

## TWENTY-SECOND DAY

Tuesday, March 2, 2010

The House of Representatives of the Twenty-Fifth Legislature of the State of Hawaii, Regular Session of 2010, convened at 9:05 o'clock a.m., with the Speaker presiding.

The invocation was delivered by Mr. Joseph W. Huster, Esq. of Damon Key Leong Kupchak and Hastert, after which the Roll was called showing all Members present with the exception of Representative Karamatsu, who was excused.

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

## GOVERNOR'S MESSAGES

The following message from the Governor (Gov. Msg. No. 192) was received and announced by the Clerk and was placed on file:

Gov. Msg. No. 192, informing the House that on February 26, 2010, the following bill was signed into law:

H.B. No. 2162, HD 1, SD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, AND THE OMBUDSMAN." (ACT 001)

## SENATE COMMUNICATIONS

The following communication from the Senate (Sen. Com. No. 31) was received and announced by the Clerk:

Sen. Com. No. 31, transmitting S.B. No. 2834, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," which passed Third Reading in the Senate on February 26, 2010.

On motion by Representative Evans, seconded by Representative Pine and carried, the following Senate Bill passed First Reading by title and further action was deferred: (Representative Karamatsu was excused.)

S.B. No. 2834, SD 1

## INTRODUCTIONS

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

Representative M. Lee introduced Mr. Matthew Acheson from Brooklyn, New York, one of the puppet artists here to perform the puppet show, *Ko'olau: A True Story of Kaua'i* which was written by Representative Lee's son, Mr. Tom Lee. He was accompanied by legislative staff, Mr. Dwight Nakamura.

Representative Hanohano introduced Ms. Kat Brady with the Community Alliance on Prisons.

## ORDER OF THE DAY

## SUSPENSION OF RULES

On motion by Representative Evans, seconded by Representative Pine and carried, the rules were suspended for the purpose of considering certain House Bills and Senate Bills for Third Reading by consent calendar. (Representative Karamatsu was excused.)

## CONSENT CALENDAR

## UNFINISHED BUSINESS

At 9:12 o'clock a.m. Representative Souki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:13 o'clock a.m.

At this time, the Chair announced:

"Members of the House. You all recognize that we're suspending the rules of the House to consider certain House and Senate Bills for Third Reading by Consent Calendar. I believe the Clerk has shared this Consent Calendar with all of you.

"For those of you who want to submit written comments, you may do so after the vote. I hope I've clarified this for the Representative from Kahului during the recess.

"Members, at this time there will be no discussion as these items were agreed upon by this Body for placement on the Consent Calendar."

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 463-10) recommending that H.B. No. 2354, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2354, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE FRAUD," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 464-10) recommending that H.B. No. 2897, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2897, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Magaoay's written remarks are as follows:

"Thank you Mr. Speaker. Mr. Speaker, I rise in support of H. B. 2897 H. D. 1. Mr. Speaker, this measure before this Body subjects a contractor to revocation or suspension of its license for knowingly or intentionally employing a person who is not eligible to work in the United States under federal law to perform work on any project or program.

"It is the unscrupulous contractor that knowingly entices an ineligible worker to break U.S. laws who should be penalized accordingly. The passage of this bill levels the playing field for contractors that play by the rules. Bidding will be more competitive, causing government to get better prices, decreasing cost to the Hawaii taxpayer and creating employment opportunities for Hawaii workers.

"Mr. Speaker, please note that there is no targeting of an ethnic minority. There is no targeting of any individual in the measure we have before us. The only target in this bill is those contractors who "knowingly and intentionally" hire a person that does not have the proper permit or status to work in the U.S.

"Mr. Speaker, the two key words are "knowingly" and "intentionally." A contractor knows that an individual is not properly documented to work in the U.S., then chooses to ignore or "turn a blind eye" to this knowledge and hires that person in light of knowledge on the part of the contractor. The contractor has then also intentionally hired the person in violation of this section.

"This section does not require a contractor to look beyond the face of the documentation presented by the prospective employer. Neither does this section require a contractor to test the veracity of the information or documents given by signing up with an information verification service.

"Please note Mr. Speaker, this measure does not recommend or require action by the Contractor's Licensing Board for negligent hiring of an undocumented worker. A negligent or inadvertent hiring could occur if documents presented to the employer were fraudulent. This takes much the same course as the federal government where employers are not held liable for fraudulent documents presented to an employer unless it was the employer who helped create or procure those fraudulent documents.

"It is true that the federal government already regulates in the area of illegal employment of undocumented workers. However, it appears that they will prosecute or indict only the individuals that did the actual hiring or recruiting. Many times this allows owners of the offending companies to continue on with their business with little or no repercussions in spite of the activity of their agents who may or may not have been doing the bidding of the owner.

"Mr. Speaker, the State of Hawaii has the power to regulate many aspects of contractor licensing within the State. Therefore, it should be incumbent upon the State, in order to maintain the professional integrity of the construction trade to ensure that contractors are not engaging in hiring practices that put at risk the public for whom these contractors perform services, by risking quality, safety and training by hiring potentially unqualified and under-trained workers, merely to add padding to a contractor's bottom line.

"In the area of abuses, those undocumented workers hired by the unscrupulous contractors are subject to many potential abuses such as workers living in a warehouse, having 40 people crammed into inappropriate living quarters, or living in converted cargo containers. Historically, the range of abuses that undocumented workers are potentially subject to is far greater than those who would seek to exploit this law to avoid hiring an undocumented worker.

"While the Contracting Licensing Board has limited power to regulate those who operate unlicensed in the industry when it comes to using illegal labor, a law such as this will ensure that an unscrupulous contractor cannot make huge labor cost savings through the use of illegal labor, since most undocumented workers are paid under the table and in cash, avoiding income tax withholding, as well as workers' compensation and other fees that legitimate contractors must account for in their labor costs. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2897, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONTRACTORS," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 465-10) recommending that H.B. No. 2548, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2548, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 467-10) recommending that H.B. No. 2575, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2575, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TRAUMA," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 470-10) recommending that H.B. No. 2383, HD 1, entitled: "A BILL FOR AN ACT RELATING TO FLAGS," as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2383, HD 1, entitled: "A BILL FOR AN ACT RELATING TO FLAGS," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 472-10) recommending that H.B. No. 2404, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2404, HD 1, entitled: "A BILL FOR AN ACT RELATING TO DRIVER LICENSING," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 473-10) recommending that H.B. No. 2693, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, and the report of the Committee was adopted and H.B. No. 2693, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD PASSENGER RESTRAINTS," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 474-10) recommending that H.B. No. 2020, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2020, HD 2, entitled: "A BILL FOR AN ACT RELATING TO COUNTIES," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 476-10) recommending that S.B. No. 898, SD 2, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, and the report of the Committee was adopted and S.B. No. 898, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CIVIL DEFENSE," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 478-10) recommending that S.B. No. 549, SD 1, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 549, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE EXPRESS WARRANTY ENFORCEMENT," passed Third Reading by a vote of 51 ayes.

Representatives Karamatsu and Herkes, for the Committee on Judiciary and the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 479-10) recommending that H.B. No. 2297, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committees was adopted and H.B. No. 2297, HD 2, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE SUN SCREENING DEVICES," passed Third Reading by a vote of 51 ayes.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 480-10) recommending that H.B. No. 2417, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2417, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ACTIVITY DESKS," passed Third Reading by a vote of 51 ayes.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 485-10) recommending that H.B. No. 2921, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2921, HD 2, entitled: "A BILL FOR AN ACT RELATING TO LICENSING," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 557-10) recommending that H.B. No. 2503, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2503, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 2503, House Draft 1, Relating to the Environment. This measure allows money in the Pesticide Use Revolving Fund to be used for compliance monitoring activities, expanding the Fund's range currently covering registration, licensing, certification and education.

"According to the Department of Agriculture's testimony,

*"Compliance monitoring surveillance is an integral part of ensuring protection of the public and the environment. Conducting actual use inspections of agricultural and non-agricultural entities is the most important component of compliance monitoring; detecting violations before they occur rather than responding to post-use complaints."*

"Mr. Speaker, the Chair of the Agriculture Committee and the Department of Agriculture have repeatedly emphasized at informational briefings and hearings that current budget cuts have decreased the amount of inspection staff at our airports and harbors. Consequently, this has lessened the amount of security in these places where the State receives foreign and local agricultural products, and possibly invasive species.

"I have heard of various examples of the effects of minimized inspection staffing across the board due to funding issues. The Department of Agriculture has stated in their testimonies that management of the Pesticides Program has been challenging with the absence of a Branch Manager, and that task has now been temporarily assumed by the Plant Industry Administrator, in addition to that individual's other administrative duties. At the airports, offices have been deserted so staff may cover the floor, which is now lacking inspectors in baggage claim and other vital checkpoints. Very recently, Mr. Speaker, I was informed that some dogs and endangered species have been brought in without proper methods of inspection. The Department of Agriculture has pointed out that unlike the vocal coqui frogs, some invasive species which may come in with product shipments may not be properly identified until an outbreak has occurred.

"Allowing the Pesticide Use Revolving Fund to include compliance monitoring activities is crucial to the preservation of our State. Funding is needed to ensure the safety of our entrance points. Mr. Speaker, I am in support of this measure. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2503, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 561-10) recommending that H.B. No. 2294, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2294, HD 2, pass Third Reading, seconded by Representative Evans.

Representative Tsuji's written remarks are as follows:

"Mr. Speaker, I rise in support of the measure. The ability to move products in and out of the State, as well as interisland is critical to the agriculture industry and the State's economy. Yet there has been a substantial decrease in agricultural inspection services statewide due to the mandated RIF within the Department of Agriculture. Some Neighbor Island airports find themselves confronted with the challenge of having only one inspector with no alternative staff when that employee is on sick leave or vacation. This is just one example of how a point of entry can become vulnerable to invasive species.

"This bill would provide a committed source of funding for the inspection, quarantine, biosecurity, and eradication programs of DOA. Reasonable service fees and meaningful fines for failure to pay such fees are appropriate ways to support the critical functions of the Department of Agriculture. There are allowable exemptions from these fines under certain provisions, and this addresses the needs of numerous bulk-freight related businesses.

"The recent discovery of a male coqui frog in Manoa should serve as a reminder of the constant threat of invasive species gaining ground in Hawaii. This legislation provides for invasive species inspection plus quarantine and eradication activities. I urge my colleagues to support it."

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

"Mr. Speaker, I rise in support of House Bill 2294 House Draft 2, Relating to Agriculture. This measure seeks to provide a dedicated source of funding for the Department of Agriculture's inspection, quarantine, biosecurity, and eradication programs through various methods.

"The addition of the Pest Inspection, Quarantine and Eradication Special Fund's (PIQEF) coverage to include biosecurity services is crucial to the preservation of our State. Hawai'i imports approximately 85% of its food from out-of-state, a fact that requires us to better safeguard our entry ports from invasive species and foreign diseases. By focusing on funding for biosecurity services and programs, we are ensuring that agricultural products coming into Hawai'i are inspected appropriately, and negative environmental impacts of any invasive species are deterred.

"Mr. Speaker, the combination of funneling agricultural fees and fines into PIQEF and repealing both the Permit Revolving Fund and Microorganism Import Revolving Fund with money from those funds being diverted into PIQEF, minimizes the amount of existing special funds. It delegates PIQEF as an all-encompassing appropriation source which provides for pest inspection, quarantine, eradication and monitoring services, as well as the training and education of inspectors and the agricultural industry, permit and certificate holders, and the general public.

"Mr. Speaker, in regards to the regulation of charging agricultural fees and fines, the Department of Agriculture has stated that by providing penalties for failure to pay or remit the service fees as proposed in this bill, accountability is established for the collection and remittance of these fees to the Department. The proposed provisions in the measure assure the proper collection and deposit of the inspection, quarantine, and eradication service fees for incoming commercial freight.

"Mr. Speaker, fee exemptions for aggregate bulk freight, cement bulk freight, coal bulk freight, and liquid bulk freight are supported by both the Department of Agriculture and the State's shipping and freight companies. Concerns from the Department and the Nature Conservancy regarding bulk freight vessels as vectors of invasive species such as insects, rodents, and other human-related disease pathogens are addressed by existing safety processes in place. Strict quality control standards of the American Society for Testing and Materials are designed to detect and prevent harmful and organic material in finished granite products. According to Hawaiian Cement, cement cargo is not a compatible environment to

invasive species. When introduced to moisture, cement develops a high level of acidity, which renders it incapable of sustaining most living organisms. Lastly, ships' cargos are subject to inspection and cleared by the United States Department of Agriculture prior to discharge in Hawaii. The fee exemptions are simply one way of expediting shipments into our islands without compromising security measures.

"Mr. Speaker, thank you for allowing me to express the reasons why I support this measure."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2294, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 564-10) recommending that H.B. No. 1927, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1927, HD 2, entitled: "A BILL FOR AN ACT RELATING TO OWNER-BUILDERS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 566-10) recommending that H.B. No. 2058, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2058, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC PROPERTY," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 570-10) recommending that H.B. No. 2831, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2831, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 573-10) recommending that H.B. No. 1852, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1852, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 574-10) recommending that H.B. No. 1854, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1854, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 577-10) recommending that H.B. No. 2277, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2277, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Marumoto's written remarks are as follows:

"HB 2277, HD1 authorizes the issuance of special purpose revenue bonds in the amount of \$20 million for Kaimuki Christian School in

Honolulu. Kaimuki Christian's campus improvement project, which is what these bonds will be used for, will be accomplished in three phases. Phase one will include a new facility for the expanding preschool through grade 8 classes and space for enrichment programs such as music, art, and computer sciences. A preschool playground area and new administrative offices will also be built. Phase two will center around a 116-stall multi-level parking structure and gymnasium. Finally, Phase three of construction will provide a permanent home for the high school that Kaimuki Christian plans to launch in the fall of 2012. When these three phases are completed, the new facilities will allow Kaimuki Christian to increase enrollment by over 70%.

"Founded in 1968, this school is a ministry of Kaimuki Christian Church and incorporates into its educational program Christian values and perspectives. The belief that solid teaching, a challenging curriculum and a caring environment are important components of a child's education has brought Kaimuki Christian into the realm of excellence.

"In 1995, Kaimuki Christian expanded to include a middle school, serving preschool through grade 8. From the school's inception, and for nearly thirty years, Helen McKenzie was the guiding light as principal. Kaimuki Christian recently honored Helen McKenzie at its gala 40th Anniversary dinner. Helen's son-in-law, Mark Gallagher is the current principal.

"It is for the worthy purpose of expanding this school that I am in favor of HB 2277, HD1, authorizing special purpose revenue bonds for Kaimuki Christian School."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2277, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST KAIMUKI CHRISTIAN SCHOOL," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 583-10) recommending that H.B. No. 2497, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2497, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 590-10) recommending that H.B. No. 2052, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2052, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 592-10) recommending that H.B. No. 2641, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2641, HD 1, entitled: "A BILL FOR AN ACT RELATING TO UNIVERSITY OF HAWAII PROJECTS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 593-10) recommending that H.B. No. 823, HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 823, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTH INSURANCE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 594-10) recommending that H.B. No. 1902, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1902, HD 1, entitled: "A BILL FOR AN ACT RELATING TO LONG TERM CARE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 595-10) recommending that H.B. No. 2094, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2094, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HAWAII PACIFIC HEALTH," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 596-10) recommending that H.B. No. 2170, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2170, HD 1, entitled: "A BILL FOR AN ACT RELATING TO VITAL STATISTICS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 600-10) recommending that H.B. No. 2152, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2152, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Keith-Agaran's written remarks are as follows:

"Thank you, Mr. Speaker. I support HB 2152, H.D. 1 which allows the Disability and Communication Access Board (DCAB) to charge a fee to defray expenses of reviewing construction plans to ensure compliance with the law. This bill will give DCAB the authority to charge a review fee to keep its review process functioning, while providing a revenue stream to offset the loss of general funds.

"Hawaii Revised Statutes (HRS) §103-50 effectively requires DCAB to advise and make recommendations on any construction plans prior to commencing with construction to ensure plans and specifications of State and county buildings, facilities, and sites comply with federal accessibility guidelines. In short, without providing a way for DCAB to continue this role, public works will grind to a halt and more of our construction workers will remain on the bench. The bill proposes a plan review fee based on the project's estimated construction cost. The proposed fees are comparable to the State of California's access compliance review fee schedule.

"DCAB conducted 1,126 plan reviews in FY 2009. Based on the number of reviews in FY 2009, the proposed plan review fee schedule is estimated to generate \$490,000.

"I urge my colleagues to vote in favor of this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2152, HD 1, entitled: "A BILL FOR AN ACT RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 603-10) recommending that H.B. No. 2061, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No.

2061, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CHILDREN," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 606-10) recommending that H.B. No. 2784, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2784, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SMALL CLAIMS COURT," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Rhoads voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 611-10) recommending that H.B. No. 2163, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2163, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill No. 2163, Relating To Salary and Pension Payments. This bill requires all government employees hired prior to July 1, 1998, to designate a financial account into which the State may deposit the employees' pay by an unspecified date.

"Currently, almost 40% of Department of Education employees still have not opted to have direct deposit of pay. As recently experienced during the furlough days' implementation and their impact on paycheck processing on paydays that coincide with furloughs, many employees without direct deposit were significantly inconvenienced.

"In addition, the logistics of island-by-island distribution of paychecks were extremely challenging on paydays falling on furlough days. In many cases, employees not on direct deposit had to wait until the following week for their paychecks to be available.

"This bill resolves these problems by requiring all employees to utilize direct deposit of their paychecks. Accordingly, I urge my colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2163, entitled: "A BILL FOR AN ACT RELATING TO SALARY AND PENSION PAYMENTS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 612-10) recommending that H.B. No. 2538, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2538, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill No. 2538, Relating to the Payment of Employees' Retirement System Benefits. This bill:

- (1) Requires all retirees and beneficiaries of the Employees' Retirement System (ERS) be paid monthly;
- (2) Requires all retirees and beneficiaries of the ERS to designate a financial institution account into which the ERS be authorized to deposit their state retirement system benefits;
- (3) Requires the ERS to provide for the transition from semimonthly payments to monthly payments by adjusting the dates on which the semimonthly payments in January 2011 and February 2011 are made; and

(4) Takes effect on January 1, 2011.

"According to the Employees' Retirement System, approximately 25,700 pensioners and beneficiaries out of 38,000 will be paid on a monthly rather than semi-monthly basis. In addition, approximately 1,400 of these recipients will have their benefit payments deposited directly into a financial institution instead of receiving paper checks.

"This measure will result in cost savings in postage, check printing, check imaging, and bank fees; and will also increase the ERS' investment earnings. The ERS estimates that this proposal will add approximately \$955,000 annually to the ERS' bottom line.

"When this measure was heard, concerns were raised that the changing payment methods to retirees may present a financial burden to older retirees. As such, your Committee on Finance strongly encourages the ERS to clearly inform those affected by these changes well in advance of the change.

"I urge my fellow colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2538, entitled: "A BILL FOR AN ACT RELATING TO THE PAYMENT OF EMPLOYEES' RETIREMENT SYSTEM BENEFITS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 615-10) recommending that H.B. No. 2533, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2533, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill No. 2533, House Draft 1, Relating to the Employment of Employees' Retirement System Retirees. This bill:

- (1) Prohibits a retiree from being employed by the State unless the retiree is reenrolled in the Employees' Retirement System (ERS) except under certain situations; and
- (2) Requires the Director of Human Resources of the appropriate State jurisdiction or the human resources management chief executive of a county to submit an annual report to the Legislature detailing the employment of positions in labor shortage or difficult-to-fill positions, and teachers.

"According to the Employees' Retirement System (ERS), this bill is intended to protect the tax exempt status of the ERS by providing penalties for retirees who are reemployed in violation of Chapter 88, Hawaii Revised Statutes, and the Internal Revenue Code of 1986, as amended.

"This bill also provides a more comprehensive structure by including certain provisions of Act 286, Session Laws of Hawaii (SLH) 2006 (retired teachers and Department of Education administrators employed in teacher shortage areas or mentors for new teachers), and Act 156, SLH 2008 (labor shortage or difficult-to-fill positions).

"During the public hearing on this measure, concerns were raised regarding the need for an appeals process for situations as those in which an employee or employer is determined by the ERS administrator to be at fault, but there is disagreement in the findings. Because of this, your Committee on Finance urges the ERS to work with employee representatives to address these concerns through the adoption of administrative rules.

"I urge my colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2533, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYMENT OF EMPLOYEES' RETIREMENT SYSTEM RETIREES," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 620-10) recommending that H.B. No. 2092, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2092, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SAFETY," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 627-10) recommending that H.B. No. 2022, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2022, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 629-10) recommending that H.B. No. 2605, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2605, entitled: "A BILL FOR AN ACT RELATING TO SAFETY INSPECTION OF MOTOR CARRIER VEHICLES," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 631-10) recommending that H.B. No. 2583, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2583, entitled: "A BILL FOR AN ACT RELATING TO IMPOUNDED VESSELS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 634-10) recommending that H.B. No. 1808, HD 2, as amended in HD 3, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1808, HD 3, entitled: "A BILL FOR AN ACT RELATING TO COASTAL AREAS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 637-10) recommending that H.B. No. 2449, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2449, HD 2, entitled: "A BILL FOR AN ACT RELATING TO COUNTY BOARDS OF WATER SUPPLY," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 646-10) recommending that H.B. No. 2855, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2855, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill No. 2855, House Draft 2, Relating to the Employees' Retirement System. This bill:

- (1) Requires the Board of Trustees (Board) of the Employees' Retirement System (ERS) to conduct a study to establish a plan to fully amortize the unfunded actuarial liability of the ERS over a thirty-year period commencing July 1, 2012, and submit the proposed amortization plan accompanied by any proposed legislation necessary to implement the plan to the 2012 Legislature; and
- (2) Authorizes the Board to recommend lesser benefits, greater contributions, or other less advantageous provisions for new employees than those for current employees.

"As reported in the ERS' 2009 Actuarial Valuation Report, as of June 30, 2009, ERS' unfunded actuarial accrued liability increased from \$5.2 billion to \$6.2 billion and ERS had a 64.6% funded ratio. This ratio represents the percentage of funds ERS has on hand to cover current and future pension benefit payments.

"It was the diversion of over \$1.6 billion in ERS' excess investment returns since the 1960s that increased the unfunded liability and prevented the ERS from establishing a reserve to weather the years of poor investment returns, like the 2000-2002 and recent bear markets.

"Facing a budget gap of approximately \$2.7 billion for FY09-11, the Administration implemented actions intended to be "one-time" in nature to balance the budget. Among these were the delayed payment of the State's contribution to the Employees' Retirement System and the Hawaii Employer-Union Health Benefits Trust Fund in FY2009, and delays in tax refunds for FY11. These actions do not absolve the State from these liabilities. Rather, they shift the burden onto future fiscal years.

"Furthermore, not only do these actions jeopardize the timely provision of necessary services and benefits, but it also skews the financial planning for future fiscal years.

"Because of these actions and declining revenues, Moody's Investor Service downgraded the State's outlook on the State's bond rating from stable to negative. Cited in this downgrade was the State's increased use of "non-recurring solutions to balance the budget."

"In this time of economic uncertainty and increasing pension liability, it is not only prudent, but necessary to look at ways of addressing the shortfall. That is exactly what this bill does. Accordingly, I urge my colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2855, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 652-10) recommending that H.B. No. 2708, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2708, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Aquino's written remarks are as follows:

"Thank you, Mr. Speaker. I am standing in support of HB 2708 HD1. This bill would require the Department of Transportation to develop and implement a public involvement process when carrying out any transportation project in the State.

"The intent is to allow people an opportunity to provide comments on projects that may affect their communities. This is to ensure people that public participation and collaboration is welcomed in a fashion where their comments have a chance to be implemented. It empowers communities

and residents and reminds them that they have a say in deciding what goes on in government. For these reasons, I support HB 2708 HD1."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2708, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 654-10) recommending that H.B. No. 2775, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2775, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 655-10) recommending that H.B. No. 2706, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2706, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Aquino's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support of HB 2706 HD1. Mr. Speaker, the bill's intention is to find ways to strengthen our economy. It would allow high worth individuals—both Hawaii residents and non-residents—to transfer a percentage of their net worth into our State for asset and trust management. This injects out-of-state money into Hawaii's economy, provides State revenues, and allows our State to become a world-class place to invest and manage their assets.

"The assets referred to are liquid assets as defined in the bill's language and does not allow real estate to be transferred in these trusts. I believe Mr. Speaker that this legislation would be truly beneficial for our State, both in the near and distant future. Certainly, in these times of fiscal struggles, this would be welcomed and serves as another possible revenue stream for our State."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2706, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PERMITTED TRANSFERS IN TRUST ACT," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Rhoads voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 656-10) recommending that H.B. No. 2639, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2639, HD 2, entitled: "A BILL FOR AN ACT RELATING TO MIXED MARTIAL ARTS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 658-10) recommending that H.B. No. 2054, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2054, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 664-10) recommending that H.B. No. 2248, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2248, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Karamatsu's written remarks are as follows:

"I rise in support. The purpose of this bill is to improve interstate adult guardianship and protective proceedings by, among other things, establishing uniform rules regarding court communication, jurisdiction, and transfers of guardianship or conservatorship. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2248, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 667-10) recommending that H.B. No. 1287, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1287, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill No. 1287, Relating to Public Employment. This bill:

- (1) Extends the enabling law for the Voluntary Employees' Beneficiary Association (VEBA) Trust for six months in order to provide for a smoother transition to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF);
- (2) Appropriates funds for five temporary positions to assist in the VEBA Trust transition; and
- (3) Appropriates funds for five permanent positions to perform other EUTF duties.

"According to Auditor Marion Higa, the VEBA "carves into the EUTF health plan and negatively impacts the EUTF and the state employer." For this and other reasons, the Legislature declares that it does not intend to make the enabling law permanent or to extend the sunset date for another pilot testing period.

"The repeal of the VEBA statute will require the transfer of at least 13,081 active teachers, and 1,995 teacher retirees to the EUTF.

"The EUTF Member Service Branch is currently facing mounting workloads beyond its capacity to handle because of inadequate staffing levels and furloughs, the recent computer system conversion, and the implementation of a new PPO plan and restructuring of PPO plan offerings.

"This bill will provide the EUTF with the necessary time and resources to facilitate the transfer of VEBA beneficiaries into the EUTF. This measure also has the strong support of the Department of Budget and Finance and the Governor. Accordingly, I urge my colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1287, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYMENT," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 670-10) recommending that H.B. No. 2783, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2783, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker I rise in support of House Bill 2783, House Draft 2, Relating to General Excise Tax. The purpose of this bill is to exempt from GET amounts up to \$400,000 per year beginning January 1, 2010 on the taxable amount received by the operator of a hotel from a time share association, and amounts received by the suboperator of a hotel from the owner of the hotel, time share association, or the operator of the hotel. This exemption is also retroactive to July 1, 2006 and sunsets on June 30, 2015. Furthermore, this bill repeals the GET exemption with a \$400,000 cap for operators, suboperators and submanagers applicable to taxable years ending on or between January 1, 2010 and January 1, 2011.

"Although the State is facing difficult economic times and is challenged with balancing the budget, the exemption provided for in this bill is necessary to level the playing field for local companies managing hotels, timeshares, or condo-tels. By exempting pass through income operators and suboperators receive for employee wages and benefits, this bill ensures that the operating costs of the cyclical tourism industry in Hawaii remains reasonable and on par with other markets worldwide. If not exempted, these amounts employees receive may be reduced. It is to the State's benefit to provide that these sums are paid by local operators to local employees and vendors. Keeping costs competitively priced also encourages additional hotel, timeshare and condominium development.

"Additionally, Mr. Speaker, the tourism industry provides highly skilled and highly compensated sales and marketing jobs for the people of Hawaii. The exempted hotels, timeshares and condo-tels are a vital part of Hawaii's economy and it was noted by the American Resort Development Association that timeshares have high and consistent rates of occupancy and customer satisfaction that keep visitors coming back to our islands.

"The bill also clarifies and further refines the application of the operator and suboperator exemption. This bill is necessary to clarify a previous DoTAX announcement that stated that the \$400,000 cap applied to gross amounts which would not significantly benefit operators and suboperators the exemption seeks to assist.

"Mr. Speaker, I would like to stress that this is only a temporary measure with a sunset date in 2015. Thank you, very much."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2783, HD 2, entitled: "A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX," passed Third Reading by a vote of 51 ayes.

### THIRD READING

#### S.B. No. 2246, SD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2246, SD 1, entitled: "A BILL FOR AN ACT RELATING TO STATUTORY REVISION: AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS," passed Third Reading by a vote of 51 ayes.

#### H.B. No. 840, HD 1:

Representative B. Oshiro moved that H.B. No. 840, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker I rise in support of this measure because the ability to use information charging for the class B felonies listed in this bill will save significant judicial, prosecutorial, and police resources.

"This bill will amend HRS §806-83 to add the following three felony offenses to the list of felonies that may be charged by written information:



Unauthorized Possession of Confidential Information, Unauthorized Entry in a Dwelling, and Methamphetamine Trafficking in the 2nd Degree.

"Information charging was instituted in 2004 to streamline the criminal justice system by allowing the charging of certain felonies by the submission of documents setting forth probable cause to a judge rather than requiring witnesses to come forth to testify at court.

"Mr. Speaker, additions of these felonies are very valid and appropriate:

1. Unauthorized Possession of Confidential Information is often charged along with forgery, theft, and identity theft offenses, all of which are currently included in the information charging provisions.
2. Unauthorized Entry in a Dwelling is another form of burglary and therefore should be included.
3. The inclusion of the class B felonies involving methamphetamine would be consistent with the intent of past legislation in Act 62 of 2004 to allow class B felonies, including methamphetamine, to be initiated by information charging.

"The aforementioned felonies were all created after the institution of information charging in 2004 and thus were not included in the original list of offenses eligible for information charging.

"In these difficult fiscal times, it is important to note that information charging has eliminated the need to pay witness fees and alleviates the requirement to have police officers waiting at court to testify, thus sparing police resources.

"Information Charging Statistics (provided by Attorney General's testimony) state that a total of 2188 cases, from 2004 to 2007, were conferred for information charging. Witnesses saved by information charging include:

3932 for HPD Officers;  
998 for HPD personnel; and  
2972 for civilian victims/witnesses.

"The passage of this measure will spare more victims and witnesses from going to court to testify at probable cause hearings, more officers will be able to stay on the job protecting and serving the community, the State will continue to see a financial savings, and fair, effective information charging will become an even greater asset to the our state's criminal justice system. For these reasons, I urge my colleagues to support this measure."

The motion was put to vote by the Chair and carried, and H.B. No. 840, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARGING BY WRITTEN INFORMATION," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Rhoads voting no.

**H.B. No. 1019, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 1019, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PENAL CODE," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2741, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 2741, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SMALL BOAT HARBORS," passed Third Reading by a vote of 51 ayes.

**H.B. No. 1985:**

Representative B. Oshiro moved that H.B. No. 1985, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 1985, Relating to Taxation, which requires the Department of Taxation to provide the Legislature with an annual report on Hawaii income patterns of individuals, a biennial report on Hawaii income patterns of corporations, proprietorships, and partnerships; and an annual report on tax credits.

"This bill increases the transparency of government by specifically delineating when these vital reports are required to be published by the Department of Taxation. These reports help taxpayers and policy makers evaluate what the State government's goals and initiatives are and help to identify which industries and areas are benefitting from tax credits and whether or not these industries are beneficial to the State.

"The timely release of information provided in these reports aid policy makers evaluate where tax expenditures of the state have taken place. With current information legislators can more accurately determine if there needs to be changes to tax law. Mr. Speaker, this bill is essential to help the legislature more effectively create policies that benefit the interests of the people of the State of Hawaii.

"Mr. Speaker, DoTAX has updated computer technology available to them so the delay in producing these reports is inexcusable. Consistent reporting of this important tax information has been lacking; the reports referenced in this bill are published on a lag basis. The most current report for income patterns of corporations is from tax year 2002 while the most current reports for the income patterns of individuals and tax credits claimed are from tax year 2005.

"An example of the negative impact of the untimely nature of these reports is that the Tax Review Commission's ability to analyze the effects of the high-tech credits and other taxes has been hindered. We do not yet know the effects of the high tech tax credit because of the lag in reporting. This inefficiency of government can no longer be tolerated when adequate technology already exists in the Department of Taxation to allow for timely publishing of these reports.

"For these reasons, Mr. Speaker, I strongly support House Bill 1985, Relating to Taxation."

The motion was put to vote by the Chair and carried, and H.B. No. 1985, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2523:**

Representative B. Oshiro moved that H.B. No. 2523, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 2523, Relating to the Aloha Tower Development Corporation (ATDC). This measure seeks to make an emergency appropriation to increase ATDC's special fund ceiling by \$900,000 for fiscal year 2009-2010 to pay a one-time settlement amount of \$1,550,000 to Kenneth H. Hughes, Inc. ("Hughes") to settle all claims, including rejection of all claimed rights to lands at ATDC, arising out of or with respect to a Development Agreement between ATDC and Hughes dated October 12, 2004 (*Kenneth H. Hughes, Inc. v Aloha Tower Development, Corp., Civil No. 09-00277 DAE-BMK, USDC*).

"The original total amount awarded to Hughes in the first proceeding from May 2008 through April 2009 was just over \$1.6M. In the first trial the arbitrator awarded Hughes damages for "lost investment time" in the amount of \$741,544.59, costs incurred of \$162,047.90, pre-award interest of \$271,755.44, and post-award interest at the rate of 10% per year. After several proceedings, at the mandate of the U.S. District Court, settlement efforts were conducted with the assistance of a Magistrate and an agreement was reached to resolve the entire dispute for the total sum of \$1.55M, in total and complete payment of all amounts due or claimed by Hughes, including any interest or attorneys' fees.

"Mr. Speaker, under the circumstances, the stipulated judgment with Hughes represents a significant savings, and avoids future harmful decisions against the State if the arbitrator's rulings remained as legal precedent. Interest on the arbitration award would by now have increased the arbitration award of \$1,600,000 by nearly \$107,000. This last settlement agreement has vacated the adverse ruling as to sovereign immunity and an appeal on that issue is no longer needed, saving taxpayer money and allowing the courts to rule on other pressing cases. The State cannot afford to pay this additional amount nor spend vital time and court resources on an additional settlement agreement.

"With the passage of this measure ATDC will be able to move forward and focus on its short term and long term development plans set forth in its Strategic Plan and Development Framework. For these reasons Mr. Speaker, I support House Bill 2523."

The motion was put to vote by the Chair and carried, and H.B. No. 2523, entitled: "A BILL FOR AN ACT RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2596:**

Representative B. Oshiro moved that H.B. No. 2596, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 2596, Relating to Tax Credits. This bill provides for the statutory ordering of income tax credits, which requires the claiming of refundable credits first, followed by nonrefundable credits.

"By requiring refundable credits to be used first, general fund payouts to taxpayers in any given year beyond reducing tax liability to zero will be substantially reduced, providing some relief to the general fund and have an annual revenue gain of approximately \$17M for at least two years after the measure has been implemented.

"DoTAX has stated that this bill will not create any material financial loss for taxpayers. The only financial loss is the time value of money. In most instances, taxpayers will not lose any credit, rather they will have to use them in future tax years as credits carried forward are allowed to be carried forward indefinitely until exhausted. Taxpayers with additional refundable tax credits beyond tax liability will still receive a refund.

"Mr. Speaker, ensuring the efficient administration of our State's tax credits and budgeting certainty will go a long way in aiding the State to survive and thrive in this recession. For these reasons, Mr. Speaker I support this bill."

The motion was put to vote by the Chair and carried, and H.B. No. 2596, entitled: "A BILL FOR AN ACT RELATING TO TAX CREDITS," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2505, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 2505, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ACCESS HAWAII COMMITTEE," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2532, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 2532, HD 1, entitled: "A BILL FOR AN ACT RELATING TO UNCLAIMED PROPERTY," passed Third Reading by a vote of 51 ayes.

**H.B. No. 1922, HD 1:**

Representative B. Oshiro moved that H.B. No. 1922, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 1922, House Draft 1, Relating to Taxation. This bill requires transferors of real property located in Hawaii to furnish a tax clearance to the Bureau of Conveyances before recording the transfer. It also authorizes the Director of Taxation to require escrow depositories remit taxes by electronic funds transfer if the depository is required to file a return of the tax withheld on a real property transfer. Additionally, this bill requires an escrow depository filing a return on behalf of a transferee to file not more than two working days following the authorization date and deliver a receipt to the transferee, which is subject to a \$100-per-day late fee.

"This bill is necessary, Mr. Speaker, because uncollected TAT and GET on rental income by nonresident real property owners is a problem for the State. As identified in the 2005-2007 Tax Review Commission Report, these uncollected TAT and GET become lost income and falls out of the State's jurisdiction when the property is sold and transferred. With nonresidents particularly, tax compliance can be poor because of unfamiliarity with laws and obligations. By serving as a condition precedent to obtaining a deed, this tax clearance will ensure that all taxpayers, including non residents, pay their fair share of taxes in Hawaii.

"During this difficult economic period, government must ensure that the total amount due to the State is collected in order to maintain vital programs and avoid costly raises in taxes and the cost of living here in Hawaii. This measure will generate income by aiding collection of taxes that had previously gone unpaid and creating a penalty fee based system for these violations.

"For these reasons Mr. Speaker, I stand in strong support of House Bill 1922, House Draft 1, Relating to Taxation."

The motion was put to vote by the Chair and carried, and H.B. No. 1922, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 51 ayes.

**H.B. No. 40, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 40, HD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2186, HD 1:**

Representative B. Oshiro moved that H.B. No. 2186, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 2186, House Draft 1, Relating to Improper Payments Elimination and Recovery. This bill establishes procedures to eliminate and recover improper payments made by a State agency, State contractor, State grantee, or a governmental or other organization administering a State program or activity, to any non-State person or entity. It also requires the head of each agency to conduct a financial management improvement program and additional reporting requirements for State agencies consistent with rules prescribed by the Director of Finance.

"This bill is necessary to create a system to ensure proper procurement of State agencies, address improper spending in a timely manner, and improves financial management of State agencies. Proper procurement has been a recurring issue within many State departments. Whether due to inefficiency, fraud, or incompetence, proper procurement needs to be addressed and eliminated.

"At a time where the expenditure of every State dollar matters, this bill provides for more accountability of financial transactions within State agencies. This bill also saves money by establishing a clear system to recover improper payments which will benefit the State budget. Future

spending errors are also avoided with the passage of this bill by requiring the Director of Finance to make recommendations to avoid additional financial errors.

"In addition to saving the State money this bill also increases transparency of spending by requiring an annual report of improper spending to the Legislature. With this report the Legislature can effectively gauge the efficiencies and inefficiencies of state agencies and departments making cuts and recommendations to benefit and serve the people of Hawaii when necessary.

"For these reasons, Mr. Speaker, I support the favorable passage of House Bill 2186, House Draft 1."

The motion was put to vote by the Chair and carried, and H.B. No. 2186, HD 1, entitled: "A BILL FOR AN ACT RELATING TO IMPROPER PAYMENTS ELIMINATION AND RECOVERY," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2594, HD 2:**

Representative B. Oshiro moved that H.B. No. 2594, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support of House Bill 2594, House Draft 2, which creates conforming amendments to the Hawaii income tax law based upon amendments to the Internal Revenue Code for calendar year 2009. This bill is necessary to amend the Hawaii income tax law to match tax measures enacted by Congress to stimulate the economy and provide taxpayer relief. The tax measures that impact the State's conformity to the Internal Revenue Code are the American Recovery and Reinvestment Act of 2009 (ARRA), and the Worker, Homeownership, and Business Assistance Act of 2009 (WHBA). The enacted legislation provides incentives to invest in capital items and relief to individual taxpayers.

"In its testimony to the Finance Committee the Department of Taxation stated that the measure *"will neither materially reduce or increase revenues...Given the current fiscal environment, the Administration proposes to not conform to any Internal Revenue Code change that would result in a negative impact to the general fund."* The neutral impact to the State's general fund is obtained by adjusting three revenue estimates provided to the U.S. government by the Joint Committee on Taxation. The first assumes Hawaii's economy is roughly 0.5% of the total U.S. GDP. The second assumes that the State average effective tax rate is one-quarter of the federal Individual Income Tax and 18% of the federal for the Corporation Income Tax. The third assumes the federal fiscal year ends September 30.

"The tax credits and reductions in interest rates will reduce the tax burden that Hawaii residents and businesses are required to pay, allowing that money to instead be spent stimulating the local economy. Using the multiplier effect, this money will create additional business for local companies and generate more income for employees as well.

"Mr. Speaker, for these reasons I support House Bill 2594, House Draft 2."

The motion was put to vote by the Chair and carried, and H.B. No. 2594, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2311, HD 1:**

Representative B. Oshiro moved that H.B. No. 2311, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Cabanilla's written remarks are as follows:

"Mr. Speaker, In support of HB 2311 with reservations [sic], Mr. Speaker. HB 2311 is probably the most misunderstood or misconstrued bill

of this Legislative Session. I heard testimony after testimony, both oral and written in support of flying the US and the State flag. Who is not in support of flying the US or the State flag, Mr. Speaker? We all are. Somehow the bill was misconstrued to be one that hindered the flying of the flag.

"The US Constitution, through The Freedom to Fly the Flag Act of 2005 which was put into law in 2006, mandates that the US Flag can be flown within PCA's with reasonable restrictions. We now have a law, Mr. Speaker. We as a Body have been criticized of writing duplicative and unnecessary laws. This is one of them.

"First of all, the bill is about erecting flagpoles. Erecting flagpoles within PCA's with reasonable restrictions just like how the flag law is written. Now going through the constitutional challenges of this flagpole bill, it made me realize the wisdom in crafting the federal legislation, the Freedom to Fly the Flag Act of 2005, did not address the flagpole issue. What HB 2311 fails to do is to articulate what type of flagpole the bill is trying to erect. Is it three feet, five feet, or 100 feet? I don't know. What does erecting a flag pole means? Does it mean a flagpole mounted on a 3x5 concrete slab, or tucked in on the wall in front to the house? The bill leaves me with a thousand possibilities.

"The bill also states that the flagpole restriction is limited to aesthetic reasons only - could it mean a nice flagpole made of 1-ply aluminum would be sufficient? Then at the end it says that PCA's can impose reasonable restrictions. What is a reasonable restriction? What does the bill accomplish, Mr. Speaker? Nothing. It just raises more questions to be answered. The bill needs more specificity.

"Mr. Speaker, you can now fly the American flag, even inside planned community associations. The residents just need to assert that right as provided by federal law. We have passed laws such as condo court, dispute resolution mandates. We also have the ACLU, The Disability Rights Center for the veterans that are handicap, grievance procedures through the Veterans Administration, and so on and so forth, not to mention that this is a civil court matter if the association forbids the flying of the flag. I have no knowledge what remedies that were taken prior to this bill's introduction.

"We all know that there are covenants inside these community associations. When you buy into these communities, you also agree to abide by these rules. There are hundreds of thousands of residents within these condos and planned communities whose voices need to be heard as well. Do they welcome these flagpoles not knowing what size we are talking about?

"No one came to talk to me or to any Member of the Committee to justify the need for this legislation. No one showed up at the hearing. All I know about the need for this legislation is what I have seen on the six and ten o'clock news. This is a media event, motivated by political desires.

"I love and honor the flag, Mr. Speaker. With that love and honor comes responsibility to protect its dignity and honor. Mr. Speaker, I am a member of the US Army Reserves and a Lieutenant Colonel. I have served for 23 years both in active duty with the Army, as well as in the Reserves, and I have served through three different conflicts. I live in a community association and I fly the flag attached to my house. I fly that flag in honor of my buddies who are currently deployed. I do not believe that erecting a flag pole will be of a greater honor to them.

"I wanted more discussion to determine if the protocols of flying a flag on a flagpole are going to be followed as prescribed by Title IV, US Code 36. Protocols such as raising the flag at dawn and retiring it at sunset. If you are to fly it overnight, you need to have a spot light shining on the flag. You must know when to fly it half or full mast. You must know how to properly dispose of it when it gets old and tattered. To fly a flag on a flagpole requires commitment. I am not saying that they will not be committed to such protocols, but I want to make sure that everyone understands and agrees.

"I gave HB 2311 a hearing Mr. Speaker, but no one – no one, Mr. Speaker showed up at the hearing. Not even one veteran showed up Mr.

Speaker. What I know about this measure was from a lone veteran crying on TV asking for sympathy. I have no idea what remedies he already took to convince the association to allow him to erect a flagpole. Did he put in an application to the design committee? Did he talk to the association board of directors or the management company? Did he talk to his neighbors? Did he circulate a petition? We do not know that, but yet we are being asked to write laws that will override the covenants of hundreds of thousands of planned community residents. These residents may not have any opposition to these flag poles, however we cannot assume that because we have not involved them in the discussion. We need to give them the time to assimilate what is going on.

"I am grateful for the media event that came with this bill Mr. Speaker, however the message is grossly misconstrued. This bill is not the prohibition of flying a flag. It is about erecting flagpoles. I have no problem with that either Mr. Speaker, however let us make sure that this is what these communities want to do. I am not saying that their passion for flying the flag on a flagpole should be ignored. It just can't be fitted within a time-certain Legislative Session. The discussion should be during the interim and we can ask for a task force to promulgate rules and protocols that people can agree on. And if they cannot agree, then we may need to introduce legislation.

"I find their analogy very disturbing - comparing the hanging of laundry and the hanging of the flag. This justifies more reason to discuss this bill further. Yes, they are both made of material Mr. Speaker, but nothing compares to the symbolism of our flag.

"We respect our veterans Mr. Speaker, and we will never forget the sacrifices that they and their families made for our country. Not passing this bill this Legislative Session should not be seen as our disrespect of their wishes. Mr. Speaker in this Legislative Session, we are dealing with a State that is financially challenged. We do not have money to keep our children in school. Small businesses are closing because we have overburdened our unemployment insurance safety net, necessitating business to contribute more. Homelessness is increasing because of lack of funding. We do not have funds to pay for the services for the poor, the aged, and the handicapped. Our people need jobs. Our homes are being foreclosed on, Mr. Speaker.

"I ask my fellow veterans to be patient and understanding."

The motion was put to vote by the Chair and carried, and H.B. No. 2311, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PLANNED COMMUNITY ASSOCIATIONS," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2724, HD 1:**

Representative B. Oshiro moved that H.B. No. 2724, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Karamatsu's written remarks are as follows:

"I rise in support. House Bill 2724, House Draft 1 will help protect dogs from cruelty, yet it is flexible enough to allow the training of working dogs in various industries in the state of Hawaii. Specifically, the bill further defines the offense of cruelty to animals in the second degree by requiring that tethering, fastening, tying, or restraining a dog to a doghouse, tree, fence, or any other stationary object or to a cable trolley system cannot be done in a cruel or inhumane manner. It requires that a tether or chain cannot weigh more than ten per cent of the weight of the dog tethered, and the tether or chain must have a swivel on at least one end. Further, one cannot tether, fasten, tie, or restrain a dog younger than two months old.

"Finally, in addition to the misdemeanor penalty currently in law, this bill mandates fines of \$50 for a first offense and \$200 for any subsequent offense. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2724, HD 1, entitled: "A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PUBLIC ORDER," passed Third Reading by a vote of 51 ayes.

At 9:16 o'clock a.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2354, HD 1  
 H.B. No. 2897, HD 1  
 H.B. No. 2548, HD 1  
 H.B. No. 2575, HD 2  
 H.B. No. 2383, HD 1  
 H.B. No. 2404, HD 1  
 H.B. No. 2693, HD 1  
 H.B. No. 2020, HD 2  
 S.B. No. 898, SD 2, HD 1  
 S.B. No. 549, SD 1, HD 1  
 H.B. No. 2297, HD 2  
 H.B. No. 2417, HD 2  
 H.B. No. 2921, HD 2  
 H.B. No. 2503, HD 1  
 H.B. No. 2294, HD 2  
 H.B. No. 1927, HD 2  
 H.B. No. 2058, HD 1  
 H.B. No. 2831, HD 2  
 H.B. No. 1852, HD 1  
 H.B. No. 1854  
 H.B. No. 2277, HD 1  
 H.B. No. 2497  
 H.B. No. 2052  
 H.B. No. 2641, HD 1  
 H.B. No. 823, HD 2  
 H.B. No. 1902, HD 1  
 H.B. No. 2094  
 H.B. No. 2170, HD 1  
 H.B. No. 2152, HD 1  
 H.B. No. 2061, HD 1  
 H.B. No. 2784, HD 1  
 H.B. No. 2163  
 H.B. No. 2538  
 H.B. No. 2533, HD 1  
 H.B. No. 2092, HD 1  
 H.B. No. 2022  
 H.B. No. 2605  
 H.B. No. 2583  
 H.B. No. 1808, HD 3  
 H.B. No. 2449, HD 2  
 H.B. No. 2855, HD 2  
 H.B. No. 2708, HD 1  
 H.B. No. 2775, HD 2  
 H.B. No. 2706, HD 1  
 H.B. No. 2639, HD 2  
 H.B. No. 2054  
 H.B. No. 2248, HD 1  
 H.B. No. 1287, HD 2  
 H.B. No. 2783, HD 2  
 S.B. No. 2246, SD 1  
 H.B. No. 840, HD 1  
 H.B. No. 1019, HD 1  
 H.B. No. 2741, HD 1  
 H.B. No. 1985  
 H.B. No. 2523  
 H.B. No. 2596  
 H.B. No. 2505, HD 1  
 H.B. No. 2532, HD 1  
 H.B. No. 1922, HD 1  
 H.B. No. 40, HD 1  
 H.B. No. 2186, HD 1  
 H.B. No. 2594, HD 2  
 H.B. No. 2311, HD 1  
 H.B. No. 2724, HD 1

The Chair then announced:

"Members, please remember to submit to the Clerk the list of House Bills on the Consent Calendar for which you will be inserting written

comments, in support or in opposition into the Journal. This must be done before the adjournment of today's Floor session."

At 9:16 o'clock a.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:56 o'clock a.m., with Vice Speaker Magaoy presiding.

### ORDINARY CALENDAR

#### UNFINISHED BUSINESS

At this time, the Chair announced that the following measures would be deferred to the end of the calendar:

#### **Stand. Com. Rep. No. 579-10 and H.B. No. 2376, HD 3:**

By unanimous consent, action was deferred to the end of the calendar.

#### **Stand. Com. Rep. No. 645-10 and H.B. No. 2377, HD 3:**

By unanimous consent, action was deferred to the end of the calendar.

#### **H.B. No. 2963:**

By unanimous consent, action was deferred to the end of the calendar.

#### **H.B. No. 2737, HD 1:**

By unanimous consent, action was deferred to the end of the calendar.

The Chair then announced that the following measure would be deferred to Thursday, March 4, 2010.

#### **Stand. Com. Rep. No. 477-10 and S.B. No. 1059, SD 2, HD 2:**

By unanimous consent, action was deferred to Thursday, March 4, 2010.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 462-10) recommending that H.B. No. 2922, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2922, HD 2, entitled: "A BILL FOR AN ACT RELATING TO SOLID WASTE," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 466-10) recommending that H.B. No. 2349, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2349, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker, on Stand. Com. Report Number 466-10, HB 2349, Relating to Violence Against Health Care Personnel. I would like to ask for a ruling on a potential conflict. Once in a great while I act as an emergency room social worker," and the Chair ruled, "no conflict."

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

"On the same measure, Mr. Speaker, I'm in strong support of this legislation and I also want a ruling on a potential conflict. I sometimes work as an emergency room nurse," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2349, HD 1, entitled: "A BILL FOR AN ACT RELATING TO VIOLENCE AGAINST HEALTH CARE PERSONNEL," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 468-10) recommending that H.B. No. 2086, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2086, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTH CARE DATA," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 469-10) recommending that H.B. No. 2284, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2284, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, Stand. Com. Report 469-10, may I have a ruling on a potential conflict? I'm an officer of a business that is in this area as a sublessee," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. Also on Stand. Com. Report No. 469-10, may I get a ruling on a potential conflict? My law firm represents the sole landowner that is affected by this legislation," and the Chair ruled, "no conflict."

Representative Har then asked that the Clerk record a no vote for her, and the Chair "so ordered."

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

"Mr. Speaker, may I submit written comments with strong reservations on Stand. Com. Rep. No. 469?"

Representative Finnegan's written remarks are as follows:

"I rise with reservations on HB 2284. The bill extends the repeal date of Act 189, SLH 2009, to June 30, 2011 for the Mapunapuna leases. Although I agree in principle with this bill, I do worry about the precedent that this bill may set in terms of the State interfering with or enabling tenants to abrogate the terms of their contract with their lessor. This should be an exception to the rule and not become the rule in order to maintain viable contract law in the State."

Representative Keith-Agaran rose in support of the measure with reservations and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Keith-Agaran's written remarks are as follows:

"Thank you, Mr. Speaker. I support this bill with reservations. This bill extends Act 189, SLH 2009, to June 30, 2011. 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."

"As members observed last Session, Act 189 apparently targeted a single landowner for the benefit of its lessees, but arguably addressed a situation where the free market between lessor and lessee was not functioning. Hawaii has experienced and 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 Hawaii businesses with little recourse. My concern is that the language in question does not appear in any other commercial lease and this measure deals with only one landowner.

"Once again, Mr. Speaker, I vote with reservations."

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

"Thank you, Mr. Speaker. I rise in opposition to this measure. Thank you, Mr. Speaker. Although I wasn't here last year, I did have some time to catch up on this particular measure. I realize that the Legislature passed Act 189 in regards to this issue.

"But I believe that this is bad policy and it sets bad precedence and ultimately, is bad for business in our State. This bill sends a message to businesses and potential investors that the Legislature may change the terms of your contract. Today it's the tenants of HRPT asking us to change their leases to reduce their rents. Next year, it could be the tenants of Ala Moana Center or Kamehameha Schools.

"This action is reckless. Last year, the Attorney General warned us that this bill may be unconstitutional in that it may violate the contract clause and the takings clause, giving the landowner the right to recover compensation from the State. But the Legislature passed the bill anyway and now we are considering extending this law just increasing the State's potential liability to pay for damages, fees, and costs.

"At a time when we're cutting social programs to balance the budget, this bill is financially irresponsible. It makes no sense to extend this law until the constitutional questions have been settled in court. We should wait to hear what the court says rather than rushing to pass a bill that the taxpayers pay for in the end.

"With your request, Mr. Speaker, I'd like to insert into the Journal two opinion letters from the Attorney General last year which was sent in April 2009 clarifying the Attorney General's concerns regarding his concerns that this particular issue may violate the contract clause of the US Constitution and also may violate the takings clause. Thank you, Mr. Speaker.

"In addition, I just wanted our colleagues to know that just recently, in fact, just yesterday or the day before, this issue as you all know, is in Circuit Court. There was a request to have the hearing date on either April 5th or April 12th. Both court dates were available prior to the ending of the Legislative Session. So we would have as a Legislature benefitted from the guidance of Judge Mollway regarding the constitutionality of this law.

"However, in Docket 72, the Citizens for Fair Evaluation opposed the advancing of the hearing date to April and requested that the court actually push back the hearing date to May 17. And in Docket 71 the State of Hawaii briefly, in their brief, opposed the advancing of the hearing date to April. The irony of this is that we could have settled this once and for all had the two parties, the Citizens for Fair Evaluation and the State of Hawaii chosen to support the motion to have the hearing prior to the ending of the Legislative Session.


"In the Committee hearings that we had in the Economic Development Committee, I questioned if the court rules that this is unconstitutional, whether the State would put itself in a financial predicament, and it was uncertain. But as we move through this process in the courts I say, this bill should not move and we should just wait for whatever happens in the court, and I urge my colleagues to take a look at this.

"Finally, Mr. Speaker, I'd like with your permission to insert into the Journal, Dockets 70, 72 and 71. Thank you."

Representative Takai submitted the following documents:

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COUNSELOR



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APRIL 23, 2009

MARK J. BENNETT  
ATTORNEY GENERAL

LISA M. GIBSON  
FIRST DEPUTY ATTORNEY GENERAL

RECEIVED  
APR 23 2009

VIA FACSIMILE NO. 586-6071  
Honorable Rosalyn H. Baker  
Chair, Senate Conference  
Committee

VIA FACSIMILE NO. 586-6461  
Honorable Brian T. Taniguchi  
Co-Chair, Senate Conference  
Committee

VIA FACSIMILE NO. 586-8426  
Honorable Sam Slom  
Manager, Senate Conference  
Committee

VIA FACSIMILE NO. 586-6161  
Honorable Angus L. K. McKelvey  
Co-Chair, House Conference  
Committee

VIA FACSIMILE NO. 586-8484  
Honorable Clift Tsuji  
Co-Chair, House Conference  
Committee

VIA FACSIMILE NO. 586-8494  
Honorable Jon Riki Karamatau  
Co-Chair, House Conference  
Committee

VIA FACSIMILE NO. 586-6341  
Honorable Blake K. Oshiro  
Manager, House Conference  
Committee

VIA FACSIMILE NO. 586-6481  
Honorable Cynthia Thiesen  
Manager, House Conference  
Committee

Re: S.B. No. 764, S.D. 2, H.D. 2, Relating to Real Property  
Meeting on April 23, 2009 at 10:15 a.m.

Dear Conferees:

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. In addition, with respect to leases of certain private agricultural lands where the lessee has made or is seeking to make improvements on the land, this bill requires

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Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 23, 2009  
Page 2

the renegotiated term of the lease to include an extension of the lease for a period at least seventy-five percent of the original term of the lease. The bill also prohibits the amendment of a land use district boundary Class A and B agricultural lands that meet four criteria.

Legal concerns regarding state impairment of contracts are raised by the proposed language affecting existing commercial and agricultural leases.<sup>1</sup>

It is well established that a retroactive law is a constitutional issue if it takes away or impairs vested rights acquired under existing laws or attaches a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already concluded. *Employees Retirement Sys. v. Chang*, 42 Haw. 532, 535 (1958). Generally, retrospective laws are not favored and all laws will be construed as prospective unless retrospective application is clearly intended and expressly declared, or is necessarily implied from the language used. *Clark v. Cassidy*, 64 Haw. 74 (1981). This principle is particularly applicable where the statute or amendment involves substantive, as opposed to procedural, rights. *Clark*, 64 Haw. at 77; *Dash v. Wayne*, 700 P. Supp. 1056 (D. Haw. 1988).

With respect to the constitutional proscription against impairment of contracts, it is a fundamental principle that obligations of a contract cannot be impaired by subsequent passage of any law. *Taylor v. Taylor*, 537 P.2d 483, 486 (Mont. 1975); *Pulco v. James*, 302 N.E.2d 768, 775 (Ind. 1973). The obligation of a contract is impaired by a law that alters the contract's terms by creating new rights or imposing new conditions or different liabilities. *Northern Pacific Railway v. Duluth*, 208 U.S. 583, 590 (1908). "Any law which changes the . . . legal effect of the original parties, giving to one greater or the other a less interest or benefit in the contract, impairs its obligation." *Kentucky Utilities Co. v. Carlisle Ice Co.*, 131 S.W.2d 499, 504 (1939). See also *Anthony v. Kauloa*

<sup>1</sup>The United States Constitution states, in part, that "[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts . . ." U.S. Const., Art. I, § 10, cl. 1. ("Contracts Clause")

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Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 23, 2009  
Page 3

Ranch, Inc., 69 Haw. 112, 119-24 (1997) [law, enacted after lease executed, that required lessors to pay, at the sole option of the lessees, for improvements built upon the leased premises in order to get the leased premises back, substantially impaired the contractual rights of the parties and was unconstitutional].

The importance of protecting the obligation of contracts from all legislative action tending to its impairment has been emphasized by the Supreme Court of the United States. That high tribunal has stated that the inviolability for contracts and the duty to perform them, as made, are at the foundation of all well-ordered society that: to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed, and that it is one of the highest duties of that court to take care that the prohibition should neither be evaded nor frittered away.

16A Am. Jur. 2d Constitutional Law § 694 (1979) (emphases added).

However, because states are vested with authority to safeguard the vital interests of their residents, the impairment clause is liberally construed and prohibits only unreasonable impairment. Id.; Energy Reserves v. Kansas Power & Light, 459 U.S. 400, 409 (1983). Reasonableness is determined by whether the law addresses a legitimate end and whether the measures taken to reach that end are reasonable and appropriate. It is important to recognize that the power of a state to modify or affect the obligation of a contract under the state's protective powers is not without limit. "Yet the contract clause limits otherwise legitimate exercises of state legislative authority, and the existence of an important public interest is not always sufficient to overcome that limitation." United States Trust Co. v. New Jersey, 431 U.S. 1, 21 (1977). See also El Paso v. Simmons, 379 U.S. 497, 506-9 (1965).

As noted above, this bill appears to intrude upon 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 to mean that

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Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 23, 2009  
Page 5

could meet those four factors, thus owning property that falls within the definition "commercial or industrial leasehold property", and be subject to the requirements of this bill.

On the other hand, a lessor in Mapunapuna with fewer than fifty thousand square feet would not meet the fourth factor and not own property that falls within the definition of "commercial or industrial leasehold property", and thus not be subject to the requirements of this bill.

In addition, the third factor, regarding a lease with a term of ten years or more and an unexpired term of five years or more, could apply to various recent leases in the Ewa region or central Oahu, whereas section 1 of the bill appears to focus on urban communities which historically have housed small commercial or industrial businesses. S.B. No. 764, S.D. 2, H.D. 2, page 2, lines 19-21 ("Thus, maintaining close geographic ties between small businesses and the communities they serve is a public purpose that requires legislative support.")

In summary, it is unclear how focusing the definition of "commercial or industrial leasehold property" on the nature of the lessor is sufficiently tailored to the bill's stated purpose of easing burdensome lease provisions on lessees. S.B. No. 764, S.D. 2, H.D. 1, page 3, lines 3-5.

At this time, it is unclear from the record how pervasive the alleged problem is, or the actual number of commercial and industrial leases affected by this bill, or how the bill's proposals actually benefit urban businesses. The government must use the least intrusive means to achieve its goals. It is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well. United States Trust Co. v. New Jersey, 431 U.S. at 31.

Legislation impairing commercial or industrial leases would be more defensible if based on articulated findings of need, demonstrated evidence that the proposed legislation will achieve the stated purpose, and explanation that no lesser remedy (such as arbitration, mediation, or litigation) is available. The bill's proposed definition of "commercial or industrial leasehold property" seems focused upon lessors and does not appear to be "a reasonable and narrowly-drawn means of promoting

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Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 23, 2009  
Page 4

"rent shall be fair and reasonable to both the lessor and the lessee to the lease." S.B. No. 764, S.D. 2, H.D. 2, page 4, lines 3-5. Unless otherwise stated in the lease, this bill also imposes a new requirement in such lease rent renegotiations that they include consideration of the "past renegotiation practices and policies throughout the previously renegotiated lease rents, the uses and intensity of use of the lease property during the term of the lease approved by the lessor, the surface and subsurface characteristics of the leased property and the surrounding neighborhood on the renegotiated date, and the gross income generated by the lessees on the renegotiated date." S.B. No. 764, S.D. 2, H.D. 2, page 4, lines 8-18. In addition, this bill provides four factors in defining "commercial or industrial leasehold property" and also defines "lease".

With respect to leases for agricultural lands, this bill intrudes upon leases of certain private agricultural lands by requiring the renegotiated term of the lease to include an extension of the lease for a period at least seventy-five per cent of the original term of the lease. S.B. No. 764, S.D. 2, H.D. 2, page 7, lines 9-20. The bill's provisions as to agricultural leases only concern revisions to the term of the lease and our views on these provisions are discussed at the end of this letter.

Despite the customary deference accorded to social and economic legislation, laws altering the rights and obligations of contracting parties must be reasonable and necessary for the public purpose for which they were enacted. Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1977). Applications of Herrick & Irish, 82 Haw. 329, 922 P.2d 942 (1996). While section 1 of this bill describes the need to strengthen and diversify Hawaii's economy, there is no evidence that this bill will achieve the stated purpose to stabilize the economy by addressing some of the alleged vague or onerous provisions of existing commercial and industrial leases. S.B. No. 764, S.D. 2, H.D. 2, page 2, lines 11-19. For example, the four factors of "commercial or industrial leasehold property" do not necessarily identify how they are linked to a benefit for the business tenants in Oahu's urban center, as opposed to those in the Ewa region or central Oahu, as stated in section 1 of the bill. S.B. No. 764, S.D. 2, H.D. 2, page 2, lines 1-10. A lessor in Kapolei

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Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 23, 2009  
Page 6

the significant and legitimate public purpose." Applications of Herrick & Irish, 82 Haw. 329, 922 P.2d 942, 953. Consequently, it appears this bill may violate the Contracts Clause and be found unconstitutional.

With respect to section 5 of part II of this bill, we raise the same concerns regarding state impairment of contracts. To the extent the bill intrudes upon renegotiations of lease rents for certain private agricultural lands, such intrusion is subject to the same analysis used for part I of the bill regarding commercial and industrial leases. Section 4 of the bill justifies the intrusion and Section 5 appears to be a reasonable and narrowly-drawn means of promoting a significant and legitimate public purpose. However, as with part I of the bill, the state impairment of private agricultural leases may be subject to challenge.

Very truly yours,

Shari Wong  
Deputy Attorney General

Mark J. Bennett  
Attorney General

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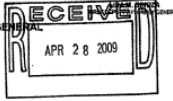
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LUCIA LIMBIE  
GOVERNOR



MARK J. BENNETT  
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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
625 QUEEN STREET  
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April 28, 2009

Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 28, 2009  
Page 3

found unconstitutional, the proposals may also constitute "takings" that give rise to a right to receive compensation from the sovereign.

Very truly yours,

Shari Wong  
Deputy Attorney General

APPROVED:  
  
Mark J. Bennett  
Attorney General

VIA FACSIMILE NO. 586-6071  
Honorable Rosalyn H. Baker  
Chair, Senate Conference  
Committee

VIA FACSIMILE NO. 586-6161  
Honorable Angus L. K. McKevey  
Co-Chair, House Conference  
Committee

VIA FACSIMILE NO. 586-6461  
Honorable Brian T. Taniguchi  
Co-Chair, Senate Conference  
Committee

VIA FACSIMILE NO. 586-8484  
Honorable Clift Tsuji  
Co-Chair, House Conference  
Committee

VIA FACSIMILE NO. 586-8426  
Honorable Sam Slom  
Manager, Senate Conference  
Committee

VIA FACSIMILE NO. 586-8494  
Honorable Jon Riki Karamatsu  
Co-Chair, House Conference  
Committee

VIA FACSIMILE NO. 586-6341  
Honorable Blake K. Oshiro  
Manager, House Conference  
Committee

VIA FACSIMILE NO. 586-6481  
Honorable Cynthia Thielen  
Manager, House Conference  
Committee

Re: S.B. No. 764, S.D. 2, H.D. 2, Relating to Real Property  
Meeting on April 28, 2009 at 10:15 a.m.

Dear Conferees:

We supplement our letter to you dated April 23, 2009, and note our additional concern that the proposals of S.B. No. 764, S.D. 2, H.D. 2, may impair private contracts and constitute

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Case 1:09-cv-00375-SOM-KSC Document 70 Filed 02/19/10 Page 1 of 4

Conferees on S.B. No. 764, S.D. 2, H.D. 2  
April 28, 2009  
Page 2

"takings" which gives rise to a right to receive compensation from the sovereign. A compensable regulatory taking occurs when governmental agencies impose restrictions that either 1) deny landowners of all economically viable use of their property, or 2) unreasonably interfere with landowners' rights to use and enjoy their property. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 933-35 (Tex. 1998).

A regulation may go so far in imposing public burdens on private interests as to require compensation. In deciding whether regulatory action goes "too far", three principles known as the *Penn Central* factors have emerged: 1) the "economic impact of the regulation on the claimant"; 2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and 3) "the character of the governmental action". *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978). *Penn Central* does not supply mathematically precise variables but instead provides important guideposts that lead to the ultimate determination whether just compensation is required. Whether a regulatory taking has occurred, "depends on a complex of factors including" the three set out in *Penn Central*. *Sheffield Dev. Co. v. City of Glenn Heights*, 140 S.W.3d 660 (Tex. 2004). The analysis "necessarily requires a weighing of private and public interests" and a "careful examination and weighing of all the relevant circumstances in this context." In considering a regulatory takings issue, a court will "consider all of the surrounding circumstances" in applying "a fact-sensitive test of reasonableness." *Sheffield* at 670-72.

A court must satisfy itself that the legislature's "adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 505 (U.S. 1987). As we have stated previously, the proposals of S.B. No. 764, S.D. 2, H.D. 2 do not appear to be a reasonable and narrowly-drawn means of promoting a significant and legitimate public purpose in protecting certain commercial or industrial leasehold property, or certain private agricultural lands. As such, in addition to the bill's proposals possibly violating the Contracts Clause and being

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HRPT Properties Trust, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HRPT Properties Trust, et al.,
Plaintiffs,
v.
Linda Lingle, in her official capacity as
Governor of the State of Hawai'i,
Defendant,
and
Citizens for Fair Valuation,
Intervenor-Defendant.

PLAINTIFFS' EX PARTE MOTION TO ADVANCE THE HEARING DATE
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT [FILED 2/17/10]

Plaintiffs HRPT Properties Trust and its affiliate companies, by and
through counsel, move this Court ex parte for an order advancing the hearing date
of Plaintiffs' Motion for Summary Judgment, filed February 17, 2010. (See Doc.
67.) Plaintiffs' Motion for Summary Judgment is currently scheduled to be heard
on May 10, 2010, at 10:30 a.m. before the Honorable Susan Oki Mollway. (See
Doc. 69.)

elect to advance the hearing date. If the Court were to advance the hearing to the
earliest possible date of April 5, 2010, Defendants would have until March 15,
2010, nearly a month from now, to prepare their responses to HRPT's Motion for
Summary Judgment.

Plaintiffs therefore respectfully request that this Court advance the
hearing to a date before the end of the legislative session.

This motion is made pursuant to Federal Rule of Civil Procedure 7
and Local Rule 7.2, and is based upon the Declaration of Bruce D. Voss attached
hereto.

Dated: Honolulu, Hawai'i, February 19, 2010.

/s/ Bruce D. Voss
Bruce D. Voss
Ryan H. Engle
Matthew C. Shannon
Clifford M. Sloan
David W. Foster
Attorneys for Plaintiffs
HRPT Properties Trust, et al.

In this case, Plaintiffs seek a declaratory judgment that Act 189 of the
2009 session of the Hawai'i Legislature violates the Contracts Clause and six other
constitutional provisions, and is therefore unconstitutional. By its terms, Act 189
expires on June 30, 2010. (See Ex. 1.) At the urging of Intervenor-Defendant
Citizens for Fair Valuation, the Legislature is currently considering two bills,
Senate Bill No. 2020 and House Bill No. 2284, to extend the Act. (See Exs. 2-3.)
The 2010 legislative session, however, is scheduled to end April 29, 2010, more
than a week before the current May 10, 2010 hearing date. (See Ex. 4.)

Disputes regarding the constitutionality of Act 189 have affected and
will continue to affect legislative consideration of Senate Bill No. 2020 and House
Bill No. 2284. For example, the Senate Committee on Commerce and Consumer
Protection recently issued a report supporting a five year extension of the Act and
listing HRPT's "filing of a lawsuit in federal district court challenging the
constitutionality of Act 189" as a reason for the Act's extension. (Ex. 5 at 2.)
Advancing the date of the hearing would assist and provide guidance to the
Legislature and the parties by allowing the Court to consider the constitutionality
of Act 189 before the legislative session ends.

Plaintiffs have been informed by this Court's courtroom manager that
hearing slots are potentially available to hold a hearing on a motion for summary
judgment on April 5, 2010 and April 12, 2010, should the Court in its discretion

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HRPT PROPERTIES TRUST, et al.,
Plaintiffs,
vs.
LINDA LINGLE, in her official
capacity as Governor of the State
of Hawai'i,
Defendant,
CITIZENS FOR FAIR
VALUATION
Intervenor-Defendant

INTERVENOR CITIZENS FOR FAIR VALUATION'S MEMORANDUM
IN SUPPORT OF EX PARTE MOTION TO CONTINUE THE HEARING
DATE OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT [#67]
AND FORTHCOMING COUNTERMOTIONS FOR SUMMARY
JUDGMENT TO BE FILED BY DEFENDANT AND INTERVENOR-
DEFENDANT BY ONE WEEK (TO MAY 17, 2010) AND OPPOSITION TO
PLAINTIFFS' MOTION TO ADVANCE TIME [#70]

This Honorable Court has scheduled the hearing on Plaintiffs' Motion for
Summary Judgment for Monday, May 10, 2010 at 10:30 a.m. [#69]. On Friday,
February 19, 2010, Plaintiffs filed an ex parte Motion to Advance the Hearing Date
[#70], arguing that an earlier hearing and ruling by this Court "would assist and
provide guidance to the Legislature." Intervenor-Defendant CFV opposes this

Motion and requests that the Hearing be set for Monday, May 17, or as soon thereafter as is convenient for the Court, for the reasons that follow.

After this Honorable Court's Order of December 22, 2009, the parties engaged in discussions regarding discovery, but they were not able to reach any agreement. In paragraph 11 of Mr. Voss's Declaration he refers to his "understanding" of those discussions, but he is incorrect in indicating that any consensus or agreement had been reached. Because no agreement was possible, the parties held a Status Conference in front of Magistrate Judge Chang on Monday, January 25, 2010, where he explained the scope of discovery for the parties. Pursuant to that clarification, Plaintiffs noticed and took the deposition of Michael Steiner on Tuesday, February 9, 2010, and Intervenor-Defendant CFV have noticed the deposition (by video conference) of David Lepore to be taken on Thursday, February 25, 2010. On Wednesday, February 17, 2010, Plaintiffs filed their Motion for Summary Judgment, and attached a series of Declarations and documents purporting to provide information relevant to this Court's Order of December 22, 2009. This new information is now being evaluated by the other parties, and further depositions or other discovery may be necessary in light of this new information. The deposition of Mr. Lepore may also produce new information that may require further discovery requirements. The discovery process is thus still evolving, and any advancement in the hearing date will

interfere with the efforts of all the parties to complete the discovery required by this Court's Order of December 22, 2009.

The lead attorney for Defendant Governor Linda Lingle, Mr. Girard Lau, has been on travel leave in recent days, and is due to return to the islands on Thursday, February 25. He has not been available, therefore, to evaluate the Plaintiffs' Motion for Summary Judgment or the new information accompanying that filing, and will need time after his return to engage in this evaluation and to decide whether the interests of his client require further discovery.

In January 2010, the lead attorney for Intervenor-Defendant CFV, Mr. Jon M. Van Dyke, accepted an invitation from the Maritime Institute of Malaysia to give a presentation in Kuala Lumpur, Malaysia, on issues related to the delimitation of the continental shelf in the South China Sea at a conference scheduled for May 10-11, 2010. Because of this conflict, Intervenor-Defendant CFV respectfully requests this Court to schedule the Hearing on Monday, May 17, 2010, or as soon thereafter during that week as would be convenient for the Court.

DATED: Honolulu, Hawai'i, February 23, 2010.

Jon M. Van Dyke /s/ Jon M. Van Dyke  
Sherry P. Broder  
Jay M. Fidell  
Keith S. Agena  
Attorneys for Intervenor  
Citizens for Fair Valuation

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Attorneys for Defendant  
LINDA LINGLE, in her official  
capacity as Governor of the State of Hawaii

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HRPT PROPERTIES TRUST and  
affiliate companies:  
MASTER PROPERTIES LLC, a  
Maryland limited liability company,  
ROBIN 1 PROPERTIES LLC, a  
Maryland limited liability company,  
TANAKA PROPERTIES, LLC, a  
Maryland limited liability company,  
LTMAC PROPERTIES, LLC, a  
Maryland limited liability company,

NO. CV 09-0375 SOM/KSC  
  
LINDA LINGLE, IN HER OFFICIAL  
CAPACITY AS GOVERNOR OF  
THE STATE OF HAWAII'S  
STATEMENT RE:  
PLAINTIFFS' EX PARTE MOTION  
[#70] TO ADVANCE THE  
HEARING DATE OF PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT [FILED 2/17/10] [#67]  
FILED FEBRUARY 19, 2010;  
CERTIFICATE OF SERVICE

[Caption Continues]

TSM PROPERTIES LLC, a Maryland  
limited liability company, and  
Z&A PROPERTIES LLC, a Maryland  
limited liability company,

[Non-Hearing Motion]

Plaintiffs,

vs.

LINDA LINGLE, in her official  
capacity as Governor of the State of  
Hawaii,

Defendant.

LINDA LINGLE, IN HER OFFICIAL CAPACITY AS GOVERNOR OF THE  
STATE OF HAWAII'S STATEMENT RE: PLAINTIFFS' EX PARTE MOTION  
[#70] TO ADVANCE THE HEARING DATE OF PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT [FILED 2/17/10] [#67] FILED FEBRUARY 19, 2010

Defendant Linda Lingle, in her official capacity as Governor of the state of  
Hawaii ("Governor Lingle"), by and through her attorneys Mark J. Bennett,  
Attorney General, and Deborah Day Emerson, Girard D. Lau, David A. Webber  
and James C. Paige, Deputy Attorneys General, believes that the hearing date  
should not be advanced and that the May 10, 2010 hearing date currently  
scheduled by the Court is appropriate. That date will allow the parties sufficient  
time to complete any necessary discovery, for the defendants to file their respective

Case 1:09-cv-00375-SOM-KSC Document 71 Filed 02/23/10 Page 3 of 4

cross motions for summary judgment, and for the parties to otherwise fully brief this matter for the Court.

DATED: Honolulu, Hawaii, February 23, 2010.

MARK J. BENNETT  
Attorney General

/s/ David A. Webber  
DEBORAH DAY EMERSON  
GIRARD D. LAU  
DAVID A. WEBBER  
JAMES C. PAIGE  
Deputy Attorneys General

Attorneys for Defendant  
LINDA LINGLE, in her official  
capacity as Governor of the  
State of Hawaii

3

Case 1:09-cv-00375-SOM-KSC Document 71 Filed 02/23/10 Page 4 of 4

**CERTIFICATE OF SERVICE**

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing LINDA LINGLE, IN HER OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF HAWAII'S STATEMENT RE: PLAINTIFF HRPT'S EX PARTE MOTION TO ADVANCE HEARING DATE was served on the following at their last known addresses:

Served Electronically through CM/ECF: Date: February 23, 2010  
bvoss@legalhawaii.com  
mshannon@legalhawaii.com  
rengle@legalhawaii.com  
cliff.sloan@skadden.com  
david.foster@skadden.com  
robryn.carr@skadden.com

jvandyke@hawaii.edu  
sherrybroder@sherrybroder.com  
fidell@lava.net  
KSA@bfsi.com

DATED: Honolulu, Hawai'i, February 23, 2010.

/s/ David A. Webber  
Deputy Attorney General

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

"Mr. Speaker, I rise in support. Very briefly, I just wanted to counter some of the prior arguments that this may be unconstitutional. I think the constitutionality of this and whether it is an impairment on the contracts clause is a valid question and something that is going to be litigated in court. I think we well knew that when we passed the legislation last year. And that's why it went through many, many machinations until it was ultimately passed. Most importantly, I think we made sure that we put in a pertinent and very specific purpose clause so that we could demonstrate the substantial governmental interest because that is one of the primary tests when it comes to the contracts clause.

"As to the argument that we should be careful about interfering with contracts, I would like the Body to note that we do this all the time. I think we just did this for veterans when they leave and they want to keep their gym memberships. That's an interference in contracts, but we did that. So if we're going to do it for something like that, I think it is wholeheartedly prudent for us to do this for these lessees because these are all small businesses. These people are being squeezed out by exorbitant rent increases that have been demanded by the lessor and they never experienced those things before.

"And so I think it is a valid thing for us in this economic time to be saying, do we want all of these lessees to be squeezed out, and to have their rent increased twofold, or threefold because the lessor can? That is a valid question for us as policy makers. I think it's something that the courts will be addressing as it goes through litigation in Federal Court and therefore I support this bill. Thank you."

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

"Mr. Speaker, I rise in support of the measure. Mr. Speaker, I had the opportunity last year to hear the extensive discussion regarding this. It's unfortunate, even though he was serving our country, that the Representative didn't hear that because it was in a larger context of what otherwise was asked for which is fair and reasonable. And in the context in which is very important to me is that only 10% of the privately held land is actually in circulation among the 1.3 million people here.

"There is a lopsided land ownership not only with the State, but I think there are six owners who own huge, huge amounts. That's why the lease-to-fee for residential lots came about. That's why the sense of being fair and equitable in this lease comes about.

"So in terms of pure market principles, the gentleman is correct. But when it comes to the context of the scarcity of land and the monopoly of land, it seemed in that sense to be fair. It seemed to be reasonable and this is basically something that we would encourage them to work it among themselves. I don't think we're intervening. We're encouraging them to work it out to be fair, to be reasonable so these businesses can carry on and the public can be served by them. Thank you, Mr. Speaker."

Representative Ching rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support with strong reservations to H.B. 2284 H.D. 1 which extends date of Act 189, SLH 2009, to June 30, 2011.

"I understand that this measure has the intention to help small businesses, but I will probably vote no if this bill is not revised before its next hearing. I have deep concerns with the constitutionality of this measure, as Act 189 fails to meet the legal tests under the contracts clause and can be said to violate Article XI, section 5 of the Hawaii Constitution. I agree with the Land Use Research Foundation of Hawaii, which states that Act 189 "interferes with the terms of existing contracts, and such alteration of commercial and industrial contracts is unconstitutional, special legislation targeted at one landowner." Thank you."

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

"Thank you, Mr. Speaker, just briefly in opposition. The problem I have with this bill is, if we were doing it as a class for all types of leases, then I wouldn't have so much of a problem. But I do have a problem with the Legislature getting involved with a single lease, for one single entity, for one certain property.

"And what this does is it encourages contractors and lessees and lessors to not negotiate in good faith, if we're willing to get involved in one single contract. In future negotiations they're going to feel that if they have some type of argument then they can put in a bill and they're not going to negotiate in good faith in the future. Thank you."

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

"Mr. Speaker, I rise in opposition to this measure. This legislation is similar to legislation that the Attorney General reviewed in 2002. The 2002 legislation proposed two things. First, it allowed a lease to request a one-time lowering of lease rents at recent rents at fair market value. Second, it required that the Uniform Standards of Professional Appraisal of Practice, otherwise known USPAP, be used to calculate fair-market value in those lease-rent renegotiations.

"The Attorney General concluded that the legislation was unconstitutional because it impaired the contracts clause. The Attorney General relied on precedent from the Hawaii Supreme Court that basically held that the Legislature's general statement that the legislation would promote equity and fairness for landowners was not sufficient to overcome the constitutional challenge. That is exactly what we have done in our legislation where we have simply stated in conclusory terms that this legislation is necessary to promote fairness and reasonableness for leases in a single tract of land located in the Mapunapuna area.

"The Legislature has done no due diligence on this issue, and in fact the only due diligence that we have done stems from an LRB report that was completed in the early 2000s, which concluded in part that whether we agree or disagree with this conclusion, the conclusion was that commercial lease rent is reasonable at this time.

"If we are serious about alleviating the lease rent that is being paid by commercial lessees, then this legislation should go farther than just the Mapunapuna tract and it should apply to all commercial leases in the State of Hawaii. Thank you, very much."

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

"Thank you very much, Mr. Speaker. In support. And may I have the words of the Representative from Aiea and Hawaii Kai entered into the record as if they were my own? And I have some brief comments.

"Number one, this is not intended for a special class *vis-à-vis* Mapunapuna. It's for those who use the terms 'fair and reasonable' in their contract. And just as in the case of *Bulgo*, where a piece of legislation that was available to Maui County could be unveiled by future parties, so too could this one be if you use the words 'fair and reasonable' in your contract. That's why I don't think the people of Ala Moana will come running to the Legislature next year. So I think that's important to note. Thank you, Mr. Speaker."

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

"Please note my strong reservations and I request written comments."

Representative Belatti's written remarks are as follows:

"I rise with reservations on HB 2284, HD 1 which extends Act 189, Session Laws of Hawaii 2009, from June 30, 2010, to June 30, 2011. Ostensibly, this bill seeks to extend protections for local businesses over those of mainland landowners that were enacted with Act 189 one year

ago. Act 189 redefined the terms "fair and reasonable annual rent" as related to commercial leasehold negotiations and required the consideration of other circumstances relating to these commercial lease renegotiations.

"I am troubled by this bill because it places the Legislature in the position of altering contract language and interfering in business relations between presumably sophisticated business parties, conduct that on its face is prohibited by the U.S. Constitution. But I am also sensitive to the public purpose that this Body is trying to address with the passage and extension of Act 189 – the ability of local businesses to be able to survive during these difficult economic times and not be faced with rents beyond what is fair and reasonable.

"Whether Act 189's intent of ensuring fair and reasonable rents for commercial leases is reasonably related to the specific and legitimate purpose of stabilizing our local economy is a close call for this legislator and, it is for this reason, that I support this bill with reservations."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2284, HD 1, entitled: "A BILL FOR AN ACT RELATING TO REAL PROPERTY," passed Third Reading by a vote of 41 ayes to 10 noes, with Representatives Berg, Carroll, Hanohano, Har, C. Lee, Luke, Morita, Saiki, Shimabukuro and Takai voting no.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 471-10) recommending that H.B. No. 1978, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1978, HD 2, pass Third Reading, seconded by Representative Evans.

Representative Pine rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Pine's written remarks are as follows:

"Mr. Speaker, I rise in support with reservations for House Bill 1978, Relating to Towing. House Bill 1978 would mandate that all towing companies in the City and County of Honolulu operate 24 hours a day, 7 days a week among other stipulations outlined in the measure.

"I have concerns with statutorily instructing a private company on what hours they have to operate. This bill is intrusive on the private sector. For these reasons, I rise in support with reservations on House Bill 1978."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1978, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TOWING," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Rhoads voting no.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 475-10) recommending that H.B. No. 2271, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2271, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Yes, Mr. Speaker. I'm rising in support of the bill titled, Relating to Explosives, House Bill 2271, SCR 475. Thank you. Mr. Speaker, I think everyone in this Body experienced loud noises and a lot of complaints after New Year's Eve. And not just New Year's Eve, but even the weeks before New Year's Eve and the weeks after from exploding fireworks.

"This bill is going to prohibit dry ice bombs which are inherently dangerous. It's a simple home-made device. It comes in a variety of sizes. All that you need is a container, a plastic water bottle, or an empty 5-

gallon tank drum. You fill them with water, add dry ice, seal the container, and wait for the gas to expand inside the container. Depending on a variety of factors, the temperature, the container size, the container will explode, many times generating shrapnel. And you have no advance notice when that will occur. You can have small children in the area and you can have serious injuries from the exploding shrapnel. The damage can also be to hearing from what a Marine officer has told me, which is in excess of many military munitions.

"These are going off in our neighborhoods. Those of us on the Windward side certainly heard them. Many are large enough that they can be heard from significant distances and of course they wake people up from their sleep. Dry ice bombs serve no purpose other than to make noise, although they can be very destructive. You put a dry ice bomb inside a metal mailbox and you rip the box apart. And the noise and the destructive power of a dry ice bomb can be increased merely by increasing the size of the container or more thoroughly sealing the container.

"Mr. Speaker, this is very important for the safety of our children, for the safety of people in our neighborhoods that we outlaw these types of explosive devices. Thank you."

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

Representative Pine's written remarks are as follows:

"Mr. Speaker, I rise in strong support of House Bill 2271, Relating to Explosives. House Bill 2271 would amend Hawaii's firearms, ammunition, and dangerous weapons law to prohibit dry ice bombs.

"Since Halloween, loud explosions were heard throughout Ewa Beach, and continued after the New Year. It is suspected that many of these explosions were a product of dry ice bombs.

"Although dry ice, the solid form of carbon dioxide, is a versatile cooling agent, some people do not use it consistent with its original purpose. The use of dry ice to create bombs poses a safety risk to those that utilize them, and the people around them. The thunderous boom that the bombs emit, disturbs our communities, and most importantly startles the elderly, children, and our veterans.

"For these reasons, I rise in strong support on House Bill 2271."

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

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

Representative Takai's written remarks are as follows:

"Mr. Speaker, I speak in support of this bill. The purpose of this bill is to protect public health and safety by making the manufacture, sale, transfer, possession, or transport of any dry ice bomb in the State a misdemeanor offense. This measure will also commission a class C felony for possession of a dry ice bomb.

"I believe that making, assembling, selling, possessing and using "dry ice bombs" is a dangerous practice. The enactment of HB 2271 will make sure that Hawaii's explosives statute prohibits them. Due to the potential danger of "dry ice bombs" I support every effort needed to ensure that no "dry ice bomb" ever is used.

"I encourage the passing of this measure so that no one is ever hurt because of the use of a "dry ice bomb," and no property damage occurs because of the use of a "dry ice bomb." For these reasons, I support this measure and urge my colleagues to do the same. Thank you, Mr. Speaker."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2271, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EXPLOSIVES," passed Third Reading by a vote of 51 ayes.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 481-10) recommending that H.B. No. 2208, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2208, HD 2, pass Third Reading, seconded by Representative Evans.

At 10:01 o'clock a.m. Representative Finnegan requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:04 o'clock a.m.

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

"Thank you, Mr. Speaker. I would like to speak with reservations and give short comments. Thank you, Mr. Speaker. The purpose of this bill is to ensure that providers who deliver healthcare to Medicaid beneficiaries are paid in a timely manner. There's two ways to do that: by repealing the exemption for Medicaid and Medigap provider claims; and the second way is requiring the Department of Human Services to pay the health plans according to the Medicaid contract with each plan and to pay interest on the late payments.

"For the first reason for the bill, repealing the exemption, actually the Director of DHS mentioned in her testimony that they already have a contract that says that they have to pay these providers, they have to pay on clean claims. So I think she was mentioning that this was unnecessary.

"The second reason for this bill was to basically require the Department of Human Services to pay health plans interest on late payments. As you know we are probably going to be pushing, I think it's \$83 million in the next fiscal year. This is a very tough time for the State and we're basically incurring or charging late fees on ourselves. So I just have strong reservations on that as we are all trying to work with the situation in balancing the budget. Thank you."

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

"Mr. Speaker, I rise in support of this measure. Thank you. With respect to the previous speaker, I support this measure. The purpose of the Act is to repeal the exemption from the Clean Claims Law for Medicaid provider claims.

"The Clean Claims law is real simple. It's found in the Hawaii Revised Statutes, Section 431. It simply provides that if payments are made, clean claim payments shall be made within 30 days of the clean claims submitted in writing, and 15 days if it's submitted in an electronic form.

"Simply stated, Medicaid clients represent approximately 241,000 Hawaii residents. These residents are some of our most underserved patients, needy families, lower-income individuals, children, aged, blind and disabled. This is the composition the Medicaid patients, Mr. Speaker.

"Furthermore, these unpaid claims will reduce our healthcare providers' working capital. Therefore it will limit their capacity to pay their employees and purchase equipment and supplies for their needy patients. This will ultimately cause problems with access to healthcare. Physicians, nurses, caregivers, nurses in community care homes, and all healthcare providers, which deal with Medicaid patients, cannot, will not, and should not accept substantially late payments. For those reasons, I support this measure. Thank you, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Just a brief rebuttal. Mr. Speaker, I am all for good legislation that helps out these providers. What we're seeing here is not necessarily that people are going to get their money and try to intervene in that. What we're saying here and what I'm saying here is, these clean claims are already in contract. If they're paying late, they're acting against that contract that the DHS has made with these health insurance companies.

"So that's already there. We as this Body shouldn't continue to just make laws to make laws. We should be doing things to make things effective. So how does this make it more effective than the contract that can be broken because they're not paying the bills? That's the point of this. I'm saying that it's unnecessary. It's not always that we go forth with laws just to change laws. It should have an effect on something. Thank you, Mr. Speaker."

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

"Mr. Speaker, I'm rising also in support of the measure. In the informational briefing held by the Human Services Committee, the Department of Human Services testified that the reason that they're not making these payments is that too many people are starting to enroll in these programs.

"When I asked them about what they've done to make provisions for new enrollments, I don't think that their responses were adequate. I don't think they've gone after federal dollars as much as they should have, or probably could have. There's certainly, at the time I think the Governor was in Washington DC, I don't think there were any meetings pertaining to this issue, which I think is again, a very important issue as the Chair of Human Services pointed out. I think a lot of the most vulnerable people in our society will be affected. So I do support this measure and I'm just standing in strong support. Thank you."

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

"Thank you, Mr. Speaker. I'm standing in support. I would like to respond to some of the comments made earlier regarding our making laws. Making laws just to make laws. I have a quick comment on that which is, that's what we're here for.

"But in regards to the measure before us. Mr. Speaker, the reason for a measure like this, especially at this time in dealing with QUEST is, that the Department of Human Services stated several times, that they're up to three months late in payments. And with some of the contracts described by previous speakers, they stated that DHS has a contract with these providers and these insurance companies to provide these services. However, there are no provisions in there in cases where the Department of Human Services doesn't pay the insurance companies, which in turn are required by the contract to pay the providers.

"So, Mr. Speaker, the reason why we're addressing this and looking at the issue of the Clean Claims Law in Section 431-13.108 in the Hawaii Revised Statutes for our patients, our constituents, the people of this great State, is we want to ensure that they continue to get the coverage that they deserve. Thank you, Mr. Speaker."

The Chair then addressed Representative Finnegan, stating:

"Representative Finnegan, this is your third time to speak. Please sit down."

Representative Finnegan responded, stating:

"Mr. Speaker, this is my third time. You're not going to allow me to speak?"

Vice Speaker Magaoay: "No."

At 10:31 o'clock a.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:32 o'clock a.m.

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

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

"Yes, just in support with reservations. This bill is definitely complicated. I think the debate showed that. But I think what the real problem is that it's really not the Governor's people that are withholding payments. It's some of the providers that are withholding payments. And so that's really one of the core problems. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2208, HD 2, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Third Reading by a vote of 51 ayes.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 482-10) recommending that H.B. No. 2289, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2289, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in support of this measure, but to express a reservation. House Bill 2289 would allow an issuance fee for certain gift certificates. Although the number has been blanked out in the bill, the Committee Report says that it will cost \$7.50 or 15%, whichever is less.

"Blanks always scare me because you will always think it could be more, but nevertheless I think at \$7.50 and 15%, it might be too high. I hope that the other legislators will look at these numbers as the bill progresses through the Session.

"The bill also allows back-end fees also called dormancy or inactivity fees. This is scary to me because they could be issued at one per month. So let's say you keep your gift certificate in the drawer for a year and you go to spend it. You will find that each month it will be less in value.

"I realize that we are conforming to federal law in some of these cases, but we really don't have to totally conform in this case. The Retail Merchants of Hawaii agree to the issuance fee, that's the front-end fees, whereby people can see what they're paying for and they pay for it upfront. However, they strongly oppose the other fees, the back-end fees. So I really feel that we should listen to them and take a look at this bill as it goes through the Session. Thank you, Sir."

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

"Thank you, Mr. Speaker. I just want to note my strong reservations on this bill. I don't view this bill as a pro-consumer bill. Thank you."

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

"Thank you, Mr. Speaker. I also have reservations on this bill. Many are the same as the Representative from Kahala. But also, I think there was some conversation that took place about the difference between a gift certificate and reloadable cards. And if you are trying to apply these fees to the reloadable cards, that this is actually under the gift certificates and it specifies gift certificates. So I'm not sure if we're accomplishing what we intend to accomplish with the bill. Thank you."

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

"Thank you, Mr. Speaker. I rise in opposition to this measure. Thank you. I've always supported having no fees for these gift cards. In fact, if you take a look at the bill on page 3, I realize that there are blanks here, but any attempt to add or offer activation or issuance fees should really be carefully scrutinized.

"I did want to mention the Retail Merchants of Hawaii testimony, they are actually not supporting an activation or issuance fee. So they don't support this part. I had a chance to talk to Carol Pregill regarding this and they're concerned. They believe just as I do, that gift certificates, when purchased by individuals, should not include any additional fees. If I go to Pearlridge and I want to buy a \$25 gift certificate, I should not be charged \$27.50. \$25 plus a 10% activation fee. That's not a gift certificate. We in Hawaii have stated for a very long time that there shall be none of these fees on our gift certificates.

"In addition, the second concern that I have in regards to this draft is that although we extend the gift cards to five years after the date of issuance, which is an extension from the two years, and mandated by the way, by federal law, we don't do the same for paper certificates. I just don't understand why. If a gift card is being extended, and the expiration date is being extended to five years, we should as a fair practice extend the expiration date for all gift certificates, paper or otherwise, to five years. This bill does not do that currently. Thank you."

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

"Thank you, Mr. Speaker. If I could note my reservations for the same reason as stated by the prior speaker."

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

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2289, HD 2, entitled: "A BILL FOR AN ACT RELATING TO GIFT CERTIFICATES," passed Third Reading by a vote of 46 ayes to 5 noes, with Representatives Belatti, Berg, Brower, Hanohano and Takai voting no.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 483-10) recommending that H.B. No. 2312, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2312, HD 2, entitled: "A BILL FOR AN ACT RELATING TO NATUROPATHIC MEDICINE," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Morita voting no.

At 10:35 o'clock a.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2922, HD 2  
 H.B. No. 2349, HD 1  
 H.B. No. 2086, HD 2  
 H.B. No. 2284, HD 1  
 H.B. No. 1978, HD 2  
 H.B. No. 2271, HD 1  
 H.B. No. 2208, HD 2  
 H.B. No. 2289, HD 2  
 H.B. No. 2312, HD 2

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 484-10) recommending that H.B. No. 2464, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2464, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PRACTICE OF PHARMACY," passed Third Reading by a vote of 51 ayes.

Representative Ito, for the Committee on Water, Land, & Ocean Resources presented a report (Stand. Com. Rep. No. 486-10) recommending that H.B. No. 2434, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2434, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker, I am voting no on this measure and would like to request permission to insert remarks from the Sierra Club that really state the reasons why we should oppose this bill. Thank you."

Representative Thielen submitted the following remarks:

"[H]B 2434 (HD2)  
 AUTOMATIC APPROVAL OF ALL PERMITS

This measure is a ham-fisted means to force agencies to enact rules limiting the time to approve or deny *any* permit. Without the adoption of agency rules, a 30 day "automatic approval" would automatically be imposed. The problems with this bill are staggering. For example, what if agencies aren't able to enact rules in a timely fashion? Some agencies are still struggling to pass rules over six years old. Theoretically, thousands of permits could be deemed automatically approved because of one malfunctioning agency. Do we really want health/welfare/safety requirements ignored?

We suggest a more intelligent route is to ask for audits of specific agencies that are not meeting performance expectations. Once we understand the basis for delays, we may be in a better position to act rather than passing a one-size fits all method that fails to serve the public at large."

*Sierra Club, Hawaii Chapter – March 1, 2010*

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

"Thank you, Mr. Speaker. I rise in opposition to this bill. Thank you, and just a few comments. The task force was convened to determine the economic contributions of the construction industry, and in so doing, they were given leeway to propose ways in which to preserve and create new jobs in construction. This bill streamlines portions of the review process which I understand are problematic for the construction industry.

"The specific area that I have issue with is with the State Historic Preservation Division, and even though they have extended in this bill the minimum period of 45 days to 60 days, the State Historic Preservation Division is shorthanded. They are currently under federal review for noncompliance with the law. We have a possible audit of them also pending. They're undergoing internal changes according to their Director and I think at this particular time, if we're looking at streamlining permitting, we need to actually look at the State Historic Preservation Division. And rather than be so worried about creating new jobs for construction, look at the processes that need to be clarified. Thank you, very much."

Representative Keith-Agaran rose in support of the measure with reservations and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Keith-Agaran's written remarks are as follows:

"Mr. Speaker, I rise in support with some reservations on HB 2434 HD2. This is part of the package introduced by the Construction Industry Task Force, bills meant to jump-start the State's stalled construction industry and get thousands of skilled and unskilled laborers off the unemployment rolls. HB 2434 proposes steps to streamline and increase efficiency of the permit review and approval process, but also includes provisions to establish maximum time periods for agencies to grant or deny approvals.

"This measure authorizes counties to contract with a third-party reviewer to lessen the workload faced by county agencies reviewing and processing construction permit, license, and other applications. This legislation has the potential to expedite the start of construction projects that are 'shovel-ready' and will generate jobs and boost local businesses by tapping federal money into our economy.

"However, I am concerned with language in Section 3 which would limit the State Historic Preservation Division ("SHPD") to a maximum 60-day period to review and comment on the effect of the proposed project. As this Body knows, SHPD faces challenges with existing resources and personnel to efficiently and effectively fulfill its important and invaluable work. I would be cautious about a blanket conclusion that finding no effect at the front end should immunize a project completely from other requirements of Chapter 6E. For example, it's absurd to decide, as this Bill appears to do, that the inadvertent discovery of burials process could not be used if in the course of a project, there is an "inadvertent discovery."

"Finally, Section 4 of this bill also establishes maximum time periods for consideration of business or development related permits when the agency has not already adopted review deadlines. I am assuming that the thirty (30) days set out in this section would not apply to the various county ordinances in different Codes that set out forty-five (45) days and the flexibility to do a thorough review of more complex projects. Deadlines are a good tool, but should not be a 'blunt hammer' for allowing bad as well as good designs and plans to move forward simply due to an agency's lack of resources.

"It is for these reasons I support this bill with some reservations and urge my colleagues to vote in favor of this bill."

Representative Wooley rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Wooley's written remarks are as follows:

"I appreciate that this bill is trying to expedite the approval process for proposed construction projects in a creative way. I do, however, want to highlight my concerns about the current draft of this bill.

"The concept of allowing a third party to perform what is traditionally a government function – to certify proposed plans comply with laws, rules, ordinances and codes – is an innovative way to streamline permit and license approval processes. A third party approval system would allow an applicant to bypass a government process by hiring an expert to do the analysis.

"For some projects, the expense for the applicant to hire the third party entity for the job may be worth the expected savings in time. There are risks to the public, however, because private entities simply do not have the same obligations to the public as public servants. It is not clear that these risks are necessary or small.

"Permits and licenses are usually required when there are public concerns that need to be addressed. These requirements have been set up in an attempt to provide fair and impartial procedures to verify minimum standards are met on issues such as safety, health, or the environment. If we moved to a system allowing third party private entities to be a substitute for long-established government functions, there should also be assurances that the original public purposes behind the permit or licensing requirements will still be met.

"This bill also proposes an automatic approval process that is even riskier than a third party approval process and threatens to undermine long-standing public policy. The automatic approval of projects within 30 days of the application would bypass 100% of the permit and license requirements simply because the applicant doesn't want to wait more than a month.

"There may be good reason for an applicant to want to move forward quickly – it may save them time and money or even provide for the construction of a project that will serve the public, such as affordable housing. However, without assurances that the underlying public concerns will be addressed, an automatic approval process would simply put the concerns of any and every single private applicant's wish for expediency above all public concerns.

"All that said, the underlying and immediate concern this bill attempts to address is a serious one – there are many workers in need of a job, and the construction industry needs solutions that will boost demand and increase economic activity.

"So, I look forward to talking more about how the Legislature can address these economic issues and I am cautiously optimistic that we will find solutions that do not undermine public policies that have been developed over many years to protect all Hawaii residents and future generations."

Representative Ching rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support with strong reservations to H.B. 2434 H.D. 1 which authorizes counties to contract with a third-party reviewer to streamline construction permit, license, and other application processing.

"We cannot overlook the construction industry task force and their findings that, as stated by Castle and Cooke, H.B 2434 HD1, "will help generate an immediate impact on our state's delicate economy by creating jobs and providing homes for Hawaii's families. [this measure] will bring action and positive change to spur the economy."

"As the founder of the Heritage Caucus, and for the sake of historic properties, however, I value the opinion of the Historic Hawaii Foundation that the State Historic Preservation Division needs to have an opportunity to review projects and look for additional ways to address these administrative conflicts without sacrificing the historic resources of the State. I also respect the Sierra Club and their objection that, "no community should suffer because government failed to perform" and believe they do raise valid points that need to be taken into consideration regarding safety, mass development, and environmental results. We must address their concerns. Thank you."

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

"I rise in opposition to this bill. I don't have a problem with a third party review section, but I just want to note that an automatic approval process is really problematic, especially when the State and the counties are looking at the furloughing of employees. My concern is how that factors into the review process being done in a timely manner. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2434, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PERMIT, LICENSE, AND APPROVAL APPLICATION PROCESSING," passed Third Reading by a vote of 42 ayes to 9 noes, with Representatives Belatti, Berg, Carroll, C. Lee, Luke, Morita, Saiki, Takumi and Thielen voting no.



Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 549-10) recommending that H.B. No. 2796, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2796, HD 1, entitled: "A BILL FOR AN ACT RELATING TO DOMESTIC ABUSE ORDERS," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 550-10) recommending that H.B. No. 2904, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2904, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in opposition to this bill. This bill eviscerates the county and community planning process statewide. Its origin however, is not a statewide issue, but targeted to overturn the Maui County Charter and Maui County Code, specifically 280A.020 dealing with community plans which provides that the community plan shall set forth in detail, land uses within the nine regions of the county designated in this subsection.

"It also overturns a long standing Hawaii Supreme Court decision which upheld that the Maui Community plans are part of the General Plan of Maui County and therefore has the force and effect of law. A proposed development which is inconsistent with a community plan may not be approved without a plan amendment.

"So what we're really doing is turning both the county and the community planning process upside down through the passage of this bill. We should be looking at this carefully because we're also affecting the discretionary nature of permitting by either the planning departments or the councils.

"Planning is really a home rule issue, and again this bill eviscerates that process. Thank you."

Representative Keith-Agaran rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, please note my strong reservations. I understand the purpose of this bill. I don't think the language accomplishes what is intended. I'd like to extend my remarks into the Journal."

Representative Keith-Agaran's written remarks are as follows:

"Thank you, Mr. Speaker. I support H.B. 2904, H.D. 1 with strong reservations. The present draft is incomprehensible in what it attempts to do with references to a non-existent State General Plan to override the historic and traditional role that counties have in planning comprehensively and determining appropriate uses for parcels in the urban, agricultural and rural land designations on their respective islands. While I generally agree that some clarity is needed regarding the meaning of and application of "consistency" between the "uses" allowed in the various land districts indicated in the State land use maps, a county general plan, a county community or development plan, and the county zoning, this current draft fails to do so.

"The State law controls planning and zoning on State Conservation Land Use District lands while the counties have the authority to plan and zone lands in the urban, rural and agricultural Land Use Districts. The present draft potentially inhibits each county's home rule ability to implement the general and community plans approved by the elected county officials and people of those communities. Each county has an elected local council who make long-range planning and development decisions in the best interests of their communities.

"The new Maui County General Plan, through the efforts of government and volunteer workers is nearing completion. If the legal effect of the new Plan is negated by this legislation, the years of work put towards the new General Plan would be considered wasted by those involved in pushing it forward.

"This bill was meant to say that common sense also applies when we are considering land use. It was meant simply to clarify that where the counties by zoning ordinance have identified particular uses in different zoning categories, consistency with the county's General Plan, Community Plan and zoning means the particular uses have been recognized as allowable in the General Plan, Community Plan and applicable zoning district -- not the bureaucratic category or description of a district.

"For example, the County of Maui allows schools in various zoning districts (including residential districts, Zero Lot Line districts, rural districts, and the specific Public/Quasi-Public district). A project for a public school would have consistency if a school is a use allowed in its zoning district whether the district is some kind of residential or public/quasi-public and a school is also a recognized use in the Community Plan designation and General Plan description. If a school is not an allowed use in the Community Plan or General Plan designation, then I would agree that a change would have to be pursued before the school is developed.

"I understand that this bill is a work in progress – a lot more work than progress I would add – and on that basis will vote to allow the process to continue."

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

"Thank you, Mr. Speaker. In support. In Hawaii County we might have six or seven community plans. They used to be advisory, but now they're being adopted as ordinance into law, and they could be contradictory. One plan could contradict the other plan, so there has to be an overriding force. That's why I support it."

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

"Just in support. In my district, it may allow some ag land to stay ag."

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

"Yes, I have strong reservations and would like the words of Representative from Kauai to be introduced as my own," and the Chair, "so ordered." (By reference only.)

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

"In strong support, Mr. Speaker. And I would just like to refer you to the Ewa Development Plan where if the County Plan would be the controlling authority, we would not have a say in the mounting development that goes on in our area without addressing the proper infrastructure that goes with those plans."

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

"Thank you, Mr. Speaker. I rise in opposition as well. I would appreciate the words of the Representative from Hanalei to be entered as my own. Thank you.

"In addition, because this bill was supposed to clarify that the State General Plan remains the ultimate controlling entity. With the Office of Planning in disarray as it is as well, I would urge our colleagues to take a look at the voting record and see how close the votes were. Perhaps this warrants us to be more deliberate in looking at jumping forward and trying to determine, or direct what the counties are supposed to do. Thank you, very much."

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

"Yes, thank you very much. Mr. Speaker and Members. I speak in favor of HB No. 2904. A community plan should not be cast in cement where it cannot be changed. The county planner who administers the plan is subject to the laws of the respective counties which are done by the county council. The county council should be the body that makes the laws consistent as much as possible with the plan.

"But it is not the plan and the planner that will govern the land use laws in the respective counties. The entity who will govern and make the laws is the respective council. If the planner wants to make the law, they should run for office so they will have the power to make ordinances for the respective county.

"Again, a plan is what it is. It should not be cast in cement so that it cannot be changed by the respective political bodies which are the elected bodies. Thank you."

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

"In support. Mr. Speaker, I just want to clarify the mission of the Hawaii State General Plan. We're referencing actually Chapter 226, the Hawaii State Planning Act, and under that is Part 2, which is the planning coordination and implementation. It sets the policies and guidelines for planning, and also lays the groundwork for the counties to do their planning. It's also in HRS 46-4, where we're also laying the guidelines for the zoning, and in Chapter 205 we lay the guidelines for the classifications.

"So in all these laws, what we're trying to do is if it's a permitted use, it's a permitted use. If there's a lack of consistency based on technicality, what we're saying is to please allow the permitted use to proceed. What's happening is it is not proceeding, and what we're trying to do is make it clear that so long as it abides by the criteria of all the laws, it is a legal proceeding for that development.

"We're not trying to change anything other than what the law currently states here in all the different chapters, in the guidelines and criteria for land use planning. So that's what we're trying to do here. I would also like to enter written comments in support."

Representative Karamatsu's written remarks are as follows:

"I rise in support. House Bill 2904, House Draft 1 provides that the State General Plan shall remain the ultimate controlling authority of land use in the State of Hawaii. Within all State land use districts other than conservation, the counties have the authority to plan and zone pursuant to sections 46-4 relating to County Zoning and 226-58 relating to County General Plans of the Hawaii Revised Statutes. Even if they are discouraged, land uses that are permitted under: (1) the State General Plan; (2) a county's general plan or development plan; and (3) the county's current zoning, for a tract of land, shall not be denied for lack of consistency or conformity.

"I would like to clarify that the State General Plan should actually be the Hawaii State Planning Act as defined in Chapter 226 in the Hawaii Revised Statutes.

"We are emphasizing that a permissible use under the Hawaii Revised Statutes Chapter 205, relating to the Land Use Commission that defines the land use classifications; Hawaii Revised Statutes Chapter 226, relating to the State Planning Act; Hawaii Revised Statutes section 226-58 relating to County General Plans; and Hawaii Revised Statutes section 46-4 relating to County Zoning should be upheld when there are technical differences such as lack of consistency or conformity.

"As reflected in the testimonies on this measure, there is confusion among communities and planning directors of certain counties. This confusion stems from a misunderstanding of the hierarchy of the land use regulations that are mandated by State law. In particular, it is believed in some counties that zoning is not effective where it is contradicted by a county general plan. According to state law, this belief is incorrect. County general plans set goals and limitations to be followed when

exercising zoning powers, but it is the zoning ordinances that dictate which uses of land are permissible.

"The Hawaii State Planning Act, as codified in Chapter 226 of the Hawaii Revised Statutes, requires counties to formulate county general plans that are to "indicate desired physical development patterns for each county and regions within each county." Further, such plans "should ... contain objectives to be achieved and policies to be pursued with respect to ... land use." These broad policies are just that – policies.

"In Chapter 46 of the Hawaii Revised Statutes, the state delegates to the counties the power to zone some of the lands on the islands. Section 46-4, particularly, requires that ordinances be passed which set out various land use regulations such as restrictions on the location of residential, industrial, and commercial buildings. These ordinances must "be accomplished within the framework of a long range, comprehensive general plan..." The statute further clarifies that "zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner." As it relates to land use, the county general plan is ineffective until the tool of zoning is utilized.

"House Bill 2904, House Draft 1, merely restates the law in a single stroke – obviating the need for an interested party to thumb through the various chapters of the Hawaii Revised Statutes and piece together the various pieces of the land use puzzle. In effect, it makes clear that zoning ordinances may never be passed that exceed the policies stated in a county general plan. However, where a county general plan changes and old zoning ordinances remain in place, the county general plan's policies are not effective with respect to land use until a new zoning ordinance reflecting such policies is passed, except as otherwise provided by state law. Thank you."

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

"Thank you very much, Mr. Speaker. I have serious reservations, and may I have the words of the speaker from Kahului entered in the record as if they were my own. Thank you," and the Chair "so ordered." (By reference only.)

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

"Thank you, Mr. Speaker. I'm rising in opposition to the measure. I believe this bill will actually usurp the counties' home rule authority with respect to long range planning. I do believe the best land use decision can be made at the county level, much closer to the grassroots level. I think we ought to reconsider as this bill goes forward to the Senate, and see whether we really want to do this. Thank you."

Representative Carroll rose and asked that the Clerk record a no vote for her, and the Chair "so ordered."

Representative Morita rose to respond, stating:

"Thank you, Mr. Speaker. In opposition again. I just wanted to point out that every county has different ordinances and their charters are different. They hold or they elevate the community plans in different ways. Maui is pretty unique because it's specific in setting forth that the community plans are detailed. It also goes on to the ordinances really specific and it says, notwithstanding the provisions of this subsection (d)12 of this section, a community plan may contain one or more project districts wherein permitted land uses are identified; provided however, the council shall subsequently zone each project district consistent with identified land uses after holding a public hearing in the applicable region.

"So the zoning process may lag, but in Maui's case the community plans are again detailed and specific in its zoning. So to me, this is a Maui issue that elevates the community planning to a different level from other counties. Again it's a Maui County issue, and I don't believe that we as a State body should be intervening in it. Thank you."

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

"Thank you very much, Mr. Speaker. In support. Mr. Speaker, the intent of this legislation is to address conformity requirements that are inconsistent with State land use, general plan, community plans, zoning, and permitted uses. Mr. Speaker, if the inconsistency is technical by nature, my concern is that during this current economic time, it would be a shame for a project not to move forward with so many of our friends in the construction industry out of work because of a technicality.

"Now I support home rule and I support planning and the community plan. However, this is a problem and I think it at least deserves further discussion. I hope that the Members will support this going forward to the next Body and the conversation will continue. The current bill is defective so hopefully we'll get a chance to address it in this Body in Conference. Thank you."

Representative Herkes rose to respond, stating:

"Still in support. The current bill has its problems at the moment, as community plans become enacted in ordinance, but we have to look at Hawaii County as a whole. Now the county general plan has to determine where growth is going to be; where we should have preservation, where we should preserve our culture, and that has to be done island-wide. The community plans are going to run afoul of that. And so we need the county general plan to be the overlying plan."

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

"I have strong reservations and would like to submit written comments."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support with reservations to H.B. 2904 - which prohibits using county general and development plans from serving as, or replacing, the county regulatory powers.

"This bill deserves our admiration for its intention to follow recommendations made by the Legislature's SCR 132 Task force, and I do respect its efforts to increase the transparency and efficiency of our State's permitting process. Indeed, as the Land Use Research Foundation testifies, we must not waste the thousands of dollars and many years which we would otherwise consume in efforts to alter minute literary discrepancies among various county general and development plans. The county regulatory powers offer zoning ordinances and subdivision rules and regulations which will, if used properly, streamline the land use approval process for greater transparency, facilitating communication and understanding among developers, contractors, lawmakers, and potential residents.

"I believe, however, that we must remain vigilant, and even creative. Numerous testimonies evoke well-founded doubts as to the eventual implications of H.B. 2904 on local counties. Maui County Council's Planning Committee Chair, Sol Kaho'ohalahala, warns that it would dramatically usurp county home rule authority over long range planning. Maui Director of Planning Jeffrey Hunt further states that it could eliminate developmental project reviews for plan compliance, valuable tools the community has already selected for growth management. Lanai resident Sally Kaye perhaps voices public perspective most poignantly, calling the local community planning process "the single most vital avenue our communities have to devise their own future," and elaborates that this method "should not be subjected to the influence of special interests outside of the established review process." We must remain particularly cautious that we do not eviscerate the local community planning process, as Ms. Kaye fears H.B. 2904 potentially could.

"In our strides to simplify regulations, we must not lose sight of the challenges our weak economy presents, and continue to bend our peeled ears toward all bills which might encourage its recovery. Although the county regulatory powers may serve as our guiding syllabus, and prevail over other documents in the event of minor discrepancies, we must not set

it in concrete, and refuse to consider future amendments when they offer solutions more viable than the status quo. While this bill promises significant advantages in terms of clarity and efficiency, let it not blind us against the innovative strategies which our thirsty economy now craves. Thank you."

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

"Thank you, Mr. Speaker. In support with just a quick note. Having served on the County Council for 10 years, I do know that the General Plan often times is delayed, whether it's due to budgetary constraint or whatever the reasons are, sometimes the general plan is updated. And I think this bill before us just gives the ability for the county councils to act without waiting for additional action from the next General Plan. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2904, HD 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTY GENERAL PLANS," passed Third Reading by a vote of 36 ayes to 15 noes, with Representatives Belatti, Berg, Carroll, Choy, Coffman, Hanohano, C. Lee, Luke, Morita, Nakashima, Saiki, Shimabukuro, Takumi, Thielen and Wakai voting no.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 551-10) recommending that H.B. No. 2461, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2461, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, may I give some comments on Stand. Com. Rep. No. 551? Thank you, Mr. Speaker. The purpose of this bill is to provide continuity in healthcare by requiring health insurers and related entities who issue prescription drug coverage to offer insureds at least the same prescription drug coverage that they had under previous healthcare plans.

"Mr. Speaker, I do have reservations on this. I don't actually know if this is retroactive back to last November and December depending upon which plan you're on, but the people who had testified against this measure are the Department of Human Services, HMSA, Hawaii Association of Health Plans, Kaiser and Ohana Health Plan who all oppose this bill. I understand that it's supposed to help the consumer if they were on a medication before and they want to be able to have that medication again.

"The healthcare system is going through changes because we have to try and control costs. We as a State also have to try and control costs. We're dealing with a budget that is unbalanced, and we have to because the revenues aren't coming in. So the bigger picture is how do we help us get through this unbalanced budget?

"The issue here is that whenever you have these options, people don't want to make changes even if it's better for them, or it's cheaper for the health plan. And so as we move forward, even though I'm voting with reservations on this, I think that sometimes you have to, in order to control costs, try and push people towards that change. And then have a mechanism that if they truly need the type of drug that they were on before, then it goes through some kind of process that allows that to happen.

"But to just have it offered because you were on it before increases our cost in healthcare, whether you're a part of the EUTF or whether you're a part of Medicaid. This is something that I think we have to really 'hunker down' and say that our healthcare costs are expensive, we do have a pretty good system, but at the same time, you don't want these insurance costs to go up especially if we can still serve the need in these prescription drug plans. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2461, HD 2, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Third Reading by a vote of 51 ayes.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 552-10) recommending that H.B. No. 2087, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committees be adopted, and that H.B. No. 2087, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I actually am rising in support of this measure. Thank you. This is Stand. Com. Rep. No. 552. The only thing is I'm a little perplexed at this because we had an earlier bill on the same issue of the Clean Claims Law that stated that these insurers are not to make late payments. And now this bill says that when you make late payments, we won't charge you interest. So I think it's going in different directions.

"I also want you to understand that the major problem, the root problem to all of this is, as the Health Chair had spoke on the other bill, as well as the Human Services Chair spoke on the other bill. The root problem is not necessarily the health plans in which both bills are directed to the health plans. The root problem is that we as a State can't afford to make the payment to these health plans and we would be delaying the payment \$83 million into the next fiscal year. That's the problem. These two bills don't address that.

"So if you really, really want to talk about getting services to those who are needy and vulnerable, we're not doing that in these bills. It's saying that we're mandating health insurers to make the payments on time, and if they don't make the payment on time, they're not charged interest.

"Now I will do this because I think it's fair that we allow this bill to pass, but one of the concerns that I do have is the discussion that is taking place currently is can these health insurance insurers and these programs use some of the reserves that are readily available at this point and time to help State government because we can't make the payment. This may serve as a disincentive for them to not help us and that's my concern, but not enough to say that this is a fair bill that needs to be extended in no late payments to the health insurers. Thank you."

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

"Mr. Speaker, in support, Stand. Com. Report 552. Thank you. Mr. Speaker, I actually agreed with the Minority Leader. This is a good bill. The reason we need it is to support those healthcare providers that do not get paid for three or four months. Imagine a boss telling you Mr. Speaker, 'You're not going to get paid for four months. I'm sure you've got reserves. It'll be okay. Four months and you're not going to get paid, but you'll be okay.' That's what the State's doing in this case.

"The providers we're talking about are HMSA, Kaiser, AlohaCare, Ohana Health and Evercare. They can accept a two month delay. That's what we ascertained through our informational briefings, Mr. Speaker. But a three or four month delay, we don't think it's right. Therefore we don't think they should pay interest payments if they're not going to be paid three or four months. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committees was adopted and H.B. No. 2087, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Third Reading by a vote of 51 ayes.

At 11:00 o'clock a.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2464, HD 2

H.B. No. 2434, HD 2  
H.B. No. 2796, HD 1  
H.B. No. 2904, HD 1  
H.B. No. 2461, HD 2  
H.B. No. 2087, HD 1

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 553-10) recommending that H.B. No. 1987, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1987, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, thank you. I'd like to express strong reservations on this fireworks bill. While this bill establishes the cause of action to abate the legal purchasing, selling, possession, setting off, igniting, or discharging of fireworks, it does not solve the problem. It actually will create a situation, and this was pointed out by the Kailua Representative earlier, where neighbors will be forced to hire a lawyer to sue their neighbors. Sometimes all you want them to do is stop their activity, but this is not in keeping with our culture and our aloha spirit. Residents should not be placed in this position to simply address the significant health and safety concerns the use of fireworks has presented.

"My office, and I'm sure all of our offices have received numerous pleas from constituents and others from all islands advocating a total ban on consumer fireworks. I believe this is the only way to stop the madness this cultural tradition has become, and to protect the health and safety of our citizens.

"Several people have been using the phrase, 'warzone' referring to last New Year's Eve. Mr. Speaker, I felt like yelling, 'incoming' every time I heard a concussion bomb or aerial device nearby.

"Mr. Speaker, even if we pass this bill to establish a cause of action or increase penalties, we will not see a significant reduction in the abusive use of fireworks. The police are not able to cite violators without witnessing the violation so it is well near impossible to cite anyone. And we lack the money and inspectors we need to search containers to keep illegal fireworks out of our State. The only option then is a total ban on the use of consumer fireworks.

"The rationale is clear: the health and safety of all our people, our seniors, our children, especially our babies, our asthma and emphysema sufferers. And how much can we ignore the testimony of our firefighters who have strongly advocated at every hearing for an end to this madness. This bill is not going out with a bang, but a whimper. Thank you for allowing me to rise in support, but expressing my frustration and my reservations. Thank you, very much."

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

"Thank you, Mr. Speaker, with serious reservations. And may I have the remarks of the Representative from Kaimuki-Kahala put in the Journal as my own? Mr. Speaker, I just want to note again that this bill would require neighbors to sue each other and that's just not the way to go. Thank you."

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

"Yes, Mr. Speaker. I'm rising with strong reservations, but coming from a different angle. This is my 6th year in this Chamber and we've talked about how to control fireworks year after year. But this last New Year's proved that all the measures that we have passed in these Chambers are really not addressing what the real issue is.

"The real issue, Mr. Speaker, the way I see it, is enforcement, which we don't have enough money for. I think that we should throw this to our communities. We have armed them with all the rules and laws there are to have. We started by asking them to pay a fee, which is called a Fireworks Permit. We have limited the time that they can ignite the fireworks, and we have even increased the penalties. As you can see, nothing seemed to work.

"So I think my humble idea is that we have to go back and retain our laws, but increase enforcement and tell these neighborhoods that if they want to control the noises that they're complaining about, they just have to take matters in their own hands. They don't have to sue their neighbors, but at least they can call the police and make a stand to say, 'My neighbor across the street has been firing fireworks.' Until the communities are ready to do that, there's nothing that we can do in this Chamber. We have empowered them, Mr. Speaker. Now they just have to act on it. Thank you."

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

"Thank you, Mr. Speaker. With reservations. It just seems to me that the whole point is to try and stop the illegals. If that's the case, we should be taking fireworks and using them to fund inspection positions. Thank you."

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

"Mr. Speaker, I rise in support. The basic principle behind this bill is similar to the current law on the books regarding nuisance abatement in drug cases where you have a neighbor selling drugs. Or you have a neighbor manufacturing drugs or neighbor selling drugs to children. It's the same principle here.

"My belief is that illegal aerial fireworks are like bombs in someone's home or garage, and they're equally dangerous to neighbors and to those who live around these people. These people are in possession of these illegal substances. So that's the idea behind it. Thank you."

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

"Mr. Speaker, I rise with reservations. I concur with the comments made by the Representatives from Kaimuki-Waialae, and also Kailua in that the reality is, the common sense thing is that you certainly don't want to cause friction between your neighbors. We're on a small island. We have small neighborhoods. We don't want to cause irrevocable friction, but something needs to be done. I just don't think that it has to be something that is going to be where we cause that sort of friction. I prefer that we have some kind of anonymous hotline or something like that where people can let them know who's doing it, but it should not be where it causes friction in our neighborhood.

"Also, I just wanted to make a comment. When we say that it's cultural, I would say that a number of the fireworks that are going off that are not on New Year's Eve and not on Chinese New Year's Eve, it is not cultural. I doubt those are cultural, and they're the ones that are doing the illegal. I don't think they're doing cultural."

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

"Mr. Speaker, I rise in support. I'm in support of this bill. It's a tough bill and it's going to be a valuable addition to the total ban when we finally pass it. Thank you."

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

"Mr. Speaker, I rise in support. You know, unfortunately I think this discussion has spun a little bit out of control. If people would actually read the bill, this bill is actually talking about the nuisance abatement unit that currently exists under the Department of the Attorney General under HRS Section 712-1270, which actually was empowered by citizens, as well as

our law enforcement. This is a unique tool where communities can take action and actually take charge of their own community.

"They don't have to actually go and sue their neighbor. That's not what the bill talks about. That's not what nuisance abatement is about. That is an option, but if people would actually read the statute and read the law, they understand that's not the only way it can be done. It can be done through the Attorney General. It can be done through the Prosecutor.

"This is basically saying that we are going to take these people that are doing illegal aeriels, people that are selling fireworks without a license to other people. They will be akin to drug houses, to prostitution houses, and to gambling homes, and I think that is a valid discussion for us to have.

"I think on another day we will probably have a bigger discussion and more substantive discussion about fireworks. But I think that is inappropriate at this time because I think people are not reading this bill. Thank you."

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

"Thank you, Mr. Speaker, I do have reservations on this bill, and I did read it. I have reservations on Part 3. I'm not going to the specific nuisance abatement law, but Part 3 causes me some concern. It provides for the forfeiture of property used in violation of the fireworks law. I know that with drug houses, some of the issues that may come across to people who are the actual owners of the property, in case someone rents or that sort of thing.

"So I think when it comes to taking away something that may be the life earnings of a family or that kind of thing, that we need to seriously take a look at it. So I'm just going to be voting with reservations on that particular measure. Thank you."

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

"Thank you, Mr. Speaker. I rise with slight reservations. The reservation I have is with the Nuisance Abatement Section. When the Legislature first created the Nuisance Abatement Program under the Attorney General's Office it was kind of visionary for the Legislature to do so in response to the ice problem. We specifically created the Nuisance Abatement Section under the Attorney General's Office for the Attorney General's Office to have the tool to go after ice houses.

"Since that time, the vision that the Legislature had for the Nuisance Abatement Section has not reached its potential due to staffing and due to a lot of problems around the State. I think we need to continue our efforts to fight ice in the State. Trying to put additional burdens on the Nuisance Abatement Section, I just don't think they can currently handle additional work to close down basically houses that do illegal fireworks or other type of fireworks, because currently they can't even handle the drug house closures. Thank you."

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

"Thank you very much, Mr. Speaker. I read the bill I have reservations as well. I would like to have the comments of the Representative from Kahala and Kaimuki entered into the Journal as if they were my own. Thank you, very much. I can understand the Finance Chair's logic, that we do have something like this, and the Majority Leader's comment about nuisance abatement.

"The fundamental difference is that selling ice to kids, or a prostitution house, or running a gambling operation out of your home, these are all activities that are absolutely banned by law. Fireworks however are not banned. There's obviously a large amount of fireworks that we do allow people to use. We're talking about illegal fireworks, but the fact of the matter is, until we ban fireworks, until that point and then people still continue to flaunt the law, then I would think that we need some kind of

nuisance abatement in that regard. But until then, as we all know, it's not banned.

"So I think this is sort of taking a sledgehammer to a relatively small problem in that respect. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. I rise in support of this measure. I would like to ask that the words of the speaker from Kahala be entered into the Journal as if they were my own. Thank you. I do know her concerns were with reservations, but actually I take a look at this bill and I believe it could be put in place in addition to, and with a total ban.

"And I've talked to a number of people in regards to fireworks, and what's not apparent to many is that actually during fireworks season, namely around New Years and the Fourth of July, I believe that it is more lucrative in some instances to be selling fireworks as opposed to drugs. So I take a look at fireworks just like dealing drugs, because it is illegal to deal drugs. It is illegal to sell aerial fireworks without the necessary permits, and it's very dangerous. In fact many of the so-called aerial bombs, and dry ice bombs, and concussion bombs, and the likes that went off and continue to go off in some cases, are actually as bad or worse than some of the bombs going off right now in Iraq and Afghanistan. They are IEDs. That's how the terrorists put together bombs that are blowing up people. Some of our service members.

"So I can't understand why we approach our fireworks that are just made like IEDs very differently from the IEDs in that country. I think people should take a look at this in light of the fact that we have the APEC Conference coming next year. If we cannot get a handle on these illegal bombs right now, and we cannot put more teeth in our laws, then I think we're in for a very rough time come next year around November. So Mr. Speaker, I support this measure and I do also support a total ban on fireworks. Thank you."

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

"I rise in support. I just want to clarify that there is a ban except for a few windows which are under 132D-3: 9 p.m. on New Year's Eve to 1 a.m. on New Year's Day; 7 a.m. to 7 p.m. on Chinese New Year's Day; 1 p.m. to 9 p.m. on the Fourth of July; or 9 a.m. to 9 p.m. as allowed by permit for those special events. So other than that, you can't do this. It's for those small little windows. Until then, it's a ban."

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

Representative Thielen rose to respond, stating:

"Thank you, Mr. Speaker. I'm still with serious reservations. Last night, fireworks were going off in Kailua."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1987, HD 2, entitled: "A BILL FOR AN ACT RELATING TO FIREWORKS," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 554-10) recommending that H.B. No. 2661, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2661, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, may I have a ruling on a potential conflict? I'm part of the Advisory Board for the Organ Donor Center of Hawaii," and the Chair ruled, "no conflict."

Representative Finnegan continued in support of the measure with reservations, stating:

"Mr. Speaker, I just have a reservation on this particular bill and would like to speak just a little bit on it. Mr. Speaker, the purpose of this bill is to improve the availability of organ donations by establishing that only an expressed refusal by a person or persons authorized to amend or revoke a decision to make an anatomical gift will amend or revoke that decision.

"Mr. Speaker, this sounds like a really good bill, and for the most part I think it would help those who will be saved by organ donation. But it's a very sensitive issue that may have some negative consequences if we do push a bill like this forward. And the reason being is because when you're in the hospital and someone that's really close to you just passed away and they didn't tell you that they had put their wishes on their driver's license that says, yes they want to be an organ donor. And then the Organ Donor Center comes in and starts to talk to them about donating the organs of their loved one. What happens is, if the family cannot accept that at that point in time, the Organ Donor Center and that system kind of backs off a little bit. So this bill is trying to make it stronger than this process cannot be allowed.

"The problem is if the loved ones aren't educated about the person who is dying being an organ donor, it can cause problems with actually getting people eventually to be organ donors on their driver's license. It makes it harder to get people to say, 'yes I'm going to do this' because they're going to hear these horror stories about how the family was at the death bed of their loved one and they were trying to take their organs away.

"And so the issue here is as we move forward, I understand what this tries to accomplish, but the Organ Donor Center of Hawaii is already having a hard time getting people to acknowledge on their driver's license that they want to be organ donors. The real issue is probably education that could push this further. Education that a person who is an organ donor share that with their family and make their wishes known and have them respect their wishes so if something happens, that the family members aren't shocked by it and won't give a bad reputation to the organ donor societies across America. Thank you."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2661, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ANATOMICAL GIFTS," passed Third Reading by a vote of 51 ayes.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 555-10) recommending that S.B. No. 466, SD 2, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 466, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO POLLUTION," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Manahan voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 556-10) recommending that H.B. No. 2293, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2293, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Tsuji's written remarks are as follows:

"Mr. Speaker, I am in support of this measure. This bill will create a temporary source of funds for Department of Agriculture personnel and operating costs from a portion of agricultural loan repayments. Deep cuts were made to that Department so when the mandated RIFs began, key services like cargo inspections and commodities certifications were greatly reduced, adversely impacting the public and local producers.

"Because the Department relies heavily on State general funds to fund such positions, any economic demise will in turn affect the Department's personnel funding source. Moving costs like salaries, fringe benefits and operating costs away from the general fund safeguards funding for our ag inspectors and other Department workers so that the public's interests are protected while ensuring business continues in a timely fashion."

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

"Thank you, Mr. Speaker. On Stand. Com. Rep. No. 556, I stand in opposition. Thank you, Mr. Speaker. Basically the purpose of this bill is to establish a temporary source of funds for Department of Agriculture personnel and operating cost by, and it basically says that it's going to use these funds for staffing DOA. It creates a special fund. Then it says that's it going to require interest and fees collected by DOA's Agriculture Loan Program to be deposited into the special fund. Then it takes a million dollars of this Agriculture Loan Program account and puts it into this special fund.

"Mr. Speaker, I understand fully what the Chair of Agriculture is trying to do. And I understand his passion for wanting to make this happen so that we can have agricultural inspectors and other staffing for the Department of Agriculture. I think it's very important and he mentioned why.

"What I would like to talk about is when we create these special funds and when we use these funds, sometimes we go a little bit off base to save a program or inspectors. What I mean by this is, if I understand the Agriculture Loan Program correctly, the program gives loans to people who are growing or in the agriculture industry here in Hawaii. Well, these fees are on these local farmers and we're using it to basically pay for, if it does end up being used for ag inspectors or whatever they are, from things coming in from the mainland and then dispersing to the different islands.

"It makes it really difficult for me to show this and to understand it, and the reason why we would want to do that for people who are borrowing money. Being charged a fee to borrow money to help with our ag industry locally here in Hawaii. So I would prefer that we take the Supplemental Budget from the Governor's Office and what they passed out, and in our budget to put some of the positions back instead of doing something like this which I think is more harmful. Thank you."

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

"Thank you very much, Mr. Speaker. In support. Just some brief comments. You know, I shared many of the concerns that the previous speaker had. And during the Committee hearing we were lucky to have a farmer who would be affected by this show up to testify. During the hearing, I asked him, 'If you don't have the inspectors to come in and to inspect, which is required by law for certification, what do you have to do?' And he responded that they would have to hire somebody, off time, fly them over to the island, pay for their airfare, their lodging, everything else, as well as remunerate them for their expenses. They told the Committee that doing that would be a much more fiscal hardship on their business than to have inspectors who could come out and inspect the crops for certification, which is required for them to export.

"So this is actually preferred by the businesses, as opposed to the cost and delay of bringing somebody over on their own dime from another island to do the inspection. Again, I am in support. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2293, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF AGRICULTURE," passed Third Reading by a vote of 47 ayes to 4 noes, with Representatives Ching, Finnegan, Marumoto and Pine voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 558-10) recommending that H.B. No. 2948, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2948, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Tsuji's written remarks are as follows:

"Mr. Speaker, I rise in support. This bill continues the Legislature's ongoing effort to protect Hawaii from invasive species.

"We are well aware that invasive species threaten Hawaii's economy, agriculture industry, its people, and environment. Prevention is a primary part of the mission of the Department of Agriculture and its Biosecurity Program. A key component is the timely and proper notification of the movement of goods and the expansion to include non-agricultural commodities, like rock. This is imperative so a sound decision can be made to determine when closer inspections are prudent.

"An estimated 500,000 containers move into Hawaii each year and another 500,000 moves from one island to another. Unfortunately, budget cutbacks caused crippling reductions in the Department's capability to review permit applications and to inspect cargo entering and moving between the islands.

- 28 of 50 general funded inspectors have been laid off statewide.
- Honolulu International Airport has only 6 inspectors when there used to be 19.
- Insect interceptions by Honolulu inspectors dropped from about 150 per month to about 10 per month.

"Knowing in advance what is arriving at our ports of entry is critical for the Department to efficiently deploy its acutely limited resources, protect the State from pest and disease introductions, and expedite the movement of cargo for the public's benefit.

"There must be adequate safeguards to prevent the introduction of invasive species into the State, as well as between the neighboring islands. This bill will be an important and fundamental step towards that goal and towards ensuring the success of the Hawaii Biosecurity Program."

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

"Mr. Speaker. Yes, on HB No. 2948, I will vote for this with reservations. I do appreciate the intent and desire to mitigate the infestation and infection of invasive species. However I'm concerned about the adverse impact that written notification of freight in advance of flights and cargo shipments would have with very short windows of opportunity that exist for interisland flights and hundreds of departures daily and the many dozens of containers arriving at our docks on a daily basis. This would result in many hundreds of bills of lading having to be submitted by shippers and approved by the Department of Agriculture.

"Those things, plus the impracticality of having to report to the DOA, and the Department having to respond, and the lack of harbor space to perform various functions make this a logistical nightmare for all parties involved. This will result in staggering delays of goods, including perishable foods to the Neighbor Islands. So I support the efforts to

prevent the onset of invasive species to our islands, but I don't think we should be 'pennywise and pound foolish.' Thank you."

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

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

"Mr. Speaker, thank you. On Stand. Com. Rep. No. 558, I do have some reservations which are very much in accordance with the speaker from Kahala. I'd just like to add that there is another bill that is very similar to this, HB 1684, HD 2 that is currently sitting in the Senate. I believe that we should have opted to put that bill in so that we could try to alleviate some of the concerns with Hawaiian Air and Young Brothers as the concern is some of these perishable items that they ship to the Neighbor Islands might be delayed. So I think that bill probably has language that would make it better for them. Thank you."

Representative Tsuji rose to respond, stating:

"Mr. Speaker, I would like to give some additional information and partial rebuttal please. Thank you. You know, Mr. Speaker, it's estimated that about a half million containers move through Hawaii each year, and interisland another half million goes from one island to another.

"Unfortunately, as we're beginning to understand the ramifications of the budget cutbacks, it's really caused a crippling reduction in the Department's capability to review permit applications, inspect cargo and really oversee the movement of cargo, especially the interisland movement. Recently 28 of 50 general funded inspectors were laid off, statewide. At Honolulu International Airport, there are only 6 inspectors available now, whereas there were 19 prior to the RIF or reduction in forces.

"What does this mean? Consider this very seriously. Insect interceptions by Honolulu inspectors previous to the RIF were about 150 per month. Today those interceptions are about 10 per month. What does this mean? That means these excess 'buggers' are coming into our ports undetected because we don't have adequate inspections. Knowing in advance what is arriving at our ports of entries is very critical to the Department to efficiently deploy its acutely limited resources. This bill is very important. There must be adequate safeguards and I urge you, Mr. Speaker, to support this bill. Thank you, very much."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2948, HD 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 559-10) recommending that H.B. No. 2290, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2290, HD 2, pass Third Reading, seconded by Representative Evans.

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

Representative Tsuji's written remarks are as follows:

"Mr. Speaker, I am in support of this measure. This bill supports the operations of the Department of Agriculture and helps mitigate the negative effects by its recently completed reduction in force. It provides a dedicated source of funding for the agricultural commodity inspection activities by establishing an Agriculture Inspection and Certification Special Fund to receive fees, fines, penalties, federal funds, grants and gifts, and other moneys obtained in connection with agricultural inspection and certification.

"In this time of widespread cutbacks, the agricultural industry is confronting a substantial decrease in agricultural inspection services statewide. The ability to move products in and out of the State, as well as interisland is critical to the survival of the economy and of the ag industry. With reduced agricultural services, it is sensible to seek alternatives and solutions to ensure the Department of Agriculture is capable of meeting the needs of farmers and related organizations. By establishing this specific fund for services rendered, the Department can provide the necessary services that protect Hawaii's agricultural industry."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2290, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 560-10) recommending that H.B. No. 2291, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2291, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you. I rise with reservations and would just like to say a few words. Thank you, Mr. Speaker. The purpose of this bill is to make the Department of Agriculture or DOA's Measurement Standards Program financially self-supporting. In the measure, Mr. Speaker, it talks about it being self-supporting. The problem that I have with this new special fund is that one, I don't believe that it's going to be self-supporting, as well as we need to start the fund with \$500,000. I don't believe that there is a means to be able to do that, especially with our challenges that we are facing in trying to balance the budget.

"Mr. Speaker, I believe that this revenue shortfall in this bill of being self-sufficient and using this fund is about \$125,000. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. I rise in support of this measure, specifically for the enactment of the special fund in its entirety. I think that because our Constitution mandates that we have to pass a balanced budget, I think it's more important that we have room to create special funds for days like this where we don't have any money. We have two special funds that we are now proposing to raid, and you know what those are. But I think that being that our Constitution was created so that we have to pass a balanced budget year after year, in order to protect those entities that are important and are subject to cuts or insufficient funds, that we should have special funds for them so we can tuck away money during years that we have plenty to use in years when we don't have enough. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. I am for this measure, but I have reservations. I have reservations on many of these measures that create special funds and increase fees one way or another. I haven't expressed them all, but I am voting positively for these measures because the DOA, the Department of Agriculture is so severely hit by budget cutbacks because they are heavily general funded. I think the need is so great that I feel that if the farmers are willing to underwrite some of these fees, and the agricultural community, then yes, we must pass these measures and perhaps we could later revoke them. Thank you."

Representative Tsuji rose to respond, stating:

"Mr. Speaker. In support and in rebuttal. This bill really looks toward special funding, but primarily the purpose of this and other bills that are going through the Legislature right now are they are trying to offset the



severe cutbacks that have been taking place because of the RIF or Reduction in Force effects on our Department of Agriculture. We are trying to get positive, and this is a positive measure to utilize fees for services. Unlike the coqui frog where it whistles and we know by the other whistles the location of this particular invasive species, others are silent invaders.

"But in this particular bill, less reliance on the general fund and particularly on special funds shows and indicates how important this particular Division of Weights and Measures is as far as providing a service to our community. I strongly support this, and I urge you to support this also. Thank you, very much."

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

"Yes, Mr. Speaker. I am in favor of this particular measure. Real quickly, I just want to accept the speech of the Chairman of Agriculture and include it as my own. I think he made a very important point. I wish to remind this Body here how important it is to have the Weights and Measures staff available. Maui County is without any weights and measures staff, so the people are at the mercy of all the businesses there, and the honesty of the businesses in having the weights and measures done correctly. My friend is smiling in the corner there.

"If you look at when you go to a grocery store, you have the scales there to weigh the meats and produce. There is, of course, gasoline and other areas where we all depended on weights and measures, certification and testing. We have nobody to test it now. So this bill will provide the remedy for that kind of a problem. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2291, HD 2, entitled: "A BILL FOR AN ACT RELATING TO MEASUREMENT STANDARDS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 562-10) recommending that H.B. No. 2409, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2409, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise with reservations on this bill. Thank you. Even in the hearing the implications of this bill weren't clear regarding fishponds as a viable new aquaculture setting. So I would urge us to pay attention when this bill comes back from the Senate to make sure that we can facilitate the fish ponds. Thank you."

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

Representative Keith-Agaran rose in support of the measure with reservations and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Keith-Agaran's written remarks are as follows:

"Thank you, Mr. Speaker. I support this measure with reservations. I appreciate the need to support the potential of aquaculture by allowing local farmers better opportunity to recoup required investment in costly aquaculture infrastructure and equipment. Providing a reasonable extension in lease terms proposed in this measure is touted as supporting increased investment in land-based, coastal, and ocean aquaculture ventures in Hawaii.

"I do object to the general policy change that would allow options on public lands for the first time – a right not afforded to any other tenant of the Public Land Trust. In a State where land is limited, competition for access and use of what limited government lands we control has been an

important value and assumption in how we act as stewards of the Public Land Trust. When these lands are used for commercial gain by private individuals and companies, the State should be careful to ensure fairness in the process.

"I do not support giving tenants an absolute right of first refusal which forces the State to continue to exclusively lease to existing tenants – under existing law, there are adequate opportunities to provide extensions and other assistance when additional investment is proposed by tenants.

"I also have reservations in regards to open ocean fish farming. Industrial ocean fish farms should continue to be monitored for negative impacts on our environment. We are an ocean State and our nearshore waters are important for the recreational, cultural and spiritual well-being of all our residents – there should be a balance between access for all our residents and making these areas the exclusive province of commercial interests.

"So once again, Mr. Speaker, I vote with reservations."

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

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

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

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

"Thank you, Mr. Speaker. In support. This is a bill that actually helps the aquaculture industry. In these tough economic times, we're talking about economic development. One of those industries that I think could become a cornerstone is aquaculture. And all this bill does is allow for up to a 45-year lease. It does not mandate it. It creates a maximum. Many aquaculture businesses who receive federal loans or grants require that your lease exceed the grant or the lease terms by five years. That's why they need 45 years.

"We did accept some comments from the Department of Land and Natural Resources in which their main opposition was the first right of refusal, and instead of saying 'shall,' we changed it to 'may' so it allows the Department flexibility if they want to give the first right of refusal. If they don't and they don't like the lessee, they can cancel the lease without giving first right of refusal. I think this is a good way to help the aquaculture industry and does not cost money. Thank you."

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

"Mr. Speaker, I rise in support of the measure. Mr. Speaker, this industry has died a thousand deaths and it has an innovative creative spurt now and then. It's something with a pioneering Tap Pryor spirit back in the 70s. There's something in this industry, if we can just develop it. You can put money, time, years, and be marginally successful.

"Other parts of the world are booming in aquaculture. We've given this industry 'lip service.' Just like agriculture, we give it 'lip service.' We don't give it money. We've got to take it off budget and give it a special fund. This one is simply giving these guys a little bit more time to get their money back.

"So far, aquaculture has not been a breadwinner. Aquaculture has not been a profitable industry. So when we say that these are things that we shouldn't be affording to the industry, if we want it to die off and let Thailand take over, which basically they have done to a great extent, we can do that. But if we mean it, we have got to have political will to do it, and this is a gesture to do that. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. In support. During the Committee hearings, testimony was in support for longer term leases, amiable term leases. The

Division of Aquaculture within the Department of Agriculture is one of the highest rising endeavors within the State of Hawaii right now. We're not different.

"Aquaculture is unique in the State of Hawaii. We are totally surrounded by water, from the mountain to the sea and beyond the three-mile limits. Aquaculture is one of the entrepreneurial industries within the State of Hawaii. And those in the aquaculture industry need support from the Legislature and from the community. This bill would ensure partially that these entrepreneurs in the newly created, innovative industry would have some type of faith, looking towards the future for some type of return on their investment. Other comments will be provided for Journal entry. Thank you."

Representative Tsuji's written remarks are as follows:

"Mr. Speaker, I speak in support of this measure. This bill encourages commercial aquaculture ventures in the State by providing favorable lease terms for public lands. Providing that the right of first refusal for aquaculture operations in good standing is permissive, public lands could be leased for this purpose for up to 45 years.

"There was opposing testimony in Committee hearings. However it is important to note that recent cuts to the Department of Agriculture resulted in significant reductions to its Aquaculture Division.

"With Hawaii's focus on sustainability - particularly the desire for decreased dependence on external food sources - finding ways to support and sustain our agriculture industry becomes even more important. This includes aquaculture.

"Testimony in support included statements that a longer term lease - one that is consistent with other types of land based leases - would give investors a higher degree of confidence in projects, and that professional farmers would be encouraged to invest in new areas of aquaculture.

"Lastly, since this State currently imports a high percentage of its seafood, the nascent aquaculture business should be supported and this measure is such a vehicle."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2409, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AQUACULTURE," passed Third Reading by a vote of 51 ayes.

At 11:41 o'clock a.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 1987, HD 2  
 H.B. No. 2661, HD 2  
 S.B. No. 466, SD 2, HD 1  
 H.B. No. 2293, HD 1  
 H.B. No. 2948, HD 1  
 H.B. No. 2290, HD 2  
 H.B. No. 2291, HD 2  
 H.B. No. 2409, HD 2

At 11:41 o'clock a.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:41 o'clock a.m. with the Speaker presiding.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 563-10) recommending that H.B. No. 2642, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2642, HD 1, entitled: "A BILL FOR AN ACT RELATING TO UTILITIES REGULATION," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 565-10) recommending that H.B. No. 2382, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2382, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Har's written remarks are as follows:

"Mr. Speaker, I rise in strong support of House Bill 2382, H.D. 1. This bill would establish digital media enterprise subzones, creating incentives, including tax credits for infrastructure and workforce development, in order to nurture the growing digital media industry in our State.

"Mr. Speaker, at a time when almost every sector of our economy is suffering in Hawaii, creative media stands out as a growing industry, hiring local people for well-paying jobs. Production on movies and television shows in our beautiful State has created hundreds of jobs and generated millions of revenue for local businesses. In addition to the talented media workforce that has emerged from the Waianae Seariders' pipeline - and the more than 80 media programs throughout our State's middle and high schools - the University of Hawaii has nurtured local talent through its Academy for Creative Media (ACM), which has grown exponentially since its founding about 5 years ago, building from 3 courses and 37 students, to 39 courses and 300 students. Graduates have written, directed and produced short films, interned for "Lost," and found full-time employment in the creative media industry.

"Within this thriving industry, digital media is growing as well. Earlier this year, Hawaii Animation Studios opened with 30 employees, most of them local graduates of UH, with plans to expand to 150 employees soon. Along with many other local companies, this represents a strong opportunity to build an industry utilizing "an indigenous creative workforce that happens to be the most coveted kind in the world," as ACM Founder and Director Chris Lee put it in his testimony before the Finance Committee on February 18, 2010.

"He went on to say, "Creative media production in all its forms, movies, television, software, video games, Internet multi-players, animation, music, visual effects, even Apple iPhone applications, is Hawaii's best chance to soften the cyclical blows of our aviation fuel-based service economy," noting that this is possible because of broadband connections and the idea that "creative intellectual property requires only that we harness the natural skills of our students," not endless raw materials or transportation back to the mainland.

"Mr. Speaker, this bill attempts to build on this nascent success in Hawaii's digital media industry by offering incentives to further encourage development of our talented workforce by implementing digital media enterprise subzones within a set radius of UH campuses. It's not enough that we train these students, but that we provide opportunities for them after graduation, and that's what this bill would help facilitate.

"Digital media companies in the subzones would receive tax credits for infrastructure and workforce development. Similar tax credits have had marked success in other states. For instance, as Mr. Lee testified, Louisiana, which started tax incentives for film in 2001, went from two low-budget pictures shot in the State in 2001, to 21 low-budget schools and 5 big-budget pictures totaling \$450 million in production spending in 2006. Multiple studios have also been constructed in the State. Internationally, New Zealand's tax credits for filming have lured projects such as "Avatar," which generated \$50 million in taxes alone for New Zealand.

"House Bill 2382, HD 1 would help Hawaii do the same in nurturing an industry that will employ our talented young people, take advantage of the burgeoning creative media educational program that will be based at UH-West Oahu and further create much-needed jobs and industry based on the west side. This bill gives us an opportunity to put our young people at the

forefront of a growing global industry, while diversifying our State's economy. I urge my colleagues to support this legislation. Thank you, Mr. Speaker."

Representative Wooley rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Wooley's written remarks are as follows:

"During the Finance Committee hearing on this bill, we heard compelling testimony about the digital media industry and how promoting digital businesses will benefit our economy and the future for our children. This is a valuable discussion and an interesting idea full of potential.

"However, I have yet to see the details on how we could pay for this tax credit, or even how much it would cost us. Given our unprecedented budgetary challenges where we are searching for ways to find to fund, for example, long-established programs such as Kupuna Care or school for our children on Furlough Fridays, I question how the State could afford to provide a new tax credit.

"If the State government could print its own money, we might be able to afford it. However, the State can't print money. The State government's primary tools are to increase taxes or impose additional budgetary cuts – two options I hope the Legislature does not pursue at this time in the name of providing tax credits to one industry.

"Therefore, I support the discussion and the concept of promoting digital media, but I have concerns about how much the proposed tax credits would cost and how they would be paid."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2382, HD 1, entitled: "A BILL FOR AN ACT RELATING TO DIGITAL MEDIA," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Nakashima voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 567-10) recommending that H.B. No. 2133, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2133, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. On Stand. Com. Rep. No. 567, if I could note my reservations with quick comments. The purpose of this bill is to improve efficiency within the government procurement process, and in some ways it can do that. Overall I think that this can work for some of the procurement contracts. I think through testimony, it sounded like maybe the language is a little overbroad and really rigid on the time limits, and it might not work for some other things. So I just have reservations as we move forward. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2133, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 568-10) recommending that H.B. No. 2381, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2381, HD 2, pass Third Reading, seconded by Representative Evans.

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

Representative Finnegan rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Finnegan's written remarks are as follows:

"I rise with reservations on this bill. HB 2381 provides a temporary tax credit for residential construction and remodeling projects. Although I appreciate the intent of the bill to spur activity in the construction industry, I do worry about the potential abuse of the tax credit for remodeling projects. In the past, this type of tax credit had a fifty percent abuse rate because the term "remodeling" was not defined properly. Given the tax revenue shortfalls that currently face the State, I am not sure if allowing for this type of tax credit is the most prudent way of managing our budget deficit at this time."

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

"On the same measure, Mr. Speaker, I just would like to state my reservation. In these times when we're in a revenue shortfall, giving a tax credit would be heading in the wrong direction. Thank you, Mr. Speaker."

Representative Wooley rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Wooley's written remarks are as follows:

"This bill proposes a 4% tax credit for residential construction. It is not clear how much this would cost the State, but it's in the range of \$15 million. That's \$15 million that the State will have to find elsewhere.

"If the State government could print its own money, we might be able to afford it. However, the State can't print money. To fund the tax credits, the State government's primary tools are to increase taxes or impose additional budgetary cuts – dollar for dollar. I have reservations about these kinds of proposals particularly given these challenging budgetary times where we have had to find over \$3 billion over a two year period simply to balance the budget.

"One overarching problem with tax credits is the public never sees the bill – the tax credits are given out to special interests, but the total amounts are never reflected in the budget. In addition, projected and actual cost estimates are hard to come by. It is even difficult to identify the actual beneficiaries or the supposed increased economic activity caused by the tax credit (i.e., there may actually be no effect even if \$15 million is paid).

"At the same time, I support the intent of helping to spur on residential construction in these tough economic times and I believe the discussion about job creation is warranted. If we combined these concepts with other goals, such as promoting green building jobs or affordable housing jobs and expertise, or even focusing the credit on remodeling and upgrading residential homes for our working families, then we may be able to justify the cost of such a tax credit."

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

"Thank you, Mr. Speaker, I rise in strong support of House Bill 2381, House Draft 2. Mr. Speaker, this bill provides a temporary tax credit for residential construction and remodeling projects. This bill will allow taxpayers who own residential, rural property to claim a tax credit equal to a percentage not yet determined, for residential construction and remodeling cost to a residential apartment unit or a single family home.

"Mr. Speaker, this tax credit was a recommendation of the construction industry task force which was established by Senate Concurrent Resolution No 132, SD 1, 2009, to develop and propose State actions to preserve and create new construction jobs. This bill is a win-win for homeowners, the construction industry, and the economy as a whole.

"First, as the real estate market has softened, it provides homeowners with an incentive to make improvements to their homes, thereby building equity in their homes. Second, as many people can finance the remodeling or renovations of their homes with a home equity line of credit, tapping into the financial markets is not an issue.

"Third, it will immediately put many of construction workers back to work. Mr. Speaker, with 52% of our construction workers on the bench, and as construction is a significant part of our economic growth, this bill will aid in both of these areas. Fourth, it provides an immediate infusion of cash into our economy. As we continue through this unprecedented fiscal crisis, any immediate infusion of funds will help our economic recovery more quickly.

"While opponents of this measure may criticize this measure because it does provide a tax credit, taking funds away from government which could have been collected, it is well documented that temporary tax credits lead directly to economic growth. Anne Kim and Ryan McConaghy, Director and Deputy Director respectively of the Third Way Economic Program think tank in Washington D.C. noted in a July 2009 publication that tax credits, "are a temporary investment in economic recovery and therefore worth the short term cost. In a market where Americans have literally seen trillions of dollars in home equity evaporate, providing a tax benefit to homeowners is a constructive step in halting economic freefall."

"Moreover, Mr. Speaker, in his verbal testimony before the Finance Committee, Lowell Kalapa, Director of the Tax Foundation, clearly articulated that this bill would be more advantageous than the Hotel Renovation Tax Credit. First, because of financial markets continue to be frozen, financial institutions are not making large loans. It is virtually impossible for hotels to even try to get the loan financing they need to take advantage of the Administration's proposal for a hotel renovation tax credit. In comparison, Mr. Kalapa noted that homeowners under this bill undoubtedly would be able to tap into a home equity loan.

"Second, even if the hotel would have obtained financing for the renovations under the Governor's proposal, the construction agreements completed, it would take so many years it would therefore obviate the need to infuse immediate funds into our ailing economy. Under this bill however, homeowners and contractors would be able to enter into renovation remodeling contracts relatively quickly and the work would be completed easily within a year, thereby providing immediate cash into our economy.

"Finally, although you would be giving a tax credit to the homeowner under this measure, Mr. Kalapa notes that you would still be collecting it from the contractors, thereby making the credit a wash.

"In summary, Mr. Speaker, this bill is a win-win all the way around. It provides our constituents with an opportunity to build equity in their homes, it provides an immediate infusion of funds into our ailing economy, and it helps put construction workers back to work. For these reasons, Mr. Speaker, I stand in strong support."

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

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

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

"Mr. Speaker, I am in support with a retort. The notion that this bill is going to bring in more money than the Governor's hotel renovation bill I think is flawed in its argument in that this is going to be a large number of small renovations versus what the Waikiki hoteliers have said that there will be considerable amounts, and millions of dollars in renovations in a period of time. So other than that, it's a good bill."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2381, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Berg and Nakashima voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 569-10) recommending that H.B. No. 2441, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2441, HD 2, pass Third Reading, seconded by Representative Evans.

Representative Keith-Agaran rose in support of the measure with reservations and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Keith-Agaran's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support of this bill with reservations. HB 2441 requires contracts to be awarded within thirty (30) days of the bid opening date for projects from Hawaiian Home Lands, State transportation, county boards of water supply, and county departments of housing, planning and permitting, and transportation. This is part of the package introduced by the Construction Industry Task Force, bills meant to jump-start the State's stalled construction industry and get thousands of skilled and unskilled laborers off the unemployment rolls.

"The concern I have with this bill is that the time limitations might be impractical in some public works contracting circumstances. For instance, this measure may make sense in a simple situation such as a tree trimming contract where the scope of work is clear, but not in a complex project such as a rail design-build contract. I agree with the Department of Transportation's idea to provide exemptions to the 30-day period for situations where the procurement involves a design-build criterion, or where the lowest responsible bid exceeds the available funds, or if negotiating with the bidder would result in a situation that is in the best interest of the public.

"Once again, Mr. Speaker, I vote with reservations."

Representative Finnegan rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Finnegan's written remarks are as follows:

"I have some reservations on HB 2441. This bill requires contracts awarded to projects of the Departments of Hawaiian Home Lands and Transportation; county boards of water supply; and county departments of housing, planning and permitting, and transportation to be awarded within 30 days of the bid opening date, subject to sufficient available funding and possible further negotiations to benefit the public.

"The measure also requires contracts by these agencies for design professional services to be awarded within 45 days of the bid opening date. This bill needs some work. It may be a step in the right direction of expediting a cumbersome process that can often adversely impact the financial bottom line of contractors. However, the timelines stipulated in this bill may be unrealistic in some cases. We need to ensure that appropriate safeguards exist in a workable and ultimately beneficial procurement process system. I will support this bill for now to see how it develops."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2441, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Berg voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 571-10) recommending that H.B. No. 2901, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2901, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, may I request a ruling on a potential conflict? I work as an electrical consultant," and the Chair ruled, "no conflict."

Representative Finnegan rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Finnegan's written remarks are as follows:

"I rise in opposition of HB 2901. This particular measure establishes a discretionary request for competitive sealed proposal procedure using the design-build process where not more than five offerors selected on their qualifications submit proposals, and stipends are paid to unsuccessful offerors who allow the agency to use elements of their designs and waive their right to protest the award.

"It seems surprising to me that this bill would essentially subsidize losing bids. The potential of securing a government contract should be incentive enough to develop compelling, quality designs that ultimately prevail in the procurement process. Given the specificity of design requirements and needs, I cannot imagine many situations where there would be the ability to recycle unused designs for projects as this bill intends. It simply would not be feasible, nor would it yield the best quality structure for the State. This bill would be an expensive proposition for the State."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2901, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," passed Third Reading by a vote of 48 ayes to 3 noes, with Representatives Finnegan, Marumoto and Pine voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 572-10) recommending that H.B. No. 2984, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2984, HD 2, pass Third Reading, seconded by Representative Evans.

Representative Keith-Agaran rose to disclose a potential conflict of interest, stating:

"Mr. Speaker. Yes, I'd like a ruling on a possible conflict. I'm affiliated with a high tech company," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2984, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TAX CREDITS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 575-10) recommending that H.B. No. 2074, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2074, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Finnegan's written remarks are as follows:

"I rise in strong support of HB 2074. This bill requires DOE to establish alternative routes to certification for principals and vice-principals. It also allows the DOE to, on a case-by-case basis, waive certification requirements until the alternative routes to certification are established.

"In this present time when it is all too apparent that our educational system is failing our children, we must change. This particular measure will enable the Department to attract and retain qualified leaders with real-world experience who can contribute to the management of our schools. It is time to start thinking outside the box and this bill is an innovative measure that does exactly that in terms of achieving educational reform."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2074, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE CERTIFICATION OF PRINCIPALS AND VICE-PRINCIPALS," passed Third Reading by a vote of 51 ayes.

At 11:53 o'clock a.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2642, HD 1  
 H.B. No. 2382, HD 1  
 H.B. No. 2133, HD 1  
 H.B. No. 2381, HD 2  
 H.B. No. 2441, HD 2  
 H.B. No. 2901, HD 2  
 H.B. No. 2984, HD 2  
 H.B. No. 2074, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 576-10) recommending that H.B. No. 2076, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2076, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Takai's written remarks are as follows:

"Mr. Speaker, I speak in support of this bill. The purpose of this bill is to require the sharing of data across State agencies. This will support research that improves education and workforce outcomes while meeting the longitudinal data requirements of the federal American Recovery and Reinvestment Act (ARRA) of 2009.

"This bill affirms the State's intent to meet the four assurances required for ARRA funding. One of the four ARRA assurances specifically targets the use of data for improving student performance. Meeting all four of the assurances is dependent on the given agencies ability to access relevant data.

"Zero to five data is critical to ensure school readiness and success in future developmental phases. For this effort to succeed data needs to be shared. I urge our colleagues to support this bill. Thank you."

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

Representative Finnegan's written remarks are as follows:

"I rise in support of HB 2076 which requires the Department of Education, University of Hawaii, and Department of Labor and Industrial Relations to share data to support research that will improve educational

and workforce outcomes and meet the longitudinal data requirements of the federal American Recovery and Reinvestment Act of 2009.

"As it becomes increasingly more apparent that our country needs to better prepare students for the future, the State must make every effort to complement national reforms. The American Reinvestment and Recovery Act's Race to the Top initiative is a commendable step in the right direction. Ensuring that our State educational decisions and policies are rooted in empirical data will inevitably increase the efficacy of our educational system and the results for individual school children. In doing so, we help to build a more prepared and productive workforce."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2076, HD 1, entitled: "A BILL FOR AN ACT RELATING TO RESEARCH," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 578-10) recommending that H.B. No. 2267, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2267, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Finnegan's written remarks are as follows:

"I rise in strong support of HB 2267. This measure requires the Department of Education to provide an early and equitable distribution of grant moneys received by the Hawaii Charter School Administrative Office when charter school enrollment numbers were used to secure federal grants.

"Public charter schools have proved to be one of our most effective educational alternatives to the traditional educational setting. Furthermore, President Obama has highlighted public charter schools as one of the foremost innovative educational reform tools. We must ensure that they receive their fair share of funds, especially when those moneys are earmarked for them."

Representative B. Oshiro rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, on HB 2267, may I have a ruling on a potential conflict? My law firm might represent some Charters Schools and a non-profit that helps a Charter School," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2267, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC CHARTER SCHOOLS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 580-10) recommending that H.B. No. 2486, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2486, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. This is a bill for minimum instructional hours. Mr. Speaker, I just have small reservations. I note that charters schools are often innovative. They do things a little differently. Some have online learning, project based schedules and hours and I'm not sure how this applies to those types of programs. So my reservation is just that we find a way to work with that. Thank you."

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

Representative C. Lee's written remarks are as follows:

"Mr. Speaker, we cannot let our children's education be used as leverage in a political fight. Mandating a minimum number of instructional hours will prevent our students from being cheated out of a full education, and prevent such a debacle from happening every again."

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

"Thank you, Mr. Speaker, I rise in support of this measure, and I request permission to insert written comment as well. Thank you. Just very briefly, a few years ago I worked with the gentlemen from Florida to develop an econometrics model that takes into consideration factors that many teachers and educators in this State believe affect education, but they have no control over. Interestingly enough, Mr. Speaker, with those seven uncontrollable factors, when taken in total, we could predict test scores within three percentage points without even taking the test.

"The reason why I mention this is because the strongest and most influential indicator of student success is in fact, student attendance. And if a child is not in school, he or she will not learn. The reason for this bill and the reason why I support this bill is that we in Hawaii have difficulty understanding that. Not only because of the current furloughs, but more importantly just because of the way the current school year and the amount of hours and minutes that our children are in school, that's why we are where we are today. This measure provides some hope that we would be able to compete not only with our counterparts across the nation, but people across the world. Our children need to be in school, and this debate is not about furloughs. This debate is about the future of our children after we solve the furlough issue. Thank you, Mr. Speaker."

Representative Takai's written remarks are as follows:

"Mr. Speaker, I speak in support of this bill. This bill calls for a minimum of 1,080 student instructional hours per year in grades K-8. Based on the current school day, the increased number of instructional hours would amount to a 229 day instructional year. This would give us an increase of 45 days per year.

"The priorities now are to restore the furlough days for the remainder of this school year and next, and to increase the number of instructional hours in the school year as proposed in this bill. When Hawaii becomes the laughing stock of the nation or when the U.S. Secretary of Education makes hurtful comments against the education system in Hawaii in the Washington Post and the New York Times, I'm terribly concerned.

"I have spent my entire legislative career focused on the education of children in Hawaii. From 1994 until last year, I was extremely proud of what we have accomplished. "Education is our Top Priority" is not a slogan for me. Rather, it's a mission. Nearly each waking hour of my life as a state representative, I've tried to live for this mission.

"My wife and I have both greatly benefited from our own public school education. She graduated from Moanalua High School, and I graduated from Pearl City High School. In hindsight, we wouldn't have it any other way. We are proud graduates of Hawaii Public Schools. Even our two young children are educated at an elementary school in Aiea. They were both receiving the best education that money can buy until this past fall.

"Furloughs are a disgrace. We build schools so that children can learn in a safe environment. Schools are where dreams are developed. When schools are closed due to furloughs and children are left at home because we can't afford paying our teachers, they lose. And when children lose, we all lose.

"A few years ago, I spent a few years volunteering in our public schools. A good friend of mine Mark Hunter, who is a retired banker from Tampa, Florida, and I spent a few years working together on an econometrics model for public schools in Hawaii. This econometrics model took into consideration a few factors that some teachers say are beyond their control.

I call these "uncontrollables." These "uncontrollables" include things like the percentage of students who are on free and reduced lunch, the percentage of students in special education, the size of the school, the percentage of teachers with less than five years of experience, the teacher attendance rate, the student attendance rate, to name a few.

"We used eight of these "so-called" uncontrollables. With these data, we could determine scores of the Hawaii State Assessment within three percentage points before the test is even taken – before the test is taken. Before the test is taken, we know with some certainty that a certain school will hit a certain score on the state assessment.

"So how is this relevant to furloughs and to today's challenges? Here's why.

"The most important factor influencing performance on the State assessment is not whether a student gets free or reduced lunch or whether the teachers are just out of college. The most important factor impacting scores on the state assessment is student attendance. How well a student does in school is based on attendance. This makes perfect sense to me. If a student is not in school, she will not learn. And if she doesn't learn, she will not perform well on the State assessment. Again, if a student is not in school because his school is closed to furloughs, he will not learn. And if he doesn't learn, he will not perform well on the State assessment.

"Furloughs keep students at home. Furloughs keep students out of school. Not being in school means our children are not learning. Children who are not learning will not do well in school and will not do well on the State assessments. Our actions or lack thereof are hurting students, are hurting our children.

"Furloughs must end. They must end not only because we closed the schools and not only because they are an embarrassment to the nation. We must end furloughs because we're hurting our children and we are hurting our future. I urge our colleagues to support this bill. Thank you, Mr. Speaker."

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

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in strong support to H.B. 2486, which establishes a minimum number of instructional hours per school year for each grade. Although we find ourselves in a state of economic crisis, the education of Hawaii's students should always be one of our top priorities. We must recognize that the length of the instructional day in Hawaii's public schools is among the shortest in the nation. Hawaii has come up short with our schools having fewer than 750 instructional hours per year, when the standard for private and public schools is 900 hours per year.

"In addition, 80% of American schools spend less than Hawaii at \$10,200 per student, yet we have less instructional time than any other state in the nation. These numbers cannot be ignored. Thank you."

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

"Thank you. In support, and may I have the words of the speaker from Newtown entered in the record as if they were my own? I have just a brief comment if I may, Mr. Speaker. I'd like to thank the proponents of this bill because I think this is a way for us to address this critical educational question without running into a situation which has happened in California whereby having instructional days set into law, they had to increase class sizes to 45 to 1, and let numerous teachers go. Thank you, very much."

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

"Yes, Mr. Speaker. I speak with some reservations. The reservation I have is that this might intrude in collective bargaining. It may also increase the cost of education. Right now we're at a situation where we're asking the Board of Education, at least the Senate is, to make an additional \$37

million in cuts, which they just did. And because of the financial situation we have, it might not be appropriate to pass such legislation at this time, Mr. Speaker."

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

"Thank you very much, Mr. Speaker. In support. If you would please keep in mind that while there will be another bill coming over from the Senate that carves out instructional days, and you know there's always going to be this perennial debate about days versus hours. I think if we look at countries like China for example, that has 251 days versus the United States' average of 108 days; and Japan is at 243 days. South Korea has 220 days. But if you look at the ways these countries educate their children, they're actually in school, instructional time, for fewer hours than we actually have our children in. What they do in these countries, even though these children are in school for seven or eight hours a day, they have a lot of peer mentoring, and children working together in groups, and so on. That doesn't count as 'instructional time.'

"You know, there's always going to be a great pedagogical debate as to whether or not an instructor standing in front of a group of children is the best way to deliver educational progress. That debate will continue. But I will say to the Representative from Maui that it is true. Article 16 of the HSTA agreement does lay out instructional hours, but again as we all know, once that contract is over we can pass a law that takes effect. We cannot reach into an existing contract, but we can, as long as we do it on a go-forward basis.

"And to respond to the other Representative from Maui, even if you put a minimum number of days or hours, it doesn't matter that it's prescribed by law. We would in this situation, had it been in effect, in my opinion we would either have to take pay cuts for the teachers, increase class size, or lay off teachers. Thank you, Mr. Speaker."

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

"Mr. Speaker, I rise in support of the measure. Mr. Speaker, we are in a crisis. This is about furloughs. It is about getting our kids back to school. It is about not 'dumbing down' our kids any further. And as we all count ourselves as policymakers from the various districts throughout the beautiful State of Hawaii, we have as our number one policy, education. For the speaker of Maui to say that this is a collective bargaining issue is to miss the point of what the responsibilities we have to set forth parameters of how we're going to be educated.

"Case in point, Mr. Speaker. Right now the people of Hawaii, 25 and above, the elders, the parents, are more educated than those kids 20 and below. We have 'dumbed down' a generation. In fact, as part of what's going on in America, the older generation was always less educated than the younger. Now we've reversed that. We talk about China. We talk about India. Those guys are going leaps and bounds ahead of us.

"This bill is a bare minimum of getting back in control of the policy of education in this State. It's a small step, but it's a very, very vital one. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2486, HD 2, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 581-10) recommending that H.B. No. 2740, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2740, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Har's written remarks are as follows:

"Mr. Speaker, I rise in strong support of H.B. 2740, H.D. 1, Relating to Schools. The purpose of this bill is to address the need for the long-awaited Royal Kunia Elementary School II by utilizing Certificates of Participation (COPS) financing.

"Mr. Speaker, COPS is a different way of financing construction of our schools. As you know, the State traditionally floats general obligation bonds for capital improvement projects, including schools. The debt service is then paid off for the life of the bond. COPS, on the other hand, allows investors to pay for design and construction up front, with the State making lease payments to pay off the investment. At the conclusion of the payment term, the State will own the building. Rather than paying interest on the bond at the end of a project, which is done through traditional financing, COPS provides the investor with a return on the lease revenues associated with the offering. The advantage to COPS financing is that it will free the State from restrictions on the amount of general obligation bonds it can float.

"Mr. Speaker, the master planned community of Royal Kunia envisioned two phases. Phase I was built during the 1990's and at that time, many of the residents were promised a new elementary school. Those promises never materialized. Phase II is now proceeding with another 2000 units to be built. It is imperative that we approve this measure so that we can get this school, which was promised to the residents a decade ago, built now. Royal Kunia Elementary School II is now number four on the Department of Education's matrix for new school construction and we have a developer who is willing to proceed with the design and construction if we can pass this measure.

"As COPS provides the State with an alternative means of financing during these unprecedented fiscal times, I strongly support this measure. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2740, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SCHOOLS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 582-10) recommending that H.B. No. 2239, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2239, pass Third Reading, seconded by Representative Evans.

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

Representative Finnegan rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Finnegan's written remarks are as follows:

"I rise in opposition to HB 2239. This measure removes the exemption for dietary supplements from the deposit beverage container program. I'm not a fan of this program and did not support the original deposit beverage container program. Cans and plastic bottles have proved very difficult for the public to redeem. Thus, whether this law pertains to dietary supplements or regular beverages, I disagree with the program."

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

"Thank you very much, Mr. Speaker. I rise with reservations on this measure. It just came to my attention perusing the bill that because dietary supplements could include Enfamil and other formula that is used by parents, and given the affect of the economy, especially on the most vulnerable sector for working mothers, I think that I have some concerns about this bill. Thank you very much."

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

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

"Thank you, Mr. Speaker. Reservations for myself as well and I appreciate what the Representative from Lahaina is sharing, and I wanted to say the same thing. Thank you."

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

"Thank you, Mr. Speaker. In support of this measure. Just for the edification of the Body, infant formula is not defined as a dietary supplement. There's a specific definition for dietary supplements and it's mainly any kind of beverage that includes vitamins, herbs, energy drinks, etc. But baby formula falls under another category, which I believe it's a medical supplement, and it's not affected by this bill. Thank you."

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2239, entitled: "A BILL FOR AN ACT RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM," passed Third Reading by a vote of 48 ayes to 3 noes, with Representatives Brower, Finnegan and Pine voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 584-10) recommending that H.B. No. 2421, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2421, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to Stand. Com. 584, House Bill 2421, Relating to Government. Mr. Speaker, this is job-killer bill number one. This is the 'barrel tax.' This is the bill that goes from five cents a barrel, to \$1.05 a barrel. This is a bill that's insidious. It's going to get at everything, not only from the gas pump, but to the oil that is keeping our lights on, to every piece of energy that's related to petroleum.

"We have taken from 1993 a bill that was set at five cents to put a reserve fund in case there was an oil spill. We didn't want the Exxon Valdez to happen here and if it did, we didn't want tourism to be spoiled so we put it in there. What's come from this environmental special fund is now, an omnibus bill for even saving food security and agriculture, which is a great thing. But to use it on this bill with this premise is a bit odd.

"The point is, it's going to increase the cost of living in Hawaii. It's going to increase the ability for jobs to be lost, and Mr. Speaker, I would say this. Governor Lingle, veto this bill, again. Thank you."

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

"Thank you, Mr. Speaker. I rise in strong support. I don't know of anybody in this Body here or in the entire State that goes against the purpose of this bill. I'm going to read these real quick. 'To promote economic development for local food and energy; become energy and food self-sufficient and sustainable; and utilize our natural resources to minimize the impact of carbon dioxide.'

"This bill, Mr. Speaker, supports our long term policies that we just put in place the last ten years in this Body. One is the Hawaii Clean Energy Initiative. The second one is our 2050 Sustainability Plan. We ask



ourselves, why now? This plan, this bill, and its purpose will span the next 20 to 40 years. We are going to see many economic cycles up and down related to this bill.

"Ask yourselves, why tax fossil fuel products? Well, we have an addiction to fossil fuel. Mr. Speaker, we have policies in place where we tax cigarettes, alcohol and other products. We do this to reduce usage. In the case of this bill, we want to promote renewable energy and local use of foods. We also do this to mitigate the problem just as in cigarettes and alcohol caused by addiction. This addiction we have spends and sends millions and billions of dollars outside of our State, hurting our economic development.

"This bill has minimal impact, Mr. Speaker. Every citizen can help manage this mitigation problem. You can turn off your lights. You can drive slower. The real world impact will be about 78 cents a month for your electricity bill. If you put about 15 gallons of gasoline in your car per week, this is going to cost you 37 and a half cents.

"Mr. Speaker, we have a great benefit for the startup of this bill this year during our economic downturn. Due to our and federal funding in fiscal year 2011, we would be able to transfer about \$10 million to the general fund next year to get this program started, funds we won't need until fiscal year 2012. Thank you, Mr. Speaker."

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

"Yes just in opposition, Mr. Speaker. I agree with the previous speaker that those things are very, very important and I really supported the original bill a year ago when it was actually a tax-neutral bill and it would not affect my constituents. I know that those numbers of 38 cents, and 20 cents, and so forth don't sound like a lot, but I've got to tell you that people from my community are really suffering because just about everything is 10 cents, and 20 cents, and 30 cents more. And then you add on this, a tax increase during a very difficult economic time, not just for individuals, but for our State and for our country. It's just perhaps maybe not the right way to do it at this time.

"The Governor had some great proposals in her Clean Energy Package that was not accepted. And it didn't charge more taxes on the people of Hawaii. I think we need to revisit those measures."

Representative C. Lee rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support. I just wanted to note that the cost that we bear today would be somewhere in the neighborhood of, I believe the estimate last year was about \$20 per person, per year, in the State. The savings in the long term, moving away from fossil fuels, are going to be somewhere in the magnitude of many hundreds of millions, if not billions of dollars. The choice we have today is whether we're willing to saddle ourselves in order to save our future generation from these added costs. So I rise in support and just request further written comments."

Representative C. Lee's written remarks are as follows:

"Mr. Speaker, Hawaii imports more than 90% of its energy in the form of crude oil, and exports nearly \$8 billion dollars to pay for it each year. As oil prices begin to skyrocket, so too will the cost of energy, goods and services in Hawaii. We must lay the groundwork today to become energy self-sufficient, if our economy is going to survive in the long term."

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

"Thank you, Mr. Speaker. I am rising in opposition to this bill. Thank you. The main opposition I have to this bill, as I mentioned yesterday when we were meeting about it, is the appropriation. I just feel that it's hard to justify that most of the taxes that will be generated from this are coming from Oahu and will be going to mostly Neighbor Island initiatives, which is fine. But I think it's inequitable right now the way bill is. And while it is a good idea, I think it is ill-timed right now, and it's a tax increase that I can't justify to my constituents. Thank you."

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

"Thank you, Mr. Speaker. I am in support, but I do have a very slight reservation. I appreciate that there is \$10 million that is going to be going to the general fund. I just wish that this Body had kept in mind the Highway Special Fund which is being rapidly depleted right now. Thank you."

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

"Thank you, Mr. Speaker. Please note my no vote and I would like to give just short comments in opposition. Thank you. You heard the concerns about the tax, and we've all experienced when taxes rise, especially with fossil fuels, how hard it is on our local residents. But I also just want to say that those of us who don't support this tax increase, we still support HCEI and moving forward. For instance, there's a bill coming up in just a couple more measures that talks about the HCEI Bond program that would work to help individuals and families be able to afford, with State help, afford getting some of these renewable energies either on their roof or to help them with their electricity. And in the long run and the short run, it's very beneficial.

"Mr. Speaker, you also know that the US Department of Energy looks to Hawaii as a leader in this area. You know and I know that Director Ted Liu went to the mainland and they're inviting him back to speak to others, especially others who are island communities, and we should be proud of where we're going with energy.

"I know that there's a lot to do, but this is a very difficult time for our residents right now. And when we talk about where we can cut or how to balance the budget and all of those types of things, we are also looking at a time when everyone's tightening up on spending, we're actually going forward with expanding government and that's a tough sell for a lot of people out there who are either losing their jobs, or getting furloughed, or getting RIF-ed, or all of those things. Yes we do want to invest in the future, Mr. Speaker, and I think we are with the measures that we are passing out. Thank you."

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

"Thank you, Mr. Speaker, in support of this measure. We spend millions of dollars attracting visitors to Hawaii and the visitor industry is the mainstay of our economy, but on the other hand we send out billions of dollars from our economy to pay for imported fuels and imported foods. So I view this bill as an economic driver for Hawaii by reducing our imports and creating economic opportunities statewide.

"Part of the reality is the transformation of our energy system and the rebuilding of our agricultural sector, and this is a statewide effort. It is not something that is solely focused on the Neighbor Islands. It is true that the bulk of our population is on Oahu, but again the resources to develop both our energy and agricultural infrastructure and needs are based on the Neighbor Islands. So I see this as the whole State working together and not a Neighbor Island versus Oahu issue.

"As our economy gets better, one of the things that we will be facing is increased energy costs as there will be more competition oil resources. As that happens, again cost will increase. And it will make it harder for the State to shift its position because whether it's taxation or increased fuel costs, we're going to have to pay for it. But at least by this additional tax on fossil fuel, on a barrel of oil, what will happen is it becomes an investment in ourselves in taking our economy in a different direction. Should we sit and do nothing? All we're doing is increasing our vulnerability and reliance on imported fuels.

"So I hope people will take this bill and look at it seriously to define our future. It is going to cost us money, but inaction will leave us in a far worse position. Thank you."

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

"Thank you, Mr. Speaker. I'm standing in support with reservations. Mr. Speaker, I support the intent. I was a member of the 2050 Task Force that looked at sustainability which is quoted in this. We did understand the need for Hawaii to move toward more self-sustainability, both in energy and food production. However, Mr. Speaker, in talking with other task force members, there were concerns expressed on how to pay for it, and who bears the burden. So I do have some concerns that this will place the burden on the everyday people.

"You know \$20 might not seem like a lot for you, but in a time in which we're having discussions of having people paying the co-pay for QUEST services, and discussions of having people paying a little bit extra for the basic necessities, I think that's something that we need to look at cautiously. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker, in support. This is a comprehensive bill that combines energy and food security. I truly believe that this plan has merit. It's very laudable. To reach Hawaii's long term food and energy security needs, I believe it is important that there is a balance between agriculture and energy production. For that, I'd like to say that I do support this measure and would like to submit further comments to be provided for the Journal. Thank you, very much."

Representative Tsuji's written remarks are as follows:

"Mr. Speaker, I rise in support of HB 2421 which would provide for long term energy and food security. Energy is a major component of this bill, but there is also an agricultural element that I would like to focus on.

"I believe the State is continually becoming more aware of food security issues, and would support initiatives towards that goal. Crop fields or cattle stock will not simply appear when our needs become sudden. These endeavors must be nurtured and cultivated, but our agriculture industry is struggling under dire conditions such as a bleak economy, prolonged drought conditions and increased fuel and production costs.

"Thirty-five cents of the assessed "Barrel Tax" would be earmarked for the Agricultural Development and Food Security Special Fund, and go towards agricultural projects including those intended to increase production or processing that may lead to reduced importation of food, fodder, or feed from outside Hawaii.

"This is a comprehensive bill that combines energy and food security - and the plan has merit. To meet Hawaii's long term food and energy security needs, it is important that there is balance between agriculture and energy production. A similar measure was passed by the Legislature last year, but was vetoed. Let us renew our effort by supporting this bill and establishing a stable funding source to provide for long term energy and food security in our State."

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

Representative Belatti's written remarks are as follows:

"I rise in support of HB 2421, HD2. In just a few short years, the State of Hawaii has made great strides in advancing energy independence by partnering with the United States Department of Energy in the Hawaii Clean Energy Initiative and collaborating with government and business entities including the State Public Utilities Commission, Hawaiian Electric Industries, Inc., the Kauai Island Utility Cooperative, and other local business organizations.

"A key component in moving this initiative forward, however, is establishing a dedicated source of funding, and not simply relying on the largesse of federal funds, to ensure we will be able to pay for the infrastructure, strategies, and programs identified by the Clean Energy Initiative to move Hawaii toward even greater energy independence. As it stands now, many of the positions now overseeing Hawaii's transition to a green economy are paid for by American Recovery and Reinvestment Act

funds. Once these moneys are exhausted by the end of next year and we face the cliff caused by reliance on federal stimulus funds, these positions will be subject to lost funding and any advances previously made will be in jeopardy.

"Because House Bill 2421, HD 1 looks to the future and adopts a long-term view of how we, as a community, can commit to and invest in energy and food security, I support this measure."

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

"Mr. Speaker, I rise in support and request written comments to be submitted to the Journal. In addition, may I request the words of the Representative from Hanalei and the Representative from Kona be entered into the Journal as if they were my own? Thank you.

"And just briefly, I wanted to say this. I believe the figure that we've been using for a few years now is that we export about \$7 billion of our gross State products in the form of oil. We pay for about \$7 billion of oil, and any which way we can lessen that dependency on oil, I'm supporting.

"You know, Mr. Speaker, I introduced House Bill No. 1 last year, which created an opportunity to look at nuclear energy. I know that we're not there yet, but I do also know that if we do not look at this issue very carefully, we are going to saddle not only our children's future, but our children's children's future with some of these very bad, difficult and challenging decisions.

"So I think if we take a look at this from the perspective of decades and generations from now, where do we want to leave Hawaii. I think this measure before us moves us into the right direction. Thank you, Mr. Speaker."

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

"Yes, Mr. Speaker, I wish to speak on this measure with some reservations. The goals of this particular measure are laudable, and I think we all want to see a green society with farmers prospering, and the community prospering from such a measure like this. However, I believe the jury is still out. Some of the measures are quite utopian and not quite realistic. I personally would like more time to study the issue. But to give a signal out there that a bill like this was going to take care of all the ills, I don't think it will.

"Right now we have entrepreneurs doing many of the things that this bill purports to do. They're providing windmills, solar, photovoltaic, and every imaginable type of heat pumps that are available in the alternative energy area to save fossil fuels without a measure like this. Farmers are beginning to develop different niches that we have throughout this State as well as they can with the resources that they have.

"Mr. Speaker and Members, in all due respect to the Chair who's been working very hard on this measure, I believe that the jury is still out on this measure and with this, I have some reservations. Thank you."

Representative Pine rose to respond, stating:

"Still in opposition, Mr. Speaker. I just want to be very clear that we're very concerned about causing future problems for future generations, but what we're trying to emphasize the most right now is that this current generation is truly suffering, and they just simply cannot afford a tax increase that's regressive to every economic level. And again, the Governor's Clean Energy Initiatives have provided and shown that availability of her working relationship with the federal government to access federal funds for similar measures like this that would not increase taxes on the people of Hawaii."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2421, HD 2, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," passed Third Reading by a vote of 43 ayes to 8 noes, with Representatives Brower, Ching, Finnegan, Har, Manahan, Marumoto, Pine and Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 585-10) recommending that H.B. No. 2631, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2631, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ENERGY INDUSTRY REPORTING," passed Third Reading by a vote of 51 ayes.

At 12:23 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2076, HD 1  
 H.B. No. 2267, HD 1  
 H.B. No. 2486, HD 2  
 H.B. No. 2740, HD 1  
 H.B. No. 2239  
 H.B. No. 2421, HD 2  
 H.B. No. 2631, HD 2

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 586-10) recommending that H.B. No. 2643, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2643, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in strong support of the Clean Energy Bonds bill. Mr. Speaker, I want to thank you for juxtaposing this side-by-side with the 'barrel tax' bill, because this is the way to go. This is probably one of the best bills that this Body will pass this Session. This is the bill that takes bond money, then in a creative way puts it through to the counties for individual businesses and particularly residents like all of us in this place here to put photovoltaic and solar on our roofs without the money up front so much as we amortize it through our property taxes.

"So this is a voluntary increase in your property taxes, but it's amortized over 20 years so you can have your house photovoltaic or totally put into solar. That means that the amount of money that you're saving and the amount of the carbon footprint that we're reducing is immediate, and it is now.

"This is such a creative way that fortunately, the tried and true Berkeley experiment is now going to be brought all over the country. Mr. Speaker, I think we can do even better than Berkeley if we really get behind this bill and really push it. Right now, I know the Chair of Finance has it blanked out and I understand the small amount that will be in there is like \$5 million. It should be \$50 million for openers. And Mr. Speaker, if we're really serious about removing the \$7 billion that we're exporting for petroleum, this is the bill. This is the way. And this is the way that we can do it without any controversy. Thank you, Mr. Speaker."

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

Representative Finnegan's written remarks are as follows:

"I rise in strong support of HB 2643 which establishes a clean energy bond loan program for renewable energy system and energy efficiency improvements on residential and commercial properties, and authorizes the issuance of general obligation bonds to finance the program. This measure is a perfect example of how we can proactively encourage and nurture Hawaii's burgeoning renewable energy industry. The Lingle-Aiona Administration's Hawaii Clean Energy Initiative is revolutionary in its goals to transform Hawaii's energy industry and consumption. In fact, the U.S. Department of Energy has upheld Hawaii as a national model for other states in transforming fossil fuel-dependent economies. HB 2643

ensures that the State is able to grow and nurture the Hawaii Clean Energy Initiative."

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

"Thank you, Mr. Speaker, in support. I just want to clarify that this is a good tool to implement our Hawaii Clean Energy strategy, but again, it's only a tool. What is important is the strategy that is outlined in House Bill 2421. Again, it's a good tool, but it's difficult to move forward if we don't have an overall comprehensive strategy in place and the funding for that strategy. Thank you."

Representative Ward rose to respond, stating:

"Mr. Speaker. One was saying that you can damn something with faint praise. I will say that this is only a tool, but it takes you off the grid. What more do we want for energy independence? It's more than a tool. It's to get a household off the grid because the photovoltaic funding upfront capital will be funded by this bill, and you just pay it off with your property tax. It takes you off the grid. What more of a tool do we want? What more of a way of lifting your foot and the footprint for all the electricity that we're burning with this oil is taken away.

"So I think we need to take this bill a little more seriously. If you want to raise taxes, that's fine. But this is a way you can do it cheaper, quicker, more efficiently, and it's already proven. It's happening with Berkeley and the other places, but they don't have the sunshine and the capacity to be a world leader as we have. Mr. Speaker, it's a matter of political will. Let's face it. We either are going to do it, or we're not going to do it and it starts here with this Body today. Thank you."

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

Representative Keith-Agaran's written remarks are as follows:

"Mr. Speaker, I rise in support of HB 2643 HD2 which establishes a Clean Energy Bond Loan Program through reimbursable general obligation bonds in order to help property owners with the cost of installation of renewable energy system and energy efficiency improvements on residential and commercial properties. For owners who participate, there will be an assessment on the property tax bill for a set number of years to repay those bonds.

"This measure will help owners defray the cost of installing energy efficient and green technology as well as cost saving benefit in lower utility bills. This measure will also create more jobs that help preserve our environment and increase competition in the business sector. Lastly, it will reduce our reliance on fossil fuel and supports advances in clean energy.

"This bill will help make cleaner energy available to the average homeowner. It's good that Hawaii took only two years to follow the lead of Berkeley which expanded the notion used in the Bay Area to make public facilities more energy efficient. I can't help but reflect that then Lt. Gov. Mazie Hirono in 2002 proposed adopting the public building precursor for Hawaii – something San Francisco began with its Solar Bond offering to retrofit city-owned buildings in 2001 – a step, if taken at the time, may have resulted in this idea now being touted as the "Hawaii model" rather than the "Berkeley model."

"It is for these reasons I support this bill and urge my colleagues to vote in favor of this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2643, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CLEAN ENERGY BONDS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 587-10) recommending that H.B. No. 2644, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2644, HD 2, entitled: "A BILL FOR AN ACT RELATING TO SOLID WASTE," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 588-10) recommending that H.B. No. 1961, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1961, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker, I rise in opposition to this measure, which imposes a \$1 surcharge for every customer of an ocean recreation business that operates in or around Molokini and deposits the money into the Kahoolawe Rehabilitation Trust Fund.

"We are experiencing a period of unprecedented economic difficulty. When I was with Life of the Land, this discussion of Kahoolawe first took place and I supported it wholeheartedly. I was an early pioneer in supporting the rehabilitation of Kahoolawe and I fully support the work of the Kahoolawe Island Reserve Commission. They're doing important work, but we must understand the fiscal problems and I cannot support the imposition of this fee on our service. It will harm the business of tour operators.

"At the Finance Hearing on this bill, tour operators came from Maui at great expense of their own to testify against this bill. They recounted that the economic downturn has created hardship for their industry. They informed us that passenger counts are down significantly even though they are offering heavy discounts. They warn that this fee increase will be passed on to their consumers and although we think it's small, it will hurt them because every time they increase costs they lose business.

"Although this fee seems small, it burdens these companies with the responsibility to collect, report and administrate the fee. Moreover, they have already experienced increased cost to their business and new conditions to reduce damage to coral resources. They accept this increase because the costs are directly related to their operations there. However, this just increases their burden.

"And finally, it's a fee on a service where they are not stopping at Kahoolawe. The only possible connection Molokini has with the Forgotten Isle is that it is nearby. Mr. Speaker, it's a bad precedent and by doing this we continue to hurt business. I agree that rehabilitation of Kahoolawe is of great importance, but we move forward in a way that is transparent and that does not continue attaching fees for unrelated activities. Thank you."

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

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

"Thank you, Mr. Speaker. In support of Stand. Com. Rep. No. 588-10. Mr. Speaker, this bill is to 'think outside of the box.' When we went to Kahoolawe, which I represent, we realized that the trust fund is depleting and there is a need to somehow, like everything else that is before us, to figure out how we can provide funding without tapping the general fund.

"This bill was actually crafted working with the Senate and looking at Molokini because there is a connection with Molokini and Kahoolawe. One may say that Kahoolawe should also take on the responsibility of Molokini, but that is another discussion for the future.

"I'd like to encourage my colleagues here to support this bill to entertain the conversation to look at how we can better manage Molokini because there are concerns in the Native Hawaiian community as to how Molokini is managed. But also, if we were to look at Kahoolawe, that is the future of our Native Hawaiian people. There's a lot to be done and we don't have

enough money in the trust fund. So I ask my colleagues to please support this measure and let the conversation move forward as we deliberate this issue. Thank you."

Representative Keith-Agaran rose in support of the measure with reservations and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Keith-Agaran's written remarks are as follows:

"Thank you, Mr. Speaker. I support H.B. 1961, H.D. 1 with reservations. HB 1961 HD1 imposes a \$1 per customer surcharge on the 41 Molokini tour operators. The money generated will be deposited in the Ka'ho'olawe Rehabilitation Trust Fund rather than for management and sustainability of the Molokini reserve.

"My reservations are based on the possible negative impact this bill may have on 41 Molokini tour operators. Testimony against this bill raises legitimate issues about the hardship this may place on consumers, an undue burden on small business, and singling out one particular industry to shoulder the burden for a worthy, but unrelated cause.

"In addition, the collection process in the present draft places the onus on the State – presumably the Kahoolawe Island Reserve Commission (KIRC) – to pursue scofflaws who fail to pay the \$1 surcharge (many customers purchase tickets for Molokini tours via activity package marketers, including internet outlets). Imposing the costs on the cash strapped KIRC to pursue individual customers for \$1 appears impractical.

"As someone who had the privilege of sitting as a member of KIRC, I have no doubt about the importance of the restoration work so I support finding ways to add resources to the Trust Fund. Although Kahoolawe rehabilitation and Molokini tour operators may seem unrelated, knowledgeable people point to a clear nexus between the two based on a traditional relationship that culturally links these areas – links reflected in oral historical accounts and Native Hawaiian stories. KIRC recognizes the link and has supported Molokini conservation efforts. The conservation efforts help preserve marine resources and serve as a sanctuary for species such as the Hawaiian Monk Seal and Humpback whale. Molokini tours benefit directly from such conservation efforts. This bill's proposed surcharge is not targeting an unrelated industry, and while the nexus may not be clear at first blush, the traditional link continues to exist.

"I support this bill with reservations."

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

"Mr. Speaker, I vote with reservations to continue the conversation."

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

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

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

"Thank you. In support, Mr. Speaker. May I have the words from the Representative from Kahoolawe and Molokini entered in the record as if they were my own? And a brief comment on my own.

"First of all, the passenger counts, with all due respect to the previous speaker, are down because of the economy and because of the overall visitor market being down. This January we've seen a record rebound in occupancy and quite a bit of activity, so you'll see the passenger counts come up quite a bit.

"And the second thing is that with bills like this, it helps to talk to people effected, i.e. the visitors. I happened to go down to Lahaina Harbor this

weekend. I talked to many of them and said, 'Would give a dollar extra on your fee to preserve the Kaho'olawe activities that are going on there?' And they all said yes, because they'd like to give a little something back. And that's the way they see it. Giving a little something back to make sure that the environment and the culture that they've enjoyed while they were here will be maintained and preserved for the future. Thank you, very much."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1961, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE KAHO'OLAWA REHABILITATION TRUST FUND," passed Third Reading by a vote of 48 ayes to 3 noes, with Representatives Ching, Marumoto and Pine voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 589-10) recommending that H.B. No. 2676, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, and the report of the Committee was adopted and H.B. No. 2676, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE KAHO'OLAWA ISLAND RESERVE COMMISSION," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Rhoads voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 591-10) recommending that H.B. No. 2053, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2053, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I just have real short comments on Stand. Com. Rep. No. 591, with reservations. I changed my vote from a no, to reservations.

"But this is in regards to the University of Hawaii capital improvements program, and I noticed that this has an effective date upon approval. One of the things that the Administration brought up while in testimony is that there may be room for using CIP money for operations and that would not be a positive move. So my reservations are on that effective date upon approval for that bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2053, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII CAPITAL IMPROVEMENTS PROGRAM PROJECT ASSESSMENT SPECIAL FUND," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 597-10) recommending that H.B. No. 2829, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2829, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support, but with reservations on this matter and I would like to state why. Before I go on to my reservations, I just would like to say this bill is a good bill, however there may be some unintended consequences. This bill talks about self-reporting by hospitals on infections acquired while in the hospital.

"It's not that I'm saying there should not be reporting, however I have my reservations that the outcome of hospital acquired infections is going to be reported to the media and anyone else that wants to get it.

"I'm not saying they should not, but it brings back memories to me of several decades ago when there was a report by then St. Francis Hospital, that they have the highest death rate in the whole State. And they did because they had the highest median age of all patients. They have a lot of elderly people in there because of the neighborhood. It wasn't fair that that information was used against them by the public. There was a remarkable drop in hospital admissions because of that fear. 'You're going to die if you go there.'

"But my reservation on this is, if this could be a competition driver for hospitals because the public may not be able to discern the statistics or the reasons for the increase of hospital acquired infections in the hospital. Those are my concerns, that it might have these unintended consequences. Thank you."

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

"Thank you, Mr. Speaker. I am in opposition. Thank you, Mr. Speaker. What this bill does is it requires hospitals to disclose infection rates. I think infection rates are important to share with the public, but let me share with you some of the concerns. Hospitals in Hawaii have begun to address this issue already, individually and through the Health Care Association of Hawaii's Patient Safety and Quality Committee. This committee will address the issue of hospital acquired infections, as well as other quality and patient safety issues faced by hospitals and other health care providers.

"Additionally, the Patient Safety and Quality Committee has created an acute care data subcommittee that is responsible for defining, analyzing and formatting quality and safety measures and projects pertinent to acute care hospitals.

"Among other information, the subcommittee is considering infection control guidelines issued by the Centers of Disease Control and other agencies. The subcommittee will develop a strategy that all of Hawaii's hospitals can support.

"As the Department of Health pointed out, this legislative shortcut mechanism comes at an inappropriate time when hospitals can least afford to respond to this 'kneejerk' legislative mandate. According to the Department, 'State administrative rules already require data reporting for infections listed in the bill while other administrative while other administrative rules also require facilities to have active infection control programs. Medicare certification requirements require that Medicare approved hospitals and nursing homes have active infection control programs and national accreditation bodies such as the Joint Commission require infection control programs. All of Hawaii's hospitals and nursing homes are Medicare certified and all of Hawaii's major hospitals and medical centers are accredited. It is best to let the hospitals continue their work to create a reasonable workable transparent mechanism that will guarantee the greatest degree of success possible in providing quality health care for Hawaii's people.'

"Mr. Speaker, they're working really hard at this already. Let's allow them to do it well. Thank you."

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

"Thank you, Mr. Speaker. I vote with reservations for the same reasons expressed by our Minority Leader."

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

"Thank you, Mr. Speaker. In support. Very briefly, this legislation is in 27 states right now. And the bottom line is if you wanted to get infection rates from individual hospitals, you cannot get it right now in Hawaii. Thank you."

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

"Thank you, Mr. Speaker. I am standing in support with brief comments in support of the author. Mr. Speaker, this bill was created to increase transparency of the healthcare system. Mr. Speaker, the Consumer Union, which is the non-profit publisher of the *Consumer Reports* reported that the Center on Disease Control and Prevention estimates hospital costs of these infections can be as high as \$4.5 billion each year.

"Mr. Speaker, the intent of this measure is to allow the consumers, we the patients, better access and understanding of hospital acquired infections. Again as stated by the previous speaker, 27 states have laws that require reporting hospital infections, and 21 states currently have reporting systems similar to the one proposed by my Vice Chair. Thank you."

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

Representative Belatti's written remarks are as follows:

"I rise in support of HB 2829, HD1. The National Centers for Disease Control (CDC) estimates that every year two million patients get an infection while being hospitalized for something other than their original diagnosis. The CDC estimates that as many as 90,000 people die annually from infections while in the hospital, incurring a cost of some \$4,500,000,000. This bill seeks to address these healthcare quality and cost-control problems by requiring hospitals to report hospital-acquired infection rates. Twenty-seven other states have passed similar measures, and seventeen of those states publish this information.

"Because reporting has the potential to improve health care, reduce overall health care costs, and save lives, I support HB 2829, HD1."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2829, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Finnegan voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 598-10) recommending that H.B. No. 2084, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2084, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm rising in opposition. Mr. Speaker, this is A Bill for an Act Relating to the Federal Disproportionate Share of Hospital Funds. A lot of the time we call it DSH. The purpose of this bill is to meet rising healthcare costs and ensure that Hawaii's residents have continued access to quality health care by appropriating State funds to maximize the availability of the federal Disproportionate Share Hospital Allowance. Mr. Speaker, this specifically appropriates \$12.6 million.

"Mr. Speaker, we want to be able to pull in as much federal dollars as we can. We need to help our hospitals. A pretty significant problem is we're trying to balance a huge budget shortfall. \$12.6 million is a lot of money, and I understand that there is a federal amount that we can get. But when the bottom line is we don't have money, then it's hard to do a match.

"Mr. Speaker, I would also like to say at this point in time, we hear all the time how our legislators are upset with Director Koller for all the different things that she does in the Department of Human Services. Well, let me just point out one thing having to do with these DSH payments. Director Koller has brought in \$115 million for the hospitals since 2005. This is something that she had done that no one in State government had done since 1994. That's 11 years of not bringing in federal money.

"Mr. Speaker, as we move forward, I just wanted to share that if we're looking at a significant amount of \$12.6 million, which I think that we should look at, then can we please at least ask where is that going to come from. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. I'm standing in support. Just to add some comments in support Mr. Speaker, regarding DSH as explained by the previous speaker. I would just like to highlight that DSH partially pays for the care that is not covered by insurance such as Medicare, Medicaid, and private insurance as stated by the Health Care Association of Hawaii.

"Just for people to be aware, in 2009, Hawaii's hospitals experienced a loss totaling a \$114 million in bad debt and charity care. Also Mr. Speaker, Hawaii's hospitals lost 20 cents on every one dollar spent on providing care for Med-QUEST patients, and 21 cents on every Medicare patient.

"So Mr. Speaker, in the current situation in which our healthcare is our lifeline, they provide 24-hour care, acute care, emergency care to the people that rely on us to make sure that the care they need for their family and friends is available, especially during times of crisis. Mr. Speaker, this bill would provide that. Thank you."

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

"Thank you, Mr. Speaker. In support of the same bill. And may I have the words of the Health Chair placed in the Journal as if they were my own? And I'd like to provide a few more comments. Thank you, very much.

"The Minority Leader brought up some very good points. I actually agree with the Minority Leader. It's going to take \$12.6 million in State funds. What the Minority Leader didn't say is the federal funds that would be coming down because of the \$12.6 million is \$15 million, which was secured by Hawaii's Congressional Delegation. To pull \$15 million down, it is true that we would need \$12.6 million. With the Governor having a budget of over \$5 billion, I think someone can prudently get \$12.6 to collect our \$15 million in federal funds waiting for us. For those reasons, I support the passage of this measure. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2084, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE FEDERAL DISPROPORTIONATE SHARE HOSPITAL FUNDS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Finnegan voting no.

At 12:47 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2643, HD 2  
 H.B. No. 2644, HD 2  
 H.B. No. 1961, HD 1  
 H.B. No. 2676, HD 1  
 H.B. No. 2053  
 H.B. No. 2829, HD 1  
 H.B. No. 2084, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 599-10) recommending that H.B. No. 2085, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2085, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 601-10) recommending that H.B. No. 2688, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2688, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Finnegan rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Finnegan's written remarks are as follows:

"I rise with reservations on HB 2688. This particular measure changes the name of the Environmental Health Education Fund to the Sanitation and Environmental Health Special Fund and allows the funds to be used for sanitation program activities and functions. It also increases the amount that the Fund may accumulate before the excess is transferred into the general fund.

"HB 2688 is essentially more budgeting on auto pilot. As the Department of Budget and Finance mentioned in its testimony, the proposed bill "limits the flexibility of the Executive Branch to review program funding requirements and allocate funding to programs based on statewide priorities within available resources." HB 2688 would not provide any flexibility to account for any adverse fiscal conditions the State faces. This measure is part of an alarming pattern developing that hurts our ability to reinvent government."

Representative Ching rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise with reservations on H.B. 2688, Relating to Health. This bill changes the name of the Environmental Health Education Fund to the Sanitation and Environmental Health Special Fund, and allows the funds to be used for sanitation program activities and functions. It also increases the amount that the Fund may accumulate before the excess is transferred into the general fund.

"According to the Sanitation Branch, the program will raise the roughly \$2,445,000 through an increase in the existing user fee charged to food establishments for their Department of Health Food Establishment Permit and feels this bill will lay the foundation for a world-class food safety program that is on par with the best food safety programs in the U.S. The bill establishes various initiatives to obtain proper staffing levels, move to a web-based inspection and Permitting process, and introduce a new placarding system.

"We must ask the question: Is this the time to implement more cost increasing numbers?

"Although this measure has good intentions to increase funds for sanitation program activities, I have deep concerns as to the costs this would mean to the State and the fiscal implications for the Food Service Industry and the residents and visitors of Hawaii. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2688, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 602-10) recommending that H.B. No. 2801, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2801, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise with strong reservations. Slight reservations. I have slight reservations about this. It's about making another emergency appropriation for the HHSC. Two brief points, Mr. Speaker.

"Number one, the bill is kind of a misnomer because to have an emergency appropriation it's supposed to have a message from the Governor unless the budget bill passes first. So it's kind of deceptive in that way. And unfortunately the bill is typical of what we do every year, and that is a bailout between \$25 and \$50 million per year.

"But my second point is, how long are we going to ignore the Stroudwater Report? The what report? The Stroudwater Report is what this Body, Mr. Speaker, last year commissioned to study what's going on with the HHSC. How can we make it better? The bottom line of that study is that HHSC is not a viable business model. Repeat. HHSC is not a viable business model and it is doomed to failure, as it has been failing \$25 to \$50 million per year. Unless it is restructured and run like the private sector, it is going to be doomed to failure.

"This bill, Mr. Speaker, buys into the old model, and I'm wondering how well it is going to be spent, and with those serious reservations I think we need to wake up to know that we have a hospital system that is very sick. The infection rates are off the charts and unless we do something, it's going to be a great sucking sound into the budget on this Floor every year. An emergency appropriation like this small \$16 million one is going to be a drop in the bucket. So, Mr. Speaker, with that I say we've got to wake up to the Stroudwater Report. I urge all of my colleagues to read it and to see if we're going to do anything other than doing emergency appropriations. Thank you, Mr. Speaker."

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

Representative Sagum's written remarks are as follows:

"Mr. Speaker, I strongly support HB 2801, HD 2, Making an Emergency Appropriation for Hawaii Health System Corporation for Operational Costs.

"HHSC operates two hospitals on Kauai: Kauai Veterans' Memorial Hospital (KVMH) and Mahelona Hospital. KVMH serves the West Kauai District with its hospital, clinic and emergency room services.

"For the Kauai Region, a cessation of payments from the State QUEST program is approximately \$1 million per month. The Kauai Region would be short \$3 million for the payments of April, May and June. Without the emergency appropriation from the State, the Kauai Region would not be able to cover the payroll as this cash flow is an integral part of their monthly collections. Other regions will probably be similarly affected.

"For this reason, I strongly support HB 2801, HD 2 to support our State Hospital System."

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

"Thank you, Mr. Speaker, in opposition. Thank you, Mr. Speaker. I understand that the money is needed for the emergency appropriation for HHSC. I do agree with the previous speaker from Hawaii Kai that mentioned the Stroudwater Report and really taking a better grasp on the way that the HHSC is set up.

"But what I would like to more so comment on is the second part of the bill that establishes the Big Island Rural Interdisciplinary Program in East Hawaii Region. Mr. Speaker, this is a program that is asking for emergency appropriations. This is very different from what emergency appropriations, in my opinion, should be. This is a program that had gotten off its feet by getting some federal money in, but also through appropriations, I believe made through the Legislature, and then the Governor decided not to release that. Knowing that the Governor was not going to release those funds, this particular program still moved forward.

"Mr. Speaker, there are so many things in our budget in programs that are underfunded and we can't get them done, and I think they rise to the level of this or surpass the level of this newly formed Big Island Rural Interdisciplinary Program. Mr. Speaker, for it to be an emergency funding to me is crazy. And that's the main reason why I'm voting no. If you want to fund the program, I mean we're also looking at putting \$83 million of delay in funding until next year. We have Furlough Fridays. We have all of these issues, but yet we're putting a few million dollars into this program that should have had the foresight to see that maybe it wouldn't get the support, and maybe they should have pulled back a little bit. But they still moved forward full blast and ask for emergency appropriations.

"Mr. Speaker, I think that is wrong and I think that if you're going to fund it, use another mechanism, but definitely do not do it through emergency appropriations. Thank you."

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

"Thank you, Mr. Speaker, I rise in support. The previous speaker is an active and involved member of the Health Committee. I understand her concern. However I do want to state that the underlying bill is to help our Hawaii Health Systems Corporation.

"Mr. Speaker, due to the economic crisis and our current shortfalls, it is vital, vital, that we support in any way we can our HHSC system. Mr. Speaker, without supporting and funding, even if we're asking for \$16.2 million, as well as the \$2.5, this is a nominal amount of money compared to the \$111 million currently that they're behind in, in the whole system. So Mr. Speaker, this measure, the intent is to assist in any way we can, to ensure that our Neighbor Islands and our rural health colleagues, get the adequate care for the people. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2801, HD 2, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR HAWAII HEALTH SYSTEMS CORPORATION FOR OPERATIONAL COSTS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Finnegan voting no.

At this time, the Chair stated:

"The Chair would like to take a recess for 35 minutes, for the Members of the House to have some lunch, and we'll reconvene at 1:30."

At 12:55 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 2:58 o'clock p.m.

At this time, the Chair stated:

"Members, at this time we are on page 18. And we ended at Stand. Com. Rep. No. 602-10. But before we continue on to 604, at this time Members, we will be taking two items out of order.

"Please turn to page 24, and refer to Stand. Com. Rep. No. 666-10, House Bill No. 2003, HD 2. Is everyone on page 24? We are taking this measure out of order."

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 666-10) recommending that H.B. No. 2003, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2003, HD 2, pass Third Reading, seconded by Representative Evans.

At this time, Representative Marumoto offered Floor Amendment No. 2, amending H.B. No. 2003, HD 2, as follows:

"SECTION 1. House Bill 2003, House Draft 2, is amended by deleting its contents, and replacing it with the following text, to read as follows:

## "PART I

SECTION 1. This Act updates, organizes, and clarifies current campaign finance laws.

The laws have their genesis in Act 185, Session Laws of Hawaii 1973. Over the past thirty-five years, numerous amendments have been made to the campaign finance laws in a piecemeal fashion and, apparently, with little regard to the laws as a whole. The resulting laws are unorganized, difficult to read, and inconsistent in some areas. The current campaign finance laws are codified in part XII, subpart B of chapter 11, Hawaii Revised Statutes.

This Act organizes the campaign finance laws into a new part of chapter 11, with ten subparts. Long and involved sections are divided into shorter sections with clear titles for quick reference. All the laws on one subject are grouped together, in contrast to current campaign finance laws that require a reader to search through the entire subpart for laws that may apply to that one subject.

This Act is a product of the campaign spending commission's blue ribbon recodification committee (committee). The committee completed its work in 2008 after meeting regularly for nine months. The committee comprised the commission's staff and seventeen attorneys who were experienced in campaign finance law and who represented various interests.

The purpose of this Act is to update, organize, and clarify current campaign finance laws and make minor substantive changes to the current laws.

## PART II

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### "PART . CAMPAIGN FINANCE

#### A. Declaration of Policy; Construction of Laws

**§11-A Declaration of policy.** The purpose of this part is to ensure the integrity and transparency of the campaign finance process. Integrity is essential to promote the public's confidence in government. Transparency provides disclosure of contributions and expenditures to assure the public is fully informed.

**§11-B Construction of laws.** Any ambiguity in the provisions of this part shall be construed in favor of transparency.

#### B. Definitions

**§11-C Definitions.** When used in this part:

"Advertisement" means:

- (1) (A) Any communication, exclusive of bumper stickers or other sundry items, that identifies a candidate either directly or by implication; and
- (B) Advocates or supports the nomination for election of the candidate; advocates or supports the election of the candidate; or advocates or supports the candidate's defeat.
- (2) (A) Any communication, exclusive of bumper stickers or other sundry items, that identifies an issue or question that has been certified to appear on the ballot at the next applicable election; and
- (B) Advocates or supports the passage or defeat of the question or issue.

"Advertisement" does not include:

- (1) A house bulletin; or
- (2) An editorial or letter to the editor distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical



publication, unless such facilities are owned or controlled by any committee.

"Ballot issue committee" means a noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election.

"Campaign funds" means contributions, the candidate's own funds, interest, rebates, refunds, loans, or advances received by a candidate committee or noncandidate committee.

"Candidate" means an individual who seeks nomination for election or seeks election to office. An individual remains a candidate until the individual's candidate committee terminates registration with the commission. An individual is a candidate if the individual does any of the following:

- (1) Files nomination papers for an office for oneself with the county clerk's office or with the chief election officer's office, whichever is applicable;
- (2) Receives contributions, makes expenditures, or incurs financial obligations of more than \$100 to bring about the individual's nomination for election, or to bring about the individual's election to office; or
- (3) Gives consent for any other person to receive contributions, make expenditures, or incur financial obligations to aid the individual's nomination for election, or the individual's election, to office.

"Candidate committee" means an organization, association, or individual that receives campaign funds, makes expenditures, or incurs financial obligations on behalf of a candidate with the candidate's authorization.

"Clearly identified" means the name, photograph or other similar image, or other unambiguous identification of a candidate.

"Commission" means the campaign spending commission.

"Commissioner" means any person appointed to the commission.

"Contribution" means:

- (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers, for the purpose of:
  - (A) Influencing the nomination for election, or the election, of any person to office;
  - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (C) Use by any candidate committee or noncandidate committee for the purpose of subparagraph (A) or (B);
- (2) The payment, by any person or party other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee without charge or at an unreasonably low charge for a purpose listed in paragraph (1);
- (3) A contract, promise, or agreement to make a contribution; or
- (4) Any loans or advances that are not documented or disclosed to the commission as provided in section 11-SS;

"Contribution" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) A candidate's expenditure of the candidate's own funds; provided that this expenditure shall be reported as other receipts and an expenditure;

(3) Any loans or advances to the candidate committee; provided that these loans or advances shall be reported as loans; or

(4) An individual or candidate committee or noncandidate committee engaging in internet activities for the purpose of influencing an election if:

- (A) The individual, candidate committee, or noncandidate committee is uncompensated for the internet activities; or
- (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services;

provided that the internet activity exclusion does not apply to:

- (i) Any payment for an advertisement other than a nominal fee;
- (ii) The purchase or rental of an e-mail address list made at the direction of a candidate committee or noncandidate committee; or
- (iii) An e-mail address list that is transferred to a candidate committee or noncandidate committee.

For purposes of this exclusion, "internet activities" includes sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's website; blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another person's website; and any other form of communication distributed over the Internet.

For purposes of this paragraph, "equipment and services" includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

"Earmarked funds" means contributions received by a candidate committee or noncandidate committee on the condition that the funds be contributed to or expended on certain candidates, issues, or questions.

"Election" means any election for office or for determining a question or issue provided by law or ordinance.

"Election period" means:

- (1) The two-year time period between the day after the general election through the day of the next general election if a candidate is seeking nomination or election to a two-year office; or
- (2) The four-year time period between the day after the general election through the day of the next general election if a candidate is seeking nomination or election to a four-year office.

"Expenditure" means:

- (1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:
  - (A) Influencing the nomination for election, or the election, of any person seeking nomination for election, or election, to office whether or not the person has filed the person's nomination paper;
  - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (C) Use by any party for the purposes set out in subparagraph (A) or (B);
- (2) Any payment, by any person other than a candidate, candidate committee, or noncandidate committee, of compensation for the

services of another person that are rendered to the candidate, candidate committee, or noncandidate committee for any of the purposes mentioned in paragraph (1)(A); provided that payment under this paragraph shall include provision of services without charge; or

- (3) The expenditure by a candidate of the candidate's own funds for the purposes set out in paragraph (1).

"Expenditure" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) Voter registration efforts that are nonpartisan; or
- (3) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
  - (A) The individual, candidate committee, or noncandidate committee is uncompensated for internet activities; or
  - (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services;

provided that the internet activity exclusion does not apply to:

- (i) Any payment for an advertisement other than a nominal fee;
- (ii) The purchase or rental of an e-mail address list made at the direction of a candidate committee or noncandidate committee; or
- (iii) An e-mail address list that is transferred to a candidate committee or noncandidate committee.

For purposes of this exclusion, "internet activities" includes sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's website; blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another person's website; and any other form of communication distributed over the Internet.

For purposes of this paragraph, "equipment and services" includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

"House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

"Immediate family" means a candidate's spouse or reciprocal beneficiary, as defined in section 572C-3, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses or reciprocal beneficiaries of such persons.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate committee, a party, or their agents.

"Individual" means a human being.

"Limited liability company" means a business entity that is recognized as a limited liability company under the laws of the state in which it is established.

"Loan" means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A loan does not include expenditures made on behalf of a candidate committee or noncandidate committee by a candidate, volunteer, or employee if:

- (1) A candidate, volunteer, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee; provided that the amount, date, and purpose of each expenditure is provided to the candidate committee or noncandidate committee before the candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made.

"Newspaper" means a publication of general distribution in the state issued once or more per month, which is written and published in the state.

"Noncandidate committee" means any organization, association, party, or individual that has the purpose of making or receiving contributions, making expenditures, or incurring financial obligations to influence the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot; provided that a noncandidate committee does not include:

- (1) A candidate committee;
- (2) Any individual making a contribution or making an expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this part; or
- (3) Any organization that raises or expends funds for the sole purpose of producing and disseminating informational or educational communications that are not made to influence a candidate's nomination or election to office, question or issue on a ballot.

"Office" means any Hawaii elective public or constitutional office, excluding county neighborhood board and federal elective offices.

"Other receipts" means the candidate's own funds, interest, rebates, refunds, and any other funds received by a candidate committee or noncandidate committee, but does not include contributions or loans.

"Party" means any political party that satisfies the requirements of section 11-61.

"Person" means an:

- (1) Individual,
- (2) Partnership,
- (3) Candidate committee,
- (4) Noncandidate committee, including a party,
- (5) Association,
- (6) Corporation,
- (7) Business entity,
- (8) Organization, or
- (9) Labor union and its auxiliary committees.

"Political committees established and maintained by a national political party" means:

- (1) The National Committee;
- (2) The House Campaign Committee; and
- (3) The Senate Committee.

"Qualifying contribution" means an aggregate monetary contribution of \$100 or less by an individual Hawaii resident during any matching payment period that is received after a candidate files a statement of intent to seek public funds. A qualifying contribution does not include a loan, in-kind contribution, or the candidate's own funds.

"Special election" means any election other than a primary or general election.

"Treasurer" means a person appointed under section 11-L and unless expressly indicated otherwise, includes deputy treasurers.

### C. Campaign Spending Commission

#### §11-D Campaign spending commission established; composition.

(a) There is established a campaign spending commission, which shall be placed within the department of accounting and general services for administrative purposes.

(b) The commission shall consist of five members representing the general public, appointed by the governor from a list of ten nominees submitted by the judicial council. A vacancy on the commission shall be filled from the list of nominees or by the reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34. Notwithstanding section 26-34, appointments to the commission shall not be subject to senatorial confirmation.

(c) The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper.

**§11-D Terms of office.** The term of each commissioner shall be four years.

**§11-E No compensation.** The commissioners shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties.

**§11-F Duties of the commission.** The duties of the commission under this part are to:

- (1) Develop and adopt forms required by this part;
- (2) Adopt and publish manuals for all candidates, candidate committees, and noncandidate committees, describing the requirements of this part, including uniform and simple methods of recordkeeping;
- (3) Preserve all reports required by this part for at least ten years from the date of receipt;
- (4) Permit the inspection, copying, or duplicating of any report required by this part pursuant to rules adopted under chapter 91 by the commission; provided that this paragraph shall not apply to the sale or use of information under section 11-CC;
- (5) Ascertain whether any candidate, candidate committee, or noncandidate committee, or party has failed to file a report required by this part or has filed a substantially defective or deficient report, and to notify these persons by first class mail that the failure to file, or the filing of a substantially defective or deficient report shall be corrected and explained, and that a fine may be assessed. All fines collected under this section shall be deposited in the general fund of the State;
- (6) Hold public hearings;
- (7) Investigate and hold hearings for receiving evidence of any violations pursuant to subpart I of this part;
- (8) Adopt rules pursuant to chapter 91;
- (9) Request the initiation of prosecution for the violation of this part pursuant to section 11-III;
- (10) Administer and monitor the distribution of public funds under this part;
- (11) Employ or contract, without regard to chapters 76, 78, and 89, persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation and to dismiss such persons;
- (12) Conduct random audits and field investigations, as necessary; and

(13) File for injunctive relief when indicated.

**§11-H Advisory opinions.** The commission may render written advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this part, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, any candidate committee or noncandidate committee, or other person or entity subject to this part, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion.

**§11-I Political activities prohibited.** (a) Each commissioner and employee of the commission shall not participate in any political campaign, including making a contribution to a candidate, candidate committee, or noncandidate committee, during the commissioner's term of office or employee's term of employment.

(b) Each commissioner and employee of the commission shall retain the right to:

- (1) Register and vote in any election;
- (2) Participate in the nonpolitical activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other noncandidate political organization and participate in its activities to the extent consistent with law; and
- (4) Otherwise participate fully in public affairs, except as prohibited by law, in a manner that does not materially compromise the commissioner's or the employee's efficiency or integrity as a commissioner or employee or the neutrality, efficiency, or integrity of the commission.

(c) Any commissioner or employee of the commission may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section.

**§11-J Exemptions.** (a) The commission shall be exempt from section 26-35(a)(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
  - (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission without the approval of the comptroller; and
  - (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.
- (b) The commission shall follow all applicable personnel laws.

### D. Registration

**§11-K Registration of candidate committee or noncandidate committee.** (a) Each candidate committee or noncandidate committee shall register with the commission by filing an organizational report as set forth in section 11-L or 11-M, as applicable.

(b) Before filing the organizational report, each candidate committee or noncandidate committee shall mail or deliver an electronic filing form to the commission.

(c) The form shall include a written acceptance of appointment and certification of each report, as follows:

- (1) A candidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the candidate and treasurer of each filed report; or
- (2) A noncandidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the chairperson and treasurer of each filed report.

(d) The organizational report for a candidate committee shall be filed within ten days of the earlier of:

- (1) The date the candidate files nomination papers for office; or
- (2) The date the candidate or candidate committee receives contributions or makes or incurs expenditures of more than \$100 in the aggregate during the applicable election period.

(e) An organizational report need not be filed under this section by an elected official who is a candidate for reelection to the same office in successive elections and has not sought election to any other office during the period between elections, unless the candidate is required to report a change in information pursuant to section 11-L.

(f) A candidate shall have only one candidate committee.

(g) The organizational report for a noncandidate committee shall be filed within ten days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period; provided that within the thirty-day period prior to an election, a noncandidate committee shall register by filing an organizational report within two days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period.

**§11-L Organizational report, candidate committee.** (a) The candidate committee organizational report shall include:

- (1) The committee's name and address, including web page address, if any;
- (2) The candidate's name, address, and telephone number;
- (3) The office being sought by the candidate, district, and party affiliation;
- (4) The chairperson's name, address, and telephone number; and if appointed, the deputy chairperson's name, address, and telephone number;
- (5) The treasurer's name and address and, if appointed, all deputy treasurers' names and addresses;
- (6) The name and address of each depository institution in which the committee will maintain any of its accounts and the applicable account number;
- (7) A certification of information in the organizational report by the candidate and treasurer; and
- (8) The name and address of each contributor who contributed an aggregate amount of more than \$100 since the last election applicable to the office being sought and the amount and date of deposit of each such contribution.

(b) Any change in information previously reported in the organizational report with the exception of subsection (a)(8) shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer.

**§11-M Organizational report, noncandidate committee.** (a) The noncandidate committee organizational report shall include:

- (1) The committee's name, which shall incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used

in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public. The committee's name shall not include the name of a candidate;

- (2) The committee's address, including web page address, if any;
- (3) The area, scope, or jurisdiction of the committee;
- (4) The name and address of the committee's sponsoring entity. If the committee does not have a sponsoring entity, the committee shall specify the trade, profession, or primary interest of contributors to the committee;
- (5) The name, address, telephone number, occupation, and principal place of business of the chairperson;
- (6) The name, address, telephone number, occupation, and principal place of business of the treasurer and any other officers;
- (7) An indication as to whether the committee was formed to support or oppose a specific ballot question or candidate and, if so, a brief description of the question or the name of the candidate;
- (8) An indication as to whether the committee is a committee for a party;
- (9) The name, address, telephone number, occupation, and principal place of business of the custodian of the books and accounts;
- (10) The name and address of the depository institution in which the committee will maintain its campaign account and each applicable account number;
- (11) A certification by the chairperson and treasurer of information in the organizational report; and
- (12) The name, address, employer and occupation of each contributor who contributed an aggregate amount of more than \$100 since the last election and the amount and date of deposit of each such contribution.

(b) Any change in information previously reported in the organizational report, with the exception of subsection (a)(12), shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer.

**§11-N Treasurer.** (a) Every candidate committee or noncandidate committee shall appoint a treasurer on or before the day it files an organizational report. The following shall be permissible:

- (1) Up to five deputy treasurers may be appointed;
- (2) A candidate may be appointed as the treasurer or deputy treasurer; and
- (3) An individual who is not an officer or treasurer may be appointed by the candidate, on a fee or voluntary basis, to specifically prepare and file reports with the commission.

(b) A treasurer may resign or be removed at any time.

(c) In case of death, resignation, or removal of the treasurer, the candidate, candidate committee, or noncandidate committee shall promptly appoint a successor. During the period the office of treasurer is vacant, the candidate, chairperson, or party chairperson in the case of a party, whichever is applicable, shall serve as treasurer.

(d) Only the treasurer and deputy treasurers shall be authorized to receive contributions or make or incur expenditures on behalf of the candidate committee or noncandidate committee.

(e) The treasurer shall establish and maintain itemized records showing:

- (1) The amount of each monetary contribution;
- (2) The description and value of each nonmonetary contribution; and

- (3) The name and address of each contributor making a contribution of more than \$25 in value.
- (f) The treasurer shall maintain detailed accounts, bills, receipts, and other records to establish that reports were properly prepared and filed.
- (g) The records shall be retained for at least five years after the report is filed.

**§11-O When an individual not to serve as a committee officer.** No candidate committee or noncandidate committee that supports or opposes a candidate shall have an officer who serves as an officer on any other candidate committee or noncandidate committee that supports or opposes the same candidate.

**§11-P Termination of candidate committee's or noncandidate committee's registration.** A candidate committee or noncandidate committee may terminate its registration if:

- (1) The candidate committee or noncandidate committee:
  - (A) Files a request for registration termination form;
  - (B) Files a report disclosing contributions and expenditures not previously reported by the committee and the committee has no surplus or deficit; and
  - (C) Mails or delivers to the commission a copy of the committee's closing bank statement; and
- (2) The request is approved by the commission.

#### E. Reporting and Filing with the Commission

**§11-Q Filing of reports, generally.** (a) Every report required to be filed by a candidate or candidate committee shall be certified to be a true and accurate statement of the committee's activity by the candidate and treasurer.

(b) Every report required to be filed by a noncandidate committee shall be certified to be a true and accurate statement of the committee's activity by the chairperson and treasurer.

(c) The persons signing the electronic filing form shall certify that the electronically filed reports are true and accurate.

(d) All reports required to be filed under this part shall be filed on the commission's electronic filing system.

(e) For purposes of this part, whenever a report is required to be filed with the commission, "filed" means that a report shall be filed with the commission's electronic filing system by the date and time specified for the filing of the report by:

- (1) The candidate or candidate committee of a candidate who is seeking election to the:
  - (A) Office of governor;
  - (B) Office of lieutenant governor;
  - (C) Office of mayor;
  - (D) Office of prosecuting attorney;
  - (E) County council;
  - (F) Senate;
  - (G) House of representatives;
  - (H) Office of Hawaiian affairs; or
  - (I) Board of education; or
- (2) A noncandidate committee required to be registered with the commission pursuant to section 11-M.

(f) In order to be timely filed, a committee's reports shall be filed with the commission's electronic filing system on or before 11:59 p.m. Hawaii Standard Time on the filing date specified.

(g) All reports filed under this part are public records.

**§11-R Candidate committee reports.** (a) The candidate and treasurer shall file preliminary, final, and supplemental reports that shall disclose the following information:

- (1) The candidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;
- (3) The reporting period and election period aggregate total for each of the following categories:
  - (A) Contributions;
  - (B) Expenditures;
  - (C) Other receipts; and
  - (D) Loans;
- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.

(b) Schedules filed with the reports shall include the following additional information:

- (1) The amount and date of deposit of each contribution and the name and address of each contributor who makes contributions aggregating more than \$100 in an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
- (2) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor who makes contributions aggregating \$1,000 or more during an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
- (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
- (4) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
- (5) Information about each loan received by the committee, together with the names and addresses of the lender and each person liable, and amount of each loan. A copy of the executed loan document shall be received by the commission by mail or delivery on or before the filing date for the report covering the reporting period when the loan was received. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to disclose the loan or to provide documentation of the loan to the commission shall cause the loan to be treated as a contribution, subject to all relevant provisions of this part;
- (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
- (7) The date of disposition of each durable asset, value at the time of disposition, the method of disposition, and the name and address of the person receiving the asset.

(c) The candidate committee shall file a late contribution report as provided in section 11-W if the committee receives late contributions from any person aggregating more than \$500.

**§11-S Time for candidate committee to file preliminary, final, and supplemental reports.** (a) The candidate and treasurer of each candidate whose name will appear on the ballot in the immediately succeeding election shall file preliminary, final, and supplemental reports.

- (1) The filing dates for preliminary reports are:
  - (A) July 31 of the election year;
  - (B) Ten calendar days prior to a primary, first special, or first nonpartisan election; and
  - (C) Ten calendar days prior to a general, second special, or second nonpartisan election; provided that this preliminary report does not need to be filed by a candidate who is unsuccessful in a primary, first special, or first nonpartisan election or a candidate who is elected to office in the primary, first special, or first nonpartisan election.

Each preliminary report shall be current through June 30 for the report filed on July 31 and current through the fifth calendar day before the filing deadline of other preliminary reports.

- (2) The filing date for the final primary report is twenty calendar days after a primary, first special, or first nonpartisan election. The report shall be current through the day of the applicable election.
- (3) The filing date for the final election period report is thirty calendar days after a general, second special, or second nonpartisan election. The report shall be current through the day of the applicable election. The final election period report shall be filed by a candidate who is unsuccessful in a primary, first special, or first nonpartisan election or a candidate who is elected to office in the primary, first special, or first nonpartisan election.
- (4) The filing dates for supplemental reports are:
  - (A) January 31 after an election year; and
  - (B) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(b) A candidate and campaign treasurer of each candidate with a deficit or surplus whose name will not appear on the ballot in the immediately succeeding election shall file a supplemental report every six months on January 31 and July 31 until:

- (1) The candidate's name appears on the ballot and then is subject to the reporting requirements in subsection (a); or
- (2) The committee's registration is terminated as provided in section 11-P.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(c) A candidate and campaign treasurer of each candidate shall continue to file all reports until the committee's registration is terminated as provided in section 11-P.

**§11-T Noncandidate committee reports.** (a) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file preliminary, final, and supplemental reports that disclose the following information:

- (1) The noncandidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;
- (3) The reporting period and election period aggregate total for each of the following categories:
  - (A) Contributions;

(B) Expenditures; and

(C) Other receipts;

- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.

(b) Schedules filed with the reports shall include the following additional information:

- (1) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor making a contribution aggregating more than \$100 during an election period, which was not previously reported; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
- (2) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
- (3) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
- (4) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
- (5) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset.

(c) No loan may be made or received by a noncandidate committee.

(d) The authorized person in the case of a party, or treasurer in the case of a committee shall file a late contribution report as provided in section 11-W if the committee receives late contributions from any person aggregating more than \$500 or makes late contributions aggregating more than \$500.

**§11-U Time for noncandidate committee to file preliminary, final, and supplemental reports.** (a) The filing dates for preliminary reports are:

- (1) Ten calendar days prior to a primary, first special, or first nonpartisan election; and
- (2) Ten calendar days prior to a general, second special or second nonpartisan election.

Each preliminary report shall be current through the fifth calendar day prior to the filing of the report.

(b) The filing date for the final primary report is twenty calendar days after the primary, first special, or first nonpartisan election. The report shall be current through the day of the applicable election.

(c) The filing date for the final election period report is thirty calendar days after a general, second special, or second nonpartisan election. The report shall be current through the day of the applicable election.

(d) The filing dates for supplemental reports are:

- (1) January 31 after an election year; and
- (2) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(e) The authorized person in the case of a party, or treasurer in the case of any other noncandidate committee shall continue to file all reports until the committee's registration is terminated as provided in section 11-P.

**§11-V Reporting expenditures.** For the purposes of this part, an expenditure is deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period are deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used.

**§11-W Late contributions; report.** (a) The candidate, authorized person in the case of a noncandidate committee that is a party, or treasurer in the case of a candidate committee or other noncandidate committee, that within the period of fourteen calendar days through four calendar days prior to any election, makes contributions aggregating more than \$500, or receives contributions from any person aggregating more than \$500, shall file a late contribution report on or before the third calendar day prior to the election.

(b) The late contribution report shall include the following information:

- (1) Name, address, occupation, and employer of the contributor;
- (2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution;
- (3) The amount of the contribution;
- (4) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; and
- (5) The purpose, if any, to which the contribution will be applied.

(c) A late contribution report filed pursuant to this section shall be in addition to any other report required to be filed by this part.

**§11-X Final election period report for candidate committee or noncandidate committee receiving and expending \$1,000 or less during the election period.** (a) Any provision of law to the contrary notwithstanding, a candidate committee or noncandidate committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, shall electronically file only a final election period report, and need not file a preliminary and final primary report, a preliminary and final general report, a preliminary and final first special report, a preliminary and final second special report, a preliminary and final first nonpartisan report, and a preliminary and final second nonpartisan report.

(b) Until the candidate committee's or noncandidate committee's registration is terminated as provided in section 11-P, supplemental reports and other reports required by this part shall be filed.

**§11-Y Failure to file report; filing a substantially defective or deficient report.** (a) True and accurate reports shall be filed with the commission on or before the due date specified in this part. The commission may assess a fine against a candidate committee or noncandidate committee that is required to file a report under this part if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(b) The fine for not filing a report by the due date, if assessed, shall not exceed \$50 per day for the first seven days, beginning with the day after the due date of the report, and shall not exceed \$200 per day thereafter; provided that:

- (1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and
- (2) The minimum fine for a report filed more than four days after the due date, if assessed, shall be \$200.

(c) Subsection (b) notwithstanding, if a candidate committee does not file the second preliminary primary report or the preliminary general report, or if a noncandidate committee does not file the preliminary primary report or the preliminary general report by the due date, the fine, if assessed, shall not exceed \$300 per day; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine, if assessed, shall be \$300.

(d) If the commission determines that a report is substantially defective or deficient, the commission shall notify the candidate's committee by first class mail that:

- (1) The report is substantially defective or deficient; and
- (2) A fine may be assessed.

(e) If the corrected report is not filed with the commission's electronic filing system on or before the fourteenth day after the notice of deficiency has been mailed, the fine, if assessed, for a substantially defective or deficient report shall not exceed \$50 per day for the first seven days, beginning with the fifteenth day after the notice was sent, and shall not exceed \$200 per day thereafter; provided that:

- (1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and
- (2) The minimum fine for not filing a corrected report more than eighteen days after the notice, if assessed, shall be \$200.

(f) The commission shall publish on its website the names of all candidate committees that have failed to:

- (1) File a report; or
- (2) Correct a report within the time allowed by the commission.

(g) All fines collected under this section shall be deposited into the general fund.

**§11-Z Electioneering communications; statement of information.**

(a) Each person who makes a disbursement for electioneering communications in an aggregate amount of more than \$2,000 during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date provided in this section.

(b) Each statement of information shall contain the following:

- (1) The name of the person making the disbursement, name of any person or entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
- (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
- (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
- (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;
- (5) If the disbursements were made by a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;
- (6) If the disbursements were made by an organization other than any candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
- (7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, or noncandidate

committee, or agent of any candidate if any, and if so, the identification of the candidate, a candidate committee or a noncandidate committee, or agent involved.

(c) For the purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000 in the aggregate for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

"Electioneering communication" means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper; or sent by mail at a bulk rate, and that:

- (1) Refers to a clearly identifiable candidate;
- (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election; and
- (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

"Electioneering communication" shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by any candidate, candidate committee, or noncandidate committee;
- (2) That constitute expenditures by the disbursing organization;
- (3) In house bulletins; or
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(d) For purposes of this section, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

**§11-AA Fundraiser; notice of intent.** (a) No fundraiser shall be held unless a notice of intent to hold the fundraiser is filed setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the fundraiser, and the method thereof.

(b) The person in charge of the fundraiser shall file the notice with the commission prior to the fundraiser.

(c) As used in this section, "fundraiser" means any function held for the benefit of a candidate, candidate committee, or noncandidate committee that is intended or designed, directly or indirectly, to raise contributions for which the price or suggested contribution for attending the function is more than \$25 per person.

**§11-BB Reporting deadline.** When any reporting deadline falls on a Saturday, Sunday, or holiday designated in section 8-1, the reporting deadline shall be the next succeeding day that is not a Saturday, Sunday, or holiday.

**§11-CC Sale or use of information.** No information in the reports or copies of the reports filed with the commission shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

#### F. Contributions; Prohibitions; Limits

**§11-DD Contributions, generally.** (a) Monetary contributions and other campaign funds shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the state, including a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are

insured by the Federal Deposit Insurance Corporation, or the National Credit Union Administration in the name of the candidate, candidate committee, or noncandidate committee, whichever is applicable.

(b) A candidate, candidate committee, or noncandidate committee, shall not accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the contributor.

(c) Each candidate committee or noncandidate committee shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked.

**§11-EE False name contributions prohibited.** (a) No person shall make a contribution to any candidate or a candidate committee or noncandidate committee, in any name other than that of the person who owns the money, property, or service.

(b) All contributions made in the name of a person other than the owner of the money, property, or service shall escheat to the Hawaii election campaign fund.

**§11-FF Anonymous contributions prohibited.** (a) Except as provided in subsection (d), no person shall make an anonymous contribution to any candidate, candidate committee, or noncandidate committee.

(b) A candidate, candidate committee, or noncandidate committee shall not knowingly receive, accept, or retain an anonymous contribution, or report such contribution as an anonymous contribution, except as provided in this section.

(c) An anonymous contribution shall not be used or expended by the candidate, candidate committee, or noncandidate committee, but shall be returned to the contributor. If the contributor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(d) This section shall not apply to amounts that aggregate to less than \$500 that are received from ten or more persons at the same political function. The receipt of these contributions shall be disclosed in a report filed pursuant to section 11-R and 11-T.

**§11-GG Fundraising on state or county property prohibited.** (a) Except as provided in subsection (b), no person shall solicit a contribution in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) This prohibition shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided the governmental facility's use rules do not prohibit political activities on the premises. Government facilities that permit use for political activities shall be available to a candidate, candidate committee, or noncandidate committee, for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor.

**§11-HH Contributions by state and county contractors prohibited.**

(a) It shall be unlawful for any person who enters into any contract with the State, any of its counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of its counties, department or agency thereof, or for selling any land or building to the State, any of its counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or



(2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final.

**§11-II Contributions by foreign national or foreign corporation prohibited.** (a) Except as provided in subsection (b), no contributions or expenditures shall be made to or on behalf of a candidate, candidate committee, or noncandidate committee, by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations 110.20, as amended.

(b) A foreign-owned domestic corporation may make contributions if:

- (1) Foreign national individuals do not participate in election-related activities, including decisions concerning contributions or the administration of a candidate committee or noncandidate committee; and
- (2) The contributions are domestically-derived.

**§11-JJ Contributions to candidate committees; limits.** (a) No person shall make contributions to:

- (1) A candidate seeking nomination or election to a two-year office or to a candidate committee in an aggregate amount greater than \$2,000 during an election period;
- (2) A candidate seeking nomination or election to a four-year nonstatewide office or to a candidate committee in an aggregate amount greater than \$4,000 during an election period; or
- (3) A candidate seeking nomination or election to a four-year statewide office or to a candidate committee in an aggregate amount greater than \$6,000 during an election period.

(b) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office.

**§11-KK Contributions to noncandidate committees; limits.** No person shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election. This section shall not apply to ballot issue committees.

**§11-LL Family contributions.** (a) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian.

(b) A contribution by the candidate's immediate family shall be exempt from section 11-JJ, but shall be limited in the aggregate to \$50,000 in any election period; provided that the aggregate amount of loans and contributions received from the candidate's immediate family does not exceed \$50,000 during an election period.

**§11-MM Contributions to a party.** (a) No person shall make contributions to a party in an aggregate amount greater than \$25,000 in any two-year election period, except as provided in subsection (b).

(b) No political committee established and maintained by a national political party shall make contributions to a party in an aggregate amount greater than \$50,000 in any two-year election period.

(c) If a person makes a contribution to a party that is earmarked for a candidate or candidates, the contribution shall be deemed to be a contribution from both the original contributor and the party distributing such funds to a candidate or candidates. The earmarked funds shall be promptly distributed by the party to the candidate.

(d) This section shall not prohibit a candidate from making contributions to the candidate's party if contributions are not earmarked for another candidate.

**§11-NN Aggregation of contributions and expenditures.** (a) All contributions and expenditures of a person whose contributions or expenditures are financed, maintained, or controlled by any corporation, labor organization, association, party, or any other person, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, party, political committees established and maintained by a national political party, or by any group of those persons shall be considered to be made by a single person.

(b) A contribution by a partnership shall not exceed the limitations in this section and shall be attributed to the partnership and to each partner in direct proportion to the partner's share of the partnership profits, according to instructions that shall be provided by the partnership to the party, candidate, or committee receiving the contribution.

(c) A contribution by a limited liability company shall be treated as follows:

- (1) A contribution by a limited liability company that is treated as a partnership by the Internal Revenue Service shall be considered a contribution from a partnership.
- (2) A contribution by a limited liability company that is treated as a corporation by the Internal Revenue Service shall be considered a contribution from a corporation.
- (3) A contribution by a limited liability company with a single individual member that is not treated as a corporation by the Internal Revenue Service shall be attributed only to that single individual member.
- (4) A limited liability company that makes a contribution shall, at the time the limited liability company makes the contribution, provide information to the party, noncandidate committee, or candidate committee receiving the contribution specifying how the contribution is to be attributed.

(d) A person's contribution to a party that is earmarked for a candidate or candidates shall be included in the aggregate contributions of both the person and the party. The earmarked funds shall be promptly distributed by the party to the candidate.

(e) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian.

**§11-OO Contributions limited from nonresident persons.** (a) Contributions from all persons who are not residents of the state at the time the contributions are made, shall not exceed thirty per cent of the total contributions received by a candidate or candidate committee for each election period.

(b) This section shall not be applicable to contributions from the candidate's immediate family.

**§11-PP Coordination of contributions and expenditures.** (a) Expenditures or disbursements for electioneering communications as defined in section 11-Z, or any other coordinated activity made by any person for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate committee, or their agents, shall be considered to be a contribution to the candidate and expenditure by the candidate.

The financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, candidate committee, or agents shall be considered to be a contribution to the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) "Coordinated activity" means:

- (1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate, candidate committee, the party of a candidate, or an agent of a candidate, candidate committee, or the party of a candidate;
- (2) The payment by any person for the production, dissemination, distribution, or republication of any written, graphic, or other form of campaign material, in whole or in part, prepared by a candidate, candidate committee, or noncandidate committee, or an agent of a candidate, candidate committee, or noncandidate committee; or
- (3) Any payment by any person or contract for any electioneering communication, as defined in section 11-Z, where the payment is coordinated with a candidate, candidate committee, the party of the candidate, or an agent of a candidate, candidate committee, or the party of the candidate.

(c) No expenditure for a candidate who files an affidavit with the commission agreeing to limit aggregate expenditures by the candidate, including coordinated activity by any person, shall be made or incurred by a candidate committee or noncandidate committee without authorization of the candidate or the candidate's authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the candidate committee or noncandidate committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-OOO.

**§11-QQ Excess contribution; return; escheat.** (a) Any candidate, candidate committee, or noncandidate committee that receives in the aggregate more than the applicable contribution limit in sections 11-JJ, 11-KK, 11-LL, and 11-MM shall return any excess contribution to the contributor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the contributor within thirty days shall escheat to the Hawaii election campaign fund.

(b) A candidate, candidate committee, or noncandidate committee who complies with this section prior to the initiation of administrative action shall not be subject to any fine under section 11-JJJ.

#### G. Loans

**§11-RR Loan to candidate committee.** (a) A candidate or candidate committee may receive a loan from any or all of the following:

- (1) The candidate's own funds;
- (2) A financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business;
- (3) The candidate's immediate family in an aggregate amount not to exceed \$50,000 during an election period; provided that the aggregate amount of loans and contributions received from the immediate family shall not exceed \$50,000 during an election period; and
- (4) Persons other than immediate family of the candidate in an aggregate amount not to exceed \$10,000 during an election period; provided that:
  - (A) If the \$10,000 limit for loans from persons other than the immediate family is reached, the candidate and candidate committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full;

(B) If a loan from persons other than immediate family members is not repaid within one year of the date that the loan is made, the candidate and candidate committee shall be prohibited from accepting any other loans. All campaign funds, including contributions subsequently received, shall be used to repay the outstanding loan in full.

(b) For the purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:

- (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditures being made.

**§11-SS Reporting loan; written loan agreement.** (a) Every loan shall be reported as provided in section 11-R.

(b) Every loan in excess of \$100 shall be documented as provided in section 11-R.

(c) A loan shall be treated as a contribution, subject to all relevant provisions of this part, if the loan is not reported or documented as provided in section 11-R.

**§11-TT Noncandidate committee loan prohibited.** A noncandidate committee shall not receive or make a loan.

#### H. Expenditures

**§11-UU Campaign funds only used for certain purposes.** (a) Campaign funds may be used by a candidate, treasurer, or candidate committee:

- (1) For any purpose directly related:
  - (A) In the case of the candidate, to the candidate's own campaign; or
  - (B) In the case of a candidate committee or treasurer of a candidate committee, to the campaign of the candidate, question, or issue with which they are directly associated;
- (2) To purchase or lease consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate. The candidate, however, shall reimburse the committee for the candidate's personal use unless the personal use is de minimis;
- (3) To make donations to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election period, the total amount of all contributions shall be no more than the maximum amount that one person may contribute to that candidate pursuant to section 11-JJ; provided further that no contributions shall be made from the date the candidate files nomination papers to the date of the general election;
- (4) To purchase not more than two tickets for each event held by another candidate or committee, whether or not the event constitutes a fundraiser as defined in section 11-AA;
- (5) To make contributions to the candidate's party so long as the contributions are not earmarked for another candidate; or
- (6) To pay for ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an office.

(b) Campaign funds may be used for the candidate's next subsequent election upon registration for the election pursuant to section 11-K.

**§11-VV Prohibited uses of campaign funds.** Campaign funds shall not be used:

- (1) To support the campaigns of candidates other than the candidate with which they are directly associated;
- (2) To campaign against any other candidate not directly opposing the candidate with which they are directly associated; or
- (3) For personal expenses.

**§11-WW Exceptions.** Notwithstanding sections 11-UU and 11-VV:

- (1) A party may support more than one candidate; and
- (2) A candidate for the office of governor or lieutenant governor may support a co-candidate in the general election.

**§11-XX Disposition of campaign funds; termination of registration.**

(a) The candidate committee and candidate who receives contributions for an election but fails to file nomination papers for that election shall return residual funds to the contributors no later than ninety days after the date on which nominations for that election shall be filed. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(b) The candidate committee and candidate who withdraws or ceases to be a candidate for the election because of death, disqualification, or other reasons shall return residual funds to the contributors no later than ninety days after the candidate ceases to be a candidate. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(c) A candidate who is elected to office, including a candidate subject to term limits and a candidate who resigned before the end of the term of office and the candidate committee of such a candidate, may use campaign funds as provided in section 11-UU or return campaign funds to contributors until four years from the date of the election for which the campaign funds were received. Campaign funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(d) A candidate who lost in an election and the candidate committee of such a candidate may use campaign funds as provided in section 11-UU or return funds to contributors until one year from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(e) A candidate committee that disposes of campaign funds pursuant to this section shall terminate registration with the commission as provided in section 11-P.

(f) Notwithstanding any of the foregoing, campaign funds may be used for the candidate's next subsequent election as provided in section 11-UU upon registration for the election pursuant to section 11-K.

(g) The commission shall adopt rules pursuant to chapter 91 to carry out the purposes of this section.

### I. Advertisements

**§11-YY Advertisements.** (a) Any advertisement shall contain:

- (1) The name and address of the candidate, candidate committee, noncandidate committee, or other person paying for the advertisement; and
- (2) A notice in a prominent location stating either that:
  - (A) The advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate; provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or
  - (B) The advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.

(b) The fine for violation of this section, if assessed by the commission, shall not exceed \$25 for each advertisement that lacks the information required by this section, and shall not exceed an aggregate amount of \$5,000.

**§11-ZZ House bulletins.** The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid advertisements, shall be exempt from the provisions of this part.

### J. Enforcement

**§11-AAA Subpoena powers.** (a) The commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects to the commission office or at any place in the state whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the commission.

(b) The books, papers, documents, or objects may be retained by the commission for a reasonable period of time for examination, audit, copying, testing, and photographing.

(c) The subpoena power shall be exercised by the chairperson of the commission, or the chairperson's designee.

(d) Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county in which the person subpoenaed resides or is found, in the same manner as a subpoena issued by a circuit court.

**§11-BBB Filing of complaint.** (a) A person alleging violations of this part shall file a complaint with the commission.

(b) A complaint initiated by the commission shall be in writing and signed by the executive director.

(c) A complaint by a person other than the executive director shall be in writing, signed by the person filing the complaint, and notarized.

**§11-CCC Notice of complaint; opportunity to explain or respond to complaint.** (a) The commission shall give notice of receipt of the complaint and a copy of the complaint to the respondent.

(b) The respondent may explain or otherwise respond in writing to the complaint and explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92.

**§11-DDD Initial determination by the commission.** The commission shall promptly determine, without regard to chapter 91, to:

- (1) Summarily dismiss the complaint;
- (2) Investigate further;
- (3) Make a preliminary determination; or
- (4) Refer the complaint to an appropriate prosecuting attorney for prosecution under section 11-KKK.

**§11-EEE Preliminary determination regarding probable cause.** (a) Upon hearing the response, if the respondent explains or otherwise responds to the complaint, and upon completion of any investigation, the commission may make a prompt preliminary determination as to whether probable cause exists that a violation of this part has been committed. The preliminary determination with findings of fact and conclusions of law shall be served upon the respondent by certified mail.

(b) The respondent shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested case hearing under chapter 91 within twenty days of receipt of the preliminary determination. Failure to request a contested case hearing shall render the commission's preliminary determination final.

**§11-FFF Waiver of further proceedings.** The commission may waive further proceedings due to action the respondent takes to remedy or correct the alleged violation, including the payment of any administrative fine.

The commission shall make the remedial or corrective action taken by the respondent, the commission's decision in light of the action to waive further proceedings, and the commission's justification for its decision, a part of the public record.

**§11-GGG Contested case hearing.** (a) A contested case hearing shall be conducted pursuant to chapter 91 and any rules adopted by the commission, except as provided in this section.

(b) If a hearing is held before the commission or a hearings officer, the commission or hearings officer shall not be bound by strict rules of evidence when conducting a hearing to determine whether a violation of this part has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(c) The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice.

(d) A record shall be made of the proceeding.

(e) All parties shall be afforded full opportunity to present evidence and argument on all issues involved.

(f) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission or hearings officer shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding before the commission and who may be adversely affected thereby, may appear or file a written statement for incorporation into the record of the proceeding.

(g) If a hearing is held before a hearings officer, the hearings officer shall render a recommended decision for the commission's consideration. Any party adversely affected by the recommended decision may file written exceptions with the commission within fifteen days after receipt of a copy of the decision by certified mail.

(h) The commission, as expeditiously as possible after the close of the commission's hearing, shall issue its final determination of violation together with separate findings of fact and conclusions of law regarding whether a violation of this part has been committed.

**§11-HHH Dismissal.** The complaint shall be dismissed if the commission makes a final determination that there is no violation of this part.

**§11-III Final determination of violation; order.** If the commission makes a final determination of a violation of this part, its written decision with findings of fact and conclusions of law may order any of the following:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine to the general fund of the State;
- (4) The respondent to cease and desist violations of this part; or
- (5) Any report, statement, or other information required by this part to be filed.

**§11-JJJ Administrative fines; relief.** (a) The commission may make a decision or issue an order affecting any person violating any provision of this part or section 281-22 that may provide for the assessment of an administrative fine as follows:

- (1) If an individual, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure; or
- (2) If a corporation, organization, association, or labor union, an amount not to exceed \$1,000 for each occurrence;

provided that whenever a corporation, organization, association, or labor union violates this part, the violation may be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine shall not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent.

(c) If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(d) If the person to whom the commission's order is directed does not comply with the order, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(e) Any administrative fine collected by the commission shall be deposited in the general fund of the State.

(f) Any person or the commission may sue for injunctive relief to compel compliance with this part.

(g) The provisions of this section shall not prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-LLL.

(h) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by section 11-Y and 11-YY(b).

**§11-KKK Criminal referral.** In lieu of an administrative determination that a violation of this part has been committed, the commission may refer the complaint to the attorney general or county prosecutor at any time it believes the respondent may have recklessly, knowingly, or intentionally committed a violation.

**§11-LLL Criminal prosecution.** (a) Any person who recklessly, knowingly, or intentionally violates any provision of this part shall be guilty of a misdemeanor.

(b) Any person who knowingly or intentionally falsifies any report required by this part with the intent to circumvent the law or deceive the commission or who violates section 11-EE or 11-FF shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.

(c) A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(d) For purposes of prosecution for violation of this part, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

- (1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
- (2) In the case of state offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
- (3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether any conflicting interest exists between the agency and its appointive authority.

(e) The court shall give priority to the expeditious processing of prosecutions under this section.

(f) Prosecution for violations of this part shall not commence after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(g) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-Y and 11-YY(b).

#### **K. Partial Public Financing**

**§11-MMM Hawaii election campaign fund; creation.** (a) The Hawaii election campaign fund is created as a trust fund within the state treasury.

(b) The fund shall consist of:

- (1) All moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5(a);
- (2) Any general fund appropriations; and
- (3) Other moneys collected pursuant to this part.

(c) Moneys in this fund shall be paid to candidates by the comptroller as prescribed in section 11-WWW and may be used for the commission's operating expenses, including staff salaries and fringe benefits.

**§11-NNN Depletion of fund.** (a) The commission shall be under no obligation to provide moneys to candidates if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, moneys in that fund are near depletion.

(b) For purpose of the partial funding program, if the Hawaii election campaign fund is close to depletion as determined by the commission, the commission shall determine the amounts available to eligible candidates based on their order of eligibility in qualifying for partial public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-VVV; provided that the application has been accepted by the commission.

(c) For purpose of the comprehensive public funding for elections to the county councils, if the Hawaii elections campaign fund is close to depletion, the commission shall determine whether the program shall be operative in accordance with this part.

**§11-OOO Voluntary expenditure limits; filing affidavit.** (a) Any candidate may voluntarily agree to limit the candidate's expenditures by filing an affidavit with the commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in this part and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the candidate's behalf by the amount set by this section. The affidavit shall be subscribed to by the candidate and notarized and filed no later than the time of filing nomination papers with the chief elections officer or county clerk.

(c) The affidavit shall remain effective until the termination of the candidate committee or the opening of filing of nomination papers for the next succeeding election, whichever occurs first. An affidavit filed under this section may not be rescinded.

(d) From January 1 of the year of any primary, or general election, the aggregate expenditures for each election by a candidate who voluntarily agrees to limit campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone, all treasurers, the candidate committee, and noncandidate committees on the candidate's behalf, shall not exceed the following amounts expressed, respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor--\$2.50;

(2) For the office of lieutenant governor--\$1.40;

(3) For the office of mayor--\$2.00;

(4) For the offices of state senator, state representative, and county council member--\$1.40; and

(5) For the board of education and all other offices--20 cents.

**§11-PPP Tax deduction for qualifying contributions.** (a) An individual resident of Hawaii may claim a state income tax deduction pursuant to section 235-7(g)(2), for contributions to a candidate who files an affidavit pursuant to section 11-OOO and does not exceed the expenditure limit. Cancelled checks or copies of the same shall be considered adequate receipt forms to attach to the tax form to claim the credit.

(b) The commission shall forward a certified copy of the affidavit to the director of taxation upon request.

(c) If a candidate has not filed the affidavit pursuant to section 11-OOO, the candidate shall inform all contributors in writing immediately upon receipt of the contribution that they are not entitled to a tax deduction for their contributions to the candidate. The director of taxation shall not allow any contributor to take a deduction, pursuant to section 235-7(g)(2), for any contribution to a candidate for a statewide or county office who has not filed the affidavit pursuant to section 11-OOO.

#### **§11-QQQ Maximum amount of public funds available to candidate.**

(a) The maximum amount of public funds available in each election to a candidate for the office of governor, lieutenant governor, or mayor shall not exceed ten per cent of the expenditure limit established in section 11-OOO(d) for each election.

(b) The maximum amount of public funds available in each election to a candidate for the office of state senator, state representative, county council member, and prosecuting attorney shall not exceed fifteen per cent of the expenditure limit established in section 11-OOO(d) for each election.

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

(d) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

(e) Each candidate who qualified for the maximum amount of public funding in any primary election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective general election. For purposes of this section, "qualified" means meeting the qualifying campaign contribution requirements of section 11-TTT.

**§11-RRR Candidate exceeds voluntary expenditure limit.** A candidate who files the affidavit agreeing to limit expenditures and who exceeds the expenditure limit for that election shall:

- (1) Notify all opponents, the chief election officer, and the commission by telephone and writing on the day the expenditure limit is exceeded;
- (2) Pay the balance of the full filing fee; and
- (3) Provide reasonable notice to all contributors within thirty days of exceeding the limit that the expenditure limit was exceeded and contributions to the candidate no longer qualify for a state income tax deduction.

**§11-SSS Reserving use of contributions.** A candidate who files the affidavit voluntarily agreeing to limit expenditures and who receives contributions that in aggregate exceed the expenditure limit for an election shall reserve use of any contributions that exceed the limit until after the applicable election.

**§11-TTT Eligibility requirements for public funds.** In order to be eligible to receive public funds for an election, a candidate shall certify that the candidate will meet all the following requirements:

- (1) The candidate and the candidate committee authorized by the candidate shall not incur expenditures in excess of the expenditure limitations imposed by section 11-000;
- (2) The candidate is qualified to be on the election ballot in a primary or general election;
- (3) The candidate is opposed by at least one other candidate for the same office in the same election;
- (4) The candidate has filed a statement of intent to seek public funds. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;
- (5) The candidate or committee authorized by the candidate has received the minimum amount of qualifying contributions for the office sought by the candidate as set forth in section 11-UUU;
- (6) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100 in each matching payment period;
- (7) The candidate agrees to obtain and furnish any evidence relating to expenditures that the commission may request;
- (8) The candidate agrees to keep and furnish records, books, and other information that the commission may request; and
- (9) The candidate agrees to an audit and examination by the commission pursuant to section 11-ZZZ and to pay any amounts required to be paid pursuant to that section.

**§11-UUU Minimum qualifying contribution amounts; qualifying contribution statement.** (a) As a condition of receiving public funds for a primary or general election, a candidate shall not be unopposed in any election for which public funds are sought, shall have filed an affidavit with the commission pursuant to section 11-000 to voluntarily limit the candidate's campaign expenditures, and shall be in receipt of the following sum of qualifying contributions from individual residents of Hawaii:

- (1) For the office of governor--qualifying contributions that in the aggregate, exceed \$100,000;
- (2) For the office of lieutenant governor--qualifying contributions that in the aggregate, exceed \$50,000;
- (3) For the office of mayor for each respective county:
  - (A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$50,000;
  - (B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$15,000;
  - (C) County of Maui--qualifying contributions that in the aggregate, exceed \$10,000;
  - (D) County of Kauai--qualifying contributions that in the aggregate, exceed \$5,000; and
- (4) For the office of prosecuting attorney for each respective county:
  - (A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$30,000;
  - (B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$10,000; and
  - (C) County of Kauai--qualifying contributions that in the aggregate, exceed \$5,000;
- (5) For the office of county council--for each respective county:

- (A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$5,000;
  - (B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$1,500;
  - (C) County of Maui--qualifying contributions that in the aggregate, exceed \$5,000; and
  - (D) County of Kauai--qualifying contributions that in the aggregate, exceed \$3,000;
- (6) For the office of state senator--qualifying contributions that, in the aggregate, exceed \$2,500;
  - (7) For the office of state representative--qualifying contributions that, in the aggregate, exceed \$1,500;
  - (8) For the office of Hawaiian affairs--qualifying contributions that, in the aggregate, exceed \$1,500; and
  - (9) For the board of education and all other offices, qualifying contributions that, in the aggregate, exceed \$500.
- (b) A candidate shall obtain the minimum qualifying contribution amount set forth in subsection (a), once for the election period.
- (1) If the candidate, other than a candidate for the office of Hawaiian affairs or the board of education, obtains the minimum qualifying contribution amount, the candidate is eligible to receive:
    - (A) The minimum payment in an amount equal to the minimum qualifying contribution amounts; and
    - (B) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum qualifying contribution amounts.
  - (2) A candidate for the office of Hawaiian affairs shall obtain the minimum qualifying contribution amount set forth in subsection (a), once for the election period. If the candidate obtains the minimum qualifying amount, the candidate is eligible to receive \$1,500.
  - (3) A candidate for the board of education shall obtain the minimum qualifying contribution amount set forth in subsection (a), once for the election period. If the candidate obtains the minimum qualifying amount, the candidate is eligible to receive \$50.
    - (c) The candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-QQQ; provided that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum qualifying contribution amounts before the date of the primary election.
  - (d) The statement of qualifying contributions shall include:
    - (1) The printed names and addresses of the individual residents of Hawaii who made the qualifying contribution during the matching payment period, and
    - (2) The amount and date of deposit of each qualifying contribution.
  - (e) As used in this section, "matching payment period" means:
    - (1) For a primary, first special, or first nonpartisan election, from January 1 of the year of the election through the day of the primary, first special, or first nonpartisan primary election; and
    - (2) For a general, second special, or second nonpartisan election, from January 1 of the year of a general election through the day of the general, second special, or second nonpartisan election.
- §11-VVV Application for public funds.** (a) Each application for public funds shall be signed by the candidate and notarized, and accompanied by the statement of qualifying campaign contributions.
- (b) The application shall be mailed or delivered to the commission, and shall not be valid unless received by the commission no later than thirty days after the general election.

(c) Each candidate in receipt of the minimum qualifying sum of contributions established for the office that the candidate seeks may apply to the commission for public funding after the candidate has become a candidate in a primary or general election.

(d) A candidate who receives funds for a primary, first special, or first nonpartisan primary election and is a candidate in the subsequent general, second special, or second nonpartisan election is required to mail or deliver another application to the commission to receive public funds for the subsequent election.

**§11-WWW Payment to candidate.** (a) Upon the commission's approval of the application and statement of qualifying contributions, the commission shall direct the comptroller to distribute matching public funds up to the maximum amount of public funds allowed by section 11-QQQ. Public funds shall be distributed to the candidate within twenty days from the date that the candidate's initial application and qualifying contribution statement is approved by the commission.

(b) The commission shall make additional determinations within fourteen days after receiving a complete application and supplemental statement of qualifying contributions from a candidate.

(c) All determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-ZZZ.

**§11-XXX Use of public funds.** (a) Public funds shall be deposited in a depository institution, as defined in section 412:1-109, duly authorized to do business in the state, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

(b) No expenditures of any public funds shall be made except by checks drawn on such checking account.

(c) Public funds shall be only used to:

- (1) Defray expenditures of the candidate; and
- (2) Repay loans, the proceeds of which were used to defray expenditures.

(d) Public funds shall not be transferred to another candidate for any election.

(e) Unexpended public funds shall be returned to the commission by the deadline for filing the final election period report for the election for which the funds were received.

**§11-YYY Post-election report required.** The treasurer shall electronically submit an expenditure of public funds report to the commission no later than twenty days after a primary election and no later than thirty days after a general election certifying that all public funds paid to the candidate have been used as required by this part.

**§11-ZZZ Post-election examination and audit; return of funds.** (a) The commission shall examine and audit the public funds received by all candidates, qualifying contributions, and the expenditures made by all candidates within sixty days after each general election.

(b) The commission shall adopt rules, pursuant to chapter 91, regarding expenditures which qualify under section 11-XXX.

(c) If the commission determines that any payment of public funds to a candidate exceeded the aggregate amount to which the candidate was entitled, the commission shall notify the candidate within two years of the payment of the public funds and the candidate shall repay the excess amount to the Hawaii election campaign fund.

(d) If the commission determines that any public funds were used for any improper purpose, the commission shall notify the candidate, and the candidate shall pay to the Hawaii election campaign fund an amount equal to three hundred per cent of such amount in addition to any fines under section 11-JJJ and section 11-LLL.

**§11-AAAA Report and recommendation.** In January of each year, the commission shall submit to the legislature:

- (1) Proposed legislation for reasonable expenditure and contribution limits, along with relevant justification for the legislation;
- (2) A report concerning the status of the Hawaii election campaign fund; and
- (3) A request for an appropriation if the total amounts of revenues comprising the fund are insufficient to provide public funds for the partial public funding program and comprehensive public funding program for elections to the county of Hawaii council."

#### PART III

SECTION 3. Chapter 11, part XII, subpart B, Hawaii Revised Statutes, is repealed.

#### PART IV

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. In codifying the new sections added by part II of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 2010 whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 8. This Act shall take effect upon approval and apply to reporting periods beginning after November 2, 2010."

Representative Marumoto moved that Floor Amendment No. 2 be adopted, seconded by Representative Ward.

Representative Marumoto rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, this is a lengthy floor amendment, but a simple one to understand. The proposed House Draft 3 reverts back to the original version of the bill. No cute stuff. No grand policy changes or nefarious ones. No tinkering around. No games. No return of 'pay to play' in any form. It's the original version of House Bill 2003, the straight recodification of our campaign spending laws.

"As for why this amendment, a couple of points. First, I quote from the Campaign Spending Commission's testimony on this bill:

Our final point is that a recodification of the campaign finance law is long overdue. The current campaign finance laws have their genesis in Act 185, Session Laws 1973. Over the past 36 years, numerous amendments have been made to the laws in a piecemeal fashion and, apparently, with little regard to the laws as a whole. The result is laws that are unorganized, difficult to read, and inconsistent in some areas. The current law is in Part XII, subpart B of HRS chapter 11.

This bill organizes the campaign finance laws into a new part of HRS chapter 11, with ten subparts. Long and involved sections are divided into shorter sections with clear titles for quick reference. All the laws on one subject are grouped together, in contrast to the current laws that require a reader to search through the whole subpart for laws that may apply to that subject.

This bill is a product of the work of the Campaign Spending Commission's Blue Ribbon Recodification Committee. The Committee completed its work in 2008 after meeting regularly for nine months. The Committee was comprised of the Commission's staff and seventeen volunteer attorneys experienced in campaign finance law who represent diverse interests.

"In other words, we are here today trying to make the laws more user friendly, better organized. The reason in and of itself is enough reason to pass this amendment. But there is a second point as to why this amendment is necessary. The recodification should have been passed by this Body and signed into law last year. Instead, certain legislators decided to hijack a very technical bill for otherwise unknown purposes. Why would anybody want to return to a system of 'pay to play'? We're going back on the reforms we made for political action committees. Why? And so forth? I don't know but the possible answers aren't very flattering.

"If some wish to make substantive changes, then do it in another bill. Don't take the easy route and mix the two, burying two sentence changes in a hundred page bill. Keep the recodification just that, a recodification.

"And I would urge my colleagues to support the amendment. However, I see a Majority amendment on the desk. It is before us now. It is very similar in content. So at this time, I will take my amendment off the table and throw my support to the Majority measure."

At this time, Representative Marumoto moved to withdraw Floor Amendment No. 2, seconded by Representative Ward and carried.

At this time, Representative C. Lee offered Floor Amendment No. 4, amending H.B. No. 2003, HD 2, as follows:

"SECTION 1. H.B. No. 2003, H.D. 2, RELATING TO CAMPAIGN FINANCING, is amended as follows:

1. By amending subsections (a) and (b) of section 11-II in section 2 to read as follows:

"(a) It shall be unlawful for any person who enters into any contract with the State, any of its counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of its counties, department or agency thereof, or for selling any land or building to the State, any of its counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or
- (2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office."

2. By amending subsection (c) of section 11-KK in section 2 to read as follows:

"(c) No person shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election. This subsection shall not apply to ballot issue committees."

3. By amending section 11-UU(a)(4) of section 2 to read as follows:

"(4) To make donations to any public school or library; provided that in any election period, the total amount of all donations shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-KK and no donations shall be made from the date the candidate files nomination papers to the date of the general election; provided further that any donation under this paragraph shall not be aggregated with or imputed toward any limitation on donations pursuant to paragraph (3);"

SECTION 2. H.B. No. 2003, H.D. 2, RELATING TO CAMPAIGN FINANCING, is amended by amending section 12 as follows:

"SECTION 12. This Act shall take effect on November 3, 2010, and shall apply to reporting periods beginning after November 2, 2010."

Representative C. Lee moved that Floor Amendment No. 4 be adopted, seconded by Representative Bertram.

At this time, Representative Souki moved to table the motion for adoption of Floor Amendment No. 4.

At 3:05 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:07 o'clock p.m.

At this time, the Chair stated:

"At this point, there is no second to the motion to table, so the Chair will recognize Representative Chris Lee, the offeror, for discussion."

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

Representative C. Lee's written remarks are as follows:

"Mr. Speaker, we cannot allow even the appearance of impropriety in our decision-making, and we cannot allow companies with state contracts to make political contributions without crossing this line.

"The intent of amending and passing this measure is to finally recodify Hawaii's outdated campaign spending laws, by passing the precise recommendations of the Campaign Spending Commission."

At this time, Representative Finnegan requested a roll call vote at the appropriate time.

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

"Mr. Speaker, are we debating the floor amendment or discussing the floor amendment? Not the tabling or anything of the likes?"

"I rise in support of the amendment. You know it's six of one, and half a dozen of another. I like the one that the Representative from Kaimuki-Kahala proposed, and the other one that just followed from Waimanalo. I'm in between those two so obviously I like my company on both sides of my district.

"The great thing about what we're doing is we're separating the wheat from the chaff, or the Administrative Rules from the campaign policy. Campaign spending, Mr. Speaker, is a real long set of policies and there's a lot of moving parts in the Administration. This one makes it clear, which is the way it should have been. And I think if someone said it was hijacked, this kind of un-hijacks it. Freezes it so you don't get the pure version of campaign finance spending, and that which is then a really policy oriented thing. So I think this is the right way to proceed. Hopefully it will be future precedence also. Thank you."

The request of roll call was put to vote by the Chair and upon a show of hands, the request was approved.



Roll call having been approved, the motion that Floor Amendment No. 4, amending H.B. No. 2003, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CAMPAIGN FINANCING," be adopted, was put to vote by the Chair and carried on the following show of Ayes:

Ayes, 51: Aquino, Awana, Belatti, Berg, Bertram, Brower, Cabanilla, Carroll, Chang, Ching, Chong, Choy, Coffman, Evans, Finnegan, Hanohano, Har, Herkes, Ito, Karamatsu, Keith-Agaran, C. Lee, M. Lee, Luke, Magaoy, Manahan, Marumoto, McKelvey, Mizuno, Morita, Nakashima, Nishimoto, B. Oshiro, M. Oshiro, Pine, Rhoads, Sagum, Saiki, Say, Shimabukuro, Souki, Takai, Takumi, Thielen, Tokioka, Tsuji, Wakai, Ward, Wooley, Yamane and Yamashita.

At 3:12 o'clock p.m., the Chair noted that Floor Amendment No. 4 was adopted.

At 3:12 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:12 o'clock p.m.

At this time, the Chair stated:

"Members of the House, thank you very much for your patience and diligence. May we turn back to page 18. So we have taken two items out of order, which were on page 24. Those were Floor Amendment No. 2 and Floor Amendment No. 4. Are we all on page 18?"

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 604-10) recommending that H.B. No. 2157, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2157, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in support of Stand. Com. Report 604. Thank you, Mr. Speaker. The measure before us increases the capacity from two to three for nursing facility level residents, in a Type I Expanded Adult Residential Care Home.

"Mr. Speaker, it's estimated that by year 2020, one in four residents in the State of Hawaii will be age 60 or over. It illustrates a need for such expanded care for our elderly. Two important principles for this measure, Mr. Speaker. It reflects traditional principles that define Hawaii, that we care for our elderly.

"And second, there is an urgency to pass this measure because there is a shortage of skilled nursing level beds in our State. Thus allowing Type I Expanded Adult Residential Care Homes to increase their capacity from two to three nursing level residents will help to reduce the financial burden of our State and save literally millions of dollars by having residents reside in an affordable, expanded care home.

"The savings will be recognized as this will provide a viable healthcare option compared to the high cost of the State placing our elderly in institutional care. Healthcare costs are already at a premium level for our general population. Just visualize the cost for a second, of healthcare for our elderly. A simple snapshot confirms elderly cost.

"For example, in Hawaii, on average, emergency room hospitalization, rehabilitation and long-term care costs directly related to senior falls total \$92 million per year. This equals \$252,000 per day. This is one segment of senior care. Expanded care homes will reduce the cost substantially.

"It's also more cost efficient, especially during these times of our economic crisis. Residents in Type I Expanded Care Homes will pay approximately \$2,500 to \$3,500 per month. If our senior were to stay in a private nursing institution, they would expect to pay between \$8,000 to \$10,000 per month.

"Type I care homes are regulated by the State Department of Health and the Office of Health Care Assurance, the same agency that regulates nursing homes. Also each nursing resident is followed by a licensed healthcare or case manager to provide oversight and ensure delivery of care.

"Mr. Speaker, just one last point. Type I care homes provide direct supervision and contact with residents. If you want to look at the ratio for our Type I expanded care that's for five residents in a home, it's generally one to five, possibly two, three, even five to five based on our clients. What I'm saying is if you have one patient that may not be able to walk it has to be a one to one ratio. One caregiver to that one patient. If two of your clients can't walk, it's then two to two. That's how it breaks down.

"This is in stark contrast to a private nursing home where the reduced level of care can be as high one caregiver to 20 patients. It obviously depends on what shift it is. If you're talking about the 11 p.m. to 7 a.m. shift, it can go down to that bad. One to 20, that's the ratio. So for those reasons, I support this measure and I hope other Members will also support this measure. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2157, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EXPANDED ADULT RESIDENTIAL CARE HOMES," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Berg and Choy voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 605-10) recommending that H.B. No. 744, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 744, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker, I rise to speak in favor of this measure and I'm very happy to see it before us. As a member of the Kupuna Caucus I'm happy to see that this program, which is modeled after the Amber Alert program to find missing children expeditiously, is passing. This measure contains the Silver Alert, which would find seniors as soon as possible. I thank you for finally realizing the wisdom of this Republican bill that we introduced last year, and I think you're finally getting it. Thank you."

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

"Also in support and I just wanted to thank all those that were involved. The Alzheimer's Association of Hawaii, the Policy Advisory Board for Elder Affairs, the Health Care Association of Hawaii, the social workers and the individuals who took time out of their busy schedules to support this Silver Alert program, as well as the Chairs that agreed to hear the bill. Aloha."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 744, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 607-10) recommending that H.B. No. 1991, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1991, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Yes, Mr. Speaker, in opposition to SCR 607. Yes, Mr. Speaker, what this bill does is it increases the fee for a traffic abstract. The original bill basically increased the fees to about 43% or so over the current price. It's currently left blank and that's why I kind of want make some comments at this time.

"Again, many people are suffering in the State of Hawaii. This particular legislation is not for anything in particular, but to instead go to the general fund. There is going to be about 500,000 abstracts pulled by the people of Hawaii, and so many people will be affected by this increase. Many states have had lowered the costs per abstract fee. Some states have only a two dollar charge on abstract fee and they've had that charge for many, many, many years. Thank you."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1991, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TRAFFIC ABSTRACT FEE," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Brower, Ching, Finnegan, Marumoto, Pine and Thielen voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 608-10) recommending that H.B. No. 2508, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2508, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I wanted to rise on a potential conflict. The law firm that I work for has claimants listed in this Claims Against the State," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. I'd also like to rise to disclose a potential conflict. My law firm has claimants in this bill as well," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2508, HD 2, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.," passed Third Reading by a vote of 51 ayes.

At 3:22 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2085, HD 1  
 H.B. No. 2688, HD 1  
 H.B. No. 2801, HD 2  
 H.B. No. 2157, HD 1  
 H.B. No. 744, HD 2  
 H.B. No. 1991, HD 2  
 H.B. No. 2508, HD 2

At 3:22 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:23 o'clock p.m., with Vice Speaker Magaoay presiding.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 609-10) recommending that H.B. No. 1904, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1904, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in opposition to Standing Committee Report No. 609, HB 1904. Thank you, Mr. Speaker. The purpose of this bill is to require an amount equivalent to the unfunded accrued liability contribution by the State for State employees to be set aside from general excise tax revenues and deposited into a separate account in the general fund.

"Mr. Speaker, I've always been a vocal supporter of not raising the unfunded liability. Talking about how we have a three-year mandate to keep the cost down and not add any more benefits or anything like that. So one might ask why would I be against something like this?

"Mr. Speaker, if we put this in law what happens, to me, what happens it does take away our ability, especially at this point in time, to try and figure out how we're going to balance the budget. And that is probably our single most important responsibility this Legislative Session. How are we going to do it?

"This doesn't allow us to have the flexibility in future years should we need that kind of flexibility. And because this stems from originally, years back where we did siphon off revenues, or our payment to the ERS, that I believe that we should not do this and give us the flexibility to address this.

"Plus, when we did a briefing earlier before the Session started, there was a report that's due with regard to the unfunded liability on how many years we'll have to pay. This report is supposed to come back, I believe next year, in the beginning of next year. At that point, I think, that would be the appropriate time to consider looking towards legislation like this, as well as it would give us some time to not necessarily have to address it right now. Thank you."

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

"Mr. Speaker, I rise in opposition to this measure. Basically for the same reasons. It's untimely, unnecessary, and even though a great cause, it's something we can't afford right now. We can't 'squirrel' away money, the same way that a family that's using money to buy food cannot start paying back debts on a car that may have gone sour. The point is, you have to have the right thing at the right time. This is the right thing, but at the wrong time. Thank you, Mr. Speaker."

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

"Mr. Speaker, thank you very much. Just a few comments in support of this measure. Those who may not have had a chance to review the draft before us, it does several things. First of all, it requires the deposit of tax collections in a sum equivalent to the unfunded accrued pension liability of the ERS contribution by the State for State employees during the fiscal year into a separate account of the general fund. It also provides that the State's monthly contribution for State employees for the unfunded accrued liability be paid from the separate account of the general fund. Currently drafted it will take effect July 1, 2011.

"I think Members need to keep in mind that as reported by the latest ERS 2009 actuarial valuation report, as of June 30, 2009 the ERS's unfunded actuarial liability increased from \$5.2 billion to \$6.2 billion. And the ERS had a 64.6% funded ratio. Not the best ratio in the land. This ratio represents a percentage of funds the ERS has on hand to cover current and future pension benefit payments.

"Members, you also need to keep in mind that actuarially speaking, Hawaii's retirees live a long time, longer than the average. In fact, this means pension benefits need to be paid out over a longer period of time. The funding for future pension payments is based on estimated annual pay increases, however actual worker pay increases have been increasing over the last several years.

"And finally, Mr. Speaker, the number of retirees is steadily growing so payments are growing too. The ERS made \$792 million in payments to 36,200 retirees in fiscal year 2008, and about \$840 million to 37,000 retirees in fiscal year 2009. In 2012, Mr. Speaker, when more baby boomers retire, the ERS will hit the \$1 billion payout mark. For these reasons, I hope Members support this measure. Thank you."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker, for letting me speak a second time. Mr. Speaker, I'm still in opposition. I would like to say that the Chair of Finance is absolutely right when we're talking about this unfunded liability. I believe that you would find the Minority Caucus for at least the time that I've been here as a freshman until now, that we've been advocating that before we even start new programs or do anything during good times, that we take a look at the unfunded liability. I know that we've made at least one payment to the unfunded liability since I've been here. I'm not sure if there was more.

"But the issue is not that we don't take care of it. The issue is, when are we going to take care of it? This year and next is going to be a really tough time for us, and to commit our general funds and our resources to pay back something that should have been started to be paid back way back then, we should have made that a priority at that time instead of adding on more programs. Mr. Speaker, that's my issue, the timing of it. We should not commit those funds now. Thank you."

Representative Ward rose to respond, stating:

"Mr. Speaker, just another, how would I say, historical footnote if I may add? In opposition. The reason we're in this position is because in more difficult times in the '90s and prior to that, this Body had set in regulation, in statute, that any amount that the ERS was earning above 8% in its investments, we raked across the top and put it into the general fund. That went along fine until there was a crisis during the Cayetano Administration. I believe that was Mr. Anzai who decided not to make a payment into the ERS, which now has caused us to be really behind.

"And now with the economy lagging we are even being more behind. Now is not the time to right what was going on in the Cayetano Administration. We should wait until things get better. But to be mindful that this Body created the problem and this bill is not going to suddenly be a 'magic bullet' and the solution. We siphoned off this money. We denied them payments. But fortunately now there's a firewall between this Body and that trust fund.

"It's almost the same way that Congress has been raiding the social security funds except in this way, when they were getting a lot of returns, we were relishing in the abundance of it. Now we've got to 'pay the piper.' The point is, to pay it now is as untimely as back then when we borrowed the money, which we shouldn't have. Thank you."

Representative Ching rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise with reservations to H.B. 1904, Relating to Government. This bill requires the set aside from General Excise Tax revenues of an amount equivalent to the unfunded accrued liability contribution by the State for State employees during a fiscal year, and deposits the funds into a separate account in the general fund.

"I have deep concerns as to the fiscal impact, which remains largely unknown. According to the Tax Foundation, this measure would prioritize

these funds ahead of other general funds, possibly lead to future accounting errors such as the double counting of tax collections, and may violate the intent and spirit of the general fund ceiling. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1904, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Finnegan and Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 610-10) recommending that H.B. No. 1905, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1905, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm in support with reservations. Thank you, Mr. Speaker. I think there's just a common message in most of the bills that I'm going to be talking about, having to balance the budget. In the Finance Committee, we're not quite there as to passing out the budget, so most of my comments will either be on bills that relate to balancing the budget, knowing that the budget has not been decided upon yet for the House. Having said that, the purpose of this bill is to set aside from general excise tax revenues an amount not to exceed \$63 million to pay fringe benefit contributions not paid in fiscal year 2008 - 2009 in an amount to not exceed \$275 million to pay tax refunds not paid in fiscal year 2010 - 2011.

"Mr. Speaker, I am going with reservations on this and not a 'no' vote, but just reservations. I think that this is very, very important, that we take care of our obligations. The reservation that I have is, again, we're trying to balance a \$1.2 billion shortfall. When I look at this, especially if you look at the \$275 million, the \$275 million probably equates to, I'm guessing off the top of my head, about a .375 or so increase in a general excise tax that we would be able to pull in if we raised it by that much.

"This is a lot of money to make up and divert from the Governor's proposal. And as much as I would like to, because I do believe that we should give back as quick as possible, any tax returns that belong to tax payers. As you know, we've been strong advocates for taxpayers. It makes it very difficult for us to make that decision between cutting and raising taxes. Thank you."

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

"Yes, Mr. Speaker. I speak for this with some reservations, but with a full understanding of why this particular measure is needed. I also understand there are some time limitations on this, and that is good.

"My reservation is that somehow with this Administration and now with us, we keep on doing these things. We keep providing deferrals of the inevitable. It's only a 'shell game.' I don't blame anybody. But someday we have got to 'pay the piper.' This cannot go on forever.

"I think the message of this particular bill is that it should stop and in the next go around we should take care of this problem, and that is good. But if we don't have the resources in the following biennium, we won't be able to take care of this problem, so we'll just continue to have it. How long do we continue with this?"

"I'm basically ashamed in a way, of the Minority Party and the Governor in some respects, who've always been very fiscally prudent, to now allow this kind of thing to happen. Not only to allow, but to lead this to happen. And to have her supporters here who are also supporting this particular item, when we all know that we are balancing the budget with the people's taxes, their hard earned money. This is money that belongs to them and it's being deferred, only to balance the budget. That is wrong. And it's wrong

for the Governor to do it. It's wrong for us to support it. That's all, Mr. Chairman. Thank you."

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

"Mr. Speaker, in support. I support the bill primarily because I feel, the Governor's decision to defer \$275 million of tax refunds from one fiscal year to another is just a 'smoke and mirrors' response to the crisis we're in. I also feel like the \$63 million deferral of EUTF benefits is of the same ilk, and I think it's just putting off the problems down the road when we need to address them now.

"I regretfully support the bill. It's too bad that we had to raise it and prepare the ground for paying that money back in the coming fiscal years. It's a response to a 'smoke and mirrors' solution and that's why I support it. Mahalo."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1905, entitled: "A BILL FOR AN ACT RELATING TO STATE PAYMENTS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 613-10) recommending that H.B. No. 2964, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2964, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support of H.B. 2964, which increases the salary reduction of various State officers and legislators from 5% to 8.07%. We must lead by example. As a result, this reduction could possibly motivate others, such as union bosses and certain government employees to be open to also take these cuts to help alleviate the State of its current economic situation. Thank you."

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

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

"Mr. Speaker, I rise in support of House Bill No. 2964, House Draft 1, Relating to Salaries. This bill:

- (1) Increases the percentage by which the salaries of the Governor, Lieutenant Governor, Justices and Judges, the Administrative Director of the State, and the department heads and executive officers are to be reduced from 5 to 8.07% beginning July 1, 2010 until June 30, 2011.
- (2) Increases the percentage by which the salaries of the members of the Legislature are to be reduced from 5 to 8.07% beginning July 1, 2010 until June 30, 2011.

"On October 29, 2009, the Hawaii Government Employees Association ratified a two-year contract with the State and counties that include 42 fewer workdays for most of its members. The contracts, from July 1, 2009, through June 30, 2011, call for some 18 furlough days this fiscal year, and 24 furlough days in the next fiscal year for state employees, including those in blue-collar supervisory jobs and white-collar nonsupervisory positions.

"The 42 furlough days equals a reduction in salary of 8.07%.

"This bill would apply a reduction equal to that in effect for HGEA members to the salaries of the Executive, Judicial, and Legislative official of State government that are covered by the Commission on Salaries.

"It is noteworthy to mention that this bill did not receive any opposing testimony during the public hearing.

"Lastly, during these austere financial times, it behooves the leaders of this State to demonstrate our commitment to stand by our fellow government workers. If the lowest paid workers in State government must take an 8.07% cut in pay, so should those who are paid more, including the officials covered by the Commission on Salaries.

"I urge my colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2964, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SALARIES," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Hanohano voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 614-10) recommending that H.B. No. 2257, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2257, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. This is in regards to Stand. Com. Rep. No. 614, HB No. 2257. With reservations. Thank you. Mr. Speaker, I just wanted to thank my colleagues for being very patient with me standing up on all of these bills. I think it's very important that we speak on what we think is not correct with the bills. Thank you.

"Mr. Speaker, the purpose of this bill is to encourage workers who are receiving partial unemployment benefits and are exempt from work search requirements to look for part-time work to supplement their benefits by providing that these workers are not disqualified for partial unemployment benefits, if they separate from their part-time employer, regardless of the reason for the separation.

"Mr. Speaker, you know I looked at this, and it wasn't exactly an easy bill to have reservations on. They cite one particular situation where a person who is considered still attached to their employment, and they don't have the requirement of looking for a job since they're still attached to their employer. They go out for supplemental income so they get a part-time job. With this part-time job this particular person ended up either, and it's disputable, either leaving or getting fired. So hence this bill, because it was a situation where she had a lot of reasons for what happened and why, she was either let go or left.

"So when you look at that, she was qualified for unemployment insurance. She got a part time job. The break in service happened. And now she's disqualified for unemployment insurance. In that kind of case, you look at it and you say, 'Wow maybe that is not fair.' But Mr. Speaker, I back up and I look from a general perspective of unemployment insurance.

"The Unemployment Insurance Fund, the purpose of this Fund is to take care of people who've become unemployed through no fault of their own. So that's the basis of unemployment insurance. The second thing is, how does this differ from someone who has a job, gets laid off, then because they're searching for a job, they get another job and their unemployment benefits are still available to them. They end up finding a job and now they're not on unemployment anymore. But for whatever reason, whether they get fired or they leave, they will be disqualified from getting unemployment insurance from their previous job.

"So when I compare those two situations and I say, 'Okay, where's the fairness in this?' And maybe we should go back to the general purpose of what unemployment insurance is for. Yes, you may catch unfair situations like, for instance this person. That might be an unfair situation that is cited in this testimony here. But you've got to look at the general purpose of the Unemployment Insurance Fund. In that situation, if that person was fired,

who went back to work, they have a job, and then gets fired. Why isn't he treated or she treated the same way this part-time attached person is? And we've got to go and say, 'Why are we treating those two situations differently?'

"I think then at that point in time, it does create a wrong precedent that we could be saying later on down the line that for any reason you can still qualify for unemployment insurance. Then I would say that this is very difficult and costly for businesses if we head in that direction. Thank you."

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

"Mr. Speaker, in support. Thank you. This bill addresses a very specific situation. Under current law if you're laid off, but only temporarily laid off, say you work at a hotel that has a low season during the winter time and I don't know what the situation would be exactly. You're only going to be off work for a couple months. Under current law, you're not required to look for a job to collect unemployment insurance. Normally if you're on unemployment you have to look for a job to collect unemployment insurance. This is a special situation because you're going to be brought back on with the same employer within a reasonable length of time.

"There's really no incentive under that situation for a person to go look for another job. They know they've got unemployment benefits until their job comes back. In this case, the person who takes the initiative, goes out and finds a part time job, and reduces the unemployment insurance paid by the first employer, gets penalized. If they lose the second job, they lose their unemployment benefits entirely, even though they didn't need to go out and look for a job at all and not risk their unemployment benefits at all.

"So the reason they're treated differently is because this is an unusual situation where you're connected to an employer. You're going to get your job back and it's just a matter of time. But you don't want to discourage people from going to find another job by making it so that they lose their unemployment for the first job if they lose their second job.

"I know that's pretty confusing. I hope I got my point across, but this is a very specific situation and I think even from the employers' perspective it's better to do it this way because they don't have to go out and look for another person to fill the job that they know they're going to have fill within a short period of time. Mahalo."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2257, HD 2, entitled: "A BILL FOR AN ACT RELATING TO UNEMPLOYMENT INSURANCE BENEFITS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Marumoto voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 616-10) recommending that H.B. No. 2637, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2637, HD 1, pass Third Reading, seconded by Representative Evans.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2637, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL AND REHABILITATION BENEFITS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Marumoto voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 617-10) recommending that H.B. No. 2919, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2919, HD 1, pass Third Reading, seconded by Representative Evans.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2919, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 618-10) recommending that H.B. No. 2935, HD 2, as amended in HD 3, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2935, HD 3, pass Third Reading, seconded by Representative Evans.

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2935, HD 3, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Finnegan and Marumoto voting no.

At 3:46 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 1904  
H.B. No. 1905  
H.B. No. 2964, HD 1  
H.B. No. 2257, HD 2  
H.B. No. 2637, HD 1  
H.B. No. 2919, HD 1  
H.B. No. 2935, HD 3

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 619-10) recommending that H.B. No. 1818, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1818, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. Regarding Stand. Com. Rep. No. 619, HB 1818, I vote with reservations. Basically the only issue that I have is that there was testimony offered that said there are potential constitutional problems with this bill. Thank you."

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

Representative Awana's written remarks are as follows:

"Thank you Mr. Speaker, I rise in strong support. The Attorney General likes to raise concerns anytime there is a bill that relates to Native Hawaiians. And for every AG Opinion out there, there are also a dozen or more different legal opinions.

"The State Constitution provides in Article 12, Section 7, Traditional and Customary Rights for descendants of Native Hawaiians. As stated by the Office of Hawaiian Affairs, this ethnic group is comprised of the

highest percent of the State's total prison population. OHA goes on to state that "... the social and economic cost to incarcerate a person for 39 months was \$123,000. Transitional programs, such as those cited in HB 1818, HD1, would cost much less, and programming would place an emphasis on wellness and independent living."

"The intent of these programs is not to mandate a religion or culture, but to provide the highest ethnic population of inmates with the tools they need to heal and learn how to become productive and peaceful citizens transitioning back into society.

"The testimony coming from the Community Alliance on Prisons shares compelling testimony through documented research and data at the national and international levels. We also received testimony from an individual who was incarcerated. He stated, "I felt more in touch with my native roots and it had made me accountable for my actions." He continues, "There is a yearning for this type of program because we have so many *kanaka maoli* in the prisons. Once you're in prison, you have a lot to think about. Banding together as Hawaiians made the transition easier. I ask this bill to be passed."

"Mr. Speaker, I ask the consideration of yourself and the Members of this House to look at rehabilitation instead of only incarceration through this passage of HB 1818, HD 1. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1818, HD 2, entitled: "A BILL FOR AN ACT RELATING TO COGNITIVE RESTRUCTURING," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 621-10) recommending that H.B. No. 2266, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2266, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CORRECTIONS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 622-10) recommending that H.B. No. 2657, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2657, HD 1, pass Third Reading, seconded by Representative Evans.

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2657, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SAFETY," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 623-10) recommending that H.B. No. 2692, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2692, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Awana's written remarks are as follows:

"Mr. Speaker, I rise in strong support for this measure. The tsunami warning this past weekend only enforced the fact that this measure is

needed. Had this measure been passed and implemented sooner, many of the challenges that we on the Waianae Coast experienced on Tsunami Warning Saturday would have been avoided.

"Where was our Civil Defense at 8:00 am? Not in the Waianae Coast Mr. Speaker. When they arrived around 9:00 am at selected shelters only after being requested by the community, what was the plan from the Civil Defense? There was no plan. The plan was to wait until 11:00 am, when the tsunami was expected to enter our waters and we would find out then.

"Those who reside and do business on the Waianae Coast unlike others areas in the State of Hawaii are limited to one, and only one main highway – Farrington Highway. In times of a natural disaster, one of the first actions that take place is closure of Farrington Highway. For this reason, this measure requests the assistance of the State Civil Defense because the State provides oversight to the only main roadway – Farrington Highway.

"The State is responsible for the oversight of air or sea commute should these alternative modes become necessary. The State works closely with the military that is responsible for a large land mass in the largest valley in the area - Lualualei. The State is responsible for many human services for our large homeless population, and indigent groups. Many do not have electricity or telephones. If they have cellular phones, there are many homeless who reside in areas where there is no cellular phone access. The State is responsible for the public schools where the community assembles during a natural disaster. This community has experienced tsunamis, hurricanes, high winds, fires and high surf – all of which required the closure of Farrington Highway.

"There was testimony provided by the State Civil Defense that stated that there already exists a program. After reviewing this program, it was clear that the State Civil Defense's priority and the County's Department of Emergency Management are to get government services online as soon as possible.

"Mr. Speaker, there is a fallacy out there that government will come to our aid in times of a disaster. This is not the truth. This lesson should have been learned during Hurricane Katrina – people waiting for the government and refusing to leave their homes. In this measure, it requests the government to help provide oversight. In times of natural disasters there are already resources within this coastal community. The biggest resource, Mr. Speaker, is the people themselves. This measure will provide for the residents to provide input and insight. This measure will help those willing to come forth and offer their services and resources from the farming community, residents, churches, schools, construction, and other businesses.

"If this sounds like a great idea Mr. Speaker, it sure is. Once established, this plan can provide guidance to other communities facing similar situations throughout our State with our people, the best resource, guiding the way."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2692, HD 1, entitled: "A BILL FOR AN ACT RELATING TO DISASTER PREPAREDNESS PLANNING," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 624-10) recommending that H.B. No. 2817, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2817, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you Mr. Speaker. I rise in support with reservations and hope that as this goes on to the Senate, that there will be more clarity as to the designation of the kinds of works of art and the criteria by which they will be decided. Perhaps this will lend itself to us thinking a little broadly as to

how Hawaii might be positioned internationally with this auction. Thank you."

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

"Thank you, Mr. Speaker. I rise in opposition to this measure. Thank you, Mr. Speaker. I do understand the intent of this. In fact, years ago, a lot of years ago, when I was the Chair of Culture and the Arts, I actually introduced a measure similar to this. But what I learned through the process is that the advocates of art, the people that were around when we started the Art in Public Places, the 1% set aside from the CIP when we created this awesome historic art collection for the State of Hawaii. What I realized is that there are some works of art that over time lose value. But it doesn't diminish the fact that those pieces are part of our art history. I understand the House Draft 1 and the efforts to maintain that. Those are not the type of artworks that will be sold.

"In fact, the types of artworks that will be sold are those that will get over a 110% of their purchase price. But it's just not a good thing. It's not a good thing for us to even contemplate the sale of our art because it's part of our history. We should be very proud of the fact that in the State of Hawaii we, years ago, and I believe it was about 30-35 years ago, we set aside this money to purchase our art. So those are the concerns that I have in regards to this bill. Thank you."

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

"Thank you, Mr. Speaker. I stand in support. Thank you, Mr. Speaker. I truly appreciate the comments made by the two previous speakers, however, the purpose and intent of this measure is to ensure that art continues to thrive in our schools and in our community. This is a revenue-neutral measure which will give the Hawaii State Foundation on Culture and the Arts the ability to auction works of art and use those funds to purchase new pieces within the State.

"Currently, the administrative rules already allow for works of art to be auctioned, but no mention is made in these regulations as to where these funds are deposited. This measure ensures that once auctioned, the funds derived from the works of art go back into a fund to continue to support art in our islands.

"The Foundation has never exercised this option; understandably. But in economic times like these, should an auction need to take place the funds will circulate right back into the Division where it came from, supporting a Department that may appear irrelevant.

"But indeed Mr. Speaker, art cultivates the creative mind. Art allows the individual to escape and at other times it allows an individual to come to terms with a situation they cannot or may not be able to verbalize. For these reasons Mr. Speaker, I support this measure. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2817, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ART," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Belatti, Brower, Choy, Coffman, C. Lee and Takai voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 625-10) recommending that H.B. No. 2445, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2445, HD 2, pass Third Reading, seconded by Representative Evans.

Representative B. Oshiro rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, on Stand. Com. Rep. No. 625, I would like to ask for a ruling on a potential conflict. At my law firm, they represent the HTA, but I'm not working on that matter," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2445, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TOURISM AUTHORITY," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Berg voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 626-10) recommending that H.B. No. 1859, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1859, HD 1, pass Third Reading, seconded by Representative Evans.

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

"I'm standing in support with reservations and brief comments, Mr. Speaker. I absolutely support the intent of this measure. It is absolutely laudable in consideration of our disabled citizens. My concern is with the additional fee increase, and it not going to the State Highway Fund. That's my only reservation on it. Thank you, Mr. Speaker."

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

"Thank you. With reservations as well. I have similar comments as the previous speaker. I'm just concerned that none of the funding will be going to the Highway Special Fund. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1859, HD 1, entitled: "A BILL FOR AN ACT RELATING TO FUNDING FOR PARKING FOR DISABLED PERSONS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 628-10) recommending that H.B. No. 2603, HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2603, HD 2, entitled: "A BILL FOR AN ACT RELATING TO COST SHARING IN THE RELOCATION AND UNDERGROUNDING OF UTILITY FACILITIES," passed Third Reading by a vote of 51 ayes.

At 3:55 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 1818, HD 2  
H.B. No. 2266, HD 1  
H.B. No. 2657, HD 1  
H.B. No. 2692, HD 1  
H.B. No. 2817, HD 1  
H.B. No. 2445, HD 2  
H.B. No. 1859, HD 1  
H.B. No. 2603, HD 2

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 630-10) recommending that H.B. No. 2561, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2561, pass Third Reading, seconded by Representative Evans.

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

"Yes, Mr. Speaker. I wish to cast a no vote on this measure. The reason being is that I believe that State land or the 'āina is sacred. If we're ever going to be selling the land or leasing the land, it should be with the oversight of the State Legislature. I believe this bill lessens the oversight of the State Legislature.

"I'm aware the reason for this is because sometimes you need to move this land rapidly, but good planning would preclude that. So I believe that the land and any dislocation, any leasehold, should belong to the oversight of this Body. Thank you, very much."

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

*"Mahalo 'ōlelo. Ke kū nei au i koho 'a'ole. 'O kēia pila 'a'ohē pono. 'O ka 'āha 'ōlelo kau kanawai hana ho'okahi hanalei kanahikukumamaono, halawai kanawai 'eula kaukani 'eiwa e kū no na 'āina 'apau no ke 'aupuni. 'O na 'oiwi 'o Hawai'i 'a'ohē pau ka loa'a hou. Ina ke kanaka maoli e loa'a hou 'oia ho'i no ka mea kaulike. He aha ke ka'ao no kēia halawai no kēia hale maka'āinana e ka ho'omana'o 'ia? Mahalo."*

Representative Hanohano provided the following translation:

Mr. Speaker, I rise in opposition. This bill is not right. The legislative Act 176, Session Laws of Hawaii applies to all public lands. The indigenous people are still in the reconciliation process. Until Hawaiians receive justice there is no justice. Is selling the lands the legacy this Legislature wants to be remembered for?

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

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

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

"Thank you Mr. Speaker. In strong support. Mr. Speaker, House Bill 2561 deals with the sale of non-ceded public lands. I ask this Body, and I've asked this question to the Attorney General and others who have testified. I think it should be made very clear to the Members of this Body.

"First of all on House Bill 2561, there were two hearings before the Committee on Water, Land, and Ocean Resources, as well as the Committee on Finance. All of the testimony was in support. There was not one piece of testimony in opposition. So that testimony included testimony from the Office of Hawaiian Affairs, the University of Hawaii System, the Hawaii Housing Finance and Development Corporation, the Department of Agriculture, the Department of Land and Natural Resources, the Department of the Attorney General. I'd like just for the record to include some of the comments that were given by the Department of Agriculture:

"The required process for legislative oversight and approval may result in the State not receiving full market price, incurring additional expenses, or reducing its net gain on the sale of land. Sale of land by the Department of Agriculture will not likely be completed in a timely manner and may result in a lower sales price as the Department of Ag may need to wait months to get approval to sell the land. In some cases the Department's costs may be higher as the delays in the sale may require the hiring of property managers to oversee and maintain the properties. In addition, the review process requires that an appraisal be obtained which may not be warranted in all cases."

"So that's just an insert of some of the testimony from the Department of Agriculture. I'd like to also read the testimony from the Hawaii Housing Finance and Development Corporation, whose mission it is to provide affordable housing.

"The HHFDC must currently conduct a community meeting, prepare an appraisal of the property for purposes of obtaining legislative approval to sell a home in fee simple, and continue to expend the carrying costs of owning an unoccupied residence, such as landscaping, maintenance, and security expenses. Passage of this measure would allow HHFDC to carry out its mission of providing workforce and affordable housing."

"Mr. Speaker, this bill is in response to Act 176. As we know, this particular bill deals only with non-ceded lands and often times State agencies need to have the ability to sell their own lands without legislative approval. While I respect the Chair of Transportation and his philosophy on the State's ability to sell public lands, I think this is a little bit of a different situation because we're not dealing with ceded lands, number one. But number two, there are situations in which you are creating more of a burden. You're creating a situation where it can be very political at times. And more importantly, you could possibly be getting less money for the land.

"So at the end of the day Mr. Speaker, again for the Members, this deals with the sale of non-ceded lands, and again there was no testimony in opposition. Thank you, Mr. Speaker."

Representative Ching rose, stating:

"Mr. Speaker, might I make a request? I would like to know what the Representative of Puna actually said. I unlike perhaps the Representatives from Kailua and Waianae, I do not understand fluent Hawaiian. But I would like to learn from what she says in the spirit of debate. I was wondering if someone might translate for the Representative."

At 4:02 o'clock p.m. Representative Say requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:03 o'clock p.m.

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

"Mr. Speaker, I rise in support of the measure. Not only is the sale of non-ceded land something that we've got to do. I would remind the Body that we have still a \$1.2 billion deficit. When a family has a problem, it may have to sell off some of its assets, jewelry, maybe a car, or maybe a boat, maybe a canoe.

"Obviously the Speaker Emeritus reminds us that we should not be selling the land. Obviously we all agree with him, but we are in a situation where it's our responsibility as policymakers to get us through and over this hump. We don't want to do it, but we're forced to do it. It's non-ceded lands. If we don't get the deficit and the budget balanced, we're going to be in trouble.

"We're reminded that the Council on Revenues is going to meet the 23rd, 24th, 25th this month. It could even be worse. According to the hearings that we had in Finance, this could raise up to \$500 million. That's a half a billion dollars. Everybody would probably breathe a sigh of relief if that was the case. Right now, we don't have anywhere close to that with all these different ways that we're trying to package the budget deficit.

"So having said that Mr. Speaker, we don't want to do it, but sometimes in hard times you've got to do things. You've got to roll up your sleeves. You've got to be tough. You've got to be self-reliant and this is part of the discipline, the fiscal discipline, to get us over the hump and to get out of this budget deficit. Thank you."

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

"I rise in support, but with reservations and I would like the words of the Representative from Kahului to be inserted as my own. I would like to make a couple of comments. This piece of proposed legislation doesn't say that we cannot sell them. It's just asking for an oversight. It's owned by the State. There should be oversight from this Body, Mr. Speaker."

Representative Souki rose to respond, stating:

"Yes Mr. Speaker, in rebuttal. First of all I did not say that we cannot sell. I said the Legislature needs oversight as to whether it is feasible or not feasible to sell, whether it is feasible to lease or not lease. The responsibility is with us.



"As far as us selling the land to pay a debt, I've never heard of something more outrageous than that. You sell the land, and I remind you, we are very limited in the State of Hawaii. We're very land poor, and now of course we're money poor. We'll spend the money, and we also won't have the land. For ages and ages the land has been sacred in Hawaii. It's in our motto. It's sacred. You don't sell this land. Thank you."

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

"Thank you, Mr. Speaker. In strong support and I'd like to adopt the words of the Representative from Kapolei as my own. And just short comments. Some of the situations that were given in testimony in Finance, for example, is that this would allow HHFDC to promptly sell repurchased homes to first-time home buyers. So in this kind of case, we must have given permission at one point in time to sell. It's just to a different first-time homebuyer. So these are the kinds of problems that they're having because of Act 176. Thank you."

Representative Har rose to respond, stating:

"A brief rebuttal, Mr. Speaker. Again, while I have great respect for the Chair of Transportation and I don't have an issue with legislative approval. But the fact of the matter is this, this Legislature only meets from January typically, to May. In the interim period, if there is the ability to sell, and again oftentimes land is dictated by fair market value, the price is dictated by fair market value, that State entity has to wait for legislative approval, which may be seven months after the fact."

"For example, I'm going back to the example with HHFDC. In my district there were many homes that were foreclosed upon and because of HHFDC's equity lien, they wanted to be able to resell these homes to families that qualified for affordable housing. Unfortunately because of the passage of Act 176, these homes have been sitting now for over nine months that could have gone to a family who qualified for affordable housing. But unfortunately, HHFDC had to come to this Body, and those resolutions still have not passed and probably will not be finalized until the end of this Session."

"So again, we continue to hold up the process. For example, with respect to HHFDC's mission to get affordable housing to our local residents. Again for these reasons Mr. Speaker, I stand in strong support of this measure. Thank you."

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

"Thank you, Mr. Speaker. I rise in opposition and request that the last few paragraphs of the Representative from Maui be entered as my own. Including all the exclamation points. And I hope that as this comes back to us, all the Chairs will be paying attention to the pieces within the bill which require proper planning and oversight by the State. It's one thing to say we can sell whatever we want to sell, but I think what we're trying to do here is to find ways to create policy that will guide our State in the correct planning process. So I hope that that will be included. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2561, entitled: "A BILL FOR AN ACT RELATING TO LANDS CONTROLLED BY THE STATE," passed Third Reading by a vote of 35 ayes to 16 noes, with Representatives Awana, Belatti, Berg, Cabanilla, Choy, Hanohano, Keith-Agaran, C. Lee, Luke, Morita, Nakashima, Nishimoto, Saiki, Souki, Takumi and Wooley voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 632-10) recommending that H.B. No. 2689, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2689, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I have reservations on this measure. This may be a case where we should look a gift horse in the mouth. This bill would require that the State receive water systems or even parts of water systems. We may be the recipient of 'Pandora's Box of Ills.' So I'm going to urge caution on this measure. Thank you."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2689, HD 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL WATER SYSTEMS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 633-10) recommending that H.B. No. 2835, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2835, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm rising to speak against this bill, Mr. Speaker. I was really surprised to see it come out of Finance because it is a very large unfunded mandate on the Bureau of Conveyances. I thought with the Finance Committee facing such a deficit that they wouldn't put through something like this measure."

"This bill will require the Bureau to provide an adjoining landowner, upon request, any information of record relating to the management, control, and title of any public highway, waterway, or water course."

"The Department of Transportation put it very clearly: 'The Department believes it will cause undue hardship, take an extraordinary amount of time to accurately research, identify, and provide available ownership information for highways, roads, lanes, alleys, and streams. And there are no known existing available databases at the Bureau of Conveyances for this bill.'"

"The bill states that ownership cannot be readily determined by search of public records. Ownership is typically determined by exhaustive searches of public records and maps. Even with ample amount of time and research, ownership of these interests might be hard to determine. Some of the ownership of roads and streams are determined by older maps that have no transfer ownership documents of records. Common use does not ascertain a land or waterway as a legal owner."

"So what we're doing is putting forth a huge unfunded mandate on the Bureau for people to go in and say, 'Okay Bureau, you do the work,' where those private landowners should instead be forming a *hui* and hiring their own legal counsel to probably have to do a quiet title action. If they want to establish the ownership of the land, the ultimate way to do that is through a judicially monitored quiet title action, then the title is established by the court."

"This way makes no sense when we have about a \$2 billion deficit. When we have other things that have to go on with the Bureau of Conveyances. The bill just makes no sense and it should never have emerged from Finance. Thank you."

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

"Thank you, Mr. Speaker. I am also in opposition and I'd like to adopt the words of the speaker from Kailua. Thank you. And just short comments. When I was in the mortgage industry and we would do titles, we would request for title searches because of a private road or ownership. It costs a lot of money. The Bureau of Conveyances is going to be very taxed in trying to get this information at no cost. Mr. Speaker, I think that before we move this measure out, we should get some kind of idea of what

this is going to cost us. I believe the fiscal impact is unknown at this point in time. Thank you."

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

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

"Thank you, Mr. Speaker. I rise in support. For many years we've continued to discuss this issue called, 'roads in limbo,' and it really puts a burden on homeowners because they never truly understand who's responsible for the road. They will go to the county and ask who's going to help with the maintenance, and the county says they don't know who owns it. They go to the State sometimes and ask who own this road, and they say they don't know. And then they talk to the neighbors and the neighbors say that they don't know.

"As a State Representative from the Big Island, I remember about six years ago when we got caught in this 'roads in limbo.' The Legislature had to jump in and we came up with \$2 million to replace a bridge over a State irrigation ditch because there were six homes on the other side of the ditch. No one could figure out who owned the road and who owned the bridge. It became a public safety issue, so we ended up doing it at the State level, but we never could resolve if it was a county issue or a State issue? But the people were in danger.

"So I think that the real intent of the author and the person who really wanted to move this forward understands that sometimes there are lanes, there are public highways, and there are roads. The property owners get caught, in who's going to do what. I think people are really nervous that it's going to happen all the time. I don't see it happening all the time, but it will happen, situations where someone's got to take care of roads, somebody's got to solve the problem. Thank you, Mr. Speaker."

Representative Thielen rose to respond, stating:

"Yes Mr. Speaker, this is my second time. That's a different bill, Mr. Speaker. We're not talking about maintenance of roads. Maintenance of roads is fine and there's another measure moving through that's saying, 'Okay county or the State. Take care of these roads even if they're private roadways.' That's fine.

"What this says is, 'Go do work for private landowners to tell them who owns title to this road.' And that's something the private landowner should pay for. That is not something that we should say to the Bureau of Conveyances, which is understaffed and underfunded, 'Now you have to do this additional work and we, the Legislature, are not giving you any money with which to do this work.' So it's a totally different issue from what the prior speaker said. Thank you."

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

"In support of Stand. Com. Rep. No. 633. I just want to say I think it's actually quite a moderate bill. I think as a matter of good governance, it would be good for the State. The Bureau of Conveyances, which is the only organization that's tasked with knowing who owns land in the entire State, which is an unusual situation. Most states do it county by county.

"But the Bureau of Conveyances is who keeps track of who owns what. I think probably in the long run, the thing that we should be doing is systematically going through all the property in the State and making sure that we know who owns everything.

"I recognize that we do have fiscal difficulties right at the moment and this bill won't be used for every single lane in the State, or every single stream in the State. But it is a big problem. It's one that the private sector has not addressed.

"It seems to me that a few hours ago some of the same people who were saying that a lawyer should not be involved in enforcing the fireworks laws, now say that lawyers should be involved and paid for by the private sector to solve a problem. So I appreciate all your support on this measure,

and it's very important to my district, and I think to many others as well. Mahalo."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. I'm still in opposition. Thank you. Mr. Speaker, government cannot and should not pay for problems that should be handled by the private sector by private owners. The issue with this as the previous speaker had just mentioned, is a big problem. What happens to the big problem? Does it just go away and not cost anything? No.

"People will come in for free services. Once they hear about this law, they will come in and try and get that information for free because they've been sitting on a problem for so long. So that's why I think it's going to cost a lot of money. This happens quite a bit.

"When I was in the mortgage industry, people would come to the table, they would find out that there's a private road, and what if that happens in this case? They find out there's a private road. They're trying to sell the property and usually that's when it happens. Then they turn around and they say, 'Okay, I'm not going to sell it right now. I'm going to go the Bureau of Conveyances and ask them to do the work that I should have done to figure out this private road situation.'

"They're going to save the \$2,000 that they would have spent if they wanted to sell their property, and now they're going to have the State basically pay for it. The Bureau of Conveyances records. They record instruments coming in. Yes they have information, but they record it. I don't think they have this huge database, and obviously they don't or else they would have said they would give them the information. But as they stated in their testimony, they don't have this information readily available because a lot of this is not clear, and they would have to go through extensive research.

"So Mr. Speaker, this is the issue. Why a 'no' vote? Because it costs money to do this kind of research. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2835, entitled: "A BILL FOR AN ACT RELATING TO THE BUREAU OF CONVEYANCES," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Carroll, Ching, Finnegan, Keith-Agaran, Marumoto, Pine and Thielen voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 635-10) recommending that H.B. No. 2171, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2171, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONVEYANCE TAX," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 636-10) recommending that H.B. No. 2347, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2347, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE MAXIMUM TERM OF COMMERCIAL USE AND OPERATOR PERMITS FOR THRILL CRAFT AND PARASAILING," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 638-10) recommending that H.B. No. 2833, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2833, HD 1, pass Third Reading, seconded by Representative Evans.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2833, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Belatti voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 639-10) recommending that H.B. No. 2923, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2923, HD 2, pass Third Reading, seconded by Representative Evans.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2923, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Belatti, Berg, Hanohano, C. Lee, Luke, Morita and Saiki voting no.

At 4:25 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2561  
H.B. No. 2689, HD 1  
H.B. No. 2835  
H.B. No. 2171, HD 1  
H.B. No. 2347, HD 2  
H.B. No. 2833, HD 1  
H.B. No. 2923, HD 2

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 640-10) recommending that H.B. No. 1921, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1921, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I would like to just note my reservations on Stand. Com. Rep. No. 640, House Bill 1921 as we move forward."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1921, HD 2, entitled: "A BILL FOR AN ACT RELATING TO A CONTROLLING INTEREST TRANSFER TAX," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Marumoto and Pine voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 641-10) recommending that H.B. No. 1926, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 1926, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to this bill. Mr. Speaker, this is job-killer bill number two. It basically takes the small business community through DBEDT to raise their fees to support something which otherwise is uncalled for. We should be funding DBEDT so it can help the community. We shouldn't have to go out and go off budget and do a special fund. May I finish my remarks through submitting to the Journal? Thank you."

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am presenting written comments in opposition to HB 1926, Relating to the Department of Business, Economic Development, and Tourism. The bill is a job killer. It makes businesses pay a \$20 surcharge for a variety of State fees.

"DBEDT says that the revenue generated for the Department would have very little impact on its budget, but have far more significant and negative impact on businesses. It turns the Department into a tax collector and is inconsistent with the Department's mission of reducing the cost of business in Hawaii.

"For these reasons, Mr. Speaker, I oppose HB 1926."

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

"Mr. Speaker, I'm in strong support of this bill. Mr. Speaker, this is a pretty interesting bill because what it does is it charges a \$20 surcharge to the business community to fund DBEDT. Now as I've been sitting in the Finance Committee, we know that we're in a budget crisis. And when you look at a Department like DBEDT it's very, very difficult to say DBEDT is a core service. Now they provide important functions to our State, and I'm not denying that, but it's really not a core function.

"So Mr. Speaker, what I tried to do in this particular bill is to make sure that we can fund the function of DBEDT by having the business community chip in 20 bucks. This 20 bucks is going to generate approximately \$5 million, which is about 100% of the 'A' funding of DBEDT.

"So if the business community chips in 20 bucks, we can save DBEDT, but more importantly Mr. Speaker, what we can do is we can take that \$5 million of 'A' funds and we can put it toward our 'safety nets.' We can put it towards our children. We can put it towards our aged and our homeless. So I freed up \$5 million of 'A' funds.

"This bill also takes \$2 million from the Compliance Resolution Fund from all non-fee sources. So again, this particular bill is just a creative way to fund DBEDT, which I think performs an important function, but not a core function. Thank you, Mr. Speaker."

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

"Thank you Mr. Speaker, with strong reservations on this bill. Mr. Speaker, I do appreciate the previous speaker's intent with this bill. But I have to say standing here today and listening to, 'It's just one more dollar. It's just 20 more dollars' on each and almost every bill that comes by. No wonder my colleague is saying it's a job killer.

"It's not the one dollar. It's not the 20 dollars. It's not the five dollars here and there. It's the constant, 'We need more money. We're going to ask for more money. If you belong to this group, you're going to pay more. If you're a business, you're going to pay more.' This adds up. I don't know, if you did that to me in my personal budget even if it was 20 cents, but if it went on forever, I wouldn't be able to afford it.

"So that's the point Mr. Speaker. I think there are very many creative ways in doing these types of things, but just remember, that's \$5 million more dollars that gets sucked up out of businesses as a collective total. Thank you."

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

"Thank you, Mr. Speaker. I'm also standing with strong reservations. Yes, I think it almost behooves the Legislature to remember, the House, as well as the Senate, the message that we send because we are leaders. Because people elect us. We're leaders and so people listen to leaders. They listen to the inherent message that we send. And I think that our concern if I may say from the Minority Caucus, is what message are we sending consistently with certain bills.

"We're sending a message that business maybe doesn't have a place at the table. Or that they're not part of the team or they're not part of the table. And that's just not, I think, what we want to do in times of unprecedented economic challenge.

"What we want to say to them, as the Representative from Hawaii Kai has said on occasion, is that we want to say, 'Hey come. *Hele mai'ai*. Come. Come. Come here. You're welcomed. We want you.'

"So I just think I understand what the Representative of Manoa is saying. And yes, there is a nexus for the user fees. I understand that. But we have to always bear in mind the message we send. Thank you."

Representative Choy rose to respond, stating:

"Thank you, Mr. Speaker. Just in brief rebuttal. You know during the testimony, Mr. Larry Reifurth, the Director of the Department of Commerce and Consumer Affairs, testified that over the last, I think he said seven years, businesses have saved \$55 million from the lowering of fees. I'm asking for them to chip in and give back just 20 bucks so we can save our safety nets. I think businesses, and I'm one of them, of Hawaii stand ready to do their share to get us out of this mess. I think that the businesses of Hawaii are not ready to forsake our children. They're not ready to forsake our needy, or our aged. I think they stand ready to do their part. Thank you, Mr. Speaker."

Representative Ward rose to respond, stating:

"Mr. Speaker, a brief retort. I would remind the learned gentlemen that in the three quarters of 2009, the State of Hawaii lost 46,560 jobs. 99% of them were private sector jobs. Job retention is one of the most responsible things that we have to do in this Body. We don't have to have a lesson in macroeconomics to know that 80% of all the jobs are private sector jobs. To say that this is not a core service, to keep 80% of our people employed is to miss the thrust of what we have as a free economy.

"15 to 20% of the jobs come out of federal, State, and City and county government jobs. If we don't keep the private sector strong, we're not going to have enough money to keep the lights on in the government. That's part of our responsibility as those who are holding the 'purse strings,' particularly in the House of Representatives.

"So Mr. Speaker, the point is we have to let these businesses have a chance to catch their breath without \$20 here, a thousand dollars from the unemployment insurance bills, the electricity bills that goes on the dollar and five tax that we just passed on the barrel tax. All of these things add up. And what we're pushing is employees out of the job market. As I said, last year 46,000 were shed.

"And the way America is exporting its businesses overseas and the way that government is complicating the hiring and the firing and the benefits process. We're going to end up with a nation instead of any businesses more than 2 or 3 people. The big businesses are going to be gone. They will either be overseas or government will have strangled them.

"Mr. Speaker, we're in the process of turning up the heat on the frog. When it's all hot and boiling, he'll never go into it. But if we get him in there and just slowly turn it up. And that's what America has done for the last couple of decades. We've turned up the heat and right now we're in a crisis in this State. We need to give these guys a break. Thank you Mr. Speaker."

Representative Ching rose to respond, stating:

"Thank you. Just a comment about business as a former educator. I'm still with strong, strong reservations. I just wanted to say I think business has been so active in education. What comes to mind is the Hawaii Business Roundtable, etc. It's in their actual best interest to have a good educational system. To have well-educated children. So I just wanted to respond to the comment about. It's just again, a philosophical difference. How do I use my money? I'd like to know where my money's going. I'd like to have a little control over it. Thank you."

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

"Mr. Speaker, in support. I just wanted to speak momentarily about this sense from the Minority side of the aisle that this Body is just relentlessly anti-business and everything we do is anti-business. I just want to point out that HB 2169, which is a UI bill that will save businesses over the next two years \$241 million, passed this House and passed the Senate today on Second Reading. It'll be going to the Governor soon. Please be balanced in your look at how we approach businesses. Mahalo."

Representative Pine rose, stating:

"Mr. Speaker, personal point of privilege. Just want to clarify that we're not speaking on that bill at that moment and he cannot speak on a bill that is not before us."

The Chair responded, stating:

"Thank you. He is done with his message."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Just to add on to my reservations. You know businesses right now, when you go to many of the functions having to do with helping the vulnerable population, association dinners and all of these types of things, who comes out and gives the money to support these types of things? Business. Businesses who have money do it. Many businesses contribute thousands, and thousands, and hundreds of thousands of dollars to contribute and help our society. So this \$20, or \$5 million collectively. Yeah sure, but it's another tax. So Mr. Speaker, that's why it's really difficult because you're taking it from them, whether or not the business can afford it. And that's my comments. Thank you."

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

"Yes in opposition, Mr. Speaker. And just as a rebuttal to the Labor Chair. No one here has said that this Legislature is against business. However, a lot of people in business are saying that about us right now. I think we need to really look at what we're doing and how we're treating not only business, but the people of Hawaii, and how we solve these budget problems.

"You know in the State of New Jersey in the early 2000's they had some budget problems even back then and they decided to go after business. A little here, and a little here, and a little here. What they discovered was a lot of those businesses decided to leave New Jersey because as the Representative of Hawaii Kai said, they pretty much got 'fried in the pot' and they just couldn't take it anymore. They were going to literally die if they didn't leave that State.

"And so as a result they lost millions and millions of dollars. Not only job losses for the people that live in New Jersey, but also the non-profit foundations lost out too because who were the people that gave the most to those non-profits? Those were those businesses.

"So I think that, while no one in this Chamber is pointing fingers at anyone as being anti-business, we really need to look at what our image is to not just other states, but the world. Not too long ago *Forbes Magazine* had us as one of the most anti-business states in the nation. And of course thanks to Governor Lingle, that changed a little bit. Unfortunately, this Legislature did override some vetoes that she felt were going to hurt that ranking. Of course we are back again as probably, according to *Forbes Magazine*, as being one of the worst states to do business in again. And so while no one's pointing fingers at anyone else here, it sure seems that people outside this building has a very different image of how we perceive ourselves."

Representative Herkes rose, stating:

"In opposition. Kill the bill and close DBEDT."

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

"Thank you, Mr. Speaker. I'm standing in strong support of this measure. We as a Body decided not to increase the sales tax or the GE tax. That's a decision we made, so therefore we have to come up with a solution to close the budget deficit. So we have to take a nickel here, and a dime there, or \$20 from somewhere. We made that decision, Mr. Speaker. So therefore, we need to lie in that bed that we made. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 1926, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM," passed Third Reading by a vote of 46 ayes to 5 noes, with Representatives Berg, Marumoto, Pine, Thielen and Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 642-10) recommending that H.B. No. 2283, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2283, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in support. However, because we've only been debating about 10 pages, and we have about 10 more pages and it's taken us 6 hours, I just would like to request to submit written comments."

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

"House Bill 2283 HD2, Relating to Public Procurement, seeks to ensure fair and ethical use of government funds by requiring both State and county purchasers and private entities offering goods and services for sale to government purchasers to follow ethical principles in matters relating to procurement. For ethical procurement principles to be observed and followed, however, there should exist a clear framework of what those principles encompass – this measure attempts to accomplish just that.

"Recently the Hawaii Procurement Institute referenced three habitual problems regarding procurement; the most serious and costly of these related to the subjective and 'piecemeal approach to contracting' that results from officials not knowing procurement procedures – and thus making sometimes unethical decisions.

"Inefficiency, as well as unethical behavior, result from Department and Agency officials being unfamiliar with the State's procurement process. A recent example of this was illustrated by the Office of Elections' attempt to procure voting machines for upcoming elections. The Office issued an RFP, received bids, and awarded contract to a company whose bid was \$25.3 million dollars more than the next comparable bid. The Chief Elections Officer was unable to justify the award, despite both proposals offering comparable service.

"As you know, under the separation of powers doctrine, the legislative branch is the sole authority to create laws and policies. Administrative agencies and administrative rules are only proper when authorized by the Legislature, and based upon a statute.

"Without any statutory basis under the Procurement Code, Haw. Rev. Stat. Ch. 103D, there appears to be a question as to whether these rules are *ultra vires*. To avoid any potential challenge to the validity of these rules should there ever be a prosecution or enforcement, the purpose of this bill is to ensure that there is a law by which contracting officers must follow an ethical code of conduct.

"It is true that there is already a standard of conduct under HRS Ch. 84, which is administered and enforced by the State Ethics Commission. However, in the event that there is ever an improper procurement or contracting issue, the purpose of this bill is to ensure that the Procurement

Policy Board has some authority to declare that there was a violation, and not have to merely rely upon their own adopted rules, which at this point, lack any statutory basis.

"The expectations detailed in this measure will help ensure that the public has confidence in government and its leaders by requiring impartiality and independence when contracting out government work. I urge my colleagues to support this measure."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2283, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC PROCUREMENT," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 643-10) recommending that H.B. No. 2698, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2698, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise with reservations on this bill, Stand. Com. Rep. No. 643-10, House Bill 2698. And as I said before, thank you so much for your patience as this is very important to do the business of the State. I'm glad that everyone is being patient with the Minority as we speak up on these bills that we think aren't going to be good for Hawaii, or as we give it some direction to make it better.

"The purpose of this bill is to position Hawaii for global competitiveness in the 21st Century by establishing the Hawaii Broadband Commission and the Hawaii Broadband Commissioner to increase access to broadband communications for all households, businesses, and organizations throughout the State.

"Mr. Speaker, there was a lot of work that was done to bring forth a bill that would truly make a difference for broadband in Hawaii. In December of 2008 the Hawaii Broadband Task Force issued its final report with recommendations to improve Hawaii's access to broadband technology. Remember: that report noted that the State of Hawaii ranked 50th in broadband connection speed in the United States.

"I also want to remind you that this is a strong issue for the President of the United States, knowing when you're talking about being globally competitive, that you want to be able to be on the cutting edge. It's a pretty sad state where America is globally, being that we are a strong nation, as well as where we rank in Hawaii.

"Now I realize that the bill, I think last year's bill, House Bill 984, is in Conference and it enacts the recommendation of the task force more thoroughly. Now for whatever reason I don't know, that didn't move forward. What I will say is that I'm going to support this with reservations because I think we can do a better job. We need to do a better job. As the world moves forward we have to keep up, and I think this is a very important issue, and I hope that the Senate and the House can get their act together so that we cannot be ranked 50th in broadband connection speed in the United States."

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

"Thank you very much, Mr. Speaker. I am in support. It's very interesting. I can appreciate the reservations of the previous speaker, but the fact of the matter is the bill that was in Conference last year had one thing in common. Every business entity involved hated it because they said it put mandates on them. It basically was empowering bureaucratic government and would stifle investment and competition in the broadband infrastructure in Hawaii.

"I had provider after provider, business entity after business entity, come to see me to say that this bill goes way overboard. It empowers government and it will scare away investment and opportunity.

"The idea behind this bill is to set up the regulatory framework or the framework of the commission and the commissioner. Let them work with the business community. And let them come back to us with recommendations on regulatory powers and other issues. Issues that will take a lot of time and input to get resolution on, rather than us micromanaging policy from a legislative point of view.

"You're right. There is a bill in Conference, Mr. Speaker. But this bill approaches a fresh revenue-neutral approach, pardon my French, to this issue. Let's set up the framework. Let's let them work with business and government, and let them come back to us and say, 'These are the things that you as a Body need to consider to really move broadband forward into the 21st century.'

"So this is an approach to bring business to the table and have their concerns met, instead of that being shoved completely to the side. We want to encourage investment. We want to encourage more opportunity in Hawaii and that's what this bill does. It's a vehicle to bring business to the table. To work with them as a partner instead of dictating to them certain terms that only one branch of government, or one agency wants. Thank you very much, Mr. Speaker."

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

"Mr. Speaker, I rise in support of this measure. Mr. Speaker, I think this bill has arrived. It's timely, it's important. It's not as big a deal as it was last year, but it's a great beginning. And I want you to know that I was on the Broadband Task Force. The Chair of Finance, myself, and a number of other people from the community.

"And even though the previous speaker from Maui did say that the private sector had a lot of problems with it, it was partially because there was a lack of transparency on their part. While we were meeting month after month, after month, after month, they held their cards so close to their chests. It was a real surprise when all those hearings kind of blew up in our face.

"But I also want to share that we have got to get serious about our speed. Not only because the November of 2011 is when APEC is coming and the whole world will be watching us, but we are so far behind that we've got to catch up so our kids can stay up to speed.

"One anecdote I will share Mr. Speaker, as a member of the Broadband Task Force, we were all excited that we heard Google was laying a cable between the US and Asia. After we got excited, however, we got so disappointed because we learned that Hawaii was going to be bypassed because we were so complicated to deal with, with the way government regulations, the way postponement and time and money were involved. Google just went right around us.

"So we have to be serious about broadband. We have to be serious about giving a sense to the private sector that we're serious about doing business. That we're open for business. I noticed that some people chuckled when the piece about Hawaii's standing among the states has increased under the Governor. Clearly it has. Her statement that we are now open for business still stands. And with that, this broadband issue is a very high part of the administration. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2698, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TECHNOLOGY," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 644-10) recommending that H.B. No. 2945, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No.

2945, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 647-10) recommending that H.B. No. 2902, HD 2, as amended in HD 3, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2902, HD 3, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC EDUCATION GOVERNMENT TELEVISION," passed Third Reading by a vote of 51 ayes.

At 4:48 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 1921, HD 2  
H.B. No. 1926, HD 2  
H.B. No. 2283, HD 2  
H.B. No. 2698, HD 2  
H.B. No. 2945, HD 2  
H.B. No. 2902, HD 3

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 648-10) recommending that H.B. No. 2301, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2301, HD 2, pass Third Reading, seconded by Representative Evans.

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

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

Representative Keith-Agaran's written remarks are as follows:

"Thank you Mr. Speaker. I support H.B. 2301, H.D. 2 which creates a pilot project to transfer jurisdiction of the maintenance of State Highways on Maui, Lanai and Molokai from the State Department of Transportation ("SDOT") to the Highways Division, County of Maui Department of Public Works ("Highways Division").

"The Final Report of the Task Force on Reinventing Government (January 2010) recommended transferring Neighbor Island State DOT personnel to the respective county department and consolidating work there. The Report further suggested: "The reorganization would eliminate redundant personnel, improve coordination between the DOT and the counties, and enable county departments to reach economies of scale. The Subcommittee [on Transportation] suggests that this idea be tried on a pilot basis, starting with the island of Maui." Final Report, p. 14.

"While there may be differences in opinion regarding whether there will be any efficiency savings – given the difference in the age and development standards governing existing county roadways and State Highways and challenges from the current dependence on oil taxes for maintenance of existing roadway infrastructure by both the State and the counties – testing the notion that eliminating apparently overlapping functions between the State and county will be an improvement is worth discussing and pursuing.

"Currently the State DOT maintains roadways developed under modern standards imposed by the federal government and financed in large part with federal aid. The counties, including the Maui Highways Division, perform some of the same highway maintenance duties on former State highways, public roads and private roads designed and built in pre-Statehood days, as well as certain Federal Aid roadways constructed in recent decades. The pilot project will continue State oversight of the

financing for state-wide projects while allowing Maui Highways Division to manage the day to day functions of roadway maintenance on Maui, Lanai and Molokai. The Task Force suggested Maui County as a pilot since the Highways Division already cooperates with the State in maintaining certain State-owned roadways on Molokai and East Maui and provides maintenance of all traffic signals on Maui.

"I understand the reluctance of the County of Maui to wholeheartedly undertake this proposed pilot project, and the caution of my colleague from West Maui regarding his experience with the responsiveness and effectiveness of the Highways Division and Department of Water Supply crews in his community. There are questions about the adequacy of resources that will be made available during the course of the Pilot Project, including, but not limited to the relationship of the State DOT employees to the Highways Division supervisors during the five years. I would hope the details can be worked out between Maui County and the State DOT in good faith to test whether a stronger County maintenance agency makes government more efficient.

"I urge my colleagues to vote in favor of this bill."

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

"Thank you very much, Mr. Speaker. In support with reservations. Just some brief comments. I appreciate the intent behind this measure and that the resources will be going from the State to the County of Maui. It's just that real world application of the law is that in Maui, particularly in my district, the State Highways Division is much more responsive than the County has been.

"Case in point. We had a degraded shoulder roadway. One call to the State DOT and a crew was out there the next day. Meanwhile a pothole the size of the Grand Canyon was on Wharf Street, which is a county street. Three months of phone calls, letter writing, went to no avail. Finally what had to happen was a contractor, off of work, late at night, had to come in and basically put asphalt in the pothole to repair it. The irony was that the contractor just got off working a State DOT job.

"So I think that by moving it to the County here, I think it will kind of be counter-productive. I think the State has been much more responsive in dealing with these issues at our level. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2301, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TRANSFER OF STATE HIGHWAYS," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 649-10) recommending that H.B. No. 2370, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2370, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker. I rise in opposition to this bill. This is job-killer bill number 3 for the Session. It raises the rental fee from \$1 a day to \$4.50. My remaining remarks, may I put them into the Journal? Thank you."

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am presenting written comments in opposition to HB 2250 [sic], Relating to Transportation. This bill is a job killer. It raises the rental motor vehicle customer facility charge to \$4.50 per day from \$1 per day. We can't afford the potential hit to our tourism industry.

"Generating additional funds to construct a new rental facility is a good goal. Airport renovation should be a priority, especially because of APEC in 2011. But we need to find the money elsewhere. This is a bad time to raise fees. We can't afford the potential hit to our tourism industry.

"This Legislature has used every excuse to raid funds this Session. There's no reason not to expect that the money this bill is supposed to generate won't be raided as well and just end up in the general fund instead of where it's supposed to go.

"For these reasons, Mr. Speaker, I oppose HB 2370."

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

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2370, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Third Reading by a vote of 46 ayes to 5 noes, with Representatives Brower, Marumoto, Pine, Thielen and Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 650-10) recommending that H.B. No. 2604, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2604, HD 2, entitled: "A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER LICENSING," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 651-10) recommending that H.B. No. 2667, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2667, HD 2, pass Third Reading, seconded by Representative Evans.

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

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

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

"All right Mr. Speaker, it seems that I'm compelled to speak on this Ferry bill. This is merely a study to determine the feasibility of the State or some other agency, a private, non-profit or other agency, operating the ferry throughout the State. So this is just the first step.

"We're a long way from having a ferry system in the State of Hawaii, even though I firmly believe that the State needs to be linked by a ferry, providing an alternative to travel for business, for pleasure, for families, and etc.

"And it's long overdue. This goes way back to, I believe to the '60s and '70s. In fact, our Finance Chairman's father, Bob Oshiro, a legend in the State of Hawaii, as a former Representative and leader, promoted the ferry years back. So did Senator Hulten, and it failed. But let's hope that now that we can carry on with this legacy to link the islands together through a ferry. Thank you very much, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. I just want to give a quick explanation on my reservations. Mr. Speaker, I think the only reservation that I have is, I agree with the statewide ferry system, but we had a private company that was here. Now we're looking at studying either doing it as the State or a

private company. And really, I just don't want it to end up being the State that has to do this and deal with this issue. Thank you."

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

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

"Mr. Speaker I rise in support of this measure. This measure requires the Department of Transportation to conduct a study to determine the feasibility of establishing a statewide ferry system and a Hawaii State Ferry System Authority as the primary agency for oversight and regulation of the ferry system.

"Currently in Hawaii there is only one way to move people between the islands – air transportation. For cargo there is air transportation and slower moving barges. It is somewhat odd that a state whose counties and people are separated by the Pacific Ocean still does not have a form of water transportation system that can move people and goods in a quick, efficient, safe and economically feasible manner.

"When this measure was heard by the Finance Committee, numerous organizations and individuals opposed the concept of a state-run ferry system and sent in their comments stating such. However, many of those who opposed did so based on what occurred during the 2007 Hawaii Superferry fiasco. This measure requires DOT to study the feasibility of establishing a statewide ferry system before even implementing one. Just because a study is conducted does not mean a public system will be established. The study could also be a useful tool for the State or to a private company wanting to come in to establish a ferry business.

"Although not stated in the bill itself, if a ferry system is developed (either publicly or privately), an EIS will be conducted to avoid what occurred with Hawaii Superferry back in 2007. It would be crazy not to conduct one.

"Finally Mr. Speaker, during the latter half 2007 and early 2008, the Hawaii Superferry attempted to provide the residents of Hawaii with high speed ferry service between Oahu, Maui, Kauai and the Big Island; however, it ran a foul due to the Administration's mis-ruling that allowed the company to commence operations prior to conducting an Environmental Impact Statement. The company eventually left the State due to its inability to operate and generate revenue while an EIS was being conducted. While we may never know if the Hawaii Superferry would have been a reliable mode of transportation or a profitable venture, we should not let that unfortunate experience be the final word on whether or not a ferry system should be implemented in the State.

"For the aforementioned reasons, I urge my colleagues to support this bill."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2667, HD 2, entitled: "A BILL FOR AN ACT RELATING TO FERRIES," passed Third Reading by a vote of 51 ayes.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 653-10) recommending that H.B. No. 2582, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2582, pass Third Reading, seconded by Representative Evans.

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

"Thank you Mr. Speaker, in opposition. Mr. Speaker, there're a few moving parts on this bill, but basically my concern with this measure is if enacted, it could allow commercial vessel activity in some of our small boat harbors throughout Honolulu. And that means less recreational space for boating enthusiasts.

"Recreational boaters come from all over the State to participate in outdoor activities at these local harbors. We currently have empty commercial space in Honolulu that we can't fill. So why create more commercial slips at the detriment to residents who use these boating facilities and want the space.

"To start commercializing our small boat harbors means to start reducing our outdoor activity options for families, young people, and the boating lifestyle community. There are several small boat harbors throughout the State where commercialization currently isn't being threatened, but may soon be if bills like this begin to pass the House.

"Lastly on this measure, should commercialization happen to the Ala Wai Small Boat Harbor, this could determinately affect people who use Ala Moana Park for outrigger canoe races, and those are members of our community who come from all over the island of Oahu. They may have less freedom and activities to participate in because of commercialization. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2582, entitled: "A BILL FOR AN ACT RELATING TO VESSELS AT ALA WAI AND KEEHI BOAT HARBORS," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Berg and Brower voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 657-10) recommending that H.B. No. 2306, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2306, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you. In opposition, Mr. Speaker. It's not that I begrudge anybody getting paid the, I think its \$230,000 to be Superintendent of Education. I'm sure there're several deserving people. But I just want to make sure that the Board of Education considers this a ceiling and then reward people for the work that they have done for their abilities, demonstrated abilities, rather than starting out with a very high salary, which we did in the case of the previous two Superintendents of schools.

"I think they did a pretty good job, but I think you just don't start out with a raise. We must keep in mind that \$230,000 is quite a bit, and our Governor after pay cuts is making only \$119,000. So that's my reservation."

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

"Thanks, Mr. Speaker. On Stand. Com. Rep. No. 657, I just have short comments in opposition. Mr. Speaker, the reason why I'm against this is not necessarily because of how much we want to pay the Superintendent or the next Superintendent. The issue to me is, we have teachers and we have principals in the system, as well as other employees of our State system who right now are under furloughs or pay cuts, and they have very important jobs. I think the morale is pretty low, and what we need to do is not give indication that we are willing to pay someone else a higher amount.

"The other thing is, there are examples such as HHSC, I think the position is called the Executive Director, someone below that position is actually stepping up, not getting paid the amount. They are working two positions, but not getting paid the salary of the Executive Director or whatever the position's name is. Not getting paid the higher amount.

"I think DBEDT also has that situation, and there're situations like that all over in State government. The Board actually approved not only the Acting Superintendent, but approved that that position would get paid the Superintendent's position cost.



"So when we're talking about these situations, we've got example after example of where people are just doing more work, their morale is low. And then we're going to go ahead and say, again under the premise or under the flag, that education is so important to us, which I believe all of us agree, that we're going go ahead and say you can make this certain amount and it's okay. Thank you."

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

"Thank you very much, Mr. Speaker. I guess in support. You know, this bill has been introduced in the past. It never went anywhere. I hear the concerns expressed by the Representative from Kahala-Kaimuki. As we well know, we set the statutory limit for the Superintendent nine years ago, going on ten, at \$150,000. Then, when the new then Superintendent got the job, the Board, in their infinite wisdom, gave the Superintendent that salary. So as a result the Superintendent who just retired never got a raise because it was a statutory limit to that.

"I think it begs a larger question in our government, whether or not salaries should be set by law, should be set by some floating number that's tied to collective bargaining, or set by a salary commission of some sort. As you well know Mr. Speaker, directors and deputy directors, the Governor and Lieutenant Governor, and all of our salaries are set by a Salary Commission. Now whether or not the Superintendent and other similar positions in government should be set likewise I think is a debatable question that we should discuss.

"With that said, taking the current salary, I think we all know of the top 25 school districts in the country, the Superintendent of the State of Hawaii actually gets paid by far the lowest salary indeed. If you look to the State of Illinois, the top 10 superintendents in that State make over \$300,000.

"And the argument that the Governor makes less, I frankly think is a specious one. The UH President makes more than the President of the United States. I mean, I don't know what the correlation to that is. And don't get me started about football coaches across the country. But that's beside the point.

"The point is that whether or not, if we want to attract someone that will do a great job in our public school system, whether or not that salary is a competitive one. And remember now, unlike the Governor or the President, this is someone that we want to recruit nationwide and hopefully we can get the best candidate. At that salary, I can assure you, it is not a competitive salary, and that old maxim that you get what you pay for may play itself out in this situation. Thank you."

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

"Yes Mr. Speaker, in opposition. You know that timing is everything and just as the timing of our pay raises was really a bad timing, I think it's really a bad time to be discussing such a large pay raise for the head of our education in the State of Hawaii.

"It's just that so many people in our districts are just suffering so much. And to hear that something like this is still being discussed to give a large pay raise to someone, whoever that may be, is just something that's hard to take for some of my constituents, I know that.

"As a place that has one of the highest foreclosures in the State, this is just something that they would rather us not be talking about right now. They'd rather us be focusing on how to help them keep jobs, and perhaps to help them to keep their homes."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2306, HD 2, entitled: "A BILL FOR AN ACT RELATING TO SALARIES," passed Third Reading by a vote of 42 ayes to 9 noes, with Representatives Awana, Cabanilla, Ching, Finnegan, Marumoto, McKelvey, Pine, Thielen and Ward voting no.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 659-10) recommending that H.B. No. 2670, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2670, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Berg and Cabanilla voting no.

At 5:04 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2301, HD 2  
H.B. No. 2370, HD 2  
H.B. No. 2604, HD 2  
H.B. No. 2667, HD 2  
H.B. No. 2582  
H.B. No. 2306, HD 2  
H.B. No. 2670, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 660-10) recommending that H.B. No. 2318, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2318, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker. Very briefly. I'm in opposition to this, Mr. Speaker. It again proposes to raise the Conveyance Tax on homes, and homes are so expensive in Hawaii. Yes, this is targeted at the top tier of homes, but it's blank so I don't know where the ax will fall. I could assure you, I'm sure my folks in Kaimuki even have million dollar lots because of the favorable location. I just think we raised the conveyance tax enough last year. We're doing it this year, and what's going to happen next year. Thank you."

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

"Thank you, Mr. Speaker. I'm also in opposition and I'll try to keep it short since I know it's late. Thank you. We're experiencing a period of unprecedented economic difficulty. Everyone in this building I suppose wants to help the homeless. Everyone in this building understands the pain they go through, especially homeless children.

"And I'm understanding that we, as government, need to provide some help. But one of the best resources that help the homeless and help our State are those that give to philanthropy, philanthropists.

"Different studies have stated that between 60% and 80% of all charitable donations come from those who are making \$200,000 a year. And if you want to see what the effect this kind of tax increase has, look to New Jersey. A study by Boston College's Center on Wealth and Philanthropy, *Migration of Wealth from New Jersey*, looked at this from 1999 to 2008. It found out in the decade's first half, New Jersey experienced substantial increase in both household wealth and charitable capacity, otherwise known as expected giving. And during those years the Garden State enjoyed a \$98 billion net influx of capital due to those households moving to the State. Enjoying again a corresponding \$881 million increase in charitable capacity.

"It was blooming. The Garden State was blooming. The trend then reversed. From 2004 to 2008, author John Havens found a large decline in the number of wealthy households that entered New Jersey, as well as a moderate increase in outflow of those households. A net decline of \$70 billion of wealth and expected giving left. A net outflow of \$1.132 billion.

"So what happened? The study doesn't purport to explain the wealth movement but the State's most notable economic policy that year was the increase targeted at the wealthy. Similar types of taxes, sending them that way.

"Mr. Speaker, we tax these charitable people that give a lot to those things we enjoy, and now more than ever for those non-profits, we need their help. We need their help. So we just again I'm hoping that our message is not that we don't want their help."

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

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

"Yes, can I have a ruling on a potential conflict? I occasionally work for a homeless shelter. Thank you," and the Chair ruled, "no conflict."

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

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

"Mr. Speaker, in support of HB2318. Housing first programs have been successful in many cities across the nation. The concept is to get homeless persons into decent housing first, and then address the problems they might have with alcohol, drug use or other social diseases. This method gives the person a sense of identity, security and dignity from which they can work towards solving their problems.

"Sometimes problems may arise with the location of such housing and as happened in Honolulu. Neighbors may protest. However, the concept is worth a try, as what we are doing now is clearly not working. A pilot project that demonstrates positive results may change people's minds. I urge the Members' support."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2318, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE HOMELESS," passed Third Reading by a vote of 33 ayes to 16 noes, with Representatives Berg, Brower, Ching, Coffman, Har, Keith-Agaran, C. Lee, Luke, Manahan, Marumoto, McKelvey, Nishimoto, Pine, Takai, Ward and Wooley voting no, and with Representatives Bertram and Finnegan being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 661-10) recommending that H.B. No. 2250, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2250, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm rising in opposition to this bill. Thank you. We don't often speak against uniform bills, but this one has some big problems. Nearly half of the states have declined to pass this uniform legislation and I'll explain why.

"The Uniform Child Abduction Prevention Act was originated to address the issue of international abductions to non-Hague countries. I think that many of us have a passing familiarity with cases that have made national news.

"But the problem is that during the drafting process, amendments were added and the final version promulgated by the Uniform Law Commission back in 2006 was expanded to address both domestic and international child abductions. That increase in the scope of the uniform law and the ability for abusive spouses to use this law to their advantage is my reason for opposition to this bill.

"I'm going to insert comments from a local physician, who practices on King Street. He said:

"For almost 10 years I've watched my wife, who left an abusive marriage back in 2000, struggle even now to keep the kids and herself safe from her obsessed ex-husband. I'll tell you exactly what's going to happen if you allow this bill to go through. You'll see a bunch of wife beaters and child abusers asking for this petition to "prevent abduction." They'll have sad and convincing stories and their wives will all be mentally ill, a danger to their children and a flight risk. This is just another way for the wife beaters to mess with their wives who left them for good reason. But the judges aren't going to look at that - they'll focus on the petitioner because "he has rights" and he'll be there filing this petition. Then they're going to issue a warrant to take physical custody of the child and be allowed to make a forcible entry at any hour to do this? Grabbing kids from their beds in the middle of the night. And it does not help the parent who is trying to keep the child safe from abuse."

"Section 7 of the Act lists out the factors that the court must consider in determining whether there's a credible risk of abduction of a child. Granted, during the intent of the Uniform Law these factors may appear benign, but look at these factors from a real life perspective.

"The perspective of an abused spouse, a spouse that fears for her life, and the life of her child. Factors viewed from the perspective of the abused and perspective spouse are not so benign. For instance, if the abused spouse is not originally from Hawaii, they may certainly, "lack strong familial, emotional or cultural ties to Hawaii." That certainly would be the case if the abusive spouse prevents the abused spouse from having friends, going out, etc., to exercise control over the abused spouse.

"An abused wife originally from out of state will be doubly impacted because it's also likely that that wife has family or some property in another state giving them, and I quote, "strong familial, financial, emotional, or cultural ties to another state." Which are another set of factors that the court is mandated to review.

"Another dynamic may be that the abused wife has tried to escape the abusive situation with the child, only to be stopped by the controlling abusive husband. Absent a divorce or emancipation orders, spouses, abusive or otherwise, have custodial rights to a child. Because of the custodial rights, attempted flight ..."

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

Representative Thielen continued, stating:

"Thank you. Attempted flight in the situation described above would be treated as an abduction by the definitions of this Act and previous attempts to escape or previous threats to escape will be held against the abused wife.

"Also under this Act, seeking to obtain the child's birth certificate, school, or medical records can be viewed as indicative of a planned abduction. And these are activities that parents engage in all the time.

"Not all uniform laws are good laws and that's why just as many states have declined to adopt this Uniform Law as adopted it. I received numerous emails from women who have had this used against them. And while we're trying to do something positive, I say instead that what this Uniform Law does, actually allows abusive husbands to use this against their abused wives and take the children away from those women.

"I would ask all of us to look at this. I wish the Women's Caucus had weighed in on this much earlier. I don't think the bill would have made it to the Floor, if we had. That those of us who are in the Women's Caucus I hope would look at this bill and realize that this is not what we should do. To put these abused women and their children at risk. And let the perpetrators of that abuse take those children away using this law. Thank you, Mr. Speaker."

Representative Souki rose to a point of order, stating:

"Mr. Speaker, point of order. She's not looking at you. She's instead looking at me."

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

Representative Karamatsu's written remarks are as follows:

"I rise in support. The purpose of this bill is to enact the Uniform Child Abduction Prevention Act, which was designed to determine the risk of a child being abducted by a parent, and establishes measures to prevent abductions before and after child custody determinations. Under this Act, courts are authorized to issue an abduction prevention order to, among other things, limit travel, or restrict visitation, and issue a warrant to take physical custody of the child. Thank you."

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

Representative M. Lee rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, I would like to speak in support, with some concerns. The objective of the Uniform Child Abduction Prevention Act is simple: to prevent abduction of children by a parent or others acting with them. Child abduction is a serious problem and according to the National Center for Missing and Exploited Children, in 1999 more than 260,000 children were abducted. 78% of these children were abducted by a family member.

"I think all of us remember the case of the boy that was taken by his mother to Brazil. After she died, there was a problem of his father getting him back. Families going through custody disputes and divorce proceedings are the highest risk group for potential abduction.

"What I'd like to bring to the attention of the Members and to you Mr. Speaker, is that I've learned the Uniform Law Commission understands the concerns of domestic violence advocates and they are working with local advocates to add language used in other states to assuage this problem.

"And so I think this is a work in progress. I think it's a worthy issue and that we should let it continue and see how it works out into this Session. If there are the concerns that the Representative from Kailua brings up, then that will certainly be addressed. Thank you."

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

"Mr. Speaker, in opposition and I would just like to have the words of the Kailua Representative taken as my own since she expressed her argument very well. Thank you."

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

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

"Thank you Mr. Speaker. In support with reservations. My reservation is that we have not heard from the Missing Children Clearinghouse on this bill. And they're the ones that deal with this issue on a day-to-day basis. I have served on their Board. My wife currently serves on their Board. They're attached to the Attorney General, and the Attorney General said that they could not testify at the hearing. Thank you."

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

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

"Mr. Speaker, in support. If I could have the words from the speaker from Mililani as my own. And to say that it is a work in progress, but we're looking for them to get to an agreement. Thank you, Mr. Speaker."

Representative Thielen rose to respond, stating:

"My second time, Mr. Speaker. Thank you. Mr. Speaker, I would like to have permission to insert in the Journal a statement from the Hawaii State Coalition Against Domestic Violence, which is in full opposition to House Bill 2250, House Draft 1.

"Mr. Speaker, they're stating again their concern that the impact that this bill may have on victims of domestic violence who are attempting to protect themselves and their children by fleeing an abusive partner. Why would we go ahead with something that could help those abusers take children away from the abused wife? Thank you. And if I may have your permission to insert that in the Journal? Thank you."

Representative Thielen submitted the following remarks:

"TO: Chair Karamatsu, Vice Chair Ito and Members of the Committee

FR: Jane Seymour, Hawaii State Coalition Against Domestic Violence

Hearing date and time: Tuesday, February 9, 2010 at 2:30pm

RE: Opposition to HB 2250 HD1: Relating to the Uniform Child Abduction Prevention Act

Aloha, my name is Jane Seymour and I am representing the HSCADV, a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV opposes HB 2250 HD1

While the HSCADV understands the intent of this bill, we have some serious concerns about the impact that this bill may have on victims of domestic violence who are attempting to protect themselves and their children by fleeing an abusive partner. Several studies have shown that many men who abuse their wives, also abuse their children. Additionally, batterers have consistently learned how to utilize the judicial system and child custody proceedings to continue to terrorize and abuse their partners.

Currently, HB 2250 HD1 lists several factors to be used in determining whether there is a credible risk of abduction, including a previous abduction, attempted abduction or threatened abduction (page 5, lines 15-17). Victims of domestic violence often flee from their abuser several times during the course of an abusive relationship, staying at emergency shelters or with friends and family. Under the current proposal, if a woman flees with her children to escape domestic violence, this action could later be used against her if her batterer argues that when she fled the abuse she abducted the children by leaving without his permission.

Another concern that the HSCADV has is the listing of activities that may indicate a planned abduction. The list includes, abandoning employment, terminating a lease or selling a house, certain financial transactions including closing or changing bank accounts, and obtaining medical and school records. These activities all describe typical actions of a victim of domestic violence who is leaving her abuser and seeking safety for herself and her children. Oftentimes, a woman must change her entire life, including where she lives, works, does errands, and where her children attend school, in order to remain safe from her abuser.

Additionally, while there is a provision in this bill that requests the court to consider "evidence of domestic violence, stalking or child abuse or neglect," it does not specify what evidence would be considered sufficient. Many victims of domestic violence do not seek medical attention, file police reports, or have other such supporting documentation. Many times they are too scared or embarrassed to seek help from professional or governmental organizations, and so the domestic violence goes undocumented.

Finally, victims of domestic violence may appear to be un-compliant with a custody order, which, in the current bill, is also a determinate of whether there is credible risk of abduction. While we recognize that non-compliance with custody and visitation orders is a problem, batterers have historically used visitation exchanges and custody issues to continue to abuse their former partners. A woman who is a victim of domestic violence may appear to be non-compliant, when instead she is simply attempting to protect herself and her children from further abuse.

We feel that this bill could negatively impact victims of domestic violence and their children, while unintentionally providing batterers with another opportunity to utilize the court system to further abuse their former partner.

Thank you for the opportunity to testify."

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

"Thank you, Mr. Speaker. I just want to note my strong reservations on this bill. Thank you."

Representative Mizuno rose in response, stating:

"Mr. Speaker. In defense of this measure and in support. In defense of this measure, at the Human Services hearing, I did talk to the representatives for the Victims of Domestic Violence and we asked them to come up with something to work with the stakeholders, the ones that supported this measure. Unfortunately, we didn't get anything back. It's our understanding that they are trying to work with them, but the clock was ticking and I had to move it out of Committee. So I support this measure and I'm hopeful that they will work together on a clean bill. Thank you, Mr. Speaker."

Representative M. Lee rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

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

"Mr. Speaker, I rise in favor of the measure which seeks to establish a uniform child abduction prevention law.

"Uniform laws are established to make interstate legal proceedings more efficient and to apply the same standards across the States. The Commission on the Uniform Laws is aware of the concerns expressed by the domestic violence advocates and intends to work with them to create acceptable language. This bill has an important place in the arsenal of laws to protect children, especially from international abduction.

"I am hopeful the concerns will be resolved and support its passage to the Senate."

Representative Belatti rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Belatti's written remarks are as follows:

"I rise in support, but with serious reservations for HB 2250, HD 1. Although House Bill 2250, HD1 appears to have a noble purpose of preventing child abductions, concerns raised by the Hawaii Family Forum, the Roman Catholic Church, and the Hawaii State Coalition Against Domestic Violence raise serious questions about the bill's unintended consequences such as the criminalizing of ordinary parenting acts, impeding parents' right to travel between or even within states, and the use of this proposed measure to harass victims of domestic violence.

"Another pause for concern is the noticeable absence of testimony from the Prosecutor's Office, the Office of the Public Defenders, and family law practitioners who would have specific insights into whether current laws adequately address abduction cases. Finally, the fact that only eight states have enacted this uniform law since its promulgation in 2006 suggests that

this uniform law may not be a good fit with our current laws governing child custody. For these reasons, while I support the intentions of HB 2250, HD1, I am hopeful that as it continues through the legislative process, these concerns will be addressed before final passage of this bill."

Representative Ward rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am presenting written comments in opposition to HB 2250, Relating to the Uniform Child Abduction Prevention Act. The bill is well-intentioned, but problematic. It flags common and ordinary parental acts as risk factors for child abduction and makes it harder for domestic abuse victims to escape from their abusers and protect their children.

"A parent picking up his or her child's school records, medical records or birth certificate gets flagged as a potential child abductor, based on this bill. Things like quitting or being fired from a job, or closing a bank account are ordinary. And some factors, like a lack of strong emotional ties to Hawaii, are not well defined.

"Other factors can get women escaping from abusive husbands into legal trouble and make it harder for them to protect their children. The bill's factors to determine risks of abduction list everything that registrants in the Social Security Administration's "New Numbers for Victims of Domestic Violence" program are advised to and must do. Going through a government approved and sanctioned Identity Change Program for domestic violence victims would flag those victims as potential child abductors.

"For these reasons, Mr. Speaker, I oppose HB 2250 HD1."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2250, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM CHILD ABDUCTION PREVENTION ACT," passed Third Reading by a vote of 42 ayes to 7 noes, with Representatives Berg, Ching, Marumoto, McKelvey, Pine, Thielen and Ward voting no, and with Representatives Bertram and Finnegan being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 662-10) recommending that H.B. No. 2091, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2091, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MEDICAID ELIGIBILITY," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Finnegan being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 663-10) recommending that H.B. No. 2774, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2774, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HUMAN SERVICES," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Finnegan being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 665-10) recommending that H.B. No. 1205, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 1205, HD 1, entitled: "A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO TAX INCREMENT BONDS," passed Third Reading by a vote of 48 ayes to 1 no, with Representative Thielen voting no, and with Representatives Bertram and Finnegan being excused.

H.B. No. 1205, HD 1, passed Third Reading in the following form:

**H.B. No. 1205, HD 1**

A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO TAX INCREMENT BONDS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The purpose of this Act is to propose amendments to the Hawaii Constitution to expressly provide that the legislature may authorize political subdivisions, such as the counties, to issue tax increment bonds.

The legislature recognizes that the definition of "tax increment bonds" under this Act is broader than the conventional definition. The legislature has purposely broadened the definition to provide political subdivisions with flexibility in the use of tax increment bonds for financing infrastructure and other improvements. Under the conventional definition, the debt service on tax increment bonds is payable from the real property tax revenues derived from the incremental increase in real property value resulting from the construction of infrastructure.

This Act broadens the definition of "tax increment bonds" to also include those bonds, the debt service of which is payable from the real property tax revenues derived from the incremental increase in real property value resulting from county action, such as the rezoning of an area.

SECTION 2. Article VII, section 12, of the Hawaii Constitution is amended to read as follows:

**"DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

**Section 12.** For the purposes of this article:

1. The term "bonds" shall include bonds, notes and other instruments of indebtedness.

2. The term "general obligation bonds" means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds.

3. The term "net revenues" or "net user tax receipts" means the revenues or receipts derived from:

- a. A public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of the public undertaking, improvement or system, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made; or
- b. Any payments or return on security under a loan program or a loan thereunder, after the costs of operation and administration of the loan program, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made.

4. The term "person" means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

5. The term "rates, rentals and charges" means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder; provided that insurance premium payments, assessments and surcharges, shall constitute rates, rentals and charges of a state property insurance program.

6. The term "reimbursable general obligation bonds" means general obligation bonds issued for a public undertaking, improvement or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to

the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

7. The term "revenue bonds" means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law, including a loan program to provide loans to a state property insurance program providing hurricane insurance coverage to the general public.

8. The term "special purpose revenue bonds" means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law.

9. The term "tax increment bonds" means all bonds, the principal of and interest on which are payable from and secured solely by all real property taxes levied by a political subdivision, for a period not to exceed \_\_\_\_\_ years, on the assessed valuation of the real property in a tax increment district established by the political subdivision that is in excess of the assessed valuation of the real property for the year prior to the undertaking of specified public works, public improvements or other actions by the political subdivision within the tax increment district.

[9-] 10. The term "user tax" means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system; provided that mortgage recording taxes shall constitute user taxes of a state property insurance program.

The legislature, by a majority vote of the members to which each house is entitled, shall authorize the issuance of all general obligation bonds, bonds issued under special improvement statutes and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes [and], revenue bonds and tax increment bonds and shall prescribe the manner and procedure for such issuance. All such bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision.

Special purpose revenue bonds shall only be authorized or issued to finance facilities of or for, or to loan the proceeds of such bonds to assist:

1. Manufacturing, processing, or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public by not-for-profit corporations;
4. Early childhood education and care facilities provided to the general public by not-for-profit corporations;
5. Low and moderate income government housing programs;
6. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities; or
7. Agricultural enterprises serving important agricultural lands,

each of which is hereinafter referred to in this paragraph as a special purpose entity.

The legislature, by a two-thirds vote of the members to which each house is entitled, may enact enabling legislation for the issuance of special purpose revenue bonds separately for each special purpose entity, and, by a two-thirds vote of the members to which each house is entitled and by separate legislative bill, may authorize the State to issue special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature; and provided further that the State may combine into a single issue of special

purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized as aforesaid, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The legislature may enact enabling legislation to authorize political subdivisions to issue special purpose revenue bonds. If so authorized, a political subdivision by a two-thirds vote of the members to which its governing body is entitled and by separate ordinance may authorize the issuance of special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the governing body of the political subdivision. No special purpose revenue bonds shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person or persons under contract or from any security for such contract or contracts or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary."

SECTION 3. Article VII, section 13, of the Hawaii Constitution is amended to read as follows:

**"DEBT LIMIT; EXCLUSIONS**

**Section 13.** General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance. Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for 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. Any bond issue by or on behalf of the State may exceed the debt limit if an emergency condition is declared to exist by the governor and concurred to by a two-thirds vote of the members to which each house of the legislature is entitled. For the purpose of this paragraph, general fund revenues of the State shall not include moneys received as grants from the federal government and receipts in reimbursement of any reimbursable general obligation bonds which are excluded as permitted by this section.

A sum equal to fifteen percent of the total of the assessed values for tax rate purposes of real property in each political subdivision, as determined by the last tax assessment rolls pursuant to law, is established as the limit of the funded debt of such political subdivision that is outstanding and unpaid at any time.

All general obligation bonds for a term exceeding two years shall be in serial form maturing in substantially equal installments of principal, or maturing in substantially equal installments of both principal and interest. The first installment of principal of general obligation bonds and of reimbursable general obligation bonds shall mature not later than five years from the date of issue of such series. The last installment on general obligation bonds shall mature not later than twenty-five years from the date of such issue and the last installment on general obligation bonds sold to the federal government, on reimbursable general obligation bonds and on bonds constituting instruments of indebtedness under which the State or a political subdivision incurs a contingent liability as a guarantor shall mature not later than thirty-five years from the date of such issue. The interest and principal payments of general obligation bonds shall be a first charge on the general fund of the State or political subdivision, as the case may be.

In determining the power of the State to issue general obligation bonds or the funded debt of any political subdivision under section 12, the following shall be excluded:

1. Bonds that have matured, or that mature in the then current fiscal year, or that have been irrevocably called for redemption and the redemption date has occurred or will occur in the then fiscal year, or for the full payment of which moneys or securities have been irrevocably set aside.

2. Revenue bonds, if the issuer thereof is obligated by law to impose rates, rentals and charges for the use and services of the public undertaking, improvement or system or the benefits of a loan program or a loan thereunder or to impose a user tax, or to impose a combination of rates, rentals and charges and user tax, as the case may be, sufficient to pay the cost of operation, maintenance and repair, if any, of the public undertaking, improvement or system or the cost of maintaining a loan program or a loan thereunder and the required payments of the principal of and interest on all revenue bonds issued for the public undertaking, improvement or system or loan program, and if the issuer is obligated to deposit such revenues or tax or a combination of both into a special fund and to apply the same to such payments in the amount necessary therefor.

3. Special purpose revenue bonds, if the issuer thereof is required by law to contract with a person obligating such person to make rental or other payments to the issuer in an amount at least sufficient to make the required payment of the principal of and interest on such special purpose revenue bonds.

4. Bonds issued under special improvement statutes when the only security for such bonds is the properties benefited or improved or the assessments thereon.

5. Tax increment bonds, but only to the extent that the principal of and interest on the bonds are in fact paid from the real property taxes levied by a political subdivision on the assessed valuation of the real property in a tax increment district established by the political subdivision that is in excess of the assessed valuation of the real property for the year prior to the undertaking of specified public works, public improvements or other actions by the political subdivision within the tax increment district.

[5-] 6. General obligation bonds issued for assessable improvements, but only to the extent that reimbursements to the general fund for the principal and interest on such bonds are in fact made from assessment collections available therefor.

[6-] 7. Reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year.

[7-] 8. Reimbursable general obligation bonds issued by the State for any political subdivision, whether issued before or after the effective date of this section, but only for as long as reimbursement by the political subdivision to the State for the payment of principal and interest on such bonds is required by law; provided that in the case of bonds issued after the effective date of this section, the consent of the governing body of the political subdivision has first been obtained; and provided further that during the period that such bonds are excluded by the State, the principal amount then outstanding shall be included within the funded debt of such political subdivision.

[8-] 9. Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law.

[9-] 10. Bonds issued by or on behalf of the State or by any political subdivision to meet appropriations for any fiscal period in anticipation of the collection of revenues for such period or to meet casual deficits or

failures of revenue, if required to be paid within one year, and bonds issued by or on behalf of the State to suppress insurrection, to repel invasion, to defend the State in war or to meet emergencies caused by disaster or act of God.

The total outstanding indebtedness of the State or funded debt of any political subdivision and the exclusions therefrom permitted by this section shall be made annually and certified by law or as provided by law. For the purposes of section 12 and this section, amounts received from on-street parking may be considered and treated as revenues of a parking undertaking.

Nothing in section 12 or in this section shall prevent the refunding of any bond at any time."

SECTION 4. The question to be printed on the ballot shall be as follows:

"Shall the Constitution be amended to expressly provide that the legislature may authorize the counties to issue tax increment bonds?"

SECTION 5. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 6. This amendment shall take effect on July 1, 2020.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 668-10) recommending that H.B. No. 2429, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2429, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SEPARATION INCENTIVES," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Finnegan being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 669-10) recommending that H.B. No. 2937, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2937, HD 2, entitled: "A BILL FOR AN ACT RELATING TO COLLECTIVE BARGAINING," passed Third Reading by a vote of 44 ayes to 5 noes, with Representatives Ching, Marumoto, Pine, Thielen and Ward voting no, and with Representatives Bertram and Finnegan being excused.

At 5:25 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2318, HD 2  
H.B. No. 2250, HD 1  
H.B. No. 2091, HD 1  
H.B. No. 2774, HD 2  
H.B. No. 1205, HD 1  
H.B. No. 2429, HD 1  
H.B. No. 2937, HD 2

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 671-10) recommending that H.B. No. 2845, as amended in HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committee was adopted and H.B. No. 2845, HD 1, entitled: "A BILL FOR AN ACT RELATING TO LANDS CONTROLLED BY THE STATE," passed Third Reading by a vote of 46 ayes to 2 noes, with Representatives Hanohano and Keith-Agaran voting no, and with Representatives Bertram, Finnegan and Sagum being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 672-10) recommending that H.B. No. 2752, HD 2, as amended in HD 3, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that H.B. No. 2752, HD 3, pass Third Reading, seconded by Representative Evans.

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

Representative Har's written remarks are as follows:

"Mr. Speaker, I rise in strong support of House Bill 2752, HD3. This bill enacts the recommendations of the Ignition Interlock Task Force made pursuant to Act 171, Session Laws of Hawaii 2008.

"Act 171 was the result of House Bill 3377, a bill I introduced in 2008 after I was hit head-on by a drunk driver. An ignition interlock is a breathalyzer device that is attached to the ignition of the vehicle of a convicted drunk driver. In order to start his or her vehicle, the driver must blow into the device, and if the driver is over the legal blood alcohol content limit, the car will not start. A small camera ensures that the offender does not tamper with the device or have someone else blow into it. Act 171 provided the basic framework for an ignition interlock system in Hawaii and created a task force to address the implementation and administration of the program. The recommendations of that task force, of which I was a member, were incorporated into House Bill 981 in the 2009 Session, which was signed into law as Act 88, Session Laws of Hawaii 2009. House Bill 2752, HD3 will make final changes that will allow ignition interlock to go into effect in 2011.

"Through my personal experience, and because of the stories I've heard from countless people throughout the State about the devastating effects of driving under the influence, I believe strongly that this bill will make a significant difference and save lives. By increasing our options and enforcement methods against drunk driving – such as revoking driver's licenses for at least a year, requiring the installation of an ignition interlock device on any vehicle operated by the person, with the cost of installation, maintenance, and calibration paid for by the offender, and requiring community service work, prison time, and a fine – we send a message that drunk driving is an incredibly serious offense, even in those cases where no innocent bystanders are harmed.

"Vehicle ignition interlock systems are not a new highway safety concept – currently, only three states do not have ignition interlock laws. Because Hawai'i has the highest percentage of alcohol-related fatalities in the United States, the final implementation of ignition interlock through this bill is critical to further change the perception that drunk driving is at all acceptable. We must all accept individual responsibility by drinking within legal limits and urging others to do the same. The ignition interlock program will force people to think even harder about the daily consequences of driving under the influence – and will consequently save lives. That is why it is imperative to support this bill. Thank you, Mr. Speaker."

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

"Thank you. I am in support with reservations. I think that there is some objectionable language about the exceptions for driver's license sanctions for minors who violate the underage drinking statute. The words added, 'for other reasons when lack of alternative transportation presents an undue hardship,' may be a loophole that a teenager could drive through.

"So I think it essentially gives kids *carte blanche* to drive anytime, anywhere. They just have to come up with a reasonable excuse. They can already receive exceptions for driving to school and school-related activities, and employment.

"So I am a little concerned about this amendment, which applies to minors even with learning permits, provisional license, or full license. I

will be watching this particular measure very carefully as it moves through the Session. Thank you."

Representative Karamatsu rose and stated:

"Mr. Speaker, that bill is actually going to be on the next page. That is House Bill 2905."

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

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in strong support with reservations to H.B. 2752 H.D 2- which prohibits an individual from circumventing or tampering with the ignition interlock system if they are restricted to operate a vehicle with system.

"The ignition interlock system started as a Minority Caucus initiative. This is an important measure due to the Hawaii statistics that show how Hawaii has one of the highest rates in the Nation for fatalities due to inebriation and intoxication. I agree with the Department of Transportation that the passage of this measure is crucial, as it, "provides the missing details needed for the implementation" of Hawaii's ignition interlock program. Thank you."

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

"In strong support Mr. Speaker. In this Chamber we have passed a lot of legislation aimed at drunk driving and increased penalties, but as you see we still have a lot of casualties because of drunken driving. It's time to implement measures like this. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and H.B. No. 2752, HD 3, entitled: "A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY," passed Third Reading by a vote of 48 ayes, with Representatives Bertram, Finnegan and Sagum being excused.

At 5:28 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2845, HD 1  
H.B. No. 2752, HD 3

### THIRD READING

#### H.B. No. 674, HD 1:

Representative B. Oshiro moved that H.B. No. 674, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to HB 674, Relating to Hawaiian Affairs. Mr. Speaker, this bill crosses the line between this Body and the Office of Hawaiian Affairs. It sets a dangerous precedent of our reaching over into OHA's affairs, particularly to the core of their affairs, their budget. It tells them which projects that they are going to administer. It steps aside of their vetting process. It sets aside their strategic plan. It neuters the OHA Board of Trustees, which I had seen Oz Stender come earlier to see what we're up to.

"And lastly Mr. Speaker, this could have not only a repercussion for how we deal with them, vis-à-vis the Akaka Bill in the future, but it's a part that we may not even be doing justice to the beneficiaries. Do we know what their priorities are? Do we know better than OHA what the Hawaiian people need, if that's the reason why OHA is there? Office of Hawaiian Affairs. This Body is the office of many affairs, and many people, but yet we're reaching over and telling them what to do. I think it's a very

dangerous precedent. What we might be accomplishing by doing this, I think, we are going to lose by its outcome. Thank you, Mr. Speaker."

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

The motion was put to vote by the Chair and carried, and H.B. No. 674, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIAN AFFAIRS," passed Third Reading by a vote of 45 ayes to 3 noes, with Representatives Berg, Marumoto and Ward voting no, and with Representatives Bertram, Finnegan and Sagum being excused.

#### H.B. No. 2587:

Representative B. Oshiro moved that H.B. No. 2587, pass Third Reading, seconded by Representative Evans.

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

"Thank you. Quickly Mr. Speaker, I do rise in strong support for this measure, changing the Father Saint Damien Day from April 15 to the 10th of May. You know Mr. Speaker, Saint Damien is one of those icons of our State history. His selfless act of aiding and giving of his life for the people is one of the inspirational stories of Hawaii. And his legacy of commitment, compassion and sacrifice would be honored on this day.

"But his accomplishments on this day will also serve to remind us of the Catholic legacy, of which my district is known. Many may not know that Chiefess Liliha was a supporter of the Catholic faith and that her husband Chief Boki, Premier Governor of the Island of Oahu, was the first baptized Catholic ever in the Kingdom of Hawaii.

"Catholicism has been able to survive through great difficulties. It has many accomplishments, especially the establishment of the St. Louis High School, Cathedral School in my district, St. Francis Hospital, and the Catholic Charities which is also in my district. We're very proud in the community and Hawaii has much to be proud of. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2587, entitled: "A BILL FOR AN ACT RELATING TO SAINT DAMIEN DE VEUSTER DAY," passed Third Reading by a vote of 48 ayes, with Representatives Bertram, Finnegan and Sagum being excused.

#### H.B. No. 1868, HD 1:

Representative B. Oshiro moved that H.B. No. 1868, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to this measure. Mr. Speaker, this is about civil service. In particular it's about turning political appointees away, after they've served in their State position, they have to refrain from going back to being civil service. They have to wait out for one year.

"The basic premise here is that they have been political, therefore if they're politicized, we will not use their skills. We will in effect 'dumb down' government by turning away these who are the best and the brightest. It rejects them to go back to their previous civil service jobs as with the very pertinent case in point, Dr. Pearl Iboishi.

"She is now in the position of being the Deputy Director of DBEDT. She had served as the State Chief Economist since 1995. She's been a member of the Council on Revenues since 1997. She has a B.A. Degree from Iowa, a Masters Degree from Hitotsubashi University in Tokyo, and a PhD from the University of Hawaii. If this bill was in effect Mr. Speaker, after she gets out of the Deputy Director position in November, she could not go back to being the Chief Economist at DBEDT.

"Why would we want to do that? She's got a wealth of information, she's an archive of knowledge and she's a very educated, intellectual person. Do we want to cripple government by passing this for somebody who is either thin skinned, or somebody who doesn't like the Administration, or



somebody who says, 'We're going to get back at you through a bill like this?'

"I just don't think it's productive because governance is important. And governance is people and the better the people, the better the government. So this bill doesn't make any sense to me, Mr. Speaker."

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

The motion was put to vote by the Chair and carried, and H.B. No. 1868, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CIVIL SERVICE," passed Third Reading by a vote of 44 ayes to 4 noes, with Representatives Pine, Souki, Thielen and Ward voting no, and with Representatives Bertram, Finnegan and Sagum being excused.

At 5:35 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 674, HD 1  
H.B. No. 2587  
H.B. No. 1868, HD 1

#### **H.B. No. 415, HD 2:**

Representative B. Oshiro moved that H.B. No. 415, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you Mr. Speaker, I rise with strong reservations. Mr. Speaker, we are experiencing a period of unprecedented economic difficulty. This bill directs the Auditor to conduct a financial management audit of the Department of Public Safety's contract with Corrections Corporation of America and the Federal Detention Center. The Auditor is also directed to address the closure of Kulani Correctional Facility.

"With all due respect, we have our families experiencing Furlough Fridays, losing their jobs, being laid off. Inmates are in prison for a reason. They're usually in prison because they broke the law. While in prison they receive three square meals a day. They receive medical care. They are offered a chance at continuing education, not to mention a playroom, cable tv, among other amenities not afforded to so many of our taxpaying citizens who work so hard, if they have a job in this community.

"They're working hard simply to put food on the table. We are in unprecedented times. We have so many challenges that face each person in our state. The hardworking people that are being laid off are probably questioning, who is the priority of this Legislature. And why do law-abiding taxpaying citizens who struggle to make ends meet seem to not be at the top of our list.

"Being realistic, I don't think there's a Neighborhood Board member in our community or any resident who wants a prison built in their own backyard. Because Hawaii has so little land, what we do have is very expensive land and therefore our costs are very high. I just don't think we can afford to build another prison in our islands which will affect our quality of life.

"Is this bill necessary? The audit is directed to focus on the quality of programming costs, economic benefit to the State by housing Hawaii inmates at mainland facilities or at our local facilities. But according to the Department of Public Safety, it actually costs the State of Hawaii approximately \$139 to house an inmate in Hawaii, yet only \$66 to \$68 dollars to house them on the mainland. So based on these figures I don't think we can afford to bring back inmates who are currently serving their sentences on the mainland.

"In addition, the scope of services is and has been available for anyone to review by simply accessing the Department's website which offers transparency in its Department. You can look up all these facts.

"So what is the real reason for this audit? Is it really to reunite inmates with their families here? What about our law-abiding citizens who are forced to move away to find jobs? Is the State willing to pay for them to be reunited? I just think that it's a time for priorities, Mr. Speaker. I understand the cultural values. I understand we want to make sure that people are taken care of, but first things first. Thank you."

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

"Thank you Mr. Speaker, on Stand. Com. Rep. No. 490, HB 415, with reservations. Thank you Mr. Speaker, I understand this purpose of the bill is to request the financial and management audit of the Department of Public Safety's contracts with Corrections Corporation of America and the Federal Detention Center in Honolulu.

"Mr. Speaker, I'm going to support it with reservations and my reservations are the money, the cost that it would take to do the comprehensive financial and management audit. But I also want to state, Mr. Speaker, when an audit is needed because maybe there are some questions, or you want to find out more information, I think it's okay to ask for an audit. Right now is not a good, opportune time because of our budget situation.

"But I also want to say, Mr. Speaker, because of the money I believe that the comprehensive financial and management audit for the DOE is a resolution now. And that with the many different reasons for having a comprehensive financial and management audit, I believe, if anything, should be moving forward in a more substantive way. Thank you."

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

The motion was put to vote by the Chair and carried, and H.B. No. 415, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SAFETY," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2288, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 2288, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PRIVATE TRANSFER FEES," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2905, HD 1:**

Representative B. Oshiro moved that H.B. No. 2905, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I spoke out of turn on the previous page. May I have my remarks with reservations from Stand. Com. Rep. No. 672 refer to this bill before us. Thank you," and the Chair "so ordered." (By reference only.)

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

"Thank you, Mr. Speaker. This is on House Bill 2905. The previous speaker spoke on this earlier. In support. In 2006 the Legislature passed Act 203, the Use and Lose Law. When minors were caught violating the State liquor laws, this law called for the mandatory suspension of their driver's license, one of their most prized possessions. That law is recognized as a very effective deterrent because it makes our young people think twice before drinking.

"Now this Session, your Committee on Consumer Protection and Commerce received House Bill 2905 which set out to amend the 'Use and Lose Law' to give law enforcement and the courts more tools to reach those minors who do not drive or have no desire to drive. In this bill

however the original language in that bill eliminated the provisions in the law that mandated license suspension, giving courts the option to issue fines instead.

"We received a lot of opposition from the Administration, law enforcement, community groups like MADD seeking to maintain the strict penalties in the existing law. We therefore amended the bill so that license suspension is still mandatory, however the draft before you gives courts the option to issue additional fines and additional hours of community service beyond the 75 hours already required by law.

"There are other provisions in the original draft we retained. One is the creation of a fund for the counties for underage drinking programs. We believe this is to be an additional, non-punitive approach in reaching out to these kids so that they can make responsible decisions for the right reasons.

"The fund would be financed by 50% of the revenue collected by the additional optional fines. Also the existing law gives the courts the discretion to grant exceptions to license suspension per, and I quote, "school, school related activities, and employment."

"In this draft we permitted the courts to consider, and I quote, "other reasons when lack of alternative transportation presents an undue hardship." There may be situations where for example, families in rural areas rely on the minor to drive to and from the hospital, or when the minor must drive to counseling for themselves. We believe the courts are in the best position to make this determination on a case-by-case basis. And to the 35 of you that live on this island. Many of you don't have a clue as to what it's like in the rural areas where there is no transportation. And so we're just giving the courts this option.

"We also kept in this draft the provision that makes it illegal for minors to use a fake ID for any one of the '21 and over' establishments, like bars and clubs. Your CPC Committee believes this draft creates harsher consequences for a minor's decision to use alcohol and we recommend its passage. Thank you."

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

Representative Aquino's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in favor of House Bill 2905 HD1. The purpose of this bill is to strengthen the enforcement of liquor laws by making several changes.

"The proposed legislation makes it a violation for a minor to use false identification to gain access to bars, nightclubs, and other venues where minors are not allowed; establishes fines for these violators; and revenues generated would fund underage drinking efforts in all counties of our State.

"I believe that having these proposed components inserted into current laws would help deter the underage drinking problems we all face in our communities. Although it may not be the cure-all solution to this issue, I feel that this is a step in the right direction. It helps them to make good decisions, therefore paving the way for responsible, future generations. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2905, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Har voting no.

#### **S.B. No. 771, SD 1, HD 1:**

Representative B. Oshiro moved that S.B. No. 771, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

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

"Thank you Mr. Speaker, I rise in opposition to this bill. Thank you. First of all I want the Body to note that this bill does not have any flaws in it. It's a Senate Bill, so this is maybe the only opportunity for us to vote on this measure.

"But I want to refer back to testimony by the Appraisal Institute, Hawaii Chapter, and they testified in opposition against this bill. They said that an arbitrator does not serve the same function as an appraiser. Appraisers may act as arbitrators. However, when they are acting as arbitrators, they are undertaking an arbitration process and not an appraisal process.

"The letter goes on to cite a federal case in district court in *Wong vs. Chalmers* where the court said, 'As an initial matter the court rejects KUA's arguments that the defendants disregarded the law by not following the professional standards for appraisers. The court finds that these guidelines do not govern the arbitration proceeding because here Hallstrom, Holton, and Vernon were acting as arbitrators, not appraisers. The fact that the arbitrators were required to be licensed appraisers is immaterial here.'

"So in this bill what we're doing is we're confusing the role of an arbitrator with the role of an appraiser. My suggestion is to vote this bill down."

Representative Belatti rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Belatti's written remarks are as follows:

"I rise in strong opposition to SB 771, HD1. This bill is an attempt to undermine the arbitration process which governs highly contentious disputed rent negotiations for commercial properties. At the heart of the arbitration process is the attempt to resolve divergent appraisals that are already based upon standards that this bill would impose on the arbitrators who are acting as judges or referees between the two conflicting parties. By confusing the difference between arbitrators and appraisers in this process and seeking to impose the proposed standard upon arbitrators, this bill will further increase the cost of the alternative dispute resolution process that is presently cheaper than costly litigation in the courts. To fix something that is not broken would be folly, and it is for these reasons that I oppose this bill."

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

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

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

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

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

Representative Finnegan rose and stated:

"Thank you Mr. Speaker, I'm going to withdraw my reservations and change it to a 'no' vote."

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

"Yes, Mr. Speaker, I'm for the measure. As a former appraiser I believe that some uniformity is very important and that includes when you go into the arbitration process. Otherwise you would be comparing apples and oranges. You're going to have an appraiser who's schooled in appraising with the uniform appraisal system, and you're going to have an arbitrator who's not familiar with that at all. So I believe they'll provide some

inconsistency over there. So for consistencies sake, for some uniformity, I think this bill merits approval. Thank you."

Representative Saiki rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Saiki's written remarks are as follows:

"Mr. Speaker, I rise in opposition to this measure. My concerns are three-fold. First, there is little understanding of how application of the Uniform Standards of Professional Appraisal Practice will impact lease renegotiation arbitrations. Second, it is unclear to what extent this measure will impact the State's leases of public lands. Third, this measure will cloud the validity of arbitration awards.

"It appears that this measure is designed to provide a basis for dissatisfied parties to vacate arbitration awards pursuant to H.R.S. § 658A-23 (permitting the Circuit Court to vacate an arbitration award where *e.g.*, [a]n arbitrator exceeded the arbitrator's powers"). As such, the number of appeals to the Circuit Court will undoubtedly increase and the certainty normally afforded to the arbitration process will be diminished.

"Thank you."

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

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

"Mr. Speaker I rise in support with reservations of Senate Bill 771, Senate Draft 1, House Draft 1, Relating to Appraisals. This measure requires real estate appraisers to rely on the Uniform Standards of Professional Appraisal Practice (USPAP) when acting as an appraiser or arbitrator in an arbitration proceeding. Additionally, this measure requires that an arbitrator must provide the rationale and evidence that provided the basis of an award under the Uniform Arbitration Act.

"Although this measure is designed to protect consumers from unfair arbitration decisions, as well as ensure the integrity and reliability of real estate appraisal practices in the State, problems exist in its application.

"Requiring appraisers acting as arbitrators to comply with the USPAP is not the intentional application of this set of standards. Mr. Speaker, I would like to provide a brief history of USPAP.

"USPAP was created by the Appraisal Foundation as a set of standards for appraisal and appraiser qualifications, and not intended to direct arbitration decisions. Congress mandated all property appraisals involving federally funded property transactions be performed under USPAP in Title XI of the Financial Institutions Recovery, Reform and Enforcement Act of 1989. This legislation was driven by the 1988 Savings and Loan Scandal where dishonest appraisers falsely valued properties and colluded with mortgage borrowers to profit at the expense of unwitting taxpayers and loan institutions costing millions in public funds.

"Additionally, this bill would override a federal district court precedence set in the ruling of *Wong v. Chalmers* stating that real estate appraisers, when acting as arbitrators, are not engaging in an appraisal function. This supports the opinion of the Appraisal Institute, Hawaii Chapter, which argues that arbitration, dispute resolution, is not the same as appraisal, the process of estimating value. Arbitrators and appraisers do not perform the same duties; therefore, an arbitration award should not be vacated because of an arbitrator's noncompliance with USPAP.

"Furthermore, Mr. Speaker, this bill challenges the finality of arbitration decisions, as set forth in State law. Arbitration is binding onto both parties as the fairness of representation was served and both parties agreed to accept the awarded decision. Allowing this decision to be reviewed would not provide the intended reductions in cost and protection of the consumer, and only serves to extend the litigation process and increase costs to all parties.

"Finally Mr. Speaker, although this measure seeks to benefit taxpayers by increasing transparency and accountability of arbitration decisions, as well as upholding the integrity of the real estate appraisers, I must express my support for the measure Relating to Appraisals, with reservations.

Representative Pine rose and stated:

"Can I change my reservations to a no vote please," and the Chair "so ordered."

The motion was put to vote by the Chair and carried, and S.B. No. 771, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO APPRAISALS," passed Third Reading by a vote of 34 ayes to 17 noes, with Representatives Belatti, Berg, Choy, Coffman, Finnegan, Hanohano, Keith-Agaran, C. Lee, Luke, Morita, Nakashima, Pine, Saiki, Shimabukuro, Takai, Takumi and Wakai voting no.

#### **H.B. No. 2129, HD 1:**

Representative B. Oshiro moved that H.B. No. 2129, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Aquino's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in strong support of House Bill 2129 HD1. The intent of this legislation is to impose stiffer penalties on a person convicted of criminal property damage involving graffiti to:

Remove graffiti within 30 days of sentencing;

Perform community service for the duration of his/her sentence within a 100 yard radius of the first offense; and

Reimburse property owners for costs incurred if the owners decide to clean it up themselves.

"This bill is a deterrent that sends a message to those who inflict graffiti damage on others' properties. It tells them that if you are caught, there are serious consequences in store including financial implications.

"In addition, this measure gives our residents peace of mind that we are serious about taking care of our communities and getting tough on senseless criminal behaviors. The vandalism and graffiti issues have frustrated, and continue to frustrate many property owners and residents throughout our State.

"Lastly, this bill costs little to no money to implement, which is always a good thing – especially in these times. For these reasons, I strongly support HB 2129 HD1."

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

"Mr. Speaker, I rise in strong support of this bill which prescribes additional penalties for those that cause damage through graffiti. I know there are a lot of issues that clamor for our attention. The budget, public education, furloughs, but this issue is so important to so many communities, because graffiti is a scourge on many of our communities and this sends the right message to those who would commit those crimes.

"In years past we've increased fines, penalties, but in this bill we do something that gets to the crux of the problem. We make the perpetrator clean up their own mess.

"There's an improvement that can be made to this bill, however, and I hope that the relevant Chairs might adopt it as it moves along. As the Attorney General testified to, there should probably be an amendment that calls for the owner's consent in having the perpetrator clean it up. After all, it is the property owner's property and he or she may have some concerns with having that person on their property. Thank you."

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

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

"Mr. Speaker, I have reservations on this measure and I would like to submit to the Journal the testimony of the Public Defender and Hawaiian Electric to express my reservations."

Representative Marumoto submitted the following testimony:

"Testimony of the Office of the Public Defender to the House Committee on Judiciary

February 16, 2010

HB 2129: RELATING TO GRAFFITI

Chair Karamatsu and Committee Members:

We oppose passage of H.B. No. 2129 because it would hold one criminally liable for acts that the person was not responsible for. This bill would automatically impose upon a person who was convicted of certain specified criminal offenses involving graffiti the duties of: 1) removing any graffiti which appears on properties within one hundred yards of the site of the original offense for two years; and 2) reimbursing property owners within one hundred yards of the site of the original offense for the costs of the removal of any graffiti which appears for two years. The bill would impose the aforementioned penalties even if the original offender was not involved with the latter incidents of graffiti.

This bill is completely contrary to the fundamental legal concept in both criminal and tort law that you are legally liable only for those acts for which you bear responsibility. This measure would be analogous to requiring a driver convicted of speeding to pay the fines of all speeders caught within a hundred yards of the original driver's site of offense for two years.

Finally, the provision which would require graffiti offenders to remove the graffiti involved within thirty days of sentencing has good intentions but might be problematic. In the past, the community service branch of the Judiciary which supervises such projects has been backlogged and unable to expediently schedule community service projects. It would be unfair to hold the offender liable for administrative delays. The proper authorities must supervise graffiti removal projects. One cannot simply enter a citizen's or company's property to conduct cleaning or painting without the proper legal clearances.

Thank you for the opportunity to be heard on this matter."

"Testimony before the House Committee on Judiciary  
By Cheryl Fujiwara  
Director, Facilities Operations  
Hawaiian Electric Company, Inc.

February 16, 2010  
2:00 p.m.  
House Bill 2129  
Relating to Graffiti

Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Cheryl Fujiwara and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We strongly **support** HB 2129, which will make those convicted of graffiti damage more accountable for their actions. However, there may be cases in which the damaged property involves an electrical vault, steel pole, or other equipment belonging to Hawaiian Electric which

may be located on land (real property) belonging to Hawaiian Electric or a third party. Much of our equipment is energized at high voltage levels in which there is a possible risk that serious injuries may occur if removal of graffiti from any Hawaiian Electric equipment is not handled in an appropriate and safe manner by trained and qualified personnel. Accordingly, in the interest of ensuring the public's safety, we propose to amend subsection (a), lines 9 through 10, of the original Bill by adding the underscored text as indicated below:

"§708-\_\_\_ Graffiti; sentencing. (1) Whenever a person is sentenced under sections 708-821, 708-822, 708-823, or 708-823.5, for an offense in which the damage is caused by graffiti, in addition to any penalty prescribed by those sections, the person shall be required to:

- (a) Remove the graffiti from the damaged property where consent from the respective property owner(s) has been obtained, within thirty days of sentencing, if it has not already been removed;

Based on the foregoing, we ask that our proposed amendment be included in House Bill 2129.

Mahalo."

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

"Thank you Mr. Speaker, in support of this bill. The one concern that the Representative from Liliha shared was about the consent, and I do have concerns on that. I think it was Hawaiian Electric that basically said, the possibility of a case where somebody went in into a dangerous area and did some graffiti, that you would be sending them back there without consent and it could be very dangerous. I think that should be looked at as we're moving forward.

"The other thing is, this is such a hard, hard, it's a hard person to catch, someone who does graffiti. And I really think that this would hopefully uplift some of those in the community that take it upon themselves to go out there and clean up the graffiti that other people leave. I have a wonderful neighbor who volunteers and goes out and paints over graffiti. Almost every morning on his walk he takes a little container of paint with him to go out and clean up graffiti. So I just wanted to share that story because, with the bad things that happen, there are really good people out there. Thank you."

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

"Mr. Speaker, standing up in support. Mr. Speaker, just brief comments. I commend the authors, the freshman class of 2009, for coming up with a creative way of addressing this ongoing problem with graffiti. I think it's an interesting way to look at the issues of making people responsible for their behavior. And as a father who does chalk drawing and painting on my driveway and sidewalks, I'll make sure my son cleans it up after he's done. Thank you."

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

Representative C. Lee's written remarks are as follows:

"Mr. Speaker, this bill is a good first step toward finally holding vandals responsible for their vandalism. Those who deface public property will be responsible for cleaning up not just their own graffiti, but any other graffiti in the area as well. This bill will go a long way toward keeping our community clean, and deterring vandalism in the future."

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

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

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am presenting written comments in support of HB 2129, Relating to Graffiti. This bill requires persons convicted of criminal property damage to remove the graffiti within thirty days, to perform community service in the area where the property damage was committed, and to reimburse the property owners for any costs incurred. These three elements will help eradicate the graffiti that is causing incalculable damage to our neighborhoods and tourism industry.

"Graffiti is not only unsightly, but it can also lead to greater problems, such as gang violence. Graffiti should therefore be recognized as a serious crime, not a petty offense. This bill does so without any cost to the State.

"It is imperative that we deter blight and violence and preserve the natural beauty of our islands. For these reasons, Mr. Speaker, I support HB 2129."

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

"Thank you. In support with just one small reservation. I think the penalties of having the violator remove the graffiti and perform community service are good ones, but however I think that the reimbursement of the cost may be going a little bit beyond a deterrent and really penalizing someone for graffiti that they may not have actually committed. So that's my one slight reservation on this. Thank you."

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

Representative Wooley's written remarks are as follows:

"First, I especially want to thank the representative from Waipahu for coming up with this graffiti bill, and thank all the freshmen for their work and commitment to move this bill forward.

"As one of seven freshmen, I've been honored to work with such a stellar group of people. We worked together for many hours and agreed to set aside differences in opinion and background in order to put our communities first. After extended discussions, we identified shared values and priorities. HB 2129, Relating to Graffiti, was a bill that symbolized our belief that in these tough times, we must find new and better ways to prevent crime and make our communities even better, without costing taxpayers a dime.

"In my community, the Honolulu Police Department, groups like 96744, and countless volunteers have been waging a battle against vandalism. Illegal graffiti has imposed significant costs on businesses, residents, as well as City and State government. It is time for us to impose stiffer penalties, and get more creative to prevent graffiti in the first place and engage perpetrators in the effort to deter vandalism in the future.

"This bill requires a person convicted of criminal property damage involving graffiti to not only remove the graffiti within 30 days of sentencing, but also take responsibility for removing graffiti within 100 yards of the site of the offense for two years, or reimburse property owners for costs incurred for removing graffiti in the area. This new approach will make those convicted of vandalism responsible for preventing it, and give them reason to start caring about keeping our community clean.

"I hope you all support this bill and help it move forward and become law. Mahalo."

The motion was put to vote by the Chair and carried, and H.B. No. 2129, HD 1, entitled: "A BILL FOR AN ACT RELATING TO GRAFFITI," passed Third Reading by a vote of 51 ayes.

At 5:54 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 415, HD 2  
H.B. No. 2288, HD 1  
H.B. No. 2905, HD 1  
S.B. No. 771, SD 1, HD 1

H.B. No. 2129, HD 1

**H.B. No. 2725, HD 1:**

Representative B. Oshiro moved that H.B. No. 2725, HD 1, pass Third Reading, seconded by Representative Evans.

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

Representative Karamatsu's written remarks are as follows:

"I rise in support. House Bill 2725, House Draft 1 further protects the health and wellbeing of pet animals. The bill creates a new definition of "primary pet enclosure," which means any kennel, cage, or structure used to restrict a pet animal to a limited amount of space. It requires that an area of confinement in a primary pet enclosure provide access to shelter; is constructed of safe materials to protect an animal from injury; enable an animal to be clean, dry, and free from excess waste or other contaminants that could affect the animal's health; provide an animal with a solid surface or resting platform that is large enough for the animal to lie down in a normal manner; provide an animal with a solid surface (in the case of a rabbit or guinea pig the surface may be welded wire of sufficient size to allow feces to pass through, yet comfortably support the animal) or resting platform (in the case of birds, a perch) that is large enough for the animal to lie or perch upon in a normal manner.

"In addition, the bill mandates that a primary pet enclosure provide sufficient space to allow an animal to easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable normal position for the animal without making physical contact with any other animal enclosure; and interact safely with other animals within the enclosure.

"Owners must also provide veterinary care when required to prevent the pet animal from suffering. The definition of "pet animal" was amended to mean a dog, cat, domesticated rabbit so long as not bred or raised for meat production purposes, guinea pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred or raised for egg or meat production purposes. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2725, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ANIMALS," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2542, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 2542, HD 1, entitled: "A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Hanohano voting no.

**H.B. No. 2702, HD 1:**

Representative B. Oshiro moved that H.B. No. 2702, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I am in opposition to this measure. Very briefly, the Department of Labor said should they ever implement a study to change the rates to twice a year, it would be extremely expensive. It would cost millions. It would be very difficult to administer also."

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

"Thank you Mr. Speaker, with reservations. Actually, I would like a 'no' vote on this. And if I could just explain, this has to do with the Unemployment Insurance Fund. I understand what we're trying to do. And I also understand that in this time, especially because there's a high utilization of unemployment insurance, that we're trying to make it fairer

for small businesses instead of large businesses who a lot of the time, especially in agriculture, as well as construction fields, utilize the Unemployment Insurance Fund a lot. A lot of these smaller businesses and other businesses are "subsidizing," quote-unquote, some of these larger businesses and their utilization.

"There was a study that was done that noticed that this was taking place, and so I appreciate the fact that we are trying to look at improving the unemployment insurance calculations and rules and how we figure this out.

"My problem Mr. Speaker with this is, in speaking with the DLIR Director, that the cost for this study, because it needs to be done by economists, is going to be quite large. I'm not sure that we have the money to do that.

"On top of that, some of the other things like the previous speaker mentioned, that some of the changes, just to change the system and the technology to follow the system could cost up to three, four, five million dollars to implement that.

"Mr. Speaker, all in all I think right now, maybe we can look at doing some changes to this Fund in the future, but right now I think it's a very difficult time to do it. Thank you."

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

The motion was put to vote by the Chair and carried, and H.B. No. 2702, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Finnegan and Marumoto voting no.

#### **H.B. No. 2736, HD 1:**

Representative B. Oshiro moved that H.B. No. 2736, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you very much Mr. Speaker, with reservations. I suppose having a measure that supports local workers and local jobs is a worthy and laudable goal. The bad news is that this measure more than likely conflicts with the procurement terms of any international trade agreements.

"For example, just under NAFTA alone, over the past few years there have been more than 40 complaints seeking \$28 billion in damages spread across various states. Not just with procurement, but on the various sections that are embedded in NAFTA.

"The good news I suppose is that it would only become problematic if one of the 42 trading partners that are under the World Trade Organization filed a complaint regarding this measure, or if Chile, Singapore, Australia, Morocco, or any of the other CAFTA signatories did the same.

"So I suspect it won't be an issue if this is a contract for local people and it's a relatively small one. But Mr. Speaker, I suspect if we were to build a new stadium and we put that out to bid and said that the only people who bid on it would be companies that can ensure that 80% of that workforce will be local people, I'm afraid that we would get a challenge. For those of you who are familiar with the challenge under NAFTA, CAFTA, or the WTO, it is a tribunal. It's done in secret and damages are assessed to the US Government. And then what usually happens, as in the case of California, the US Government, all they do is take it off the top, highway funds or some other funds that the state gets to pay the damages.

"So these appeals, these challenges, take years to work out. But again, that's the one problem with that part of this measure. Thank you."

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

"Thank you, Mr. Speaker. I do have concerns on this bill as well. With reservations and just short comments. Mr. Speaker, one of the things is, I have similar comments. There's just one problem and I keep hearing about the constitutional issue. I think that's a big problem. Of course, we want to save our jobs for local workers. That's the right thing to do, but there are these things that fall in the way of our being able to do that.

"The other thing that I'd like to just share is, and just kind of to put some rumors to rest. I know when we were discussing this bill, I think it was in Committee, that there were some really bad things that the Aloha Stadium project contractor had done. They went to the mainland to get certain employees or workers to come and work at the Aloha Stadium without looking locally first. Upon going back to the Aloha Stadium and checking what had happened, the issue was that there were no trained professionals or people locally in all of the State of Hawaii that could do the work that was contracted for the Aloha Stadium. So before we jump to conclusions, I think that we should get our information correct first. Thank you."

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

"Thank you, I rise with strong reservations. Thank you. I'd like to have the remarks of the Chair of Education entered as my own. I will also submit additional written comments. I hope that we certainly don't want to be getting sued or create more problems in our effort to try and solve it."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support with reservations to H.B. 2736 which requires at least eighty per cent of workers on public works and construction contracts to be Hawaii residents.

"While I understand that this bill strives to reduce unemployment here in Hawaii and that the measure provides a contractor with flexibility to bring in workers from elsewhere if needed, I have deep concerns with the constitutionality of this measure and agree with testifiers that the State must be able to establish that this would not pose as a liability for the State in the future. We must also look at the costs that are associated with this measure, as a reason for contracting out-of-state workers may be for the savings associated with using these workers. Thank you."

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

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

The motion was put to vote by the Chair and carried, and H.B. No. 2736, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC PROCUREMENT," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2832, HD 1:**

Representative B. Oshiro moved that H.B. No. 2832, HD 1, pass Third Reading, seconded by Representative Evans.

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

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

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

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

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

"Mr. Speaker, with reservations. And the reason for that is the referral of this bill was waived out of Water, Land and Ag to meet the deadline to Finance. The Water, Land Committee wants to have a hearing on this too. So that's the reason for my reservation. Thank you."

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

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

"Thank you, Mr. Speaker. I rise with reservations and some real brief comments. My position on the underlying matter of this bill is perfectly clear. However, like the Chair of Water, Land stated, as a member of Agriculture, I was shocked that we didn't have a chance to get public testimony and input on this measure. And I find it ironic that some Members would chastise the EBM Committee for this, but yet something like this pops up. Thank you, very much."

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

"Thank you, Mr. Speaker. I am rising in strong support. Thank you, Mr. Speaker. I just want to make sure that first of all, Members understand that the reason why this bill moved forward was because there was some controversial language in the original draft. Fortunately, in working with the Chair of Agriculture, the Chair of Water, Land and the Chair of Finance, we were able to identify that and pull that language out. We then noticed it for hearing so it did go through full hearing. I believe that most of the Members had a chance to review that testimony."

"This is a very exciting bill, Mr. Speaker. One of the reasons is that it is a way for us to create jobs. In the testimony that came out, it was estimated that there are 40 to 100 jobs per 100 acres for taro growing. In addition, it was estimated that about 4.3 million pounds of raw taro provided more than \$1 million in tax revenue to the State. That was for about 390 acres."

"So right now there's a lot of potential for the State of Hawaii to bring in federal money, as well as private money for growing taro. That includes restoring land for wetland purposes, food security, water quality, and a whole host of other reasons. One of the non-profits in my community has actually moved forward with that and they're pulling in federal money right now."

"So this is a great opportunity and a creative way for us to let OHA have the authority to bring in that money to the State, and then funnel it directly to our farmers, and to our community to create jobs. So I appreciate everybody working with me, and everyone's support. I am very excited about this bill. I hope you support it. Thank you."

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

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

"In support with reservations, Mr. Speaker. And a few comments. I'd just like to rebut the comments from the author of this bill. To be clear, this is a bill regarding taro security, and yet there was never a hearing before the Agriculture Committee, and the Water, Land, and Ocean Resources Committee. This bill was heard before one Committee and that was Finance."

"So to say that this bill received a full hearing before subject matter committees is incorrect, Mr. Speaker. For these reasons I rise with reservations. Thank you."

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

Representative Wooley's written remarks are as follows:

"In response to concerns raised on the Floor, let me begin by saying that I have heard no one express concerns about the substance of this bill in its

current form. I believe that is a testament to our legislative process, as well as the bill itself. HB 2832 is good policy. It creates the potential for job growth, food security, environmental protection, Hawaiian culture, and education. And it doesn't cost the State a dime or mandate any action."

"There appears to be some misunderstanding about the process that was followed as this bill moved forward in the House. Let me put those issues to rest. The original draft of this bill included controversial language that divided this Legislature and the public in years past. The original draft used the words "non-GMO taro."

"My perspective is there should never be, and never will be GMO taro in Hawaii. That's why I had the bill drafted allowing for money to be spent to promote "non-GMO Hawaiian taro." However, those words are fighting words. The seed industry, researchers, and many others have serious concerns about any efforts to distinguish between GMO and non-GMO food."

"The Chair of Agriculture knows all too well the extreme views on this issue. And to his credit, he has heard many controversial bills on this issue and has tried to move the discussion forward so that all agricultural industries and all farmers are supported."

"When I used the words "non-GMO taro" I did not reflect on the controversy that might be caused. However, I sincerely thank the Chair of Agriculture for being willing to talk to me about the issue and to point out that the words are simply too controversial for us to move forward at this time."

"Because there was support for this bill, I investigated the procedural options after a hearing deadline was missed. The Chairs of the Agriculture, Water Land, and Finance Committees were willing to talk to me about the options – again, mahalo to each Chair. After some discussion, I determined that the use of the re-referral form, which is commonly used in this Body to address exactly this kind of circumstance, would be the best way to proceed."

"I took the bill to each one of the Chairs and talked to them about changes we could make to the bill to make it non-controversial. Each Chair had suggestions. Based on their excellent suggestions and their wisdom, I drafted a proposed HD1. We changed the authorized agency from the Department of Agriculture to the Office of Hawaiian Affairs primarily because the Department of Agriculture can barely keep its head above water in these tough times, and it was recognized that OHA already has background and expertise on taro-related issues. We took out all references to "GMO." After talking about the issue, we also took out language in the preface of the bill and the references to Hawaiian taro defined in Bulletin 84."

"Each Chair in all three Committees was given a copy of the proposed HD1. I asked each Chair if it looked okay, or if they had any concerns. As indicated on the re-referral sheet and based on this proposed HD1, each Chair approved a single referral for the bill to the Finance Committee – the one Committee that cannot, as a policy, waive off on any bill that has a financial implication for the State. It is this HD1 that we are voting on today."

"This is our system, and I followed it to the 'T.' And I sincerely thank each of the chairs for working with me on the bill, educating me, and supporting a bill that they all realize makes great public policy in a time of great need."

"There may have been some confusion about the process because when the notice for the bill was posted, it referred to the original language of the bill and not the proposed HD1. There was also confusing testimony that proposed a new HD1, which I now see added significantly to the uncertainty about what happened with this bill."

"I hope this clears up any questions that remain about the process for this bill as it moves forward. The bill, if heard by the Senate, will have at least one more full subject matter hearing before coming back to this Body for a final vote. I hope you support it. Mahalo."

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

"Thank you, Mr. Speaker. I do have some reservations on this bill and just short comments. Thank you, Mr. Speaker. I think you know that process is so important, and I understood that this bill had prior concurrence by the previous Chairs to be re-referred. If that's not the case, then I think that we should have the process work for us and make sure that there's ample time for people in the public to weigh in. Thank you."

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

"I have reservations on the same concerns. Thank you."

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

"Mr. Speaker, I have reservations with two brief comments. One was the surprising statistic regarding the amount of taro that's coming in from China and overseas. A huge amount of taro. Secondly, that Kauai is producing 80% of the taro which we consume in the State of Hawaii. So kudos to them, but that was a surprise. And we have got to do more."

"I'm not sure this bill is going to push it that far down the line because it says, 'OHA please go get money for us.' Taro farming is not an easy thing and there's a long way to go. But this is a beginning. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2832, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TARO SECURITY," passed Third Reading by a vote of 51 ayes.

#### H.B. No. 2600:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 2600, entitled: "A BILL FOR AN ACT RELATING TO TAX ADMINISTRATION," passed Third Reading by a vote of 48 ayes to 3 noes, with Representatives McKelvey, Pine and Thielen voting no.

At 6:09 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2725, HD 1  
H.B. No. 2542, HD 1  
H.B. No. 2702, HD 1  
H.B. No. 2736, HD 1  
H.B. No. 2832, HD 1  
H.B. No. 2600

#### H.B. No. 2690:

Representative B. Oshiro moved that H.B. No. 2690, pass Third Reading, seconded by Representative Evans.

At this time, Representative Thielen offered Floor Amendment No. 3, amending H.B. No. 2690, as follows:

"SECTION 1. House Bill 2690 is amended by deleting its contents, and replacing it with the following text, to read as follows:

"SECTION 1. Section 661-1, Hawaii Revised Statutes, is amended to read as follows:

"**§661-1 Jurisdiction.** The several circuit courts of the State and, except as otherwise provided by statute or rule, the several state district courts shall, subject to appeal as provided by law, have original jurisdiction to hear and determine the following matters, and, unless otherwise provided by law, shall determine all questions of fact involved without the intervention of a jury[-];

- (1) All claims against the State founded upon any statute of the State; or upon any regulation of an executive department; or upon any

contract, expressed or implied, with the State, and all claims which may be referred to any such court by the legislature; provided that no action shall be maintained, nor shall any process issue against the State, based on any contract or any act of any state officer which the officer is not authorized to make or do by the laws of the State, nor upon any other cause of action than as herein set forth[-]; and provided further that a claim founded upon a statute of the State is within the original jurisdiction of the courts only if, in the text of the separate statute upon which the claim is founded, the State has unequivocally waived its sovereign immunity for the claim.

- (2) All counterclaims, whether liquidated or unliquidated, or other demands whatsoever on the part of the State against any person making claim against the State under this chapter."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.""

Representative Thielen moved that Floor Amendment No. 3 be adopted, seconded by Representative Marumoto.

Representative Thielen rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I'm not sure if Members here realize it, but about one-third of the Members in this Body are attorneys. Sometimes attorneys have a different view of life and what bills really make sense. The difficulty with this bill, and what I am proposing is not the exact language of the Attorney General, but as things move forward it can be amended on the Senate side to be the exact language if the Members feel that it should be.

"What this bill says is that we as legislators set policy. And we as legislators have a responsibility to set policy, not the court. Not the court acting in a legislative capacity instead of a judicial capacity. And up until recently it has been we as legislators decide when we, the State will be allowed to be sued, and we say that within the legislation. If it's not in the legislation, then the State has what's called 'sovereign immunity.' It can't be sued.

"While the Hawaii Supreme Court has expanded on a private attorney general doctrine, it popped up in the Superferry case. One of those cases. And the court awarded attorney fees to the plaintiffs in that case. The law did not provide for the attorney's fees. The law said, sovereign immunity. The State is immune from suit, but the Supreme Court acting in a legislative capacity decided otherwise.

"The amendment will keep the authority with the Legislature and not in the Court. Now I'll tell you how serious it is. It's become expanded from the Superferry case. In 2003, a number of us were here during that period of time."

Representative Evans rose to a point of order, stating:

"Point of order. I'm sorry the speaker is not addressing the Chair. She's not addressing you. She's addressing the audience."

The Chair addressed Representative Thielen, stating:

"Representative Thielen, please address the rostrum and not the audience. Please continue."

Representative Thielen continued, stating:

"I was just doing an eyeball look around to see who was here in 2003 and who wasn't, Mr. Speaker. Some of us were here, and some were not. But in 2003 we passed a really good bill which established that all accreted or newly-formed land belonged to the State. And this was an effort Mr. Speaker, to preserve our beaches for the public.

"Well, Paul Alston had clients that thought differently and said, 'Wait a minute. That's our land.' So he went to court on behalf of those clients. The



court had a sort of split decision and said once that bill was passed from 2003 forward, that land belongs to the State. That accreted land. But anything that was in existence prior to 2003, that those plaintiffs could go to court to prove that they had that accreted land and to prove individually that that should be theirs. Paul Alston is suing for attorney's fees under the Private Attorney General Doctrine, for \$650 an hour. \$650 an hour.

"So without making sure that we ourselves as policymakers will say when we can be sued, when the State can be sued, and when it can't, we're opening ourselves to a huge amount of liability. And if the Finance Chair thinks he has trouble now, take a look at what the future bill would be like that we passed just not so long ago, the Claims Against the State bill, and take a look at how that bill will escalate.

"Let me give you an example of just some of the bills before us today where plaintiff attorneys could go in and use this Private Attorney General Doctrine and come back for attorney's fees. House Bill 2667, which is the Superferry again. Superferry 2. Were that to move ahead, who knows down the road what that would do. We know in one Superferry case the court already did grant attorney's fees."

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

Representative Thielen continued, stating:

"House Bill 674. This is about putting some provisos in the OHA budget. We could be subject there. And then here's a biggie. House Bill 2284, which is the fair and reasonable determination on the rents, on the leases. That could set us up for major attorney's fees.

"And then the one we were just talking about, House Bill 2736, the bill requiring 80% of workers on public work construction projects to be Hawaii residents.

"All of these could turn around and come back for future Legislatures to have to look at an, 'oh my gosh' bill for claims against the State because we didn't pass an amended bill today making clear that the State cannot be sued unless the policymakers, not the court, but the policymakers say in statute that the State will be open to being sued.

"Now I have a feeling that the Majority Leader is going to pop up and argue ferociously against this, but before he, or if he, does, I would like to ask him to recuse himself because while he may not work on those cases, Paul Alston gets \$650 an hour in attorney's fees for protecting our public land, accreted land for the public, then that does accrue to the members of that law firm.

"Mr. Speaker, I know that there is a tendency in this heavily Democrat Legislature to never accept a Republican's amendment."

The Chair addressed Representative Thielen, stating:

"Representative Thielen, please stick to the issue on the floor which is Floor Amendment No. 3."

Representative Thielen continued, stating:

"Okay. I would like to say in this case Mr. Speaker, it's the State and the taxpayers' financial liability that is just massive if we don't clarify this law and say to the Supreme Court, 'You're not the decider. We as policymakers will decide when the State will be open to suit and when we will waive our sovereign immunity.' That's what this whole bill is about. I know that there are some of the senior members in this Body that would recognize what liability lies out there unless we enact this amendment. Thank you."

Representative B. Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to the amendment."

Representative Thielen rose, stating:

"Mr. Speaker, I asked him to recuse himself and refrain from arguing about this. I think there is ..."

Vice Speaker Magaoay: "Representative Thielen, you're out of order. Representative Blake Oshiro has the floor."

Representative Thielen: "Mr. Speaker, I'd like to have him disclose his relationship with the firm that is seeking \$650 an hour."

Representative B. Oshiro: "Mr. Speaker, she is out of order. May I explain why I don't need to?"

Vice Speaker Magaoay: "Representative Thielen, please sit down. Representative Blake Oshiro you have the floor. Please proceed."

Representative B. Oshiro continued, stating:

"The first reason I don't have to ask for potential conflict of interest is because her floor amendment has nothing to do with attorney's fees. If she reads it closely, as much as she wants to try and say there's the potential for it to get amended as it moves on. Heck, any bill has the potential to get amended to move on and include that issue. So why do we make that argument? That is not what's before us.

"What's before us is this bill. This proposed amendment that she's trying to do to HRS 661 which has nothing to do with attorney's fees. Instead what it's talking about is the State's sovereign immunity. Let me get to that. The State's sovereign immunity is not only limited to a policy issue."

Vice Speaker Magaoay: "Representative Thielen, Representative Blake Oshiro has the floor."

Representative Thielen: "No. A point of clarification. I don't see how the speaker can say this has nothing to do with attorney's fees because unless we maintain our sovereign immunity ..."

Vice Speaker Magaoay: "Representative Thielen, you had your chance to offer your discourse. Right now, we have Representative Blake Oshiro who has the floor. Representative Blake Oshiro, please continue."

Representative B. Oshiro continued, stating:

"Mr. Speaker, had the proponent wanted to introduce attorney's fees, she could have introduced attorney's fees. But let me look at the underlying language. I don't see the word, 'attorney.' I don't see the word, 'fees' anywhere there in her proposed amendment. Therefore, that's not the subject of this proposed amendment.

"What this proposed amendment is about is sovereign immunity. However, the problem with that is it's not just about the policy decisions of this Legislature. What is also included in sovereign immunity is the action of the Administration.

"Let me be more specific. When the Administration and the Department of Human Services said that they had the right to terminate all dialysis and cancer treatments for people from Micronesia, that was something that needed to be challenged in federal court, as well as State court. Had this amendment passed, if this language was on our statute books, guess what? There wouldn't have been that cause of action in State court.

"What the Attorney General is seeking to do is undo years and years of precedent that has been built up in HRS 661. That is what is before us. And so as much as she may be trying to say that this is about attorney's fees and other things, that is not the issue before us. So I would say, if she wants to introduce that, then actually that's what the floor amendment should be. Because actually, she's really misaligned the issue.

"The Private Attorney General Doctrine is specifically defined by our Hawaii Supreme Court in the *Waiahole* case and there's a three pronged test that must be met. None of those three bills she mentioned today have anything to do with the Private Attorney General Doctrine. It all would fail the test. All of them would fail that test. So before she starts citing the Private Attorney General Doctrine, I suggest she read the case and find out

what the three prong test is. And then maybe she can talk about the doctrine and actually mean what it has to say instead of just speculating, and instead of talking about some people's law firm which has nothing to do, again, with this amendment.

"Third, let me say that, again to cite from the Minority Leader. The process is so important. This bill was actually heard in the Judiciary Committee on February 23rd. However, the bill did not move because what the Attorney General wanted was not the bill. Not the language that's before us. He wanted something completely different, and so what he asked was for an amendment to put in some language on attorney's fees, but that has not gotten a hearing. That was not anything anybody was able to submit testimony on. And so when we talk about the process being so important. When we talk about transparency and the people having an opportunity to come to this Body and talk, and testify on bills. The Attorney General should not be trying to subterfuge and 'slide in' language in bills that has nothing to do with actual subject. That's the problem. Because this floor amendment and the issue she's talking about are two entirely different things. Thank you."

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the amendment. Mr. Speaker, I can't speak for the two-thirds in here who are not lawyers, but I can say from common sense that what the speaker from Kailua said is the Supreme Court has taken an unprecedented step. They have threatened the sovereign immunity of this Body, and if it's going to cost us an arm and a leg in terms of fees, we ought to wake up and pay attention to it.

"Now is this unprecedented? What did the 'black robes' do to this Body in the '90s? And I'm not one of those older Members, because I had a hiatus. But in the '90s the 'black robed' individuals said, same sex marriage is legal in the State of Hawaii the way we read it. The Chief Justice said, 'You the Legislature have the trump card.' What the good representative from Kailua is trying to tell us is, wake up Legislature. If we don't tell and send a message to the Supreme Court, the sovereign immunity rests with us unless we say otherwise.

"All of these suits. It was the Whale Foundation that got, I forget how many hundreds of thousands of dollars when they brought the Superferry to court. It's not only these pending ones. It's the other ones that we're going to have to pay out an arm and a leg for. So Mr. Speaker, this is a fiscal issue, but it's one that the Supreme Court needs to hear from us about. That's basically the non-legal language that she is talking about. Thank you."

Representative Finnegan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. Just a brief rebuttal because of a quote that I said earlier. Yes, I'm in favor of the amendment. Thank you. Just a brief rebuttal. The issue to me is, I believe that the AG feels that that particular amendment is very germane to the bill and offered the amendment just like we do in any other Committee.

"The problem that I had with the Taro Security bill is that we were talking about prior concurrence of the Chair's before that. I know that that is something important to this Body. It's important to the Speaker. And it's important to the process. To hear on this very Floor, in Committee, to say that there was prior concurrence and then on this very Floor saying that there wasn't. That's disturbing Mr. Speaker, because then that information was misrepresented.

"None of the information that we're talking about on this bill is misrepresented, Mr. Speaker. The AG in Committee did like what they do on a lot of the different bills, where they feel it's related and germane to the bill, they're going to offer an amendment to make the bill better and that's what he did. And I feel that we are in that process. Thank you."

The motion that Floor Amendment No. 3, amending H.B. No. 2690, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," be adopted, was put to vote by the Chair and upon a voice vote, failed to

carry. (Representatives Aquino, Awana, Mizuno, Nishimoto, Takai and Takumi were excused.)

(Main Motion)

The motion was put to vote by the Chair and carried, and H.B. No. 2690, entitled: "A BILL FOR AN ACT RELATING TO GOVERNMENT," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Ching, Finnegan, Marumoto, Pine, Thielen and Ward voting no.

**H.B. No. 2874:**

Representative B. Oshiro moved that H.B. No. 2874, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to the measure. It's relating to the Transient Accommodations Tax. It's job-killer bill number 5. It's going to hurt Waikiki. It's going to hurt the visitor industry and I will save the rest of my remarks for the Journal. Thank you."

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am presenting written comments in opposition to HB 2874, Relating to the Transient Accommodations Tax (TAT). Applying the TAT to resort timeshare vacation units would make visiting Hawaii prohibitively expensive for many visitors and harm our State's already struggling tourism industry.

"Last year, when TATs were applied to hotels, room rates increased dramatically. Hawaii's hotel room rates currently rival those of New York City, and visitors who come to Hawaii generally spend more nights here. Expensive hotel rates have caused timeshares to gain popularity as an alternative means of accommodation. If the TAT is applied to timeshares as well, tourists may have to choose more affordable vacation destinations. Although the State desperately needs money, the timeshare TAT will deter tourists from visiting the State and ultimately do more harm than good. For these reasons, Mr. Speaker, I oppose HB 2874."

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

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

"Thank you, Mr. Speaker. I would like to just note my reservations on this bill, please. And just a few comments. Thank you. I think we're one of the only states that charges a TAT on timeshares, and we're raising them to gain \$3 million. My understanding, in the grand scheme of the whole budget deficit is that it's not that much. I think we stand to lose more in visitor spending and arrivals as a result of it. So just please note my reservations. Thank you."

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

"Thank you, Mr. Speaker. I'm actually voting with reservations on this bill. Thank you. Most of the time I will vote no on these tax increases. But the predicament that we're in is that we haven't gone through the budget yet, and so I want to try as much as possible to open up or at least open some other options for now. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2874, entitled: "A BILL FOR AN ACT RELATING TO THE TRANSIENT ACCOMMODATIONS TAX," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Brower, Ching, Marumoto, Pine, Ward and Wooley voting no.

**H.B. No. 2875, HD 1:**

Representative B. Oshiro moved that H.B. No. 2875, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Yes Mr. Speaker, I wish to speak on this measure with reservations. And if I could, I also would want to include HB 2963 if I may. Is that at the end of the calendar? My apologies.

"With reservations. Only because the bonding people have stated that if we should take any money away from the Hurricane Fund, it could affect the bond rating. Now I'm well aware of why we're doing this and the reasons why, but this is only as a caution to the Finance Committee, and ultimately to the Conference Committee as they move this along. They should tread very carefully on this measure so it does not affect our bond rating. Thank you, very much."

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

"Thank you, Mr. Speaker. On this measure I'd just like to note my reservations and just give short comments. Thank you, Mr. Speaker. My reservation is basically that, if we end up doing this, and we feel that we're in the position where we feel that we have to do this, that my reservation just means that I don't have to like it, and that's why I'm voting with reservations. Thank you."

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

The motion was put to vote by the Chair and carried, and H.B. No. 2875, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HURRICANE RESERVE TRUST FUND," passed Third Reading by a vote of 51 ayes.

**H.B. No. 2595, HD 1:**

Representative B. Oshiro moved that H.B. No. 2595, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to this measure. Mr. Speaker, this is revolving around the GET tax and the call for anybody who's a non-profit to be exempted from it. It's job-killer bill number 6. It basically says that if you're non-profit and the government does not allow you or you did not ask the government to allow you to be exempt, you shall not be exempt.

"The second thing, which probably is much more Machiavellian, is that it elevates the GET tax to the sacred ground of being employee withholding taxes. Employee withholding taxes are until death do you part. You pay those forever and ever. You go out of business, or you file bankruptcy, you have still got to pay those. We're now elevating the GET tax to that sacred level where every business heretofore is going to be bound to pay this.

"Now when people file for bankruptcy in businesses, generally these are forgiven. After this bill, they're no longer forgiven. This is putting Hawaii's businesses in quicksand and in a hole that's going to be really tough to get out of. So let's get the money for DoTax, fine. But in terms of elevating that up into a trust fund liability, that's very, very dangerous, Mr. Speaker. Thank you."

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

"Mr. Speaker, in strong support. And a little bit of rebuttal. My good friend from Hawaii Kai is wrong on the first part of the bill. It has nothing to do with non-profits. What the bill says is, if you don't file your paperwork on time or within 12 months after the due date, or you don't file

it at all, or you don't get a GE Tax license, then any kind of exemptions that you may get, you will not be allowed to get.

"On the second part of the bill, my friend from Hawaii Kai is correct. But you know the one thing that we have to look at here is that, first of all this is an Administration bill. And what it does is it protects our revenues. The way I feel about people who don't pay their taxes, I feel that every time somebody doesn't pay their fair share of taxes, I've got to pay more, and I'm not willing to do that.

"What this particular bill does is make tax compliance just a little bit easier. Just a little bit stronger. So people who pay their fair share of taxes are protected from people who do not. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and H.B. No. 2595, HD 1, entitled: "A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX," passed Third Reading by a vote of 48 ayes to 3 noes, with Representatives Marumoto, Pine and Ward voting no.

At 6:35 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2690  
H.B. No. 2874  
H.B. No. 2875, HD 1  
H.B. No. 2595, HD 1

**H.B. No. 2313, HD 1:**

Representative B. Oshiro moved that H.B. No. 2313, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you. I am in strong support."

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

"Yes, Mr. Speaker. I strongly favor this measure. Not only because of the absence of the bill, but this might be an indication that there is some hope for gaming in the future. Now Members, all of you that vote for this, remember that because we're going to have another bill coming here next year for gaming.

"Seriously. This bill is probably for those 400,000 people who go to Las Vegas and spend a billion dollars of Hawaii money over there. Some of them have losses so they come here and ask for help to recoup their losses. Now we would have been better served if they would have stayed here and spent their money here rather than going to Las Vegas and spent that billion dollars. Thank you, very much."

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

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

Representative Finnegan's written remarks are as follows:

"HB 2313 repeals the income tax provision that requires the reporting of gambling winnings, but not losses. This measure reverses the Legislature's efforts from last year. I opposed this bill last Session and I wish the Majority could have foreseen the issues with this law when they were raised last year."

Representative Ching rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support, but with strong reservations, to H.B. 2313 H.D. 1 which repeals the income tax provision to require the reporting of gambling winnings but not losses.

"Upon consultations, I have decided to revise my vote from an initial "no" to one in support with strong reservations. Although I reluctantly support H.B. 2313 because individuals should pay taxes upon actual winnings, rather than a false figure that in no way reflects their "bring home" earnings, I believe that it sends the wrong message to our residents regarding our motivations and goals here at the Legislature. While we have revoked tax exemptions and added fees, on at least 27 separate occasions during recent weeks alone, yet we restore this one first. Nonetheless, our State should tax accurately, according to the amount of one's real profit; anything more or less would be unfair to those who chose to gamble, and an insult to the integrity of justice in Hawaii.

"My reservations, however, rely upon a wholehearted conviction that H.B. 2313 sends the wrong message to our citizens, many of whom already suffer from the current economic downturn. By encouraging gambling, and even presenting it as a more lucrative activity, it promises a false remedy for the financial woes which so many of our unfortunate citizens have now stumbled upon. The marginal taxes which this bill may hand back to empty wallets in no way compares to the magnitude of loss which gamblers are likely to accrue if they are to frequent the casinos more often. Overall, therefore, this bill will weigh heavily upon individual fortunes, as it may lure citizens to gambling as a more profitable, and thus deceptively safe, financial solution.

"Further, my reservations rest upon a more philosophical belief that we should not reverse this vote, while holding fast to others which also drain citizen pockets with hefty taxation. Businesses, for instance, now suffer more acutely than ever from taxes raised to levels disproportionate with their earnings. We should first prioritize those most dynamic solutions which may propel themselves, by stimulating the market to keep business and employment alive. By focusing our equitable taxation strides upon gamblers rather than businesses, we are encouraging reclusiveness rather than cooperation as an economic solution. Unless we proactively turn the spotlight to the many more enduring remedies which also call for our help, our economy may wade in our current woes much longer than Hawaii can afford. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2313, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Marumoto and Thielen voting no.

#### **H.B. No. 1948, HD 1:**

Representative B. Oshiro moved that H.B. No. 1948, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, On HB 1948, Relating to Taxation. Thank you, so much. With reservations, Mr. Speaker. Reservations because a while back, a few minutes back we heard a Representative speaking about how we need to pay our taxes on time. This provides that every citizen should pay taxes on time. But if that's the basis, they should get their refund on time too. So there is some inconsistency here Mr. Speaker, and that's my reservation. Thank you, very much."

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

"Mr. Speaker, in support. Very quickly. This bill addresses the concerns of the previous speaker, as well as links into the previous speaker from Manoa. Just a couple of things. This will require the Department of Taxation to provide refunds to taxpayers within 90 days of the filing of the return, or if earlier, the due date of the tax discovery date of the overpayment in an amended return, or the date of the determination by the Director of Taxation. This measure would be effective July 1, 2011.

"What this does is it creates an incentive for Department of Taxation to provide refunds to taxpayers in a timely manner. If paid late Mr. Speaker, refunds incur interest charges. This will also provide a disincentive for the next Administration, should he or she choose to delay the return of State income funds, maximizing the 135 day period as allowed under the current law before interest is payable. This will also prompt timely return of tax refunds which will stimulate the economy, allowing taxpayers to more quickly invest the money's return into the marketplace. This bill Mr. Speaker, will also have a fiscal impact of about \$275 million in fiscal year 2011. Thank you."

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

"Thank you, Mr. Speaker. I have reservations on this bill. Thank you, Mr. Speaker. I understand what this measure is doing and I understand that there are many taxpayers out there, especially those who are going to be receiving a refund who are upset about this particular issue. I'm sure that the Governor wouldn't have used what's allowable under law without interest accruing because it's allowed under law to postpone this \$275 million into the next fiscal year.

"Mr. Speaker, I know we had a lot of discussion about how difficult a time we're having here. My concern is basically, if we decide to do this for next year in 2011, that we are looking at 2012, I think in our six-year financial plan as the heaviest year for closest to a negative balance. This is \$275 million that we'll have to make up in one year. I would love to do that. I just don't know whether or not that six-year financial plan is going to be able to accomplish that in balancing the budget. Thank you."

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

The motion was put to vote by the Chair and carried, and H.B. No. 1948, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 1907, HD 1:**

Representative B. Oshiro moved that H.B. No. 1907, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to HB 1907, Relating to Taxation. Mr. Speaker, this bill will limit or cap net operating losses, itemized deductions, standard deductions, capital goods, excise tax, and basically handcuffs small businesses in a very difficult way.

"These provisions are made available to small businesses so they can recoup what otherwise are losses in difficult times or cycles which they go through. Case in point, you're a farmer. It takes you 18 months before your crop matures. But you've got to put all that money in. In the meantime, either a calendar or fiscal year comes around and you've got to pay your taxes. If you can't go back and carry back those losses, you're really, really hurting. So what we got here is a bill that's contrary to, I think, common sense of the times and contrary to national policy.

"Case in point. In March 2009 the US Congress passes the AARA. They allowed small businesses with net operating losses in 2008 to offset these losses back five years prior. That's what this bill is going to prevent. Then in November 2009, the US Congress passed the Worker, Home Ownership, and Business Assistance Act which provided relief to small businesses and most taxpayers with losses.

"Mr. Speaker, on the national level they're aware that these kinds of things are very important to small businesses. We now at this particular junction in this State with these small businesses, we say it's not. Mr. Speaker, this is job-killer bill number 7. Thank you."

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

"Thank you, Mr. Speaker. I will be voting no on this bill. Mr. Speaker, as I take a look and try to figure out what we're going to do to balance the budget for these next two years and the six-year financial plan, there are many bills that I would normally vote no on. But I haven't, and I've been voting with reservations.

"This particular bill I think is one that I know I'm going to be voting no on, and that's because this has to do with all of these businesses who are investing in their companies and expecting that they're going to be able to take some kind of credit like this. These are businesses. These are the ones that are providing our jobs in a very tough economic time. And if they have the money to do so, but they're depending upon that savings through the credit. I think that this will be moving in the wrong direction for creating jobs and for sustaining jobs. Thank you."

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

"Mr. Speaker, in support. This bill, when I look at it, it does different things than what the prior speakers have talked about. It defers the net operating loss. It does not get rid of it. Itemized deductions are for people, not businesses. And the Capital Goods Excise Tax Credit right now, is not in effect actually. So what this will do is it actually puts it in effect. It does make it non-refundable, and does defer some things. But at least it does provide an incentive again. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 1907, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 39 ayes to 12 noes, with Representatives Berg, Brower, Ching, Finnegan, C. Lee, Marumoto, McKelvey, Nishimoto, Pine, Takai, Thielen and Ward voting no.

#### **H.B. No. 2885:**

Representative B. Oshiro moved that H.B. No. 2885, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm rising to speak against the bill and would request if I could have some remarks from the Sierra Club inserted in the Journal. Thank you."

Representative Thielen submitted the following remarks:

"[HB 2885]  
CONVEYANCE TAX REDUCTIONS  
We understand the State's need to tighten the belt. We've deliberately avoided supporting most bills that might directly add to the budget problems and have suggested alternative funding mechanisms like the "barrel" tax and the plastic bag offset fee.

We suggest drawing the line, however, on this proposed budget cut. The Natural Areas Reserve and Land Conservation Fund has already seen a 50-60% cut in State funding. This has resulted in a loss of staff positions and valuable public-private conservation programs. Another 50% reduction would likely destroy these programs by eliminating irreplaceable staff and public-private partnerships. It would also eliminate important matching federal funds.

Some might argue that funding could be restored in a year or two. We're concerned these programs – having lost key staff – would not recover. The small gain this bill proposes is not worth the long-term loss."

*Sierra Club, Hawaii Chapter – March 1, 2010*

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

The motion was put to vote by the Chair and carried, and H.B. No. 2885, entitled: "A BILL FOR AN ACT RELATING TO THE CONVEYANCE TAX," passed Third Reading by a vote of 41 ayes to 10 noes, with

Representatives Belatti, Berg, Brower, Coffman, Keith-Agaran, C. Lee, Morita, Takai, Thielen and Wooley voting no.

#### **H.B. No. 1947, HD 1:**

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, H.B. No. 1947, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 51 ayes.

#### **H.B. No. 2850, HD 1:**

Representative B. Oshiro moved that H.B. No. 2850, HD 1, pass Third Reading, seconded by Representative Evans.

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

"May I request of a ruling on a possible conflict? I'm a wholesale importer of Japanese wine," and the Chair ruled, "no conflict."

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

"Mr. Speaker, I rise in opposition to this measure. Not so much because it's liquor, but because in the Finance Committee, Anheuser-Busch gave us a formula. For every amount of increase in price there was the decrease in sales, which was a decrease in jobs. This was a national database, empirical, actual, non-imaginary or factitious. Because of that Mr. Speaker, I'm against this bill. It's job-killer bill number 8. Thank you."

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

"Thank you, Mr. Speaker. In opposition. I guess, for the last time. We're experiencing unprecedented economic difficulty and therefore I rise in opposition to House Bill 2850, Relating to the Liquor Tax. The problem is Mr. Speaker, that even with all being said, there are other times when this Body has perhaps not taken a look at the consequences of our actions. House Bill 2850 is one of those times.

"With tourism, maybe in some people's eyes, coming back, but in generally accepted to be still in a fragile state. Discretionary spending is at an all time low. This tax represents a cost increase that will be passed on to not just tourists, but also local customers.

"The fact is that restaurants rely heavily on the profit generated by liquor consumption at their establishments. From the high end five-star dining, but maybe more importantly the Hawaii regional cuisine restaurants, to the local neighborhood bar and grill establishments. They are just all hanging on. We all know how tough the restaurant business is. They're hanging on just to make payroll. Just to remain open. And they are employing our local people.

"This tax will drive down sales and once the sales are reduced, then layoffs will begin and now their workers will find themselves unemployed. Businesses will close as many of the businesses in my district have closed.

"And it will not only be the businesses that sell liquor. These restaurants purchase products from other local businesses. They purchase, importantly, agricultural products, particularly Hawaii regional cuisine restaurants. Local beef, local fresh vegetables, the list goes on and on.

"So Mr. Speaker, I urge our Members to recognize the cause and effect, and to look deeper into the effect of what we do. To look beyond. To look towards tomorrow. To look towards the bigger vote, and please protect our local businesses."

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

"Thank you, Mr. Speaker. In opposition with short comments. Thank you, Mr. Speaker. We didn't have any, at least from what I can recall, we didn't have any testimony in support on this bill. But I just wanted to make

note that this is an approximately 13% increase. A 13% increase on this current tax. Thank you."

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

"Thank you, Mr. Speaker. Just with some slight reservations. I know this is a work in progress and we need to move this along to keep as many tools available to us for the deficit. I'm just concerned with the sunset in 2015 that the rates will sunset higher than they are now. I think with the economy recovering by that point, there might hopefully be some flexibility to lower them. Thank you, very much."

The motion was put to vote by the Chair and carried, and H.B. No. 2850, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE LIQUOR TAX," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Brower, Ching, Finnegan, Marumoto, Pine, Thielen and Ward voting no.

At 6:52 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2313, HD 1  
H.B. No. 1948, HD 1  
H.B. No. 1907, HD 1  
H.B. No. 2885  
H.B. No. 1947, HD 1  
H.B. No. 2850, HD 1

At 6:52 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 7:03 o'clock p.m., with Speaker Say presiding.

At this time, the Chair stated:

"Members this evening, I want to thank all of you for your patience and perseverance in going through this session today. It's about five minutes after 7:00. We started this morning at 9:00 or maybe five or ten minutes after that. So we'll try to get out, I hope by 8:30 or 9:00 with three more pages to go, and the end of calendar measures."

#### **H.B. No. 2851, HD 1:**

Representative B. Oshiro moved that H.B. No. 2851, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to the measure, Relating to Insurance. Just as a footnote to your comment, Mr. Speaker. It is late. People are a bit tired. They're hungry. But you know, you've got such heavy bills saved for the last. You're probably going to get us out quicker because we want to get out. Whereas if they would have been in the front, we probably would have debated it and thought about them a bit early. But you put all of these back to back.

"Case in point. Relating to Insurance increase in the insurance premium tax, which basically says the cost of living and the cost of dying has just gone up with this bill, Mr. Speaker. This is job-killer bill number 9, and my further remarks will be in the Journal."

Representative Ward's written remarks are as follows:

"Mr. Speaker, I am presenting written comments in opposition to HB 2851, Relating to Insurance. This bill is a job killer. The tax increase makes captive insurance in Hawaii less competitive with the rest of the country and could drive businesses, and consequently jobs, away. Insurance contracts, sales and providers are already taxed substantially. Hawaii is the second best captive insurance domicile in the country. This bill will threaten that.

"For these reasons, Mr. Speaker, I oppose HB 2851."

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

"Thank you, Mr. Speaker. On this measure, may I have a ruling on a potential conflict? I'm an insurance broker," and the Chair ruled, "no conflict."

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

The motion was put to vote by the Chair and carried, and H.B. No. 2851, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Third Reading by a vote of 41 ayes to 10 noes, with Representatives Berg, Brower, Ching, C. Lee, Marumoto, Pine, Takai, Thielen, Ward and Wooley voting no.

#### **H.B. No. 2872, HD 1:**

Representative B. Oshiro moved that H.B. No. 2872, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I rise in opposition to the measure. This is relating to basically taxing or increasing the fees for bankers. The bankers are already in a depressed state. They're losing, if not merging. They're going out of business. It's not the 1920s or the early '30s, but it's a time where there's a real shedding of assets in the banking industry.

"Before bankers were the most trusted individuals, Mr. Speaker. Now nurses are the most trusted, so it shows the shaking of our economy. I'm not sure where politicians are. I don't think we were probably ever at the top. But this is going to hit the banking community, and all of us who have those accounts are going to have to pay. This is job-killer bill number 10. Thank you."

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

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

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

"Mr. Speaker, in support. And just really quickly to correct the speaker from Hawaii Kai. House Bill 2872, HD 1, Relating to Taxation does not increase taxes for banks. All it does is divert the Franchise Tax into the general fund. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2872, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 46 ayes to 5 noes, with Representatives Berg, Ching, Marumoto, Pine and Ward voting no.

#### **H.B. No. 2887, HD 1:**

Representative B. Oshiro moved that H.B. No. 2887, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in opposition of this measure. Thank you, Mr. Speaker. Ten years ago, those of us who were in this Body had an opportunity to do something pretty monumental. We passed the bill which became the law that set up the Tobacco Settlement Fund. I'd like to read a couple of statements that I made that day because I think it's important to put this discussion tonight in context, and I quote:

"With the passage of this bill, we will be making a decision that will save lives, save money, and improve public health. This bill will

positively impact every resident in Hawaii especially our children. Hawaii has once again placed itself on the map as one of the nation's leaders in terms of public health and education. We now have the funds allocated to mount an effective education campaign against the tobacco industry which for years has targeted our children."

"Mr. Speaker, when I said those words ten years ago, I did not in any imaginable sense believe that I'd be on the Floor today, ten years later protecting what is left of the Fund. As you know over the years we have eroded the support to the basic premise of this Fund, namely to provide funding for tobacco prevention efforts.

"In fact, in 1999 when we set up this Fund, 35% was set aside for purpose number two. Purpose number three which is totally eliminated tonight, started out at 25%.

"It's interesting Mr. Speaker, because I have two young children. In fact, just about a week ago when we were watching the Olympics, one of the TV commercials was the one where the guy's playing basketball and dragging this ball and chain. My daughter and I had a conversation. I asked her, 'Do you know what's going on here? Do you know why this guy is struggling to play basketball?' And she said, 'Yes. Because he smokes and smoking is bad. Daddy, have you ever smoked?' And I said, 'Yes, actually I have.' And she says, 'Why did you do that? It's really, really bad.' And I said, 'It is. I don't smoke anymore.'

"Mr. Speaker, she's only six years old and I believe that our efforts to curb tobacco usage among children especially, and also among our adults is working, and we should all take credit for what we have done ten years ago to setup this opportunity.

"Today people have said and will continue to say, that the Hawaii Community Foundation which now has the corpus of the funding is rich at \$53 million. Mr. Speaker, this tobacco settlement money is eventually going to disappear one day, and the purpose of that endowment from the very beginning in 1999 was to setup a corpus from which we could use the interest raised from these moneys to continue supporting tobacco prevention efforts in perpetuity.

"Now I had a chance to review some of the testimony provided to the Committee on Finance, and time and time and time again, there was testimony from many influential organizations, and many influential people saying that we should not do this. In fact Mr. Speaker, as you well know, the *Honolulu Star-Bulletin* and the *Honolulu Advertiser* both came out with editorials against this particular measure.

"I really think our colleagues should take a look at this. I know we're in dire straits and I know the attempt to raise money from these type of funds to help our general fund balance is a priority, however I think we need to realize that taking money away from this particular purpose and using it to balance our budget will in the long run, cost us many more millions and definitely many more lives.

"The other thing I would like to add Mr. Speaker, is that many of the bills that we're looking at especially during this late hour, all have defective dates. This measure does not have a defective date. Mr. Speaker, a vote tonight on this measure by any Member of this Body needs to be a vote to be considered as a final vote. And I think that's very important because we may not see this measure again.

"Mr. Speaker, in 2007 when we passed another amendment to this Fund we said, 'Well this is going to be for only two years.'"

Representative Bertram rose to yield his time, and the Chair "so ordered."

Representative Takai continued, stating:

"Thank you, Representative. In 2007 when we said that we're going to make some minor changes to the purpose of the funding, we said it will last two years. Then we said it'll last another two years, so 2009. Then we made changes last year in 2009 to say, 'Well, you know what? Let's extend

some of these purposes, these diversions of the funding to 2011.' Tonight we're saying, 'Oh no. It's not 2009. It's not 2011. It's in fact, 2015.'

"I've said on this Floor numerous times over the years, every time a bill comes up like this, that we got to end this type of taking once and for all. I can show you speeches that I've given, as well as many of our colleagues have given that said, 'Okay, you know what? Let us do this, and then let's end it.' I supported the effort to utilize the extra money for the UH Medical School for the operation of the school for two years. Now this thing is going to go on. Some people want it to go on forever. I just think it's absurd that we're now taking money for our tobacco prevention efforts, and not even looking at that particular part of the Fund.

"Members, please take a look at this and I urge you to seriously consider your vote, because I believe that a vote for this is a vote against children, and it's a vote against our public health in Hawaii. Thank you, Mr. Speaker. One more thing, Mr. Speaker. May I insert additional comments? Thank you."

Representative Takai's written remarks are as follows:

"Mr. Speaker, I speak in opposition to this bill. The purpose of this measure is to totally eliminate the revenue stream from the Tobacco Settlement Special Fund to the Tobacco Prevention and Control Trust Fund.

"Hawaii receives Tobacco Settlement moneys as the result of a settlement entered into between 46 states and the major tobacco companies to recover damages for tobacco-related health care costs paid by taxpayers because of the harms caused by cigarettes. By joining the settlement, Hawaii made a promise to the people of Hawaii to reduce youth use of tobacco and to advance public health. This promise is reflected in Act 304, SLH 1999 (SB 1034, SD 1, HD 2, CD 1), which created the Tobacco Settlement Special Fund and the Tobacco Prevention and Control Trust Fund.

"The Tobacco Settlement Special Fund was created to "serve as a medium for a public-private partnership to." The fund also serves as a mechanism to maximize financial resources for tobacco prevention and control, health promotion and disease prevention programs. If this bill becomes law, the Tobacco Prevention and Control Trust Fund will suffer a 100% reduction from its original funding.

"In the last 10 years, the Tobacco Prevention and Control Trust Fund has kept youth from starting to use tobacco, and saved Hawaii money. Hawaii now has the fifth-lowest smoking rate in the nation with 15.4 percent of adults smoking in 2008 as compared to 21.1 percent in 2002. We've reduced smoking from 1 in 4 youths to 1 in 10 youths from 2000-2007.

"Public Health Epidemiologist, Tonya Lowery St. John, reports that the reduction in smoking rates between 2002 and 2008 resulted in 42,300 fewer adult smokers in the State. This decrease has spared approximately 14,100 lives from tobacco-related deaths. It has saved an estimated \$402 million in direct medical costs, of which \$53.9 million would have been for Medicaid expenditures and the State of Hawaii's share would have been \$22.4 million.

"We have learned from other states that cuts in funding will undermine successes made in reducing smoking rates. When Indiana cut it's funding of tobacco prevention programs by 70 percent, their smoking rates increased to 23.9 percent in 2006. California had a well-funded Tobacco Control program in 1999 that reduced youth smoking; however, funding cuts in 2003 led to an increase in high-school smoking rates from 13.2 percent to 15.4 percent between 2004 and 2006, and declines in cigarette consumption came to a virtual standstill between 2002 and 2005.

"Although we've made significant progress in reducing tobacco use and saving lives because of the investment in tobacco prevention and control, tobacco use remains a serious health issue. In fact, lung cancer associated with tobacco use kills more women than breast cancer in Hawaii. More than 1,000 Hawaii youth become daily smokers each year.

"Smoking costs us over half a billion dollars per year in smoking-related healthcare costs and lost productivity. All that stands between the \$42 million tobacco companies spend each year in Hawaii and the next generation is the counter-education efforts of tobacco prevention programs and messages.

"Tobacco-related health costs take an enormous toll on our business and economy. Smoking costs us over half a billion dollars per year in smoking-related healthcare costs and lost productivity-addition costs our State cannot afford in these difficult economic times.

"I urge that we maintain the 6.5 percent of Tobacco Settlement dollars funding the Tobacco Prevention and Control Trust Fund so that these community-based services can continue. For these reasons, I oppose this measure and urge my colleagues to do the same. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. In support. First let me start by saying what I started to say on this bill on Second Reading. I think we all understand that especially with children, smoking is bad. And everybody understands that the tobacco prevention people do good work. It is a necessary and good program to help people to first, not take up smoking; and second, for those who are, to help them get off.

"As I also said, and I will reiterate again, that we are in a fiscal crisis and this, along with many other bills, we are going to have to make some tough decisions. Do we forgo prevention in the name of immediate care? Do we, as some would say, 'kick the can down the road'? I don't think anybody wants to do that, especially on issues like this. However, we are at a point where we cannot even make the payments for our safety net QUEST on time.

"I appreciate the prior speaker's concerns and comments, and when he was speaking of his child watching the commercial, I was thinking about the other children, and that's when it came to me. What about the other children? Not every child has loving parents. Not every child has parents who have the economic wherewithal to provide healthcare. Not every child has parents able to put food on the table, and that's the situation we're in.

"Yes, let's think about the children, but let's think about all the children. Let's think about the children who are in embattled families waiting for CPS to rescue them, those who have not been rescued yet. Let us think of the children who are not able to access certain healthcare services. Let us think of the children who are still on Furlough Friday.

"Is this something that we all want to do on this bill? No. But we are at the point where we need to ensure the programs and the safety net for the State. Like I said earlier, let's think about all children. Thank you."

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

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

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

"Thank you very much, Mr. Speaker. In support with reservations. The irony is that my reservations were best encapsulated by the speaker from Kaneohe. I have very grave concerns with the bill, however the reasoning he gave are the reasons why I'm going with reservations and am not opposed to the measure. Thank you."

Representative B. Oshiro rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, may I ask for a ruling on potential conflict of interest? At my law firm, I represent the Coalition for Tobacco Free Hawaii," and the Chair ruled, "no conflict."

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

"I rise in support, Mr. Speaker. I'm not sure that all the Members are aware that in many states the entire tobacco monies go into their general fund. We have been very lucky in Hawaii to have reserved this trust fund for work with tobacco prevention. And because we pass this bill today, it does not mean prevention and control is going to go away. There is \$53 million there.

"I'm sorry that we have to use it, but as the Representative from Kaneohe said, it doesn't mean that by using this that children will be hurt. Children will be hurt if we don't use some of this money for the safety net. I'll add some additional written comments. I'm sorry we have to do it, but this year it's really necessary and we will continue with our prevention and control programs. Thank you."

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

"Mr. Speaker, I rise in support. No one wants to see tobacco education and prevention efforts end. The Hawaii Tobacco Prevention and Control Trust Fund still has \$53 million that can be made available by the non-profit responsible for the fund.

"In these dire fiscal times, we must temporarily transfer a portion of the monies from the Hawaii Tobacco Settlement Special Fund to help us deal with critical needs in our State budget. No child will be harmed by this transfer and many children may be helped. I urge support."

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

Representative Wooley rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Wooley's written remarks are as follows:

"HB 2887 is not a bill I want to support, but given all that I know about the budget and our dire fiscal situation, I must. The solace is knowing that the shifting of this money to the general fund will not affect the actual services provided. Instead, it will only slightly deplete the \$53 million corpus of the Tobacco Fund."

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

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

"Mr. Speaker, I rise in strong support. Mr. Speaker, I really appreciate the comments from my colleague from Pearl City and all the other folks concerned about this measure. It would be appropriate I believe, for everyone to vote with reservations because this measure does affect the funding of the Hawaii Community Foundation which for the past 10 years has been monitoring and providing the grants to the various interest groups who will be participating in the public hearings. I can understand their concern and that it might affect some of them.

"But the truth of the matter is Mr. Speaker, as alluded to by the Representative from Kaneohe, and the Vice Chair of Finance, is that the Hawaii Community Foundation has properly managed the fund and invested it over the last 10 years. In their current report submitted to the Legislature in December 2009, they have a fund balance of \$52 million. According to their report issued here, they spend about \$5 million Mr. Speaker, per year in funding the various nonprofits who do both smoking cessation, as well as smoking prevention work. They also fund the very effective multimedia campaigns geared toward the youth in our community, and they have been effective.

"I think the Members also need to know that in October of this year, October 26, 2009, there was a review of the investment policy, and expenditure policies by the Hawaii Community Foundation and the



Department of Health, and there was an amendment made to the previous investment policy guidelines. We hope to review that document soon.

"The point of the matter Mr. Speaker is, sometimes we all need to be careful of what we read and in this case, I think the adage that, 'you shouldn't believe everything you read' bears truth. Both the *Star-Bulletin* and *The Advertiser* editorials have been wrong, and I think they fail to appreciate the fact that there's \$53 million in the Hawaii Community Foundation Fund. This is a temporary diversion of these moneys to the general fund for important purposes of health, safety, and education, and that for the next years, \$5 million will go to the various non-profits and they'll be able to administer and run their programs. For this reason Mr. Speaker, I hope everyone can support this measure. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2887, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TOBACCO SETTLEMENT MONEYS," passed Third Reading by a vote of 36 ayes to 15 noes, with Representatives Aquino, Belatti, Berg, Brower, Carroll, Finnegan, Hanohano, C. Lee, Marumoto, Morita, Rhoads, Takai, Takumi, Thielen and Ward voting no.

#### **H.B. No. 2598, HD 1:**

Representative B. Oshiro moved that H.B. No. 2598, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, if I may briefly speak in support. In 1973, when I was the Vice Chair of the Hawaii Hotel Association, then Governor Burns said, 'Don't ever give up fighting against the room tax. If the Legislature passes it, I will veto it.' It was later when the industry changed its mind and supported the TAT. Before I voted on it I said, 'Are you sure? Are you sure you want me to vote for this? Can you trust past, present, and future Legislatures to keep their word that this money is going to be for marketing and only marketing?' I voted for it with strong reservations.

"I have never supported giving any money to the counties. That is not marketing. I don't support using it to balance the budget. That is not marketing. If we had used the TAT from the very, very beginning to market Hawaii and market tourism, we might not be in the same fix we're in now. Thank you."

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

"Yes Mr. Speaker, I speak in favor. I am strongly in favor, and if I can, I wish to thank the leadership and members of the Finance Committee for providing this, I would use this term, 'accommodation' to the counties. I know the kind of work that it took to find the money to provide the funding at this particular level. For the Mayors and for Maui County, thank you very much."

Representative Finnegan rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Finnegan's written remarks are as follows:

"HB 2598 places a limit on the amount of Transient Accommodations Tax revenues distributed to the counties. Although I support the Finance Chair in his decision to amend this bill, I do understand the Governor's position.

"Despite the shared budget problems that this economic downturn has brought the entire State, the counties chose to play politics when the Administration began implementing cost control measures and working out collective bargaining agreements. The counties said they were fine financially when in actuality, they knew full well that their budgets for the next few years would be severely strained. Faced with this prospect of losing their TAT subsidy, the counties' dire financial situations all of a sudden became clear.

"The counties' share of the TAT is a subsidy that the State provides. The counties and the State share the ownership of the economy and they similarly share the responsibility for wise stewardship of resources and helping Hawaii achieve a sound fiscal footing and economic recovery. I believe the Governor's proposal to take back some of the Transient Accommodations Tax was made with the recognition of that shared responsibility."

The motion was put to vote by the Chair and carried, and H.B. No. 2598, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMMODATIONS TAX," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Pine voting no.

#### **H.B. No. 2852, HD 1:**

Representative B. Oshiro moved that H.B. No. 2852, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. On this measure, House Bill 2852, may I have a ruling on a potential conflict? I'm an insurance broker," and the Chair ruled, "no conflict."

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

"Mr. Speaker, I rise in opposition to this measure. Mr. Speaker, we are in a healthcare crisis. I think anything that comes out of the national level with the Obama Administration, and the health industry, and the summit, and all the things that basically said that we are in a crisis to the extent where the cost is skyrocketing. This bill at the local level is not only a part of exacerbating the national crisis, but it takes really close to home, a tax on credit, or another way of bumping the premiums for HMSA and Kaiser.

"Mr. Speaker, heretofore we would not have to pay on prescription drugs, but we have food and medicine as things that are taxable. Now we're getting on to very sacred ground by putting the expense onto HMSA and Kaiser. Mr. Speaker, I believe it was you while we had lunch who reminded me that the rates for HMSA just went up another 7.5% for the business community. Mr. Speaker, in simple terms, I think it is most descript. This is a job-killer. It's bill number 11. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 2852, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE INSURANCE PREMIUM TAX," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Berg, Brower, Ching, Finnegan, Pine, Takai and Ward voting no.

At 7:30 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2851, HD 1  
H.B. No. 2872, HD 1  
H.B. No. 2887, HD 1  
H.B. No. 2598, HD 1  
H.B. No. 2852, HD 1

#### **H.B. No. 2866, HD 1:**

Representative B. Oshiro moved that H.B. No. 2866, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Ward rose to speak in opposition to four measures, stating:

"Mr. Speaker, with your permission, may I bundle this page, H.B. No. 2866, HD 1; H.B. No. 2867, HD 1; H.B. No. 2877, HD 1; and H.B. No. 2962, HD 1, so I can be brief. They're all relating to taxation and I am voting no on all four of those and the other ones at the end of calendar.

"Essentially Mr. Speaker, it's saying that these are the final job-killing bills, numbers 12, 13, 14, and 15, which when we look at what we're doing, we have to see the full trend line of where we are. We have to connect the dots. And with these 15 bills taken as a whole, we can see there's a few hundred million dollars that's laying out there which we have to understand we're going to be pulling out of the economy.

"Now some of the Members of the Body have berated the fact that we've pulled out \$500 million from the economy and set it aside for the rail. When you pull money out of the economy, you weaken the pipeline, the cash flow, and the basic mechanism which keeps an economy strong and that is consumer spending. Mr. Speaker, if we look at these 15 job killing bills, we will have if we implement them, pulled out another \$150 million at least in the economy over the ensuing years. Mr. Speaker, because of that, we want to keep our people employed. We want to keep our kids in school. We don't want these job-killing bills. And that's the summary of my 15."

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

"Mr. Speaker, in support. I just disagree with the idea that somehow these bills are taking money out of the economy. On the contrary, they're taking money out of one part of the economy, but it's going to another part of the economy and the money is going to be spent just as fast as it comes in. Maybe faster.

"You know, there's no difference between government money being spent, and private money being spent. It's still money. It still stimulates the economy. It's a net wash, I agree with that. It's basically zero if the money you take out of one sector goes into another sector and comes out in the economy somewhere else. It's all zero.

"But the problem is from the government side, this is a period of time when the demand for services goes up, and we need the money. So I just disagree with the economic theory being proposed. Mahalo."

The Chair then addressed Representative Rhoads, stating:

"Representative Rhoads were you speaking in support of all four measures on this page before us?"

Representative Rhoads responded, stating:

"Mr. Speaker, I was only speaking on the first bill, Stand. Com. Rep. No. 530. Thank you."

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

"Thank you, Mr. Speaker. I believe this is the bill connected to the death tax? HB 2866? Mr. Speaker, I want to just note that, I was thinking about voting with reservations. We were talking about being able to balance the budget and keeping some of these measures alive, but I noticed that this is effective date upon approval, so I will be voting no."

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

"Yes, in opposition. I'm sorry, this is my last one big speech, and then I'll be quiet. I rise in opposition to Stand. Com. Rep. No. 530. Basically, this is the tax that will be applied retroactively, to December 31, 2009. So we're already in March, and this bill is going to be retroactive to those that the death tax would apply to, from last year.

"So it will affect estates that did not have the opportunity to plan effectively for such a tax. This takes from people who never even had a chance to see it coming. While the State should continue to look for ways to increase revenue, pushing a family who just lost a loved one by taxing them and taking the assets they amassed over their lifetime, to me is just cruel and wrong.

"The death tax falls hardest on those who maintain a family business, often forcing family business owners to sell the business in order to pay the tax.

"As defined by the IRS, the 'death tax' is a tax on your right to transfer property. A death tax mocks the idea of fundamental property rights. By its intrinsic operation, the death tax confiscates a life earnings, and prevents families from passing a legacy of hard work and delayed gratification down to the next generation.

"The death tax effectively punishes those who save and invest, while exempting those who spend their money away, or who don't have money. Which is okay on that part.

"Economist Art Laffer aptly described the perverse incentives of the death tax in a recent *Wall Street Journal* article. Today in America you can take your after-tax income and go to Las Vegas and carouse, gamble, drink and smoke, as far as our government is concerned, and that's just fine. But if you take that same after-tax income, like my grandmother has done, and leave it to your children and grandchildren, the government will tax that after-tax income, one additional time, at the rates of up to 55%. And these especially are those families that don't really know how to put things into a trust. And I'm finding that a lot of people in my district, who have amassed a lot of savings and a lot of lands, don't even know about trusts, and we're informing them about that right now.

"The death tax is a form of double taxation, which means that it taxes assets that have already been subject to the federal payroll, income, and/or capital gains taxes. The death tax is an additional burden on top of the other federal taxes.

"Consider for example, Joe, who manages to get taxed three separate times due to the death tax. And we're making this retroactive, now. Joe is an electrician, who recently started his own business. He takes home earnings of roughly \$60,000 a year. All of his income is subject to the income tax, the first tax layer.

"Joe wants to improve his family's standard of living, so he is frugal and saves his money and invests it in diversified mutual funds. Over the course of his life, he invests \$500,000 of his income where it grows to over \$1,000,000. Upon selling his stock, Joe owes capital gains taxes on the profit above his original \$500,000. That's his second tax layer. He's just an electrician.

"Joe dies after enjoying a good life and nice retirement. Joe is excited before, as he does his will. He leaves his investment returns along with his house, his boat, his other land, other belongings, as an inheritance for his son and daughter and his grandchildren. Joe's business savings and other belongings are valued at \$11.5 million. Any inheritance that he leaves in excess of \$7 million, or \$3.5 million if he is single, is subject to the death tax. And this is the third tax, after he's paid taxes all of his life.

"Hence Joe has been taxed three separate times on the same dollar. Once when he earned it. Again when he invested it, and later sold the investment. And then once again when he died. Is it right for Uncle Sam to nail Joe three separate times on the same dollar?"

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

Representative Pine continued, stating:

"Is it right for Uncle Sam to nail Joe three separate times on the same dollar? Shouldn't Joe pay taxes once, and then be done with his obligations to the taxman?"

"Now this really hits close to home, because my grandmother was a plantation worker. And because my grandpa was Filipino, he could never rise to an officer level when he was in the military, so he was always the chef, or the custodian, or an assistant to the Admiral. All my life I've seen them just save, save, save, save, save. And had it not been for me working here and understanding a few things, we would not be able to meet with someone who is a tax person that helped her to develop a special trust and some other incentives to save her money. But because she's just in a beautiful way, a wonderful way, very simple minded, she and many other wonderful people from her generation, they just put things in savings.

They don't know about all these fancy things to do to prevent the death tax from being so high.

"And so when I talk about this, I see real faces. When we allow this to revert back to taxing people in such a way that they were before the death tax, it really is something that I think we should reconsider before the end of this Session."

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

"Mr. Speaker, I rise in support. I'll be very brief. Unfortunately, the estate tax under the Bush tax cut plan only benefitted the rich. So at this point the exemption grew from \$675,000 up to \$3.5 million dollars for an individual. That's what we've pegged it at for this bill because unfortunately, Congress was not able to pass a bill. So right now, anybody that passes away under the federal law, in 2010, will escape a death tax. They will escape any estate tax.

"So although it's not very popular for us to be assessing taxes, I think when the federal government has failed to actually do anything, and actually has assessed a tax, and there's this gap in the law, then I think it is appropriate for us to take a look at it. And we've not done anything that the federal government hasn't done in the past. We've just picked it up right where they left off. This isn't a brand new tax. This isn't something that people are not aware of. This is something that is exactly where the federal tax has been for the last nine years under the Bush tax cuts. All we've done is continue it on for 2010, because unfortunately, on the federal level, they will get away with paying none. Thank you."

Representative Ward rose to respond, stating:

"A brief rebuttal to the Representative from Downtown, Chinatown, if I may proceed?"

The Chair responded, stating:

"I believe he was on the first bill."

Representative Ward continued, stating:

"But if I waited till the end of all these bills to rebut it, you would say it's probably out of context. But I leave it to you. I just want to rebut.

"He gave a wrong impression of what economics are about. He said government is as awful as consumer spending is, and it is not. We have to realize that the economy has three separate parts. Consumers, private investment, government investment. Consumers are 70% of the equation, Mr. Speaker. That's the whole point. When government spends something, it's around 15% to 20%. Probably now it's pushing it a little bit further because we've got so many stimulus programs going on. But when the private business sector does it, it's about 10% to 15%. The point is, when 70% of the pipeline of the economy slows down because we've sucked out money by taxes, the economy slows down. That's the whole point.

"So he was saying a dollar, is a dollar, is a dollar. Not so. And that's why we've got to be very attentive to allow those with the money to keep it in the stream and to keep people spending. Yes, spending. We've got to keep people spending. Not sucking the money in and putting it aside like we did with the \$500 million for the train, which these bills are going to do, the 15 bills that I just told you that are job killer bills. We've got to keep the pipeline filled, Mr. Speaker. That's the whole turnaround in an economy. That's why we got through the Depression when the war came. We got the economy moving. And we have to stick to those basic principles at this point in this State. Thank you."

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

Representative Rhoads rose to respond, stating:

"Mr. Speaker, are we still on the first bill? This is my second time then. Still in support. I would say to my colleague from Hawaii Kai, that as the

Chair of the Labor Committee, I've been reminded many times that 65% of the cost of government is from salaries. When we raise taxes to pay for government, that means paying for salaries of workers. And those workers are in fact consumers. They go out and spend their money just like the consumers who work in the private sector do. The government spends money, and it works just as much as a stimulus as private sector money does. Mahalo."

Representative Pine rose to respond, stating:

"Yes, thank you. Just in rebuttal to a couple of previous speakers. First of all, it's been a proven fact that the private sector has worked a lot more efficiently than people who do the same things in the government sector. I think just watching the news this morning about our Postal Service, they're saying it's very hard for government to operate the way it does in competing against private business because they run their businesses much more efficiently. For example, like FedEx or UPS. And so that's a great example of what's happening today exactly, and how government versus the private sector uses money that's in the economy.

"And second of all, this hasn't always been a tax. I'm not in the federal government right now to make any changes. I'm in the Hawaii State House of Representatives. And what this does, what this 'gut and replace' bill does is, it now retains the State's ability to pick up the State death tax as it existed way before. And so it does make a change."

The motion was put to vote by the Chair and carried, and H.B. No. 2866, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Berg, Ching, Finnegan, Marumoto, Pine, Thielen and Ward voting no.

#### **H.B. No. 2867, HD 1:**

Representative B. Oshiro moved that H.B. No. 2867, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Ward rose to speak in opposition to H.B. No. 2866, HD 1; H.B. No. 2867, HD 1; H.B. No. 2877, HD 1; and H.B. No. 2962, HD 1. [See remarks for H.B. No. 2866, HD 1.]

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

The motion was put to vote by the Chair and carried, and H.B. No. 2867, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Ching, Finnegan, Marumoto, Pine, Thielen and Ward voting no.

#### **H.B. No. 2877, HD 1:**

Representative B. Oshiro moved that H.B. No. 2877, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Ward rose to speak in opposition to H.B. No. 2866, HD 1; H.B. No. 2867, HD 1; H.B. No. 2877, HD 1; and H.B. No. 2962, HD 1. [See remarks for H.B. No. 2866, HD 1.]

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

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

"Mr. Speaker, I just would like to request a ruling on a potential conflict of interest. I can't quite tell what the bill does, but I think it may affect the two organizations that I'm on the Board of Directors for: the Honolulu Tower AOA; and also the Pacific Gateway Center," and the Chair ruled, "no conflict."

Representative Rhoads continued to speak in support of the measure with reservations, stating:

"Thank you. Just with reservations. I'm a little concerned about one of the sections that has to do with low-income housing. Kukui Gardens of course is the affordable housing complex the State purchased a couple of years ago when we actually had some money, and I'm afraid that, and I can't tell again, I'm unsure whether these provisions could actually negatively affect that enterprise. But I'm concerned about that and I hope that we can work that out before the final bill goes through. Mahalo."

The motion was put to vote by the Chair and carried, and H.B. No. 2877, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Berg, Brower, Ching, Marumoto, Pine, Thielen and Ward voting no.

#### **H.B. No. 2962, HD 1:**

Representative B. Oshiro moved that H.B. No. 2962, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Ward rose to speak in opposition to H.B. No. 2866, HD 1; H.B. No. 2867, HD 1; H.B. No. 2877, HD 1; and H.B. No. 2962, HD 1. [See remarks for H.B. No. 2866, HD 1.]

Representative Keith-Agaran rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, on the final bill, House Bill 2962, I'd like to disclose a potential conflict. I am affiliated with an investor in a qualified high tech business," and the Chair ruled, "no conflict."

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

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

"Mr. Speaker. Yes, I speak in favor, but with reservations. I would like to mention that I did submit a green slip to vote no, and I want to change that to yes.

"In relation to this measure, my only concern here is, and I understand why we're doing this in order to find the revenue to balance the budget. But my main concern here is that at the end of three years, we need to replace \$168 million which is the net amount of the three years of revenue to the State that we will have suspended from the Act 221 clients.

"I have some problems with that. I have a problem doing away with Act 221 and the sunset and the continuance. And I understand the good they've done, but they're supposed to sunset. They still have a tail, and the tail amounts to approximately \$168 million that we'll have to pay three years hence. Right now I have no idea how we're going to pay it, including the \$275 million from the Governor's budget, if we accept the Governor's budget, and on and on. This only adds to our burden.

"So hopefully the money Committee can look at it and be aware that three years from now, we've got to 'pay the piper.' Somehow we've got to find money for that \$168 million. There aren't too many alternatives for that. I'm a champion for a few of them, but I will not mention it now. Thank you, very much."

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

"Mr. Speaker, I would like to ask for a ruling on a potential conflict. I service high tech industry clients in my firm. Thank you," and the Chair ruled, "no conflict."

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

"Mr. Speaker, please note my reservations and I have short comments. Mr. Speaker, I am supporting this bill for now with reservations. I think that the reservation that I have is, of course we don't want to do a deferral of these credits because a promise is a promise. That's what the law was at

that time. People invested. They earned that credit. But Mr. Speaker, because of the situation we are in with the budget, I am moving forward, but I do have reservations. Thank you."

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

The motion was put to vote by the Chair and carried, and H.B. No. 2962, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Berg and Ward voting no.

At 7:53 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2866, HD 1  
H.B. No. 2867, HD 1  
H.B. No. 2877, HD 1  
H.B. No. 2962, HD 1

#### **H.B. No. 2849, HD 1:**

Representative B. Oshiro moved that H.B. No. 2849, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I stand in opposition to HB 2849, House Draft 1. It imposes a retroactive reserve housing requirement for residential and commercial planned development permits greater than 45 feet. And that's the definition that you folks are all familiar with, I'm sure. I do believe the Kakaako community should be composed of residential housing for all income levels, however this particular measure, we don't believe is the proper way to encourage that creation.

"According to the Land Use Research of Hawaii Foundation, there is no evidence that proves there's legal justification with the percentages allotted. Are they justified or constitutional? I agree with this Foundation, and the Hawaii Community Development Authority, that there needs to be more discussion before a measure is passed, with the stakeholders, with the landowners and the agencies, to develop a consensus of the goals, the initiatives, and how it's implemented. Thank you."

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

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

The motion was put to vote by the Chair and carried, and H.B. No. 2849, HD 1, entitled: "A BILL FOR AN ACT RELATING TO KAKAAKO," passed Third Reading by a vote of 38 ayes to 13 noes, with Representatives Belatti, Berg, Ching, Finnegan, Hanohano, C. Lee, Luke, Manahan, Marumoto, Morita, Pine, Saiki and Takumi voting no.

#### **H.B. No. 2918, HD 1:**

Representative B. Oshiro moved that H.B. No. 2918, HD 1, pass Third Reading, seconded by Representative Evans.

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

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

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

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

The motion was put to vote by the Chair and carried, and H.B. No. 2918, HD 1, entitled: "A BILL FOR AN ACT RELATING TO KAKAAKO COMMUNITY DEVELOPMENT DISTRICT," passed Third Reading by a vote of 51 ayes.

**H.B. No. 1752, HD 1:**

Representative B. Oshiro moved that H.B. No. 1752, HD 1, pass Third Reading, seconded by Representative Evans.

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

"In opposition, Mr. Speaker. What this bill does is, it removes certain offenses from the Three Strikes Law, which I supported. You know, this has been a tool for those in law enforcement in helping to reduce some more serious crimes in the State of Hawaii. Enforcing this bill also eliminates felony convictions in other jurisdictions, which would allow career criminals from other states to move to Hawaii.

"When Karen Ertell died, this was a youth offender. But if he was an adult, we would have known about multiple offenses that did occur in New Zealand. Some of the things that this removes from the Three Strikes Law are ownership or possession of firearms and ammo of a convicted person. It eliminates criminal possession of drugs. It eliminates promoting a dangerous drug in a third degree, a detrimental drug in the first degree, a theft in the first and the second, theft of livestock, forgery in the second degree, criminal possession of a forgery device. I could go on and on if it was earlier in the day, but I just find that to do this multiple times, that means you are a career criminal. So even though these aren't murder, these are by my definition, very serious crimes, and these people should not be in my community."

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

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

Representative Karamatsu's written remarks are as follows:

"I rise in support. The purpose of House Bill 1752, House Draft 1 is to increase judicial discretion by excluding certain non-violent offenders from the repeat offenders statute requiring mandatory minimum prison terms. The House is aware that the intent of this bill is to give back to Hawaii State judges discretion in sentencing certain defendants guilty of certain crimes as enumerated in the bill without requiring any minimum jail time or alternative sentencing methods if the circumstances do not require incarceration.

"Mandatory incarceration of defendants results in huge costs to the State and does not lead to a reduction in recidivism. According to the Judiciary, the incarceration of an adult defendant costs about \$50,735 per year. The use of alternative courts, such as Drug Court or Hawaii's Opportunity Probation with Enforcement (HOPE) program, costs about \$8,000 per year for each defendant. In addition, the rates of recidivism for defendants graduating from these alternative courts are markedly lower than those leaving incarceration. Thank you."

Representative Finnegan rose, stating:

"Regarding HB 1752, after looking at the bill, this one also has an upon approval effective date, so I just wanted Members to know that as well. Thank you."

The motion was put to vote by the Chair and carried, and H.B. No. 1752, HD 1, entitled: "A BILL FOR AN ACT RELATING TO REPEAT OFFENDERS," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Ching, Finnegan, Har, Marumoto, Pine, Thielen and Ward voting no.

**H.B. No. 1756, HD 1:**

Representative B. Oshiro moved that H.B. No. 1756, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Yes, Mr. Speaker. I am in opposition to this bill. HB 1756 would allow for the expungement of convictions for non-violent offenses that are over five years old. And the reason I'm against this, Mr. Speaker, is, I've been learning a lot about crime. I've been taking classes with the FBI to study criminal behavior and other things. What I'm finding out is that it's really hard to convict a violent offender of certain crimes.

"Let's use Al Capone for example. They could never get the guy. But they got him on something really tiny, and it was tax evasion, on multiple counts. And so what I'm studying in these different crime classes is that there are a lot of career criminals in our communities that the police or the FBI and other law enforcement have been trying to get for years on more serious crimes. But it is these smaller ones that the criminals slip a little more.

"So keeping their records on file has been a very helpful tool for law enforcement so they can keep track of these career criminals and perhaps start flagging them as potential criminals that will do much more serious crimes. And perhaps for these minor crimes, keeping them on record will help them to possibly put together cases that would allow them to have the evidence built over time, to actually convict some of these criminals that are being convicted for lesser crimes, for the more harsher crimes that they are committing. Thank you."

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

Representative Karamatsu's written remarks are as follows:

"I rise in support. House Bill 1756, House Draft 1 allows for the expungement of convictions for non-violent offenses after a five year waiting period after the completion of sentencing or probation for the offense to be expunged, whichever is later, before an application for expungement may be filed with the court. It prohibits the expungement of a conviction for any crime that is not eligible for a deferred acceptance of a guilty plea or nolo contendere plea. The court shall determine that the defendant is not likely to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the conviction remain on the applicant's record before issuing an expungement order.

"This bill works together with the Judiciary budget bill that includes the funding for the specialty courts that help people who commit non-violent crimes to turn their lives around. Upon completion of their sentencing or probation, an expungement of convictions for non-violent offenses will help these individuals to get jobs and be productive citizens in our community. Thank you."

At 8:00 o'clock p.m. Representative Finnegan requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 8:06 o'clock p.m.

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

"Thank you, Mr. Speaker. This is on Stand. Com. Rep. No. 540, HB 1756. I will be voting no. This does have an effective date upon approval from what I can see, so we may not see it again."

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

The motion was put to vote by the Chair and carried, and H.B. No. 1756, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE," passed Third Reading by a vote of 42 ayes to 9 noes, with Representatives Cabanilla, Ching, Finnegan, Har, Marumoto, McKelvey, Pine, Thielen and Ward voting no.

At 8:10 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2849, HD 1  
H.B. No. 2918, HD 1  
H.B. No. 1752, HD 1  
H.B. No. 1756, HD 1

At this time, the Chair stated:

"Members of the House, at this time we are at the items at the end of the calendar. We will be taking up the four items that were moved to the end of the calendar this morning.

"We will be taking up two measures. On page 16, Stand. Com. Rep. No. 579-10, HB No. 2376, HD 3, which is the Board of Education constitutional amendment. And on page 22, Stand. Com. Rep. No. 645-10, HB No. 2377, HD 3, which is the statutory language for the Board of Education reorganization.

"So we will be taking up those two measures at one time, since they both are related to one another."

Representative Tokioka rose, stating:

"Yes, Mr. Speaker. I rise on a point of inquiry. Mr. Speaker, we've been in this Chamber since roughly 10 o'clock, deliberating on bills, and I noticed something different for the entire day. I noticed that there was an additional camera in the room today, Mr. Speaker. So my inquiry is, if this camera is public record, and if I as a Member can ask for a copy of that?"

"I know that there are 6 other cameras in this Chamber that are used by Capitol TV, and we budgeted \$175,000 for this. After we split with the Senate, that's about \$85,000. But I do know that when we ask for a copy of the hearings or the proceedings, that we get that information. So I would just like to make that point of inquiry, Mr. Speaker."

At 8:12 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 8:14 o'clock p.m.

At this time, the Chair recognized Representative Finnegan, stating:

"An inquiry was posed by one of our Majority members, and the Minority Leader will respond to the inquiry that was posed to the Members of this Body."

Representative Finnegan rose, stating:

"Thank you, Mr. Speaker. I appreciate the question. For clarification, Mr. Speaker, let me just start off by saying that any, at least the equipment that the Minority Caucus has been using to tape this, is privately owned. Pretty much from these public cameras, we are not able to really use them when we are trying to do either YouTube, or communicate with our districts. And so on our own, and with the personal funds of some of our really dedicated employees, they decided to purchase equipment and use that to record events.

"I would just also like to add that I think it's very important that we remain as a Body, as open as possible. In fact, open to the public and very transparent. I think that this allows us to do so. Thank you."

The Chair addressed Representative Tokioka, stating:

"Thank you, very much. Has she responded to your inquiry, Representative Tokioka?"

Representative Tokioka responded, stating:

"Thank you, Mr. Speaker. I guess we can take that answer. But as far as being open, as I mentioned earlier, we have six cameras in here, and they have pretty good angles of the room. I think that's kind of open. As I said, we spend \$85,000 a year on providing information to the public. I think that's sufficient."

Representative Finnegan: "Mr. Speaker, I'm just wondering, why does this concern him? We're recording it with personal equipment. Even if it is being paid, the other equipment is being paid by this Body and the Senate, it is equipment that is personally owned that is being used to record our sessions so that we can communicate to our districts as to what took place. We can't use the video tape that is ..."

Representative B. Oshiro rose to a point of order, stating:

"Point of order Mr. Speaker. This is not a debate. Can we take this offline and not on the record and in the Journal?"

Representative Finnegan: "Mr. Speaker, I believe that the Members on that side started the conversation and implied that it was wrong to do so."

Speaker Say: "The inquiry was posed primarily because some of the Members felt that if it was public money, it should be open to the Members of this Body. Since private sources have been used to acquire the property and the equipment, it is the right of the GOP or the Republican Minority Caucus to do that. His inquiry was because he wanted to find out if it was privately bought or publicly bought. If it was publicly bought, then I think we'd have a decision that it should be shared among all Members of this Body."

Representative Finnegan: "Mr. Speaker, I agree except for the second comment that had nothing to do with that."

Representative Tokioka: "If I offended anyone, I meant no offense by that. I just inquired. I wasn't accusing. Thank you, Mr. Speaker."

#### END OF CALENDAR

Representative M. Oshiro, for the Committee on Finance presented two reports:

(Stand. Com. Rep. No. 579-10) recommending that H.B. No. 2376, HD 2, as amended in HD 3, pass Third Reading; and

(Stand. Com. Rep. No. 645-10) recommending that H.B. No. 2377, HD 2, as amended in HD 3, pass Third Reading.

Representative B. Oshiro moved that the reports of the Committee be adopted, and that H.B. No. 2376, HD 3, and H.B. No. 2377, HD 3, pass Third Reading, seconded by Representative Evans.

Representative Souki rose to speak in opposition to H.B. No. 2376, HD 3, stating:

"Yes Mr. Speaker, I am opposed to this first measure. I believe that the request for a constitutional amendment to change the composition of the Board is an overreaction because of the Furlough Fridays. And I believe that the impetus of this is too much haste and not enough thought. We have another bill, and I am going to reserve my remarks for the second bill that we are going to be discussing until later. But in regard to the constitutional amendment, I don't believe we need an amendment now. We may need it in the future, after we have had a lot of thought.

"I would like to see a committee be set up by you and the President of the Senate to study this during the interim. Then come back to the Legislature next year, and come up with the recommendation. That would

give enough time for people to settle down, and not get into the fervor of Furlough Friday.

"In respect to the three Governors, I served with all three of them, at different times of course. I can't remember any of them coming up with any recommendations for changes in the education system, or in the Board system. So it was quite a surprise to me. Thank you, very much."

Representative Finnegan rose to speak on both measures, stating:

"Mr. Speaker, I know we're taking up two measures, so I would like to be very clear on my votes on both issues. On Stand. Com. Rep. No. 579, the constitutional amendment for the Board of Education, I will be voting with reservations. And for the other bill with the statutory changes, on that bill I will be voting no.

"Mr. Speaker, on the first constitutional amendment question. First of all I did want to provide some comment on what the previous speaker just said. If I'm not mistaken, and I didn't research this, but if I'm not mistaken, Governor Cayetano actually did a Blue Ribbon report I think, recommending local school boards. I can't remember, but I think I remember something like that.

"Anyway, the constitutional amendment on the Board of Education. The Minority has offered a couple bills, and we offered a very similar bill to this, but instead we said to abolish the Board. The Governor also introduced a bill that said to abolish the Board and replace it with the Superintendent being appointed as a cabinet member of the Governor.

"And the reason why I'm with reservations is, as this moves forward, I would rather like to see a constitutional amendment more like the Governor's, where it focuses in on direct accountability, and responsibility to the Governor. So I'd rather see that.

"Now, speaking on the second bill that we're taking up, it has to do with the implementation language. This one gets a little confusing for me, and that's why I'm voting no. What I hope everybody wants here is more accountability within the system. What you have in the bill is, it creates a council. And this council has representation that is, I guess appointed by different members of different groups.

"Well what happens in this case is, to me, it gets, again, more gray on whether or not the Governor has direct accountability or responsibility of the education system. You go through a council, and I know it's modeled after the Board of Regents. But you go through a council, and then after you go to that council, then they recommend to the Governor and of course, she gets to choose. Then it goes down to advise and consent with the Senate.

"Mr. Speaker, I think it's really important that we keep that line very direct from the Governor to appoint the Superintendent. And if there should be a Board, to appoint the Board, because that would be much clearer for accountability. Some people are worried about the ability to have community involvement. And if we truly want community involvement, I think that that direct accountability with the Governor and appointing the Superintendent, as well as appointing the possible Board members, that you would get accountability. And you could push the decision making down, and decentralized to where it matters, where that's at the school level.

"And going further into that, we passed a tool, called Weighted Student Formula, in Act 51, where we're supposed to, or I would like to see, most of the money, at least 90, 70, 80, and then 90%, to the classroom level. Because the way I put it, is those with the gold will make the rules, and then they will have the ability to have decentralization, at the school level, to make the decisions that they need to do, to prioritize the spending, to prioritize their needs, to meet the needs of the student.

"Mr. Speaker, I think that that's what we need to do for our *keiki*, so that we can, as much as possible, avoid situations like Furlough Fridays. It's really giving that community of community, principal, and teachers, the ability to make the decisions and prioritize the way that they're going to be spending that money. And then clear direction from the Governor and the

Superintendent appointed by the Governor, and an appointed Board if that's how it ends up being, by the Governor. Thank you."

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

"Mr. Speaker, I would like a ruling on a possible conflict. My daughter works for the Board of Education," and the Chair ruled, "no conflict."

Representative Belatti rose to speak in support of H.B. No. 2376, HD 3, stating:

"Thank you. I am in strong support for HB 2376, HD3, and I request to submit written comments."

Representative Belatti's written remarks are as follows:

"I rise in support of HB 2376, HD 3 which gives the public the opportunity to vote on the governance structure of public education in Hawaii. Critics of this bill describe it as an overreaction to the current Furlough Friday crisis that does not directly tackle the problems causing the Furlough Fridays. I disagree. What has become apparent through Furlough Fridays is that there is a lack of accountability for all the adults who have a role in the educational system and it is far too easy to engage in a blame game by pointing fingers at the Governor, the elected Board of Education, the Hawaii State Teachers Association, and the Legislature.

"Although this bill is not a panacea for student achievement, it is a step in the right direction of bringing greater accountability to our public education system. Ultimately, the hope is that this measure will provide leadership that is able to restructure and decentralize public education down to the school and principal level within our unique statewide school district and achieve the goals of increasing student achievement, improving teaching and learning, and providing a quality education for the students of Hawaii.

"I believe that an appointed school board will clear up mixed priorities, conflicted leadership and a lack of accountability and I firmly believe that the choice of an elected versus an appointed school board should be placed before the electorate for a vote. For these reasons, I support HB 2376, HD3."

Representative Souki rose to speak in opposition to H.B. No. 2377, HD 3, stating:

"Yes, Mr. Speaker. I would like to speak on the second measure. In regards to the Board of Education, I believe that the Governor, and the governing system that we have right now, is overly centralized at this point. We have one of the most centralized governments in the whole United States. It's a huge responsibility for one person, and it kind of reflects to some degree on what is going on right now.

"The Education budget is approximately \$3 billion. More than half of our annual State budget. Now to expect one person, one Governor, who is also responsible for Health, who is also responsible for Human Services, also responsible for Transportation which includes highways, harbors, airports, and then the Board of Education, all of that, besides the tons of Committees that we also have. To be responsible for all of that and to be able to keep track of everything, it's very difficult for one person. You become very dependent on many, many people. And that becomes very subjective as they get up to the Governor.

"Now I would like to see a continued electoral system. There's no better accountability than an elected accountability. With the present system that we have right now, the Board is too small. It doesn't provide accountability for different districts in Honolulu. It doesn't provide accountability for each individual island, each Neighbor Island. On the Island of Maui, you're combined with two or three other islands. There is no accountability there for that particular Board member. I think we should reconstitute the Board, and this is why I would want a deliberate effort during the summertime, during the interim, to look at what kind of Board that we would need. What size and how many people do we need? And in the end, it could be that we want an appointed Board. But not now. We're not ready for it right now.

"We're doing this in too much haste. So let's sit back. But remember this, there is nothing more accountable than an elected person to his or her electorate. Not an appointed Board who has no accountability. Yes, the Governor is accountable. But when you have individual Board members elected by their particular districts, they're accountable to their district and you know that they're going to do their best. They're going to do the best they can so that they can get reelected again. That is the inducement. An appointed Board doesn't have that same kind of inducement as an elected Board.

"So Members, all I ask of you is try to lay back a little bit. Don't be hasty. We don't have to act on it right now. The Board is not doing that bad a job where the whole world is going to fall apart. Just wait a little bit. Thank you, very much."

Representative McKelvey rose to speak in opposition to both measures, stating:

"Thank you, Mr. Speaker. In opposition to both measures, and may I have the words of the speaker from Wailuku entered into the record as if they were my own. And I have some brief comments if I may. I know it's getting late. I'm just kind of, I guess, taken aback by the Republican position, because just a few years ago the position of the Party seemed to be for local school boards. Now they're going towards one person in the Governor's cabinet? I think that's going completely in the opposite direction of accountability.

"But back to the bills themselves. I agree with the Speaker Emeritus. I think what we need to do is use this and look at this issue. But I think at the end of the day, we have to have a serious conversation in the off-Session about locally elected school boards. Thank you, very much."

Representative Takumi rose to speak in support of both measures, stating:

"Thank you very much, Mr. Speaker. In support of both measures, and just a quick response to some of the comments that have been made on the Floor. I do realize that there is no 'silver bullet' when it comes to education reform. And it is true that the research that relates student achievement or the potential for increased student achievement, and the Governor's model of a particular state or school district, there really is no bright line nexus. But that said, I do believe this approach is worth a try.

"Now let me comment on a couple things. Taking off from just what the previous speaker said. It's very interesting to me that the Administration proposed initially, this year, a bill to abolish the Board, so we would follow two other states with no state board of education. We would have, if you will, an education 'czar,' a cabinet member, a one-person school board and department head all rolled into one. This is coming on the heels of in 2004, of proposing at least 7 local elected school boards. And I don't want to rehash that one, but needless to say, in that bill if you recall, for those of us who were here, those 7 local school boards could also morph into other school boards. So like a bad 'Petri dish' experiment, they could just kind of morph, and divide and go on.

"If you look at the 15,000 school districts in our country with an average size of 2,500 students, which is about the size of Campbell High School or Farrington High School, that would mean we would have about 70 local elected school boards. So the intent and the design and the hope at that time, was that you would have this local, grass roots, elected by the people, let the people decide, that sort of thing. And now the Governor has proposed consolidating all of that into one person. So philosophically, the premise to me is diametrically opposed.

"But that notwithstanding, to respond to the speaker from Maui, the Speaker Emeritus. Yes, maybe we ought to think about this and put some thought into it, but there have been permutations of an appointed board and an elected board introduced many times over the years. Now one of them during my time actually made it to the ballot, but we have put it out before the people of the State, after we became an elected board in 1964, two times, whether or not we should have an appointed board.

"The bill itself, Mr. Speaker, the constitutional amendment bill, merely says, shall there be an appointed board, appointed by the Governor, subject to Senate confirmation. And all the rest would be decided by law. So the concern expressed by the Speaker Emeritus, we would be able to take care of that. If the voters of this State decide if it indeed is put on the ballot, if we decide we would have an appointed board, we have the underlying bill, but that bill, again, it would be subjected to law. We can make changes. Right now the bill says eight members, one student non-voting member, seven appointed members, one from Kauai, one from the Big Island, one from Maui and four from Oahu. That can change. We can say because again, it will be determined by law, the terms, the staggering, all the rest.

"Last point, Mr. Speaker. We talk about the University of Hawaii, and this bill, to some degree, is mirrored after the Board of Regents, the way they are done. But keep in mind, in this bill, the Governor appoints the Chair or nominates the Chair of the Board of Education. That is not true with the Board of Regents. The Board of Regents, though, let's keep in mind, the University of Hawaii, over 80% plus of that budget is paid for by taxpayers. And yet it is appointed by the Governor as a result of the selection Council, and it seems to have worked well. It seems to me we ought to at least try that in the K to 12 system, and see whether or not that works well. Thank you."

Representative Ching rose to speak in support of both measures with reservations, stating:

"Thank you Mr. Speaker, just reservations on both measures, and I wish to have some remarks entered in the Journal. But I do just want to say, those comments about the Minority Caucus and our positions. What we just note is that what we have now isn't working as it should. It's not working to the level that we know we can. And it's so easy to become sweeping about concepts, and election, but the reality is that whereas perhaps in our legislative elected positions, people know who their Representative is, and even then I wonder sometimes. Or they know their Senator. The reality is that when asked, I think most of our people, our voters, really don't know who their Board of Education person is.

"So in terms of accountability, not all fruit are the same. It's apples and oranges sometimes. And that's the thing. Being a former educator, there are nuances, you know. It almost is that you have to be so aware of the fine line with some of the things that work. But we know that what is going on right now doesn't work. So let's move, let's shift, and let's try something else. And I think we need to do it right away, I think if you talk to your constituents. Thank you."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support with strong reservations to H.B. 2377 HD2 and H.B. 2376 HD2 which amends the Constitution to establish the BOE as a Board appointed by the Governor.

"As the Hawaii Business Roundtable has testified, "the current governance structure is ambiguous and has led to mixed priorities, conflicted leadership and a lack of accountability." I stand by the Hawaii Association of Independent Schools, who state that, "the members of the Board of Education would be appointed by the Governor." However, I have seen the affect of Senate approvals, and urge caution as there is no need to politicize the approval of candidates. Therefore, I have concerns with these measures due to the fact that these bills have the appearance of education reform, but merely change the process of selection. Thank you."

Representative Ward rose to speak in support of both measures with reservations, stating:

"Mr. Speaker, I rise with reservations on both measures. Mr. Speaker, when you live in a round house, you can never be cornered. It's impossible. It's structured in such a way you cannot be cornered. I think the other analogy or metaphor is, Congressman Abercrombie said that, the present structure of education is like a rectangular firing squad, all aiming at each other. And I think maybe a little bit we're already doing that on the Floor here.



"But the bottom line is accountability. Checks and balances. If something doesn't happen, you know who it is. Americans are very pragmatic people. If it doesn't work, let's change it. But Mr. Speaker, from Governors Ariyoshi, Cayetano, Waihee, to Lingle, who basically together signed a proclamation saying let's do something different. One of which is this bill. Let's get an appointed Board of Education, so we can tweak it and try it, to see if it works any better than what we're doing. Because right now it's not working very well, Mr. Speaker. Everybody will admit that. But we have got to get off the dime.

"Now this is not the perfect explanation. The Governor putting it into a czar, or one person, is a compromise to what maybe seven years ago when she was kind of pushed back, knocked down, and otherwise saying, 'Don't you dare decentralize. Don't you dare put your communities in charge of these schools.' And that went out the window. But Mr. Speaker, each of us represent a district. We've got 25 to 30,000 people that we have to report to. If we're not doing our jobs, we're out of here. Right? In the Board of Education, if we represented all of Oahu, who would know from where or what was being done by whom? It wouldn't happen.

"So if we break it down into smaller pieces, on the electoral level, it makes sense. But if we can't do that, given what happened six or seven years ago, let's try the appointed. This is not the 'silver bullet.' It's not the best way, but it's another way of getting accountability, and getting results. Because if that doesn't happen, you know, we're really going to be in serious trouble. Thank you."

Representative C. Lee rose to speak in support of both measures, stating:

"Thank you, Mr. Speaker. I just wanted to follow up, in support. I understand the comments made by the Representative from Wailuku, as well as the Education Chair. But I did want to say, actually following up on the Representative from Liliha's comments earlier. Ironically, in the Finance Committee, when we were debating these bills, I just for fun polled the audience. And this was an audience of education advocates of all stripes. I asked them whether or not they could name the Board of Education member in their area, and less than half of the audience could, which I think is telling, considering I would bet that they would not be able to mention anything else about any positions these people might have. So I think a continued discussion on the matter is positive."

Representative Takai rose to speak in support of both measures, stating:

"Thank you Mr. Speaker, I rise in support of both measures. Thank you. I'd like the words of the Chairman from the Education Committee be entered into the Journal as if they were my own. Thank you Mr. Speaker, I just wanted to mention a couple things.

"The first one is, I already spoke on these two particular measures twice, coming out of Education and Judiciary. And I did have some concerns. In fact, I had some grave concerns regarding the makeup of this newly appointed Board and the fact that originally there were no geographic requirements. Finance cleaned it up. In fact it's a great bill. My only concern is, and I know we can work on this as we move through the process. Even after the voters of this State hopefully approve this constitutional amendment, my only concern is that there are people out there that are still pushing for the student on the Board of Education to be a voting member. I support a voting student on the Board of Education. However, I think the way that it's crafted, it will allow us to work on this as we go through the process.

"A few years ago, we passed the voting student on the Board of Education, and that was through a law. These measures will allow us to do that, should a Legislature in the future choose to do so.

"The final thing I wanted to mention is that, this has been talked about, researched, heard in Committees, many, many, many times. In fact, the last time we had this ballot question on the ballot, was in 1994. And unfortunately, back then, the voters of this State did not support an appointed Board. But I do believe now, with the consensus building across the State, including the members of the Hawaii Business Round Table, and even the Hawaii Association of Independent Schools now supporting this particular measure. I think the ground swell of support has risen to a level

that we can now place this on the ballot, again, and hopefully the voters of this State will support an appointed Board of Education. Thank you, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. I'm still standing with the same votes on both measures. Mr. Speaker, I did want to make a comment, and thank the Education Chair and Finance Chair for the changes that were made in this bill. I think you have a little bit more accountability with the appointed Chair by the next Governor, or future Governors, I think that's a very positive move in, what I would consider, I guess, for me it would be a compromise from where we were at before. But Mr. Speaker, I'd like to speak to the point of, 'Wow. Look. Their ideas changed from 2004 till now.'

"Mr. Speaker, yes. Local school boards are something that I think a majority of, at the time, Republican members were for. It was about change. It was about doing something. It was about a State that was demanding that the Legislature do something about education. That bill, I believe, had one committee hearing. And at that point in time, with that committee hearing, there were all kinds of extremes. Are we going to have 14,000 school boards? Are we going to have one school board? Are we going to have seven school boards, are we going to have four school boards. There was all kinds of stuff thrown out there. That's in one hearing.

"What do we do in a sample bill that comes through this Session, it's never entered perfectly. It's never filed perfectly. You make changes throughout the whole time. But I believe there was just one hearing. And there were extremes being thrown out there on what was going to happen. But instead, to answer the community, the State's cry to do something about education, what was proposed and passed, was Act 51. That was an experiment. Something like what we're, you know, it was basically putting ideas together and passing it out as law, and making the system change, and it was supposed to be reinventing, so it changed everything on education, or the things that needed to be changed. Some of the major parts in that bill was we're going to put the services from other departments and put it into the Department of Education so that they could have the control. Year after year we started taking it out. Year after year there are, there's the audit on the procurement that said they couldn't handle it.

"Mr. Speaker, not only that, but we had, another part of the bill was about principal contracts. And the principal contracts are nowhere off into being approved. It stalled. We're not going to get it.

"Mr. Speaker, there was also another part of it that had to do with science text books and all of that kind of stuff, and DOE and I can't remember ..."

The Chair addressed Representative Finnegan, stating:

"Representative Finnegan, I believe you are steering off these two measures that are before us, because you're reflecting on Act 51."

Representative Finnegan: "I am Mr. Speaker, because I'm talking about education reform, Mr. Speaker."

Speaker Say: "Representative Finnegan, your time has expired, your three minutes."

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

Representative Finnegan continued, stating:

"Thank you, Mr. Speaker. The reason why I talk about these things is because we're talking about education reform. Act 51 is an experiment, the things that we are providing today is an experiment, but it was some merit, because people have been studying these issues and trying to put something forward.

"The other thing is, we talk about this education czar. Two examples of this education czar. Mike Strembitsky, he was the original area in which we adopted Act 51 and weighted student formula for. Basically that's what

he did. What I explained earlier when I spoke before this, is that he was one person that pushed decentralization down to the schools, and turned it around and said, 'You've got the money. Now you make the decisions.'

"Two years after they implemented the weighted student formula in that area in Canada, unionized principals and teachers said, and I spoke to the union president, and they were both in the same union. They visited here in Hawaii, and they said, 'Don't take away this decision making authority, and don't take away our money. Do not change it.' And at that point in time, there was only 70% at the school level.

"Mr. Speaker, going back to one more point in the reform of Act 51, is we were supposed to get to 70%, but right now we're at 40%, and this is 6 years later.

"Mr. Speaker, this is really important. Education is really important. We need to make some foundational changes. Real changes. And I am so glad that we are moving these bills forward, because this is where we can make some fundamental changes. Anyway Mr. Speaker, I just think that we definitely need to make these kinds of changes, and I hope that the folks that are against these moves, that they allow us to move forward."

Representative Herkes rose to speak in support of both measures, stating:

"Thank you. In support. When I listen to a lot of the things about the regional school boards and so on, and so forth, Ka'u is bigger than this island. I represent 12 schools. And they're all over the place. I invited the Chair of Education to come out to my schools. And you know, in the case of Ka'u High School, we talked about the Micronesians that don't speak English. One of them wasn't in school. They went to the house and said, 'How come you're not in school?' He said, 'Well, I went and had breakfast, and came home.' He didn't know he was supposed to go to class.

"So when you start thinking about regional school boards, the people that I represent, drive 100 miles to work, round trip each day. They're gone during the daylight. You can't expect them to get involved closely with the schools. And so we need some central control, in order to make sure that the rural guys don't just fall off the map.

"But let me tell you, on the bright side. I am always encouraged by the kind of scholarships that the kids from Ka'u High School end up with. I'll use my granddaughter as an example. She graduated from Honokaa High School, a dysfunctional school. She graduated with honors. Then she graduated from George Washington University in three years with honors. So she obviously learned something. So the other thing I say to parents is, 'Look in the mirror.'"

The motion was put to vote by the Chair and carried, and the reports of the Committee were adopted and H.B. No. 2376, HD 3, entitled: "A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE BOARD OF EDUCATION," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Awana, Carroll, Hanohano, McKelvey, Rhoads and Souki voting no; and

H.B. No. 2377, HD 3, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Awana, Carroll, Finnegan, Hanohano, McKelvey, Rhoads and Souki voting no.

At 8:50 o'clock p.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 2376, HD 3  
H.B. No. 2377, HD 3

H.B. No. 2376, HD 3, passed Third Reading in the following form:

### H.B. No. 2376, HD 3

A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE BOARD OF EDUCATION.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Article X, section 2, of the Hawaii Constitution is amended to read as follows:

#### "BOARD OF EDUCATION

~~Section 2. There shall be a board of education [composed of members who shall be elected in a nonpartisan manner by qualified voters, as provided by law, from two at-large school board districts. The first school board district shall be comprised of the island of Oahu and all other islands not specifically enumerated. The second school board district shall be comprised of the islands of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau. Each at-large school board district shall be divided into departmental school districts, as may be provided by law. There shall be at least one member residing in each departmental school district. The Hawaii State Student Council shall select a public high school student to serve as a nonvoting member on the board of education]. The governor shall nominate and, by and with the advice and consent of the senate, appoint the members of the board of education, as provided by law."~~

SECTION 2. The question to be printed on the ballot shall be as follows:

"Shall the members of the board of education be nominated and, by and with the advice and consent of the senate, appointed by the governor, as provided by law?"

SECTION 3. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 4. These amendments shall take effect on July 1, 2020, and upon compliance with article XVII, section 3, of the Hawaii Constitution.

### H.B. No. 2963:

Representative B. Oshiro moved that H.B. No. 2963, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in support of HB 2963. Thank you, Mr. Speaker. The Rainy Day Fund was created by this Legislature in 1999 for the use in times of emergency. The purpose of the Fund was to maintain levels of programs determined to be essential, such as public safety, health, welfare, and education. According to the school calendar on the Department of Education website, the regular calendar would have amounted to 184 school days prior to the furloughs.

"With the furloughs, Mr. Speaker, the total number of instructional days for the 2009-2010 school year will be 163. 163 instructional days represents the lowest number of school days in the nation. This is not acceptable. Therefore, using part of the Rainy Day Fund for education, would be in the parameters for what this Fund was established for. However, I humbly request that Members view this Fund as a source of funding, not the only source of funding for education, and that Members be open, and remain open to the use of this Fund for healthcare and human services also. Thank you Mr. Speaker."

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

"Thank you, Mr. Speaker. May I have a ruling on a potential conflict? My law firm is representing a class of students who are trying to end the Furlough Fridays. Thank you," and the Chair ruled, "no conflict."

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

"Mr. Speaker, I guess I keep banging my head against a wall. I'm for this measure with reservations. I understand the need for this. It's for emergency purposes, like we have now. However, the problem that I have is the bond market has already stated that using the Emergency Fund and the Hurricane Fund could jeopardize our bond rating. That's number one.

"Number two is that this money, even though it's from the general fund and will be going to an appropriation, I would imagine for the budget for education. However, it is well known that this \$50 million is to remedy the furlough problem that we have now. And that's a very noble thing. However, unless the situation is resolved between the Governor, the Board of Education and the Union, if the money is appropriated and if it's not resolved, it is very likely that the money appropriated, will be restricted by the Governor. If the Governor restricts the money, that's money that could have been used for something else. It could be used for human services. It could be used for health. But this money then will be just lying idle, restricted by the Governor. If no agreement is reached between the Union, the Board and the Governor, this is a fact. So Members, think about that. Thank you, very much."

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

"Thank you, Mr. Speaker. I'm standing up in support with reservations. A few comments Mr. Speaker, regarding my reservations. Trying to address this budget shortfall and making sure students get the appropriate education and educational time is one of the major things that we need to address this Legislative Session. But Mr. Speaker, I do want to express some caution in regards to using the Emergency and Budget Reserve Fund.

"You know Mr. Speaker, it is accurate that with this Fund, you can maintain levels of programs with this money for essential public health, safety, welfare, and education, Mr. Speaker. However, in the legislation, it also says that the Fund cannot be used to fund cost items in any collective bargaining contract.

"So I understand the method of moving the money from the Rainy Day Fund to general fund to be used to address this collective bargaining issue of furlough days. However Mr. Speaker, as we face these economic situations, we really have to address the shortfalls in our health and human service programs. And pitting potential programs that address *kupuna* care and *keiki* care, with issues of furloughs and teachers, I think is a bad policy issue. Thank you, Mr. Speaker."

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

Representative Ching rose in support of the measure with reservations and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support of H.B. 2963. As a former teacher it pains me to see publications such as the *New York Times* talking about how Hawaii has the fewest school days and that our education system is in dire straits. The children of Hawaii are our greatest resource and we owe it to them to provide a scholastic environment that is conducive to success, not failure.

"Children need consistency and routine when it comes to education and the current system of Furlough Fridays provides neither. Furloughs not only harm our children, but they also put an unneeded burden upon the parents. In these economic times, families are having enough trouble

putting food on the table and clothes on their children's backs. These furlough days require parents to take days off from work, seek daycare, and add unnecessary worry about their children's educational future.

"Being a former teacher allows me a certain insight into this problem. I know from years of teaching experience that we must get our children back into school. Thank you."

Representative Manahan rose in support of the measure with reservations and asked that the remarks of Representatives Souki and Yamane be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

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

"Mr. Speaker, I rise in support. Mr. Speaker, I think it boils down to basically political will and a matter of priorities. I think the Chair of Health brings up a technical difficulty. There's not really any difficulty in changing that particular collective bargaining whenever that outlaws the use of that particular Fund. But we have to get our priorities straight, Mr. Speaker. The Representative from Maui said that we spend \$3 billion on education. I think if we throw in the University of Hawaii you could probably say that.

"That means as policy makers, our best and biggest, and most important policy is education, if you follow the money, right? So Mr. Speaker, we've got to end these furloughs. This is the beginning, even if it's a negotiated beginning. It's a time to sit down and say, 'Look, are we going to have a priority? Or are we not going to have a priority?' Do we really believe in the education of our kids or not. Fish or cut bait. Get on with it, or not get on with it. This is the one, regardless of all the other needs that we have, we've got to prioritize. And this is the beginning. Thank you."

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

"Mr. Speaker, in opposition to this bill. Mr. Speaker, I am taking a very hard line on this. From the beginning I said that I wasn't going to vote for raiding the Rainy Day Fund for education and this collective bargaining agreement. Mr. Speaker, I feel like the system is holding the students hostage. You know, we're not going to get education unless you fund them wholly. Raise, taxes, do whatever you need to, but you have to fund them wholly. We can't even identify what is adequate funding, even in good times in our budget.

"Number one, I believe that this enables the broken system. Number two, I want to adopt the words from Speaker Emeritus, from Maui, as well as the words from the Chair of Health for their reasons. Thank you.

"Mr. Speaker, also, remember that this is the Board that, when they're given suggestions to cut, that they can't make those decisions. The suggestions to cut from the Department of Education, that they can't make those decisions. In fact, they're the very ones that sent us over legislation because they couldn't do it, as a Board. They sent us the legislation that told us to ban ice cream and candy.

"Mr. Speaker, they should be able to find at least some of the money to pay for Furlough Fridays within the existing \$2 point something billion. The largest budget for a Department that we have. In turn, we, as in the other departments and the State, suffer in small departments, like Agriculture, or DLNR. These budgets are so small, and you're squeezing them, because, for the sake of education, for the protection of education. We need to look at that and we say, you're talking about this whole \$2 point something billion that you cannot and will not cut enough to pay for Furlough Fridays. Teachers and principals know that there is waste in the Department of Education. They understand priorities. And they understand that Furlough Fridays and instructional time is a number one priority. But yet, all these other things are being funded before that.

"Mr. Speaker, we have to make hard choices. That's what we're being asked to do. And as much as I want to end Furlough Fridays, I cannot continue to sit or stand here enabling a broken system that won't look within itself, or doesn't have the ability to look within itself, or have the

board members that will make the tough decisions. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and H.B. No. 2963, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FROM THE EMERGENCY AND BUDGET RESERVE FUND FOR EDUCATION," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Cabanilla and Finnegan voting no.

At 9:03 o'clock p.m., the Chair noted that the following bill passed Third Reading:

H.B. No. 2963

#### **H.B. No. 2737, HD 1:**

By unanimous consent, action was deferred one legislative day.

#### **INTRODUCTION OF RESOLUTIONS**

By unanimous consent, the following resolutions (H.R. Nos. 72 through 74) and concurrent resolutions (H.C.R. Nos. 131 through 134) were referred to Printing and further action was deferred:

H.R. No. 72, entitled: "HOUSE RESOLUTION RECOGNIZING MARCH 11, 2010, AS WORLD KIDNEY DAY AND APRIL 2010 AS ORGAN DONOR AWARENESS MONTH IN HAWAII," was jointly offered by Representatives Yamane, Brower, Manahan, Mizuno, Nishimoto and Wakai.

H.R. No. 73, entitled: "HOUSE RESOLUTION URGING CONGRESS TO PASS "CASH FOR CLUNKERS" LEGISLATION IN THE SECOND SESSION OF THE 111TH CONGRESS," was offered by Representative Mizuno.

H.R. No. 74, entitled: "HOUSE RESOLUTION EXPRESSING SUPPORT FOR THE PHILIPPINE TARSIER FOUNDATION," was offered by Representative Mizuno.

H.C.R. No. 131, entitled: "HOUSE CONCURRENT RESOLUTION RECOGNIZING MARCH 11, 2010, AS WORLD KIDNEY DAY AND APRIL 2010 AS ORGAN DONOR AWARENESS MONTH IN HAWAII," was jointly offered by Representatives Yamane, Brower, Manahan, Mizuno, Nishimoto and Wakai.

H.C.R. No. 132, entitled: "HOUSE CONCURRENT RESOLUTION URGING CONGRESS TO PASS "CASH FOR CLUNKERS" LEGISLATION IN THE SECOND SESSION OF THE 111TH CONGRESS," was offered by Representative Mizuno.

H.C.R. No. 133, entitled: "HOUSE CONCURRENT RESOLUTION EXPRESSING SUPPORT FOR THE PHILIPPINE TARSIER FOUNDATION," was offered by Representative Mizuno.

H.C.R. No. 134, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING A COMPREHENSIVE MANAGEMENT AND FINANCIAL AUDIT OF FOR-PROFIT ENTITIES CONTRACTED AS MANAGED CARE PROVIDERS FOR THE DEPARTMENT OF HUMAN SERVICES'S QUEST EXPANDED ACCESS PROGRAM," was offered by Representative Mizuno.

#### **ADJOURNMENT**

At 9:04 o'clock p.m. on motion by Representative Evans, seconded by Representative Pine and carried, the House of Representatives adjourned until 12:00 o'clock noon tomorrow, Wednesday, March 3, 2010.

#### **HOUSE COMMUNICATIONS**

"March 2, 2010

The Honorable Linda Lingle  
Governor of the State of Hawaii  
Executive Chambers  
State Capitol  
Honolulu, Hawaii 96813

Dear Governor Lingle,

In accordance with the provisions of Article XVII, Section 3 of the Hawaii State Constitution, written notice is hereby given of the final form of the following House Bills, copies of which are attached hereto:

H.B. No. 1205, H.D. 1, entitled:

"PROPOSING AMENDMENTS TO ARTICLE VII, SECTIONS 12 AND 13, OF THE CONSTITUTION OF THE STATE OF HAWAII, RELATING TO TAX INCREMENT BONDS."

H.B. No. 2376, H.D. 3, entitled:

"PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE BOARD OF EDUCATION."

Said measures passed Third Reading in the House of Representatives on this date.

Respectfully,  
/s/ P Mau-Shimizu  
PATRICIA MAU-SHIMIZU  
Chief Clerk

Enclosures

CC: Carol Taniguchi, Clerk of the Senate  
Scott Nago, Chief Election Officer"