon Lines, LLC, supported the intent of this measure.

Your Committees note the severe threat that the brown tree snake (BTS) poses not only to Hawaii's environment and native species but also to the public health and safety of its residents. All reasonable and appropriate precautions must be taken to ensure that BTS does not become established in the State.

In addition, your Committees recognize that concerns were raised relating to this bill's possible violation of the Commerce Clause, article I, section 8, clause 3, of the United States Constitution. However, the health and safety of Hawaii's residents and the protection of its environment outweigh the burden on interstate commerce implicated by this bill.

Your Committees have amended this bill by:

- (1) Expanding the purpose section to emphasize the potential dangers of BTS on Hawaii's environment, public health, and safety, which are concerns that override the possible burden on interstate commerce caused by this bill;
- (2) Clarifying that the specific purpose of the inspection is to prevent entry of BTS; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Agriculture and Energy and Environmental Protection that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2477, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2477, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Chang, Evans, Karamatsu, Schatz, Tamayo and Waters.

**SCRep. 994-04 Consumer Protection and Commerce on S.B. No. 2579**

The purposes of this bill are to provide appropriate and cost-effective insurance coverage for mental health and drug and alcohol treatment by:

- (1) Establishing a mental health parity supplemental coverage tax credit for employers who provide their employees with mental health benefits;
- (2) Requiring insurance policies to include supplemental mental illness and alcohol and drug dependence benefits upon written authorization by an employer;
- (3) Providing parity of coverage and rates for mental illness and alcohol and drug dependence benefits, including crystal methamphetamine dependency, with coverage and rates for physical health conditions; and
- (4) Requiring the Insurance Commissioner to report to the Legislature by January 15, 2005, on the effects of this measure.

Testimony in support was received from Kaiser Permanente (supporting S.D. 2 in preference to H.D. 1), Hawaii Medical Association (S.D. 2), Hawaii Psychiatric Association (H.D. 1), Hawaii Government Employees Association (S.D. 2), Blueprint for Change (H.D. 1), Hawaii Psychological Association (S.D. 2), National Association of Social Workers (H.D. 1), Equal Insurance Coalition (H.D. 1), NAMI Hawaii (H.D. 1), NAMI O'AHU (H.D. 1), Hawaii Disability Rights Center (H.D. 1), and four individuals (H.D. 1).

The Department of Health supported the intent of the bill. The Chamber of Commerce of Hawaii testified in opposition (H.D. 1), pending receipt of Auditor's report.

The Hawaii Medical Service Association expressed concerns (H.D. 1). The state Insurance Commissioner took no position but provided comments and concerns.

Perhaps due to the substantial changes that were made by the H.D. 1 to the S.D. 2 of this bill, and the brief time between publication of the H.D. 1 and this Committee's public hearing, some testimony was received in support of the S.D. 2. When only written testimony was provided it was not possible to be certain whether the testimony was a request that the Committee revert to the earlier draft, or simply a reflection of a lack of familiarity with the H.D. 1.

It is perhaps fair to characterize much of the testimony as supporting the S.D. 2 as an incremental improvement over previous drafts, and the H.D. 1 as a separate and more comprehensive effort. However, in some cases such as Kaiser Permanente's testimony, it was clear that the testimony expressed a preference for the S.D. 2.

Your Committee finds that requiring mental health parity represents sound public policy and that insurers should view the treatment of mental illness and alcohol or drug dependence in the same manner as they view the treatment of a physical health condition.

National trends in mental health care are towards expansion of mental health and substance abuse treatment benefits to ensure parity with physical illnesses. Only a very small percentage of the population uses mental health and substance abuse treatment services. It is estimated that only four percent of the population use mental health services, compared to 65 percent who use physical health care services.

Your Committee notes that a major frustration faced by the interested parties and members of the Legislature is a delay in publication of the Auditor's report, which was undertaken pursuant to S.C.R. No. 116. The report was to be submitted 20 days prior to the convening of this session.

While it appears probable that the report will be published within the next two weeks, allowing it to be considered in the event that this bill becomes the subject of a conference committee, this is not what the Legislature requested. The belated response has diminished the value of the report, especially to the members of the general public who were not able to use it in formulating their individual or organizational position on this important measure.

Your Committee has amended this bill by changing the effective date to July 1, 2009. This will assure that there is further opportunity for deliberation, with due regard to the prior concurrence of this Committee.

Technical nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2579, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 2579, S.D. 2, H.D. 2.

Signed by all members of the Committee except Representatives Ito, Kanoho and M. Oshiro.

**SCRep. 995-04      Education/Legislative Management on S.B. No. 2056**

The purpose of this bill is to designate the State Auditor as an authorized representative of the Department of Education (DOE) and Department of Health (DOH) for the purpose of accessing student and other records.

The State Auditor supported this bill. DOE, the Department of the Attorney General, DOH, and the Hawaii State Teachers Association opposed this bill.

Your Committees have amended this bill by:

- (1) Clarifying the scope of the State Auditor's authority to access student and other records; and
- (2) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the records of votes of the members of your Committees on Education and Legislative Management that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2056, S.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2056, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Signed by all members of the Committee except Representatives Hale, Tamayo and Ontai.  
(Representative Halford and Blundell voted no.)

**SCRep. 996-04      Education on S.B. No. 3002**

The purpose of this bill is to help prepare students for high technology-based jobs by appropriating funds for the continuation and expansion of the Environmental and Spatial Technology Project initiative in public schools statewide.

The Hawaii State Teachers Association testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3002, H.D. 1, and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 997-04      Education on S.B. No. 3230**

The purpose of this bill is to establish a pilot project to provide community-based, collaborative, and comprehensive early childhood care direct services for children under age five and their families, based on the Hui Imua O Koolauloa model.

The Good Beginnings Alliance, Hui Imua O Koolauloa (Hui Imua), and several concerned individuals testified in support of this bill. The Department of Human Services and Hawaii Family Support Institute supported the intent of this measure.

Your Committee finds that Hui Imua is a community-based collaborative service model that breaks down the divisions between agencies and disciplines. The Hui Imua model has proved successful at reaching and retaining underserved, high-risk families.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3230, S.D. 2, H.D. 1, and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 998-04      Education on S.B. No. 995**

The purpose of this bill, as received by your Committee, is to require the Department of Education (DOE) to create a consolidated school textbook list.

For the purpose of receiving public testimony, your Committee circulated a proposed H.D. 1 version of this bill. As amended, this bill repeals the school-to-work program in Hawaii's public schools.

DOE supported the intent of the proposed H.D. 1.

Your Committee finds that federal moneys for Hawaii's school-to-work program have been fully expended. Funded through a five-year grant, the school-to-work program was successful in creating several initiatives that will continue through the efforts of other entities. The formal school-to-work structure is therefore no longer needed.

Your Committee has further amended this bill by making technical, nonsubstantive changes for purposes of style and clarity.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 995, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 995, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Schatz, Tamayo and Ontai.

**SCRep. 999-04 Education on S.B. No. 2425**

The purpose of this bill is to improve funding to New Century Charter Schools (Charter Schools) by:

- (1) Allowing the Legislature to:
  - (a) Adjust the Department of Education's (DOE) consolidated annual financial report for general appropriations for Charter Schools; and
  - (b) Consider employee benefits and facility costs in the appropriation to Charter Schools;
 and
- (2) Adjusting the scheduled computation and distribution of the per pupil allocation to Charter Schools from 40 percent by August 1, to 50 percent by July 20, and the remaining allocation from 20 percent to 10 percent by January 1.

The Charter School Administrative Office, Good Beginnings Alliance, Hawaii Association of Independent Schools, Ho'okako'o Corporation, and several concerned individuals testified in support of this bill. The Hawaii Charter Schools Network, Waimea Middle School, Kualapu'u Elementary School, Kanu o ka 'Aina New Century Public Charter School, and Halau Ku Mana New Century Public Charter School supported this measure with amendments. DOE provided comments.

Your Committee has amended this bill by:

- (1) Removing the provisions that allow the Legislature to adjust DOE's consolidated annual financial report for Charter School appropriations and to consider benefits and facility costs in Charter School appropriations;
- (2) Changing the due date of the 50 percent per pupil allocation to July 15;
- (3) Adjusting the date Charter Schools must submit a revised student enrollment to the Charter Schools Administrative Office to receive the remaining 10 percent per pupil allocation from December 1 to October 15;
- (4) Changing the effective date to July 1, 2010; and
- (5) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2425, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2425, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita and Tamayo.

**SCRep. 1000-04 Education on S.B. No. 2428**

The purpose of this bill, as received by your Committee, is to establish the Hawaii Administrator Standards Board to develop licensing standards for educational administrators.

For the purpose of receiving public testimony, your Committee circulated a proposed H.D. 1 version of this bill. The purpose of this proposed H.D. 1 is to enable substitute teachers to be paid according to their qualifications by requiring them to be compensated according to a classification and compensation system established by the Board of Education (BOE).

The Department of Education, Hawaii State Teachers Association, and an individual supported the proposed H.D. 1. Two individuals opposed the proposed H.D. 1.

Your Committee notes that currently, all substitute teachers are paid at the same rate, regardless of differences in experience or level of education. This bill will enable BOE to ensure that substitute teachers are paid according to a system that takes these criteria into account.

Your Committee has amended the proposed H.D. 1 by making technical, nonsubstantive changes for purposes of style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2428, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2428, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 1001-04 Education on S.B. No. 2063**

The purpose of this bill is to help public schools to provide needed books and instructional materials by:

- (1) Clarifying that students and their parents or guardians may be held accountable for negligently losing, breaking, damaging, or destroying books and other materials;
- (2) Enabling the Department of Education (DOE) to charge restitution fees to replace the books and other materials; and
- (3) Establishing a special account to receive the restitution fees.

DOE supported this bill. The Hawaii State Teachers Association supported the intent of this bill.

Your Committee has amended this bill by:

- (1) Enabling public schools to charge a general textbook and instructional materials fee of up to \$20 to all students, except for students who are eligible to receive free or reduced lunch; and
- (2) Making technical, nonsubstantive changes for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2063, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2063, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita and Tamayo.

**SCRep. 1002-04 Education on S.B. No. 2065**

The purpose of this bill is to require public schools to finalize teacher hiring before the end of the preceding fiscal year.

A concerned individual supported this measure with amendments. The Department of Education supported the intent of this bill with amendments. The Hawaii State Teachers Association opposed this bill. A concerned citizen submitted comments.

Your Committee finds that this measure will provide stability for students by ensuring that teachers are in place and prepared to teach prior to the beginning of the school year.

Your Committee has amended this bill by amending the effective date to July 1, 2050, to facilitate further discussion.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2065, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2065, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita and Tamayo.

**SCRep. 1003-04 Education on S.B. No. 2478**

The purpose of this bill is to allow the Department of Education (DOE) to assess and collect impact fees by intergovernmental agreement with a county, as fair share contributions of developers for the construction of state educational facilities, with the funds collected used toward capital improvements for public schools.

DOE testified in support of this bill, suggesting amendments. The Department of Planning and Permitting for the City and County of Honolulu supported the intent of this measure and suggested an amendment. The Land Use Research Foundation of Hawaii and two members of the Hawaii County Council opposed this bill. A concerned individual offered comments.

Your Committee has amended this bill by:

- (1) Inserting an effective date of July 1, 2050, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2478, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2478, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Morita, Tamayo and Ontai.

**SCRep. 1004-04 Education/Labor and Public Employment/Higher Education on S.B. No. 3238**

The purpose of this bill is to improve student academic performance in our public schools by:

- (1) Implementing education reform and decentralization measures; and

- (2) Appropriating funds for various education programs.

The Board of Education (BOE), Department of Education (DOE), and Hawaii Business Roundtable generally supported this bill. The University of Hawaii, Hawaii Teacher Standards Board, and Hawaii State Parent, Teacher, Student Association supported portions of this bill. The Department of Health, Department of Human Resources Development, Hawaii State Teachers Association, and Hawaii Government Employees Association supported the intent of this bill. The Office of the Governor, Department of the Attorney General, Department of Budget and Finance, and an individual opposed this bill. The Department of Accounting and General Services (DAGS) and the State Procurement office submitted comments.

Your Committees find that this bill implements critical changes to Hawaii's education system that will allow for more local control and greater efficiency. This bill establishes a weighted student formula under which funds are allocated to schools based on the specific needs of each student, with moneys following students to whichever schools they attend. Other important reforms empower principals, enhance school community governance and participation, and ensure that a greater percentage of operating funds are controlled and expended at the school level.

Your Committees have amended this bill by deleting its contents and inserting the substantive provisions of H.B. No. 2002, H.D. 2. This bill:

- (1) Requires DOE to apply a weighted student formula in allocating operating moneys to schools;
- (2) Transitions the current School/Community-Based Management (SCBM) system to a mandatory School Community Council (SCC) system;
- (3) Appropriates funds for:
  - (A) Expanding the SCBM system and preparing for the implementation of SCCs;
  - (B) Providing training for principals;
  - (C) Reducing average class size in grades K-2;
  - (D) Operating and expanding Parent-Community Networking Centers;
  - (E) Creating and operating the Teacher National Board Certification Incentive Program; and
  - (F) Providing textbooks and other learning materials;
- (4) Requires DOE to convene an interagency working group to address systemic impediments to the efficient management and operation of schools; and
- (5) Establishes the Committee on Weights within DOE to determine student weights.

Your Committees have further amended this bill by:

- (1) Specifying that 75 percent of general funds appropriated to DOE, excluding debt service, shall be allocated to individual schools to be expended by principals for school operations;
- (2) Requiring more detailed plans and reports regarding functions to be transferred to DOE from other state agencies;
- (3) Clarifying the duties of the Committee on Weights;
- (4) Specifying that reimbursements provided to teachers who achieve National Board Certification shall cover the amount of the certification application fee and other expenses necessarily incurred to achieve certification;
- (5) Enacting conforming amendments relating to the transfer of school repair and maintenance responsibilities from DAGS to DOE;
- (6) Including academic achievement, safety and well-being, and civic responsibility as goals under DOE's accountability system;
- (7) Requiring each principal within each school complex to collaborate to ensure logical, sequential curricula and best practices are adopted within the complex;
- (8) Clarifying procedures for the transition from the SCBM system to the SCC system;
- (9) Clarifying that teachers shall be represented on each SCC;
- (10) Improving administrative efficiency by enabling BOE to issue general waivers of policies, rules, or procedures applying to all or multiple schools; and
- (11) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the records of votes of the members of your Committees on Education and Labor and Public Employment and Higher Education that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3238, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3238, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Hale, Kahikina, Morita, Blundell, Ontai and Pendleton.

The purpose of this bill is to propose an amendment to the State Constitution to require potential members of the Board of Regents (BOR) of the University of Hawaii (UH) to be identified and recruited for appointment by the Governor and confirmation by the Senate, by a Candidate Advisory Council (CAC), as provided by law.

The Association of Governing Boards of Universities and Colleges, UH Student Caucus, League of Women Voters of Hawaii, Associated Students of UH-Manoa, and an individual supported this bill.

Your Committees have amended this bill by inserting the substantive provisions of S.B. No. 2716, which establishes the CAC in statute, and provides for the appointment and general duties of its members. Your Committee has further amended this bill by:

- (1) Enabling current BOR members to remain in office upon ratification of the constitutional amendment until being replaced;
- (2) Reducing the number of BOR members from 12 to 11;
- (3) Requiring BOR members to represent geographic areas of the State;
- (4) Requiring BOR members to serve staggered terms, with no more than three members appointed per year;
- (5) Clarifying that the CAC shall screen and propose BOR members for appointment; and
- (6) Making technical, nonsubstantive changes for style and clarity.

As affirmed by the records of votes of the members of your Committees on Higher Education and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3125, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3125, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Arakaki, Chang, Hale, Herkes, Kahikina, Lee, Sonson, Ching and Pendleton.

#### **SCRep. 1006-04      Judiciary on S.B. No. 1238**

The purpose of this bill is to:

- (1) Enable individuals to make known in advance their preferences regarding mental health care and treatment so that those preferences can guide their future care and treatment when they are incapacitated;
- (2) Provide for the appointment of an agent and alternate agents to make mental health care and treatment decisions for a principal when the principal is incapacitated or prefers to have an agent make such decisions on the principal's behalf;
- (3) Set forth standards of liability and penalties for health care providers who fail to comply with the advance mental health care directive or statutory requirements; and
- (4) Repeal chapter 327F, Hawaii Revised Statutes (HRS), relating to medical treatment decisions for psychotic disorders.

The Hawaii Disability Rights Center, Hawaii Psychological Association, Mental Health Association in Hawaii, Department of Health, State Mental Health Planning and Advisory Council, and two concerned individuals testified in support of this bill. Christian Science Committee on Publication for Hawaii supported the intent of this measure.

Your Committee supports the intent of this bill allowing individuals to plan for mental health treatment in the event of incapacitation. While existing statutes permit advance health care directives that may include mental health treatment, the situation of a mentally ill individual who may have periods of capacity and incapacity requires statutes that are tailored to specific needs for mental health treatment.

Your Committee has amended this bill by:

- (1) Clarifying that this bill's provisions specifically apply to advance mental health care directives for mental health care and treatment, and not the advance health care directives for health care and treatment in existing law;
- (2) Adding a section that would make guardianship provisions in this measure consistent with a guardianship bill that is moving through the Legislature this session, H.B. No. 2297, H.D. 1, in the event that the guardianship bill is enacted. Specifically, H.B. No. 2297, H.D. 1 would give priority to a guardian appointed pursuant to chapter 560, HRS, over an agent in a health care or mental health care directive;
- (3) Amending the effective date to July 1, 2010, to facilitate further discussion; and
- (4) Making technical, nonsubstantive changes for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1238, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 1238, S.D. 2, H.D. 2.

Signed by all members of the Committee except Representatives Herkes, Kanoho and Pendleton.

#### **SCRep. 1007-04      Judiciary on S.B. No. 2994**

The purpose of this bill is to, among other things, clarify the use tax law in light of the Hawaii Supreme Court decision of *In the matter of Baker & Taylor, Inc. v. Director of Taxation (Baker & Taylor)*. Specifically, this bill:

- (1) Clarifies that a seller of goods imported into Hawaii for purposes of resale is subject to the 0.5 per cent use tax even if title to the goods passes to the buyer outside of Hawaii; and
- (2) Requires a seller who is not subject to the use tax on the importation of property into the state to collect the use tax from the purchaser.

The Department of Taxation (DoTax) testified in support of this bill. The Tax Foundation of Hawaii provided comments. A concerned individual opposed this measure.

Your Committee finds that the decision of the Hawaii Supreme Court in *Baker & Taylor* requires an amendment to the existing use tax statutes to remove any ambiguity that may exist between the language and the consistent interpretation of the use tax by DoTax. In *Baker & Taylor*, the court held, in part, that the out-of-state seller was subject to payment of general excise taxes for library materials imported into the state, but was not subject to the half percent use tax because the seller was not importing the goods from an unlicensed seller or for resale in Hawaii. Your Committee questioned whether the changes proposed by DoTax were adequate to cover the issues raised by the court. In response, DoTax submitted further revisions to this bill to ensure that any importer of goods into Hawaii for purposes of sale or resale is subject to the use tax, unless specifically exempted under the law.

Your Committee further finds that DoTax has consistently enforced its use tax laws against sellers, such as *Baker & Taylor*, regardless of whether the importation of goods was for sale or resale in Hawaii and whether title passed outside of Hawaii. Hence, even though the statutory revisions are necessary to address the Hawaii Supreme Court ruling, they are not substantive changes to DoTax's interpretation of the use tax. Therefore, retroactive application of this measure to taxable years after December 31, 1998, is appropriate to ensure that no taxpayer can avoid the use tax as interpreted by DoTax prior to the Hawaii Supreme Court's ruling.

Your Committee has amended this bill to include the following changes requested by DoTax:

- (1) Amending the definitions of "import" (in any form) and "purchaser" to clarify that a purchase of tangible property from an unlicensed seller regardless of where title passes is subject to the 0.5 percent use tax;
- (2) Amending the definition of "use" to include control over property by a seller who is or should be licensed for general excise tax payment and who directs the import of the property into Hawaii, regardless of where title to the property passes;
- (3) Clarifying that the use tax applies to tangible personal property imported by a taxpayer in the state, whether owned or however acquired from an out-of-state seller for use in the state;
- (4) Clarifying that the use tax applies to property imported into the state for purposes of sale or resale; and
- (5) Making technical, nonsubstantive changes for style, consistency, and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2994, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2994, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, Kanoho and Pendleton.

#### SCRep. 1008-04 Judiciary on S.B. No. 2840

The purpose of this bill is to deter distribution of untaxed cigarettes via telephone, mail order, or the Internet by:

- (1) Creating a new offense of unlawful shipment of cigarettes;
- (2) Refining definitions of "ship", "dealer", "distribute", and "sale" to eliminate loopholes in existing law; and
- (3) Clarifying the seizure and confiscation powers of the Department of the Attorney General.

Delivery services that are not complicit in evading taxes are not subject to the penalties provided by this measure.

The Department of Health, American Heart Association, American Lung Association of Hawaii, Coalition for a Tobacco Free Hawaii, and Phillip Morris USA, Inc., testified in support of this measure. The Attorney General testified in support and suggested a technical change.

Your Committee believes this approach will compel out-of-state Internet, mail order, and telephone vendors to comply with Hawaii's tobacco tax laws, and will reduce availability of low-priced cigarettes to underage smokers.

Your Committee also believes that capping the amount of a supersedeas bond that a court may require a Tobacco Master Settlement Agreement (MSA) signatory, successor, or affiliate to post pending appeal is worthy of continued discussion. In its Standing Committee Report No. 562-04 on H.B. No. 2715 H.D. 1, the Committee on Finance stated that the Attorney General recommended raising the bond limit to \$150,000,000 if the Legislature is inclined to pass this measure.

Accordingly, your Committee has amended this measure by:

- (1) Designating the existing provisions of this bill, "Part I;"
- (2) Replacing a reference to "title 14 of the United States Code" in proposed new section 245- (g) with the correct reference: title 14, Hawaii Revised Statutes;
- (3) Inserting as Part II, the provisions of H.B. No 2715, H.D. 1, relating to tobacco settlement;
- (4) Increasing the amount of the supersedeas bond cap from \$100,000,000 to \$150,000,000; and
- (5) Making technical, nonsubstantive revisions for clarity and style.



As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2840, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2840, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, Kanoho and Pendleton.  
(Representative Thielen voted no.)

**SCRep. 1009-04 Economic Development and Business Concerns on S.B. No. 643**

The purpose of this bill is to acknowledge that the State has a trust obligation to ensure the preservation, sustainable use, and equitable sharing of benefits of Hawaii's biological resources by:

- (1) Prohibiting the exclusive possession or conveyance of the rights, interest, and title to the biological resources from public lands, except for farming and research operations whose products are neither indigenous nor endemic to the State;
- (2) Clarifying that the intent of the bill is not to inhibit, restrict, or prohibit any research or to prevent the State from entering into certain joint research or commercial development agreements;
- (3) Establishing a temporary Bioprospecting Advisory Commission (Commission) within the Department of Business, Economic Development, and Tourism (DBEDT) to develop a comprehensive plan for the preservation and use of these biological resources; and
- (4) Appropriating funds for the Commission to fulfill its mandate.

The Hawaii State Commission on the Status of Women, Ahahui Siwila Hawaii o Kapolei, Women's Coalition, Life of the Land, Oahu Council of the Association of Hawaiian Civic Clubs, Hawaii Chapter of the Sierra Club, Ilioulaokalani Coalition, Waikiki Hawaiian Civic Club, Ewa-Puuloa Hawaiian Civic Club, First Unitarian Church, Queen Emma Hawaiian Civic Club, King Kamehameha Hawaiian Civic Club, and several concerned individuals submitted testimony in support of this measure.

The Native Hawaiian Legal Corporation, Office of Hawaiian Affairs, and Hawaii Audubon Society supported this measure with amendments. The Department of Agriculture, Hawaii Agriculture Research Center, and DBEDT supported the intent of this measure with amendments. The University of Hawaii (UH) supported the intent of this measure with concerns. The Maui County Farm Bureau and Hawaii Farm Bureau Federation opposed this measure.

Your Committee recognizes that the key issue at-hand is the claim that the State and native Hawaiians have to the biological resources of the State. Your Committee also recognizes the importance of stating this claim without causing unintended consequences, such as to the agricultural research and development community.

Your Committee recognizes that although an agreement on this measure has been reached between the native Hawaiian community and UH, an agreement has not yet been reached with the agricultural community. Due to its importance, your Committee encourages further discussion on this issue as it moves through the legislative process so that a resolution may be reached.

Your Committee notes that UH's claim in the Diversa contract that it has the rights to "provide ... material to Diversa without the violation of any applicable statute, regulation, agency rule, administrative or judicial order, or contract" is in potential conflict with the public trust clause in Article 12, section 4 of the State Constitution.

Your Committee has amended this bill by:

- (1) Removing the definitions of "biological diversity" and "biotechnology";
- (2) Removing language prohibiting the exclusive possession or conveyance of the rights, interest, and title to the biological resources identified upon or collected from public lands;
- (3) Limiting the scope of the bill to bioprospecting, and not biotechnology; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development and Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 643, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 643, S.D. 2, H.D. 2.

Signed by all members of the Committee except Representatives Karamatsu, B. Oshiro, Sonson, Tamayo and Leong.

**SCRep. 1010-04 Judiciary on S.B. No. 3104**

The purpose of this bill is to provide a comprehensive public funding program from candidates seeking election to the State House of Representatives. Among other things, this bill would provide public funding for candidates under the following conditions:

- (1) Candidates must collect \$3 qualifying contributions from one and one half percent of the number of voters in the district in which office is sought who were registered for the previous regular general election;
- (2) The base amount of public funding is computed on 150 percent of the voluntary expenditure limits set forth in existing statute for State House of Representatives candidates;
- (3) Publicly funded candidates may receive equalizing funds up to double the amount of base public funding;
- (4) Publicly funded candidates must agree to abide by the spending and contributions restrictions; and
- (5) The comprehensive public funding program is triggered when there are sufficient funds in the Hawaii Election Campaign Fund to support public funding for two candidates from each district.



This bill also amends numerous statutes in order to distinguish between the existing partial public funding program and the new comprehensive public funding program for State House of Representatives candidates.

Hawaii Clean Elections Coalition, Green Party of Hawaii, The League of Women Voters, the First Unitarian Church, Advocates for Consumer Rights, Hawaii Coalition for Good Government, Kokua Council, Parents and Children Together, Sestak Rehabilitation Services, Hawaii State Commission on the Status of Women, Life of the Land, a Council member from the Hawaii County Council, and numerous concerned individuals testified in support of this bill. Campaign Spending Commission (Commission) testified in opposition and offered comments. The Office of Elections offered comments.

Your Committee finds that it is necessary to restore voter confidence in our political system, which has been damaged by the revelations that numerous individuals and businesses violated the campaign contribution laws. In recent years, it has become costly for candidates to deliver their message to potential voters. As the cost of running for public office increases, so does the need to raise funds to meet these expenses.

Public funding is an effective countermeasure to the escalating costs of campaigning, as well as the perception that candidates are forced to rely on private funding sources that may expect a return on their investment in a candidate. Widespread use of public funding programs will permit more candidates to run for office, provide the voters with choices on election day, and eliminate the perception that a candidate is influenced by the special interest groups that contributed to the candidate.

Initially, your Committee expressed concerns regarding the ability of the Commission to determine on a timely basis whether a candidate is entitled to receive equalizing funds to be a financially viable candidate. We reviewed the Maine clean elections laws to better understand how the equalizing funding provisions work in that state. Our research indicates that the non publicly funded candidate (nonparticipating candidate) is required to submit special reports when opposing a publicly funded candidate and that the trigger for equalizing funds is based on either expenditures made or campaign contributions amassed by the nonparticipating candidate. Nonparticipating candidates, noncandidate committees, and political parties are required to file reports within 48 hours when they spend in excess of a specified amount. Maine also permits an advance of equalizing funds if it appears likely that equalizing funds would be needed by the publicly funded candidate to remain financially competitive, subject to restrictions on when the funds may be expended. We have incorporated these provisions in this bill as a means of addressing these concerns.

Your Committee is also concerned about the State's ability to fund a viable public funding program. The proponents of the measure have consulted with Campaign Spending Commission and reached agreement that the program would be operational if \$3.5 million exists in the Hawaii election campaign fund. However, your Committee has revised the bill to cap the amount spent in this program at \$3.5 million. We are also inserting a provision similar to the Maine law that allows the campaign spending commission to permit the publicly funded candidate to use private funds up to the amount the candidate would have received in public funds in the event that the public funds are depleted. Your Committee has carefully reviewed the language in this bill to balance between a fiscally responsible program and one which will encourage individuals to become candidates through public funding.

Your Committee has retained the defective effective date to continue the discussion on this bill.

Your Committee removed sections 1 and 2 of the bill, inserted sections 1 and 2 of H.B. No. 2070, H.D. 1, and further amended this bill by making substantial structural, substantive, and technical changes, including:

- (1) Adding definitions for the terms "certified candidate," "participating candidate," "nonparticipating candidate," and "contested election;"
- (2) Deleting all references to petty cash, and permitting the commission to regulate that expenditure in its rules;
- (3) Clarifying the definition of "qualifying period;"
- (4) Revising the definition of "independent expenditure" to create a presumption that any communication disseminated within 30 days of a primary election and 60 days of a general election is an independent expenditure for reporting purposes;
- (5) Amending the sufficiency of funding provision by specifying that if the Hawaii election campaign fund has \$3.5 million, the comprehensive public funding program becomes operable and capped the amount to be distributed under the program to \$3.5 million;
- (6) Amending the time period to file the declaration of intent to seek comprehensive public funding to the period beginning January 1 and ending 30 days before the deadline to file nomination papers for the primary election;
- (7) Clarifying that surplus campaign funds may not be spent after a declaration of intent to seek comprehensive public funding is filed and until the end of the general election campaign period;
- (8) Adding the requirement that qualifying contributions should be returned to the contributors within 60 days if the candidate is not certified as a comprehensive publicly funded candidate;
- (9) Amending the deadline to file the application for comprehensive public funding to 30 business days before the primary election;
- (10) Amending the provisions on "first come, first served" to designate the methods that applications for certification for comprehensive public funding may be filed to select the three candidates per district that may be certified;
- (11) Specifying the time frames for which the commission must distribute public funds for the general election;
- (12) Specifying the funding priorities for the commission in the event that there are insufficient funds for all certified candidates to receive the base amount and equalizing funds and allowing the certified candidates to accept and spend private contributions up to the amount they would have received in public funding;
- (13) Deleting sections on the computation of equalizing funds and permitting the commission to establish the formula by rule;
- (14) Reducing the amount required to trigger eligibility for equalizing funds from 50 percent to 25 percent in excess of the base amount of public funding;

- (15) Adding the requirement to report contributions, as well as expenditures by the nonparticipating candidates to trigger eligibility for equalizing funds for the certified candidate;
- (16) Requiring nonparticipating candidates and their candidate's committees to file reports on expenditures within 48 hours when expenditures exceed \$1,000 in the aggregate and made similar requirements for reporting independent expenditures by noncandidate committees, parties, and other persons;
- (17) Permitting the commission to advance equalizing funds when reports indicate that the nonparticipating candidates campaign contributions or surplus campaign funds exceed the base amount of public funding by 100 percent;
- (18) Clarifying that qualifying contributors shall be registered voters in the district within which the candidate seeks nomination on the date the contribution is given;
- (19) Clarifying that the Commission shall establish the number of qualifying contributions required for certification based on the number of registered voters in the district in the previous regular general election;
- (20) Specifying that a participating candidate may not accept seed money from any contributor whose contribution is prohibited by law;
- (21) Clarifying that a candidate is subject to penalty for violations of the comprehensive public funding program when violations are made with intent to fraudulently receive public funding;
- (22) Specifying that a qualifying contributor must include the last four digits of the social security number to verify voter registration;
- (23) Requiring the candidate to submit a list of qualified contributors to the Office of Election for verification, and the Office of Elections to provide an affidavit of verification within three weeks;
- (23) Amending sections 11-224, 11-225, 11-228, and 11-229, Hawaii Revised Statutes, to conform the language to the distinction between the partial public funding program and the comprehensive public funding for State House of Representatives; and
- (24) Making numerous technical, nonsubstantive amendments for style, consistency, and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3104, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3104, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, Kanoho and Pendleton.

#### **SCRep. 1011-04      Judiciary on S.B. No. 2861**

The purpose of this bill is to implement the recommendations of the task force convened by the Judicial Council of Hawaii pursuant to Act 190, Session Laws of Hawaii, 2003 (Act 190).

The Department of the Attorney General, Department of the Prosecuting Attorney for the City and County of Honolulu, Honolulu Police Department, Office of the Public Defender, Hawaii Tourism Authority, Hawaii Reserves, Inc., and the Waikiki Improvement Association testified in support of this bill. The American Civil Liberties Union, Hawaii Chapter, opposed this measure. The Judiciary offered comments.

Your Committee finds that the task force convened pursuant to Act 190 has recommended that information charging for certain class B and class C felonies be authorized and has recommended that the certain charging procedures be implemented.

Upon further consideration, your Committee has amended this bill by making technical, nonsubstantive changes for style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2861, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2861, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Herkes, Ito, Kanoho, Souki and Pendleton.

#### **SCRep. 1012-04      Consumer Protection and Commerce on S.B. No. 2902**

The purpose of this bill is to harmonize the State of Hawaii's telemarketing law, Chapter 481P, Hawaii Revised Statutes, with the Do-Not-Call provisions of the Telemarketing Sales Rule (TSR) and the Telephone Consumer Protection Act (TCPA), administered by the Federal Trade Commission and the Federal Communications Commission.

Testimony in support of this administration bill was received from the Department of Commerce and Consumer Affairs, Verizon, and Legislative Information Services of Hawaii.

Your Committee finds that recent amendments to the federal TSR and the TCPA have given consumers a choice about whether they want to receive most telemarketing calls. By placing their numbers on a national Do-Not-Call registry, consumers will now be able to reduce the number of telemarketing calls they receive. TSR's and TCPA's enforcement provisions make it a violation of federal law for most telemarketers to call a number listed on the Do-Not-Call registry.

This bill proposes to give the State the ability to protect consumers who do not wish to receive telemarketing calls, by making it an unfair or deceptive trade practice, subject to prosecution by state consumer protection authorities, for a telemarketer to make a solicitation call to a number listed on the national Do-Not-Call Registry.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2902, S.D. 2, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 1013-04 Consumer Protection and Commerce on S.B. No. 3172**

The purpose of this bill is to remove duplicative or irrelevant bases for disciplinary action against pest control operators in chapter 460J, Hawaii Revised Statutes (HRS), the Pest Control Operators licensing law (chapter 460J).

The Department of Commerce and Consumer Affairs (DCCA) Regulated Industries Complaints Office, State Pest Control Board, and Hawaii Pest Control Association testified in support of this bill.

Your Committee understands that licensees are concerned that they may be subject to discipline twice for a single act, and that the Department of Agriculture and DCCA are working to alleviate this concern by coordinating their activities and focusing on the most egregious pesticide law violations.

Your Committee agrees with the intent of this bill to:

- (1) Limit disciplinary action under chapter 460J to violations of laws or rules with a rational relationship to a pest control operator's qualifications, functions, duties, or responsibilities;
- (2) Remove the failure to complete construction repairs as a basis for disciplinary action, while continuing to require licensees to honor contracts for the agreed upon price; and
- (3) Remove, as redundant, conviction of offenses such as theft from the listed bases for disciplinary action, because conviction of a crime related to the licensee's profession is already included in chapter 436B, HRS, the Uniform Professional and Vocational Licensing Act, as a basis for license sanctions.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3172, S.D. 1, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Ito, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 1014-04 Tourism and Culture on S.B. No. 2394**

The purpose of this bill is to clarify the responsibilities of the Hawaii Tourism Authority (HTA) by:

- (1) Clarifying that HTA has a duty to create a vision and develop a long-range strategic plan for tourism in Hawaii;
- (2) Requiring HTA to update their tourism marketing plan every year; and
- (3) Specifying other niche markets, such as wellness, agriculture, and nature tourism, which are included with technology tourism in the group of new products whose development by the counties and the public and private sectors is to be coordinated by HTA.

The Department of Business, Economic Development, and Tourism and HTA testified in support of this bill.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2394, S.D. 1, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Herkes, B. Oshiro, Leong and Ontai.

**SCRep. 1015-04 Judiciary on S.B. No. 2278**

The purpose of this bill is to amend various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii pursuant to chapter 23G, Hawaii Revised Statutes, to correct errors, update references, clarify language, and delete obsolete or unnecessary provisions.

The Legislative Reference Bureau testified in support of this measure.

Your Committee finds that all of the statutory amendments proposed by this measure are of a purely technical nature and either contain no substantive changes to the law, or, if they have any substantive effect, are done simply to correct the types of errors noted in this report.

Your Committee finds the reasons for the respective technical amendments made in this bill are as follows:

**Section 1.** The last paragraph of section 39A-256, HRS, as enacted by L 2002, c 257, §1, refers to "article I, section IV, of the Constitution of the State of Hawaii." The sections in the state constitution, however, are numbered in Arabic numerals, not Roman numerals.

Section 39A-256, HRS, should be amended by deleting the brackets around "4" to ratify the Revisor's substitution of "4" for "IV" to make the reference to the section consistent with the current section numbering of the Hawaii constitution.

**Section 2.** Effective July 1, 2003, L 2001, c 88, repealed Chapter 87, HRS, the Hawaii "public employees health fund" law and replaced it with Chapter 87A, HRS, relating to the "Hawaii employer-union health benefits trust fund". Section 88-103.5(a), HRS, still contains references to the repealed "Hawaii public employees health fund" and also makes a specific reference to repealed section 87-27.

Section 88-103.5(a), HRS, should be amended to change the references of the repealed "Hawaii public employees health fund" to the "Hawaii employer-union health benefits trust fund" and to replace the repealed "section 87-27" reference with "section 87A-23".

**Section 3.** As enacted by L 2003, c 109, §2, section 88D-3(d), HRS, incoherently read "The employer shall reimburse employees under the age of fifty-five who elect a withdrawal their entire account balance from the special pay plan within sixty days from the date that the employee separated from service...."

Section 88D-3(d), HRS, should be amended by deleting the brackets around the word "of" to ratify the Revisor's insertion of this word to make the sentence coherent.

**Section 4.** L 2002, c 232, §3 amended section 89-11(c), HRS, to delete the "April 16" impasse date and replaced it with "February 1". Section 89-9(a), HRS, still refers to "the April 16 impasse date under section 89-11". Section 89-9(a), HRS, should be amended to refer to the "February 1" impasse date.

Effective July 1, 2003, L 2001, c 88 repealed Chapter 87, HRS, the Hawaii "public employees health fund" law and replaced it with Chapter 87A, HRS, relating to the "Hawaii employer-union health benefits trust fund". Section 89-9(a), (d), and (e), HRS, still contain references to the repealed "Hawaii public employees health fund". Section 89-9(a), (d), and (e), HRS, should be amended to change the references of the repealed "Hawaii public employees health fund" to the "Hawaii employer-union health benefits trust fund".

**Section 5.** As amended by L 2002, c 232, §3(1), section 89-11(d)(3)(B), HRS, states that the Hawaii labor relations board shall promptly report "The ratification or failure or ratification of a tentative agreement", which is incoherent. Section 89-11(d)(3)(B), HRS, should be amended by deleting the brackets around the word "of" after the word "failure" to ratify the Revisor's substitution of the word "of" for the word "or".

Additionally, effective July 1, 2003, L 2001, c 88 repealed Chapter 87, HRS, the Hawaii "public employees health fund" law and replaced it with Chapter 87A, HRS, the "Hawaii employer-union health benefits trust fund" law. Section 89-11(g), HRS, still contains references to the repealed "Hawaii public employees health fund". Section 89-11(g), HRS, should be amended to change the reference of the repealed "Hawaii public employees health fund" to the "Hawaii employer-union health benefits trust fund".

**Section 6.** L 2003, c 35, §4(1) amended section 195D-21(b), HRS, and in so doing, created two sets of paragraphs, numbered (1) through (3) and (1) through (8). Referencing or citing the paragraphs is ambiguous because, for example, a reference to "section 195D-21(b)(1)" could mean either of the two paragraphs that are numbered (1).

Section 195D-21(b), HRS, should be amended to eliminate the two sets of numbered paragraphs, by designating the first paragraph in subsection (b) as paragraph (1) and the existing paragraphs (1) through (3) as subparagraphs (A) through (C), and designating the second paragraph in subsection (b) as paragraph (2) and designating the existing paragraphs (1) through (8) as subparagraphs (A) through (H).

**Section 7.** L 2002, c 143, §2, amended section 201B-2, HRS, relating to the Hawaii tourism authority. Subsection (g) was amended to provide that "The authority may employ persons not subject to chapters 76[~~77~~] and 78 to perform and execute the functions of the authority." Subsection (f), however, was amended to provide that "The board shall appoint an executive director, exempt from chapters 76 and [77] 88, who shall oversee the authority staff...." Chapter 77, HRS, pertained to the repealed civil service compensation law and chapter 88, HRS, pertains to the pension and retirement systems.

Based on the amendment made to subsection (g), the Revisor mistakenly believed that the amendment made in subsection (f), changing chapter "77" to "88" was a typographical error, and that the reference instead should have been to chapter 78, relating to public service, (which would have made the reference consistent with the changes made to subsection (g)). Because of this, the 2003 statute revision bill (L 2003, c 3, §3) made the "correction" by changing chapter "88" to "78".

Subsequent to the passage of the 2003 statute revision bill, the Revisor was apprised of the error, as Conference Committee Report No. 113-02 (on L 2002, c 143), page 3, subparagraph (4) of the second paragraph, makes it clear that the legislature specifically intended to exempt the executive director from the employees' retirement system (chapter 88).

Thus, section 201B-2(f), HRS, should be amended to provide that "The board shall appoint an executive director, exempt from chapters 76 and [78; ~~88~~, ...."

**Section 8.** When section 302A-482, HRS, was enacted by L 2003, c 99, §1, the term "department of social services and housing" was used in subsection (a)(11). The "department of social services and housing" was changed to the "department of human services" by L 1987, c 339. Section 302A-482(a)(11), HRS, should be amended by deleting the brackets around "human services" to ratify the Revisor's substitution of this term for "social services and housing" to conform to the department's current name.

**Section 9.** In section 302A-805(a) and (b), HRS, the last sentence of each subsection provides that "This subsection shall be repealed on June 30, 2002." Section 302A-805, HRS, has not been subsequently amended to delete or extend this repeal. Thus, section 302A-805, HRS, should be amended by deleting subsections (a) and (b), which are now functus, and, as the section will no longer pertain to credentials, the section heading should be amended by deleting reference to "credential".

**Section 10.** L 1999, c 115, §4 amended section 662-15(8), HRS, by providing an exception from the State Tort Liability Act for "Any claim arising out of a year 2000 error produced ... by a government computer system." L 1999, c 115, §11 provides for the repeal of section 662-15(8), HRS, on December 31, 2003. Since neither L 1999, c 115 nor section 662-15, HRS, was amended to extend this repeal date, section 662-15(8), HRS, is repealed by operation of law on that date, and is now functus. Section 662-15, HRS, should be amended by formally repealing paragraph (8).

**Section 11.** L 2003, c 179, §1, 2 amended sections 36-27 and 36-30, HRS, by removing the exemption of certain special funds from paying the costs of central service operations of government and administrative expenses incurred by the departments responsible for the operations supported by these special funds. The Committee on Finance stated in House Standing Committee Report No. 1422 that the purpose of Act 179 was to ensure that special funds that benefit from central service operations of

government or administrative expenses incurred by the departments responsible for the operations supported by these special funds "pay their fair share of these costs by removing the exemption enjoyed by these special funds." Among the special funds removed from exemption under sections 36-27 and 36-30, HRS, was the "probation services special fund under section 706-649". However, section 706-649, HRS, establishing the probation services special fund, was not amended and still contains language exempting the fund from these expenses.

Section 706-649, HRS, should therefore be amended to remove the reference to the probation services special fund's exemption under sections 36-27 and 36-30, HRS, to make this section consistent with the amendments made to sections 36-27 and 36-30, HRS, by L 2003, c 179, §§1, 2.

**Section 12.** In section 846-2.7(b)(7), HRS, as enacted by L 2003, c 95, §7, the department of human services is authorized to conduct criminal history record checks on prospective adoptive parents, as established under "chapter 346". Section 346-19.7 requires the department to develop procedures to obtain criminal history information about prospective adoptive parents, which shall include criminal history record checks "in accordance with section 846-2.7." Subsection (b)(7) should be amended by deleting the brackets around the phrase "section 346-19.7" to ratify the Revisor's substitution of this phrase for the phrase "chapter 346".

In subsection (b)(8), as enacted, the department of human services is authorized to conduct criminal history record checks on "applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-19.7". Section 346-19.7, HRS, however, requires the department of human services to develop procedures to obtain criminal history information about prospective adoptive parents, not operators of child care facilities. Section 346-154, HRS, as amended by L 2003, c 95, §9(6), requires the department to conduct criminal history record checks of and obtain criminal history record information about child care facility operator applicants and their new and prospective employees "in accordance with section 846-2.7". Subsection (b)(8) should thus be amended by deleting the brackets around section number "346-154" to ratify the Revisor's substitution of this section number for section "346-19.7".

In subsection (b)(9), as enacted, the department of human services is authorized to conduct criminal history record checks "on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-154". As stated in the foregoing discussion of subsection (b)(8), section 346-154, HRS, requires the department to conduct criminal history record checks of and obtain criminal history record information about child care facility operator applicants and their new and prospective employees. Section 346-152.5, HRS, requires persons exempt pursuant to section 346-152, HRS, to agree to a criminal history record check and a child abuse record check by the department, to be eligible to provide child care and receive child care subsidies. Subsection (b)(9) should thus be amended by deleting the brackets around section number "346-152.5" to ratify the Revisor's substitution of this section number for section "346-154".

In subsection (c), the term "criminal record check" was used instead of the term "criminal history record check." Subsection (c) should be amended by deleting the brackets around the word "history" to ratify the Revisor's insertion of this word to make the term consistent with the rest of chapter 846, and the Hawaii Revised Statutes.

Additionally, the Revisor, pursuant to §23G-15, inserted the word "section" in subsection (b)(3) to correct an obvious omission.

**Section 13.** L 1999, c 137, §3 amended section 431:10C-103, HRS, by adding the definitions of "emergency medical condition", "emergency services", and "stabilize". The amendments were subject to repeal and reenactment by L 1999, c 137, §15 on July 1, 2003. Section 431:10C-103 was to be reenacted in the form it read on June 24, 1999.

L 2000, c 24, §4 subsequently amended section 431:10C-103, HRS, by adding the definitions "alternative care provider", "anesthetist", and "medical fee schedule", but did not exempt these amendments from the repeal and reenactment provisions of L 1999, c 137, §15.

L 2000, c 24, §15 should thus be amended to exempt the amendments that Act 24 made to section 431:10C-103, HRS, from the repeal and reenactment provision of L 1999, c 137, §15.

**Section 14.** L 1999, c 137, §3 amended section 431:10C-103, HRS, by adding the definitions of "emergency medical condition", "emergency services", and "stabilize". The amendments were subject to repeal and reenactment by L 1999, c 137, §15 on July 1, 2003. Section 431:10C-103 was to be reenacted in the form it read on June 24, 1999.

L 2000, c 66, §1 subsequently amended section 431:10C-103, HRS, by amending the definition of "uninsured motor vehicle", but did not exempt this amendment from the repeal and reenactment provisions of L 1999, c 137, §15.

L 2000, c 66, §3 should thus be amended to exempt the amendment made to section 431:10C-103, HRS, from the repeal and reenactment provision of L 1999, c 137, §15.

**Section 15.** Sections 707-730(1) and 707-732(1), HRS, were amended by L 2001, 2d Sp, c 1, subject to repeal and reenactment on June 30, 2003. Section 707-732(1) was subsequently amended by L 2002, c 36, §2. L 2002, c 36, §3 amended the repeal and reenactment provisions of L 2001, 2d Sp, c 1, to exempt Act 36's amendment of section 707-732(1) from the repeal and reenactment.

L 2003, c 62, §1 deleted the repeal and reenactment provision by amending L 2001, 2d Sp, c 1, instead of L 2002, c 36. L 2003, c 62, §1 should thus be amended to correct this oversight.

**Section 16.** L 2003, c 85, §9 amended section 150A-6.1, HRS, making the sale or importation of *Salvinia molesta* plants, etc., illegal within the State. Section 10 of Act 85 amended section 150A-9.5, HRS, making any interim rules governing the transportation of flora and fauna into and within the State effective for not more than one year, instead of 180 days. Act 85, §3 also established a temporary invasive species council. Finally, Act 85, §12 provided for the repeal of Act 85 on July 1, 2008.

Conference Committee Report No. 82 (on Act 85) states in relevant part:

"Your Committee has fully recognized and addressed each of the concerns presented by the Attorney General in a letter addressed to your Committee on Conference, dated April 21, 2003, by making the following amendments:

(1) Inserting July 1, 2008, as the sunset date for the Council".

The amendment in the conference draft, however, added the July 1, 2008 repeal date for the entire Act. L 2003, c 85, §12 should thus be amended by exempting sections 9 and 10 (which amend sections 150A-6.1 and 150A-9.5), from the repeal provisions of Act 85, §12.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2278, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Herkes, Kanoho, Sonson and Pendleton.

**SCRep. 1016-04      Judiciary on S.B. No. 2443**

The purpose of this bill is enact an attorneys'-lien statute modeled after the Oregon statute relied on in *Banaitis v. Commissioner of Internal Revenue*, 340 F.3d 1074 (9<sup>th</sup> Cir. 2003) ("*Banaitis*") to clarify an attorney's property interest in settlements and awards, and to ensure that those amounts are not subject to double taxation.

Four concerned individuals testified in support of this bill.

Your Committee finds that:

- (1) Under recent federal-court decisions, attorney's fees paid out of a settlement or judgment may be taxed twice (i.e., first to the client, then the attorney) depending on the relevant state law concerning attorneys' liens;
- (2) Hawaii has long recognized attorneys' liens on settlements and judgments. *Carroll v. Miyashiro*, 50 Haw 413, 441 P.2d 638 (1968);
- (3) In *Banaitis*, the court held that certain provisions in Oregon's attorneys'-lien statute prevented the double taxation of the subject attorneys' fees; and
- (4) This measure clarifies that attorneys' liens on settlements and judgments vest attorneys with clear property interests, and those amounts should not be taxed to the client.

Your Committee has amended this bill by deleting its substance and replacing it with language that effectuates the following changes:

- (1) Applies this measure to Chapter 507, Hawaii Revised Statutes (HRS), relating to liens, instead of Chapter 605, HRS, relating to attorneys;
- (2) Deletes the provision that specified the payees required on a check satisfying a judgment, settlement, or award;
- (3) Deletes the requirement that "(t)his Act shall be liberally construed";
- (4) Deletes the provision that limited the measure to attorneys' fees and compensation paid on or after the effective date of this Act;
- (5) Clarifies that the lien may be used for costs advanced by the attorney;
- (6) Provides that the attorney's lien survives as long as the subject judgment, decree, order, settlement, or award remains valid;
- (7) Specifies the time period within which the attorney's lien must be filed;
- (8) Specifies that a party may not discharge or dismiss a judgment or settlement until an attorney's lien is satisfied, except:
  - (a) By payment in full by a judgment debtor; or
  - (b) If more than one lawyer from the same firm appears of record for a party, then the satisfaction of the lien by one of those lawyers is conclusive evidence that the lien is fully satisfied;
- (9) Adds a reference in section 605-8, HRS, to the new section in chapter 507, HRS, with respect to the collection of attorney's fees or commissions taxed or allowed by courts; and
- (10) Makes technical, nonsubstantive changes for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2443, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2443, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Herkes, Ito, M. Oshiro, Sonson and Finnegan.

**SCRep. 1017-04      Judiciary on S.B. No. 3185**

The purpose of this bill is to prevent abuse of the process for requesting government records by authorizing the Office of Information Practices (OIP) to declare that a person is a vexatious requester.

OIP and the Department of Business, Economic Development and Tourism testified in support of this bill. The Society of Professional Journalists, Hawaii Chapter, commented on this measure and offered suggestions.

Your Committee finds that this measure will alleviate pressure on government agency personnel to respond to unnecessarily burdensome requests that are made for purposes other than those for which the Uniform Information Practices Act was enacted. This measure will allow government agencies to make timely responses to legitimate requests for government records.

Your Committee has amended this measure by:

- (1) Adding a provision to allow a person determined to be a vexatious requester and whose request has been restricted by OIP, to ask for Ombudsman review of the restriction to ensure that it is narrowly tailored to the abusive pattern of conduct, and to authorize the Ombudsman to affirm, modify, or overturn any such restriction;
- (2) Providing that any designation of a person as a vexatious requester is limited to two years from the date of the determination;
- (3) Incorporating a reference to the authority provided to OIP by this bill, in the list of OIP's powers and duties under section 92F-42, Hawaii Revised Statutes;
- (4) Inserting an effective date of July 1, 2040, to facilitate further discussion; and
- (5) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3185, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3185, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Chang, Herkes, Ito, M. Oshiro, Sonson and Finnegan.

**SCRep. 1018-04 Consumer Protection and Commerce on S.B. No. 2009**

The purpose of this bill is to clarify that the requirement of owner approval to change the use of or to lease a condominium's common elements does not apply to the installation of telecommunications equipment.

Testimony in support of this measure was received from T-Mobile USA, Inc., Community Association Institute, Hawaii Chapter, and Nextel Partners, Inc.

In general, the condominium property regimes law requires that the owners of 75 percent of a condominium's common interests must approve a condominium's board's decision to:

- (1) Change the use of a condominium's common elements; or
- (2) Lease common elements not actually used by any owner for an originally intended specific purpose, if the lease has a term of over five years.

Your Committee finds that Act 137, Session Laws of Hawaii 2002 (Act 137), provided an exception to this requirement and authorized a condominium association's board to approve the installation of television signal distribution and telecommunications equipment upon a condominium's common elements without seeking approval of apartment owners.

Your Committee further finds that despite the enactment of Act 137, some condominium association boards are being advised that owner approval is still required if a telecommunications installation agreement has or potentially could have a term greater than five years.

This proposed measure clarifies that licenses, leases, and other agreements, authorized by Act 137 are not subject to the owner approval requirement.

Your Committee has made technical, nonsubstantive amendments for style and clarity.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2009, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2009, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Sonson, Finnegan, Marumoto, Stonebraker and Thielen.

**SCRep. 1019-04 Tourism and Culture on H.R. No. 38**

The purpose of this resolution is to request the Legislative Reference Bureau to study the feasibility of establishing a state coin program, including:

- (1) Coin designs and compositions that may commemorate historic landmarks, popular tourist landmarks, or noteworthy past and present State citizens;
- (2) Design and production in Hawaii;
- (3) Coin packaging;
- (4) Coin distribution policies and practices, including:
  - (a) Fundraising for state programs, schools, environmental protection, or historic preservation of state assets; and
  - (b) Retailing or wholesaling of coins, including pricing and bank participation as resellers;

and
- (5) The benefits of such a program.

The Honolulu Mint supported this measure. The Legislative Reference Bureau offered comments.



As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee concurs with the intent and purpose of H.R. No. 38 and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Abinsay, Herkes, B. Oshiro, Wakai, Leong and Ontai.

**SCRep. 1020-04 Tourism and Culture on H.C.R. No. 59**

The purpose of this concurrent resolution is to request the Legislative Reference Bureau to study the feasibility of establishing a state coin program, including:

- (1) Coin designs and compositions that may commemorate historic landmarks, popular tourist landmarks, or noteworthy past and present State citizens;
- (2) Design and production in Hawaii;
- (3) Coin packaging;
- (4) Coin distribution policies and practices, including:
  - (a) Fundraising for state programs, schools, environmental protection, or historic preservation of state assets; and
  - (b) Retailing or wholesaling of coins, including pricing and bank participation as resellers;

and
- (5) The benefits of such a program.

The Honolulu Mint supported this measure. The Legislative Reference Bureau offered comments.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 59 and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Abinsay, Herkes, B. Oshiro, Wakai, Leong and Ontai.

**SCRep. 1021-04 Consumer Protection and Commerce on H.C.R. No. 5**

The purpose of this concurrent resolution is to request that the State Auditor assess the social and financial effects of requiring that health insurers offer coverage for obesity reduction programs for children and adolescents.

Kapiolani Medical Center supported this measure. The Department of Commerce and Consumer Affairs offered comments but took no position. The Hawaii Medical Service Association noted that it generally opposes mandated insurance benefits but supported the request for a State Auditor's study.

Your Committee finds that research indicates that there is more than a 50 percent probability that an obese child will continue to be obese as an adult. It has been medically established that obesity of adults substantially increases risks of developing health problems such as high blood pressure, heart disease, type II diabetes, and breast, colon, and prostate cancers.

Your Committee is aware that section 23-51, Hawaii Revised Statutes, mandates a sunrise study by the State Auditor before any legislation mandating health insurance coverage for specific health services, specific diseases, or for certain providers of health care services as part of individual or group benefits, may be considered. The study is to assess both the social and financial effects of the proposed mandated coverage.

This measure requests that the State Auditor perform the required study. Your Committee finds that an impact assessment of mandating insurance coverage for obesity reduction programs will provide legislators with objective findings and recommendations for decisionmaking.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 5 and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 1022-04 Consumer Protection and Commerce on H.C.R. No. 16**

The purpose of this concurrent resolution is to request that the State Auditor assess the social and financial effects of requiring health insurers to offer coverage for cognitive rehabilitation.

The Hawaii Medical Service Association, Hawaii Disability Rights Center, and a Federal Traumatic Brain Injury Survivor testified in support of this measure. The Department of Commerce and Consumer Affairs offered comments, but took no position on the measure's merits.

Your Committee finds that recent evidence indicates great strides have been made in the neuropsychological treatment and cognitive therapy of traumatic brain injury victims. Survivors of traumatic brain injury have been urging health care insurers to include such injuries within their insurance coverage.



Your Committee is aware that by statute, section 23-51, Hawaii Revised Statutes, provides that a sunrise study by the State Auditor be performed before any legislation that mandates health insurance coverage for specific health services, specific diseases, or for certain providers of health care services as part of individual or group health insurance policies, may be considered.

This measure requests that the Auditor perform the required assessment of the social and financial effects of requiring health care insurers to offer coverage for traumatic brain injuries. Your Committee finds that an impact assessment will provide the legislature with findings and recommendations for its decisionmaking.

As affirmed by the record of votes of the members of your Committee on Consumer Protection and Commerce that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 16 and recommends that it be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Chang, Kanoho, B. Oshiro, M. Oshiro and Sonson.

**SCRep. 1023-04      Transportation on H.C.R. No. 11**

The purpose of this concurrent resolution is to authorize the Department of Land and Natural Resources (DLNR) to designate public lands located at Kaholaloa, Sand Island, Oahu, as an industrial park.

DLNR testified in support of this measure.

Your Committee finds that approximately 45 acres of public lands located in one of the primary industrial areas on Oahu remain underutilized. This site, located near Honolulu Harbor, Honolulu International Airport, and major freeways, has excellent industrial development and tremendous revenue generating potential. Although DLNR has determined that this parcel of land is suitable for the development of an industrial park, approval is required from the Legislature for this type of designation.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 11 and recommends that it be referred to the Committee on Water, Land Use, and Hawaiian Affairs.

Signed by all members of the Committee except Representatives Moses and Pendleton.

**SCRep. 1024-04      Transportation on H.C.R. No. 56**

The purpose of this concurrent resolution is to request the Legislative Reference Bureau (LRB), in cooperation with the Department of Economics of the College of Social Sciences of the University of Hawaii (UH), to study the price-setting mechanisms and strategies of interisland air carriers.

The Department of Business, Economic Development, and Tourism (DBEDT) and LRB commented on this measure.

Concerns have been raised regarding the high cost of interisland travel, especially among Neighbor Island residents who often have to commute for employment purposes. Although suggestions have been made that the duopoly enjoyed by the two major commercial interisland airlines promotes excessive profit taking, the facts remain unclear. Your Committee finds that the only way to alleviate these concerns is to conduct a study of the airfare price-setting mechanisms of interisland air carriers.

Your Committee understands the concerns raised by LRB regarding its lack of expertise in conducting such a study. Accordingly, your Committee has amended this measure by:

- (1) Requesting that DBEDT rather than LRB conduct the study, in cooperation with the UH Department of Economics of the College of Social Sciences; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 56, as amended herein, and recommends that it be referred to the Committee on Consumer Protection and Commerce in the form attached hereto as H.C.R. No. 56, H.D. 1.

Signed by all members of the Committee except Representatives Moses and Pendleton.

**SCRep. 1025-04      Tourism and Culture on H.R. No. 29**

The purpose of this resolution is to encourage the United States Postal Service to host the final ceremony marking the release of the "Souvenir Sheet" of all twelve Chinese Lunar New Year commemorative postage stamps in Hawaii in January 2005.

A concerned individual supported this measure.

Your Committee finds that the series of Chinese lunar stamps designed by graphic artist Clarence Lee was such a success for the U.S. Postal Service that a "Souvenir Sheet" of all twelve lunar stamps will be issued at the start of the Lunar Year 2005. The initial unveiling of the "Souvenir Sheet" occurred at the East-West Center on December 29, 2003.

Your Committee further finds that the final ceremony for releasing the "Souvenir Sheet" of Chinese Lunar New Year Commemorative Postage Stamps was originally scheduled to take place in Honolulu, Hawaii, but was subsequently changed to San Francisco, California. It seems only proper that this significant event should take place in Mr. Lee's birthplace and hometown, Honolulu, Hawaii. Your Committee, therefore, encourages the U.S. Postal Service to host the final ceremony in the State of Hawaii in January 2005.

As affirmed by the record of votes of the members of your Committee on Tourism and Culture that is attached to this report, your Committee concurs with the intent and purpose of H.R. No. 29 and recommends its adoption.

Signed by all members of the Committee except Representatives Abinsay, Herkes, B. Oshiro, Wakai, Leong and Ontai.