GOVERNOR'S MESSAGES RECEIVED AFTER THE ADJOURNMENT OF THE 2009 SPECIAL SESSION SINE DINE

Gov. Msg. No. 534, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 300 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 300, entitled "A Bill for an Act Relating to Intoxicating Liquor" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to require restaurants, retailers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, and condominium hotels to maintain liquor liability coverage in an amount of $1,000,000. In addition, this bill prohibits the county liquor commissions from issuing, renewing, or transferring a liquor license unless the applicant can show proof of the mandated insurance coverage.

I understand the intent of this legislation and support efforts to encourage responsible business practices. When tragedy occurs, those who have taken proactive measures to protect themselves should not be burdened disproportionately because others were less responsible.

This bill raises concerns because it has the potential to put some small establishments out of business. There is reason to believe that smaller liquor establishments are either unaware of the requirements of this legislation or unable to afford the mandated coverage. Many of the businesses in this situation are owned and operated by immigrants who are non-native English speakers.

In addition, I am concerned about the immediacy of the bill's July 1, 2009 effective date. This effective date provides no grace period for businesses to learn about the bill, contact an insurance company, negotiate a quote, secure a policy, and generate the necessary funds that would be needed to comply. My office has been working with the Executive Directors of the Liquor Commissions of the four counties to allow for a reasonable period of time for liquor establishments to comply before instituting punitive actions against these businesses.

Finally, it should be noted that insurance mandates do not address the root of the problem. Until people take personal responsibility for their actions and change their behavior, we will continue to see deaths on our roads as a result of drinking and driving. Unfortunately, no amount of money can bring back a loved one lost because of another person's irresponsible behavior. We must all work hard to address this issue in our communities and among our family and friends if we want to affect real change.

For the foregoing reasons, I allowed Senate Bill No. 300 to become law as Act 177, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 535, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 199 SD1 HD1 CD2

On July 15, 2009, Senate Bill No. 199, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this law is to amend the High Technology Business Investment Tax Credit by limiting claims to 80 percent of tax liability, allowing only one to one credit allocation ratios, and eliminating carryovers for investments made between May 1, 2009 and December 31, 2010. This law also suspends the Capital Goods Excise Tax Credit for investments, renovation costs, or the purchase of eligible depreciable tangible properties from December 1, 2008 through December 31, 2009.

This bill retains Hawaii's high technology investment tax credits as one of the most generous credits available from state governments. Investors will still be allowed to claim up to one hundred percent of the amounts invested against their tax liability and will be able to offset up to eighty percent of the actual income taxes owed each year.

However, it should be recognized that this bill changes the terms of the High Technology Investment Tax Credits eighteen months prior to the expiration of these credits. I am concerned that this sends a signal to potential investors and the business community that they cannot depend upon the continuation of a government policy that encouraged them to behave in a certain manner, presuming the same investment rules would stay in place through 2010.

Also, the suspension of the Capital Goods Excise Tax Credit is troubling because this credit assists Hawaii's businesses with capital good investments. This is the time when companies should be encouraged to make such investments as one of our economic recovery tools. Certainly encouraging the purchase of capital goods was recognized by President Obama's Administration when they included bonus depreciation provisions in the American Recovery and Reinvestment Act.

On balance, I believe the fiscal implications of this legislation outweigh the concerns I have noted above. For the foregoing reasons, I allowed Senate Bill No. 199 to become law as Act 178, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 536, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1316 HD2 SD1 CD1

On July 15, 2009, House Bill No. 1316, entitled "A Bill for an Act Relating to Torts" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to provide a limitation on the liability for design professionals engaged in work on highway projects where a design professional is determined to be a joint tortfeasor along with one or more other joint tortfeasors, the degree of negligence is ten percent or less, and the contract value was $1,000,000 or less.

This bill raises concerns because it gives a negligent design professional more protection from liability than the law affords the developer, the State of Hawaii, the counties, or the construction entities, who rely on the expertise of the design professional when building the highway.

This bill amends by law previous contracts between design professionals and the developers, the State of Hawaii, the counties, or the construction entities. I am concerned that this allows the professional to avoid contractual duties and obligations they fairly and voluntarily entered into.

The State recognizes that some design professionals elect not to bid on State highway projects as a result of the liability exposure that might accrue as a result of working on these projects. We believe the more appropriate approach would be to enact meaningful tort reform in Hawaii that would cover most professions and also put reasonable limits on the financial exposure of the State and the counties.

For the foregoing reasons, I allowed House Bill No. 1316 to become law as Act 179, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 537, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 603 SD1 HD1 CD1

On July 15, 2009, Senate Bill No. 603, entitled "A Bill for an Act Relating to Public Utilities" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to direct the Public Utilities Commission of the State of Hawaii to treat local exchange intrastate services as fully competitive.

The intent of this bill is laudable in that it attempts to update Hawaii's regulatory framework for telecommunications providers and create market parity among phone service providers. However, several provisions of this bill raise concerns because the language is vague and extends beyond the intended scope.

This bill directs that "fully competitive" treatment be accorded to local exchange intrastate services, "[n]otwithstanding section 269-16.9 or any other law to the contrary." The provisions in the bill, however, are not limited to local exchange intrastate services and providers of such services. Rather, the provisions extend to any telecommunications carrier, not just a carrier providing local exchange intrastate service.

Under the bill, any telecommunications carrier may modify its rates and services without the approval of the Commission, regardless of whether the carrier has received an exemption pursuant to section 269-16.9, Hawaii Revised Statutes. In addition, the carrier is not required to provide cost support and other information to the Commission for such modifications.

The absence of cost support and other information may impair the ability of the Commission to fulfill the statutory directive in section 269-40, Hawaii Revised Statutes, to ensure that all consumers are provided with "nondiscriminatory, reasonable, and equitable access to high quality telecommunication network facilities and capabilities…at just, reasonable, and nondiscriminatory rates that are based on reasonably identifiable costs of providing the services."

The bill provides that a telecommunications carrier's rates for any retail telecommunications service cannot be higher than the rate for the same service included in the carrier's filed tariff "except upon receiving the approval of the commission."

The significance of the Commission's approval with respect to rate increases for local exchange intrastate service is questionable, given the "fully competitive" treatment directed by the bill. With regard to any other telecommunications service, the Commission's role is in doubt because the bill provides that all rates, fares, charges, and bundled service offerings shall be filed with the Commission for "information purposes only," which raises a question as to whether any applicable tariff can be enforced by the Commission.

Because this language creates an ambiguity over the role of the Commission in enforcing tariffs, my Administration will be proposing amendments to this bill for consideration by the 2010 Legislature that deletes this clause and clarifies the scope and applicability of this measure.

For the foregoing reasons, I allowed Senate Bill No. 603 to become law as Act 180, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 538, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1550 HD2 SD1 CD1

On July 15, 2009, House Bill No. 1550, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to amend Hawaii's income tax law to impose a State income tax on rollovers or transfers made by State and county employees from qualifying deferred compensation plans and qualifying annuity plans to eligible retirement plans.

However, although it was the intent of the legislative conference committee to tax both rollovers and transfers, as stated in the committee report, the actual language of House Bill No. 1550 only imposes a State tax liability on moneys that are rolled over from a qualifying account to the Employees' Retirement System plan. This inadvertent mistake may result in unequal treatment of those State and county employees who choose to purchase Employees' Retirement System hybrid plan credits in a lump sum via a rollover of funds, as defined in the Internal Revenue Code, sections 403 and 457, versus those employees who elect to transfer funds in accordance with the definitions contained in these sections of the Internal Revenue Code.

I encourage the Department of Taxation and the Employees' Retirement System to implement this measure fairly by ensuring equal tax treatment of all public employees using deferred-compensation and annuity plans for their hybrid plan upgrade. In addition, I also encourage the Legislature to fix this technical error in the bill language during the 2010 legislative session.

For the foregoing reasons, I allowed House Bill No. 1550 to become law as Act 181, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 539, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 1673 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 1673, entitled "A Bill for an Act Relating to the Hawaii Health Systems Corporation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this omnibus bill is to make changes to the laws that affect the operations of the Hawaii Health Systems Corporation (HHSC), the regional system boards, and their facilities. The legislation attempts to begin the reforms necessary to strengthen the network of thirteen public hospitals in our state. However, I am concerned that this bill is unclear in several important respects which will make implementation difficult.

One important reform made by this bill is that it would allow individual facilities to transition into various other legal entities, including non-profit, for-profit, or public benefit corporations. The bill states that upon its transition, "all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State[.]"

This provision is unclear because it does not define which liabilities are being addressed. It could be interpreted that only pending collective bargaining disputes, grievances, or issues become the responsibility of the State once the facility has transitioned into a new legal entity. However, it could also be argued that this provision means that the State must continue to pay the wages for the State workers after the facility has transitioned to a private entity. This lack of clarity could cause significant problems. In addition, this provision could create a sizeable financial burden for the State since there are no limitations contained in the bill. I believe this section must be clarified before any transitions occur.

Second, it appears that the "transition" language in the bill would authorize a HHSC facility to become a private entity. However, the bill as currently written does not specifically state that this new entity would be exempt from chapters 76 and 89, Hawaii Revised Statutes, the civil service laws and collective bargaining laws, respectively.

In 1997 the Hawaii Supreme Court held that the government could not privatize one of its operations without express statutory authority. In 2004, the Hawaii Supreme Court further held that the privatization of another government operation was legal because there was a statute that mandated the privatization. This bill does not mandate privatization of HHSC facilities, but by implication allows for it.

Because there is no direct precedent, it is difficult to predict whether the Hawaii appellate courts would find this to be sufficient language to permit HHSC facilities to become private entities and abolish their civil service positions. This uncertainty could cause lengthy and costly litigation that should be avoided by clearer drafting of the law.

Additionally, we remain concerned that this bill transfers to the Department of Health liabilities and debts that the HHSC hospitals accrued prior to June 30, 1996. It is unclear how this transfer will occur under generally accepted accounting principles, since the receivables are not properly reflected on the books of the corporation.

While certain provisions in this bill make small steps towards reforms needed to improve the viability of our public hospital system, such as allowing criminal background checks, I had hoped for more aggressive and comprehensive efforts to address the fiscal problems of the public hospitals. My Administration has outlined a vision for reform, which was presented to the Legislature by the State's Director of Health, Dr. Chiyome Fukino, that deserves serious consideration.

It will be necessary to amend this law in the next legislative session to resolve the ambiguities in the bill.

For the foregoing reasons, I allowed Senate Bill No. 1673 to become law as Act 182, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 540, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1809 HD2 SD1 CD1

On July 15, 2009, House Bill No. 1809, entitled "A Bill for an Act Relating to Recycling" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to mandate the recycling of televisions sold in the State by expanding the Department of Health's existing electronic device recycling program.

As I have stated in the past, I have strong concerns about establishing new State programs that are not essential to nor improve the efficiency of government. Given that we face a budget shortfall of at least $2.73 billion over the next several years, I question how the Legislature can justify passing legislation that creates a new program and increases the demand on personnel, while at the same time making funding reductions to State departments.

In addition, I am concerned that the program created by this bill places numerous requirements on manufacturers and retailers that will increase the cost of doing business in our state. Further, the fees and increased reporting requirements mandated by this bill will likely be passed on to consumers through higher retail prices.

While I agree that it is important to encourage proper recycling methods for computers, televisions, and other electronic devices, the private sector already provides a number of options to consumers and these options continue to grow. In the Department of Health's report to the Legislature on Act 13, Special Session Laws of 2008, I note the following reference to a recycling program developed by the Sony Corporation:

"Sony established a national recycling program for consumer electronics. The Sony Take Back Recycling Program allows consumers to recycle all Sony-branded products for no fee at 75 Waste Management Recycle America eCycling drop-off centers throughout the U.S. The program, began on September 15, 2007 (and) was developed in collaboration with WM Recycle America, LLC, a wholly owned subsidiary of Waste Management, Inc. The program also allows consumers to recycle other manufacturers' consumer electronics products at market prices, and may include a recycling fee for some types of materials."

Given that programs such as this already exist in the private sector, there is little advantage to be gained by setting up a State-managed television recycling program.

Despite these strong concerns, I am allowing this bill to become law without my signature. If this bill does not become law, televisions would be subject to the more onerous recycling requirements of Act 13 of the 2008 Special Session. In the coming 2010 Legislative Session, I encourage the Legislature to reconsider its support for both the electronic device and television recycling programs in this bill and in Act 13 and consider repealing them.

For the foregoing reasons, I allowed House Bill No. 1809 to become law as Act 183, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 541, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 470 HD1 CD1

On July 15, 2009, Senate Bill No. 470, entitled "A Bill for an Act Relating to Liquor" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to make various amendments to the State's liquor laws. Included in these amendments are provisions that: 1) allow the Department of Taxation to provide tax clearances to liquor establishments for license renewals as long as these establishments enter into a payment plan for taxes owed, 2) allow the county liquor commissions to extend the deadline for making liquor license application decisions from a maximum of 30 days up to 120 days, and 3) allow the county liquor commissions to use up to ten percent of fines collected to fund public liquor-related educational and enforcement programs.

While this measure is well-intentioned, I have concerns regarding two provisions in this bill. Although I understand the economic difficulties that liquor establishments are facing as a result of the current downturn, I am concerned that this bill does not provide a means for immediately revoking a liquor license if an establishment fails to make payments to the Department of Taxation while already on an installment plan for taxes owed. Currently, contractors are able to obtain temporary tax clearances and renew their licenses as long as they enter into a payment plan with the Department of Taxation. However, their license can be promptly revoked if the contractor fails to make payments. For liquor establishments, the only way for the Department of Taxation to proceed with a liquor license revocation is to apply to the county liquor commissions for a hearing, which allows a liquor establishment to operate without paying taxes until the commission makes the decision to revoke the license.

Additionally, I am concerned that extending the deadline for making liquor license application decisions will result in longer wait times for small businesses attempting to set up an establishment that requires a liquor license. Since liquor establishments must locate and lease space prior to applying for a liquor license, it would be difficult for these businesses to continue paying rent for their establishment up to 120 days after the hearings process when they cannot start operations until a license is approved. While I understand that the original intent is to allow the county liquor commissions more time to evaluate establishments with complicated liquor license applications, rather than automatically denying those establishments a license, timetables should be limited to ensure licenses are granted expeditiously.

Since the intent of this measure is to help businesses struggling during these economic times, I hope the county liquor commissions will work with all stakeholders to administer this bill fairly and equitably so that the above concerns can be addressed.

For the foregoing reasons, I allowed Senate Bill No. 470 to become law as Act 184, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 542, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 591 HD1 SD2

On July 15, 2009, House Bill No. 591, entitled "A Bill for an Act Relating to Public Utilities" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to allow the Public Utilities Commission to establish preferential rates for renewable energy produced in conjunction with agricultural activities.

This measure is intended to provide an incentive to both agricultural and renewable energy producers by providing better rates to agricultural energy producers selling electricity to utilities. While the Lingle-Aiona Administration supports local agricultural production and the goal to increase renewable energy, this bill could result in shifting of the costs of electricity onto consumers to compensate for the preferential rates given to agricultural operations. I am concerned that this cost shifting could adversely impact the bulk of electricity users in the State.

The phrase "renewable energy produced in conjunction with agricultural activities" also lacks clarity as to what constitutes a sufficient relationship between energy production and agricultural activities. It would be unfortunate if non-agricultural producers are able to take advantage of the vague wording in this measure to establish preferential rates intended to support agricultural operations.

For the foregoing reasons, I allowed House Bill No. 591 to become law as Act 185, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 543, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1379 HD2 SD2 CD1

On July 15, 2009, House Bill No. 1379, entitled "A Bill for an Act Relating to Physician Orders for Life Sustaining Treatment" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to create a means for individuals or their surrogates to provide evidence of their wishes regarding life sustaining treatment to health care providers through a standardized form.

I support measures that help individuals and their families make personal decisions about end of life care. The Physician Orders for Life Sustaining Treatment form created by this bill would give individuals an opportunity to be very specific about the course of medical attention they desire should they become gravely ill or incapacitated. In addition, this form has the potential to provide clear guidance to emergency care workers regarding what types of life sustaining treatment they should provide to a critically ill patient.

Whenever possible, decisions regarding end of life care should be made by individuals before they become ill or incapacitated. Making such decisions through an advance healthcare directive, living will, or another legal form provides friends and family members with clear guidance about the level of care one desires and can help alleviate some of the pain when a loved one is suffering.

While I can understand and support the intent of this legislation, I am concerned about provisions in the bill that allow a surrogate to make decisions on behalf of an incapacitated patient without the patient's knowledge or authorization. Specifically, the bill states that the Physician Orders for Life Sustaining Treatment form may be executed by a physician and a surrogate if the patient is incapacitated. I am concerned that this provision could lead to an abuse by a surrogate. In addition, it is unclear why the authors of the bill feel that a surrogate should be afforded the power to make life sustaining treatment decisions without authorization or appointment by the patient.

We must be cautious when legislating in areas that deal with such complex ethical questions. While it makes sense to give individuals the opportunity to make decisions about life sustaining treatments, it is

questionable why government should give that same authority to surrogates who may not represent the patient's wishes.

For the foregoing reasons, I allowed House Bill No. 1379 to become law as Act 186, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 544, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 994 HD1 SD2 CD1

On July 15, 2009, House Bill No. 994, entitled "A Bill for an Act Relating to Tourism" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to appropriate $500,000 for the application of a spaceport license from the Federal Aviation Administration. An appropriation of $250,000 will come from the Department of Transportation's Airport Revenue Fund and a similar amount from the Hawaii Tourism Authority's Tourism Special Fund.

Over the past year, Hawaii's tourism industry has faced devastating losses due to a downturn in the global economy. While we work to rebuild this critical industry, we must also diversify and strengthen tourism opportunities for the future. Space tourism has the potential to provide business opportunities and jobs for our state as new applications dependent on commercial space transportation emerge.

A number of companies are at work to develop reusable launch vehicles that could be used to carry people to space and potentially enable the development of a commercial space tourism industry. Some of these companies have expressed interest in launching this type of vehicle from Honolulu and/or Kona International Airports. In order to start the process to become a launch site, Hawaii must obtain a commercial space transportation license from the Federal Aviation Administration.

This bill would start the application process for a commercial space transportation license from the Federal Aviation Administration. Specifically, the funding provided would support the work needed to conduct the environmental and safety studies required for licensure.

In light of the State's economic situation, I have serious concerns about the appropriations made in this bill. First, monies from the Tourism Special Fund should be targeted towards marketing programs which will translate into immediate returns for the tourism industry. Given that a spaceport will take a number of years to come to fruition, may never happen, and may not be self-sustaining if built, it is difficult to justify spending any amount of public money on a spaceport license.

Second, monies from the Airport Revenue Fund must be approved for use by the Federal Aviation Administration. It is clear that more discussion will be required with the Federal Aviation Administration to ensure the funds appropriated by this measure can be used for the intended purpose. In addition, I am concerned that tapping into the Airport Revenue Fund could be interpreted as a deviation from our focus to use these moneys for the much needed Airports Modernization Initiative.

For the foregoing reasons, I allowed House Bill No. 994 to become law as Act 187, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 545, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1776 HD1 SD1 CD1

On July 15, 2009, House Bill No. 1776, entitled "A Bill for an Act Relating to Public Assistance" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this measure is to prevent inmates from receiving public assistance by: (1) requiring the Department of Public Safety to provide a complete list of all inmates in its custody to the Department of Human Services no later than December 31, 2009, and beginning January 31, 2010, to provide the Department of Human Services with monthly reports listing newly admitted inmates; and (2) requiring the Department of Human Services to identify the status of each inmate on the monthly list with respect to the inmate's current receipt of public assistance. State law presently prohibits inmates from receiving public assistance.

Although I support the policy of screening inmates for public assistance, this task might have been more easily accomplished through a Memorandum of Agreement or Memorandum of Understanding between the Department of Public Safety and the Department of Human Services. Legislation was unnecessary and interferes with the flexibility of each department to manage its internal affairs and adjust to changing circumstances.

For the foregoing reasons, I allowed House Bill No. 1776 to become law as Act 188, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 546, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 764 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 764, entitled "A Bill for an Act Relating to Real Property" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to change the process for renegotiating the amount of rent during the term of an existing commercial or industrial lease, unless expressly stated otherwise in the lease. The bill requires the term "fair and reasonable" annual rent of any lease of commercial or industrial leasehold property to be construed as fair and reasonable to both the lessor and the lessee to the lease, and to consider other relevant circumstances relating to the lease, such as surface characteristics of the property. If the lessee is a master lessee, these requirements shall apply if the master lessee agrees to act comparably when determining the renegotiated sublease rental amount charged to a sublessee.

This measure appears to be targeted at a single landowner for the benefit of its lessees. The ability to freely negotiate contracts without government intrusion is essential to a fair and open marketplace and a principle that I support.

However, this bill addresses a case where the free market between lessor and lessee is not functioning. We have seen a concentration of land ownership of urban commercial and industrial properties become centered in a few large firms that distort market forces and leave businesses in Hawaii with little recourse.

It is unfortunate that the actions of a single land owner have created the situation where the Legislature has intervened between the parties, albeit only for a single year.

This bill impacts the renegotiations of lease rent by interjecting, unless otherwise stated in the lease, its construction of "fair and reasonable annual rent" in commercial or industrial leases. In addition, this bill requires master lessees to limit any sublease rental amount negotiated or renewed during the period the lease rent is renegotiated with the master lessee to the lesser of a) the "fair and reasonable" amount determined according to the aforementioned requirements or b) the rental amount as calculated under the renegotiation or renewal provisions of the sublease.

For the foregoing reasons, I allowed Senate Bill No. 764 to become law as Act 189, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 547, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 111 SD2 CD1

On July 15, 2009, House Bill No. 111, entitled "A Bill for an Act Relating to State Salaries" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to establish a two-year statute of limitations for governmental bodies to recover salary or wage overpayments to their employees.

We are concerned that the two-year limitation does not allow the State and counties sufficient opportunity to recover salary overpayments. It often takes time to review an employee's daily work records to determine whether the employee has been overpaid. Most salary overpayments are discovered when the employee is about to retire and the employee's pension is calculated.

Salary overpayments are made by mistake, and while some employees, upon becoming aware of overpayments, promptly report the overpayments, not all do so. Employees are not entitled to keep overpayments and should not benefit from an inadvertent error. An overpayment to an employee deprives another employee or program of the use of those funds.

The existing statutes protect an employee from an arbitrary employer action. There is a process that the State and counties must follow to recover the overpayment, and the employee is free to contest the government's assertion that there has been an overpayment. Current law provides that the employee may request a hearing and, if the employee so chooses, may appeal an adverse determination.

While it is understandable that some would contend that the State should not have an unlimited period to recoup its mistakes, limiting this period to only two years will hamper the State and counties and result in the unjust enrichment of some.

For the foregoing reasons, I allowed House Bill No. 111 to become law as Act 190, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 548, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1362 HD1 SD2

On July 15, 2009, House Bill No. 1362, entitled "A Bill for an Act Relating to Genetic Counselors" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to establish a genetic counseling licensure program within the Department of Health.

In 2006 an analysis by the State Auditor concluded that establishing a licensing program for this profession is largely about title protection. It gives licensed individuals the ability to use the title but does not prohibit the practice by unlicensed practitioners. This bill prohibits unlicensed individuals from using the title "genetic counselor" or "licensed genetic counselor," but it would not prohibit them from offering services. It should also be noted that licensing would not impact the commercial marketing of DNA testing and counseling, especially at-home genetic self-testing, which is a growing industry.

While the bill calls for fees to be assessed to defray the cost of the license requirement, the cost of initial implementation is not funded and will have to be covered by the Department of Health when the program is implemented in 2011.

Genetic counselors provide valuable services to individuals and families with health issues who need to understand their family's health history.

In the interim, until this bill becomes law, should individuals in need of services seek knowledge about a genetic counselor's qualifications, they can consult the American Board of Genetic Counseling, which serves as the credentialing organization for the genetic counseling profession in the United States and Canada.

For the foregoing reasons, I allowed House Bill No. 1362 to become law as Act 191, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 549, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 1338 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 1338, entitled "A Bill for an Act Relating to Household Energy Demand" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to prohibit real estate contracts, agreements, and rules from precluding the use of a clothesline on single-family dwellings or townhouses and to allow private entities to adopt rules that reasonably restrict the placement and use of clotheslines.

Hawaii residents should consider using clotheslines as an alternative to electric dryers. This is a simple and easy way to lower individual energy costs, help the environment, and move us closer to meeting our goals of 70 percent clean energy by 2030. However, the proper way to promote this practice is through public education campaigns, not government laws.

This bill addresses an issue that can and should be addressed at the local, community level. Homeowners who choose to buy a home or townhouse

in a neighborhood governed by a community association do so for a reason - they want to live in a community that provides and protects a certain aesthetic. These homeowners often pay more for this option, and, upon purchase, agree to abide by specific covenants and rules that regulate certain activities, such as the number of cars that can be parked on the street, the color of the paint on their house, and the use or placement of a clothesline.

This bill recognizes that homeowners associations should be allowed to adopt rules for the placement of clotheslines in their communities. As such, this measure is less onerous than the legislation I vetoed last year.

For the foregoing reasons, I allowed Senate Bill No. 1338 to become law as Act 192, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 550, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 1422 HD1 SD1 CD1

On July 15, 2009, House Bill No. 1422, entitled "A Bill for an Act Relating to Abandoned Vehicles" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to allow the counties to remove abandoned motor vehicles from private roads if the private road owner pays for the removal of the vehicle and agrees to indemnify and hold the county harmless for claims arising from the removal and disposal of the vehicle. This Act shall be repealed on January 1, 2010.

It can be both dangerous and frustrating to have abandoned vehicles parked on or near one's property. Many property owners and neighborhoods struggle with this issue and I can understand their concern. However, it appears that property owners already have authority under current law, Section 290-11, Hawaii Revised Statutes, to remove abandoned vehicles in certain circumstances. Based on the testimony provided on this bill, it appears there is some uncertainty as to how this provision applies and, as a result, the Legislature felt it necessary to clarify the statute through passage of this bill.

In addition, I note that this bill will only be in effect for six months. Legislation should be used for critical policy matters, not for settling short term disputes. I am concerned that changing a State statute for such a short time period calls into question whether this represents sound public policy for the State.

For the foregoing reasons, I allowed House Bill No. 1422 to become law as Act 193, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 551, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 1329 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 1329, entitled "A Bill for an Act Relating to Early Learning" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to amend the structure and duties of the Early Learning Council and the early learning system by: (1) authorizing members of the Early Learning Council to assign a designee to represent them on the Council; (2) adding a representative from a Head Start provider agency to serve as a member of the Council; (3) directing the Council to develop a plan to address the operations of the junior kindergarten program, (4) prohibiting the Department of Education from moving a child between junior kindergarten and kindergarten unless they use an assessment tool to determine the placement, and (5) renaming the Keiki First Steps Trust Fund as the Early Learning Trust Fund.

This bill presents policy concerns that will adversely impact the delivery of education to the children in our State. First, the legislation further blurs the relationship and responsibilities of the Department of Education over the junior kindergarten program. The bill is prescriptive in what the Department of Education can and can not do in operating its junior kindergarten and kindergarten programs. For example, it expressly prohibits the Department of Education from moving a student between junior kindergarten and kindergarten, except after a detailed assessment is conducted using an evaluation system to be developed by the Early Learning Council.

The bill also continues the presumption that the State should continue to develop an early childhood learning program that operates outside of the purview of the Department of Human Services. The powers vested in the Early Learning Council could adversely impact the ability of the Department of Human Services to license, fund, regulate, and terminate early childhood education programs as provided for in Chapter 346, Hawaii Revised Statutes.

Last year I warned of the indeterminate costs to fully implement an early learning system. Since Act 14 became law, the State's fiscal outlook has worsened and it is difficult to foresee how the State could support a program with a projected implementation cost ranging from $144 million to $170 million.

The Department of Education has raised concerns about its ability to administratively support the continued operation of the Council. The Department of Education's 2009 report to the Legislature on the Early Learning Council states, "The progress report from the Early Learning Council indicates that the Council must explore options for its continued work, beyond June 30, 2009, as the funding has been eliminated from the Department of Education budget. Without future funding, it will be challenging to secure the staff to ensure the smooth operations of the Council."

Additionally, this bill fails to recognize the substantial progress my Administration has made in early learning. The Department of Human Services has worked closely with the preschool community of providers to adopt preschool content standards, improve teacher qualifications, and add slots for low-income children who could not previously attend preschool.

I will continue to support expanded early learning opportunities for children through the Quality Care Program administered by the Department of Human Services. I am particularly proud of the fact that this program has enabled over 2,000 additional disadvantaged children to attend preschool. This legislation, regrettably, does not build upon that progress.

For the foregoing reasons, I allowed Senate Bill No. 1329 to become law as Act 194, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 552, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 203 SD2 HD1 CD1

On July 15, 2009, Senate Bill No. 203, entitled "A Bill for an Act Relating to Contractors" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to increase the monetary penalties for unlicensed contracting from (1) $500 to $2,500 for the first offense, or 40% of the contract cost, and (2) from $1,000 to $3,500, or 40% of the contract cost, for the second offense.

Although this bill has the goal of deterring unlicensed contracting in the State of Hawaii, I am concerned that this legislation dramatically increases monetary fines without a corresponding increase in the threshold under the contractor licensing law's "handyman" exemption. This exemption provides that the licensing law does not apply to any project or operation for which the aggregate contract price for labor, materials, taxes, and all other items is not more than $1,000.

The $1,000 threshold has not been increased since 1992. The handyman exemption allows property owners to seek help with minor repairs and renovations. The dollar value of the threshold should be adjusted to reflect cost changes that have occurred over the past 17 years.

Although the Department of Commerce and Consumer Affairs has indicated that it plans to use reasonable discretion in imposing penalties under this bill, unlicensed workers may nevertheless face substantial fines when the work they are doing might more appropriately fall under the handyman exemption.

For the foregoing reasons, I allowed Senate Bill No. 203 to become law as Act 195, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 553, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No: 1461 SD2 HD1 CD2

On July 15, 2009, Senate Bill No. 1461, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this law is to advance the general excise tax filing and payment deadline from the last day of the month to the twentieth of the month. This bill also allows the Department of Taxation to require electronic filing and payment of taxes if the taxpayer is already doing the same for federal taxes. Finally, this bill extends the sunset of Act 239, SLH 2007, the general excise tax exemption for common expense reimbursements received by timeshare sub-operators and condominium association managers and sub-managers, by instituting an aggregate cap on exempted amounts for one year.

This bill contains a number of technical and administrative flaws that adversely impact the fair and impartial administration of tax laws in the State of Hawaii.

First, while I supported the concept of advancing the general excise tax filing and payment date from the last day of the month to the twentieth of the month, it is of concern to me that the Department of Taxation and business community are expected to implement this measure for payments due after May 31, 2009. This timeframe is too short and unrealistic for the Department of Taxation to adequately implement this change, as it does not allow taxpayers throughout the State adequate time to prepare for and implement the new payment schedules.

Second, the bill also contains unrealistic deadlines for taxpayers to comply with the requirements to remit their tax payments electronically to the State Department of Taxation. Unrealistic and overzealous timetables create confusion among the taxpaying public and result in additional, unnecessary work for public employees who are helping them to comply.

Third, in attempting to control the general fund revenue impact of the extension, the Legislature put a cap of $400,000 in aggregate tax exemptions on all eligible timeshare owners and condo managers. The cap, if it is to be applied, should have been a cap on the tax credit, not the tax exemption, since the exemption reduces the gross proceeds on which the GET tax is calculated, effectively lowering how much is due the State.

It is also unfortunate and unfair that the general excise tax exemption will be unequally applied to condominium associations governed by Chapter 514A, Hawaii Revised Statutes. Condominium associations created after July 1, 2006 are governed by Chapter 514B and already had the excise tax exemption for reimbursements prior to Act 239. Therefore, the $400,000 exemption cap will be applied to condominium associations created before July 1, 2006, but not those created thereafter. As a result, I am concerned with the unequal treatment of condominium associations created by this provision.

For the foregoing reasons, I allowed Senate Bill No. 1461 to become law as Act 196, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 554, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 522 SD2 HD1

On July 15, 2009, Senate Bill No. 522, entitled "A Bill for an Act Relating to Land Court" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill would require the registrar's office within the Bureau of Conveyances to provide within ten days after the end of each week an image and index of all instruments and documents recorded in Land Court during the week to a county designated as a central clearinghouse. Further, the registrar is prohibited from charging for the information and the bill prescribes the seven specific pieces of information the Bureau of Conveyances Land Court section must provide and the manner in which the information must be delivered.

Currently the Bureau of Conveyances already provides to several entities on a daily basis in electronic format data on all of the transactions that have occurred in the registrar's office and Land Court for the previous day. At least one county, the City and County of Honolulu, has the ability to extract from this data the information needed by all counties for real property assessment purposes. However, the City and County of Honolulu instead relies on a third party to provide their real property assessment information. This bill would unnecessarily shift this burden to the Bureau of Conveyances Land Court staff and require that they provide this data within a statutorily set deadline, regardless of the impact on their other duties.

Further, this bill prescribes the exact data that must be provided, making it difficult, without changing the law, to revamp the format or type of information the counties may require. Additionally, this bill restricts the State from charging the county for the work involved in providing the information every week. While the State does not currently charge for the electronic data they provide to third parties on a daily basis, we should not be precluded from considering charges at a future time when it may be warranted.

The State remains receptive to entering into written agreements with the counties to ensure that the counties receive the data they need in a manner that best fits their individual requirements.

For the foregoing reasons, I allowed Senate Bill No. 522 to become law as Act 197, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 555, dated July 16, 2009, informing the House that on July 15, 2009, pursuant to Section 16 of Article III of the State Constitution, the following bill became law without her signature, stating:

"Dear Mr. Speaker and Members of the House:

Re: House Bill No. 371 HD2 SD2 CD1

On July 15, 2009, House Bill No. 371, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to extend the exemption of naphtha fuel used in electrical generation from the transportation fuel tax. This measure retains the exemption until December 31, 2012. I support this exemption but believe the sunset date should have been removed in its entirety.

Naphtha, a bi-product of the manufacture of gasoline, is recognized as a low-carbon emission fuel, preferable to other fossil fuel sources. This legislation recognizes the importance of naphtha as a fuel source used in the State today.

However, this legislation also doubles the tax imposed on naphtha fuel used to generate electricity on Kauai and along the Hamakua coast. This increase, which totals an estimated $440,000 per year for both facilities, will be passed along to rate payers in each jurisdiction.

The increase from 1 cent to 2 cents per gallon, even though some will consider it small, is a 100% increase or a doubling of the tax on this fuel. What is particularly troubling is the increase comes at a time when our families and residents are most vulnerable to additional costs, even small costs, as they struggle with lay-offs, business closures, downsizing, and increasing State and county taxes.

The amount of additional tax is not enough to significantly assist the highway program and does not contribute to closing the State general fund budget gap. Thus, it has no measurable fiscal benefit to the State, while adversely impacting those communities that receive electricity from naphtha-burning power plants. However, if this law did not go into effect, then the much larger highway fuel tax would apply to naphtha starting January 1, 2010.

For the foregoing reasons, I allowed House Bill No. 371 to become law as Act 198, effective July 15, 2009, without my signature.

Sincerely,
/s/
LINDA LINGLE"

Gov. Msg. No. 556, dated July 17, 2009, transmitting the Hawaii Health Systems Corporation Annual Financial Audit and Report to the Legislature pursuant to Chapter 323F-22, HRS.