

FORTY-THIRD DAY

Tuesday, April 6, 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. Arapata Meha, Associate Dean of Admissions of Brigham Young University - Hawaii, after which the Roll was called showing all Members present with the exception of Representatives Cabanilla and Hanohano, who were excused.

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

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 220 through 222) were received and announced by the Clerk:

Gov. Msg. No. 220, informing the House that on April 1, 2010, the following bill was signed into law:

S.B. No. 2699, SD 1, entitled: "A BILL FOR AN ACT RELATING TO RESTORATION OF CERTAIN FORFEITED PROFESSIONAL AND VOCATIONAL LICENSES." (ACT 011)

Gov. Msg. No. 221, dated April 1, 2010, requesting immediate passage of S.B. No. 1178, SD 2, HD 2, authorizing emergency appropriations of \$40,000,000 in general funds and \$80,000,000 in federal funds for the Health Care Payments Program (HMS 401) to address a funding shortfall in the Medicaid program.

Gov. Msg. No. 222, dated April 1, 2010, requesting immediate passage of S.B. No. 2400, SD 1, HD 1, authorizing general fund emergency appropriations of \$250,000 to the Office of Elections to fund operating costs for the 2010 Regular Elections, and an additional \$140,000 to the Office of Elections to reimburse the City and County of Honolulu for the 2010 Special Election.

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 385 through 393) were received and announced by the Clerk:

Sen. Com. No. 385, transmitting S.C.R. No. 40, SD 1, entitled: "SENATE CONCURRENT RESOLUTION EXPRESSING SUPPORT FOR ENFORCEMENT OF EXISTING OSHA REGULATIONS ON THE USE OF HEXAVALENT CHROMIUM AND URGING OSHA TO DEVELOP SAFER ALTERNATIVES AND BAN HEXAVALENT CHROMIUM," which was adopted by the Senate on April 1, 2010.

Sen. Com. No. 386, transmitting S.C.R. No. 145, SD 1, entitled: "SENATE CONCURRENT RESOLUTION PROCLAIMING 2010 AS THE YEAR OF ETHNIC STUDIES IN HAWAII," which was adopted by the Senate on April 1, 2010.

Sen. Com. No. 387, transmitting S.C.R. No. 207, SD 1, entitled: "SENATE CONCURRENT RESOLUTION URGING MEMBERS OF HAWAII'S CONGRESSIONAL DELEGATION TO SUPPORT H.R. 208, THE NATIONAL GUARDSMEN AND RESERVISTS PARITY FOR PATRIOTS ACT, AND S. 644, THE NATIONAL GUARD AND RESERVE RETIRED PAY EQUITY ACT OF 2009," which was adopted by the Senate on April 1, 2010.

Sen. Com. No. 388, transmitting S.C.R. No. 218, SD 1, entitled: "SENATE CONCURRENT RESOLUTION EXPRESSING LEGISLATIVE SUPPORT FOR THE RIGHT TO DISPLAY THE UNITED STATES FLAG," which was adopted by the Senate on April 1, 2010.

Sen. Com. No. 389, transmitting S.C.R. No. 235, SD 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF A CLEAN AND SOBER HOME AND HALFWAY HOUSE TASK FORCE," which was adopted by the Senate on April 1, 2010.

Sen. Com. No. 390, dated April 1, 2010, informing the House that the Senate has on March 31, 2010, agreed to the amendments proposed by the House to the following Senate Bill and that said bill has this day passed Final Reading:

S.B. No. 2340, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO KANEOHE BAY REGIONAL COUNCIL."

Sen. Com. No. 391, transmitting H.B. No. 2056, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO PHARMACIST LICENSURE," which passed Third Reading in the Senate on April 1, 2010.

Sen. Com. No. 392, transmitting H.B. No. 2197, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," which passed Third Reading in the Senate on April 1, 2010.

Sen. Com. No. 393, transmitting H.B. No. 2568, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF DIRECTORS OF THE HAWAII PUBLIC HOUSING AUTHORITY," which passed Third Reading in the Senate on April 1, 2010.

Representative B. Oshiro moved to disagree to the amendments made by the Senate to the following House Bills, seconded by Representative Evans and carried: (Representatives Cabanilla and Hanohano were excused.)

H.B. No. 2056, HD 1, (SD 1)
H.B. No. 2197, HD 1, (SD 1)
H.B. No. 2568, (SD 1)

ORDER OF THE DAY

COMMITTEE REASSIGNMENTS

The following measures were re-referred to committee by the Speaker:

<u>H.R.</u> <u>Nos.</u>	<u>Re-referred to:</u>
27	Committee on Health
34, HD1	Jointly to the Committee on Health and the Committee on Human Services
40	Committee on Agriculture
145	Committee on Finance
232	Committee on Finance
<u>H.C.R.</u> <u>Nos.</u>	<u>Re-referred to:</u>
68	Committee on Health
76, HD1	Jointly to the Committee on Health and the Committee on Human Services
89	Committee on Agriculture
216	Committee on Finance

317 Committee on Finance

CONSENT CALENDAR

UNFINISHED BUSINESS

At this time, the Chair stated:

"Members, at this time the Chair will be taking Standing Committee Report No. 1143-10, which is on page 3, out of order. We will be taking up this measure which is on page 3, out of order."

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1143-10) recommending that S.B. No. 696, SD 1, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that notwithstanding the recommendations contained in Standing Committee Report No. 1143-10, that S.B. No. 696, SD 1, HD 1, be recommitted to the Committee on Finance, seconded by Representative Evans.

The motion was put to vote by the Chair and carried, and S.B. No. 696, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO COQUI FROGS," was recommitted to the Committee on Finance, with Representatives Cabanilla and Hanohano being excused.

SUSPENSION OF RULES

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

CONSENT CALENDAR

UNFINISHED BUSINESS

At 9:13 o'clock a.m. Representative B. Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:16 o'clock a.m.

At this time, the Chair stated:

"Members, at this time there will be no discussion, since 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. 1125-10) recommending that S.B. No. 2701, 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. 2701, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 1128-10) recommending that S.B. No. 2325, SD 1, 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 S.B. No. 2325, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CONTRACTORS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 1130-10) recommending that S.B. No. 2770, SD 1, 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 S.B. No. 2770, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO REMOTE DISPENSING PHARMACY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Carroll, for the Committee on Hawaiian Affairs presented a report (Stand. Com. Rep. No. 1133-10) recommending that S.B. No. 633, SD 1, 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 S.B. No. 633, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO WATER," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1137-10) recommending that S.B. No. 107, 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 S.B. No. 107, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ADMINISTRATIVE REVOCATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1139-10) recommending that S.B. No. 2597, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committees be adopted, and that S.B. No. 2597, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I support SB 2597, H.D. 1 which amends HRS §431 in two ways. First, it allows HEMIC to split the titles and responsibilities of "CEO" and "President" which will allow a smoother transition of executive leadership. The amendment also enables Directors who have served two full terms to be re-elected after sitting out a term by inserting "consecutive" to the two term limitation. Thus, HEMIC will have a more experienced executive staff which will benefit HEMIC members and Hawaii employers.

"Secondly, this measure attempts to clarify that HRS chapter 431-14A does not create a higher legal standard of liability for HEMIC than any other Hawaii workers' compensation insurers—that language in our statute (that HEMIC is intended to provide the "highest level of service", and its purposes include fostering the "highest standard of workplace safety and loss prevention, to encourage employer involvement, and to be responsive to each policyholder's experience, practice, and operating effectiveness") apparently is merely 'fluff.' Those opposed to this measure raise concerns this measure will result in insulating HEMIC from bad faith lawsuits, which is a common law claim to hold HEMIC accountable if abuses occur. However, the proposed amendment states that HEMIC is subject to common law suits for bad faith, which puts them in the same position as any other issuers of workers compensation insurance in Hawaii. By passing this measure, the Legislature does not intend to shield HEMIC or any other workers' compensation insurers from accountability for any legally recognized common law claims.

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

The motion was put to vote by the Chair and carried, and the report of the Committees was adopted and S.B. No. 2597, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII EMPLOYERS' MUTUAL

INSURANCE COMPANY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1140-10) recommending that S.B. No. 2607, SD 2, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committees was adopted and S.B. No. 2607, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ACTIVITY DESKS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1141-10) recommending that S.B. No. 2545, SD 2, 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 S.B. No. 2545, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1142-10) recommending that S.B. No. 2775, SD 1, 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 S.B. No. 2775, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLICITY RIGHTS NAMES AS DISTINGUISHED FROM TRADE NAMES AND SPECIFYING REGISTRATION PROCEDURES FOR PUBLICITY RIGHTS NAMES BY AMENDING CHAPTER 482P," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1146-10) recommending that S.B. No. 2399, SD 1, 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. 2399, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MIXED MARTIAL ARTS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1148-10) recommending that S.B. No. 2809, 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. 2809, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO UTILITIES REGULATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1155-10) recommending that S.B. No. 2117, SD 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. 2117, SD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1157-10) recommending that S.B. No. 2122, SD 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. 2122, SD 1, entitled: "A BILL FOR AN ACT RELATING TO RESEARCH," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1161-10) recommending that S.B. No. 2172, SD 2, 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. 2172, SD 2, 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 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1163-10) recommending that S.B. No. 2257, SD 2, 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. 2257, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ELECTRONIC WARRANT VOUCHERS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1167-10) recommending that S.B. No. 2709, SD 1, 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 S.B. No. 2709, SD 1, HD 3, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTALLY SENSITIVE PRODUCTS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1169-10) recommending that S.B. No. 2544, SD 2, 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. 2544, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST HONOLULU SEAWATER AIR CONDITIONING LLC PROJECTS ON THE ISLAND OF OAHU," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1170-10) recommending that S.B. No. 2563, SD 1, 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 S.B. No. 2563, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ENERGY EFFICIENCY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1173-10) recommending that S.B. No. 506, SD 1, 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 S.B. No. 506, SD 1, HD 3, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1174-10) recommending that S.B. No. 2139, SD 2, 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 S.B. No. 2139, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO VETERANS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1175-10) recommending that S.B. No. 2831, 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. 2831, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PROCUREMENT CODE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1176-10) recommending that S.B. No. 2389, 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. 2389, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1177-10) recommending that S.B. No. 2649, SD 2, 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. 2649, SD 2, entitled: "A BILL FOR AN ACT RELATING TO UNIVERSITY OF HAWAII PROJECTS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1179-10) recommending that S.B. No. 2386, 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. 2386, HD 1, 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 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1182-10) recommending that S.B. No. 2599, SD 2, 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 S.B. No. 2599, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTH INSURANCE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1183-10) recommending that S.B. No. 2729, 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. 2729, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO IMMUNIZATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1184-10) recommending that S.B. No. 2885, 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. 2885, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH SAVINGS ACCOUNTS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1186-10) recommending that S.B. No. 2611, SD 2, 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 S.B. No. 2611, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO VITAL STATISTICS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1187-10) recommending that S.B. No. 910, SD 1, 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 S.B. No. 910, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE TRANSFER OF HOMELESS PROGRAMS WITHIN THE DEPARTMENT OF HUMAN SERVICES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1190-10) recommending that S.B. No. 2716, SD 2, 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 S.B. No. 2716, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CHILD PROTECTIVE ACT," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1193-10) recommending that S.B. No. 2150, 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. 2150, HD 1, entitled: "A BILL FOR AN ACT RELATING TO APPELLATE JURISDICTION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1194-10) recommending that S.B. No. 2116, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2116, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I support S.B. 2116 S.D.2 H.D.2 which authorizes the Governor to delegate to the Superintendent of Education the authority to agree to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees, under certain circumstances, when the use of county property will be for a school purpose or function.

"Public schools on Maui – as is common throughout our State – utilize county property for essential school functions such as sporting events, graduation ceremonies, playgrounds, and physical education facilities. Our residents, in many cases, don't distinguish between State and County facilities or the bureaucratic idiosyncrasies associated with different agencies – they are mainly interested in seeing their children play in a safe and well-maintained facility, or walk down the aisle in their cap and gowns, or attend a community meeting in a clean building. The current process for the Department of Education to obtain approval from the Governor to indemnify the county when a public school uses a county

facility for a school function is unnecessarily burdensome, especially when changes discovered too late to follow the usual bureaucratic process of approvals require decisions at a more local level. Many times, the burden falls on the classroom teachers and the individual schools to work through the issues with county officials with details that shouldn't require an entirely new review at the level of the Board of Education, the Superintendent or the Governor. This measure would streamline the indemnification process, easing the burden for teachers and allowing continued use of county property for important public school functions.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2116, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO INDEMNIFICATION OF COUNTY AGENCIES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1200-10) recommending that S.B. No. 2050, 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. 2050, entitled: "A BILL FOR AN ACT RELATING TO VOCATIONAL REHABILITATION IN WORKERS' COMPENSATION LAW," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1202-10) recommending that S.B. No. 2323, 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 S.B. No. 2323, HD 2, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1204-10) recommending that S.B. No. 2691, SD 1, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2691, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I support SB 2691, SD1, HD 1. This bill allows the Employee Retirement System (ERS) to deposit benefit payments monthly to all ERS retirees and beneficiaries once a month. I appreciate the efforts of the Chairs of Labor and Finance to address concerns by retirees and beneficiaries for a transition period that helps them cope with and plan for any hardships from the revised payment schedule.

"Under this measure, by March 1, 2011, approximately 25,700 pensioners and beneficiaries out of 38,000 will be paid by the ERS on a monthly rather than on a semimonthly 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.

"As a result, ERS will save costs for 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 ERS' bottom line which ultimately benefits all ERS retirees and beneficiaries.

"Out of the 50 State retirement systems in the country, Hawaii is the only retirement system that continues to process pension benefits on a semimonthly rather than on monthly basis.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2691, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PAYMENT OF EMPLOYEES' RETIREMENT SYSTEM BENEFITS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1212-10) recommending that S.B. No. 2054, SD 2, 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. 2054, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CIVIL DEFENSE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1213-10) recommending that S.B. No. 2502, 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. 2502, SD 1, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII CIVIL AIR PATROL FOR OPERATING EXPENSES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1215-10) recommending that S.B. No. 2702, SD 2, 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. 2702, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO A MAJOR DISASTER TRUST ACCOUNT," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1216-10) recommending that S.B. No. 2601, SD 1, 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 S.B. No. 2601, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ATHLETIC TRAINERS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1217-10) recommending that S.B. No. 2187, SD 1, 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 S.B. No. 2187, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TOURISM AUTHORITY," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Berg voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1219-10) recommending that S.B. No. 2758, 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. 2758, entitled: "A BILL FOR AN ACT RELATING TO SAFETY INSPECTION OF MOTOR CARRIER VEHICLES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1220-10) recommending that S.B. No. 2863, SD 2, HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2863, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I support SB 2863, SD 2, HD 2. The purpose of this bill is to expand the existing tax lien and encumbrance record statute to assist State and county agencies in recovering moneys owed for outstanding judgments by encumbering vehicle titles of any debtor that has an outstanding judgment payable to the State or a county. This bill will also require the payment of judgments owed to the State or a county as a condition precedent to the vehicle's renewal, registration, or transfer of ownership. This bill also includes a provision to exempt State or county agencies from paying the statutory fee of \$5 for each recordation.

"The encumbrance of motor vehicle titles will strengthen the ability of State and county agencies to recover monies for outstanding judgments owed to any State or county agency. By requiring the payment of outstanding judgments payable to the State or a county before the renewal, registration, or transfer of ownership of the debtor's vehicle, debtors will be encouraged to repay debts owed to State or county agencies.

"Also, the statutory fee of \$5 per recordation is hindering some agencies from using the statute to assist in the recovery of outstanding debts owed to the agency. Waiving the \$5 fee will encourage more State and county agencies to use this recovery tool. This bill allows for only actual judgments obtained by the State or counties, in order to satisfy any due process issues, since such judgments are rendered only after ample notice and opportunity to be heard have already been given.

"Finally, the bill also gives government agencies discretion to settle *manini* judgments for a certain period of time to avoid clogging up our busy judicial system with actions, motions and petitions to re-open judgments of \$500 or less. I realize that the Judiciary testified that it prefers to require judgment debtors to incur the time, costs and expenses of such litigation rather than sparing the calendars of their district court judges from such claims. Obviously, even in times of budget challenges, we should usually leave it to our separate co-equal branches of government to apply their own sense of how best to use their scarce resources. It simply seems that judges should have more important cases to resolve than relitigating parking ticket judgments of less than \$500.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2863, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE TAX LIEN AND ENCUMBRANCE RECORD," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1221-10) recommending that S.B. No. 2201, 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. 2201, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1224-10) recommending that S.B. No. 2942, SD 2, 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 S.B. No. 2942, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION," passed Third

Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1226-10) recommending that S.B. No. 2019, SD 1, 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 S.B. No. 2019, SD 1, 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 48 ayes to 2 noes, with Representatives Berg and Ward voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1227-10) recommending that S.B. No. 2440, 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 S.B. No. 2440, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE BOARDS OF WATER SUPPLY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1231-10) recommending that S.B. No. 2385, 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. 2385, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Berg voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1232-10) recommending that S.B. No. 2600, SD 2, 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 S.B. No. 2600, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTHCARE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

THIRD READING

S.B. No. 2154, SD 1, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2154, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO ADULT PROBATION RECORDS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

S.B. No. 2472, SD 2, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2472, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MORTGAGE FORECLOSURES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

S.B. No. 2532, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2532, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SUSTAINABILITY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

S.B. No. 2547, SD 1, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2547, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SMALL BOAT HARBORS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

S.B. No. 2695, SD 1, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2695, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO NON-GENERAL FUNDS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

At 9:18 o'clock a.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2701, SD 1, HD 1
 S.B. No. 2325, SD 1, HD 2
 S.B. No. 2770, SD 1, HD 2
 S.B. No. 633, SD 1, HD 2
 S.B. No. 107, HD 2
 S.B. No. 2597, HD 1
 S.B. No. 2607, SD 2, HD 1
 S.B. No. 2545, SD 2, HD 2
 S.B. No. 2775, SD 1, HD 2
 S.B. No. 2399, SD 1, HD 1
 S.B. No. 2809, SD 2, HD 1
 S.B. No. 2117, SD 1
 S.B. No. 2122, SD 1
 S.B. No. 2172, SD 2, HD 1
 S.B. No. 2257, SD 2, HD 1
 S.B. No. 2709, SD 1, HD 3
 S.B. No. 2544, SD 2, HD 1
 S.B. No. 2563, SD 1, HD 2
 S.B. No. 506, SD 1, HD 3
 S.B. No. 2139, SD 2, HD 2
 S.B. No. 2831, SD 1, HD 1
 S.B. No. 2389
 S.B. No. 2649, SD 2
 S.B. No. 2386, HD 1
 S.B. No. 2599, SD 2, HD 2
 S.B. No. 2729, SD 2, HD 1
 S.B. No. 2885, SD 2, HD 1
 S.B. No. 2611, SD 2, HD 2
 S.B. No. 910, SD 1, HD 2
 S.B. No. 2716, SD 2, HD 2
 S.B. No. 2150, HD 1
 S.B. No. 2116, SD 2, HD 2
 S.B. No. 2050
 S.B. No. 2323, HD 2
 S.B. No. 2691, SD 1, HD 1
 S.B. No. 2054, SD 2, HD 1
 S.B. No. 2502, SD 1, HD 1
 S.B. No. 2702, SD 2, HD 1
 S.B. No. 2601, SD 1, HD 2
 S.B. No. 2187, SD 1, HD 2
 S.B. No. 2758
 S.B. No. 2863, SD 2, HD 2
 S.B. No. 2201, SD 1, HD 1
 S.B. No. 2942, SD 2, HD 2
 S.B. No. 2019, SD 1, HD 2
 S.B. No. 2440, HD 2
 S.B. No. 2385, SD 1, HD 1
 S.B. No. 2600, SD 2, HD 2
 S.B. No. 2154, SD 1, HD 1
 S.B. No. 2472, SD 2, HD 1
 S.B. No. 2532, HD 1
 S.B. No. 2547, SD 1, HD 1
 S.B. No. 2695, SD 1, HD 1

At this time, the Chair stated:

"Members, with your indulgence, the Chair would like to recommend that if there are any floor amendments that you would like to propose today, if you could please submit your amendments now so that both the Majority and Minority can go into caucus on those proposed floor amendments."

At 9:18 o'clock a.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:29 o'clock a.m.

ORDINARY CALENDAR**THIRD READING**

At this time, the Chair stated:

"Before I begin, let me thank you all for your patience and your indulgence on the proposed floor amendments that are before us. We are at this time, Members of the House, on page 10 of the Order of the day.

"Members of the House, please turn to page 22 for the first floor amendment, which is Floor Amendment No. 7, by Representative Brower, on S.B. No. 2402, on page 22."

S.B. No. 2402, SD 1, HD 1:

Representative B. Oshiro moved for the adoption of S.B. No. 2402, SD 1, HD 1, seconded by Representative Evans.

Representative Brower moved for the adoption of the floor amendment, and requested a roll call vote at the appropriate time, seconded by Representative Wakai.

At 10:30 o'clock a.m. Representative B. Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

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

At this time, the Chair stated:

"The Chair recognizes Representative Blake Oshiro for the proper motion. Please state it once more."

Representative B. Oshiro moved that S.B. No. 2402, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

At this time, Representative Brower offered Floor Amendment No. 7, amending S.B. No. 2402, SD 1, HD 1, as follows:

"SECTION 1. S.B. No. 2402, S.D. 1, H.D. 1, RELATING TO TAXATION, is amended by amending section 2 to read as follows:

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§237-A Temporary suspension of exemption of certain amounts; levv of tax at one per cent rate. (a) Notwithstanding any other law to the contrary, the exemption of the following amounts from taxation under this chapter shall be suspended from July 1, 2010, through June 30, 2015:

- (1) Amounts deducted from the gross income received by contractors as described under section 237-13(3)(B);
- (2) Reimbursements received by federal cost-plus contractors for the costs of purchased materials, plant, and equipment as described under section 237-13(3)(C);

- (3) Gross receipts of home service providers acting as service carriers providing mobile telecommunication services to other home service providers as described under section 237-13(6)(D);
- (4) Amounts deducted from the gross income of real property lessees because of receipt from sublessees as described under section 237-16.5;
- (5) The value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces as described under section 237-16.8;
- (6) Amounts received, charged, or attributable to services furnished by related entities or the imputed or stated interests of related entities as described under section 237-23.5(a);
- (7) Amounts received by common paymasters and disbursed as employee compensation or benefits as described under section 237-23.5(b);
- (8) Amounts received by sugarcane producers as described under section 237-24(14);
- (9) Amounts received by cooperative housing corporations from shareholders as reimbursement for expenses as described under section 237-24(16);
- (10) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped interisland as described under section 237-24.3(1);
- (11) Amounts received from the sale of intoxicating liquor, cigarettes and tobacco products, and agricultural, meat, or fish products to persons or common carriers engaged in interstate or foreign commerce as described under section 237-24.3(2);
- (12) Amounts received or accrued from the loading or unloading of cargo as described under section 237-24.3(4)(A);
- (13) Amounts received or accrued from tugboat and towage services as described under section 237-24.3(4)(B);
- (14) Amounts received or accrued from the transportation of pilots or government officials and other maritime-related services as described under section 237-24.3(4)(C);
- (15) Amounts received by labor organizations for real property leases as described under section 237-24.3(10);
- (16) Amounts received as rent for aircraft or aircraft engines used for interstate air transportation as described under section 237-24.3(12);
- (17) Amounts received by exchanges and exchange members as described under section 237-24.5;
- (18) Amounts received by hotel operators or suboperators and disbursed for employee compensation and benefits as described under section 237-24.7(1) in the form in which it exists on July 1, 2010;
- (19) Amounts received by operators of orchard properties and disbursed for employee compensation and benefits as described under section 237-24.7(4);
- (20) Amounts received by management companies from related telecommunications services common carriers and disbursed for employee compensation and benefits as described under section 237-24.7(9);
- (21) Amounts received as high technology development grants as described under section 237-24.7(10);
- (22) Amounts received by the Hawaii convention center operator as reimbursements of costs or advances as described under section 237-24.75(2);
- (23) Amounts received by professional employment organizations from client companies and disbursed for employee benefits and compensation as described under section 237-24.75(3);
- (24) Amounts received from the servicing and maintenance of aircraft or construction of aircraft service and maintenance facilities as described under section 237-24.9;
- (25) Gross proceeds received from the sale of tangible personal property to the United States and state-chartered credit unions as described under section 237-25(a)(3);
- (26) Gross proceeds, including any proceeds or income from scientific contracts, as more fully described under section 237-26;
- (27) Amounts received by petroleum product refiners from other refiners for further refining of petroleum products as described under section 237-27;
- (28) Gross proceeds received from the construction, reconstruction, erection, operation, use, maintenance, or furnishing of air pollution control facilities, as described under section 237-27.5, that do not have valid certificates of exemption on July 1, 2010;
- (29) Gross proceeds received from shipbuilding and ship repairs as described under section 237-28.1;
- (30) Gross income received from the planning, design, financing, construction, sale, or lease of affordable housing projects, as described under section 237-29(a), that do not have valid certificates of exemption or approval under section 46-15.1 or 201H-36 on July 1, 2010;
- (31) Gross income received by nonprofit or limited distribution mortgagors for low- and moderate-income housing projects, as described under section 237-29(b), that were not certified or approved under section 46-15.1 or 201H-36 on or before July 1, 2010;
- (32) The value of or gross proceeds received from tangible personal property shipped out of the state as described under section 237-29.5;
- (33) The value of or gross income received from contracting or services performed for use outside the state as described under section 237-29.53;
- (34) Gross proceeds or gross income received from the sale of tangible personal property imported for subsequent resale at wholesale as described under section 237-29.55;
- (35) Amounts received by telecommunications common carriers from call center operators for interstate or foreign telecommunications services as described under section 237-29.8; and
- (36) Gross proceeds received by qualified businesses in enterprise zones, as described under section 209E-11, that do not have valid certificates of qualification from the department of business, economic development, and tourism on July 1, 2010.
- (b) Except as otherwise provided under subsection (d), there is levied, assessed, and collected annually against the persons under subsection (a), a tax at the rate of one per cent on the previously exempt gross income or gross proceeds of sale.
- As used in this section, "previously exempt gross income or gross proceeds of sale" means the amount of the gross income or gross proceeds of sale, the exemption for which is suspended under subsection (a). The term also includes the following:
- (1) The value received by a nonprofit organization from conventions, conferences, trade show exhibits, and display spaces, the exemption for which is suspended under subsection (a)(5);
- (2) The value of tangible personal property shipped out of the state, the exemption for which is suspended under subsection (a)(32); and

- (3) The value of contracting or services performed for use outside the state, the exemption for which is suspended under subsection (a)(33).

The persons exempted under subsection (a), against whom the tax is levied and assessed under this section, shall be responsible for payment of the tax to the director of taxation.

(c) Notwithstanding section 237-8.6, no county surcharge shall be levied, assessed, or collected on any previously exempt gross income or gross proceeds of sale that is subject to taxation under subsection (b).

(d) This section shall not apply to gross income or gross proceeds from binding written contracts entered into prior to July 1, 2010, that do not permit the passing on of increased rates of taxes.

(e) The provisions of this chapter shall apply to the payment, collection, enforcement, and appeal of the tax levied under this section.

The director of taxation may establish additional requirements, procedures, and forms pursuant to rules adopted under chapter 91, to effectuate this section.

§237-B Information reporting. The director shall require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for the following:

- (1) Amounts received that are exempt under section 237-24(1) through (7);
- (2) Amounts received by persons exempt under section 237-23(a)(3) through (6); provided that such person is exempt from filing federal Internal Revenue Service Form 990 or Form 990-EZ; and
- (3) Any other amounts, persons, or transactions as determined by the director in the best interest of tax administration and made by official pronouncement."

Representative Brower moved that Floor Amendment No. 7 be adopted, and requested a roll call vote at the appropriate time, seconded by Representative Wakai.

Representative Brower rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. And thank you, Members. Mr. Speaker, Senate Bill 2402, SD 1, HD 1, this amounts to a 1% general excise tax increase to about 37 transactions which previously were exempt. I'm very concerned about one of these items which is item number 12 on page 3.

"What that item does is, it now takes out the exemption for the condominium maintenance fees, as well as potentially homeowners' fees that are paid to their association. I believe that this will be very detrimental if we leave this part of the bill in.

"Essentially in regards to a condominium maintenance fee which goes for the cost of insurance, water, sewer, property taxes, employees, as well as scheduled repairs. We have condominium owners paying the condominium boards, so essentially condominium owners paying other owners who are on the board.

"I think that it might be illogical and set bad policy to tax that money as it goes from one hand to the other. I know that a lot of associations of apartment owners, although they're incorporated or unincorporated, technically they're a non-profit organization.

"And currently by living in a condominium, I believe you're already paying your fair share of taxes. When you're in a building that's vertical as opposed to horizontal like in a planned community, you have much less wear and tear on the infrastructure, as well as other environmental resources. My building has 38 floors with 12 units on each floor. Conservatively, it houses over 900 people. Imagine the strain if those people all lived in houses.

"Mr. Speaker, it's for these reasons, as well as other reasons that I have put on all Members' desk today in the form of a yellow paper which was Xeroxed, front and back, that I offer this amendment. Thank you."

Representative Belatti rose in support of the proposed floor amendment and asked that the remarks of Representative Brower be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Ward rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition. Mr. Speaker, many will recall that I enumerated 15 job killer bills. The mother ship of this amendment is job kill number 14. The unfortunate thing is that this legitimizes otherwise a real bad policy, taxing non-profits. We're trying to make it look good by taking out homeowners' associations. That's equivalent of, I would say Mr. Speaker, 'putting lipstick on a pig' or trying to pull out a sliver when you've got a dagger already in the heart. These are job killer bills. They should be known for what they're actually intended to do. This is just a gesture without substance. Thank you."

Representative Takai rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of this measure. Thank you. The introducer of this floor amendment mentioned a yellow paper and I'd like to request that we insert this into the Journal with your permission. Thank you, Mr. Speaker."

Representative Takai submitted the following information distributed by Representative Brower:

"BILL DESCRIPTION: S.B. 2402, S.D.1, H.D.1 amounts to a 1% general excise tax to 37 "transaction" classes, which previously were exempt.

FLOOR AMENDMENT is to specifically exclude only one of the many classes of individuals the current bill would tax: condominium maintenance fees – home-owners fees.

How will this affect homeowners in the future? Would we start taxing rent for people who live in private communities and homeowners associations? What will they think?

THE ISSUE:

Condominium fees (costs for insurance, water, sewer, property tax, employees, scheduled repairs) are fees paid by condominium owners to their condominium boards. This is essentially money they are paying to themselves; it would be illogical and bad policy to tax money that goes from one hand to the other.

Association of Apartment Owners (AOAO)s are typically incorporated or unincorporated non-profit organizations. By virtue of their "**non-profit**" organizational status, maintenance fees should be exempted from the General Excise Tax as these monthly fees are *not* income. Should the current bill pass, it could open up to legal challenges.

CONDO BENEFITS:

- Condominiums already pay for more than their fair share of taxes by building vertically as opposed to horizontally (like planned home communities).
Imagine 500 homes versus 500 condominium units.

- It saves on infrastructure (such as sewers and road) and environmental resources. Many buildings use private trash collection and private security.

My building has 38 floors with 12 units on each floor. It conservatively houses 812 people. Imagine the environmental strain of the same number of people in houses.

CURRENT CONDO HARDSHIPS:

- Many unit owners are elderly, on fixed incomes or younger couples in their first homes.

- In addition, this State has seen an increase in **delinquencies** in maintenance fees and foreclosures. Once an AOA exceeds 10-15% in delinquencies, most lenders will not approve lender financing for the unit in the condominium development. The reasoning behind this is because lending underwriting sees "high" delinquencies as high-risk, thereby, limiting the pool to only cash buyers and further hampering the AOA's ability to operate.

More Detailed information:

SB 2402, S.D.1, H.D.1 would require cooperative housing corporations and condominium projects to pay 1% GET per annum for the next 5 years on the fee collected by the Board or homeowners association in reimbursement of sums paid for common expenses such as maintenance fees.

The following recession-driven factors will be exacerbated by this GET increase:

High Delinquency Rates are created by unpaid maintenance fees as a result of residents who have been laid off or furloughed → This creates deficits that require co-ops/ condo's to raise maintenance fees in the following years.

Hawaii is experiencing one of its highest levels of *foreclosures*. If the foreclosures or delinquency rates are too high in a particular building—or the reserves too low—the local lenders will not give mortgages to any prospective buyer in that building. Only cash buyers will be allowed to buy. This has adverse consequences in the real estate market.

Additionally, the co-op/ condo would lose their insurance coverage. This exposes them to various risks they cannot afford.

Most co-op and condo buildings were built in the 1960's and 1970's and are in need of *repairs*:

- Spall repairs for concrete buildings to fix corrosion → \$1M+
- Antiquated plumbing
- Roof
- Parking Deck
- Elevator modernization

Many leasehold co-ops and condo are in the process of *rent re-negotiations* or have recently completed rent re-negotiations (which typically occur after 25-30 years from the lease inception). For example, a resident at Discovery Bay informed me that her lease rent increased from \$232 to almost \$1800 for the quarter. Now, in addition to the increased lease rent, leasehold unit owners will be burdened by the 1% tax and possible future increases.

Reduced value of the property: Finally, due to the maintenance fee delinquencies, co-ops and condos have had to cut back on services to their residents; lay off or terminate employees; and put off or delay current maintenance and repair projects.

Thank you for considering this amendment."

Representative Finnegan rose to speak in support of the proposed floor amendment with reservations, stating:

"Thank you, Mr. Speaker. I'm rising with reservations. Thank you, Mr. Speaker. I have strong reservations, not because I don't necessarily like the amendment, but because of the underlying bill. I will be with strong reservations on the underlying bill. I think if it does make it at least a little bit better, then I will be voting to support this with reservations. Thank you."

Representative Herkes rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. Mr. Speaker, we've said many times on this Floor that in order to balance the budget we need to keep everything on the table. We need to send a complete package into Conference and then decide what's going to happen. The only vote that matters is the final vote. Thank you."

Representative Chong rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. First, I'd like to reiterate the words of the Representative from the Big Island. This is one of many tools to balance our large deficit that we are facing. I understand the concerns of the Representatives from the Kakaako area and Waikiki. I think a lot of these concerns can be dealt with in Conference. I think we need to move the bill forward to continue the discussion and work things out so that we can end with a balanced budget. Thank you."

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

"Thank you, Mr. Speaker. First of all, I'd like to ask for a ruling on a potential conflict. I live in a condominium and serve on two condominium boards. Thank you," and the Chair ruled, "no conflict."

Representative Ching continued in support of the proposed floor amendment with reservations, stating:

"I too have reservations on this particular amendment. I'm for the amendment of helping the condominiums, as I do live in one and pay maintenance fees, but I'm against the underlying bill. Thank you."

Representative M. Lee rose to speak in opposition to the proposed floor amendment, stating:

"In opposition, Mr. Speaker. To save time, I'd like the words of the Representative from Kaneohe and the Representative from the Big Island placed in the Journal as my own."

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

"Mr. Speaker, I'd like to request a ruling on a potential conflict. I'm a member of the Board of Directors of my condo. Thank you," and the Chair ruled, "no conflict."

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

"Thank you Mr. Speaker, a potential conflict. I live in a planned community association on Maui," and the Chair ruled, "no conflict."

Representative McKelvey continued in opposition to the proposed floor amendment, stating:

"In opposition, and I'd like to adopt the words of the speaker from Ka'u as well as the Windward side of Oahu as if they were my own. And I just wanted to say a few words, if I may? There are a lot of these bills that I personally don't like or agree with, but I support them to move them along because, as the previous speaker said, we need to have all the options available for Conference to attack this \$1.3 billion deficit, to provide services for the seniors and for the *keiki*.

"Now here's the thing I would hope that the movant would remember. Would you rather take something that is exempt, not raising the GET because they're exempt, and put 1% on it? Or would you rather have us go down the road of a GET increase? Or worse, in the case of the condominium owners, taking the TAT away from the counties, thereby leading to increased property taxes.

"That's the perspective I hope that people will keep in mind as we move these measures forward. Let's keep the tools for the tool chest available for Conference, but let's look at the big picture. 1% on something that was previously exempt, or a massive GET raise, take away the TAT from the counties, and have your property taxes go way up. Thank you, Mr. Speaker."

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

"Mr. Speaker, I'd like a ruling on a potential conflict. I'm a member of the Waiālae Iki Ridge Community Association," and the Chair ruled, "no conflict."

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

"I'd like a ruling on potential conflict. I live in a planned community association," and the Chair ruled, "no conflict."

Representative Evans continued in opposition to the proposed floor amendment 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 Pine rose to disclose a potential conflict of interest, stating:

"Yes, I would ask for the same ruling on a potential conflict," and the Chair ruled, "no conflict."

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

"Thank you. I would like a ruling on a potential conflict. I'm a renter in a condominium," and the Chair ruled, "no conflict."

Representative Yamane rose and stated:

"Can I ask a brief question, Mr. Speaker? Personal privilege. Can we ask for a ruling on everybody who lives in a planned association, rather than one by one?"

The Chair responded, stating:

"That's okay. Asking one by one is the proper way."

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

"Can I ask for a potential conflict because I live in a planned association as well? Thank you," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. May I have a ruling on a potential conflict? I live in a planned community association with subassociations. I also am the president of a condo association that we rent out. Thank you," and the Chair ruled, "no conflict."

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

"Mr. Speaker, may I have a ruling on a potential conflict? I too live in a condominium," and the Chair ruled, "no conflict."

Representative Manahan continued in opposition to the proposed floor amendment, stating:

"Thank you. I will be opposing the floor amendment right now, but again, I think we do need all the tools and we need to be able to have the discussion in Conference. Thank you."

Representative Berg rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of this amendment and in light of the fact that there are so many potential conflicts in this Chamber, perhaps it is worth noting that this amendment might actually address those conflicts."

"In addition, if this is really all about going to Conference, perhaps the floor amendment will give our Finance Committee and the Committee members in Conference more leverage, or more creative options to make the bill really strong when it comes out. Thank you."

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

"Thank you, Mr. Speaker. May I get a ruling on a potential conflict. I too live in a planned community association," and the Chair ruled, "no conflict."

Representative M. Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise to speak against this amendment. Just a couple of points that have not been made. The underlying bill does contain certain exemptions from the general excise tax. This one in particular, according to the last three Tax Review Commissions which are nonpartisan review commissions, they pointed out repeatedly for us to review these exemptions to see whether or not they make sense in this day and age."

"This particular one that we're looking at in this amendment here has been in existence since the 1990s. So they haven't been paying any of the GET. This merely would impose a 1% tax upon the condominiums for a period of just 5 years to 2015, and then it will sunset. So 1% for five years. They haven't been paying the 4% for over 20 years. Just to put things in perspective. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. I'd like to get a ruling on a potential conflict. I too also live in a condo and pay maintenance fees," and the Chair ruled, "no conflict."

Representative Wakai continued in support of the proposed floor amendment, stating:

"I rise in support of this amendment. This particular amendment is addressing double taxation. The moneys that are going into maintenance fees are already being used to pay for services which are then taxed at that 4.5%."

"So when people say they are leaving things on the table, this is actually creating a separate table. So we're keeping too many items and in this particular case we're removing a table that we're creating which allows for this double taxation which I find is unfair to those who live in condos and planned community associations. Thank you, Mr. Speaker."

Representative Brower rose to respond, stating:

"Thank you, Mr. Speaker. Just a few brief remarks to answer some of the questions that we've heard on this issue. Still in strong support. By removing one of these 37 previous exemptions, we are keeping this vehicle in place."

"My concern is that I need to vote on what's in front of me and this has a clean date, going into effect July 1st, 2010. I don't know the future of this after it leaves this Body, and my concern is the maintenance fees and homeowner fees that now will get taxed. Currently they're taxed when these fees are spent, but now they'll be taxed when they're going into the pot being ready to be spent. Those are my concerns. Thank you."

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

"May I have a ruling on a potential conflict. I own a hotel condo in Waikiki," and the Chair ruled, "no conflict."

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

"I also would like a ruling on a potential conflict. I am part of a homeowner's association on Kauai. Thank you," and the Chair ruled, "no conflict."

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

"Mr. Speaker, since everybody else is rising asking for a ruling of a potential conflict, I too would like to do the same. I own several properties in planned communities and condominiums. Thank you," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. I would like a ruling on a potential conflict. I do own a condo. I do not live in it, but I do own a condo," and the Chair ruled, "no conflict."

Representative Finnegan continued in support of the proposed floor amendment, stating:

"May I just give additional comments please. Short comments. Mr. Speaker, I do agree with keeping things alive and seeing what we can do in Conference, but I do have to agree with this particular floor amendment. For the most part, the majority of these costs that are in the homeowners' association dues or condo dues are either insurance, water, sewer, or whatever. If we do raise the taxes on that, we're basically raising the taxes for sewer, water, insurance and those types of things on these homeowners or people who own condos and townhouses.

"Mr. Speaker, the Finance Chair did mention how the Tax Review Commission was looking at reviewing these exemptions and I definitely think that that's what this bill does. This bill brings it to the table so that we can review them, and I think it's proper for all of us in the House to vote on whether or not we think that this tax increase should go forward on these condos and homeowners. Thank you."

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

"May I have a ruling on a potential conflict? I own a property in a planned community. Thank you," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. I have the same potential conflict as the previous speaker. Thank you," and the Chair ruled, "no conflict."

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. 7, amending S.B. No. 2402, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," be adopted, was put to vote by the Chair and failed to carry on the following show of Ayes and Noes:

Ayes: 15: Belatti, Berg, Brower, Ching, Finnegan, C. Lee, Luke, Marumoto, Nishimoto, Pine, Rhoads, Saiki, Takai, Thielen and Wakai.

Noes: 35: Aquino, Awana, Bertram, Cabanilla, Carroll, Chang, Chong, Choy, Coffman, Evans, Har, Herkes, Ito, Karamatsu, Keith-Agaran, M. Lee, Magaoay, Manahan, McKelvey, Mizuno, Morita, Nakashima, B.

Oshiro, M. Oshiro, Sagum, Say, Shimabukuro, Souki, Takumi, Tokioka, Tsuji, Ward, Wooley, Yamane and Yamashita.

Excused, 1: Hanohano.

(Main Motion)

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

"Thank you, Mr. Speaker. I am going to be voting with severe reservations. I understand what the Representative from Ka'u said, but it's very difficult in this economic time to pass a measure like this. I will wait to see what comes out of Conference Committee, but please have the Clerk note my very serious reservations. Thank you."

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

"In opposition, Mr. Speaker. In reference to some of the previous speeches on the amendment, I do want to address that it doesn't matter whether you increase the 1% tax or take this 1% deduction away from people. It's a tax increase and that's why I'm in opposition to it.

"We keep talking about how we're going to figure this out in Conference Committee. Well, I came here to represent the people of my community, District 43 in Ewa Beach. And this bill only went to the Finance Committee, and now people are saying that they don't want us to give input on how we feel. We want to leave it up to just a few members of the Conference Committee to decide which of these tax increases we should include for these different groups.

"This includes a 1% tax increase now on condominium maintenance fees and homeowner fees, which would affect almost 60% of the people in my community. It would increase a 1% tax on the gross income of real property leases. It would increase taxes on home service providers, which is a big community in my community that try to help a lot of people. So it just goes on, and on, and on. I just wish that we could all somehow be more a part of the process to choose which ones are good and which ones are bad, and which ones are no longer valid, according to the Finance Chair. So for those reason I vote no."

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

"Mr. Speaker, I rise in strong support of this measure. Mr. Speaker, I too was elected by my constituents from Wahiawa, Whitmore Village, Launani Valley to represent their interests. I believe that this measure advances their interests in several respects.

"I'll just touch upon five points in this measure and what this measure does. It removes various exemptions from the general excise tax, use tax, and public service company tax. This is our alternative to raising the general excise tax, Mr. Speaker.

"Number two, this bill asks those who are not paying taxes, to support everyone else who is paying taxes. In other words for those who have been subsidizing these people not paying the general excise taxes, whether it's 10, 20, or 30 years.

"Mr. Speaker, Members should keep in mind that we're asking these entities to pay 1% on the dollar. One penny on the dollar. We're asking for 1% in taxes when everybody else is paying 4% on the Neighbor Islands or 4.5% on Oahu.

"Number three, Mr. Speaker, three prior Tax Review Commissions, nonpartisan, not affiliated with either Party, have recommended that exemptions in the Tax Code should be periodically revisited to determine if they are still needed. Those books and reports are available online for anybody to see 24/7, or maybe at their library.

"Mr. Speaker, in most cases, my staff tried to ascertain the public policy or purpose of the exemptions, and for many of these they are hard to determine.

"Number four, most of these have been on the books for 20, or 30 years. We should look at them. I invite any Member of this Body, and the listening public to contribute to this discussion as we proceed for the next four weeks.

"And finally, Mr. Speaker, this is basically an issue of parity and fairness. Thank you."

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

"Mr. Speaker, I vote with reservations. I would vote no on this issue, but I know that we need this money to balance the budget. But I want to send a message out that we should be looking at this particular issue.

"It's not a transaction, these maintenance fees. It's money that's kept in trust from the tenants and put into a fund. When it's needed, it's used. If this was an exchange for a good or for a service, then certainly it should have a tax. But this is just a fund that's put in a reserved fund for future use for the maintenance of condominiums. So it makes no sense at all to tax that.

"I know we have been doing it in the past. I believe that we need to look at this kind of pass through money, that they are not taxed, and should not be taxed. For this, I will vote with strong reservations on this measure, but I accept the premise from the Chair of Finance that we need to provide money at this point to balance the budget. For this reason I support the bill, but with strong reservations."

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

"Thank you, Mr. Speaker. I have strong reservations. I'd also like to adopt the words of the previous speaker as my own, and just short words.

"Mr. Speaker, I do agree that we should review all of the 37 transactions that are in this particular bill. With the help of the Representative from Waikiki, we got some really good information on this particular issue of condos and town homes and homeowners association fees. As I explained before, the majority of that is like what the Representative from Maui has just stated.

"My thought on this, Mr. Speaker, is that we should go over a review. I vote with serious reservations because I don't want to see other types of transactions covered by this bill taxed more. I think many of them in there would be a situation where you would be raising taxes on things like this, where they're just holding onto the money, they're not necessarily having an actual transaction.

"Mr. Speaker, it's kind of like, if I were to give to my husband a rent check, or give it to my aunt. Can you go and make this water payment for me? And then the State says, 'Okay, well then we're going to tax you this 1%.' It's very similar to that because we're giving that money, whether it be an insurance payment, or a water payment, or a property tax payment. We are taxing these homeowner associations upon that transaction, and all they're doing is paying it on our behalf for the ease of the homeowner association. Thank you, Mr. Speaker."

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

"Thank you Mr. Speaker, in opposition with comments inserted into the Journal, and may I please have the Representative from Wailuku's words inserted as if they are my own. I feel it's better late than never. Thank you."

Representative Brower submitted the following written remarks which were distributed to the Members of the House:

"BILL DESCRIPTION: S.B. 2402, S.D.1, H.D.1 amounts to a 1% general excise tax to 37 "transaction" classes, which previously were exempt.

FLOOR AMENDMENT is to specifically exclude only one of the many classes of individuals the current bill would tax: condominium maintenance fees – home-owners fees.

How will this affect homeowners in the future? Would we start taxing rent for people who live in private communities and homeowners associations? What will they think?

THE ISSUE:

Condominium fees (costs for insurance, water, sewer, property tax, employees, scheduled repairs) are fees paid by condominium owners to their condominium boards. This is essentially money they are paying to themselves; it would be illogical and bad policy to tax money that goes from one hand to the other.

Association of Apartment Owners (AOAO)s are typically incorporated or unincorporated non-profit organizations. By virtue of their "**non-profit**" organizational status, maintenance fees should be exempted from the General Excise Tax as these monthly fees are *not* income. Should the current bill pass, it could open up to legal challenges.

CONDO BENEFITS:

- Condominiums already pay for more than their fair share of taxes by building vertically as opposed to horizontally (like planned home communities).
Imagine 500 homes versus 500 condominium units.

- It saves on infrastructure (such as sewers and road) and environmental resources. Many buildings use private trash collection and private security.

My building has 38 floors with 12 units on each floor. It conservatively houses 812 people. Imagine the environmental strain of the same number of people in houses.

CURRENT CONDO HARDSHIPS:

- Many unit owners are elderly, on fixed incomes or younger couples in their first homes.

- In addition, this State has seen an increase in **delinquencies** in maintenance fees and foreclosures. Once an AOAO exceeds 10-15% in delinquencies, most lenders will not approve lender financing for the unit in the condominium development. The reasoning behind this is because lending underwriting sees "high" delinquencies as high-risk, thereby, limiting the pool to only cash buyers and further hampering the AOAO's ability to operate.

More Detailed information:

SB 2402, S.D.1, H.D.1 would require cooperative housing corporations and condominium projects to pay 1% GET per annum for the next 5 years on the fee collected by the Board or homeowners association in reimbursement of sums paid for common expenses such as maintenance fees.

The following recession-driven factors will be exacerbated by this GET increase:

High Delinquency Rates are created by unpaid maintenance fees as a result of residents who have been laid off or furloughed → This creates deficits that require co-ops/ condo's to raise maintenance fees in the following years.

Hawaii is experiencing one of its highest levels of *foreclosures*. If the foreclosures or delinquency rates are too high in a particular building—or the reserves too low—the local lenders will not give mortgages to

any prospective buyer in that building. Only cash buyers will be allowed to buy. This has adverse consequences in the real estate market.

Additionally, the co-op/ condo would lose their insurance coverage. This exposes them to various risks they cannot afford.

Most co-op and condo buildings were built in the 1960's and 1970's and are in need of *repairs*:

- Spall repairs for concrete buildings to fix corrosion → \$1M+
- Antiquated plumbing
- Roof
- Parking Deck
- Elevator modernization

Many leasehold co-ops and condo are in the process of *rent re-negotiations* or have recently completed rent re-negotiations (which typically occur after 25-30 years from the lease inception). For example, a resident at Discovery Bay informed me that her lease rent increased from \$232 to almost \$1800 for the quarter. Now, in addition to the increased lease rent, leasehold unit owners will be burdened by the 1% tax and possible future increases.

Reduced value of the property: Finally, due to the maintenance fee delinquencies, co-ops and condos have had to cut back on services to their residents; lay off or terminate employees; and put off or delay current maintenance and repair projects.

Thank you for considering this amendment."

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

"With reservations, Mr. Speaker. And I'd like the great words from the great Representative from Maui included in the Journal as my own. Thank you." (By reference only.)

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

"Thank you, Mr. Speaker. I am also in opposition and I ask that the words of the Representative from Ewa Beach be entered as my own. As well as, I'd like to request that the yellow sheet distributed by the Representative from Waikiki be entered into the Journal." (By reference only.)

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in strong opposition to S.B. 2402, Relating to Taxation. As we are all aware, Hawaii is suffering through one of the worst economic downturns in its history. Adding this additional excise tax burden on nonprofit community associations will merely prolong the current real estate problems, as well as make condominium ownership less affordable. This tax is not only bad for the economy, it also hurts the elderly, many of who are on fixed incomes and would further struggle to pay this tax.

"This tax inhibits business, taxing amounts received from the loading, transportation, and unloading of agricultural commodities that are shipped interisland. It is business that keeps our struggling economy afloat. Imposing a tax on the transportation of agricultural commodities will only further strain the already struggling businesses.

"For all of these reasons, Mr. Speaker, I strongly oppose S.B. 2402. Thank you."

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

Representative Wooley's written remarks are as follows:

"The goal of this bill is to eliminate tax loopholes which serve no legitimate purpose and to make sure all corporate and special interests doing business in the State bear their fair share of State taxes.

"Most businesses in Hawai'i must pay over 4% on every transaction. In contrast, many of the interests included in this exemption bill have paid no tax for long periods of time because they were able to get a special tax exemption at one time or another.

"In the future, if and when the Legislature grants a tax credit or exemption, the public purpose should be specified, there should be methods in place to assure transparency and accountability for the exemption or credit, and there should be a time limit imposed so that the Legislature is required to occasionally review the policy and reauthorize the exemption or credit only if it continues to serve a legitimate purpose.

"While I support this bill, I do believe it should be narrowed so that condominium owners need not pay an additional tax for maintenance fees and paymasters need not pay a 1% tax multiple times. There may be other examples in this bill where there is a legitimate purpose for the tax exemption, and as the bill moves forward, I expect it will be narrowed to address this issue."

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

"Thank you, Mr. Speaker. I should have stood up earlier to ask for a potential conflict ruling. My 90 year old mother lives in a condo, and my brother and I are responsible for those maintenance fees. Thank you," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. I am opposed to this measure. This bill, my understanding, will hit all nonprofits. I think it includes all schools, and churches, and Boy Scouts, and YWCA, and Salvation Army, and all entities that are nonprofit. I think some of the hospitals, too. I think there'll be a hue and cry. The alternative is not the increase in the general excise tax. The alternative is to cut government spending wherever possible, and I think we have not made enough of an effort in this area. Thank you."

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

Representative Thielen rose, stating:

"Thank you, Mr. Speaker. Will the Finance Chair yield to a question please? Thank you. I've been going over the language in the bill and I don't see any impact on nonprofits with the exception of subsection 5 which is the value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces. And could the Finance Chair tell me is there any other impact on the nonprofits?"

Representative M. Oshiro responded, stating:

"Thank you, Mr. Speaker. Thank you, Representative Thielen, I would like to respond. Yes, that is correct. There is no tax being imposed upon nonprofits, hospitals, churches, etc. in this bill. It never was the intention, and none of the drafts contained any of those tax provisions. Thank you."

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

"Thank you, Mr. Speaker. In support of the measure. As an owner of condominiums, as well as planned community properties, I'm very aware of what is being charged on those maintenance fees. There's a whole lot of services that are included in those maintenance fees.

"First and foremost, Mr. Speaker, are legal fees. Also landscaping fees, and paving fees. I believe that those services need to be taxed.

"While it's true that they pay for water and sewer, I think what we need to consider in the future as a result of this, is to separate those essential services that are passed through, as opposed to those contracted services that are under the maintenance fees. Thank you, Mr. Speaker."

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

"Mr. Speaker, I rise in support. I just wanted to say that it was hard for me to believe that anybody still thought nonprofits were included in this bill because we've gone over, and over, and over this, but that's another thing.

"What we are getting rid of is many tax exemptions that are given to special interests. Special interests. That's what has been in the recommendations of the Tax Review Commission for years, and years, and years. We're doing the right thing, and I support this bill strongly. Thank you."

Representative Marumoto rose to respond, stating:

"Thank you. I appreciate the Representative from Kailua asking that question of the Finance Chair. I hope that the bill does not morph into something a little bit more dangerous than nonprofits. I don't know what the initial intent was, but my understanding it was to tax nonprofits like Girl Scout cookies and other things like that. So I hope that in Conference that you will hold the line on this. I have not seen the Senate version, but I am not a member of your Committee. Thank you for the information."

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

"Thank you, Mr. Speaker. With strong reservations, and just to add a few comments. I do support the 1% increase on many of the special interests that are listed in this bill. However, I think there's a distinction between corporate special interests, and the many hundreds and thousands of people who live in condominium associations and are, in effect, going to be double taxed by this proposal. Thank you, Mr. Speaker."

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

"In support, Mr. Speaker. I would be delighted to pay a tax if I did get water and sewer service."

Representative Pine rose to respond, stating:

"Yes, Mr. Speaker. Still in opposition. It's okay to balance the budget, but just don't do it on the backs of the people of Hawaii who are already suffering. We say that nonprofits are exempted, but they're not. What do you think nonprofits do when they have conventions, and meetings, and events for? They do that to raise money to help people that are hurting. So we are taxing nonprofits.

"So Mr. Speaker, I am for going after special interests that can afford to pay more, and I wish we would have a better discussion and have this bill not introduced last minute in the Finance Committee where very few people were able to review these different things, line by line so they can come and testify in person to prove that they deserve this tax deduction.

"It's just how this was done. It's being sped through, and not that many Committees are hearing it. It has not given the public a chance to prove to us individually whether they deserve this or not. So that's really my opposition, that there was really a lack of true transparency and true discussion."

The motion was put to vote by the Chair and carried, and S.B. No. 2402, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 43 ayes to 7 noes, with Representatives Berg, Brower, Ching, Marumoto, Pine, Takai and Ward voting no, and with Representative Hanohano being excused.

At 11:06 o'clock a.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 2402, SD 1, HD 1

UNFINISHED BUSINESS

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1171-10) recommending that S.B. No. 2548, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2548, SD 2, HD 1, pass Third Reading, seconded by Representative Pine.

At this time, Representative Thielen offered Floor Amendment No. 8, amending S.B. No. 2548, SD 2, HD 1, as follows:

"SECTION 1. Senate Bill 2548, Senate Draft 2, House Draft 1, is amended by amending Section 2, to read as follows:

"SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended by adding a new section to part VII, to be appropriately designated and to read as follows:

"§27- Information technology; chief information officer; information technology steering committee; establishment; responsibilities. (a) There is established within the department of accounting and general services a full-time chief information officer to organize, manage, and oversee statewide information technology governance, including supervision and oversight of the information and communication services division of the department of accounting and general services. The chief information officer shall be appointed by the governor as provided in section 26-34. The chief information officer shall report directly to the governor and, in conjunction with the information technology steering committee, shall:

- (1) Develop, implement, and manage statewide information technology governance;
 - (2) Develop, implement, and manage the state information technology strategic plans;
 - (3) Develop and implement statewide technology standards;
 - (4) Report annually to the governor and the legislature on the status and implementation of the state information technology strategic plan; and
 - (5) Perform other necessary or desirable functions to facilitate the intent of this section.
- (b) There is established an information technology steering committee to assist the chief information officer in developing the State's information technology standards and policies, including but not limited to:

- (1) Assisting the chief information officer in developing and implementing the state information technology strategic plans;
- (2) Assessing executive branch departments' progress in meeting the objectives defined in the state information technology strategic plans and identifying best practices for shared or consolidated services;
- (3) Ensuring technology projects are selected based on their potential impact and risk to the State, as well as their strategic value;
- (4) Ensuring that executive branch departments maintain sufficient tools to assess the value and benefits of technology initiatives;
- (5) Assisting the chief information officer in developing state information technology standards and policies; and

(6) Clarifying the roles, responsibilities, and authority of the information and communication services division, specifically as it relates to its statewide duties.

The members of the information technology steering committee shall be appointed by the senate president and speaker of the house of representatives in equal number respectively and shall include representatives from executive branch departments, including large user agencies such as the department of education and the University of Hawaii; the judiciary; the legislature; and private individuals. The chief information officer shall serve as the chair of the committee and shall ensure that the committee is evaluated periodically.

(c) There is established within the department of budget and finance a special fund to be known as the shared services technology special fund to be administered and expended by the chief information officer for the purposes of this subsection. per cent of the receipts collected from special funds pursuant to section 36-27 shall be deposited into the shared services technology special fund. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the chief information officer and the information technology steering committee, including the employment and training of staff and any other activities deemed necessary by the chief information officer to carry out the purposes of this section."

Representative Thielen moved that Floor Amendment No. 8 be adopted, seconded by Representative Pine.

Representative Thielen rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. This one should be a lot quicker and a lot easier. I would just ask the Members to look at this with open minds because it corrects a defective bill. I know it's proposed by the Minority, but so be it. Maybe for once you can say, 'Okay, this makes sense.'

"The underlying bill, I support, which would establish the Information Technology Officer or the Chief Information Technology Officer, which we do need in this State. Unfortunately the bill is defective in that it places it in the Office of the Governor.

"The Attorney General explained that under the Constitution, you can have temporary offices within the Governor's Office, but it can't be a permanent position. Therefore this office should have been placed in the Department of Accounting and General Services.

"This is simply all that the bill does. It corrects the violation of the State Constitution. And we have support certainly for this Chief Information Officer from the High Technology Development Corporation and others in the community.

"So let's do it right, and that's all that the amendment does. If we pass the amendment, the bill will be corrected, and Members could feel good about doing something proper today. Thank you."

Representative B. Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to the floor amendment. I'll be very brief. What the offeror says is true; that you cannot create permanent offices in the Office of the Governor. That was actually one of the problems that was pointed out when had the Office of Elections under the Lieutenant Governor, because the Attorney General under that opinion said that you cannot permanently establish an agency.

"Under our Constitution, agencies can only be established as they are listed in our statutes. So you cannot permanently attach another agency to the Governor's or Lieutenant Governor's office.

"However, I don't believe that is what is being done in this case. In this case all we're doing is establishing the position of the full time Chief Information Officer, and so I don't believe that that runs afoul of the

Constitution. Establishing a position within the Office of the Governor is very different than attaching an agency to the Office of the Governor.

"As you have already seen, she has done that with her tourism liaison. If that is a case that she's not allowed to establish any other positions, then that one should also be violative of the Constitution, but it is not. All we are doing is establishing that position. Thank you."

Representative Thielen rose to respond, stating:

"Thank you, Mr. Speaker. If I were a betting person, I would bet you 'dollars to donuts' that by the time this bill ends up, the Chief Information Officer will be placed in the Department of Accounting and General Services. So my question is now, is it simply because it's a Republican proposal that the Members won't vote for it? Because on the final day, I'm sure that the bill will be corrected and then everyone will vote for it, including the Majority side. Thank you."

Representative B. Oshiro rose, stating:

"Mr. Speaker, point of order. I don't believe it's proper to align motive to why we vote for things or against things. You can talk about effect, but not motives or intent. Thank you."

The Chair responded, stating:

"Your point is well taken, and you are correct."

Representative Finnegan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'm in support. Mr. Speaker, for transparency purposes, I know the Minority has had a very difficult time getting roll call votes. So for transparency purposes, I am standing in support with no comments."

Representative Berg rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I stand in opposition to this floor amendment simply because of the content. I think the good Representative from Kailua makes a very good point. My concern is that there is an Office of Information Practices within the Lieutenant Governor's office, and if this position is placed someplace else, I'm not sure how that would facilitate the coherent changes that the Auditor is suggesting. Thank you."

Representative Marumoto rose to speak in support of the proposed floor amendment, stating:

"I rise simply to say that I support the amendment."

Representative Pine rose to speak in support of the proposed floor amendment, stating:

"Just for transparency, I just want to note I support the amendment."

Representative Ching rose to speak in support of the proposed floor amendment, stating:

"Thank you. I am also in strong support of the amendment. I think that we should be supporting this initiative of technology, and on a permanent basis. Thank you."

Representative McKelvey rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, for transparency purposes, I rise in opposition. However, I do want to note that the concerns of the Minority, I share them completely, and we will be bringing this into Conference. Thank you, very much."

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"I rise in support."

Representative Manahan rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I'm standing in opposition to this floor amendment. I just briefly want to say, I thought this is what HTDC already does. So I don't understand why we need a new position. Thank you."

The motion that Floor Amendment No. 8, amending S.B. No. 2548, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION TECHNOLOGY," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry. (Representative Hanohano was excused.)

(Main Motion)

Representative Pine rose and stated:

"All Minority Members vote aye, with reservations."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2548, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION TECHNOLOGY," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

At 11:14 o'clock a.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 2548, SD 2, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1236-10) recommending that S.B. No. 2124, SD 2, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2124, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

At this time, Representative Ward offered Floor Amendment No. 9, amending S.B. No. 2124, SD 2, HD 1, as follows:

"SECTION 1. Senate Bill No. 2124, Senate Draft 2, House Draft 1, is amended by amending Section 1, to read as follows:

"SECTION 1. Hawaii is facing one of the most challenging economic times it has ever faced and these economic conditions have necessitated difficult decisions by the State to balance an already precarious budget. One such decision reached through collective bargaining between the Governor, the Board of Education, the Department of Education, and the Hawaii State Teachers Association, was to institute furlough days for Hawaii's educational system. As a result of this agreement, Hawaii's *keiki* have already lost nearly three weeks worth of instructional days during the current school year and are scheduled to lose anywhere from seventeen to twenty-one more days during the next school year.

The loss of these instructional days may have a tremendous impact on the youth of our state. It may be devastating to the quality of their education and a loss which may last them a lifetime. In addition to the effect on our youth, these lost days may have far reaching effects on the prosperity, health, and growth of the entire state for years to come.

Despite the State's economic difficulties and the great need for additional resources in many areas that would benefit the public welfare, the legislature finds that the education of our youth is of the utmost importance. Accordingly, your Committee is loaning Hawaii Hurricane Relief Funds to the general fund to restore instructional days for the 2009-2010 and 2010-2011 school years that would be lost to furloughs. By providing these funds, the legislature is enabling a return of our students to the classroom.

As required by the Hawaii Constitution, the legislature's authority and responsibility is to establish funding priorities that will result in a balanced budget. In our current fiscal climate it is difficult to balance the many needs of the people of Hawaii, but the legislature has made the educational needs of Hawaii's children a top priority and therefore has appropriated these funds to restore instructional days. In doing so, it is not the intent of the legislature to become a participant in the collective bargaining process. In fact, the Hawaii Constitution forbids this. The legislature's role is to reject or approve funding for the cost items agreed to by collective bargaining.

The legislature declares that the loan made under this Act shall not be construed to mean that the legislature, in any way, intends to interfere with the processes of public sector collective bargaining as authorized under the state constitution and chapter 89, Hawaii Revised Statutes.

The purpose of this Act is to loan Hawaii hurricane relief funds to restore instructional days for the 2009-2010 and 2010-2011 school years that have been negotiated pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes, and a proportionate amount on a per-pupil basis to alleviate the impact of reductions to charter schools for the 2009-2010 and 2010-2011 school years."

SECTION 2. Senate Bill No. 2124, Senate Draft 2, House Draft 1, is amended by adding a new Part I, to read as follows:

"PART I

SECTION 2. Section 431P-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (g) to read:

"(g) Any proceeds from loans or other moneys from the federal government, any proceeds from bonds issued pursuant to this chapter loaned by the director to the Hawaii hurricane relief fund, any repayment of principal and interest on loans to the general fund, and other moneys as the State may make available from time to time shall be deposited into the hurricane reserve trust fund."

2. By amending subsection (i) to read:

"(i) Moneys in the hurricane reserve trust fund may be:

(1) Disbursed upon dissolution of the Hawaii hurricane relief fund; provided that:

(A) The net moneys in the hurricane reserve trust fund shall revert to the state general fund after payments by the fund on behalf of licensed property and casualty insurers or the State that are required to be made pursuant to any federal disaster insurance program enacted to provide insurance or reinsurance for hurricane risks are completed; and

(B) If such moneys are paid on behalf of licensed property and casualty insurers, payment shall be made in proportion to the premiums from policies of hurricane property insurance serviced by the insurers in the twelve months prior to dissolution of the fund; or

(2) ~~[Deposited to the loss mitigation grant fund established under section 431-22-102;]~~ Loaned to the general fund pursuant to legislative act and expended in place of previously appropriated general funds;

provided that all interest earned from the principal in the hurricane reserve trust fund shall be transferred and deposited into the general fund each year that the hurricane reserve trust fund remains in existence.

Any legislative act that provides for the loan of moneys from the Hawaii hurricane reserve trust fund to the general fund shall also provide for the repayment of half of the principal of and, if any, interest due and owing on the loan by June 30, 2015, and the repayment of the remaining half of the principal of and, if any, interest due and owing on the loan by June 30, 2017. As the means of repayment, the legislative act may dedicate general revenues from an existing or new tax or fee. If the principal and interest

are not fully repaid by the applicable deadlines, the director of finance shall transfer the delinquent amount from the general fund to the Hawaii hurricane reserve trust fund. No penalty shall be charged on any delinquent principal or interest. The director shall make the transfer or transfers without necessity of appropriation or any other legislation. Notwithstanding the foregoing, all or a portion of the principal of and, if any, interest due and owing on the loan may be repaid at any time prior to the applicable deadlines without penalty."

SECTION 3. Section 431P-16.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[(§431P-16.5)]~~ **Transfer or loan of funds; immunity.** There shall be no cause of action, claim for damages or relief, charge, or any other liability of any kind whatsoever created against the State, the Hawaii hurricane relief fund, the commissioner, or their respective agents, employees, or board, by, or relating to~~[-the]~~:

- (1) The transfer of any moneys from the hurricane reserve trust fund to the loss mitigation grant fund or from the loss mitigation grant fund to the hurricane reserve trust fund or involving the loss mitigation grant program[-]; or
- (2) The loan of any moneys from the hurricane reserve trust fund to the general fund."

SECTION 3. Senate Bill No. 2124, Senate Draft 2, House Draft 1, is amended by adding a new Part II, to read as follows:

"PART II

SECTION 4. Notwithstanding provisions of chapter 431P, Hawaii Revised Statutes, to the contrary, there is appropriated out of the Hawaii hurricane relief fund the sum of \$16,533,333 or so much thereof as may be necessary for fiscal year 2009-2010 to restore instructional days for the 2009-2010 school year that have been negotiated pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes; provided that:

- (1) The funds appropriated by this Act shall only be released upon the completion of all negotiations of parties necessary to execute the restoration of instructional days pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes;
- (2) Of the sum appropriated, \$691,289 shall be allocated to charter schools for the 2009-2010 school year to alleviate the impact of funding reductions for the 2009-2010 fiscal year;
- (3) Of the sum appropriated, \$15,842,044 shall be allocated to non-charter schools for the 2009-2010 school year to alleviate the impact of funding reductions for the 2009-2010 fiscal year;
- (4) Notwithstanding section 37-41.5, Hawaii Revised Statutes, funds appropriated for the 2009-2010 school year that are not expended at the close of that school year shall not be carried over to the following school year and shall lapse into the Hawaii hurricane relief fund; and
- (5) The funds appropriated by this Act shall be treated as a loan pursuant to the provisions of sections 431P-16 and 431P-16.5, as amended by this Act.

The sum appropriated under this section shall be expended by the department of education and the charter school administrative office, respectively, for the purposes of this Act.

SECTION 5. Notwithstanding provisions of chapter 431P, Hawaii Revised Statutes, to the contrary, there is appropriated out of the Hawaii hurricane relief fund the sum of \$45,466,667 or so much thereof as may be necessary for fiscal year 2010-2011 to restore instructional days for the 2010-2011 school year that have been negotiated pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes; provided that:

- (1) The funds appropriated by this Act shall only be released upon the completion of all negotiations of parties necessary to execute the restoration of instructional days pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes;
- (2) Of the sum appropriated, \$1,901,045 shall be allocated to charter schools for the 2010-2011 school year to alleviate the impact of funding reductions for the 2010-2011 fiscal year;
- (3) Of the sum appropriated, \$43,565,622 shall be allocated to non-charter schools for the 2010-2011 school year to alleviate the impact of funding reductions for the 2010-2011 fiscal year; and
- (4) Notwithstanding section 37-41.5, Hawaii Revised Statutes, funds appropriated for the 2010-2011 school year that are not expended at the close of that school year shall not be carried over to the following school year and shall lapse into the Hawaii hurricane relief fund; and
- (5) The funds appropriated by this Act shall be treated as a loan pursuant to the provisions of sections 431P-16 and 431P-16.5, as amended by this Act.

The sum appropriated under this section shall be expended by the department of education and the charter school administrative office, respectively, for the purposes of this Act."

SECTION 4. Senate Bill No. 2124, Senate Draft 2, House Draft 1, is amended by renumbering the subsequent remaining sections and amending them to read as follows:

"SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that sections 4 and 5 shall take effect on July 1, 2010, and that Part I of this Act shall be repealed on July 1, 2017; provided that:

- (1) Sections 431P-16 and 431P-16.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective day of this Act; and
- (2) The repeal of this Act shall not affect the obligation of the State to repay any loan or portion thereof made from the Hawaii hurricane relief fund pursuant to this Act."

Representative Ward moved that Floor Amendment No. 9 be adopted, seconded by Representative Ching.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, this is a very handy amendment, and timely. I will be brief in explaining that there's a big difference between taking money and borrowing money. This is about the Hurricane Relief Fund which the people of Hawaii believe is their own money. Last heard, we are still in a hurricane zone. This needs to be solvent. It needs to be there.

"This amendment basically says, 'Yes, you can use the money. But no, you've got to pay us back.' It's not going to be on its own. So Mr. Speaker, moving for the adoption of this is simply saying, yes we're going to use the hurricane relief money, but we want to have it as a loan and pay it back. Thank you."

Representative Pine rose to speak in support of the proposed floor amendment, stating:

"In support of the amendment, Mr. Speaker. I agree with the previous speaker that a loan is better than just taking. I think it's so important, especially in these times, that when we keep our word to the people of Hawaii, that we're taxing them for a specific purpose, that we actually do keep our word, because they eventually start losing faith in their leaders and the taxes that we collect from them.

"So I believe that if we classify this more as a loan, this will always be considered as part of our budget. When we have surpluses we will pay it back so that we can keep our promises to the people that were taxed for the Hurricane Relief Fund."

Representative Thielen rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In support of the amendment, and in loaning the money for the purpose provided in this legislation. Mr. Speaker, I'm going to just read briefly from the Insurance Commissioner's letter to me:

"When a hurricane hits Hawaii, the HHRF is designed to activate, begin setting up operations to provide hurricane insurance to Hawaii property owners who are unable to get insurance from a traditional insurer. Usually, in the aftermath of a hurricane, traditional insurers pull back from the market. Homeowners who cannot find insurance are then in default on their mortgage, and foreclosures may ensue. The HHRF is designed to provide insurance to prevent the additional personal and economic disaster of numerous foreclosures when we are trying to cope with the environmental, economic, and personal catastrophe after a hurricane."

"And I would note that by loaning the money, it provides a much better message because then the Fund will be repaid; and I go on to J.P. Schmidt's comments:

"Timing is important after a hurricane. It takes time to set up the operations of the HHRF. The less money the HHRF has, the longer it will take to get going and the greater risk of foreclosures and further economic disruption. The greater the amount in the HHRF, the quicker we can address these problems."

"That's what this amendment is all about, Mr. Speaker. Thank you."

Representative Finnegan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. For transparency purposes, I will be voting yes on this amendment, Mr. Speaker. My colleague before me mentioned the need for reinsurance if there is a hurricane or a hurricane disaster. The ability for people to refinance, for property sales to still move forward should they want to move forward, preventing foreclosures and stuff like that.

"Mr. Speaker, one of the important things that this borrowing of the funds creates is that commitment of the Legislature to make sure that important things like these don't fall to the wayside, and that we're just not always operating in emergency mode where we'll have to sell bonds or whatever we need to do in order to respond to potential foreclosures, refinances, and property sales.

"Mr. Speaker, we've done this in the past, not in the same way, with the ERS, where we sort of borrowed the funds, because we're trying to pay it back now to make us an unfunded liability for the ERS. Mr. Speaker, it's important for us to have this commitment. We cannot go forward and expose our homeowners and their homes to this kind of noncommittal, and especially because we are in a hurricane area that we should be committed and make sure that we pay this back, and that it's in the forefront of the minds of our Legislature, as well as future Legislatures. Thank you."

Representative Ching rose to speak in support of the proposed floor amendment, stating:

"Thank you. I am also in strong support of the amendment for similar reasons as the former speakers. One very important reason though, especially to keep our word to the taxpayers that this will be used for the hurricane. And if we do have to use it, then pay it back."

Representative Marumoto rose to speak in support of the proposed floor amendment, stating:

"Thank you. I am also in favor of the amendment, Mr. Speaker. At the time that we instituted this Hurricane Fund we were at a crisis situation when all the insurers that offered wind insurance left town, literally. We were forced to start our own insurance, hurricane insurance fund. I think we should keep it intact and fully funded as much possible to preclude another disaster, because the crisis situation was terrible when we were not able to sell or buy a single property, condo, single family residence, commercial property that needed financing because it was really a bank requirement, not an insurance requirement, a financial requirement.

"So I think it's a very good amendment to borrow the money from the Hurricane Fund rather than to take the money. I would hope that you would really think about this amendment because it's not one of those things you can fix in Conference Committee. It's too important. So I hope I don't have to say, 'I told you so.' Thank you."

Representative M. Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"I rise to speak against this amendment. Mr. Speaker, this amendment will do several things. It would cause us to create a loan between the hurricane relief fund and the general fund, but there are problems with that. I think first of all, internally it's inconsistent because it calls for a payment and return of the amounts, "borrowed" by June 30, 2015 with interest. And then later on there's also another principal payment due on June 30, 2017. This bill does not contain the terms and conditions of this loan. Nothing on what might trigger any default of this loan.

"And furthermore, Mr. Speaker, although it talks about interest being paid, it does not level any interest on the loaned amount. I think those who are thinking about moving this bill forward should first look at the existing law whereby the general fund does receive interest from the Hawaii Hurricane Relief Fund that goes to the general fund.

"It's terribly ironic Mr. Speaker, given all these descriptives about being transparent when one of the most noticeable portions of this bill in part two, seems to be the Governor's proposal to end the Furlough Friday debacle that she had a hand in. If you look at part two of the bill, Members, the current draft before us, section 4 and section 5 and section 6 and section 7. It essentially contains the Governor's proposal. I have not heard one comment about that from the Minority, so I find it very strange and intriguing, and it simply flabbergasts me. Thank you, Mr. Speaker."

Representative Ward rose to respond, stating:

"Mr. Speaker, I find it flabbergasting that anybody who has endured over 160 some days of furloughs is not flabbergasted that we haven't fixed it yet, and that's why we're borrowing the money. Simple logic. Borrowing the money to fix what otherwise is one of the biggest problems in this State, in this Session, at this time.

"Secondly, Mr. Speaker, this is all about restoring in good faith, the trust that the people of Hawaii have in us. If we just take this money like we took with the Highway Fund, people complained in my district, your district. Why are there so many potholes? We took the money out, and never restored it.

"The ERS, we say we have so many billion of unfunded liabilities. Why did we have that? Because we took the money out, and we never restored it. This one is saying and codifying it, 'if you take the money, give it back.' Loan it out. I'm glad that the Chair of Finance mentioned that there's no greater cause than putting our kids back into school. Thank you, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. In support of the amendment again and just follow up comments. Mr. Speaker, I thought it was important to include the language of the borrowed money for the commitment of paying it back because this is a very important fund. The only reason why we use that particular language in part one of this bill is because it was the language that our House passed over from First Crossover when we borrowed funds from the HHRF.

"So this language, if it's not okay to use, this Body already gave its stamp of approval when it sent it over to the Senate side. So if there are any mistakes, it was through the leading of this Body in how they wanted to attack using this Fund and loaning money out of this Fund and having our Legislature or the State pay it back. So again, this is the language that went over to the Senate in our House Bill that we passed off at First Cross."

The motion that Floor Amendment No. 9, amending S.B. No. 2124, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HURRICANE RELIEF FUND," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry. (Representative Hanohano was excused.)

(Main Motion)

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

"Thank you, Mr. Speaker. I'm rising with reservations on the underlying bill. Mr. Speaker, I'm going to go back to the letter that I received from the Insurance Commissioner, JP Schmidt, and just would like the Journal to reflect the following:

"The HHRF has a number of revenue sources. HHRF uses premiums of post-hurricane assessment on the HHRF servicing carriers, a mortgage recording fee, an annual assessment on the property and casualty insurers and a post-hurricane surcharge on property and casualty insurance policyholders. Those who pay premiums received in return the benefit of insurance coverage for their homes. Those who paid the other fees and assessments receive the benefit of stabilized insurance and mortgage markets."

"He notes, "We will need the HHRF when the next hurricane hits Hawaii. We are currently in an El Nino weather pattern which historically is when Hawaii is at highest risk of hurricane. In addition on average Hawaii is hit every 10 years. Hurricane Iniki occurred about 17 years ago."

"Mr. Speaker, I think we should be very cautious in taking more than a very small amount from the HHRF particularly when it could cause such economic damage. Thank you."

Representative Ching rose in support of the measure with reservations 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 Pine rose in support of the measure with reservations 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 Finnegan rose in support of the measure with reservations 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 S.B. No. 2124, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HURRICANE RELIEF FUND," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

At 11:28 o'clock a.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 2124, SD 2, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1159-10) recommending that S.B. No. 2589, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2589, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

At this time, Representative Ward offered Floor Amendment No. 10, amending S.B. No. 2589, SD 2, HD 1, as follows:

"SECTION 1. Senate Bill 2589, Senate Draft 2, House Draft 1, is amended by amending Section 1 to read as follows:

"SECTION 1. The legislature finds that some public charter schools face daunting obstacles, including the high cost of rent and less-than-desirable locations for their facilities, while the department of education is considering the closure of certain school that are not charter schools due to financial constraints.

The legislature further finds that education is of the utmost importance to the future of Hawai'i. As Hawai'i continues to strive for innovative ways to improve the education and opportunities for our children, the federal government has stressed, both publicly and in its policy and funding choices, the importance of successful innovations, especially encouraging states to nurture charter schools. Recently, the Obama Administration set aside several billion dollars in competitive grants called "Race to the Top" funds for the very purpose of education reform and improvements, and blatantly states that part of the criteria for qualifying for the funds hinges on states' decision to nurture charter schools.

The purpose of this Act is to require the department of education to consider making available vacant school facilities or portions of those facilities for use by charter schools, and to create statutory changes to enable Hawai'i to further improve public charter schools as a means of innovative public education and to better situate Hawai'i to qualify for "Race to the Top" funds and other federal grants."

SECTION 2: Senate Bill 2589, Senate Draft 2, House Draft 1, is further amending by adding a new section 6, to read as follows:

"SECTION 6. Section 302B-4, Hawaii Revised Statutes, is repealed.

~~["§302B-4 Limits on charter schools. The panel may authorize one new start up charter school for each existing start up charter school that has received a three year or longer accreditation from the Western Association of Schools and Colleges or a comparable accreditation authority as determined by the panel, or for each start up charter school whose charter is revoked. The total number of conversion charter schools authorized by the panel shall not exceed twenty five."]~~

SECTION 3: Senate Bill 2589, Senate Draft 2, House Draft 1, is further amending by adding a new section 7 and 8, to read as follows:

"SECTION 7. Section 302B-5, Hawaii Revised Statutes, is amended to read as follows:

"§302B-5 Start-up charter schools; establishment. (a) New start-up charter schools may be established pursuant to this section.

(b) Any community, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to the office to form a charter school, establish an interim local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d).

(c) The start-up charter school application process and schedule shall be determined by the panel or university, as applicable, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to operate a start-up charter school;
- (2) The timely transmittal of the application form and completion guidelines to the interim local school board;
- (3) The timely submission to the panel or university, as applicable, of a completed application;

- (4) The timely review of the application by the panel or university, as applicable, for completeness, and notification of the interim local school board if the application is complete or, if the application is insufficient, a written statement of the elements of the application that require completion;
- (5) The timely resubmission of the application;
- (6) Upon receipt of a completed application, the convening of the panel by the panel chairperson to begin review of the application or the convening of the university entity to begin review of the application, as applicable;
- (7) The timely notification of the applicant of any revisions the panel or university, as applicable, requests as necessary for a recommendation of approval;
- (8) Following the submission of an application, issuance of a charter or denial of the application by the panel or university, as applicable, by majority vote; provided that if the panel or university does not approve the application and issue a charter, provisions requiring the panel or university, as applicable, to:
- (A) Clearly identify in writing its reasons for not issuing the charter, which may be used as guidelines for an amended plan; and
- (B) Allow the interim local school board to revise its plan in accordance with the panel's guidelines, and resubmit an amended plan within ten calendar days;
- (9) A provision for a final date on which a decision must be made, upon receipt of an amended plan; and
- (10) A provision that no start-up charter school may begin operation before obtaining panel or university, as applicable, approval of its charter.
- (d) An application to become a start-up charter school shall include a detailed implementation plan that meets the requirements of this subsection and section 302B-9. The plan shall include the following:
- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
- (2) A plan for identifying, recruiting, and retaining highly-qualified instructional faculty;
- (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
- (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (5) A plan for the assessment of student, administrative support, and teaching personnel performance that:
- (A) Recognizes the interests of the general public;
- (B) Incorporates or exceeds the educational content and performance standards developed by the department for the public school system;
- (C) Includes a system of faculty and staff accountability that holds faculty and staff both individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
- (D) Provides for program audits and annual financial audits;
- (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of local school board members;

- (7) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time, start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
- (8) A facilities plan."

SECTION 8. Chapter 302B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302B-A Alternative chartering authority; University of Hawai'i.
 (a) The board of regents of the University of Hawaii shall have the authority to designate itself or another entity within the University of Hawaii to be an alternative chartering authority to the charter school review panel. The alternative chartering authority authorized by the board of regents under this section shall have the power and authority to:

- (1) Review, approve, or deny charter applications for new charter schools in accordance with section 302B-5 for the issuance of new charters; provided that applicants that are denied a charter may appeal to the superintendent for a final decision pursuant to section 302B-5;
- (2) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability; provided that a denial of a significant amendment to a detailed implementation plan may be appealed to the superintendent for a final decision pursuant to section 302B-5;
- (3) Adopt reporting requirements for charter schools;
- (4) Review annual self-evaluation reports from charter schools and take appropriate action; and
- (5) Evaluate any aspect of a charter school that the entity may have concerns with and take appropriate action, which may include probation or revocation."

SECTION 4: Senate Bill 2589, Senate Draft 2, House Draft 1, is further amending by renumbering the subsequent sections accordingly.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2050."

Representative Ward moved that Floor Amendment No. 10 be adopted, seconded by Representative Ching.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I will be pithy and pertinent to something that I think is very necessary and on the minds of the people of Hawaii, as well as many on this Floor. This amendment lifts the cap so we can get back into the Race to the Top. The Race to the Top involves millions of dollars of funds for our *keiki*. This requirement has been set by Secretary Duncan and the whole Race to the Top Charter School contest for the entire nation.

"Unfortunately, we were not included in round one. We didn't have the requisite lifting of the cap, as well as merit pay and other issues.

"Mr. Speaker, this amendment, brief as it is, simply says that we want to get back in the race. We want to go to the top. We want to get the money for the kids for our schools, but we're going to remove the cap to Charter Schools. If there's one thing this Administration is really committed to, it's Charter Schools, Mr. Speaker. We just want to align ourselves with them and that's the purpose of the amendment. Thank you."

Representative Finnegan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. For transparency sake, I do want to stand up and say that I'm in strong support of this amendment. Also to support as the previous speaker has said, to really back education reform through Race to the Top and being able to qualify for that money, but also just for the commitment.

"We as the Legislature pass out education reform through Charter School legislation, and every year since then it's been very difficult for Charters to even survive in the environment this Body or the Legislature has given them.

"We do need to say firmly that we are committed to the Charter School movement and its education reform and the things that it has provided to us so far in comparing the way that our traditional schools are operated and the bureaucracy of the Department of Education, and the contrast when Charter Schools, with the authority and flexibility to do what they need to do at this Charter School level. How they've been able to overcome some of the very difficult situations that they're in.

"Mr. Speaker, I strongly support this amendment and hope that others will be transparent in saying if they're yes or no on this particular amendment. Too often do the Charter Schools get the answer from people on the House Floor and the Senate Floor saying they support Charter Schools, but won't vote for legislation that actually helps them. Thank you."

Representative Ching rose to speak in support of the proposed floor amendment, stating:

"Thank you. In strong support of the amendment. Thank you."

Representative Thielen rose to speak in support of the proposed floor amendment, stating:

"In strong support of the amendment, Mr. Speaker."

Representative Pine rose in support of the proposed floor amendment and asked that the remarks of Representatives Ward and Finnegan 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 proposed floor amendment, stating:

"Mr. Speaker, I support this amendment because I find the energy coming out of Charter Schools really recharges us all. The morale is so great among the parents and the teachers and the students, so we need more Charters."

Representative Takumi rose to speak in opposition to the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. In opposition. Just a quick response to the Minority Leader. If she has any research that shows that our Charter Schools do better as a whole than the regular public schools, I sure would like to see that. There've been two studies done by Kamehameha Schools that were inconclusive about that assertion as well.

"On the one hand, I do support Charter Schools, on the other hand to make an assertion that somehow they do better than regular public schools is not quite conclusive in my book.

"But let me state for the record, Mr. Speaker, I am in favor of lifting the cap and having multiple authorizers for our Charter Schools but it's a question of timing. I'm sure the Representative from Hawaii Kai did read the Race to the Top application. I don't know if he read all 900 pages, but particularly the section that dealt with Charter Schools. And then he must have read the part of the criticism by the US Department of Education and why we fell short in that category in our application.

"As you know, every state's application was reviewed by five objective reviewers and they offered comments. And again, I'm positive he read their

comments. Let me give you some comments that they did make, Mr. Speaker.

"One reviewer said, 'A lack of emphasis upon student achievement as a significant factor in determining Charter renewal.' In other words we don't quite have a system where student achievement is used as a gauge as to whether or not these charters should be renewed.

"Another reviewer wrote that the approval process is 'murky.' That was the word that was used. Another wrote, 'it is unclear how Charter School authorizers approve, monitor, hold accountable, reauthorize and close Charter Schools.' Another reviewer wrote, 'the lack of clarity of an appeals process when a Charter application is denied or a Charter is revoked.'

"That speaks for itself, Mr. Speaker. As you well know, the Charter School law passed in the State of Hawaii in 1994. I'm sure all of you know how many Charters have been revoked from 1994 to today. The answer is obviously, zero. Even though we have Charter Schools in 40 states and the District of Columbia and on average, Charters are revoked at a rate of about 10% a year. A national average. We have revoked none since 1994 and the reason for that is that our rules and our procedures and our policies to revoke a Charter is, as one reviewer wrote, 'murky.'

"So it seems to me, Mr. Speaker, that in light of these comments from rejected reviewers, I wonder how prudent it would be for us to lift the cap at this time and enable more authorizers.

"And lastly, the Senate Bill when it came over we read the Senate Draft 2, it does invoke some of the recommendations and proposals in this floor amendment. We're going to take it to Conference and we'll see where it goes. Thank you."

Representative Ward rose and stated:

"Mr. Speaker, would the Chair of Education accept a question?"

Speaker Say: "Representative Takumi, will you yield to a question?"

Representative Takumi: "No."

Representative Ward rose to respond, stating:

"Okay, I thought I misunderstood when he said he was actually for lifting the cap. But if he's not, he certainly gave enough reasons not to say that he was for the cap, if he did say that in effect.

"The point is, Mr. Speaker, Charter Schools are the experimentation laboratory for America. They're doing different and new things. And of course the data is still questionable as to whether they're doing as well in the achievement test.

"But the sense is, they're pushing the envelope. Case in point, yesterday I read, Mr. Speaker, about when they took the achievement test in some East Coast school, they allowed the kids to chew gum while they were doing the test. Mr. Speaker, the data says that you get a 3% push in the points by allowing the kids to chew gum. You think in the DOE here you can chew gum while you're taking an assessment test? No way.

"Now after the tests were over they had to take the gum out of their mouth etc., but the point is that we're lacking as a country and as a state, what's going on in the education of the minds of the youth of the world. What's going on in China, in India, South Korea, the Philippines, is frightening enough to say, 'Wake up America. Get your schools in order.'

"This is the laboratory to do it, and the federal government is saying, 'Look, you want our money? Here's the incentive. Lift the cap and we'll give you some money.' We failed the first time around, this is an amendment to say, 'Hey let's get back into the race. Let's get to the top. Let's do stuff with our kids.' We've got the brains here. We just don't have the system and the structure to bring it out. Thank you, Mr. Speaker."

Representative Takumi rose to respond, stating:

"A brief rebuttal, Mr. Speaker. Again, I'm sure the Representative from Hawaii Kai read the criteria for the Race to the Top application. The criteria for Charter Schools was that a state must have at least 10% of their schools as Charters. We do. So that was not held against us, the fact that we have a cap. The fact of the matter is 11% of our schools are Charters.

"Second point is the use of the word experiment. Mr. Speaker, unless the State of Hawaii and our experiment with Charter Schools is just an incredible anomaly relative to the other states, experiments succeed and experiments fail. Again, I point out, how many Charters have been revoked since 1994? The answer is none. And again, unless we are doing superlatively better than any other state, it's because our system of revoking Charters and reviewing Charters and renewing Charters, still is wanting. Thank you, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. In support of the amendment. Mr. Speaker, I do have some rebuttals on what the Chair of Education has said.

"Mr. Speaker, the reason why we have our Charter system the way that it is, the reason why we don't have any closures in Charter schools, is because of the system, in and of itself. The Board of Education was tasked to do this since 1994 on making rules on how to close a Charter.

"Mr. Speaker, if we don't commit to really paving the way for Charters so that they can successfully thrive, we just don't do that. We continually put in place things, and sometimes we take 'baby steps.' I agree in the way that we're trying to improve Charter School legislation. We may do a little 'baby step' here and there, but when I first started and came to this Capitol for education reform I was sending my kids to Charter Schools ..."

Representative Finnegan disclosed a potential conflict of interest, stating:

"Oh. A ruling on a conflict, Mr. Speaker, my kids go to a Charter School," and the Chair ruled, "no conflict."

Representative Finnegan continued, stating:

"Thank you. When I first was committed to going to a Charter School, we went in because we didn't want to give up on the public school system, Mr. Speaker. We wanted to have a voice. We wanted to be able to have that school have the flexibility and really commit to public school education.

"I had my son on my hip when I first went to apply my other child to a Charter School, my daughter in kindergarten. Now I was scolding him the other day, and I was looking at him eye to eye. He's the same height as I am. Mr. Speaker, this has been eight years and we haven't had significant help for the Charter Schools. The kids don't deserve that and those people working at the Charter Schools don't deserve that either.

"Mr. Speaker, we talk about measuring Charter Schools. Kamehameha went out on their own to do their assessment. Kids feel safer in the environment that they're in. There's a whole questionnaire that they go through, as well as they feel that they have accomplished more in the Charter School setting. Academically, as well as environmentally, as well as being responsible for their own learning. The telltale sign of that is that Kamehameha is willing to give millions of dollars to help the Charter Schools out.

"So I think that if they can be convinced that that's where they want to invest their dollars for Hawaiian kids, that that is a good sign that the Charter Schools are moving in the right direction.

"Mr. Speaker, right now Laupahoehoe is trying to convert from a traditional school to a Charter School. The CSR, the review panel, put that application on suspension. Why did they do that? Laupahoehoe went in with a grant asking the federal government for some assistance and money. They have a half a million dollars waiting for them in assistance to convert to a Charter School. The Charter School review panel put the application on suspension because of our lack of support of Charter

Schools. What that means is, because of the funding, they will not approve it because it means less funding for all the rest of the Charter School students.

"Mr. Speaker, by doing this we make a commitment to Charter Schools. We say let them flourish, and also we should force the BOE to come up with the language that says this is the criteria in which you close down a Charter School. That's why we need more authorizers, Mr. Speaker, and that's why we need to lift the cap on Charter Schools. Thank you."

Representative McKelvey rose to speak in opposition to the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. For transparency sake, in opposition. Everything that the previous speaker said is absolutely true in my book. I'm a strong supporter of Charter Schools and I think we should look at lifting the cap. Heck, we should lift them. But the floor amendment is being predicated on that this will position us better for the next round of Race to the Top.

"After hearing from the Education Chair, as well as reading the comments of the reviewers, I don't think this will get us there. So if the floor amendment is about getting us into a better position for the Race to the Top, then I'm all in favor, but I don't think it achieves those ends. So let's discuss the Charter School issue and as a separate issue, but as to this floor amendment, I don't think this positions us any better than where we're at now and that's why I'm opposed to the floor amendment."

At this time, Representative Souki called for the previous question, stating:

"Yes, Mr. Speaker. I call for the question please. I believe we had enough debate."

The motion that Floor Amendment No. 10, amending S.B. No. 2589, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARTER SCHOOLS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry. (Representatives Chang and Hanohano were excused.)

(Main Motion)

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

"In support with reservations. One of the previous speakers talked about how the amendment before did not improve education, and there's that little part in here that doesn't lift the cap on Charter Schools. I just disagree with that.

"When you create more schools that do better, that improves all of our chances of getting Race to the Top money. In Ewa Beach there're several groups including a lot of the principals of the local schools, and the parent leaders of the local schools, that wanted to create a couple of Charter Schools in Ewa Beach for specialized things that were not being addressed, or could not be addressed in the schools that are in my district. But they couldn't be creative despite so much support. We got federal funds for it, we got a free school basically that we could have opened up, but we couldn't do it to improve education and increase our chances to get Race to the Top money, because there is this cap. So it's very frustrating and so when we talk about ..."

Representative B. Oshiro rose, stating:

"Point of order, Mr. Speaker. The underlying bill has to do with Charter Schools use of facilities. I don't see what her current point is. That was related to the floor amendment, not the current bill that's before us."

Speaker Say: "Representative Pine, could you confine your remarks."

Representative Pine: "I'm sorry. I've strayed from the subject."

Speaker Say: "It's the utilization of school facilities for Charter Schools. Please."

Representative Pine continued, stating:

"I'm still in support with reservations. I just really believe that we need to take a stronger stance and talk about these issues whenever we deal with a bill like this."

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

"Thank you, Mr. Speaker, in support. Just short comments, Mr. Speaker. One is that when we're talking about facilities, this is an area where Charter Schools do need support, but because we are talking about facilities that may or may not be available for a particular Charter School, like say in their area that they're located in now, there may not be facilities available. So this is only going to go to those Charter Schools that can benefit from it.

"Facility support is so important for Charter Schools right now. In fact they don't get funding for facilities, and that makes up a large amount of their school budgets. So any support that we can give them is great.

"I did want to just say one more thing in regards to one of the facts that was stated earlier in the Charter School debate, and that is that 11% of the public schools in Hawaii are represented by Charter Schools. It's actually two to three percent of students that actually go to these Charters Schools. I don't know what the rule is. I don't know what the guidance is for Race to the Top. Numbers can be fudged in all kinds of ways and that is not a true interpretation of how many people are actually going to a Charter School. There's only two to three percent that are actually going to Charter Schools right now. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2589, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARTER SCHOOLS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

At 11:47 o'clock a.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 2589, SD 2, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1166-10) recommending that S.B. No. 2571, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2571, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

At this time, Representative Ward offered Floor Amendment No. 11, amending S.B. No. 2571, SD 2, HD 2, as follows:

"SECTION 1. Senate Bill 2571, Senate Draft 2, House Draft 2, is amended by amending Section 1, to read as follows:

"SECTION 1. The purpose of this Act is to implement, upon its ratification, the constitutional amendments to Article X, Section 2 of the Hawaii Constitution, by requiring the members of the board of education to be nominated and, with the advice and consent of the senate, appointed by the governor."

SECTION 2. Senate Bill 2571, Senate Draft 2, House Draft 2, is further amended by amending Section 2, to read as follows:

"SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

§302A-A Board of education members; appointment; terms; quorum and meetings; compensation. (a) The board shall consist of eight members as follows:

(1) Six voting members who shall represent and reside in the specified geographic areas as follows:

(A) One member from the county of Hawaii;

(B) One member from the county of Maui;

(C) One member from the county of Kauai; and

(D) Three members from the city and county of Honolulu;

(2) One voting member who shall be designated by the governor to serve as the chairperson of the board; and

(3) One nonvoting member who shall be a public school student at the time of the initial appointment.

The members shall be appointed by the governor, with the advice and consent of the senate, and may be removed by the governor.

Except as otherwise provided by law, state officers shall be eligible for appointment and membership.

(b) Except for the student member, the governor shall set the terms of those initially appointed under this section to each seat on the board as follows:

(1) Two members shall serve two-year terms;

(2) Two members shall serve three-year terms; and

(3) Three members, including the chairperson of the board, shall serve four-year terms.

(c) Except as provided for in subsection (d):

(1) The term of each member shall be four years, except as provided for the initial appointment in subsection (b); and

(2) Members shall serve no more than two consecutive four-year terms; provided that the members who are initially appointed to terms of three years or less pursuant to subsection (b) may be reappointed to two ensuing, consecutive four-year terms. If a member is to be appointed to a second consecutive term of four years, the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the expiration of a member's first four-year term; provided that if the senate is not in session prior to the one-hundred-twenty-day deadline by which the senate shall have considered the question of reconfirmation, the member shall continue to serve until the senate convenes for the next regular session or the next special session during which the senate is authorized to consider the question of reconfirmation.

(d) The term of the student member shall be two years. The student member may be reappointed for one additional consecutive term even though the member may no longer be a student at the time of reappointment; provided that the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the expiration of the member's first term; provided further that if the senate is not in session prior to the one-hundred-twenty-day deadline by which the senate shall have considered the question of reconfirmation, the member shall continue to serve until the senate convenes for the next regular session or the next special session during which the senate is authorized to consider the question of reconfirmation.

(e) Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed by the governor and confirmed by the senate in accordance with Article X, Section 2, of the Hawaii Constitution.

(f) The board shall select its own vice chairperson from its voting members, who shall serve as interim chairperson in the event the chairperson's seat becomes vacant, and until the governor selects the appointee who shall serve as the chairperson of the board pursuant to subsection 302A-B(e).

(g) A majority of all the voting members to which the board is entitled shall constitute a quorum to conduct business. At any time the board has fewer than six voting members, three voting members of the board shall constitute a quorum to conduct business and to make any action of the board valid.

Notwithstanding chapter 92, from the convening of the legislature in regular session to adjournment sine die of each regular session, and during each special session of the legislature, the board may file any notice that specifies only legislation or legislation-related agenda items, no fewer than two calendar days before the meeting.

(h) The members of the board shall serve without pay but shall be entitled to their travel expenses within the state when attending meetings of the board or when actually engaged in business relating to the work of the board."

Representative Ward moved that Floor Amendment No. 11 be adopted, seconded by Representative Ching.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, the purpose of this amendment is to go 'hand in glove' with the brother or sister if you want, of the appointment of the Board of Education. The purpose of this amendment is to take the politics out of the appointment process because this floor amendment says, 'Let's take the advisory board, the selection advisory board and set it aside.' Mr. Speaker, that means setting aside your appointee, the President of the Senate's appointee, and all those who because of their affiliation with certain Members of this Body is going to dwindle, dilute, and otherwise keep the accountability of the Governor from really being full on if he appointed this Board.

"An appointed board is an appointed board. Having the intermediaries with these political appointments, I think, really takes the feet of the Governor away from the fire. And Mr. Speaker, if we're going to try to get accountability, I know the analogy has been used time and again. Representative Abercrombie has called it the, 'rectangular firing squad.' Everybody shoots each other because there's no accountability.

"This bill gets in that direction in a very good way, but we're diluting it by saying, 'Well, the Senate's got to have a hand in it, and the politics of it. The House has to have a hand into it.' And that really detracts from accountability which is in the beginning the whole purpose of doing this. So when we don't get results, whether it's Charter Schools or it's the other public schools, we know who to call on the carpet. And we know this Administration has called a lot of people on the carpet as previous Administrations have, and this is the methodology by which to do it Mr. Speaker. That's the purpose of the amendment. Thank you."

Representative Finnegan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of the amendment. Thank you, Mr. Speaker. What this amendment does is, it just eliminates the Selection Advisory Council. The Selection Advisory Council that causes a huge, to me, problem from the beginning of this legislation. From the beginning of this Legislative Session, I saw and I think many of the people in Hawaii have seen, that what we need is accountability.

"The Selection Advisory Council does not help in bringing accountability to what so many people, Democrat and Republican alike, have said is an accountability issue. You cannot say, honestly say, that it's the Superintendent that is the problem. That it's the Board of Education that is the problem. That it's the Department of Education that is the problem. That it's the Legislature that is the problem. That it's the Governor that is the problem. In fact, there has been consensus I think, in some places where they're saying it's the Governor's problem. That the Governor made this whole furlough mess.

"Mr. Speaker, the way our system is set up right now is, there's no way to say that we're going to hold somebody accountable because there's so

many people involved in the formula that you can't really hold anyone accountable.

"I wouldn't be so hard line on this issue Mr. Speaker, if I thought that there's no time to waste, and if I thought that there was the possibility of this being an important issue, that could move education forward, then I would support it.

"Mr. Speaker, later on today we're going to have the constitutional amendment that talks about changing the Board of Education from an elected Board, to an appointed Board. This is the companion, if you want to call it, legislation or the implementation legislation that says how are we going to do that.

"You know, it's so frustrating. I talk to the teachers and I talk to the principals in these areas in the schools. I talk to parents and they're so frustrated with the system. I've dealt with parents that said when they want answers, they can't go to what we established in Act 51, which was the School Community Councils. People are laughing at the fact that that was considered reform, and that was considered local control.

"Mr. Speaker, if we want education reform, we have to be able to address some of these issues, the issue of accountability. We have all different people appointing people to the Advisory Council. In my opinion, six years from now, it's likely that we will not have anything accomplished in education reform just like from 2004 to 2010 with Act 51.

"This is a serious issue Mr. Speaker, that we have to answer to our constituency of how we're going to do education reform in Hawaii. We can't continue to do these 'baby steps.' Those kids that go to schools whether they're Charter or traditional schools, every year, every year goes by so fast, and we're promising them education reform. We're not doing what we need to do to get it.

"We have the tools in place with Act 51, but we don't have 'the teeth.' We have now this appointed Board, but we have this gray area that there's this selection committee that will affect who the Governor can actually appoint. And then on top of that, you sandwich that with the Senate advice and consent. How is that accountability?

"Mr. Speaker, if I truly thought this was going to bring education reform, I would vote for it. I obviously don't. I think that we're going to end up 6 to 10 years from now saying, 'Oh let's look at education again,' for the fourth decade. Education reform. Thank you."

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

Representative Thielen rose to speak in support of the proposed floor amendment, stating:

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

Representative Ching rose in support of the proposed floor amendment and asked that the remarks of Representative Finnegan 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, stating:

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

The motion that Floor Amendment No. 11, amending S.B. No. 2571, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF EDUCATION," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry. (Representatives Chang, Hanohano and Mizuno were excused.)

(Main Motion)

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 provide enabling legislation to allow the Governor to appoint the members of the Board, with the advice and consent of the Senate, from pools of qualified candidates presented to the Governor by the Board of Education Selection Advisory Council.

"I believe this measure will encourage the Board of Education to restructure and decentralize public education for the purposes of increasing student achievement and protecting student rights.

"This measure will serve to refocus the Board of Education on its constitutional role of setting long-term systemic achievement goals for the Department of Education and the Superintendent and monitoring progress towards those goals.

"While Hawaii has a long and proud history of both valuing and prioritizing public education, in recent years our public educational governance structure has become gridlocked at the Board level. This gridlock has many historic sources that are independent of the individuals who currently serve.

"The fact that the BOE Chair is elected annually from among its members has often led to bitter internal politics that carry forward for the remainder of the session rendering the Board highly ineffective.

"A split Board is often a weak Board. Crippling internal politics has contributed to an atmosphere in which narrow personal biases toward specific issues or each other often seem to supersede members' responsibility to advocate first and foremost on behalf of Hawaii's public school parents and students. Teacher furloughs are but the latest example of this dynamic.

"In place of the leadership vacuum left by the BOE the Legislature itself, as most of you know all too well, has been forced to take an increasingly active role in the oversight of our public school system. This has necessitated legislative involvement in virtually all aspects of the Department of Education.

"An appointed Board of Education, with an externally appointed Chairperson, is far less likely to be susceptible to the internal politics and influences that have removed the existing BOE from its role in the governance process thereby allowing its members to better place the interests of Hawaii's public school students and their parents above all other considerations.

"This measure would also align the DOE governance structure with the exciting reforms that are taking place throughout the public school system through the next DOE Strategic Plan and the federal Race To The Top initiative upon which it is to be based.

"While there is an increasing awareness of the Race to the Top initiative in which Hawaii is now competing, far fewer people appreciate the implications of that initiative or the fact that it is to become the "backbone" of the Department of Education's next Strategic Plan.

"The unprecedented reforms currently being implemented at the school level will dramatically increase the ability of our teachers, principals, Complex Area Superintendents and Superintendent to quickly identify the best elements of what techniques are working in our classrooms so they can be replicated.

"They will also allow our teachers and principals to adjust and reinforce those aspects that are not working as well as they should be. To be effective these reforms will require nothing short of a complete change in the culture of the DOE.

"That change of culture is absolutely essential if we are to provide ALL of our public school students with the knowledge and skills they will need to thrive in the 21st century.

"As anyone who has been a part of a large institution can appreciate, it is virtually impossible to alter an organization's culture without the driving vision and force of that change emanating from the top.

"It is as simple as this: if the reforms now being codified into the DOE's next Strategic Plan are to succeed Hawaii will need the Board of Education itself to lead the way. The time has come to realign our public education governance structure in a way that supports and reinforces the reforms already underway throughout the rest of the Department of Education.

"For these reasons, I support this measure and urge my colleagues to do the same. Thank you."

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

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

"Thank you, Mr. Speaker. I would like to cast a no vote, and could you just incorporate my words from the previous amendment discussion to this."

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

Representative Ching rose in opposition to 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 stand in opposition to S.B. 2571 – Relating to the Board of Education. This bill requires the members of the Board of Education to be nominated, and with the advice and consent of the Senate, appointed by the Governor from lists of qualified candidates presented to the Governor by the BOE Selection Advisory Council.

"We have experienced the partisanship that Senate Conferees have had to endure this past year and so it remains to be seen if these types of antics we witnessed indeed reflect the spirit of the law regarding confirmations. It has become questionable as to whether advice and consent of the Senate helps or hampers solving the educational challenges. We must remember that we are here to help not hamper the educational system. That is why it is necessary that we create a clean line of accountability within our Education Department. We must be cognizant of the current situation our State's education finds itself in. We need to increase the amount of direct accountability for public education, and, as stated by the Administration, this measure will "create more layers and less transparency in the selection process". Thank you."

Representative Thielen rose in opposition to the measure 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 S.B. No. 2571, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF EDUCATION," passed Third Reading by a vote of 43 ayes to 4 noes, with Representatives Ching, Finnegan, Pine and Thielen voting no, and with Representatives Awana, Chang, Hanohano and Mizuno being excused.

At 11:57 o'clock a.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 2571, SD 2, HD 2

At 11:58 o'clock a.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:02 o'clock p.m., with Vice Speaker Magaoy presiding.

UNFINISHED BUSINESS

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1122-10) recommending that S.B. No. 358, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 358, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

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

"In support, Mr. Speaker. Basically what this bill does, Senate Bill 358, is it allows people to keep their firearms during times of natural disasters. This bill came about as a result of actions during Hurricane Katrina where there were documented cases of police using extreme and illegal actions to confiscate firearms from law-abiding citizens who are licensed to own those firearms.

"Mr. Speaker, I will never forget the stories that came out of Hurricane Katrina. Women being raped, the elderly being taken advantage of, people getting things stolen from them, people being attacked, and at the same time people couldn't protect themselves because their firearms were being taken from them. I can't think of any bigger tragedy than that.

"Mr. Speaker, one of our basic fundamental rights that is given to us in the Constitution is to own firearms. Firearm ownership is on the rise in the State of Hawaii and there are many people, after this recent semi-tsunami, who are starting to think about this again. What would happen when we have a crisis, when we didn't have food, we didn't have supplies coming to the islands?

"What if some type of chaos erupted and the Department of Defense used this particular law to confiscate firearms. It's always those that are not the law-abiding citizens that have used firearms, Mr. Speaker. So I think this is a very important bill and it will keep our fundamental rights to protect ourselves and our families during times of crisis."

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

"Thank you very much, Mr. Speaker. In opposition. Mr. Speaker, I don't know if people are aware that in 2006, a federal law was passed by Congress and basically it says that federal officials cannot, I repeat, cannot confiscate weapons from citizens in event of natural disasters and emergencies.

"It also states in that law, that any local or state police department, which includes a safety department like the Department of Defense in Hawaii that receives federal dollars, they also cannot confiscate weapons. Thank you very much, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 358, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO FIREARMS," passed Third Reading by a vote of 44 ayes to 6 noes, with Representatives Berg, M. Lee, Morita, Rhoads, Takai and Takumi voting no, and with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1123-10) recommending that S.B. No. 2409, HD 2, as amended in HD 3, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2409, HD 3, 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. Mr. Speaker, this bill arose out of just a single incident of some commercial boat operators at Molokini. The problem is the bill applies broadly to all marine life conservation districts. Not just to the Molokini area.

"It's going to require the Department to create rules which is a very lengthy and time-consuming process, at a time when they are understaffed and need to focus on preserving our marine and land resources.

"The Nature Conservancy said specifically that it would create long delays and limit the Department's ability to respond to situations. I think it's a bit of an overkill, Mr. Speaker. So it would be nice to see, as this measure goes to Conference, that it does not emerge. 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 the report of the Committee was adopted and S.B. No. 2409, HD 3, entitled: "A BILL FOR AN ACT RELATING TO MARINE LIFE CONSERVATION DISTRICTS," passed Third Reading by a vote of 46 ayes to 4 noes, with Representatives Finnegan, Marumoto, Pine and Thielen voting no, and with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1124-10) recommending that S.B. No. 2565, SD 1, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2565, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, on Stand. Com. Rep. No. 1124, I rise with support. Thank you, Mr. Speaker. This bill extends the deadline for the Hawaii Civil Rights Commission to adopt new rules regarding disability discrimination to allow for conformity with new federal rules from no later than December 31st, 2010, to 12 months after the US EEOC publishes final rules in the federal registry.

"You may wonder why I'm talking about this bill being that I'm in support. Well last year, Governor Lingle vetoed SB 1183, the bill that created the deadline of December 31, 2010. In her veto message the Governor stated that, states usually amend their rules after the relevant federal agency, in this case the Equal Employment Opportunity Commission, has issued guidance on revisions to federal laws. The federal Equal Employment Opportunity Commission has not yet issued rules pertaining to changes in the American with Disabilities Act as amended in 2008, although they have recently issued a notice of proposed rulemaking.

"She also goes on to say it will be premature to ask the Hawaii Civil Rights Commission to act prior to the completion of federal rulemaking. It is also improper to ask the State to complete our rules by a date certain in the absence of knowing when the federal government will finish its rulemaking process.

"Mr. Speaker, this Legislature was so intent on flexing its muscles over the Governor that it decided to choose this issue to override, and here we are nine months later, correcting the decision made by this Legislature.

"In the history of Hawaii Governors prior to Governor Lingle, there was one veto override session, Mr. Speaker. I hope that we can learn from this and understand that through the process of testimony, and through asking for corrections like what we did here on the House Floor with amendments, that we can apply that and not have to come back and decide that we aren't going to take good ideas and move forward with them. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2565, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII CIVIL RIGHTS

COMMISSION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1126-10) recommending that S.B. No. 2726, SD 2, 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 S.B. No. 2726, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TIME FRAMES TO REGAIN FITNESS TO PROCEED," passed Third Reading by a vote of 48 ayes to 2 noes, with Representatives Har and McKelvey voting no, and with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1127-10) recommending that S.B. No. 2883, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2883, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I am in opposition to this measure. On the face, this measure seems like it's a good idea. No one should be penalized for legitimately taking sick leave they have earned and accrued.

"The problem is that there are a few employees who are constantly absent from work or abuse the sick leave policy that their companies give them. Those that abuse these policies not only jeopardize this gift, but they also put a strain on their fellow coworkers.

"For instance, take a hotel. An employee absent on the Monday after a three day weekend, it is not like their coworkers can just say, 'I'll leave it until so-and-so comes back.' No, they're conscientious. Instead they pick up the slack. It's not fair to them, and again, it jeopardizes the sick leave that the company gives them. All it takes is a few rotten apples to spoil the whole barrel.

"In addition to this, I do not believe this Body should be legislating these kinds of benefits. This is the purview of collective bargaining. It's for the unions and their collective agreements, and not the Legislature. I know that amendments in Committee were made so that collective bargaining would control, but we still walk down a 'slippery slope' when we attempt to legislate these benefits. Because these changes were made, I am in opposition. I think it's potentially dangerous. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2883, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES," passed Third Reading by a vote of 48 ayes to 2 noes, with Representatives Finnegan and Marumoto voting no, and with Representative Hanohano being excused.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 1129-10) recommending that S.B. No. 2390, SD 2, 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 S.B. No. 2390, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PHARMACIST LICENSURE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 1131-10) recommending that S.B. No. 2811, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2811, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, in opposition. What this bill does is it requires pharmacies, all pharmacies, even small 'mom and pop' pharmacies in very remote locations that few pharmacies want to go to, to be able to have all the records and prescriptions and be able to transmit prescriptions to other entities electronically.

"While to many of us, that seems like an easy thing to do, it was testified in Committee that this would really hurt those smaller pharmacies and 'mom and pop' stores, and gosh, in this time when it's so difficult to run a business in the State of Hawaii, and have a job, we're going to possibly really hurt these pharmacies that are actually acting out of good will to help these remote locations that nobody wants to go to."

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

"Mr. Speaker, I'm in opposition and I like to say a few words. Thank you, Mr. Speaker. With this particular bill, I'm all in support of technology and how technology can create efficiencies that don't necessarily exist currently in some of our systems. This one has to do with prescriptions, electronic prescriptions.

"The part that I have difficulty with is what we do here is we say 'shall' instead of 'may,' and when you do 'shall' instead of 'may' like my colleague had mentioned just a little while ago, that you're forcing these businesses to upgrade. We as a State, we know that technology can be much more beneficial to us in the way that we keep records, the way that we do things, and so we want to move into the 21st Century with some of the most high-tech equipment, software programs and everything like that.

"The bottom line though is, it's very difficult for us to do. We get the commitment of over \$100 million for the State and so we're not moving forward with doing this. What this bill does is it says for pharmacies, that you must. You shall. So what I would prefer is language that would help the small business owner, or the businesses by saying that you 'may,' and then what you would do is leave, and doctors with the ability to choose whether they want to patronize these pharmacies that operate in a more efficient way, that make it easier for them to get their prescriptions.

"So Mr. Speaker, in this time, I think that we should be very careful of what we mandate for businesses to do even though we think that they should be heading in the age of efficiency. Thank you."

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

"Thank you, Mr. Speaker. I stand with reservations. Thank you, Mr. Speaker. My reservations are pretty much exactly the same as the Minority Leader. It's just the bad timing of this, in fact coupled with the bad economy. I know that we need this. I hear about it all the time through the medical community, and so I'm for that. It's just I would hope that it would not affect our small businesses that employ our people. 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 just make a comment regarding timing. That is an issue, as well as cost. However due to some of the federal legislation, as well as the movement regarding the health information exchange requirements that will be required by many of the states, to have digital information available. If we do not have that available, the State could face future penalties. This was the intent of trying to move forward to make sure that we meet that goal of the federal requirement. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2811, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PHARMACIES," passed Third

Reading by a vote of 48 ayes to 2 noes, with Representatives Finnegan and Pine voting no, and with Representative Hanohano being excused.

At 12:18 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 358, SD 1, HD 2
 S.B. No. 2409, HD 3
 S.B. No. 2565, SD 1, HD 1
 S.B. No. 2726, SD 2, HD 2
 S.B. No. 2883, SD 1, HD 2
 S.B. No. 2390, SD 2, HD 2
 S.B. No. 2811, SD 2, HD 2

Representative Herkes, for the Committee on Consumer Protection & Commerce presented a report (Stand. Com. Rep. No. 1132-10) recommending that S.B. No. 2371, SD 2, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2371, SD 2, 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. I just have reservations on this bill and have short comments. Thank you, Mr. Speaker. The purpose of this bill is to exempt limited benefit health insurance policies from provisions of the Insurance Code. Mr. Speaker, I think in moving forward with this bill, I just wanted to mention that the DCCA had some serious concerns about how confusing this bill will be to insurers, consumers, and regulators. I just wanted to make sure that those who will be on this Conference Committee take that into consideration. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2371, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO LIMITED BENEFIT HEALTH INSURANCE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative Ito, for the Committee on Water, Land, & Ocean Resources presented a report (Stand. Com. Rep. No. 1134-10) recommending that S.B. No. 2646, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2646, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in opposition to this bill. Thank you. As an alert to the Conference Committee should this return, in looking at the testimonies from Save Our Surf and a number of other individuals and organizations, it appears as if the word, 'competitive surfing,' added in after 'recreation,' might be a problematic point of this bill. So if that could be removed, the Save Our Surf advocates are concerned that competitive surfing would mean surf contests, more than we already have, and that relates as commercialization, and reducing surfing opportunities for recreational surfers.

"One of the comments that they made was that the Hawaii surf sites are overcrowded already, and especially because there is an emergence of two recent surfing offshoot sports, those being tow surfers and stand up paddling surfers.

"So I request permission to add the particular sections as comments in the Journal specifying the particular sections that might be looked at in Conference to remove the word 'competitive.' Thank you."

Representative Berg's written remarks are as follows:

"Mr. Speaker, I rise in opposition to SB 2646 HD 2 SD 1. The bill looks to create surfing reserves in Hawaii for recreation and competitive surfing. "Competitive" surfing means surf contests which will take away from recreational surfers ability to enjoy the surf and reduces surfing opportunities for recreational surfing at peak times. This is unfair for our recreational surfers and will bring the State into a conflict between recreational surfers and surf contest promoters.

"There are very simple amendments to the bill that can be made so that the goal of recognizing, preserving, and protecting specific surf sites can be fulfilled.

"By deleting the word "competitive" in 3 sections, the integrity of that objective can be upheld:

DELETE "competitive" in Section 1 Line 1:

Corrected statement: Formal worldwide recognition of the designated surfing site as an area that has quality surf and significant cultural, historical and recreational, sports value;

DELETE "competitive" in Section 1 Line 3:

Corrected statement: Promotion of the long-term preservation of Hawaii surfing reserves for recreation surfing.

DELETE "competitive" in Section 2 b. Line 1:

Corrected statement: Recognize that recreational surfing in all its forms is an asset to the state of Hawaii;

"Passage of this bill equates competitive surfing interests with recreational surfing interests, thereby enabling professional contests and subordinating recreational interests to commercial interests. The proliferation of contests has been somewhat held in check heretofore by the City & County permit process. Community associations and surfers have battled to limit surf contests. It is unnecessary to even have this conversation at this time in our economically turbulent times.

"I do not believe that we want to provide an advantage for contest promoters (commercial interests) by passing this bill, thereby propelling the State into conflicts between the interests of the public (recreational surfers) and commercial interests. 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 rise in support with reservations on the matter relating to surf reserves. After some dialog with surf reserve advocates, I was assured that the designation is similar in nature to the "historic" properties designation, but without restrictions. I was assured that the designation is merely a recognition of the major surf spots. However, my reservation relates to a future concern that the designation could interfere with cultural harvesting and fishing rights, and be used as a tool to restrict beach access and ocean recreation activities."

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

"Thank you Mr. Speaker, in support. Yes, I was in the hearing as well, and when this bill was initially heard, the testimony from Save Our Surf who actually runs one of the largest professional surfing events on the North Shore, the gentleman representing Save Our Surf, and under more research on this bill I understand it doesn't want to take away any of the surfing spots from our locals. That was my original concern, always to take care of our local people and make sure that they have access to the surf as well. But I wanted to read just some testimony from the Historic Hawaii Foundation.

"This bill recognizes that surfing specifically, and water-based recreation generally are significant elements of Hawaii's culture, history, recreational economy and as such certain areas should be identified, promoted, and protected as surfing reserves by the Department of Land

and Natural Resources working in partnership with federal, State, and county departments and other organizations.

In Hawaii, surfing has occurred in Waikiki everyday for centuries and it's certainly integral to the recreational, economic, and cultural values of Hawaii and taking steps to ensure that such areas are recognized and that measures are taken to identify, nourish, and protect these areas is laudable."

"And I agree with the testimony from the Historic Hawaii Foundation, and under more investigation, I very much appreciate this bill and support it wholeheartedly."

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

Representative Nishimoto 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 SB 2646, SD 1, HD 2 with some slight concerns. This bill designates three Hawaii Surfing Reserves, comprising of surf breaks in Waikiki, the North Shore of O'ahu, and Honolua Bay on the Island of Maui. Our Hawaiian islands, and more specifically, the beaches of Waikiki and the North Shore of Oahu, are recognized around the world as the birthplace of surfing so it's entirely fitting to include these significant sites in Waikiki, the North Shore and West Maui as the first of our reserves.

"Hawaii's action today will serve as a global model for preserving noteworthy wave breaks and their surrounding areas. The bill recognizes that surfing is a significant part of Hawaii's culture, history, and recreation and helps to ensure that certain surf spots are promoted and protected. This bill further notes surfing's economic contributions to the State. Although surfing's spiritual and cultural roots form a big part of Hawaii's history, the sport – and the lifestyle and merchandise associated with surfing -- has also evolved into a multi-billion dollar industry that draws millions of spectators to Hawaii each year.

"Given the importance of surfing in Hawaii's cultural heritage and mythic image, I agree with the concept of designating reserves. My caution is that all our shorelines generally should continue to be public spaces available to all residents for recreation, cultural use and for spiritual rejuvenation. In many areas, our beaches and bays are used for many different activities and our laws and regulations – no matter how well-meaning or seemingly benign-- should not foster balkanization of our shorelines between public and private, recreation and commercial, or one particular use over another. Given the importance of our shorelines and ocean to public recreation and our collective well-being, maintaining free access by the public generally should be a paramount assumption of any regulation.

"I urge my colleagues to support this measure."

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 SB 2646, Relating to Hawaii Surfing Reserves. The bill would designate Waikiki and certain areas of the North Shore as surfing reserves.

"The bill would serve as a formal recognition of important cultural landmarks. Fernando Aguerre, the President of the International Surfing Association, said that it was the ISA's hope that this bill would "serve as a model for preserving wave breaks and their surrounding areas throughout the world by recognizing the positive environmental, social, cultural and

economic benefits of waves." Other groups have submitted testimony expressing the same hope.

"Sen. Fred Hemmings, the author of this bill, knows exactly how important surfing is to Hawaii and why it's important to so many people around the world. The *Honolulu Advertiser* called him the "father of professional surfing in Hawaii." When he was 8-years-old, he started surfing at Waikiki beach. At 12, he entered surf competitions and placed 3rd in the junior men division of the Makaha International Surfing Championships and 1st in four other years that he competed. He won the Peruvian International Championship and then the World Surfing Championship in Puerto Rico before creating various surf competitions, including the World Cup of Surfing championships with both men's and women's events and the Triple Crown of Surfing. He also co-founded the world's first professional surfing circuit, the International Professional Surfers.

"Hawaii gave surfing to the world. It's an important part of our history and culture, and it deserves to be preserved. For these reasons, Mr. Speaker, I support SB 2646."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2646, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HAWAII SURFING RESERVES," passed Third Reading by a vote of 48 ayes to 2 noes, with Representatives Berg and Morita voting no, and with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1135-10) recommending that S.B. No. 2020, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2020, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, may I have a ruling on a potential conflict? I am an officer of a company that is a sublessee. Thank you," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. May I also request a ruling on a potential conflict? My law firm represents the landowner that would be affected by this legislation. I am 'China walled' from the case," and the Chair ruled, "no conflict."

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

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

"Thank you, Mr. Speaker. In opposition. Thank you. As I did for the House Bill, I'd like to request permission to insert the two testimonies from the Attorney General from last year stating that he believed that this law is unconstitutional. In addition the three dockets recently in court regarding the postponement of the court hearing. Thank you."

Representative Takai submitted the following documents:

APR-23-2009 10:53 FROM:HAG

5861205

IU1005066391

F.110

APR-23-2009 10:53 FROM:HAG

5861205

TD1005066391

P.3-6

LINDA LINGLE
GOVERNOR

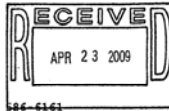


STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUINN DRIVE
HONOLULU, HAWAII 96813
(808) 586-1500

MARK J. BENNETT
ATTORNEY GENERAL

LISA K. GONZA
FIRST DEPUTY ATTORNEY GENERAL

April 23, 2009



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

VIA FACSIMILE NO. 586-6161
Honorable Angus L. K. McKelvey
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 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

330896v2

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

330896v1

APR-23-2009 10:53AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:001 R=93*

APR-23-2009 10:53AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:003 R=92*

APR-23-2009 10:53 FROM:HAG

5861205

IU1005066391

F.110

APR-23-2009 10:53 FROM:HAG

5861205

TD1005066391

P.4-6

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.¹

It is well established that a retroactive law in a
constitutional sense is one that 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. Chago*, 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); *Pulos 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. Kualoa*

¹The 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")

330896v1

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. Spannaue*, 438 U.S. 234, 244 (1977). *Applications of
Herick & Irish*, 22 Haw. 329, 322 P.2d 942 (1956). While section
3 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 Baa
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

330896v1

APR-23-2009 10:53AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:002 R=93*

APR-23-2009 10:53AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:004 R=92*

APR-23-2009 10:54 FROM:AG

5861205

TO:888586341

P.2/3

APR-28-2009 08:02 FROM:AG

5861205

TO:888586341

P.1/3

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

330896v2

APR-23-2009 10:54AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:005 R=92*

APR-28-2009 08:02AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:001 R=93*

APR-23-2009 10:54 FROM:AG

5861205

TO:888586341

P.2/3

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, 340, 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

APPROVED:

Mark J. Bennett
Attorney General

330896v2

APR-23-2009 10:54AM FAX:5861205

ID:REP BLAKE OSHIRO

PAGE:006 R=92*

APR-28-2009 08:02AM FAX:5861205

ID:REP BLAKE OSHIRO

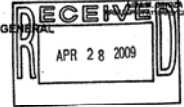
PAGE:002 R=93*

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500



April 28, 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 Slone
Manager, Senate Conference
Committee

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

VIA FACSIMILE NO. 586-8484
Honorable Clift Tawji
Co-Chair, House 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 Thielon
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

331055v1

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


331055v1

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

331055v1

Of Counsel:

Bays Deaver Lung
Rose & Holma

Bruce D. Voss 6532-0
Attorney at Law
A Law Corporation
Ryan H. Engle 7590-0
Attorney at Law
A Law Corporation
Matthew C. Shannon 9043-0
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: (808) 523-9000
Facsimile: (808) 533-4184
bvoss@legalhawaii.com
rengle@legalhawaii.com
mshannon@legalhawaii.com

Skadden, Arps, Slate,
Meagher & Flom LLP

Clifford M. Sloan
David W. Foster
Attorneys at Law
1440 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 371-7000
Facsimile: (202) 393-5760
Cliff.Sloan@skadden.com
David.Foster@skadden.com

Attorneys for Plaintiffs
HRPT Properties Trust, et al.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HRPT Properties Trust, et al.,) CIVIL NO. 09-0375 SOM/KSC
)
Plaintiffs,)
)
v.) PLAINTIFFS' EX PARTE MOTION TO
) ADVANCE THE HEARING DATE OF
) PLAINTIFFS' MOTION FOR
Linda Lingle, in her official capacity as) SUMMARY JUDGMENT [FILED
Governor of the State of Hawai'i,) 2/17/10] [#67]; DECLARATION OF
) BRUCE D. VOSS; EXHIBITS 1-5;
Defendant,) PROPOSED ORDER GRANTING
) PLAINTIFFS' EX PARTE MOTION TO
and) ADVANCE THE HEARING DATE OF
) PLAINTIFFS' MOTION FOR
Citizens for Fair Valuation,) SUMMARY JUDGMENT [FILED
) 2/17/10] [#67]; CERTIFICATE OF
Intervenor-Defendant.) SERVICE
)
) NON-HEARING MOTION
)

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.)

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

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.

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

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)
CIV. NO. CV09-0375 SOM KSC

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

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.

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

MARK J. BENNETT 2672
 Attorney General of Hawaii

GIRARD D. LAU 3711
 First Deputy Solicitor General
 girard.d.lau@hawaii.gov

JAMES C. PAIGE 4835
 james.c.paige@hawaii.gov

DAVID A WEBBER 5161
 david.a.webber@hawaii.gov

DEBORAH DAY EMERSON 3668
 deborah.d.emerson@hawaii.gov

Deputy Attorneys General
 425 Queen Street
 Honolulu, Hawaii 96813
 Telephone: (808) 586-1180
 Facsimile: (808) 586-1205

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

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

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.

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

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

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

/s/ David A. Webber
 Deputy Attorney General

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

"Just a ruling on a possible conflict, Mr. Speaker. I own several leasehold properties. Thank you," and the Chair ruled, "no conflict."

Representative Belatti 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, please note my strong reservations on this bill. 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 the report of the Committee was adopted and S.B. No. 2020, HD 2, entitled: "A BILL FOR AN ACT RELATING TO REAL PROPERTY," passed Third Reading by a vote of 40 ayes to 10 noes, with Representatives Berg, Brower, Carroll, Coffman, Har, C. Lee, Luke, Saiki, Takai and Wakai voting no, and with Representative Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1136-10) recommending that S.B. No. 2817, 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. 2817, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SOLAR ENERGY DEVICES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representatives Herkes and Karamatsu, for the Committee on Consumer Protection & Commerce and the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1138-10) recommending that S.B. No. 2491, SD 2, HD 1, pass Third Reading.

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, the report of the Committees was adopted and S.B. No. 2491, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TELEMEDICINE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1144-10) recommending that S.B. No. 2523, SD 2, 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 S.B. No. 2523, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL INSPECTIONS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1145-10) recommending that S.B. No. 2527, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2527, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

At 12:26 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 12:26 o'clock p.m.

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

"Thank you, Mr. Speaker. On Stand. Com. Rep. No. 1145, may I give some comments please. Thank you, Mr. Speaker. I do rise with some reservations on this particular bill.

"Mr. Speaker, generally speaking I understand why the Department of Agriculture and the Chair of Agriculture want to move this bill forward and create self-sustaining special funds. But one of the things that I can't get over is some general comments that were made by, I think it was Lowell Kalapa of the Tax Foundation.

"My reservation is not necessarily addressing the need for this kind of committed funding in a special fund. My reservation is more that as we move forward and we talk about core services, that when these different funds are made, and then what happens is you have money that is pretty much autopilot spending. So you cannot look at a particular service that we do, or a government responsibility and create a comparison of what your priorities are across these services and whatever we supply as a government.

"So we're taking a look at these. We're not prioritizing. We're saying to setup these special funds so that they're self-sustaining. And I understand why we're doing this because of the different cuts we made because of the economy.

"But in the same breath, we're not moving forward with defining what our core responsibilities are. Making sure that those core responsibilities are funded, and the core services are funded. Mr. Speaker, the more that we do this and we take little funds and set this up outside of the general fund budget, then I think the more that we're not being transparent to the people of Hawaii, and the more we don't prioritize what services we are going to provide for Hawaii.

"So Mr. Speaker, I do stand with reservations, as well as knowing that when you do start a special fund that we need startup funds for the special fund. Thank you."

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

"Mr. Speaker, I believe this deals with the two funds. I have reservations on this particular measure, and in particular, I don't like taking money from the Agriculture Loan Fund because generally, farmers take out loans and repay them, the money should be going to a revolving fund to be used for other loans.

"I believe in this case it is being used to pay staff, salaries and fringe benefits. So I really object to this diminution of the loan money that is available to the agriculture community. This is just to express my reservations. Thank you."

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

"Thank you, Mr. Speaker. I would like to offer comments in rebuttal. In strong support. Thank you very much, Mr. Speaker. In regards to the necessity to funding for inspections and certifications, if you recall from last year, about 50 or so inspectors were laid off or RIF'd. About half were reinstated because of the necessity to the economy of agriculture, and the economy to the State of Hawaii.

"In referring back to about what the public feels, and how they feel, in referring to the various stages of public hearings and Committee hearings we had, testimonies stressed how important and crucial it is to farmers to have such inspectors reinstated.

"Take for example on the Big Island. The Big Island coffee growers, and the Big Island individual farmers have attested that they are worried because we don't have timely inspections. The inspections are inadequate to access the inspections of their green coffee beans, where coffee must be certified. Sometimes it takes between an hour and a half, to two hours to travel to these inspection stations to have their products inspected.

"Additionally, here on the Island of Oahu and also on the Island of Hawaii, when it comes to coffee and papaya inspectors, these fruits that

have been picked and are subject to inspections, are now also susceptible to over-ripening if we don't have inspectors there on a timely basis. The fields that we do certification, this schedule will cause delay and delivery to the products from the farmers to the customers.

"When we talk about inspections, we are not only talking about inspections for agriculture. What talk about what affects the interisland exports, the international exports, and this is an ever-growing industry. The demise of agriculture has been continuous and downward in its trend, and this bill is very important to the agriculture industry. Thank you very much, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Still in support with reservations. I just want to make it very, very clear that what the previous speaker from the Big Island is speaking about, I agree with. The problem that we have in the Legislature, and the reason why I bring this up is because when we talk about core functions, or we talk about core services, that we should do it in a transparent manner. Make our arguments to, and reflect our budget and change our budget to reflect the importance of what we need in Hawaii.

"What this does is, it's less of a transparent way of operating, Mr. Speaker. We have so many special funds that operate this way, and I understand the need for them. I'm not saying that I don't understand the need for this, but if we say that it is important, then we fund it in the budget and we stop. Because who knows, maybe ten years down the line, there may be priorities that shift. And what happens is we create these things that are important today that may not be important ten years from now, but it will be on this automatic funding, automatic pilot.

"And remember that it is the farmers that, yes they may be okay with increasing these fees and taking on this responsibilities themselves, but the challenge is, if there are a lot of farmers on the Big Island, then Big Island consumers that buy those fruits and vegetables and coffee beans and whatever, their prices are going to increase because these farmers aren't going to be the ones to just suck up this extra fee. They're going to have to pass it on.

"So Mr. Speaker, you know it's just that what we need to do is convince our own House of Representatives to fund it. If it is important for the ag industry, and especially if the ag industry is coming out in strong support saying that this is what's going to help with our exports out to the different nations and the United States. So make a commitment Mr. Speaker, and that's how we should do it. Thank you."

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

"Thank you, Mr. Speaker. I rise in support. Thank you. I just want to point out that we never heard any testimony from any businesses against these special funds. We only heard opposition from the Governor's Office, and yet the reason that this bill is so important is because the Governor cut the Department of Agriculture's budget, the general funds, by 44%.

"So the reason that we're passing this bill is it is so essential to our local businesses; to our agricultural community and to all our farmers. It is so essential in fact, that the businesses themselves are asking to be taxed and charged to establish this special fund. May I also submit written comments? Thank you."

Representative Wooley's written remarks are as follows:

"I just want to thank the Chair of Agriculture, his staff, my staff, and the many people who have worked on this bill. It is because of their efforts that agriculture in Hawai'i still has a chance to thrive. And without this bill, the budget cuts to the Department of Agriculture would cripple our hopes of promoting locally grown food, farming, and the entire agricultural industry."

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

"Thank you, Mr. Speaker. I rise in support of the bill. I disagree with what I heard from the Minority Leader. You know, there are definitely

some philosophical differences and I would say that anyone that has stood before the Ways and Means Chair, as well as our House Finance Chair knows that they're very good at setting priorities. You have to justify what is going to be put in the budget and spent on programs. I believe that special funds do serve a great purpose in terms of transparency in setting priorities.

"It's very clear that the Chair of Agriculture rose to the occasion when he saw that these positions got cut, and the impact that it had. People were calling us saying they don't want invasive species in Hawaii. They don't want our agriculture industry to be ruined. We need inspections if we're going to send things out of this State, so we were in a crisis mode.

"So this idea of the special fund really addresses the fact that it is a priority. We need to look at how we're going to fund this and how to keep that priority clear in everybody's minds. So this special fund is more transparency, and more of a priority setting than what was said by the Minority Leader. Thank you."

Representative Tsuji rose to respond, stating:

"Thank you, Mr. Speaker. Just a few comments. I must say that I do agree with the observation of the Minority Leader; the need for more transparency, and because of the importance of this, if we consider this very important, that it should be included in the budget. I want to thank this Body because in our House budget bill, under general funding for agriculture, there are allocations for about 57 positions for inspectors so they can do their job in agriculture throughout the State of Hawaii. This is in our House Draft of the budget. Thank you, very much."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2527, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

At 12:39 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2371, SD 2, HD 1
S.B. No. 2646, SD 1, HD 2
S.B. No. 2020, HD 2
S.B. No. 2817, SD 1, HD 1
S.B. No. 2491, SD 2, HD 1
S.B. No. 2523, SD 2, HD 2
S.B. No. 2527, SD 2, HD 2

At this time the Chair announced:

"Just to let you know, the Senate has finished their Order of the Day as of 11:15 this morning. So just letting you know."

At 12:39 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:21 o'clock p.m.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1147-10) recommending that S.B. No. 2501, SD 1, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2501, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I need a ruling on a potential conflict. I'm a CPA and my firm also does peer review," and the Chair ruled, "no conflict."

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

Representative Choy's written remarks are as follows:

"Mr. Speaker, it is the intent of this bill to require fair and equitable administration of mandatory peer review for all firms practicing public accountancy in Hawaii, including the Hawaii offices and Hawaii engagements of foreign and multi-state CPA firms. The Hawaii peer review requirement cannot be met by having an out-of-state office of the foreign or multi-state CPA firm peer reviewed. This policy, made by this Legislature, is necessary for the protection of the residents of the State of Hawaii. The analogy given in testimony of a nationwide restaurant chain getting a health inspection of its New York restaurant and using that to pass a health inspection of its Hawaii restaurant is a compelling reason as to why the Hawaii offices and Hawaii engagements of a foreign or multi-state CPA firm must be peer reviewed for the protection of the public.

"Mr. Speaker, your Committee on Finance in its Committee report suggested that when adopting administrative rules pursuant to section 7 of this bill, the State Board of Public Accountancy may consider the circumstances under which audit engagements of publicly traded companies subject to oversight by the Public Company Accounting Oversight Board may be excluded from peer review under section 5 of this bill. I believe that this discretion should be considered carefully by the Hawaii State Board of Public Accountancy. If the Public Company Accounting Oversight Board or any federal government authority imposes sanctions on a firm for work performed on a Hawaii attest or non-attest engagement, including Hawaii publicly-traded companies, the Board should investigate the matter and determine whether additional sanctions or remedial measures are warranted for the protection of Hawaii's consumers."

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

"Mr. Speaker, I'm in opposition. I can't find my notes so it'll be a short speech. I have to be in opposition because some of the larger firms do their own peer review. The way they do it is, they have one partner usually in charge of quality control.

"In addition, they contract with an independent peer reviewer that probably works for another large firm, and the way they do that is they do the peer review on the entire firm. So if a multi-state company has 100 offices across the country, they may look at examining, let's say 20% of the offices. That's quite a stringent review and the entire firm passes, so I don't think we need this kind of a local review.

"Generally, a larger company has to do this review because you have to maybe travel to other states, visit maybe 20 offices or so, two dozen offices. The cost of these peer reviews is about \$100,000 and these are done by the standards of the American Institute for CPAs.

"In addition to this review, they have an annual oversight committee that looks at all the jobs they do on companies that are publicly traded and governed by the SEC. So this would be an additional burden on these large companies.

"At one time, there were maybe eight large multinational, multistate companies. They were called the 'Big Eight' CPA firms. It went down to seven. It went to six. Then down to five. I think there may be four left standing. PricewaterhouseCoopers left Hawaii, or they closed their offices here although they still operate here from the regional office on the mainland, but we're down to three here. We would hate to see these offices close because they're fairly large and may employ 50 or 75 people. But you know, they operate under a very rugged set of rules which is called for by their national office headquarters.

"So I don't think this bill is really necessary. I think it's going to move despite my vote, but I just wanted to express my unhappiness with this particular measure. Thank you."

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

"Mr. Speaker, I rise with reservations. Mr. Speaker, this bill is very timely. Peer review is very necessary particularly in view of what happened recently with financial meltdown, where Wall Street, Main Street, and both ends of Pennsylvania Avenue by report of which the accounting profession which helped 'cook the books' to make this happen should be held accountable.

"Peer review is the way to do that, however this bill puts us out of step with the other 48 states that have firm review rather than peer review, which means you have to count every little bean, rather than the basket if you're a big firm.

"So in effect, what we've got here, we're taking sides with the little guy which is good, but I think this is a professional organization, and professional organizations police themselves.

"I would hope those who are accountants within this Body and the others who can be peacemakers will be able to put the parts together between the 'big boys' and the 'small guys,' and have a peaceful accounting profession hereafter. So this is a beginning hopefully, of the discussions that will be peace on the balance sheets. Thank you."

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

"Thank you, Mr. Speaker. With strong reservations and some words. Thank you, Mr. Speaker. You know Mr. Speaker, this is about peer review for accountancy firms and offices.

"At first, when I took a look at it, I had arrived at the hearing a little bit late and I remember going really quickly through all the testimony and going, 'Oh, everybody is in support of peer review.' But then at that particular hearing, the testimony on that bill and the questions being asked took a very long time. I think it was maybe even an hour or so, or longer. And I thought, 'Well, how can this be when all of the testimony says that they're supportive of the concept of peer review?'"

"And when after really listening in and reading the testimony carefully and meeting with people, I realized what the difference was. The difference was that when you have an accounting company here in Hawaii, that all offices should be peer reviewed, including these multistate firms.

"And one of the questions that happened in Committee was that there's no other state that is actually doing this. Where you can have national firm and make that national firm have a peer review on their local office. They do have peer reviews, but those peer reviews are for the whole national firm, whether or not you actually do the peer review in Hawaii.

"So I thought, 'Okay. Well, where is this coming from?' I tried to do a little bit more research here and there, and one of the things that was brought up was Washington State. That one of the things that was brought up was that all of the states, 50 of the states, don't have this requirement to do a local office peer review. And one of the questions that had come up was there was one state that did this. This local office peer review for multistate agencies and this was Washington State.

"Mr. Speaker, then I also received a letter from the Board of Accountancy of the State of Washington and it talks about what had happened over the years. They did have a policy that stated that they were going to require that the local office be peer reviewed.

"And it states that their criteria was that the peer review must have included a review of the firm's Washington practice, or the report must have included a detailed description of the peer review activities performed on the Washington practice.

"And then it further says that what they did was, and this was following the whole Enron scandal so they tried to put something in place to 'hunker down' on the language and make sure that things were done not only fairly,

but appropriately. That there was no 'hanky panky' being done with accounting practices.

"And then in July of 2007, it says that they reversed the policy and I'll read from what it says in here. The Board ultimately eliminated the specific Washington location requirement based upon recognition of three principal factors. One, the quality control centralization that was occurring in both the technical, as well as monitoring processes of firms licensed in multiple states. Two, the PCAOB processes in effect for the public reporting side of the firm's practice. And three, the fact that under the pricing model of most firms, the additional costs associated with the site specific requirement would pass through to the consumer for no incremental benefit to the state's consumers because of items one and two.

"Mr. Speaker, everybody that was in the Committee hearing agreed that we needed peer review. The only problem is there were quite a large group of members that basically said that you don't need to be driving out those large firms that do have offices in many states because they do employ local people, and because the work that they do is not the kind of work that our other firms locally can do because the jobs are so big.

"Mr. Speaker, I think that for Conference Committee and moving forward that we should really take a look at that language. If we're the only state in the nation that is moving towards doing this local office peer review, I think that that's the wrong direction. The wrong direction for local offices and the jobs for the people that they employ, as well as making it business unfriendly in the State of Hawaii. Thank you."

Representative Choy rose to respond, stating:

"Thank you, Mr. Speaker. I just don't know where to begin. In rebuttal. First I'd like to rebut the statements made by my colleague on my left here, from Waialae.

"She talked about an inspection process that only the large firms go through. The local firms also have their own internal inspection process, and that is required by our standards. The local firms also go through an independent peer review just like the 'big boys' do, according to our standards. So as far as that is concerned, we are on equal footing.

"Now, from the good gentleman from Hawaii Kai, I agree with him; that it is the 'big boys' who 'cook the books,' and they're the ones that are going to be probably faulted for the current mortgage meltdown. So I think more peer reviews for these particular individual firms is more important than for the little firms. The little firms Mr. Speaker, do not make the headlines. It's the large firms that make the headlines and they require more review.

"As far as the statement that no other state in the country requires this, I just checked this morning with another peer review from Washington, and the Minority Leader is correct. They used to have a policy to require out-of-state offices to be reviewed. But when I talked to my colleague from Washington State, he said that he did multiple multistate firms during the last five years. So it is something that should be considered. And since it was considered in Washington, we should consider it again for the State of Hawaii, and for the protection of the residents of the State of Hawaii. Thank you, Mr. Speaker."

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

"Mr. Speaker, I did not mention that I need a potential conflict ruling. My husband worked for a large firm, but he's been retired for 15 years. Thank you," and the Chair ruled, "no conflict."

Representative Marumoto continued, stating:

"To the esteemed Representative from Manoa, I wish to say that I did not intimate that small firms did not have a peer review process. I'm glad that they do and I feel that it's necessary. There should be more peer review.

"And he mentioned that the 'big boys cook the books.' Well I think he's referring to the Enron situation, and Arthur Andersen duly paid for their

indiscretion in this. It probably was a few people in one office, but all the partners and all the employees of the firm eventually had to pay for this. It was a real tragedy, but you know, that's what happens.

"I don't think we should enact this legislation. I just think we shouldn't because there has been no evidence of unique problems in Hawaii which would require creating a new peer review process, and not using the AICPA's peer review standards. So just in passing again, please look carefully at this measure before you vote. Thank you."

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.)

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. I am still with reservations. Just one point that the Washington Board of Accountancy did eliminate the section of policy that required these peer reviews for the local offices on July 27, 2007. Almost three years ago."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2501, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ACCOUNTANCY," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Marumoto voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1149-10) recommending that S.B. No. 2842, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2842, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Yes. I am in support with reservations and have just a couple comments. In 1996, a tax called the Generation Skipping Transfer Tax was created, and basically what this did was if a wealthy individual left a large amount of their trust to a grandchild, they would have to pay a substantial tax. And of course we said, 'Okay. They're wealthy so that's okay.'

"However what this did for our State was that a lot of wealthy families were keeping all of their assets in other states that didn't have this tax. The Act also required if you developed a trust, that you would have to close that trust with your family after a certain amount of years, and that's what closed down Campbell Estate.

"And so the reason why I support this bill is it eliminates that transfer tax to your grandchildren and others. But my reservation is that we still have a 1% tax on the transfer, so it's not completely eliminating the tax.

"What I'm concerned about is when it goes to Conference is, lots of things happen in Conference. And as First Hawaiian Bank testified in Committee, they would much rather prefer just no tax on this because many states are already doing that, and we're not being competitive enough to bring these assets to our State. This also leads to investment. It leads to better banking bonds. And it also leads to people moving their families here and all of their assets to Hawaii, and that will benefit us as a state, as a whole.

"And so as First Hawaiian Bank said in testimony, I really hope that we don't go above the 1% because we really will not be competitive at all."

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

"Thank you, Mr. Speaker. Just in support, but have the same concerns as the speaker before me, as well as hoping that we can be more competitive with just not charging a tax at all. Thank you."

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

"Thank you. Reservations, with the same concern. Thank you."

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

"Mr. Speaker, I rise with reservations. The Generation Skipping Tax occurs at the federal level and was put in because no taxation was occurring at all for generations and generations, and to say that the Generation Skipping Tax is a bad thing, I think, is really un-American. I mean, if some people are going to have to pay tax, then everybody should have to pay tax. Wealthy families never paying taxes is not good policy. Thank you."

Representative Pine rose to respond, stating:

"Mr. Speaker, I just don't think it's American to tax people who give assets when they die to their families. When we sell things, okay, let's pay a tax. But why when someone works so hard and they just want to pass their dreams over to their children or grandchildren. Why are we taxing that?"

"They've already been taxed on their income. They've already been taxed on their business, and now we're taxing them on their inheritance. I'm sorry I just had to rebut that comment."

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

"Mr. Speaker, in support. Mr. Speaker, I think the previous speakers, all of them should read this particular bill and understand it. This is not a tax avoidance trust. This is an asset protection trust.

"And the 1% fee that we charge for the transfer of assets to this trust is because when this particular trust makes money and you're a nonresident taxpayer, you pay no Hawaii income taxes. So it's just a 1% transfer fee. It can provide estate tax and generation skipping tax protection, but that's not the purpose of this trust. The purpose of this trust is asset protection and therefore, you may get no estate tax or generation skipping tax protection.

"I think this is a very complex bill, and I could stand up here and talk for another half an hour. But I think the previous speakers should read and understand this particular trust. Thank you."

Representative Ward rose, stating:

"Mr. Speaker, will the gentleman from Manoa submit himself to a peer review?"

The Chair addressed Representative Ward, stating:

"Representative Ward, are you in support, or in opposition? Thank you. In support."

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

"Thank you, Mr. Speaker. In support. It was First Hawaiian Bank that recommended the 1%. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2842, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PERMITTED TRANSFERS IN TRUST ACT," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Rhoads voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1150-10) recommending that S.B. No. 1230, SD 2, 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.

1230, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1151-10) recommending that S.B. No. 2165, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2165, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Just in support with some reservations. Basically what this bill does is it requires training for various types of guards and agents, operatives, assistants employed in a type of guard agency. I just wanted to give a couple of concerns that were given in Committee from the Retail Merchants Association, as well as the International Association of Chiefs of Police, and the Armored Car Association.

"The armored car guards, they said, should not be instructed in powers of arrest, patrolling, and interaction with tourists. They found that that was a little excessive, and that really was not the purpose of their employment with these companies.

"In addition, it becomes apparent that security personnel or guards currently employed in the retail industry, immediately become subject to Chapter 463-7 HRS and as such, must comply with this licensure requirement despite the fact that they already have all these other training requirements and license requirements within their own professions.

"And so I'm just concerned that we're not separating these types of guards. I do believe training is very necessary, but I just don't want to overburden certain businesses."

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 S.B. No. 2165, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PRIVATE GUARDS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1152-10) recommending that S.B. No. 2220, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2220, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"I'd like to ask for a ruling on a potential conflict. I have contractors in the family," and the Chair ruled, "no conflict."

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

"Thank you, Mr. Speaker. I'm rising with some reservations on this measure. Thank you. Mr. Speaker, this bill was introduced by a Senator who is a contractor and has a company, and I hope he asked for a potential conflict. I don't know. What it does is it establishes a construction site inspection task force and this task force is to find out how they can go around and inspect construction sites to find out whether everyone is licensed.

"The thing that's difficult about this is, first of all we have several laws on the books that say if you're an unlicensed contractor and you're

apprehended, you can be fined, or you could lose your tools or even your vehicle. So I mean, things are there on the books already to take care of this situation.

"But the insult that's added to injury is that it's going to impose a fee on licensed contractors to fund this inspection task force so licensed contractors are now going to have to pay \$20 for their license, in addition to a fee on their licensing where they're operating legally. The Department says that money is not going to be enough, so subsequent Legislatures or maybe the Department is going to have to raise that fee on legally operating contractors. So I think this is the wrong way to go, Mr. Speaker, and I would suggest that this bill just not emerge from Conference Committee. 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 the report of the Committee was adopted and S.B. No. 2220, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CONSTRUCTION SITES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1153-10) recommending that S.B. No. 2603, SD 2, 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 S.B. No. 2603, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1154-10) recommending that S.B. No. 2068, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2068, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I have a potential conflict on this one too. I have a granddaughter that is going to be ready to enter junior kindergarten," and the Chair ruled, "no conflict."

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

"I'm very proud of her, and I'm happy that junior kindergarten will be in operation in the public school system because that's where she wants to go.

"Mr. Speaker, I think this bill is heading us the wrong way. I'm voting with reservations. And I had conversations with the Education Chair on this. I really appreciate the Education Chair's concern to not implement a ban on junior kindergarten right away before the other providers are able to gear up and be ready to take junior K students.

"So the harsh effect of the bill, eliminating junior kindergartens, will not go into effect for at least a year or maybe two years. But the point is, although only one-third of the schools have implemented junior K's, that's where I think we should be encouraging the other two-thirds to go ahead.

"Mr. Speaker, what's happened is that principals and teachers to whom I've spoken with have said those students that go to junior K are so much better prepared for the actual kindergarten experience. If we leave it to the private sector, that means that people will have to be able to afford to send their children to a private junior kindergarten. That's not going to always be the case, and we won't always have government subsidies to step in and help the other students.

"So the best way to do it is to recognize the benefit of early education and to go ahead and encourage the other schools to start a junior K program. Granted they may not have the money this year, but let's at least leave the system in place so they can then, when the money is available, they can go ahead and implement that.

"It makes a huge difference in a child's readiness to learn. The experts say that, and the on-the-ground experience from what I've been told, says it in spades. Thank you."

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

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

"Thank you. With all due respect to my illustrious friend and colleague sitting here next to me, I do support this piece of legislation because I feel that we're going towards quality. Quality early education. I've been a longtime supporter of early education and it seems that this bill would require the DOE and the Early Learning Council to work together and to report on a plan to integrate the junior kindergarten.

"You know, the Early Learning Council did testify that only a third of our schools have adopted a variation of this J-K program, and that the findings are that the children in this program may actually be appropriately placed in a preschool setting. I just know that we do have some pretty great preschools and that they've done an excellent job.

"And you know, there are many private nonprofits and public agencies dedicated to working, getting working families access to this quality education. An example of this is the Governor's Early Childhood Education Initiative, which matched \$5 million in State funds with \$20 million in federal dollars. It was successful in increasing the number of slots available for low income families.

"I recognize also that our State's budget crisis has brought about many concerns. I'm a strong supporter of early education and I think that's it been a well-known fact that the more we have kids prepared for their academic program, kindergarten and beyond, that's the best investment we can make. However, I think that we need to always remember that it's quality, quality, quality. Thank you."

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

"Thank you very much, Mr. Speaker. I would like a ruling on a potential conflict. I have two grandchildren in kindergarten," and the Chair ruled, "no conflict."

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

"My thanks. One of them is Karley. She's really cute and we call her 'Princess.' I'm sorry, I digress.

"You know, Mr. Speaker, the Representative from Kailua that talks about the importance of early childhood education, I cannot agree with that more. That's absolutely true. If she wants, her office is right next door to mine. I can give her boxes of research about the quality of preschool education and how it matters as to what age the child is. Or if she wants, she can just read the *Outliers* by Malcolm Gladwell. It's a short book. She can just read that, and that will tell the story.

"Mr. Speaker, it's not about putting children into junior kindergarten or kindergarten. It's about putting children into a differentiated instruction environment, in an age-appropriate setting. Clearly, if we put our school children into a setting that they are not prepared for, particularly the 5,000 children who are late born. They should be put into a far better and appropriate setting, and that is preschool.

"The majority of our kindergarten teachers do not have degrees in early childhood education. They have degrees in elementary education. It is a

world of difference when you're four and a half years old, and five years. Maybe for someone like you and I who, we may only be six months apart, that doesn't make a difference at our age. But at that age in terms of fine motor, and motor skills development, and brain skills, it makes a huge difference.

"So I think the direction our State has to take is to remove these children, in an appropriate time frame. I think next year is way too early obviously, and put them in an appropriate setting and that is in preschool. 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. First, I'd like the words of the previous speaker entered into the Journal as if they were my own.

"I have two kids: Matthew and Kaila. The reason I mention this is that Matthew is actually born on October 18. Kaila's born on May 2nd. That is a big deal in my eyes. In 1996 I had an opportunity to meet this gentleman by the name of Dean Liskum from Kauai and he has mounds and mounds of data that the Chair of Education has as well, that shows for a fact that late born children, those who start kindergarten before they're five years old, disproportionately outnumber those who are five years old when they start kindergarten in the areas of special education.

"Now people wonder why our test scores maybe are not as good as they should be, and I would suggest that one of the issues is the start of kindergarten and how old our children are.

"When children transfer from public schools here, to some private schools, what happens? Sometimes they are held back one grade, and it matters because an 18 year old male in a senior year at a private school in Hawaii is one year older than the same kid born on the same day in our public schools. That matters not only in academics, but also in athletics.

"But if you take a look at that and you take it to the next level which is the mainland, and look at what the other school districts across the mainland are doing. I think what we need to do, and I've been assured by the Chair of Education that one of the things this task force is going to do is, really take a look at the start date for our kindergarten.

"And yes, we do need to improve and support our preschool education system and provide the necessary support for these children to succeed as kindergarteners, but I do believe in hindsight we should have done this in '96. We should have even done this in 2004, and we wouldn't be talking about this, and that is to make the kindergarten start date relative to the age of the child. And I do believe that in the end, if we make it five years old for any child starting kindergarten, we'll solve a significant portion of our concerns that we have right now in our school system. Thank you, Mr. Speaker."

Representative Thielen rose to respond, stating:

"Thank you, Mr. Speaker. I'm still with reservations. I basically think we're all saying the same thing except my concern is, if we do away with junior kindergarten, what is going to be there in a publicly funded situation so all parents can afford to have their child have the junior K education? And if that's someone who is more skilled in early education, how are all families going to be able to afford that? Otherwise you're going to have quite a disparity again, with those that are able to go to the preschool beyond preschool, junior K experience, and those that aren't. You're still going to get disparate groups going into kindergarten.

"So the early education is so important, and it has been proven to be so important that we need to take a very serious look at how do we continue that, and continue it for all children in Hawaii. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2068, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY EDUCATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

At 1:56 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2501, SD 1, HD 1
S.B. No. 2842, SD 2, HD 1
S.B. No. 1230, SD 2, HD 1
S.B. No. 2165, SD 1, HD 2
S.B. No. 2220, SD 1, HD 2
S.B. No. 2603, SD 2, HD 2
S.B. No. 2068, SD 2, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1156-10) recommending that S.B. No. 2120, SD 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. 2120, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE CERTIFICATION OF PRINCIPALS AND VICE-PRINCIPALS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1158-10) recommending that S.B. No. 2434, SD 1, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2434, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Yes, in opposition Mr. Speaker, with a couple of sentences. What this bill does is it increases the cap for pay for the Superintendent to be no greater than 150% of the highest paid principal. And I understand concerns were brought to the Legislature that there are four principals in the State of Hawaii that make more than the Superintendent, and so that was really the nexus of this bill.

"The new salary cap according to the Office of the Governor, could go up to \$245,000 dollars that the Superintendent would make. We have many in the State of Hawaii right now, who have lost their jobs or who say that they too are getting paid far below what they're worth. And if we're going to use the fact that four principals make more than the Superintendent, then let's talk about the football coach at UH who makes more than the Governor, or even the fact that the Superintendent makes more than the Governor who's in charge of the whole State.

"I think these concerns are very valid, but I think now is just simply not the time in this economy to show our constituents and the residents of the State of Hawaii that we want to increase anyone's salaries that are being paid for by the taxpayer."

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

"Mr. Speaker, I rise in opposition. Mr. Speaker, I would submit this bill is moot, and if we look at the momentum for the appointed Board of Education, this will no longer be necessary because the appointed Board will then appoint the Superintendent, and I don't believe that a quarter of a million of dollars is going to be a relevant figure.

"So in a way, this is arguing in isolation. If the system doesn't change, and I don't believe the people of Hawaii do not want to not change and we will have an appointed Board, and this will be become a side issue. So Mr. Speaker, I think it's an issue that we can dispense with. Thank you."

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

"Thank you, Mr. Speaker. This bill increases the cap for the pay of the Superintendent to be no greater than 150% of the highest paid principal collectively bargained in contract in the Department of Education.

"Mr. Speaker, I'm in opposition to this bill. Thank you. The reason why I'm in opposition to this bill is because we have to move towards merit based. I believe that the Senate Bill that came over talked about going in that direction, but it still didn't base it upon how well of a job you are doing.

"Are you making the quality of life for teachers and principals easier, better, creating a better environment at the school level? Are the children going to flourish because you are the Superintendent? What's going to motivate you to go against all the different special interests that want to keep status quo?"

"This simply just giving the money is not going to be the answer. I feel for the Superintendent that was our previous Superintendent who eventually, as you know, left the system.

"Mr. Speaker, we have to have some kind of something, some motivation, that will help a Superintendent to go against all of the things that keep our system the way it is. We have to motivate them that way to speak up. When you have the bosses who are the Board members that have control over whether or not the things that you want to change, but they appoint you as well. How are you supposed to go against those bosses and think you're going to make any real change?"

"Mr. Speaker, when we talk about reform, we should take a look at some of the situations like Chancellor Rhee and Washington D.C. and how the accomplishments they made were because of this one person, this Chancellor Rhee that decided that she was going to shake up things because she was going to put students at the top of the pyramid.

"She was going to make sure that teachers were responding to student's needs. That principals were responding to teacher's needs, and the bureaucracy was going to respond to all of these that support the students. And yes, you will anger those special interests. Yes, you will anger the status quo and people who want to keep things the same.

"Until we get to that point Mr. Speaker, I don't think we should be throwing around 150% pay increases or whatever this bill says, because we don't have something that will improve the system overall. So Mr. Speaker, again, not only is it bad timing that we're giving the tool to increase salaries, but it's also saying, 'C'mon. Let's have some merit based stuff in here.' Thank you."

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

"In support, Mr. Speaker. Holy smokes. You know the Minority Leader talks about Michelle Rhee. It's very interesting. Michelle Rhee oversees a system about one-fourth the size of Hawaii. She makes \$275,000 a year, Mr. Speaker. I don't quite get the point about that.

"Look. It seems to me that if you want to recruit someone of quality to run our school system, unfortunately you have to pay for quality. The correlation between the Governor's salary and Superintendent's salary is an 'apples and bowling ball' comparison. When we recruit for a superintendent of Education, we recruit nationwide. When we recruit for a Governor, we don't recruit nationwide. There's a residency requirement to run for Governor. It's a local requirement.

"So if there was a gauge, we all know how much the President of the United States makes. That doesn't make any sense. That guy only makes \$450,000. He should get paid \$20 million. He's running the whole country. That is a specious argument, Mr. Speaker.

"Let's look at the internal argument. I had mentioned before that four principals do make more than the Superintendent, but more problematic is that over 80% of the principals make more than the Complex Area Superintendents. And as you know, the Superintendent's salary is tied to Deputy and Complex Area Superintendents. It's a percentage of what the Superintendent makes. Unless we increase the salary of the

Superintendent, their salaries will not go up. There's very little incentives for principals in our system to want to move up and become a Complex Area Superintendent or a Deputy Superintendent.

"Now we might say, 'Well, you don't do it for the money,' and that's true. Very few educators are in the business for the money, but money is important. And when you're the supervisor overseeing a complex of schools, and every one of your principals makes more than you, you're going to see and it's already happened where a Complex Area Superintendent then returns back to being a principal because they actually make more money. That doesn't make any sense to me as well.

"Let's look at it externally. Nearly 80 administrators in the University of Hawaii system make more than the current Superintendent. The Director of the Waikiki Aquarium makes \$151,000. The Chancellor of Kauai Community College makes \$150,000. I would assert that, with all due respect to their jobs and their positions, that the scope of the responsibility of running the Waikiki Aquarium is less than it is running the statewide school system.

"Secondly Mr. Speaker, it's a cap. It says that the Board can only pay up to 150% of the highest paid principal. It does not mean they will pay that amount. They could pay anywhere up to that amount, so let's keep that in mind as well. Thank you, Mr. Speaker."

Representative Pine rose to respond, stating:

"Just in rebuttal. You know I think we found the problem today with the public education system. It's become all about money. Every person that has their salary paid for by the taxpayer is a public servant. And if principals don't want to move up because of the money, that's fine. To me, that's a problem too. Maybe we're just recruiting from a certain pool of people. Maybe that's the problem. And the only way to get that pool of people to move up is to give them more money.

"The Superintendent should be a person that wants to improve education, period. And has a passion to do it and will do anything it takes to make it happen for our kids.

"I'm just extremely disappointed in this debate today Mr. Speaker, because it's really an example of what's going on. These furlough things have been all about money. We are all about the kids and this discussion that we're having is all about money.

"I look back to my grandma's days. You know, she worked on a plantation. And when she was part of that whole movement with Governor Burns that helped to shake things up, they had this incredible dream. Back then, it was all about people, and people would sacrifice for each other so that others could succeed. It was never ever about money. It was about creating an incredible state that would take care of each other. That would lift people up from the plantation and help them to become successful. Help them get that education that they were once denied.

"And so I'm still in opposition Mr. Speaker, and I think this is a great example of what's going on with our furloughs right now."

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

"Thank you, Mr. Speaker. In opposition. People often, when we resort to, because we have to pay someone a lot, and money is important. I think you know, everyone knows, money pays the bills. I mean that's why we're here. We help to make sure that we're making sure bills get paid and things are available for people. Money, prosperity.

"Prosperity is a good thing, but I think it's an indication of what the environment is, and I would submit this. That we do, this is just one more reason why we really have to revamp this system. If a place is, you don't feel that you have as much control over your classroom, or you don't have control over the things that you want to do.

"Teachers always tell me, my colleagues, like doctors. Doctors came to take care of the patient. Not to spend hours and hours, and hours, and hours, filling out charts. It's the same thing with the teacher. The teacher

wants to teach. She wants to go out there and she wants to teach. That's her joy, that's what she went to school for. And if it ends up being where she's plagued with all these constraints and it's an unpleasant place to work, I have to let you know.

"My sister-in-law, she was a certified teacher, completely. She did six months in the DOE, and she became a flight attendant. That is not about money. To me, that is about a system that doesn't make you feel like you're being rewarded for what you set out to do. And I think that when we improve the system, you're going to find, I mean I can use example after example after example how many teachers go on to the private sector, but they're not getting paid necessarily as much or their benefits.

"So we need to look at the other moving parts, the other elements that make teaching so fulfilling, which it really is, but we need to help our teachers feel that. That they're really having their goal met."

Representative Takumi rose to respond, stating:

"Thank you very much, Mr. Speaker. A brief rebuttal, and still in support. The argument that this is about money again, it's just a very flawed one. I mean, look. None of us are here for the money. Mayor Michael Bloomberg of New York works for a dollar a year. Each of us can do that as well. Thank you, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Still in opposition, and just some clarification in rebuttal please. Thank you. You know Mr. Speaker, I think the Chair of Education missed my point. My point is when I talked about Chancellor Michelle Rhee, it wasn't necessarily about how many students are under her or anything like that.

"It's about the fact that there was a mayor willing to stand up and back the Chancellor. It was because Chancellor Michelle Rhee said, 'I have ideas on how we can change things around so that we can have student achievement,' and they are successfully moving in that direction, more so than some of the test scores that we see across the nation. When others are going down, her Washington D.C. area is making strides to go upward.

"And so the point is, would I pay \$275,000 to a superintendent if they could do that for us? Absolutely. I think it's a good investment. The problem is we don't have that system. We don't have the system where the mayor appoints and gives the backing to the chancellor. We have a system where a Selection Committee is going to review some applications and put the existing Board members on a list that gets reviewed amongst all of these people who get chosen from these different areas, and then submitted to the Governor. Where the Governor will then select from that list, and then the Governor will take that down for the advice and consent of the Senate and possibly, when that Board actually appoints the Superintendent."

Representative B. Oshiro rose to a point of order, stating:

"Point of order, Mr. Speaker. She's straying again to another bill that we've already debated and discussed. This is just about the salary. Can we please just debate that? Thank you."

Representative Finnegan continued, stating:

"Thank you, Mr. Speaker. I was just making a point in regards to the \$275,000 that was brought up for arguments sake of this bill, and Michelle Rhee in addressing the issue that we have a totally different system than theirs.

"That I would invest money, hard-earned taxpayer money if we're not throwing the Superintendent that is appointed by this appointed Board into quicksand, because that's what basically we would be doing with the next Superintendent. Putting them in quicksand and telling them, 'Okay, now that you have this environment, I want you to fix education.' Thank you."

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

"In support. I must admit that I'm puzzled by the fact that the Minority Caucus is ..."

Representative Thielen rose, stating:

"Mr. Speaker, I have an objection. This is about the fifth time that he has done personal attacks or talked to motive, and the Majority Leader has before said motive is improper. So I will just echo the words of the Majority Leader. Discussing motive is improper."

Representative Rhoads continued, stating:

"I don't believe I'm going to be discussing motive. I was just going to say that I think it's surprising to me that a Party that puts so much stock in market-based solutions suggests a cap on salaries at all."

Representative Thielen: "Mr. Speaker, this also. Objection, Mr. Speaker."

Representative Rhoads: "Why not get rid of the salary cap entirely?"

Vice Speaker Magaoay: "Representative Rhoads, could you wrap it up?"

Representative Thielen: "This is off the subject of the bill and our Minority Leader was already corrected."

Representative Rhoads: "I'm sorry, Mr. Speaker. Do I have the Floor or not?"

Vice Speaker Magaoay: "Representative Thielen, please let Representative Rhoads finish. Representative Rhoads, please continue."

Representative Rhoads: "I'm not sure, from a market-based perspective why a salary cap would be necessary at all. I think why not just let the market decide what the price should be for the person. There is a market for these kinds of employees. So let the market work. It's is puzzling to me; that this position would be taken by this particular Party. Mahalo."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2434, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO SALARIES," passed Third Reading by a vote of 42 ayes to 8 noes, with Representatives Awana, Ching, Finnegan, Marumoto, McKelvey, Pine, Thielen and Ward voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1160-10) recommending that S.B. No. 2115, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2115, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. With reservations. I don't believe we should give the Department of Education this expanded authority until they're audited. And I believe they're well overdue for an audit."

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

"Mr. Speaker, I rise with reservations for the same reasons, and would like to adopt the words of the previous speaker," and the Chair "so ordered." (By reference only.)

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

Representative Pine rose in support of the measure with reservations 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 S.B. No. 2115, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PREAUDITS FOR PROPOSED PAYMENTS," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1162-10) recommending that S.B. No. 2256, SD 1, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2256, SD 1, HD 1, 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 in support. Thank you, very much. And just with some reservations. I don't know if I did need a ruling on a conflict of interest. There are times where with community events, that I do ask the schools of my district for use of the parking lot."

The Chair responded:

"No conflict. That shouldn't pertain to anyone on this Floor, but please proceed."

Representative Ching continued, stating:

"Thank you, very much. So I rise with reservations on this legislation allowing the DOE to assess to fees for parking, roadways, and parking areas under its jurisdiction. I do want to see the DOE be able to raise its own revenue, but I just believe one of the great traditions of our State and country is the free and open access of school facilities in the neighborhoods they serve.

"These buildings not only serve the students for school and sporting events, but they're also gathering places for community events. Things like the Boy Scout meetings or the recent Aloha Aina Earth Day recycling collections at Farrington. The numerous other community meetings that occur in schools across the State.

"People gather at these schools. They pay taxes to support them and hopefully, we will have the DOE be able to be judicious about this and make sure of that. Sure I know it's tough economic times, that they remember that these community organizations are the ones that are often times improving their communities. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2256, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF EDUCATION," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1164-10) recommending that S.B. No. 2452, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2452, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Yes Mr. Speaker and Members of the House, I speak in favor of this measure with strong reservations. The reservations I have on this particular measure are that I've never seen a bill so watered down, and so weak that it is not going to do anything.

"This bill is going to be signed by the Governor, and it's going to be put in a nice file, stashed away, and that's all it's going to do. It doesn't do anything. It says 'may,' and 'if money is available,' and all those kind of synonyms."

Representative McKelvey rose, stating:

"Mr. Speaker, are we on Stand. Com. Rep. No. 1162 or 1164? On 1164. Sorry. Please continue."

Representative Souki continued, stating:

"What's the problem with my friend from Lahaina? It's been a long day, Mr. Speaker.

"Anyway I won't go on anymore. I think I got my message across. I just hope that somewhere along the line, there's over \$160 million in the Emergency Fund. Maybe some of that can be used for transportation. Some of the balance. Because without transportation, the kids who live in the rural areas will not go to school. They will miss a lot of days, and this concerns a lot of the people living in Puna, Hana, or Ulupalakua. How do you think they're going to schools? There's no way they can.

"So I think this is an extremely important bill, but it was treated lightly, and it should not be treated lightly. Thank you, very much."

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

"Thank you, very much. Again my apologies. In support with serious reservations. May I have the comments of the speaker from Wailuku entered into the record as if they were my own. I would like to underscore one point: it is the most disadvantaged members of our society that need this lifeline of transportation to the schools. And this, on top of everything else, is really going to severely impact them.

"You're putting people in a situation to choose, especially in a lot of areas where there are no safe routes to school. You're putting them in a precarious situation: do I send my kid to school, exposing them to the dangers? Or do I just keep them at home? And I think that like the previous speaker said, this is a very serious bill and I hope as it moves into Conference that we can really beef this thing up and look to some of these funding sources that he mentioned. Thank you."

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

"Thank you, Mr. Speaker. I rise in strong support of this measure. I want to assure the Members that we did not take the contents of this measure, or the purpose of the measure, lightly. That's why it's here before us and it's moving forward to the Senate.

"Mr. Speaker, this is a very important issue. It is in regards the transportation of our students to and from school. It is especially important on the Neighbor Islands where they have a lack of public bus service. It also affects the rural areas of Oahu where you do not have reliable transportation services and options.

"So when we're looking at this, I just hope that we have the wherewithal at some point and time to provide maybe some additional funding for the school bus service. Thank you."

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

"Thank you, Mr. Speaker. I am in support of this bill. I would like to submit comments to the Journal and add some additional comments here.

"Mr. Speaker, like my colleagues from Maui, for my district it's not an option. I don't have any transportation for the students in my district because of the way that my district is made up. Many of the students won't be able to even reach school.

"So I thank the Chair of Finance for keeping a vehicle alive, and I hope that as it moves to Conference that we do find the money to specifically, especially in my district and others that have the same challenges, that the buses are serviced and the students won't have to rely so much on their parents who work, and who also don't have transportation. So thank you, Mr. Speaker."

Representative Carroll's written remarks are as follows:

"I support this bill and its intention of continuing to provide public school students with transportation to and from school. Many students in District 13 live far away from the schools they attend and would have difficulty procuring an alternative means of transportation if school buses were no longer provided. This would result in truancy or create an unfair financial burden on parents and guardians forced to drive in excess of 40 miles on a daily basis.

"I agree with the Committee on Finance that more discussion will be necessary in order to establish the logistical necessities of creating and maintaining a transportation revolving fund, particularly in terms of ensuring that schools are provided for according to the factors specified within the bill and of creating a sufficient amount of funding to continue the service. I would also recommend that the finances of the Department of Education be audited to explore other potential sources of funding."

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

"In support. And just to follow up on the rural district. I have kindergarten students that go 15 miles to school, and obviously if there is no bus transportation, they won't go to school."

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

"Thank you, Mr. Speaker. I support this bill and I would like to make some comments. Thank you, Mr. Speaker. In talking about transportation for our students, and safe transportation for our students, it's really interesting because we really should become more 'charter' minded. Meaning more innovative and more accountability when we're talking about transportation funds.

"When we were sitting in the hearing, when we heard over and over about the safety, safe routes to school, making sure the kids have transportation, and all of this fun stuff and important stuff, we also heard about the existing system and how the numbers for transportation, how much it costs for transportation in getting kids to school. \$72 million, \$50 million, \$45 million. All over the place.

"And then you hear from some of these companies that have the transportation contracts, the bus contracts. They're talking about in their individual contract it states that there are all kinds of money going all over the place. So for instance, there may be somebody, even said anecdotally, I'm sharing this with you. But somebody even said there was like \$300,000 or something, or \$30,000 or something like that, that goes to books which is in a transportation contract.

"Mr. Speaker, safe routes to school, I vote yes. Money for school buses, I vote yes. Accountability on where this money is going and if it's being used correctly, and whether or not we've got good contracts in place, and whether or not we can be innovative with school transportation. That is not in this bill and we do nothing to address those things.

"Rural areas such as on the Big Island, you have, in fact we have one of Executive Director of West Hawaii Explorations Academy, they bought buses. They don't have mechanics, but they send whoever gets a commercial license, and this might be another employee and not necessarily a bus driver because they have to be innovative with how they spend their money. They do the maintenance on these buses by whoever's driving that bus that day. If they need maintenance on the bus, they'll drop it off at a local place where they do all the maintenance efforts on that bus, and pick it up in the morning to go pick up their kids. They do that within their Charter School budget because they have to. They feel that it's a priority and they're going to fund it.

"Also, Kamaile in Waianae. I shared this story before. They bought mini-buses, bigger vans, they cross-trained their sometimes cafeteria workers, or whoever else into getting some of these other licenses so they can drive the kids. They pick up homeless kids at 6:00 in the morning, and drive them home at 6:00 at night. Way beyond what this bill does. Safe routes to school. Safe transportation to school. Pick them up right at their doorstep, or in these cases, not their doorstep, but wherever they are.

"Mr. Speaker, it's about innovation. It's about accountability. It's about priorities. And it's about giving the control to those schools to make the decision that they have to make. By continuing to operate like this, we will continue to see the price tag go up, and up, and up, for the sake of safety for kids, but you're not looking at how we can be accountable to the tax dollar and create safety for kids.

"Mr. Speaker, like I said, I'm in support. And for the speaker from Wailuku, I've actually seen many bills that have been watered down so much that it doesn't do anything anymore. 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:

"This bill, like so many, is not perfect. However, it makes clear that the Legislature understands the importance of providing bus service for our school children. Especially for rural areas, school bus service is critical and will save lives. I would like to thank the countless concerned individuals who testified in support in this bill. I will continue to do whatever I can to make sure that school bus services are not permanently parked, our kids are not left by the side of the road and forced to brave the highways, and our families will not witness an increase in traffic and safety hazards."

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 stand in strong support. A vast majority of school-aged children use the school bus for transportation. In rural areas, parents leave homes early in the morning and children are left to walk to a nearby site located within their neighborhood. Should school bus service not be made available, children in my district will have to walk along a highway known for pedestrian accidents and vehicles that travel way beyond the posted speed limit. I understand that there remain financial challenges in the DOE budget, but the safety of these students needs to be a priority. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2452, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION OF SCHOOL CHILDREN," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Morita voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1165-10) recommending that S.B. No. 2570, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2570, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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 SB2570, which proposes an amendment to Article X, Section 2, of the Hawaii Constitution, to change the Board of Education from an elected board to an appointed board.

"Elected BOE members currently have little accountability, especially to the Administration. If the Governor appoints BOE members, they—and the Superintendent they elect—will be accountable to the Governor and the people of Hawaii.

"Although I support this bill, it is a 'half-loaf' compromise. Having the Governor directly appoint the BOE superintendent would be a better way to ensure direct accountability to the Administration instead of indirect accountability. Another weakness is that the success of the BOE depends too heavily on the effectiveness of the appointees' selection process.

"Regardless, this bill is a step in the right direction toward establishing a BOE that is accountable and has a new perspective on Hawaii's education issues. For these reasons, Mr. Speaker, I support SB2570."

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

"Mr. Speaker, may I have a ruling on a potential conflict and also for Stand. Com. Rep. No. 1166? My daughter works for the Board of Education."

The Chair responded, stating:

"No conflict for these measures, but we already voted on Stand. Com. Rep. No. 1166."

Representative Carroll rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Carroll's written remarks are as follows:

"The Executive Branch of our government is currently responsible for appointing a number of positions, administrative and otherwise. To give this Branch nearly complete jurisdiction over the Board of Education runs contrary to the mandated balance of powers and will strip our voters of the agency they currently have to select whom will be responsible for their children's educational welfare.

"I am particularly concerned that this bill does not stipulate that all islands or counties must be represented by Board members knowledgeable about their particular needs. The schools within my district are different from schools on O'ahu in terms of geography, demographic, and programs required. Any bill that alters our current system in terms of Board nomination and appointment must address this difference to ensure that all of our constituents are represented equally."

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

"Yes, Mr. Speaker and Members. I am in strong opposition. Mr. Speaker and Members, I believe that this bill is an overreaction to the furloughs and the situation we have right now. If you have listened to some of the speeches that have been made relative to what we're doing in education right now, and the previous speaker from across the aisle, you know that if it goes to the Governor's Office to administer, the Department of Education it going to have the same kind of thing that you've been hearing right now.

"We're going to make the Governor, whoever the Governor is, whether it's a Republican or a Democrat, we're going to make that particular person more powerful than they are right now. We have the most powerful Governor in the whole nation, right in this State. This bill is going to make the Governor even more powerful. It's going to make us that much weaker and we're a party to this. You're going to continue to lose the balance of power between the Executive and the Legislative Branch, and this is why you need to continue with an elected Board.

"Yes, this Board may not be working. We may have to restructure the Board. We may have to look at having more Board members so they would be more accountable to smaller districts.

"But to put it in this way is not the way to go, and if this is your will, so be it. But remember this. You are losing again, the flexibility of the

Legislative offices versus the Governor's office. You're weakening the legislative process. Thank you, very much."

Representative Ward rose to respond, stating:

"Mr. Speaker. I'll be submitting remarks for the Journal, but I would say as a brief retort on behalf of the Administrations from Ariyoshi, Waihee, and Cayetano, the people of Hawaii through the Office of the Governor have spoken. Business as usual is not acceptable.

"It's not about power. It's about what my colleague said here, it's about the kids. It's about getting education up to speed, up to par, so that we are not mediocre, but we excel. That we become world class.

"If the Representative from Maui is correct, if we've got to change it, we'll change it again, but we're going to keep pushing the envelope until we reach some kind of excellence rather than continually going, from decade to decade, accepting what we have. Maybe he's right. Maybe he's wrong. So far, four Governors have said he's wrong, and I'm betting on them. Thank you."

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

"Thank you very much, Mr. Speaker. In opposition. First of all, I'd like to have the words of the speaker from Wailuku entered into the record as if they were my own. And just a few brief comments.

"I'm glad that this measure is going to go before the voters because this will be the last say they have in education. Because the reality is we need reform in education, but it's taking away the voice of the people and putting it in the hands of one person. Is that going to lead us to the reform that we want?

"Members, I would have you keep in mind the rural and Neighbor Island perspective on this. What you're saying to us is, 'Your voice doesn't count. Your accountability. Your schools, and the ability to ensure change and resources, it doesn't count.' What counts is whether that Governor, whoever he or she may be either, (a) likes you; or (b) will even listen to you.

"And there's nothing you can even say to the Governor to ensure that will even appoint somebody who truly represents that area. Realistically, they're probably going to appoint somebody who is politically patronage or supportive of them. Their only tie to the area will be that they may or may not have lived there, and that's it.

"Let's push the envelope, Mr. Speaker, but let's push it in a way where we can have the best of both worlds. That's the accountability with participation. I totally concur with the speaker from Wailuku. Let's look at the size of the Board and making them smaller districts. Let's look at locally elected school boards perhaps. But let's look at reform that empowers people and doesn't silence them. Thank you, very much.

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

"Thank you, Mr. Speaker. I rise in support. I really wasn't going to stand up and speak about this at the moment, but I wanted to share a little perspective someone who's been a classroom teacher, as well as a Vice Principal, Student Activities Coordinator, and Principal in the public school system. My whole career has been with the public school system.

"What I know to be true, when we talk about school reform, is that it happens at the school level. The school principal is absolutely paramount, and the school principal is responsible for his or her actions to the Complex Area Superintendent, who really at this moment does not have much authority, and ultimately to the Superintendent of the schools.

"When we talk about the policy making body for the Department of Education, it is the Board of Education. Whether we agree with that Board or not, it needs to be a functioning Board. For 32 years we have assumed that having an elected Board would not only allow the voice of the people

to be heard, but would be a discerning body of people who really paid attention to policy.

"What we've observed in the last few months is that the attention is not about policy, but about compliance. Compliance to contracts, compliance with employment laws. I mean those are all important, but we heard a little earlier from one of our colleagues that we need to pay attention to the children's well-being.

"I believe if we have a Board that is not worried about factions, and about if they'll be not like by their community, or if they can garner the support of other of their members because of certain platforms. But if we have a Board, and I'm not sure that this particular model, though we fashion it after the Board of Regents, I'm not even sure that's the right methodology. But certainly we know at this particular moment that having an elected Board is much more emotional. And I would venture to ask all of my colleagues to go into their communities and ask their constituents, who did they vote for the Board of Education in the last election. I have my community calling me asking me who they should vote for because they trust that I have some sense about the candidates.

"So I would like us to calm down at the particular moment. I know we get very emotional about all our platforms and all our policies, but at this particular moment, if we look at really what is in the best interest of a system change. I believe that this particular methodology will at least shift the way in which we're doing business in which the way the Board of Education is doing business at this moment. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. In support. I couldn't echo more the sentiments of the Representative from Aina Haina. You know by results, I repeat, aside from anything that you want to say this policy or what happened here in this State and what happened. By results. You can't run away from the results.

"The result is the fact that our people cry for change. This is not working. So maybe we don't know what the crystal balls going to show us, but we've been told by people of experience who have been in government that they think this is a good way to go, and so I think that we should do that. I ask that the words of the Representative of Aina Haina be entered as my own."

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

"Thank you Mr. Speaker, in opposition and just a few comments. Thank you, Mr. Speaker. The reason why I'm voting no on this piece of legislation is not because I don't think that there could be value in this particular constitutional amendment right in this bill. The problem, like I said is, I'd like to see something a little bit, not just some steps moving in the right direction, but really something that we can hang our hat on.

"One of the previous speakers talked about how locally elected school boards would be one way that we can think about going. Well, that's only because of the failure of being able for any of our bills regarding local school boards over the years, year after year, after year, did we even consider to think about appointed school boards.

"Mr. Speaker, that's what we wanted. We wanted the ability to have the say from each of these different counties, but there was no one from the other side that supported us in that. And so we come up with another bill here that talks about elected boards for the Board of Education. One of the reasons why it's moving forward is because the previous Governors, Democrat Governors, came out in support of it and I really thank them for doing that because it is change.

"Mr. Speaker, we have a responsibility here, we have a responsibility to take a look at how do we get quality education to kids. And we should be looking at all the different reforms, whether it be locally elected school boards, or whether it be the Governor appointing a Superintendent, or a Governor appointing the Board. We all know that it's accountability that we need. It's said over and over, and over, but yet we keep on doing these

not even 'half loaves.' Sometimes I believe that these things are change for the sake of change. But when are we going to. One of the comments was that the Governor is the all powerful Governor. Well maybe it will take something like that for us to achieve true reform, education reform.

"Mr. Speaker, I'm just really disappointed because moving forward on something so important as education reform. I know some of my colleagues are voting no, but not for the reason of education reform, but because they think that they're not going to have local input from their Neighbor Islands. I would say then if that is so, then maybe we should really take a strong look at local school boards. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2570, SD 1, HD 2, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE X, SECTION 2, OF THE HAWAII CONSTITUTION, TO CHANGE THE BOARD OF EDUCATION FROM AN ELECTED BOARD TO AN APPOINTED BOARD," passed Third Reading by a vote of 45 ayes to 5 noes, with Representatives Carroll, Finnegan, McKelvey, Rhoads and Souki voting no, and with Representative Hanohano being excused.

S.B. No. 2570, SD 1, HD 2 passed Third Reading in the following form:

S.B. No. 2570, SD 1, HD 2

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE X, SECTION 2, OF THE HAWAII CONSTITUTION, TO CHANGE THE BOARD OF EDUCATION FROM AN ELECTED BOARD TO AN APPOINTED BOARD.

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.

The transition from an elected to an appointed board of education shall be 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, with a period of transition as provided by law?"

SECTION 3. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 4. This amendment shall take effect upon compliance with article XVII, section 3, of the Hawaii Constitution.

At 2:40 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2120, SD 1

S.B. No. 2434, SD 1, HD 1
 S.B. No. 2115, SD 1, HD 2
 S.B. No. 2256, SD 1, HD 1
 S.B. No. 2452, SD 2, HD 2
 S.B. No. 2570, SD 1, HD 2

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1168-10) recommending that S.B. No. 2828, SD 1, HD 2, as amended in HD 3, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2828, SD 1, HD 3, 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. 1168, with reservations and some comments please. Thank you, Mr. Speaker. I have this reservation on this bill. This bill is about school impact districts. In 2007 we passed Act 245, which allowed the DOE to designate West Hawaii as the first school impact district and collect fees for new residents. This has resulted in much resistance to the fees in that residents and I feel these issues should be resolved before we further amend Act 245.

"I understand that West Hawaii is a rapidly growing area of the State and supporters are saying that these fees are needed to be able to build classrooms and schools in order to accommodate all of the new students. We cannot ignore our slumping economy and the struggling construction industry, especially over there.

"Recently Hawaii Island Mayor Billy Kenoi came out against the impact fees, saying that the imposition of them on residential builders was, "at the worst place, at the worst time." He went on to say the proposed impact fee will be passed on to the home buyer and that would, "depress an ailing construction industry." I do agree. Our economy is struggling and I don't think we should do anything that will increase cost and harm an important sector of our economy, especially on the Big Island.

"Another reason why I oppose this bill is that it does not include Charter Schools. I would rather have the impact fee apply to Charter Schools as well. They should be included. The Charter School Administrative Office testified about this and they asked to be included through an amendment whereby a residential developer could enter into an agreement with an existing Charter School or one in the process of starting up to provide the facilities for that Charter School in lieu of the school impact fees. I think this is a reasonable request, Mr. Speaker, and I hope that the Conference Committee will take a look at some of these things. Thank you."

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

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

"Mr. Speaker, I stand in support. Being a Representative from West Hawaii, I'm very familiar with the school impact fee. I wanted to offer some comments. One of the problems in West Hawaii is the inconsistency of the Department of Education, at the time when they went in for their land use change for example, from rural to urban, or from conservation to rural. What was happening is a letter would go to the Board of Education and then it would go down to the staff. They would write letters, and what we were finding is that the fees or land being given, however it was decided was very inconsistent. There was no way for anyone who came in to West Hawaii to understand the rules and understand what their obligation was to schools.

"So because of that, what would happen is when we went through this huge growth spurt, we didn't have adequate schools, and the funding and the mechanism to get those schools, wasn't in place and so we were scrambling. This discussion about all this new construction, and knowing that as these schools, as these communities and subdivisions were being

approved, why there wasn't a system in place to understand what fees would be needed to make sure there were adequate schools?"

"So there's a lot of work that's been put into this bill. Months and months, and months, of discussions. The development community was also involved in those discussions. It's not perfect. It needs to continue. But the work and where it's at today is such an improvement, and I believe basically in the concept, because I was at the Board of Education meeting when they were discussing this and getting ready to approve this, this school impact fee. In the discussion that I heard from some of the people that were submitting testimony is, in concept they all agreed that this was the right way to go. Thank you, Mr. Speaker."

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

"Mr. Speaker, I rise in opposition. I refer to the article in one of the major dailies quoting Mayor Billy Kenoi."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Just some additional remarks. Mr. Speaker, for the Majority Floor Leader, then I hope if this is the way that we are going to progress with this bill, I hope that there is strong support because most of our Charter Schools are on the Big Island, and you know they deserve facilities and facilities funding, or ways that they could get facilities. I hope that she will be one of the proponents of adding the Charter Schools along with this bill. Thank you."

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

"In strong support, Mr. Speaker. As the Representative of a district where schools are impacted by the rapid growth of housing developments, where the schools are so beyond capacity due to the impact of developments, I think it should be computed with population growth and student growth. Thank you."

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 S.B. No. 2828, SD 1, HD 3, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Ward voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1172-10) recommending that S.B. No. 2840, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2840, SD 2, 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. I won't say much. I just stand with strong reservations and I'll see what comes out on Final Reading. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2840, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC PROCUREMENT," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1178-10) recommending that S.B. No. 2903, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2903, SD 2, 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. Can I speak on Stand. Com. Rep. No. 1178 for just some short comments? Thank you, Mr. Speaker. I do have some reservations on this bill. The purpose of this bill is to strengthen and ensure continuum of Hawaiian language education from the early grades to college by requiring the Hawaiian Language College at the University of Hawaii at Hilo, Department of Education and Charter School Administrative Office to enter into an agreement regarding the Hawaiian Language College's functions related to Nawahiokalani 'Opu'u School and other schools as appropriate as laboratory schools.

"Mr. Speaker, I'm in support of this bill. My reservations comes from just seeing if this is truly a place for coordination and collaboration between UH-Hilo and CSAO, and some of these other Charter Schools, as well as the Department of Education, that it really should be a partnership that grows from the interest of those parties and not from, what I would consider, a forced partnership from the Legislature.

"Mr. Speaker, then those are the kinds of things that we do in what's now called categorical funds or programs, and all those types of things. I think especially in this time when the Senate, as well as the Board and we are looking at eliminating categorical funds, that we should really concentrate on where these partnerships can be created and let them do it. I don't think this has funds, but especially if we're going to support this, then it really should be that these people, within their own heart and their own efforts and their own funds, that they're coming together to say this is important. This is our priority. We are going to make a commitment to doing this, and it shouldn't be a forced thing from the Legislature. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2903, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAIIAN LANGUAGE COLLEGE," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1180-10) recommending that S.B. No. 930, HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 930, HD 2, pass Third Reading, seconded by Representative Evans.

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

"I would like a ruling on a potential conflict, Mr. Speaker. I'm a volunteer with the Department of Health medical emergency response corps and would be covered under this measure as an emergency social worker. Thank you," and the Chair ruled, "no conflict."

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

"I'm just asking for a ruling on a potential conflict. My husband sometimes volunteers in a medical capacity at different organization events. Thank you," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 930, HD 2, entitled: "A BILL FOR AN ACT RELATING TO VOLUNTEER MEDICAL ASSISTANCE SERVICES," passed Third Reading by a vote of 50 ayes, with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1181-10) recommending that S.B. No. 2494, SD 2, HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2494, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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 S.B. No. 2494, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Third Reading by a vote of 48 ayes to 2 noes, with Representatives Finnegan and Pine voting no, and with Representative Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1185-10) recommending that S.B. No. 2919, SD 1, 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. 2919, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII STATE HOSPITAL," passed Third Reading by a vote of 49 ayes to 1 no, with Representative Rhoads voting no, and with Representative Hanohano being excused.

At 2:52 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2828, SD 1, HD 3
S.B. No. 2840, SD 2, HD 1
S.B. No. 2903, SD 2, HD 1
S.B. No. 930, HD 2
S.B. No. 2494, SD 2, HD 2
S.B. No. 2919, SD 1, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1188-10) recommending that S.B. No. 2473, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2473, SD 1, HD 2, 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:

"Thank you, Mr. Speaker. I stand in strong support. Many *kupuna* have taken the responsibility to become caregivers to their grandchildren when an emergency situation takes place and the only other recourse would be a foster home. Allowing our elderly to assist in times of crisis alleviates further confusion and fear for these children.

"Because we understand that the rules and guidelines may prevent children from residing in a complex or apartment for an extended period of time, this measure allows for the transition for both the *kupuna* and the grandchild to be much smoother. This measure helps make a bad situation a lot better for the *ohana*. Thank you, Mr. Speaker."

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

"Mr. Speaker, with reservations. Thank you, Mr. Speaker. The purpose of this bill is to assist grandparents raising their grandchildren by number one, allowing grandchildren of elderly housing project residents to temporarily reside with the elderly resident during certain family crisis situations; and number two, granting elderly residents evicted from elderly housing because they allowed grandchildren to live with them during a family crisis, first priority back into elderly housing.

"Mr. Speaker, my reservation is on part one or that section that allows the grandchildren of elderly housing project residents to temporarily reside

with elderly residents during certain family crisis situations. I actually agree with the bill and I've told many people that I am supporting it. It's just that the language in here is three months is supposedly the transition time, the time that you're allotted to find other housing.

"For those who are elderly in these elderly apartments, three months is kind of a long time. Maybe we should be looking at making it a little lesser time, two months or maybe one month, because as people get older, and I've had more and more time to spend with my older grandparents on my husband's side, as well as my mom and dad, as much as they love kids and grandkids, some elderly folks have a hard time being around young kids just because they don't understand what it's like to be old, the young kids don't.

"So it sometimes gets into a really awkward situation and so if anything, if we are going to have this which I think is very needed for grandparents to take care of grandchildren during a difficult time and family crisis, then maybe we should make that time period less than three months. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2473, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HOUSING," passed Third Reading by a vote of 49 ayes, with Representatives Hanohano and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1189-10) recommending that S.B. No. 2593, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2593, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, this is regarding Stand. Com. Rep. No. 1189. I rise with reservations, please. Mr. Speaker, the purpose of this bill is to ensure that housing projects granted a low or moderate income housing general excise tax exemption continue to meet exemption criteria.

"Mr. Speaker, I found that the testimony that came from the Tax Foundation, or actually from Lowell Kalapa, I guess he's also a manager in one of these low income housing areas. What he said was sometimes what you have are people who are living in these housing areas, and the records don't get updated and they may actually be making more than they're supposed to be making. So say it's a low income area and there's a certain amount that you're supposed to be qualifying for to live in that place. He said that there are more and more situations where those records don't get updated and then people who are not low income anymore, but maybe have a more moderate income, that they're still taking advantage of these low income houses.

"Now the way that you do these reviews to me made sense on how he does it. Supposedly what he does is, they do an actual review. They take appointments, the manager takes appointments with each of the people who live in that apartment building to update their records. But currently what happens is people will just tell the managing agent, 'Yeah, yeah, yeah. I'm on the same earning income structure.' So you what you end up with is people who are not accountable and the project ends up receiving a general excise tax exemption, and that's not what the intent and purpose of having the general excise tax exemption is about.

"It really is about helping low income folks with housing. So if we can tighten up the language and make it more meaningful so that people will move on to the next level of housing, and those who are truly low income can come in, I think we need to work on this bill more to accomplish those means."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2593, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HOUSING

FINANCE AND DEVELOPMENT CORPORATION," passed Third Reading by a vote of 49 ayes, with Representatives Hanohano and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1191-10) recommending that S.B. No. 2469, SD 2, 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 S.B. No. 2469, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE EMERGENCY AND BUDGET RESERVE FUND," passed Third Reading by a vote of 49 ayes, with Representatives Hanohano and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1192-10) recommending that S.B. No. 2650, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2650, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise in support. I just wanted to read from a constituent on Maui who had her experience with the EPOD system that's being proposed for our State by the Department of Human Services. It has to do with the fact that they could not reach any human person. They could not get the type of face-to-face contact they needed in order to make the types of determinations for her son to cover her son's medical bills. In fact because of their flawed system, her son still has problems and these comments are on the Oregon Public Assistance Call Centers.

"This again, just shows the fact that this is not a good system that's being proposed. And it's been proposed in a way that isn't giving enough people enough time to really have a say in how it's actually to be implemented. So I really ask that everybody take a good hard look at this and consider also being against it."

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

"Thank you, Mr. Speaker. I feel that I will speak on this a little bit because the Chair of Human Services I think, is chomping at the bit to get at me. So I'm going to go ahead and talk about this a little bit. I actually am in opposition of this.

"Mr. Speaker, maybe because the second part of this talks about that EPOD Program that the previous speaker just spoke of. And you've heard the arguments.

"Mr. Speaker, I'm a little confused because if I'm not mistaken, and I haven't checked within the last week, but I don't believe that the EPOD has actually been implemented yet. Yes, the letters went out that says, I think it was a 90-day RIF letter, that says by June-something, you're going to be RIF'd. But I believe that the call center has not taken place yet. There is one part of eligibility that are doing calls, but I don't think the EPOD Program has been implemented yet. I'm not sure, maybe the previous speaker is talking about someone who has moved over from a state that has already implemented something like the EPOD Program.

"Mr. Speaker, what this does is under the second part in the Standing Committee Report, it says that all intake and eligibility functions relating to welfare and public assistance recipients be performed by employees of the Department of Human Services.

"Mr. Speaker, what I believe this says is, this stops the ability for the EPOD Program to move forward. It stops the ability to have private-public partnerships. It stops the ability, say if there's somebody who needs interpretive services, that if that person is interpreting for them at a local church, or if there's any creative way that we could get better services to Medicaid applicants, that we would not be able to do it unless these

services are performed by employees of the Department of Human Services.

"Mr. Speaker, we can disagree all day long and I think that Members both on the Democrat and the Republican side have disagreed on the implementation of the EPOD system. You've heard it before, and why I believe that we should implement it, and still move forward.

"I think that the elimination mainly of the 31 offices across the State is not a true elimination of offices because the Department of Human Services are planning to use all the rest of the Department of Human Services' offices on the other islands to be able to be not intake centers, but areas where you can go in and have the ability to apply.

"I just think that this second part tries to get at stopping the EPOD program for the Department of Human Services, but I really think that doesn't help us with our ability to do private-public partnerships. Thank you."

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

"Thank you, Mr. Speaker. In support of Stand. Com. Report 1192. Thank you very much, Mr. Speaker. The Department of Human Services wants to close every single public assistance office statewide. All 31 locations. This represents the closure of 50 units in the State of Hawaii, including all Neighbor Islands.

"The Department of Human Services would like to abolish 228 DHS employee positions. In fact, the Minority Leader is correct. Those letters have gone out to all 228 employees indicating their positions will be abolished.

"Who do they serve? What services do the 228 employees provide? They provide services, essential services to over 300,000 needy Hawaii residents. What's the cost savings, Mr. Speaker? According to Director Koller, she believes they can save \$8 million by this move.

"Mr. Speaker, if I may. There are seven reasons why I disagree with the EPOD plan, and why I support Senate Bill 2650. The first reason is that the House Bill actually reduced the Governor's budget for DHS by over \$18.5 million. They were able to do this without closing a single office or eliminating a single employee.

"The second reason why I disagree with the proposal is because the Supplemental Nutrition Assistance Program, the SNAP, Department of Human Services Administrator, the expert, your number one person dealing with federal public assistance for the Department of Human Services, she disagrees with this plan. Linda Tsark disagrees with her Director.

"In fact, she has not spoken to Director Koller about the EPOD plan. That's very concerning, not only to me, but to the United States Department of Agriculture. In fact, Linda Tsark is so courageous, she came to our briefings and she outwardly spoke against this EPOD proposal and against her boss, her supervisor, DHS Director Koller. Linda Tsark had stated that we could be in violation and we could possibly lose \$50 million in federal benefits if we are not in compliance with the federal policy.

"The third reason I oppose the EPOD plan is because the chief investigator, your expert in welfare fraud, has spoken out against this proposal. Chief Investigator, Eric Weyenberg, has not even talked to Director Koller about this. He's upset and shocked that she did not see him, his office or the other special investigators to discuss this EPOD plan. He also opposes this plan.

"The fourth reason. This may violate federal law, Mr. Speaker. In fact, the United States Department of Agriculture has provided a letter to Director Koller. This is dated March 9th of this year. It provides in relevant part, Mr. Speaker, 'The state agency must grant a face to face interview to any household which requests one. Please explain how this requirement will be met if there are no offices on many of the neighbor

islands.' Again this is from the United States Department of Agriculture to Director Koller.

"In looking at the House Journal, Mr. Speaker, I noticed, and I say this with complete respect, that the Minority Leader proposed comments in the Journal and it relates to the Office of Language Access. This is germane to Senate Bill 2650, as it relates to the Office's ability to ensure that no person is denied access to State or State-funded services due to the limited ability to speak, read, write, or understand English. It is germane to this bill and to services for those people where English is their second language.

"Furthermore, Mr. Speaker, if services are denied by closing all welfare offices statewide, this could violate Title VI of the Civil Rights Act of 1964, which requires that state agencies provide language services to limited English applicants or recipients of public assistance benefits. Furthermore, in looking at the letter from the United States Department of Agriculture ..."

Representative Brower rose to yield his time, and the Chair "so ordered."

Representative Mizuno continued in support, stating:

"Thank you, very much. Also in the letter from the United State Department of Agriculture, it does provide that this may violate Executive Order 13166, which provides access for persons with limited English proficiency. In fact the United States Department of Agriculture posed the question to Director Koller in their letter. 'Please explain how these requirements will be met under the proposed reorganization.'

"The fifth reason why I support this measure and I am opposed to the EPOD plan is that the Department of Human Services employees never had a chance to talk with the Director. There was no meaningful consultation with State administrators, staff, or the DHS employees that will be affected by this.

"However, this was an attempt, I guess you can call it, an email that a brave DHS worker forwarded to me which is dated March 15, 2010 with the time 3:08 p.m. Now this email went to only certain DHS employees and provides, and I quote, "Hi everybody. Director Koller is requesting recommendations and comments for EPOD operations. Please email me suggestions from yourself and staff by tomorrow." Tuesday, that's March 16, 2010. So in less than 24 hours, only a selected few employees were to give their comments or suggestions about EPOD. This is not meaningful consultation with staff, administrators, or Department of Human Services' employees.

"The sixth reason why I support this measure and I'm against the EPOD plan is because the Director does not have a plan when she launched this so-called EPOD proposal. And this is why I say this. I can say this with complete honesty, Mr. Speaker. One of the brave and courageous employees from DHS was able to give us this. It's a solicitation request from the Director's office dated February 25, 2010. What it provides is that the Director is looking for assistance on expert testimony, and I quote, "at the Director's request to the Legislature on EPOD." She's looking for expert testimony. She's having a tough time. I can understand that and we would love to work with the Director, but at this point you see, it's full speed ahead.

"Further I quote, "assistance in communicating with the media and public." Now, Mr. Speaker, if you know your stuff, if you know your game, you don't need assistance to communicate to the media or the public. You know what you're doing. This tells me she doesn't know what's going on. And I quote, "assistance in planning the office for configuration." Configuration? Have a plan. "Assistance in fully defining work flow. Assistance in determining help with the application process and other assistance required regarding EPOD." Grave concerns, Mr. Speaker.

"And the last reason, Mr. Speaker, the final reason I support Senate Bill 2650 and I'm against the EPOD plan. I'm very concerned. The Governor, as we all know, opposed the National Health Reform Bill but wants to use \$10 million of taxpayer's money for her Hawaii Premium Plus. How does this relate? It does. At a cost saving of \$8 million you're saying that you're going to save \$8 million and hurt services to 300,000 people in the State of

Hawaii, but yet you want to propose a Hawaii Premium Plan at \$10 million to help how many people? 6,450 new workers. I'm a little perplexed. So for those seven reasons, Mr. Speaker, I support Senate Bill 2650, and I oppose the EPOD plan. Thank you, Mr. Speaker."

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

"Mr. Speaker, just a couple of rebuttal points. You know first of all I do take great offense that someone says that Lillian Koller doesn't know what she's doing. She is probably one of the most knowledgeable Directors that we have in the State of Hawaii, and maybe in a very long time. She has won countless awards and been recognized nationally by people who understand human services, and it's been bipartisan. Certainly there are some things that could have been done a little better, especially in the public relations aspect.

"When I first heard about this idea and I saw the people testifying, I was very disturbed and I was concerned and I asked her to come in. She did with other members to talk about this. And it really comes down to something very simple. How can we service the people better?

"She's trying to propose a system for that person that's in a wheelchair that goes to these offices and waits for hours just to talk to someone to get qualified to get the help that they need that they are qualified for. They don't have to stand in line anymore. They don't have to wake up in the morning, and go, 'God, how am I going to get there? Who's going to take me? Am I going to be able to survive those four, five, six, seven hours in line?' What Lillian Koller wants to do is, she wants you to be able to pick up the phone, either talk to a person, or press a couple of buttons, and then you're done.

"It's really what she's trying to do. I agree that I wish that there was a better way that we could have handled a lot of the employees and that it was done differently in terms of dealing with the employees. Maybe in getting better training. Maybe transferring them. Unfortunately, the way that our system is set up with our employees is we can't even encourage them to get more training because you have to negotiate that. And then maybe if you train them more, then they're going to be into a different section of a union and then they've got to negotiate that.

"So really what she was trying to do is trying to make the service better for the people. So that's why I'm in opposition to this. Yes I agree it could have been done a little better, but I do believe that we should at least give her idea a chance."

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

"I stand in strong support. In response to what was just said, for those who are disabled, you can get a power of attorney and have someone else represent you at those types of face to face meetings so those types of waits can be avoided.

"I just wanted to share with this Body that over the weekend I ran into Sara Lapilio, and she's been a supervisor at DHS's Kapolei Unit for many, many years. She was literally in shock. She had gotten her RIF notice and was given a date of June 30, along with 75% of her staff. That would be their last day on the job. She just could not imagine how this can happen, and what's going to happen to all the people that they service on a daily basis.

"I also just got an email from a class at LCC Waianae that had heard that the Waianae CPS Unit was going to be closed. That unit is probably one of the busiest in the State and they're in a panic as well. I think it's just common sense that if you get rid of all of these people and all these offices, these disabled and vulnerable people will have nowhere to turn. Expecting them to call or go online, many of these clients are mentally ill, disabled, of course they lack the money to be making these kinds of calls. They don't have computers, and that kind of thing. I have additional written comments to submit including an email from Sara Lapilio."

Representative Shimabukuro's written remarks are as follows:

"In strong support. Over the weekend I ran into Sarah Lapilio, supervisor of DHS's Applications Unit in Kapolei, and she told me she has received a notice laying her off as of June 30. She was in shock.

"Ms. Lapilio sent several legislators this email yesterday:

"Aloha: ...There has been a lot of resistance to allowing the Governor... to move forward and implement the EPOD which would be detrimental to the state's most vulnerable population.

I have been an employee of DHS for almost 30 years. For the last 11 years, I have been a Supervisor. I have dedicated more than half of my life as a public servant with the intent to make life better for those in need. To reduce the services we provide to a simple phone call would put needy individuals and families at a greater risk.

Since 2006, my role of Supervisor has been to manage an Applications Unit and as always, I have required my staff to perform well above expectations. As a unit that averages the highest intake of applications, my unit has accomplished greater than the 95% requirement by the federal government. In fact, in the past 2 years, we have met 100% timeliness.

With the reduction in staff last year, my staff has continued to persevere, but burn out is inevitable as we cannot continue to perform as expected with less resources. Very recently, 75% of my staff, including me, have been served with RIF notices. We find it difficult to concentrate on our work, but we are reminded of our mission to make life better for those less fortunate.

In closing, I ask your support in requiring the state to cease all efforts to implement the EPOD until a task force is convened. Mahalo!

Sarah Lapilio
Kamokila Unit"

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

Representative Carroll continued in support, stating:

"I'd also like to comment, in the last two weeks as a member of the Human Services Committee, I was on the phone with my constituents from Lanai and Molokai because their offices will be closed. The burden will be put on other nonprofit organizations who may or may not have a fax machine, or Internet ability. And because of the cuts that they're facing, they're many elders and those who are faced with disabilities that are right now concerned because there isn't that person to person contact. It's that kind of human services that, at least I can speak for my district, that they look forward to.

"In an area that cannot afford, or have access to the Internet, I've been having community meetings, especially in East Maui and all the different villages. They're outraged with the cuts. I've had to spend many late hours listening to many of my constituents on their concerns. Yes, I do believe that the Director should have handled this a little better in communicating with those who are affected by the service, as well as the providers, and that wasn't done. And I concur with the Chair of Human Services. I'd like to insert additional comments."

Representative Carroll's written remarks are as follows:

"The recent decision of the Director of the Department of Human Services to reorganize its service structure without consulting its employees or clients has spurred nearly universal criticism and apprehension. Centralizing DHS operations would seriously disadvantage persons on smaller islands in that they would be forced to purchase plane tickets just to acquire the face-to-face contact that federal law requires DHS to make available to clients. Compounding this, a constituent from Lana'i contacted me to point out that there is only one public facsimile on the entire island. The lack of available technological resources on smaller islands worries me, as does the thought of forcing this system upon elderly

and disabled clients who may prove physically or mentally unable to utilize new technology.

"Recently, Speaker Calvin Say, Rep. Angus McKelvey, and I visited Lana'i, where DHS clients confirmed that a reorganization would prove severely detrimental to their community. This revision is largely a result of that visit, as the House Speaker recognized the need to exempt Neighbor Islands from the EPOD reorganization. I support his draft of this bill, as it will protect the most vulnerable residents of my District, but I also hope that we will be able to halt EPOD reorganization on O'ahu in the future."

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

"Thank you, Mr. Speaker. I stand in support. I would like to make a few comments. I do understand that with our great financial situation here in this State that we can no longer do business as we've done in the past. We have to make changes and make certain adjustments, and I do respect Director Koller.

"However, this EPOD, or this recent proposal of scrapping all the service providers, is a rather draconian way to deal with the budget or improving the way that we deliver care. In the testimony from Kauai, from the Director of the Foodbank, I was really swayed with what she said. There's really a certain percentile of the population that will never be able to feel comfortable, or are unable to go to a fax machine or be on the Internet to apply. Those people that haven't kept up with us. They are still 70 years behind. And those are the very people that need these services, that are the bona fide recipients of this.

"So by going to this EPOD system, we're going to eliminate the 'bottom of the barrel.' Those people that actually need the care. So I'd rather that we proceed cautiously with this. I agree with the change, but it should not be as draconian as this one. Thank you, Mr. Speaker."

Representative Finnegan rose to respond, stating:

"Thank you, Mr. Speaker. Just short comments in rebuttal, and still a no vote. Many of the comments that happened on the Floor are basically saying that we're getting rid of all eligibility workers, and that's simply is not true. Half of the workforce or more than half of the workforce will still be there.

"The whole EPOD reorganization is not only about reorganizing, but it's really innovating how we can do this better. What do I mean by this? Some case managers right now handle 300 some odd files. So that means on a daily basis if someone calls in and says that I want to get updated on my file, or I've got to change my address, or anything like that. They have to talk to one particular case manager.

"This system, this informational technology system that everybody seems to like for other things, but not for EPOD, will allow someone if somebody calls in, 'Change of address? Sure. What's your name?' Boom, they change your address. That's what a case manager, or I don't even think they're called case managers. I think they're called eligibility workers. That's the kind of work and upkeep that they do when they say they have 300 and something cases to handle.

"Mr. Speaker, it's about innovation and changing the way we do things. Yes, you're absolutely right. In their minds, they cannot foresee how you can do things differently because this is how they handle things now. What's being proposed is a totally different way of handling things.

"Face to face interviews. Some of that was talked about. Face to face interviews doesn't mean that you can go ahead and shake their hand. Face to face interviews that other states have been talking about as well is the ability to look at each other face to face. I was in China and India on a trip. I was able to look face to face and have pretty darn good communication between my husband and my kids. That's an ocean away, Mr. Speaker. We can do these things locally. We can setup these things locally so that we can make the application process for these people who are disabled and all of this other stuff, and able-bodied people as well, to get these services.

"Mr. Speaker, there is a fundamental difference when you're talking about \$8 million in savings from an innovation and changing your system, and comparing it to the \$10 million that will be spent on the Hawaii Premium Plan. This Hawaii Premium Plan is about getting people from being on Medicaid, from being on welfare, and telling them and incentivizing the worker, the jobs, the employers and saying, 'Why don't you bring them on so that they can work, and we'll help you pay for that insurance.'"

At this time, the Chair addressed Representative Finnegan, stating:

"Representative Finnegan, can you wrap it up?"

Representative Finnegan continued, stating:

"Yes, Mr. Speaker. One last comment. Ultimately, it's fundamentally a different way of thinking between the Chair and me. Fundamentally different that I see an able-bodied person and I say, 'Yes. You can work. And we're going to help you.' Thank you."

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

"I stand in support. I'm a little troubled by the plan. On Hawaii Island, there are 111 employees. They're all going to be stuffed into one office in Hilo. As some of you may or may not know, Hawaii Island is bigger than the rest of where all of you live put together. Nobody has talked about what some of the other impacts might be.

"We're not through the plantation closure problems. The people are in their 80s and 90s, and there is like Pahala. I think we're going to see some starvation. I think we're going to see some theft. I think we're going to see an increase in domestic violence. I think we're going to see some suicides. I think we're going to see some very, very serious social problems. All of this dumped on top of the vog problem that we're having that has completely disrupted people's lives. From a personal standpoint I'm really, really concerned about what's going to happen to the people I represent. 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 stand in support. Many along the Waianae Coast use the services of the Waianae Coast Comprehensive Health Center of which a vast number of recipients are serviced with the help of Medicaid. This measure will truly benefit vulnerable patients with the ability to receive the services they need. Thank you, Mr. Speaker."

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

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I stand in opposition to S.B. 2650 – Relating to the Department of Human Services. This bill requires Medicaid contracts between the Department of Human Services and Medicaid healthcare insurance plan contractors to contain provisions affecting the reimbursement obligations in the policies between the Medicaid healthcare insurance plan contractors and the home and community-based case management agencies. This measure also convenes a task force to determine the feasibility of the Department of Human Services proposed reorganization.

"The Department of Human Services expects Medicaid health plans to deliver cost-effective services, so that Hawaii residents know that their tax dollars are being spent wisely. If this measure passes, it will open the door to special interest groups seeking self-interested legislation to protect their incomes, which will increase program expenditures. According to the DHS, this bill will "essentially block health plan flexibility and increase program expenditures requiring a new substantial State general fund

appropriation". Our State is facing a severe budget crisis therefore no measures that could potentially cost money and worsen patient access to care should be considered. Thank you."

Representative Thielen 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 S.B. No. 2650, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF HUMAN SERVICES," passed Third Reading by a vote of 45 ayes to 4 noes, with Representatives Ching, Finnegan, Marumoto and Pine voting no, and with Representatives Hanohano and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1195-10) recommending that S.B. No. 2159, 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. 2159, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TRAFFIC ABSTRACT FEE," passed Third Reading by a vote of 42 ayes to 7 noes, with Representatives Brower, Ching, Finnegan, C. Lee, Marumoto, Pine and Thielen voting no, and with Representatives Hanohano and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1196-10) recommending that S.B. No. 2378, SD 2, 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. 2378, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS," passed Third Reading by a vote of 49 ayes, with Representatives Hanohano and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1197-10) recommending that S.B. No. 2454, SD 2, 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. 2454, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC AGENCY MEETINGS AND RECORDS," passed Third Reading by a vote of 49 ayes, with Representatives Hanohano and Ward being excused.

At 3:25 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2473, SD 1, HD 2
 S.B. No. 2593, SD 1, HD 2
 S.B. No. 2469, SD 2, HD 2
 S.B. No. 2650, SD 2, HD 2
 S.B. No. 2159, HD 1
 S.B. No. 2378, SD 2, HD 1
 S.B. No. 2454, SD 2, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1198-10) recommending that S.B. No. 2661, SD 2, HD 1, as amended in HD 2, pass Third Reading.

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

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

"Mr. Speaker, I would like to request a ruling on a potential conflict. My law firm has claimants listed and included in this bill. Thank you," 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 request a ruling on potential conflict. My law firm also has a claimant listed in this bill," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2661, SD 2, 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 47 ayes, with Representatives Cabanilla, Hanohano, M. Oshiro and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1199-10) recommending that S.B. No. 2807, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2807, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. In opposition. This bill proposes a constitutional amendment to alter the provision for a tax refund or a credit to the taxpayers when the State general fund balance at the close of each of two successive fiscal years exceed 5% of general fund revenues. It would create another option allowing the Legislature to make a deposit into one or more emergency and budget reserve funds.

"According to the Tax Foundation, the disposition of excess revenues provision was enacted in tandem with our general fund expenditure limit. This occurred in the '78 Constitutional Convention. The refund provision was meant to ensure that consideration be given to returning excess funds to the taxpayers, rather than to remain a target for excessive public spending. In years past, this refund was as high as \$100 per person, maybe even higher, although in recent times the Legislature has issued a token \$1 tax credit to meet the constitutional requirement.

"Nonetheless, even the \$1 refund serves the purpose of making the general public aware of State finances, ensuring that people are reminded of just how much money the State is spending. Sometimes we really 'rake it in.' So I'm in favor of letting people spend money on their family needs and not have it spent by the State or retained by the State. This is a good reminder for us, Mr. Speaker. I think we should keep this provision. Thank you."

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

"I stand in support. This measure gives an option to the State so that we could prepare for a worse economic situation. So in times of good, we could set aside some money in a fund or funds. And sometimes a forecast comes right near a point where you do have excess funds, so we could set that aside for the next couple of years ahead of us. So it just gives us that option. And if I could insert written comments please."

Representative Karamatsu's written remarks are as follows:

"I rise in support. This bill proposes a constitutional amendment to Article VII, Section 6, of the Hawaii Constitution to authorize the Legislature to determine whether excess funds should be used as tax refunds or tax credits to taxpayers of the State, or diverted to one or more funds to serve as a temporary supplemental source of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue.

"If this bill passes and is approved by the voters of Hawaii, the Legislature will be able to better prepare for future economic downturns by setting aside more money during the good economic times instead of returning funds to the taxpayers through a tax refund or tax credit as required by the current language of our Hawaii Constitution. It is in my long term goal to make Hawaii a top economy per capita and have a large enough reserve fund to better protect Hawaii in even the worst economic conditions that could occur in the future. Thank you."

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

"Mr. Speaker, I'm in strong support. Mr. Speaker, this basically sets up a mechanism to address the situation we faced back in 2007 when we had a projected surplus under the current constitutional scheme, and we were forced to give a \$1 tax refund. This addresses that.

"It also has the support, I believe, of the Governor who at that time did express how absurd that provision was. So this gives us the option to either give some refund back to the taxpayers or put some of this money into our Rainy Day Fund. Thank you."

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

"Thank you, Mr. Speaker. I'm in support of this, but I have some slight reservations on this bill. My slight reservation is just that we put in a formula that will allow us to actually get money into the Rainy Day Fund. I think if you go on the formula and the language in the bill right now, that within the next 5 or 6 years we still wouldn't have any money that would go into this emergency budget fund. So if we can massage that and be able to actually to put away money. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2807, SD 2, HD 2, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 6, OF THE HAWAII CONSTITUTION, RELATING TO THE TAX REBATE REQUIREMENT," passed Third Reading by a vote of 46 ayes to 1 no, with Representative Marumoto voting no, and with Representatives Cabanilla, Hanohano, M. Oshiro and Ward being excused.

S.B. No. 2807, SD 2, HD 2 passed Third Reading in the following form:

S.B. No. 2807, SD 2, HD 2

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 6, OF THE HAWAII CONSTITUTION, RELATING TO THE TAX REBATE REQUIREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to propose an amendment to article VII, section 6, of the Hawaii Constitution to amend the requirement that excess general fund revenues be returned to taxpayers of the State as a tax refund or tax credit and allow the legislature to deposit these excess revenues into one or more emergency and budget reserve funds as an alternative.

SECTION 2. Article VII, section 6, of the Hawaii Constitution is amended to read as follows:

"DISPOSITION OF EXCESS REVENUES

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, or make a deposit into one or more emergency and budget reserve funds, as provided by law."

SECTION 3. The question printed on the ballot shall be as follows:

"Shall the legislature be provided with the choice, when the state general fund balance at the close of each of two successive fiscal years exceeds five per cent of the general fund revenues for each of the two fiscal years, to provide a tax refund or tax credit to the taxpayers of the State, or to make a deposit into one or more emergency and budget reserve funds?"

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Hawaii Constitution.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1201-10) recommending that S.B. No. 2174, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2174, 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 S.B. No. 2174, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Third Reading by a vote of 47 ayes, with Representatives Cabanilla, Hanohano, M. Oshiro and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1203-10) recommending that S.B. No. 2394, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2394, HD 1, pass Third Reading, seconded by Representative Evans.

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

"In opposition, Mr. Speaker, and just a couple of comments. Basically this removes the DHRD Director as serving as the Chairperson of the Board of the ERS. Basically, there's really been no positive testimony that really is convincing that says that we must do this."

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 SB 2394. This measure makes the Director of Human Resources Development one of two ex officio members on the Board of Trustees of the Deferred Compensation Plan and deletes the requirement for the Director to serve as the Chairperson. Additionally, it requires the Board to have five employee members appointed by the Governor with the advice and consent of the Senate.

"The State of Hawaii needs employer representation on the Board in order to protect the taxpayer. This measure removes DHRD's power and vote and completely skews the Deferred Compensation Plan Board toward labor interests. In the management-labor dynamic, both sides need to be represented. The repercussions of a Board being skewed toward labor interests will invariably mean overly preferential treatment of labor's concerns, all at the taxpayer's expense."

Representative Ching rose in opposition to 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 stand in opposition to S.B. 2394 – Relating to the Board of Trustees of the deferred compensation plan. This bill

makes the Director of Human Resources Development one of two ex officio members on the Board of Trustees of the Deferred Compensation Plan and deletes the requirement for the Director to serve as the Chairperson.

"It is the core responsibility of the DHRD Director to "administer the employee benefit programs/plans for State employees". According to the Board of Human Resources, within the current system, there in fact are currently five (not three) public employees on the Board. Additionally, the Board has done an exemplary job and serves as a model Board. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2394, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE BOARD OF TRUSTEES OF THE DEFERRED COMPENSATION PLAN," passed Third Reading by a vote of 42 ayes to 5 noes, with Representatives Ching, Finnegan, Marumoto, Pine and Thielen voting no, and with Representatives Cabanilla, Hanohano, M. Oshiro and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1205-10) recommending that S.B. No. 1062, SD 1, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 1062, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Marumoto 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 Marumoto's written remarks are as follows:

"I am an enthusiastic booster of professional employee organizations (PEOs). They provide auxiliary services to a small business so that the business can concentrate on its main mission. I am in general support of HB 1062.

"My reservations to this measure go to the \$1 million bond required of all PEOs. One business expressed that the size of the bond may be unaffordable for small PEOs. Perhaps a graduated scale would be preferable based on certain criteria.

"One testifier was concerned about the fact that the definition of PEO may be too broad. The bill covers "any person that is a party to a professional employer agreement..." rather than to the PEO alone. This issue should be clarified in Conference Committee.

"Finally, I agree with the Department of Commerce & Consumer Affairs Insurance Commissioner that it is not appropriate for his division to regulate PEOs since it is not an insurance company. Perhaps the registration requirement could come under other sections of the DCCA. What I am certain about is that it should *not* go to the Department of Labor and Industrial Relations because it is a management issue. In the past there have been members of the labor community, as well as a few legislators, for reasons unknown to me, who were opposed to these PEOs."

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 S.B. No. 1062, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS," passed Third Reading by a vote of 47 ayes, with Representatives Cabanilla, Hanohano, M. Oshiro and Ward being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1206-10) recommending that S.B. No. 2175, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2175, SD 1, 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."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2175, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYER-UNION HEALTH BENEFITS TRUST FUND," passed Third Reading by a vote of 47 ayes, with Representatives Cabanilla, Hanohano, M. Oshiro and Ward being excused.

At 3:32 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2661, SD 2, HD 2
S.B. No. 2807, SD 2, HD 2
S.B. No. 2174, HD 1
S.B. No. 2394, HD 1
S.B. No. 1062, SD 1, HD 1
S.B. No. 2175, SD 1, HD 2

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1207-10) recommending that S.B. No. 2324, SD 2, 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 S.B. No. 2324, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO UNEMPLOYMENT INSURANCE BENEFITS," passed Third Reading by a vote of 44 ayes to 5 noes, with Representatives Ching, Finnegan, Marumoto, Pine and Thielen voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1208-10) recommending that S.B. No. 2566, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2566, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I seem to be pretty negative today. I am in opposition to this measure. This would allow diagnostic testing or one-time consultation for subspecialty diagnostic evaluation in a worker's compensation claim, regardless of whether such testing or consultation is medically necessary. I would like to give you a sample of some of the testimony that we heard.

"The City and County testified in opposition. The proposed bill requires the employer or insurance carrier to pay for one-time consultation without allowing the employer or insurance carrier the opportunity to assess whether it is reasonable, necessary, and related to work injury.

"The Department of Human Resources Development said, this bill deprives the self-insured employer or insurance carrier of a fundamental right to challenge the referral on the basis of it not being reasonable or necessary, or for a condition that is unrelated to the industrial injury. In addition, DHRD said that this bill will likely increase costs by removing one of the checks and balances currently afforded employers and insurance carriers.

"Hawaiian Electric testified that this bill removes the established controls that ensure that all diagnostic tests and a one-time consultation are reasonable and warranted by the work injury. This bill creates a bias against employers and insurance carriers, by removing the opportunity to challenge the referral before these services are performed. This bill would

increase work comp costs for employers since not all work injuries are so severe and complex in nature that they require this level of assessment and services.

"The Hawaii Insurers Council said that there could also be referrals made for injuries unrelated to the work injury which would also add costs if the employer has to be pay for this referral.

"Finally, the Property Casualty Insurer's Association said that it supports the Department of Labor and Industrial Relations' belief that the existing Administrative Rules that allow for consultations are fair and adequate, and that there is no need for a non-contestable blanket rule allowing for diagnostic testing and a one-time consultation.

"So if we want to help business, this is not the way to do it. Please consider this vote carefully. Thank you."

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

"May I have a ruling on a potential conflict? My husband is a primary care physician," and the Chair ruled, "no conflict."

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

"Thank you. I just have slight reservations. Thank you."

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

"Mr. Speaker, I'm in support. I just want to note there are checks and balances that do not show up in the language of this bill itself, but are certainly in the worker's compensation law. If you do anything fraudulent or unethical, you run the risk of several penalties, and in extreme cases of criminal penalties as well.

"So I think there are already built into the worker's comp law significant deterrents to doing the kinds of thing that have been suggested that this bill will encourage.

"I would also say on a positive note, that often quickly addressing the health concerns of an injured worker is to the long-term benefit of both the injured worker. If the injury goes untreated, that's obviously not a good thing. And also probably, in many cases, to be an economic advantage of the insurer and the employer because if the injury is taken care of quickly, the total cost of treatment will be less than it would be if you wait a while to look at the injury. So for those reasons I support the bill. Mahalo."

Representative Marumoto rose to respond, stating:

"Thank you, just a short rebuttal. I think we should fix the particular problem. If a worker is injured and needs extra consultation and diagnostic testing, we should find a way to get it to that person as soon as possible. We don't have to give this blanket opportunity for every single work comp claim. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2566, HD 2, entitled: "A BILL FOR AN ACT RELATING TO MEDICAL AND REHABILITATION BENEFITS," passed Third Reading by a vote of 47 ayes to 2 noes, with Representatives Finnegan and Marumoto voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1209-10) recommending that S.B. No. 2626, SD 1, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2626, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"I'm in opposition. One of my first jobs that I took when I graduated from Berkley was at the ILWU. My responsibility was to interview all the old-timers that united in the plantation to get better benefits and pay, and a better lifestyle in the plantations.

"Some of the elders told me about how when they first started to organize and stand up for their rights, they didn't win their first strike because they were all divided. Those that did strike, they were severely punished. Some were even beaten. Some, their pay was cut. Some were given the worst jobs. Some were made to work longer hours.

"I'll never forget that feeling after I talked to each of these individuals with how, wow, just because you wanted to do something that was better for your families, you were punished. I have that feeling right now with this bill right here. This bill just makes me sick. I have never in the whole time that I have been here seen a bill that would punish people because they wanted to go work for the other side. They were originally civil servants.

"What this bill does is, if you were a civil servant and you decided to work for the Lingle Administration, you, technically from an outsider reading this bill, are considered the enemy. You who were once promised by our laws and our rules to have your civil service job back, because you worked for this Administration, you are going to be punished.

"You know how you're going to be punished? You're not going to have your same rights and privileges that you once were promised before you decided to take the job in the Lingle Administration. You will be put on probation. You will not have the same rights as you used to have. You will also not be entitled, if you make a mistake, to be represented by the Attorney General, as was your previous right.

"You know what? In this bill it says that if anyone hires any of these civil service personnel or if any of these civil service personnel want to go back to their civil service position with the same rights and privileges, they will be fined \$500,000. I cannot believe that we are this petty.

"Some of these civil servants that went to the Lingle Administration, they weren't necessarily Republican or conservative. They saw this as perhaps a time in their career where they could actually be in a position to make a difference. They are no longer the 'worker bee.' They're going to actually be in charge and implement that vision that they always had for Hawaii. Or maybe it pays just a little more and they said, 'Hey you know what? I want to take this chance and I'm going to take this job. It's okay because I can come back to my job later on.'

"I cannot believe we're doing this and that this bill has gone this far. I'm in opposition, Mr. Speaker. And I'm just really disappointed in all of us right now."

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

"Yes Mr. Speaker and Members of the House, I speak in opposition. It kind of pains me, a Democrat of many, many, many years, to look at legislation like this. And it's even more painful to generally agree with my colleague across the aisle.

"I believe that a bill like this degenerates the House. It smacks of pettiness where you provide that 'thou shall not' work for the Executive or the Governor because you're an opposing Party member. But we are not looking at the broader picture. Whoever the Governor is, they should choose the person that best can serve them and serve the people of the State of Hawaii. Not being able to choose the most qualified person to serve the people of the State of Hawaii, I believe does an injustice to all the people of the State of Hawaii, regardless of Party.

"This bill does that. So I'm very sorry to say that, because I have the greatest respect for this institution. I have the greatest respect for the Chairman of the Finance Committee and Leadership, and it hurts me and pains me to say this. But I don't believe that we should be trifling a matter like this here.

"For that matter, Mr. Speaker, I wish to table this measure."

At this time, Representative Souki moved to table Stand. Com. No. 1209-10, and S.B. No. 2626, SD 1, HD 1, seconded by Representative Cabanilla.

At 3:44 o'clock p.m. Representative Takai requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:04 o'clock p.m.

At this time, the Chair stated:

"Members, prior to recess, we were on Standing Committee Report No. 1209-10, Senate Bill No. 2626, SD 1, HD 1. There was a motion on the Floor to table the measure, and the motion was seconded. This measure will be deferred to the end of the calendar of today's agenda."

At this time, action on Stand. Com. Rep. No. 1209-10 and S.B. No. 2626, SD 1, HD 1, was deferred to the end of the calendar.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1210-10) recommending that S.B. No. 2849, SD 2, as amended in HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2849, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Ward rose and stated:

"Mr. Speaker, I rise with serious reservations, if not a no on this one. There seems to be some difficulty in implementing this. This is the Hawaii Employer Union Trust Fund Benefits for trustees. I believe as I quote somebody in the Finance Committee who said, I can't imagine how anyone in their right mind would become a volunteer to be a trustee of the EUTF."

"There are fiduciary responsibilities. There are threats of a punitive nature. It's just where the entire structure of the bill turns logic on its head. What's the word for voluntary spirit? That spirit of helping your community. That spirit is totally taken out of it, the same way that a lot of people earlier had a conflict of interest because they were members of community associations and boards and condominiums."

"Well if you're on the Board you usually get Board insurance in case you get sued. This one you're basically naked. You're fully exposed. And for the important service to the community through the EUTF, you are held personally liable."

"Mr. Speaker, that's not fair. This bill is written rather 'cockeyed' and I don't see how it could possibly pass because there is no possibility of anybody ever signing up and becoming a part of it, unless it becomes really restructured and reprogrammed. Thank you."

Representative Thielen rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Thielen's written remarks are as follows:

"Mr. Speaker, I rise in opposition. My opposition starts with one particular aspect of this bill, and that is the personal liability that is imposed on the fiduciary of the Hawaii employer-Union Health Benefits Trust fund (EUTF).

"On page 4, lines 17 to 22, and continuing on page 5, lines 1 to 4, this liability is spelled out. "Any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by this chapter shall be personally liable to reimburse any losses to the plan resulting from each breach, and to restore the plan any profits of the fiduciary that have been made through the use of assets and of the plan by the fiduciary, and shall be subject to any other

equitable and remedial relief as the court may deem appropriate, including removal of the fiduciary."

"Mr. Speaker, in the case of the self-dealing prohibitions in this bill, I can understand that. But when you impose a duty that fiduciaries of the EUTF discharge their duties solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits, and the other reasons listed on pages 1 and 2, it seems as though we are severely upsetting the balance in favor of the employee in the EUTF."

"It appears that one of the fiduciary duties under this bill is to provide benefits. The cost of those benefits is not a mitigating circumstance. Taking a "pro-management position" that attempts to control costs by capping benefits would be a breach of fiduciary duty by definition."

"Why would anyone, especially on the employer side of this joint Board, want to serve on this Board under those circumstances?"

"There are other aspects of this bill that seem to support this contention. For instance, section 3 of this bill changes the composition of the board of trustees from an even 5 to 5 split between employers and employees, to a 7 to 5 split in favor of employees."

"As if the imposition of personal liability on trustee/fiduciaries to favor employees were not enough, the voting structure gets changed to tip the balance in the favor of employees, basically undercutting management's position at the bargaining table."

"Mr. Speaker, we often pay 'lip service' to not interfering with the collective bargaining process. But bills like this show we are more than ready to change the rules of the game in such a way as to guarantee victory for one side in collective bargaining. That may not be the true definition of interfering, but it is disingenuous."

"And I fail to see how imposing personal liability on EUTF trustees and basically mandating that EUTF tow a pro-employee line rather than facilitate a collectively bargained benefit from relatively equal bargaining position, helps control health benefit costs."

"Mr. Speaker, the issue we are facing has been, and continues to be, rising health care costs. We don't solve that issue by threatening EUTF trustees, and we don't do it by slanting the playing field to favor one side in negotiations. We all know better than this."

Representative Ching rose in opposition to 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 opposition to S.B. 2849 – Relating to the Hawaii Employer-Union Health Benefits Trust Fund. I believe that this bill, by creating separate health benefit trust funds for each bargaining unit, would retrogressively skew collective bargaining procedures, and allow certain units to obtain disproportionately favorable or unfavorable health contribution rates in comparison to one another. Both the State Department of Budget and Finance and the City and County Department of Human Resources echo the concern that S.B. 2849 will fragment the groups for which plans are purchased, and also voice doubt over motives for a switch of the retiree trustee from an employee trustee to an employer trustee. Factors determining the units' varying contribution rates would likely prove arbitrary and depend upon estimates only roughly predictable, such as the demographics of each unit and the members' anticipated use of their health benefits."

"Also, if we are to so disallow alternate impasse procedures on the health benefit contribution amount, the proposed amendments to Section 89-11 (a) and (h) would obstruct the ability for public employers and unions to flexibly resolve continuing negotiations by prioritizing the most significant issues in each discussion. Furthermore, by distilling employee and retiree groups from one another, we would sacrifice the economy of scale now established by grouping all employees into a single trust fund, and thus force the State to accrue higher costs for administrative and other functions."

"The State Office of Collective Bargaining reminds us of the various motivations Hawaii originally weighed in 2001, in the process of establishing a single health benefits delivery system for State and county employees with the current EUTF. For one, had the State maintained its prior Health Fund system, employer contribution costs would have exceeded \$1,000,000,000 by 2013. Secondly, the unions had been significantly impaired in their abilities to negotiate more competitive benefit packages with insurance carriers, and to retain low costs by not offering coverage to retirees. Third, the unions had been retaining refunds for premium overpayment, even though the Health Fund had originally funded most union-plan premiums. The EUTF has mollified these concerns, but I fear that S.B. 2849 would lead them to resurface.

"The State Department of Human Resources Development strongly opposes this bill, asserting that, given its exacerbated dearth of staffing and funds, it cannot afford to effectively oversee the EUTF, as S.B. 2849 proposes. According to DHRD, "transferring the EUTF to the DHRD would not result in any cost savings that would warrant taking such action, and may in fact cause unforeseen problems which might add to EUTF's current difficulties." Given Hawaii's already dire financial situation, we cannot risk this bill's serious potential to increase costs. Let us now reconsider this murky bill, in light of the numerous objections and concerns which it has elicited. Thank you."

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

"I rise in support. Just a point of clarification. Most private Taft Hartley trusts do impose severe and strong sanctions for breach of fiduciary responsibility, and that's all this thing does. It tracks the federal law regarding the fiduciary's responsibility to the beneficiaries of the trust. Thank you."

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

"Mr. Speaker, a no vote on this bill. Mr. Speaker, I can understand fiduciary duties and everything, but from my reading of the bill, you can actually be sued. A trustee can be actually sued if the members don't like the plan. This bill does not allow EUTF trustees to freely make decisions that would actually, what if they're thinking about sustaining the fund, or looking at things from that angle. So, Mr. Speaker, I will vote in opposition."

Representative Ward rose to respond, stating:

"Mr. Speaker, just to clarify my no vote on this bill. I think the Chair of Finance's clarification that it is simple, it's straightforward. It's not a big deal. The difficulty is, is that the EUTF, at last report, is losing a million dollars a month. Do we ask a volunteer to be responsible to 'pony up' any or part or in any way be responsible for that.

"Given the track record of EUTF and probably it's pending restructuring, how they can restructure with a bill like this, doesn't make any sense. Again, if this is common to voluntary associations, that's terrific. But in terms of what we need for the health benefit programs for the retirees and the active civil servants of this State, this bill is a 'poison pill' for the voluntary spirit. Thank you."

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

"Mr. Speaker, I'm in support. Just quoting from the bill it says, 'However nothing in this section shall preclude,' and there's 1, 2, 3 items. 'Three, an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee welfare benefit plan.' So I'm not sure where this idea that there can be no protection for the person volunteering came from, because it specifically says in the bill that you can get insurance.

"The other thing I would point out is that there are ERISA boards. This bill is modeled on an ERISA board. The federal statutory provision, I can never remember exactly what it stands for. But anyway, it's the federal

analogue of what we're trying to do here, and they do people to volunteer on those boards. Now the Attorney General did submit testimony to the Finance Committee that we will be looking at it very carefully as we go to Conference to be sure that we follow the federal lead so as to be sure that the potential problem that previous speakers have mentioned is addressed. Mahalo."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2849, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND," passed Third Reading by a vote of 43 ayes to 6 noes, with Representatives Ching, Finnegan, Marumoto, Pine, Thielen and Ward voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1211-10) recommending that S.B. No. 950, SD 2, 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 S.B. No. 950, SD 2, HD 3, entitled: "A BILL FOR AN ACT RELATING TO ELECTRIC GUNS," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1214-10) recommending that S.B. No. 2533, SD 1, as amended in HD 1, pass Third Reading.

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

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

"Thank you, Mr. Speaker. In opposition. The purpose of this bill is to require an audit of the Department of Public Safety's contracts with the Corrections Corporation of America and the Federal Detention Center in Honolulu that focuses on a comparison of housing Hawaii inmates in mainland facilities and in the Federal Detention Center, with housing Hawaii inmates in Hawaii facilities operated by the State.

"Mr. Speaker, over the years we've seen different types of requests like this coming through our Legislature, and I would hear from what was being said in testimony, but often times I wouldn't hear from people who have actually been in CCA. More and more, I'm getting letters from those women who have transferred to Hawaii, as well as men who have come back from the CCA on the mainland. I've seen the facilities that are there, compared to the facilities here. And the response that I'm getting from many who come back are saying, the lack of programs, the way it's so crowded here, and that locally their needs aren't being met, having to do with any kind of education or other programs that they feel that they need that really, when they were in the mainland, really started to have them see things in a different light. That they could come back to Hawaii and make a life for themselves outside of the life of crime.

"Mr. Speaker, as we move forward with this, because I know this is going to be pushed through. One of the things that we have to absolutely take a look at is, are the majority of people who are in these mainland facilities, are they being serviced where they're coming out to be better people. And I'm going to have to say that there are quite a few who have had positive experiences. Thank you."

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

"Thank you, Mr. Speaker. I rise in support. I believe the previous speaker gave a good argument as to why we should continue and really have this audit. As was pointed out, there may be severe differences between what's happening here and on the mainland, but we really don't know because they're so far away.

"When I was Chair of Public Safety, I had the privilege to fly to Kentucky and go to Eastern Kentucky to see our female inmates. I also went to Arizona and saw the places where our male inmates are housed and, yes, sometimes we hear they have better programs. But what does that really mean. When I was talking to the gals in Kentucky, it was like you earned the right to be in the program. And if you didn't do things appropriately, then you got a lot of punishment like lockdown, or in fact you were refused your programs. So it was kind of like a 'carrot and a stick' approach that they had on the mainland.

"I'm not quite sure what the contract actually says on what kind of services we provide, but in the end, when you really look at how many women on the mainland did get the programs, it really wasn't that many as a percentage in terms of what was really housed there. So I don't think we really understand the answer of what's really working and not working.

"Until we get a handle on this argument that somehow the private sector, which is for profit, versus what we have in this State which is not-for-profit. Until we get a handle on the real differences between the two, I don't think we'll ever really understand what we need to do for the prison population and what kind of programs to provide them. So this is really a great idea. We keep trying to do this. We've had trouble with getting it through, and I really hope it makes it through this year. Thank you, Mr. Speaker."

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

"Thank you, strong support, with written comments."

Representative Awana's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support. I believe this audit is necessary in to ensure that our State tax dollars are being used adequately. Corrections Corporation of America has an ongoing contract with the Department of Public Safety for many years – housing thousands of Hawaii inmates, yet no audit has been done. The same holds true for the federal Detention Center in Honolulu. Thank you, Mr. Speaker."

Representative Ching rose in opposition to 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 opposition to S.B. 2533. This measure is flawed and would require the expenditure of funds that would be unnecessary because the audits required by this measure would be repetitive. These contracts and agreements referenced in this measure are already audited on a regular basis by an independent auditor.

"Based on the foregoing reasons, I strongly oppose this measure. Given our fiscal constraints, it would not be prudent to expend limited resources on functions that are already in place. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2533, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO AN AUDIT OF CONTRACTS OF THE DEPARTMENT OF PUBLIC SAFETY WITH THE CORRECTIONS CORPORATION OF AMERICA AND THE FEDERAL DETENTION CENTER," passed Third Reading by a vote of 45 ayes to 4 noes, with Representatives Ching, Finnegan, Marumoto and Pine voting no, and with Representatives Bertram and Hanohano being excused.

At 4:16 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2324, SD 2, HD 2
 S.B. No. 2566, HD 2
 S.B. No. 2849, SD 2, HD 1
 S.B. No. 950, SD 2, HD 3
 S.B. No. 2533, SD 1, HD 1

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1218-10) recommending that S.B. No. 2105, 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. 2105, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PARKING FOR DISABLED PERSONS," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1222-10) recommending that S.B. No. 2461, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2461, SD 2, 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. Mr. Speaker, this is job killer number three. This is the increase in the car rental fee from a dollar a day, to \$4.50. That's aside from the surcharge which means it's \$7.50 a day. Almost \$50 a week before you even get in your car.

"Mr. Speaker, we know that APEC is coming, 20 countries' heads of state are going to be here. We want to get the airport in 'ship shape.' Unfortunately, this is probably not even going to be out of the planning stage by then. So it doesn't benefit that one.

"The other thing is that as the price goes up, inevitably common sense tells you that demand is going to go down. In the Finance Committee hearing the industry told us that the more the price goes up, the more people rent their cars. The more airport-centric their location, the more rentals, regardless of price. They promised they were giving the Finance Chair and the members of the Committee that data. To this hour, I have not received anything that's counterintuitive to say that your price is going to increase your sales. It doesn't fit, doesn't follow logically.

"So, Mr. Speaker, if the industry can prove that that was the case and that they could build it and get it in time for APEC, and they could assure all the *kama'aina* renters on the weekend and for those of our colleagues on the Neighbor Island who are going to have to pay this if they do rent a car.

"It's going to be a job killer because they're going to get rid of employees. Employees, Mr. Speaker, I remind everyone, 80% of all the jobs come out of the private sector. Government is the biggest single employer, but 80% still have to go through the private sector. That's what the job killer bill is about, and this is where it's going to attack the auto industry. 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 with reservations in support of S.B. 2461–Relating to Transportation. This bill amends the Hawaii Revised Statutes to raise the rental motor vehicle Customer Facility Charge (CFC) from \$1/day to \$4.50/day. The bill further seeks to appropriate funds out of the Rental Motor Vehicle Customer Facility Charge Special Fund for multiple purposes. While I, too, acknowledge the necessity of modernizing Hawaii's rental car facilities as essential to improving tourist numbers and overall satisfaction, we must remain steadfast in committing any and all funds generated by the CFC increase to this purpose, and this purpose alone. I also support this measure due to the fact the affected industry is one of the bill's main proponents.

"The written testimony supplied by Dollar Thrifty Automotive Group, Inc., notes that the increase will raise "approximately \$500 million." Although DOT believes the increase in the CFC charge will enable the

Department to move forward with the effort to provide modernize the State's aging rental car facilities, fast track construction projects and create new jobs, care should be exercised to insure that these funds are not raided for purposes other than building the specified facility. As noted in the written testimony provided by the Tax Foundation of Hawaii: "A special fund of this size could become a very tempting target to bail out general fund programs in these difficult economic times." I also hope that this measure does not adversely impact tourism. 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 S.B. No. 2461, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Third Reading by a vote of 43 ayes to 6 noes, with Representatives Brower, Marumoto, Pine, Takai, Thielen and Ward voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1223-10) recommending that S.B. No. 2897, SD 2, HD 2, as amended in HD 3, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2897, SD 2, HD 3, pass Third Reading, seconded by Representative Evans.

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

"In strong support, and may I request permission to enter written comments into the Journal."

Representative Har's written remarks are as follows:

"Mr. Speaker, I rise in strong support of Senate Bill 2897 S.D. 2 H.D. 1. This bill enacts the recommendations of the Ignition Interlock Task Force made pursuant to Act 171, Session Laws of Hawaii 2008.

"Traffic fatalities and crashes continue to rise each year due to drunk drivers. I was one of the fortunate to survive my accident, but thousands of lives yearly are cut short. I strongly believe 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 offender, 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.

"Prior to Act 171, Hawaii was one of the only states that did not have ignition interlock laws, even though we have the highest percentage of alcohol-related traffic fatalities in the United States. The aforementioned provisions of the law will hopefully force people to think even harder about the daily consequences of driving under the influence – and will consequently save lives.

"For these reasons, I stand in strong 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 S.B. No. 2897, SD 2, HD 3, entitled: "A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1225-10) recommending that S.B. No. 1315, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 1315, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I'm with reservations due to the establishing of the new special fund. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1315, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CONSERVATION AND RESOURCES ENFORCEMENT PROGRAM," passed Third Reading by a vote of 48 ayes to 1 no, with Representative Brower voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1228-10) recommending that S.B. No. 2610, 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. 2610, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONVEYANCE TAX," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1229-10) recommending that S.B. No. 2144, SD 2, 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 S.B. No. 2144, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT," passed Third Reading by a vote of 48 ayes to 1 no, with Representative C. Lee voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1230-10) recommending that S.B. No. 2231, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2231, SD 1, HD 2, pass Third Reading, seconded by Representative Evans.

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

"On Stand. Com. Rep. No. 1230, I needed to request a ruling on a potential conflict. My wife's firm represents Better Place Hawaii, which sells electric cars. Thank you," and the Chair ruled, "no conflict."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2231, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ELECTRIC VEHICLES," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1233-10) recommending that S.B. No. 1178, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 1178, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm standing in strong support. I would also like to note that the Governor also sent down a message requesting the immediate passage of this measure, SB No. 1178, SD 2, HD 2, regarding the emergency appropriation of \$40 million in general funds for the \$80 million in federal funds to help our healthcare payment program.

"It's excellent, I'm glad she's on board. And I hope that she can also see some of the other emergency requests that we have in order. Thank you."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1178, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

At 4:22 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2105, SD 2, HD 1
 S.B. No. 2461, SD 2, HD 2
 S.B. No. 2897, SD 2, HD 3
 S.B. No. 1315, SD 2, HD 2
 S.B. No. 2610, HD 1
 S.B. No. 2144, SD 2, HD 2
 S.B. No. 2231, SD 1, HD 2
 S.B. No. 1178, SD 2, HD 2

At 4:22 o'clock p.m. Representative B. Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:51 o'clock p.m., with the Speaker presiding.

At this time, the Chair stated:

"Members, at this time we are on page 19. Let's proceed on, but prior to proceeding on, for Stand. Com. Rep. No. 1238-10, Senate Bill 1141, SD 2, HD 2, this will be moved to the end of the calendar."

Stand. Com. Rep. No. 1238-10 and S.B. No. 1141, SD 2, HD 2:

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

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1234-10) recommending that S.B. No. 2534, SD 2, HD 1, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2534, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. Short comments in opposition. Thank you, Mr. Speaker. The bottom line on this particular measure is that we just don't have money to do this. And I'll insert written comments. Thank you."

Representative Finnegan's written remarks are as follows:

"Mr. Speaker, I rise in opposition to SB 2534. This bill requires law enforcement agencies to accept cash bonds, certified copies of pre-filed bonds and original surety or own recognizance bonds when the court is closed and stipulates prompt release after acceptance of bail. While this particular idea has many merits in that it makes the process of bail more convenient for persons in law enforcement custody and it would also theoretically reduce the expenses of the detention centers that would ordinarily be holding suspects for longer periods of time, it is simply not good legislation for us to pass.

"This bill conflicts with the provisions of HRS § 353-11.5, which restricts entry upon grounds of a Hawaii correctional facility without the permission from the administrator and the cost of compliance outweighs what little financial savings it might have provided. We simply should not be expending additional money to establish a system and/or personnel stationed at different locations in order to have the ability to submit a twenty-four hour bail."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2534, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO BAIL," passed Third Reading by a vote of 45 ayes to 4 noes, with Representatives Ching, Finnegan, Marumoto and Pine voting no, and with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1235-10) recommending that S.B. No. 2884, SD 2, 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 S.B. No. 2884, SD 2, HD 2, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR COLLECTIVE BARGAINING COST ITEMS," passed Third Reading by a vote of 49 ayes, with Representatives Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1237-10) recommending that S.B. No. 2951, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2951, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

Representative Thielen rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Thielen's written remarks are as follows:

"Mr. Speaker, I rise in opposition to Stand. Com. Rep. No. 1237-10. This bill is intended to provide unprecedented levels of compensation to lessees when leased public land for agricultural or pastoral uses is withdrawn, condemned or taken for public purposes.

"The DLNR strongly opposed this measure in Committee, and I believe DLNR continues to oppose its current form. This bill is extremely unfair and, "absolutely favors" a select few with what can only be termed as a kickback-like benefits to tenants who have reaped years of benefits from below market rates.

"This is not the first time that we have seen this bill before. It was originally vetoed last year by the Governor because then, as is now, it was seen as, "disproportionately and inappropriately [compensating] the lessees of public lands above other lessees of State lands."

"We can't afford to show preferential treatment to anyone at a time when revenues are falling short. This is poor legislation because it's giving a soft touch when the rest of us are facing hard times."

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 S.B. No. 2951, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Third Reading by a vote of 48 ayes to 1 no, with Representative Thielen voting no, and with Representatives Bertram and Hanohano being excused.

Representative Karamatsu, for the Committee on Judiciary presented a report (Stand. Com. Rep. No. 1239-10) recommending that S.B. No. 2169, SD 2, HD 2, pass Third Reading.

Representative B. Oshiro moved that the report of the Committee be adopted, and that S.B. No. 2169, SD 2, HD 2, pass Third Reading, seconded by Representative Evans.

Representative M. Oshiro 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 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 S.B. No. 2169, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO SHARK FINS," passed Third Reading by a vote of 48 ayes to 1 no, with Representative Souki voting no, and with Representatives Bertram and Hanohano being excused.

At 4:54 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2534, SD 2, HD 1
S.B. No. 2884, SD 2, HD 2
S.B. No. 2951, SD 2, HD 2
S.B. No. 2169, SD 2, HD 2

At 4:54 o'clock p.m. Representative B. Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:55 o'clock p.m.

LATE INTRODUCTIONS

The following late introduction was made to the Members of the House:

Representative Rhoads introduced Mr. Fetu Kolio, a resident of, and safety advocate for the Mayor Wright Homes Tenant Association.

At 4:56 o'clock p.m. the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:13 o'clock p.m.

ORDINARY CALENDAR

THIRD READING

S.B. No. 2937, SD 1, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2937, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION PRACTICES," passed Third Reading by a vote of 45 ayes to 4 noes, with Representatives Berg, Brower, Rhoads and Takai voting no, and with Representatives Bertram and Hanohano being excused.

S.B. No. 2408, SD 2, HD 1:

Representative B. Oshiro moved that S.B. No. 2408, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker. I am in opposition and just have a couple sentences. This bill was amended to zero out all housing credits. I just have a lot of concerns about that. As we are hitting hard times, we're definitely going to need more affordable housing. So I just am very concerned about these amendments."

The motion was put to vote by the Chair and carried, and S.B. No. 2408, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING DEVELOPMENT," passed Third Reading by a vote of 35 ayes to 14 noes, with Representatives Belatti, Berg, Brower, Carroll, Ching, Finnegan, Keith-Agaran, C. Lee, Luke, Manahan, Morita, Nishimoto, Pine and Saiki voting no, and with Representatives Bertram and Hanohano being excused.

S.B. No. 2834, SD 1:

Representative B. Oshiro moved that S.B. No. 2834, SD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, in strong support. Thank you. Strong support."

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 S.B. 2834 S.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 of the similar H.B. 2313 from an initial "no" to one in support with strong reservations. Although I reluctantly support S.B.2834 S.D.1 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 S.B. 2834 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 compare 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 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 S.B. No. 2834, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 47 ayes to 2 noes, with Representatives Marumoto and Thielen voting no, and with Representatives Bertram and Hanohano being excused.

S.B. No. 2395, SD 2, HD 1:

Representative B. Oshiro moved that S.B. No. 2395, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. On this measure, Senate Bill 2395, I rise with reservations. Thank you, Mr. Speaker. As you mentioned, there was a floor

amendment that I did pull back, and I just wanted to mention the two points that I made earlier.

"The first point is, I do believe that the bill is fatally flawed right now, or at least there's a question as to whether in fact the implementation date of the bill comes after the VEBA dies. So I've been assured by Leadership that they're going to work with the Senate Leadership to make sure that we take care of that.

"For those of you who don't know, the effective date of the bill was July 1st, 2010, and VEBA by State law right now will end on July 1st, 2010, so there was some confusion there. So the intent of the floor amendment was actually to move it to June 30 to clear that up.

"The second point is that, let me first say that I still continue to support VEBA. I do believe it has worked, it continues to work, and will work in the future. But regardless of whether you support VEBA or not, I think we all agree that the EUTF right now is not doing too well.

"The operations of EUTF are suspect. I do know that they are leaderless. They don't have an Executive Director. I also do know that they have finally over the course of a few months now, have a majority of the trustees appointed so they can start making decisions. But we've had a very difficult 12 months. The last 12 months with EUTF. I don't think it would be wise for us, after going through what we went through earlier this year, to increase the membership of the EUTF by another 40,000 members if we transfer VEBA too early.

"Now the proposed bill in front of us recommends that we do the transfer come December 31st, 2010. My recommendation is to extend it to June 30, 2011 for two reasons. The first one as I mentioned, I don't think EUTF can take the additional members right now. But number two, Mr. Speaker, as you know the public health funds typically starts on July 1st of every year and it just seems right to me to start the transfer of the VEBA on the effective date of the next planned benefit year.

"The reason for that is because when you do bids, Request For Proposals on these types of plan designs, you put the effective date, the length, and you also talk about the number of members. Right now all of that is up in the air being that they will not have open enrollment right now, and the July 1st new year has been extended to, we don't know when. But we do know that come July 1st, 2011 it should be a new year. It just seems wise that we do the transfer if we should choose to do it, at that time. Thank you, Mr. Speaker."

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

"Mr. Speaker, I rise with reservations. The words of the previous speaker are very well taken. I would only add that VEBA is looking better and better as we see that the EUTF and the million dollars, and after this last bill that said the trustees are going to be liable for untold amounts of difficulties. It makes VEBA look like the story has not really been totally understood yet. I will reminisce as I did earlier when in the Finance Committee, the Auditor's report was presented and so many of us were so brain dead we never asked questions for the VEBA consultant who was in the room to give his side of the story. So, Mr. Speaker, this bill will push us down the field, and hopefully all the data will come out. And hopefully it's going to work out. Thank you."

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

"Mr. Speaker, may I have a ruling on a potential conflict? I have one of the VEBA plans," and the Chair ruled, "no conflict."

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

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

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

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

Representative Ching rose in support of the measure with reservations 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 Pine rose in support of the measure with reservations and asked that the remarks of Representative Takai 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 S.B. No. 2395, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE BUDGET," passed Third Reading by a vote of 48 ayes to 1 no, with Representative Ward voting no, and with Representatives Bertram and Hanohano being excused.

S.B. No. 2405, SD 2, HD 1:

Representative B. Oshiro moved that S.B. No. 2405, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"I'm in opposition, Mr. Speaker. What this bill does is it temporarily suspends the income tax net operating loss carry back deductions for losses that were generated in 2009 and 2010.

"This is a hard bill to swallow for many of the businesses, those 90% of the businesses that are small businesses, 'mom and pop' stores in the State of Hawaii. Many are just barely making it and we add this bill where they can't itemize deductions anymore. It's really going to hurt them.

"I've spoken, just in the last month, to so many small business owners that just make \$50,000 a year, maybe even less. One owner said, 'Wow, I used to make \$8,000 extra every month in my business with two or three employees. And now, I'm barely making it.' Now with the increase in cost of the unemployment insurance they're going to have to fire somebody. And then you add this. That just leaves that one person working, and really that person doesn't have a business anymore.

"I know that there are some decisions being made, but I hope that instead of just looking at the immediate savings that the State might have, that we look at the long term problems that may occur and the devastating impact on our economy that may occur."

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

"Mr. Speaker, I rise in opposition to the bill. Mr. Speaker, this is job killer number 7. This is the bill that changes the rules for the business community. This is the bill that is a takeaway. This is a bill that is going to cause a lot of hardship as my colleague has just mentioned. It's a bill that changes the rules and confuses what otherwise is a very distraught community.

"If any of you have read the *Star-Bulletin* article a few days ago. Mr. Speaker, it was shocking to learn that behind Tokyo is Honolulu as the most expensive city in, not the United States, not in the Pacific, not in the Southern Hemisphere, or the Northern Hemisphere, but in the world. Mr. Speaker, we are so designated as the second most expensive place to do business in the world.

"One of the components of why it's so expensive is taxation. This is a possibility for businesses to get their money back, particularly net

operating losses. This is an opportunity for them to hire more employees and the result is going to be the exact opposite.

"Now I know everyone's pleading, 'Well, we've got to be able to balance the budget.' Well hopefully in a few days you're going to see that there's a budget that's going to balance that does not need these kinds of figures. And does not rely upon this kind of stuff, because in the end run when we lose the employees, we've got to pay more for unemployment insurance. We've got to pay more for social services, medical insurance, etc.

"Mr. Speaker, for those who have derided the fact that the EPOD and the other budget cuts are coming, well these are private sector budget cuts that we are cutting now right in the private sector. So job killer number 7. It's real. It's coming. Thank you."

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

"Mr. Speaker, I stand in strong support. This is job saver bill number 7. You know, it's funny. My good colleague from Hawaii Kai would knock this particular bill. He should know that if we were to charge a fee, or charge a tax, we're taking something away from the businesses.

"This bill, the language of which I wrote, especially the first part, the net operating loss part, what it does is it precludes you from carrying back your NOL. But we don't take it away. It's like borrowing money. It's like that \$275 million proposal of the Governor. It's 'kicking the can down the road.' So I'm kind of doing the same thing that she is.

"But I can't understand why my good friend from Hawaii Kai would object to this because if we don't do this, then we would have to raise taxes, and that's taking. This is just a function of borrowing.

"My last point, the State of California did exactly this except they did not allow you to carry back your losses, and they did not allow you to carry forward your losses, which is a lot more draconian. All we did was borrow. We didn't take. Thank you, Mr. Speaker."

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

"Mr. Speaker, I'm in strong support. Just a couple of other points to this measure. It basically, temporarily suspends the income tax net operating loss as expressed by the previous speaker. It saves about \$35.2 million in fiscal year '11. So it helps us generate some savings.

"The second point I need to make is it caps the itemized deductions at \$50,000 for individuals, \$100,000 for couples, \$80,000 for heads of household. It will save us about \$49.3 million per year.

"The third point is it makes the capital goods excise tax credit a nonrefundable credit. It is similar to the Governor's bill that was approved by this House and it went up to her for her signature, that would change the order of which you can claim the credits. By doing that, we save about \$7 million in fiscal year '11, \$2.1 million in fiscal year '12, \$700,000 in fiscal year '13, and \$200,000 in fiscal year '14.

"As our previous speaker expressed, all these provisions sunset December 31st, 2015. So these are temporary measures and this is in lieu of raising personal income taxes, or the general excise tax. Thank you."

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

"Mr. Speaker, I'm in opposition. Just short comments, Mr. Speaker. Throughout the Session I've been very careful, voting with reservations on tax increases and saying that at the end of the Session we'll have a clearer picture. I still believe that through the budget and other things that if it were up to me and I could make the decisions on the budget, that I believe, and the Minority believes, that we wouldn't have to raise taxes, or we wouldn't have to use measures like this. Although very creative and needed to move forward, I think we believe that we can still do a lot within our budget to define core services and cut more of our budget, Mr. Speaker, and find other ways to increase revenues.

"But Mr. Speaker, at this point in time, as the Session comes near an end, that we believe that there's more things that we can do so that we don't take taxes from those who are taxpayers. And in this case, this is mainly about business owners that decided to invest, and they're going to have losses. So you're talking about business owners that took, in this period of time when we had such a slowdown, businesses that could, took this money and invested it within their business and that's the kind of movement that we need.

"We need those businesses to be encouraged about what they see in the future and generate more jobs and generate more business activity. So that's one of the reasons why I will be voting no. Thank you."

Representative Ward rose to respond, stating:

"Brief rebuttal, Mr. Speaker, if I may. I really appreciate my colleague from Manoa, in Sherlock Holmes terms, the author of the crime has admitted that he is the author of the bill. And that he will take full responsibility even though he's given a few concessions that yes, it's only a loan. That is true. That is for granted. But the one thing that his profession and the advice that his profession gives, is to try to make systemically predictable the outcome of your risks.

"The point being that businesses need certainty, businesses need stability, and Mr. Speaker, we are not the Third World. In the Third World, you can have access to licenses and property, and in the next month you can lose that. We are doing with this what many places in the Third World do. They yank stuff according to who's in power. To have an economy with stable employees, you need stability.

"I think I'm preaching the choir to the author of the bill, but for the sake of the jobs that may be lost by this, that's what's down the line with job killer number 7. Thank you."

The motion was put to vote by the Chair and carried, and S.B. No. 2405, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 42 ayes to 7 noes, with Representatives Ching, Finnegan, Marumoto, Pine, Thielen, Ward and Wooley voting no, and with Representatives Bertram and Hanohano being excused.

At 5:33 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2937, SD 1, HD 1
S.B. No. 2408, SD 2, HD 1
S.B. No. 2834, SD 1
S.B. No. 2395, SD 2, HD 1
S.B. No. 2405, SD 2, HD 1

S.B. No. 2493, SD 2, HD 1:

Representative B. Oshiro moved that S.B. No. 2493, SD 2, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I'd like to disclose a potential conflict. My grandson is a second-year med student at the Medical School," and the Chair ruled, "no conflict."

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

Representative Thielen's written remarks are as follows:

"I am submitting comments from the UH John A. Burns School of Medicine (JABSOM) on SB No. 2493.

"What the bill does:

- Maintains the current allocation of monies in the Fund. There is no reduction to Tobacco Coalition.
- Adds new requirement that DoH and UH prepare a detailed account of revenues and expenditures.
- Extends the date JABSOM can use excess funds to cover operating expenses from 2011 to 20105, the same sunset date as its current allocation.

Why is this important to State?

- There is a shortage of physicians in Hawai'i by about 500 doctors, based on our population. This is even less than the national average.
- This is one of the most important investments the State can make to ensure healthcare for everyone in Hawai'i.

JABSOM is the best source of doctors for Hawai'i

- About 50% of the practicing physicians in Hawaii are graduates of JABSOM or its post-graduate residency programs.
- On the Neighbor Islands, where the shortages are the most acute, JABSOM is developing residency and rotation programs to give students and physicians exposure to rural practice, with some participants already indicating an interest in practicing there.

How this bill helps

- The Tobacco Settlement Fund provides funds to pay for the debt service on bonds for JABSOM construction. If there is an excess within the JABSOM allocation, it can be used for operating expenses. Currently, that excess is about \$4 million. The bill simply moves the sunset date on the use for operation purposes to conform to the sunset date for JABSOM's overall allocation, which is 2015.

Avoids General Fund Impact

- If it were not possible to use Tobacco Settlement funds for operating expenses, JABSOM would have to seek general fund monies to fulfill its important mission.
- Because of UH cuts, JABSOM has already lost \$5 million over the last 2 years; will probably have to share in future UH cutsback [sic], and has no reserves to absorb additional cuts such as the loss of tobacco settlement monies.

JABSOM is engaged in tobacco cessation efforts

- This includes training professionals in tobacco cessation and proving treatment."

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

Representative C. Lee rose in opposition to 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:

"The John A. Burns School of Medicine plays a vital role in training and producing medical doctors and staff for Hawaii. However, it has continually come to the Legislature, year after year, for more money to pay for its operation, after years of commitment to becoming financially self-sufficient. Using money from the Tobacco Settlement Fund to pay for continuing operations robs other public health programs and services of the funding for their operation.

"It is well past time that the School of Medicine sort out its issues, follow through on its commitment to fully funding the school of public health, and make a serious effort to help keep the doctors and staff it trains here in Hawaii, rather than continuing to lose them and their expensive taxpayer-subsidized education to other cities and states on the Mainland. This vote is not a vote against the School of Medicine, it is a vote against

the manner in which the school is operated, and the harm that is being done to other programs whose funding the School of Medicine is stealing."

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. This measure continues what we set about in 2007 to give the University of Hawaii Medical School the excess revenues from the Tobacco Settlement Funds for the express purpose of the operations of the Medical School.

"In 2007 we agreed to give it to them for four years. So it was supposed to lapse in 2011. This bill extends it out to 2015. Much has been in said over the course of almost a decade now in regards to the use of the Tobacco Settlement Funds for the Medical School and I won't reiterate all of the background.

"But I wanted to tell you that I had a great meeting with the Dean of the Medical School yesterday, and we did talk about a whole bunch of stuff, in addition to some of the history that I shared with him. But I'm still not certain what's going to happen to the Medical School or what their plans are should these funds disappear. In other words, what's going to happen to the Medical School when the \$4 million that they get currently from this fund for operations, is no longer available? What happens if this bill becomes law in 2015 when they no longer have access to these funds?

"There's no answer. I've asked them to get back to me. And I'll share it with the Body once they give me their answer, but I think it's important to understand the financial plan of the Medical School, and as we move forward, the financial plan of the Cancer Research Center as well, because as you know that building is coming up pretty quick and to my knowledge there are no plans on how we're going to pay for the operations of even that facility.

"A few years ago when I spoke to Dean Cadman, we talked about the financing of the operations of the Medical School and I remember that we decided in 2001 when we provided these funds that the Medical School was going to pick up and carry the cost of operating these facilities.

"Today they say it costs about \$10 million to operate the facility, and there's just not enough money that we give them and not enough money that they said they were going to raise, to cover the costs. That's the reason why they're using Tobacco Settlement Funds.

"When I talked to Dean Cadman a few years ago when we revisited this issue, he said that the reason why he wanted to separate the UH Medical School into an 11th campus of the University System, was to increase the indirect cost percentage for the campus.

"As you recall, it was about 38% for the entire campus of Manoa, and he thought they could go as high as 68%. Why that is important is because for every federal grant, whatever that indirect cost percentage is, pretty much you can multiply it so in the case of the original percentage of 33-35% you can multiply a million dollars and get \$350,000 more.

"He had desired to increase it to as high 70%. So at a million dollars you can get another \$700,000 to use for the operations. Back then, President McClain promised the Medical School 100% of the indirect costs, the RTRF funds, and yesterday, I found out that they only get 50%.

"So there's a whole bunch of moving things, and a whole bunch of concerns that I still have. But the bottom line is that we need a financial plan in order for all of us to succeed and to continue to support the Medical School and the University of Hawaii at Manoa, and the Cancer research center, they need to provide us with the financial plan.

"The other thing, Mr. Speaker, in regards to this bill. It's a clean bill. This bill can go to the Senate and get approved and sent to the Governor in days. My concern is that there are a number of other proposals floating around right now that propose to use additional tobacco settlement funds to balance the budget. When we do that, if we do that, we're going to pit the advocates of the anti-tobacco effort with the advocates of the Medical School. I hope that we don't have that happen in the next few days, but in

the event that that happens, sending this bill up to the Governor will just do that and we've got to be very careful.

"I hope that this Body can continue to support keeping the corpus of the endowment in the Hawaii Community Foundation intact. Support keeping the percentage going to anti-tobacco efforts if we're going to pass this bill. Thank you, Mr. Speaker."

Representative Awana 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 Awana's written remarks are as follows:

"Mr. Speaker, I rise in support with reservations. As I understand it, the original agreement between University of Hawaii Medical School and the State was that funds from the Tobacco Settlement Fund were to be used for a short period time which has now been extended for years. Once again, this measure asks for an extension. I support the University System and want the Medical School to succeed, but at the same time, other programs of which this fund were to be used are now suffering and I am not sure how many years the Medical School will be knocking on our doors for continued help. The Medical School must realize that the Tobacco Fund is not an open checkbook. For these reasons, and the reasons that came from previous speakers, I stand in support, but with reservations. Thank you, Mr. Speaker."

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

"Thank you Mr. Speaker, I rise in support of this measure. I'd just like to cover a couple of points on why this measure is important for us to vote today. What this bill does first of all, it maintains the current allocation of moneys in the Fund and there is no reduction to the Tobacco Coalition.

"It adds a new requirement that the Department of Health and the University of Hawaii prepare a detailed account of revenues and expenditures, and that's clearly set forth in this bill. It extends the date the John A. Burns School of Medicine can use excess funds to cover operating expenses from 2011, to 2015, the same sunset date as its current allocation.

"Why is this important to the State? Well a couple of points. There is a shortage of physicians in Hawaii by about 500 doctors. This is based upon our current population. This is far less than the national average.

"We are also one of the fastest aging communities and populations in the country. This is one of the most important investments we as a Legislature and a State can make to ensure basic health care for all of us in Hawaii.

"The John A. Burns School of Medicine is also a principal source for doctors in Hawaii. About 50% of the practicing physicians in Hawaii are graduates of the John A. Burns School of Medicine or its post-graduate residency programs.

"On the Neighbor Islands, Mr. Speaker, where the shortages are most acute, the John A. Burns School of Medicine is developing residency and rotation programs to give students and physicians exposure to rural practice with some participants already indicating an interest in practicing in our rural community.

"If we're not able to use the Tobacco Settlement Funds for operating expenses, the John A. Burns School of Medicine, Mr. Speaker, would seek general funds in order for it to fulfill its mission. Because of the University of Hawaii cuts, the John A. Burns School of Medicine has already suffered about \$5 million over the last two years, and there might be further cuts to the John A. Burns School of Medicine. Thank you, Mr. Speaker."

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

"Thank you very much, Mr. Speaker, in opposition. Just to address some of the comments made by the Finance Chair. You know Mr. Speaker, I

was your Higher Ed Committee Chair back in the day when the John A. Burns Medical School was actually started up.

"At that time as was noted by the Representative from Pearl City, then Dean Cadman proposed the Medical School and said basically it would be self-sufficient because with the dollars that they would get from grants and what not, it would cover the operational overhead, and it sounded too good to be true and frankly it was too good to be true. Now we're on the hook for millions of dollars to continue the Medical School.

"I think the Finance Chair has the wrong perspective on this. No one is saying that we don't need doctors, or there's not a doctor shortage. It's important that we fund doctors that can provide services in our rural areas and so on. There's absolutely no disagreement to that.

"However, there is another solution besides using general fund dollars to fund the Medical School and that is, have the University of Hawaii find the dollars within their own budget to pick that up. They do have autonomy. If you recall, Mr. Speaker, previously they were fined by the Environmental Protection Agency. They used to come to the Legislature to help pay for that fine. Today we say, that EPA violation happened on your watch, you pay for it out of your own budget. That's no different than the Med School.

"A promise was made. A promise has been broken. I don't see why we have to use other dollars, whether they're tobacco dollars or general fund dollars. Scarce dollars by the way, Mr. Speaker, that could be used for other purposes to continue funding med school. Thank you, Mr. Speaker."

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

"I'm standing in support. Mr. Speaker, I would like the words from the Representative of Wahiawa to be included as my own and I have some brief comments.

"The previous speaker is correct in regards to the issue of UH autonomy, however if we're going to use that as a policy issue, then we should be consistent with that with all schools and programs within the University System, including the community colleges.

"Mr. Speaker, in regards to the issue of why this is important, unfortunately we are in and have been in a healthcare crisis currently. I think as policy makers we have to decide, how do we address the issues of providing healthcare to the people and constituents of our communities.

"Mr. Speaker, we have a shortage of doctors as previously stated, about 500 and growing. We need throughout our communities more cardiovascular specialists, gastroenterologists, we need doctors to practice internal medicine and pediatricians, gynecologists.

"Mr. Speaker, we need these physicians to be trained to have a cultural sensitivity to this great State and we need them now. In fact we need them yesterday, Mr. Speaker. So I understand the issue about the rhetoric, about what has happened in the past, and the commitments and past promises broken. However, during this current fiscal situation, we have to actually pick where we need to attack. And one of the issues right now facing the people and is actually going to cost the lives of people around us is the issues of not having adequately trained physicians ready. Thank you."

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

"I rise in support, Mr. Speaker. First, I'd like the words of the Representatives from Mililani and Wahiawa recorded in the Journal as if they were my own. I agree with the issue of the need for more physicians, particularly under healthcare reform. They're going to be a lot more people with access and you got to have somebody to take care of them. So I think it's really important that we make sure we have an adequate supply of physicians in this State. That's what the Medical School was put there for, and I hope that's what they're going to do. Thank you."

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

Representative Takai rose to respond, stating:

"Thank you, Mr. Speaker. Just two things, I wanted to address the physician shortage. We all do realize that there's a physician shortage, but what's interesting to note is that there's no requirement for people going to the medical school, despite the fact that we provide the lion's share, the taxpayer's provide a lion's share of the cost of educating these students. There's no requirement for them to stay in Hawaii.

"So I asked the Dean, and we're going to kind of take a look at it, whether we can tie going to the University of Hawaii Medical School with a commitment to come back to Hawaii after you're done with your residency. If we can undertake that type of activity then I can say, you know what, our hard-earned dollars, whether it's tobacco dollars or tax credit dollars, are going to address the doctor shortage. That's number one.

"Number two. I mentioned it once, and I'll mention it again because I think it's a little bit complicated. Part of the financial plan, part of the financial plan that Dr. Cadman had in order to pay for the operations of the Medical School was that he was going to receive 100% of the indirect costs. I found out yesterday that they're only getting 50%. There's a 'shell game' going on and it's very confusing. So they take away \$3 or \$4 million to use it for other purposes, and that's why they have this big *puka*.

"So I think what we need to do is we need to figure out where all the sources of funds are, where the money is going, where the money should be going, and then get a real good picture as to what's happening. Because I believe that based on what I've heard in terms of all the research, the great research that's being done in the School of Medicine, there should be enough, or there should be more than enough money to support the operations of the Medical School if they got what they said they were going to get in the first place. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. In opposition and just a few brief comments related to the physician shortage. If it was a matter of addressing the physician shortage, we could take some of that money and directly apply it to things such as loan forgiveness programs, or strengthen the residency programs that we have here, where we could get a direct correlation of those people, those young doctors who are living and working here, and who are committed to staying and working here, rather than going into the operational costs for the Medical School. I would also like to adopt the words of the Representative from Pearl City in my opposition. Thank you."

Representative Yamane rose to respond, stating:

"Mr. Speaker, I'm standing a second time in rebuttal. Esteemed colleagues, when we're discussing the questions about physician shortages and addressing a wide variety of concerns regarding the healthcare.

"Mr. Speaker, these are some of the things that this money is being used for at the University School, JABSOM, to address the physicians now. Not residency programs, but for example, they're doing Big Island family medical care training expansion, in collaboration with UH Hilo and UH Manoa's nursing program. We're also providing fellowships and cardiovascular and gastroenterology services. We're also doing research in diabetes, neuroscience, HIV/AIDS, and tropical medicine affecting the people of Hawaii and the Pacific region. Also they're the only accredited hyperbaric treatment center. We're also doing collaboration with speech pathology and medical technology in Hawaii.

"Mr. Speaker, we have a huge number of local, local homegrown, home-born, home-educated students going to JABSOM. We're also encouraging them as we train them here, to stay here, and many do. We have a higher percentage than many of the other mainland universities' medical schools.

"So Mr. Speaker, if we really want to address the issue of having local doctors helping local people, then JABSOM is our only ticket right now. Thank you."

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

"I'm in support. Much has been said about former Dean Cadman and the promises that he made. Now, we have to move on. He's not here anymore. We have a new Dean in Dean Jerris Hedges and he's doing a good job. We need to support what they're doing and put out some good doctors for the State of Hawaii."

Representative Ward rose to respond, stating:

"Mr. Speaker, two footnotes and as I speak in support with reservations, one thing that came very clear from the University was that we are in the 85th percentile of retention of local graduates. In other words of all the other medical schools in the country, we're in the 85th percentile of people coming back. That actually equates to, for every 10 graduates, 5 of them come back and they put their services to the community.

"Second, one of the facts is that the Medical School attracts \$56 million per year in research and other grants. So it is a money generator and if we remember when the President M.R.C. Greenwood gave her address, the leverage with the University, for every dollar, it's about six dollars at least, that they're putting into the economy. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. Just briefly in opposition. I understand what the debate is, but the concern for me is not so much whether we're dealing with access or physician availability or whatever, but it's availability of funds. And especially in a time when funds are tight, I think we need to look at all sources to figure out, how do we best optimize funds that are available to us.

"A few years ago there was a debate about the Law School. Whether the viability of the Law School in Hawaii is a real thing or it's something that we should continue to subsidize. And at that point in time, there was a threat to close down the Law School because we didn't want to subsidize it anymore.

"Some of the ideas were, whether it's through tuition or better fundraising. Those are the things that we need to kind of look at. We're not talking about just simple government services. We're talking about a University System that has the ability to tackle different types of funds. And I can tell you, the University of Hawaii School of Medicine has probably one of the lowest tuitions in the nation. I've talked to some of the students recently and a majority of the students that are there probably paid more for high school than they are paying right now. Thank you."

Representative M. Oshiro rose to respond, stating:

"Mr. Speaker, thank you. I'm still in support. This is my second time just to make a couple more points. To that very question of requiring a certain practice upon their graduation. We need to be careful of that, Mr. Speaker. We start imposing those kinds of requirements upon graduate school students, it may backfire for a couple of reasons.

"Number one, it might prevent them from seeking professional training and residency outside the State which may be beneficial for them to return. We always hear about local folks going off into the mainland, getting professional skills, getting hands-on experience and coming home. And we've greatly benefitted from their exposure and work outside, so we need to keep that in mind.

"The second point. It may make Hawaii less competitive with applicants who want the freedom to choose their training site.

"Third, Mr. Speaker. No other medical school in the country imposes that kind of restriction upon their medical students.

"Another point I think I need to make, Mr. Speaker, on the John A. Burns School of Medicine. Let's think about the name of the institution itself. We need to remember that this was the dream of our former Governor John A. Burns, that local kids in Hawaii would have the opportunity to attend medical school. That we'll be able to grow and have

our own doctors who are comfortable with overall culture, who grew up in our community, who are part and parcel of who we are.

"That's why we have purposefully and intentionally kept the tuitions at the Medical School low so that it is affordable for our local families. A high tuition increase might force some of these applicants to seek assistance through waivers and scholarships elsewhere. Just things to keep in mind, Mr. Speaker. Thank you."

Representative M. Lee rose to respond, stating:

"Mr. Speaker, just briefly again in support. We've had a lot of talk about job killers. This is a job maker. There are so many ancillary services and supportive services that develop around healthcare and healthcare is truly a growth industry in this State. So again I do support this bill. Thank you."

The motion was put to vote by the Chair and carried, and S.B. No. 2493, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO USE OF TOBACCO SETTLEMENT FUNDS," passed Third Reading by a vote of 40 ayes to 8 noes, with Representatives Belatti, Berg, C. Lee, Luke, Morita, Rhoads, Takai and Takumi voting no, and with Representatives Aquino, Bertram and Hanohano being excused.

S.B. No. 2578, SD 1, HD 1:

Representative B. Oshiro moved that S.B. No. 2578, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Wooley 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 S.B. No. 2578, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 48 ayes, with Representatives Aquino, Bertram and Hanohano being excused.

S.B. No. 2643, SD 1, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2643, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX," passed Third Reading by a vote of 48 ayes, with Representatives Aquino, Bertram and Hanohano being excused.

S.B. No. 2001, SD 1, HD 1:

Representative B. Oshiro moved that S.B. No. 2001, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

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

"Mr. Speaker, I'm in support. This is a great bill, Mr. Speaker. This is trying to hold on to a very important credit in this time of fiscal uncertainty with a big deficit facing in front of us. We're having to look at deferring and/or getting rid of a lot of credits. This credit here, Mr. Speaker, is a very important credit. I invite people to look at the testimony that was submitted on this measure from the companies that are using it to hire, to expand, and to take advantage of the opportunities that are being brought home by our federal congressional delegation.

"In a perfect world, we could keep other credits going. But in an imperfect world we need to make balances and I believe this strikes the balance by continuing to have a good credit extended while still being fiscally responsible and revenue neutral. Thank you."

Representative Keith-Agaran rose to disclose a potential conflict of interest, stating:

"Thank you, Mr. Speaker. I would request a ruling on possible conflicts on both this bill, Senate Bill Nos. 2001, and 2401. I'm affiliated with a company that has invested in qualified high-tech businesses," 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 to SB 2001. This measure extends the tax credit for research activities for one year and repeals the technology infrastructure and high technology business investment tax credits. Investment is key to Hawaii's economic recovery. There are limited sources of revenue that will fuel recovery. These include more money being spent in Hawaii by residents, money spent by non-residents in Hawaii, and by investment.

"Hawaii has regularly been cited as one of the worst places to do business. This measure only exacerbates that already negative reputation by renegeing on this particular investment credit."

The motion was put to vote by the Chair and carried, and S.B. No. 2001, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 46 ayes to 2 noes, with Representatives Finnegan and Thielen voting no, and with Representatives Aquino, Bertram and Hanohano being excused.

S.B. No. 2401, SD 1, HD 1:

Representative B. Oshiro moved that S.B. No. 2401, SD 1, HD 1, pass Third Reading, seconded by Representative Evans.

Representative Keith-Agaran rose to disclose a potential conflict of interest, stating:

"Thank you, Mr. Speaker. I would request a ruling on possible conflicts on both this bill, Senate Bill Nos. 2001, and 2401. I'm affiliated with a company that has invested in qualified high-tech businesses," and the Chair ruled, "no conflict."

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

"Mr. Speaker, I rise in opposition. Mr. Speaker, what one hand giveth, the other hand taketh away. This is the take away side of it because it's going to be a hit to the high-tech people who are already operating. Those who are expecting some returns, and this suspends them. Before my colleague from Manoa reminds me that it's only a temporary suspension, it still is a way, in addition to the other things that basically we've told the high-tech industry, 'We had a love affair with you. We had great times together. But it's over.'

"Act 221 and the residuals of it with this bill and the other bill that we're passing, unfortunately Mr. Speaker, is going to say we're still going to go back to being a 'one horse town' with tourism, and hopefully maybe some of the defense contract spending will continue. Otherwise we've told them, we're finished. We've had our one night stand. Our decade stand, and we're over. Therefore, Mr. Speaker, this is job killer number 15 of the 15 job killers that we have introduced this Session. Thank you."

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

"Mr. Speaker, I'm standing in support. Gee, I don't know where to start. First of all, this bill will help us with the budget shortfall without again, raising general excise taxes. Without taking the TAT which will probably result in a real property tax increase. It just delays people taking their tax credit.

"In rebuttal to the prior speaker, it is not going to affect the businesses. These credits are based on money already invested. We're not taking money away from the companies. This money is gone already. It's in their pockets. All we're saying is to the investors who made the investment, we ask that you hold off on taking the credit. So this should not affect the

QHTBs, nor should it affect jobs because this is money that's already been invested. Thank you."

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

"Thank you, Mr. Speaker. In opposition and I'll rebut a little bit for my colleague behind me. A comment was made that this will not take away money from businesses. The way that I see this bill is, I've supported it all the way up until this point with reservations, and the way I see this bill is you're talking to investors. Investors who have already invested in corporations or companies, whether it be tech or film industry or whatever it might be, who have already invested in these companies.

"What you're telling them is, whether or not you need it back, because the investment money right now is pretty tight with these investors wherever they are. Whether or not you need the money now, it doesn't ask you can you push it off until future years. It tells you, you have to push it off until future years. You don't have an option if you've already invested.

"What this tells me is when I think with investor eyes and ears, which I'm not one of those big time investors, nor am I a little time investor actually. But whether or not what these investors are looking at, are they looking at across the nation, where can I invest my money. Well, Hawaii decided that they're going to play with their laws. All the promises that they made us. Shoop. Snap. Gone.

"Mr. Speaker, this is a reputation for Hawaii saying to investors out there across the world, across the nation, in our own home state. Don't believe us. In fact how is that going to affect the credit that we just approved but a minute ago? Are people really going to take us seriously, because when I see that kind of back pedal or putting off of giving these investment credits, to me it says huge on who we are as a state that we can't keep our promises.

"So will it affect businesses? I think it will. I think that businesses that are going out there to try and get investor money, those investors are going to look and say, 'Hmm. I'm not so sure,' because the bill that we just passed cut off potential investors coming in by cutting it short. This one will tell you, 'No. You can't claim your credit right now. In fact, why don't you wait a few years.'

"Mr. Speaker, it's possible that some of these investors could probably afford it more, but when you're talking about the perspective from where I come from, where I don't believe that we need to raise the GE tax. I don't believe that that particular threat, if we do make some really hard choices and we look at core services, and we look at additional cuts that we can make within our budget which we've already made some of them, and we offered some of them to you. I just really think that before we do this, we should be thinking about the investor. Thinking about that, and our businesses that can benefit from investors coming in and investing in their businesses. Thank you."

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

"Mr. Speaker, thank you very much. And Members of the House, I have some slight reservations. The only reservation that I have is that this measure is, and I understand why we need it. We need the money. But what I don't particularly care about is it's a deferral of the revenue that we have to pay back in a few years.

"As far as the businesses, that we're slighting business. On the contrary, we've had the most generous high-tech tax credit in the nation. For years they got a windfall from the generosity of the taxpayers of the State of Hawaii. So I think this was a gift for them for a very little while, and in fact, I think we're being too generous. I would not let them get the money back after this tax credit. I would have kept the tax credit, and not made a deferral for it. Thank you."

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

"Mr. Speaker, I'm in support. It does seem to me that the Minority Leader made some good points. I do think it does raise some questions about whether investors will look at Hawaii the same way that they did before we altered this.

"I think the problem is that there are other aspects of what we're doing here that also will have an effect on investors. One is, if you look at Furlough Fridays, I don't see it as an investor. Depending on what your commitment to Hawaii is, that as a cut has to be seen as concerning if you're looking for an educated workforce. Things as basic as the Department of Health being cut back to where we're not monitoring our restaurants to be sure that you can eat at a restaurant without getting E. coli. I think that also eventually affects investment. I think not having agricultural inspectors is for certain kinds of businesses, and maybe not ones that are affected by the high-technology tax credit, but maybe some that are, I'm not sure. That also is a detriment.

"The problem is the choices that we face right now are very stark. We either keep the very basic services of public safety and education, or we give people really generous investment credits. Personally I think the decision is pretty clear. You go with the basics and I think that's what we're doing in this case. Mahalo."

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

"Thank you, Mr. Speaker, in support with some slight reservations. In a perfect world, I don't think this bill would be necessary. But as the previous speakers have said we're in an imperfect world. That \$92 million that will be saved could definitely come in handy to funding a furlough agreement.

"This will change investor behavior, Mr. Speaker. And I think what it's going to do is it's going to change investor behavior in that, you invest in the product, in the company and its merits. If you've got a winner company, you've got a winner idea, people are going to beat a path to your door. Build a better mouse trap, the world will come.

"We're not the only state going through a fiscal crisis. Other states are being much more draconian and just taking huge swipes all across the board, even going retroactive, despite the threat of lawsuits.

"It's a difficult one for me personally, but at the same time I understand that we have so many competing interests. I hope that investors now will look at the product, the company and what they're developing. I think when they do look at some of the winners especially in aquaculture and other areas, that they will continue to invest because these are things that are going to be very successful in the future. So it's a tough call, Mr. Speaker, but in the end, I think unfortunately we need to continue to move this one along. Thank you."

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

"Thank you, just with reservations. Mr. Speaker, I would like to just say that I reiterate that not only do we want to keep our word because our reputation is so important. With the information that the Representative of Hawaii Kai mentioned, that we're the most expensive place to do business only behind Tokyo, in the entire world. I've never been to Tokyo, but I imagine Tokyo and the services that are there, and it's just not a good reflection on Hawaii.

"But in a slight rebuttal to the Representative from Maui. Yes, in a perfect world, to use the term again, you may have those ideas that are so readily apparent that they're winners. But the fact is that's not how business works or you wouldn't have all these miracle stories. The fact is that it's like cooking. There are so many different elements to it and some of the elements might be, am I getting a credit for this? What should I do? What's the incentive for me to invest? So I don't think it's always that simplistic. I just don't think it's that simplistic.

"I also rebut somewhat the good Representative, my neighbor from Downtown. There are some other reasons for some of the other ills we've had. That is not to take away from business. We don't want to take away

from business. I'd also like additional written comments, Mr. Speaker. Thank you."

Representative Ching's written remarks are as follows:

"Thank you, Mr. Speaker. I rise with reservations on S.B. 2401--Relating to State Finances. This bill will temporarily suspend the claiming of technology infrastructure renovation and high technology business investment tax credits.

"To understand and appreciate the fiscal crisis we face as a State, it is a difficult decision to cut funding to any group or organizations. All sectors of the economy and State must be equally cognizant of the shortfalls we as state face currently face.

"My reservations are based on the premise expressed by testimony submitted by SDC Hawaii, LLC: "this proposed bill...upsets existing law and is certain to damage those companies that have relied on the investor tax credit to develop their financing plans for the remainder of this year." Making further changes to Act 221 prior to its established sunset date continues a dangerous precedent set last year wherein the Legislature upset what investors and local tech companies considered to be stable law. Major provisions within the law were then changed last Session, critically impacting companies (and costing jobs) throughout the state. "Requiring investors to defer credit claims to 2013 for investments already made could have a substantial adverse impact on their tax and cash flow situations and therefore raise significant constitutional problems of retroactivity." Thank you."

The motion was put to vote by the Chair and carried, and S.B. No. 2401, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO STATE FINANCES," passed Third Reading by a vote of 42 ayes to 6 noes, with Representatives Berg, Finnegan, Keith-Agaran, C. Lee, Thielen and Ward voting no, with Representatives Aquino, Bertram and Hanohano being excused.

At 6:11 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 2493, SD 2, HD 1
S.B. No. 2578, SD 1, HD 1
S.B. No. 2643, SD 1, HD 1
S.B. No. 2001, SD 1, HD 1
S.B. No. 2401, SD 1, HD 1

S.B. No. 2400, SD 1, HD 1:

On motion by Representative B. Oshiro, seconded by Representative Evans and carried, S.B. No. 2400, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO FUNDS," passed Third Reading by a vote of 48 ayes, with Representatives Aquino, Bertram and Hanohano being excused.

At 6:12 o'clock p.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 2400, SD 1, HD 1

CONFERENCE COMMITTEE REPORTS

At this time, the Chair announced:

"Members, please note the 48-hour notice for Conf. Com. Rep. No. 1-10."

Representatives Yamane, Mizuno and Nishimoto, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate in H.B. No. 1642, HD 1, SD 2, presented a report (Conf. Com. Rep. No. 1-10) recommending that H.B. No. 1642, HD 1, SD 2, as amended in CD 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 1-10 and H.B. No. 1642, HD 1, SD 2, CD 1, entitled: "A BILL FOR AN ACT RELATING TO THE PURCHASES OF HEALTH AND HUMAN SERVICES," was deferred for a period of 48 hours.

END OF CALENDAR

Stand. Com. No. 1209-10 and S.B. No. 2626, SD 1, HD1:

At this time, the Chair stated:

"Members, let's go back to the end of calendar measures on page 17. Stand. Com. Rep. No. 1209-10, S.B. No. 2626, SD 1, HD 1."

At this time, Representative Souki withdrew his motion to table the measure, and Representative Cabanilla withdrew her second.

Representative B. Oshiro moved that notwithstanding the recommendations contained in Standing Committee Report No. 1209-10, that S.B. No. 2626, SD 1, HD 1, be recommitted to the Committee on Finance, seconded by Representative Evans.

Representative Manahan rose and asked that the Clerk record a no vote for him on the motion to recommit, and the Chair "so ordered."

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

"Mr. Speaker, I rise in support of the motion. I want you to know that I can now use this 'barf bag' as a recycling bag rather than for the worst piece of legislation this Session has had."

Representative M. Oshiro rose to speak in opposition to the motion to recommit, stating:

"Mr. Speaker, I'm going to speak against this motion. I apologize, it may have been inartfully drafted at this stage, but the basic intention is clear, Mr. Speaker. I think it's to curb a renegade Governor who both civil servants, career civil servants, administrators have concerns, and you've heard about them today, regarding the administration of Department of Human Services, Department of Ag, Department of Health, Department of Land and Natural Resources. What might occur when we leave these Chambers?"

"So Mr. Speaker, I was hoping that this measure could move forward. We could have further discussion, further refinement of it. Because it simply is to protect the civil service system, and not allow it to be embedded with political favorites as she leaves office. So with that, Mr. Speaker, I'll be voting in opposition to this motion. Thank you."

Representative Souki rose and stated:

"Mr. Speaker, I wish to object to the previous speaker who was speaking against the motion, and he should speak on the issue of the recommitment and not on the particular merits or the demerits of the bill."

The Chair responded, stating:

"The Chair recognizes that."

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

"Thank you, Mr. Speaker. I'm just responding to the Finance Chair. I'm very much in support of the motion to recommit. Mr. Speaker, this measure took a hatchet and an Uzi and any other type of firearm to a measure of civil service. When you look at the bill, it just was absolutely appalling. The \$500,000 fine against the Governor where the Governor would have no immunity. And then the ability to execute on property held as tenants by the entirety.

"I mean you go through the bill and it becomes worse and worse with each line, so I really applaud the fact that this bill is going to be recommitted. Thank you."

Representative Yamane rose to speak in opposition to the motion to recommit, stating:

"Mr. Speaker, I'm standing in opposition to the recommittal. Thank you, Mr. Speaker. Actually the reason why I'm standing in opposition is I wish that this measure could continue to be discussed. I think there are some elements in here that have validity, that need to be further discussed. And if we're going to talk about hatchet and Uzis, I think that's what the Departments of Health, and Human Services, the income maintenance workers are feeling right now. Thank you."

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

"Thank you Mr. Speaker, I'm in favor of the motion to recommit and I couldn't agree more with the Speaker Emeritus when he said when he first made the motion that it degenerates the House and smacks of pettiness. So I think we should all vote for recommittal. Thank you."

Representative Brower rose to speak in support of the motion to recommit with reservations, stating:

"Mr. Speaker, with reservations. I know we've had a lot of vexatious conversations, but it's really the 'pot calling the kettle black.' I remember this current Administration, in the beginning they weeded out civil service placements from the previous administration, and people are acting like they're not aware of this.

"A lot of us here believe we're champions of small businesses. We'd like to see government run like a private sector business, and this bill in a small way would help to do that. So without politics, arguably this is a good bill. It's unfortunate that it had to go down like this. In addition, you give someone a job for eight years; do you owe them a job for the rest of their lives? I agree with the comments of the Finance Chair and support him on it."

Representative Tokioka rose and asked that the Clerk record a no vote for him on the motion to recommit, and the Chair "so ordered."

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

"In strong support, and I do feel as many do, that the Representative from Maui hit it on the nose when he talked about how punitive it was."

Representative Har rose in opposition to the motion to recommit and asked that the remarks of Representatives M. Oshiro and Brower be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

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

"I'm in support. I just can't believe that this still continues. I'm in disbelief by what has just been said on this Floor, that this was about revenge. Have we forgotten where we came from and how this government was formed? It was never about revenge. It was about equality for ideas.

"The Governor didn't do this. She may have eliminated positions that she felt were no longer needed, but she never did this. Where she would punish any House Member, or any of the Democrat Party just for opposing her. I cannot believe this discussion is still continuing. But I want to thank Members of this Body for in the end recognizing that this is about democracy. Not about power and the abuse of it."

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

"Thank you, Mr. Speaker. In support of the recommittal. May I have the word of speaker of Wailuku, minus the part directed at the Finance Chair, entered into the record as if they were my own? And it's time to moveon.org, people."

The motion was put to vote by the Chair and carried, and S.B. No. 2626, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC SERVICE," was recommitted to the Committee on Finance, with Representatives Har, Manahan, M. Oshiro, Tokioka and Yamane voting no, and with Representatives Aquino, Bertram and Hanohano being excused.

Representative M. Oshiro, for the Committee on Finance presented a report (Stand. Com. Rep. No. 1238-10) recommending that S.B. No. 1141, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative B. Oshiro moved that notwithstanding the recommendations contained in Standing Committee Report No. 1238-10, that S.B. No. 1141, SD 2, HD 2, be recommitted to the Committee on Finance, seconded by Representative Evans.

The motion was put to vote by the Chair and carried, and S.B. No. 1141, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," was recommitted to the Committee on Finance, with Representatives Aquino, Bertram and Hanohano being excused.

ANNOUNCEMENTS

Representative Luke: "Thank you, Mr. Speaker. Mr. Speaker, with your indulgence and with the Member's indulgence, can I say hello to my son who is watching us diligently on TV? Hi, Logan. Thank you."

Representative M. Lee, for the Committee on Finance requested a waiver of the 48-hour advanced notice requirement for the purpose of hearing the following measures on Wednesday, April 7, 2010, at 2:30 p.m. in Conference Room 308, and the Chair "so ordered."

H.C.R. No. 216

H.C.R. No. 199

Representative Tokioka: "Thank you, Mr. Speaker. I'd like to let the caucus and everyone who's watching at home, Logan, and everyone else know that, tomorrow at 12:00 outside of Conference Room 329 we will be having a fundraiser for the Easter Seals and ARC on Kauai.

"So we'll have the pickup for many of you who have purchased your sushi from The Alley Restaurant at Aiea Bowl. Come and pick it up. They will be brining extra for those who have not already signed up. Thank you very much, Mr. Speaker."

ADJOURNMENT

At 6:22 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, April 7, 2010. (Representatives Aquino, Bertram and Hanohano were excused.)

HOUSE COMMUNICATIONS

House Communication dated April 6, 2010, from Patricia Mau-Shimizu, Chief Clerk of the House of Representatives, to the Honorable President and Members of the Senate, informing the Senate that the House has disagreed to the amendments made by the Senate to the following House Bills:

H.B. No. 2056, HD 1, SD 1

H.B. No. 2197, HD 1, SD 1

H.B. No. 2568, SD 1

"April 6, 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 Senate Bills, copies of which are attached hereto:

S.B. No. 2570, S.D.1, H.D.2, entitled:

"PROPOSING AN AMENDMENT TO ARTICLE X, SECTION 2, OF THE HAWAII CONSTITUTION, TO CHANGE THE BOARD OF EDUCATION FROM AN ELECTED BOARD TO AN APPOINTED BOARD."

S.B. No. 2807, S.D.2, H.D.2, entitled:

"PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 6, OF THE HAWAII CONSTITUTION, RELATING TO THE TAX REBATE REQUIREMENT."

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"

OTHER COMMUNICATIONS

A copy of the following Senate Communication to the Governor was received by the Clerk:

"April 6, 2010

The Honorable Linda Lingle
Governor of the State of Hawaii
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 to the following bill(s), a copy of which is attached hereto:

H.B. No. 2376, H.D.3, S.D.2
"PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE BOARD OF EDUCATION."

Respectfully,
/s/ Carol Taniguchi
CAROL T. TANIGUCHI
Clerk of the Senate

Enclosure

cc: Patricia Mau-Shimizu
Clerk of the House"