

## FORTY-SEVENTH DAY

**Tuesday, April 11, 2017**

The House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017, convened at 9:07 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Mr. Pono Tokioka, after which the Roll was called showing all Members present with the exception of Representatives Ing and Quinlan, who were excused.

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

## SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 515 through 540) were received and announced by the Clerk:

Sen. Com. No. 515, transmitting H.B. No. 90, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 516, transmitting H.B. No. 100, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE BUDGET," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 517, transmitting H.B. No. 186, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO COFFEE BERRY BORER BEETLE," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 518, transmitting H.B. No. 209, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 519, transmitting H.B. No. 427, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO DARK NIGHT SKIES PROTECTION," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 520, transmitting H.B. No. 475, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO MOVIE THEATRES," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 521, transmitting H.B. No. 492, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII TEACHER STANDARDS BOARD," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 522, transmitting H.B. No. 632, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO WATER INFRASTRUCTURE LOANS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 523, transmitting H.B. No. 655, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ROSE-RINGED PARAKEET," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 524, transmitting H.B. No. 832, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 525, transmitting H.B. No. 880, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF EDUCATION," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 526, transmitting H.B. No. 909, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 527, transmitting H.B. No. 918, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY INTERVENTION," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 528, transmitting H.B. No. 936, SD 1, entitled: "A BILL FOR AN ACT RELATING TO TEACHER INCENTIVES," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 529, transmitting H.B. No. 937, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY LEARNING," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 530, transmitting H.B. No. 942, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO FILIPINO VETERANS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 531, transmitting H.B. No. 1006, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO INVASIVE SPECIES," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 532, transmitting H.B. No. 1028, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CHARITABLE ORGANIZATIONS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 533, transmitting H.B. No. 1229, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 534, transmitting H.B. No. 1230, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST MAUI-GROWN COFFEE, INC.," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 535, transmitting H.B. No. 1322, HD 2, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CONSTRUCTION CONTRACTS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 536, transmitting H.B. No. 1325, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO BIOSECURITY," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 537, transmitting H.B. No. 1389, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO LIVESTOCK HARVEST FACILITIES," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 538, transmitting H.B. No. 1469, HD 1, SD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 539, transmitting H.B. No. 1498, HD 1, SD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," which passed Third Reading in the Senate on April 7, 2017.

Sen. Com. No. 540, dated April 7, 2017, informing the House that the Senate has disagreed to the amendments proposed by the House to the following Senate Bills:

S.B. No. 174, SD 2, HD 2  
 S.B. No. 272, SD 2, HD 1  
 S.B. No. 314, SD 1, HD 1  
 S.B. No. 322, SD 1, HD 1  
 S.B. No. 382, SD 2, HD 1  
 S.B. No. 387, SD 1, HD 1  
 S.B. No. 396, SD 1, HD 1  
 S.B. No. 410, SD 1, HD 1  
 S.B. No. 420, SD 1, HD 1  
 S.B. No. 423, SD 1, HD 1  
 S.B. No. 478, SD 1, HD 1

S.B. No. 513, SD 1, HD 2  
 S.B. No. 572, SD 1, HD 1  
 S.B. No. 612, SD 2, HD 1  
 S.B. No. 655, SD 2, HD 2  
 S.B. No. 658, SD 2, HD 2  
 S.B. No. 714, SD 2, HD 1  
 S.B. No. 715, SD 2, HD 1  
 S.B. No. 718, SD 1, HD 1  
 S.B. No. 723, SD 2, HD 1  
 S.B. No. 773, SD 2, HD 1  
 S.B. No. 776, SD 2, HD 1  
 S.B. No. 808, SD 1, HD 1  
 S.B. No. 895, SD 1, HD 2  
 S.B. No. 900, SD 1, HD 1  
 S.B. No. 911, SD 1, HD 1  
 S.B. No. 912, SD 2, HD 1  
 S.B. No. 914, SD 1, HD 1  
 S.B. No. 915, SD 1, HD 1  
 S.B. No. 916, SD 1, HD 1  
 S.B. No. 917, SD 1, HD 1  
 S.B. No. 918, SD 1, HD 1  
 S.B. No. 920, SD 1, HD 1  
 S.B. No. 921, SD 1, HD 1  
 S.B. No. 925, SD 1, HD 1  
 S.B. No. 926, SD 1, HD 1  
 S.B. No. 936, SD 2, HD 1  
 S.B. No. 946, SD 1, HD 1  
 S.B. No. 948, HD 1  
 S.B. No. 949, SD 1, HD 1  
 S.B. No. 950, SD 2, HD 1  
 S.B. No. 951, SD 2, HD 1  
 S.B. No. 952, SD 1, HD 1  
 S.B. No. 953, SD 2, HD 1  
 S.B. No. 976, HD 1  
 S.B. No. 987, SD 1, HD 1  
 S.B. No. 992, SD 2, HD 1  
 S.B. No. 994, SD 1, HD 1  
 S.B. No. 1040, SD 2, HD 1  
 S.B. No. 1068, SD 1, HD 1  
 S.B. No. 1073, SD 1, HD 1  
 S.B. No. 1074, SD 1, HD 1  
 S.B. No. 1148, SD 2, HD 2  
 S.B. No. 1150, SD 2, HD 3  
 S.B. No. 1171, SD 1, HD 1  
 S.B. No. 1227, HD 2

Representative Saiki moved to disagree to the amendments made by the Senate to the following House Bills, seconded by Representative Evans and carried: (Representatives Ing and Quinlan were excused.)

H.B. No. 90, HD 1, (SD 2)  
 H.B. No. 100, HD 1, (SD 1)  
 H.B. No. 186, HD 1, (SD 2)  
 H.B. No. 209, HD 1, (SD 1)  
 H.B. No. 427, HD 2, (SD 1)  
 H.B. No. 475, HD 1, (SD 2)  
 H.B. No. 492, HD 2, (SD 1)  
 H.B. No. 632, HD 1, (SD 1)  
 H.B. No. 655, HD 1, (SD 1)  
 H.B. No. 832, HD 1, (SD 1)  
 H.B. No. 880, HD 1, (SD 2)  
 H.B. No. 909, HD 2, (SD 1)  
 H.B. No. 918, HD 1, (SD 1)  
 H.B. No. 936, (SD 1)  
 H.B. No. 937, HD 1, (SD 1)  
 H.B. No. 942, HD 1, (SD 1)  
 H.B. No. 1006, HD 1, (SD 2)  
 H.B. No. 1028, HD 2, (SD 1)  
 H.B. No. 1229, HD 1, (SD 1)  
 H.B. No. 1230, HD 1, (SD 2)  
 H.B. No. 1322, HD 2, (SD 1)  
 H.B. No. 1325, HD 1, (SD 1)

H.B. No. 1389, HD 1, (SD 1)  
 H.B. No. 1469, HD 1, (SD 2)  
 H.B. No. 1498, HD 1, (SD 1)

## ORDER OF THE DAY

### SUSPENSION OF RULES

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

### CONSENT CALENDAR

#### UNFINISHED BUSINESS

At this time, the Chair stated:

"Members, there will be no discussion on these items agreed to by the body for placement on consent calendar."

At 9:15 o'clock a.m., Representative Evans requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:15 o'clock a.m.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1733) recommending that S.B. No. 602, as amended in HD 1, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 602, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EXEMPTIONS FROM REGISTRATION FEES," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1734) recommending that S.B. No. 885, SD 2, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 885, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE STATE RISK MANAGEMENT AND INSURANCE ADMINISTRATION," passed Third Reading by a vote of 48 ayes to 1 no, with Representative McDermott voting no, and with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1735) recommending that S.B. No. 909, SD 2, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 909, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO ENERGY ASSURANCE," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1737) recommending that S.B. No. 902, SD 1, as amended in HD 1, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 902, SD 1, HD 1 pass Third Reading, seconded by Representative Evans.

Representative Oshiro's written remarks in support of the measure are as follows:

"I support the general intent of this bill to make updates to the statute governing the High Technology Development Corporation. The bill:

1. Changes the name of the High Technology Development Corporation to the Hawaii Technology Development Corporation;
2. Changes all references to "high technology" to "technology" in Chapter 206M, Hawaii Revised Statutes; and
3. Repeals the Hawaii Software Service Center established within the High Technology Development Corporation because it has been unfunded and moribund for at least 10 years.

"Nevertheless, my concern lies in the consequences of these seemingly minor changes in names and terminology. There might be some legal and accountability problems with these name changes, such as changing 'high technology' to 'technology' in Chapter 206M, Hawaii Revised Statutes. Despite the best efforts in Section 9 of SB 902, SD 1, HD 1, the bill does not clearly and unambiguously reconcile these name changes with present and on-going contractual and/or legal or procedural agreements and understandings. Noticeably, there was no attorney general review of or comment made on any drafts of the bill.

"There is also a concern that, given the broad title of the bill – Relating to the High Technology Development Corporation – 'new' language or text could be inserted by the conference committee.

"For the aforementioned reasons, I support passage of this measure with these concerns and ask that the conference committee bear these in mind."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 902, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE HIGH TECHNOLOGY DEVELOPMENT CORPORATION," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1739) recommending that S.B. No. 850, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 850, HD 2, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION TECHNOLOGY," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Woodson, for the Committee on Education, presented a report (Stand. Com. Rep. No. 1740) recommending that S.B. No. 194, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 194, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TUBERCULOSIS TESTING," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1741) recommending that S.B. No. 1244, SD 2, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1244, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1743) recommending that S.B. No. 969, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 969, HD 2, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1745) recommending that S.B. No. 491, SD 1, as amended in HD 1, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 491, SD 1, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE DEPARTMENT OF THE PROSECUTING ATTORNEY OF THE CITY AND COUNTY OF HONOLULU," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1746) recommending that S.B. No. 1006, SD 1, as amended in HD 1, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1006, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE ESTATE AND GENERATION-SKIPPING TRANSFER TAXES," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Nishimoto, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1747) recommending that S.B. No. 997, SD 1, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 997, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Nishimoto, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1748) recommending that S.B. No. 429, SD 2, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 429, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Nishimoto, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1750) recommending that S.B. No. 288, SD 2, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 288, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO SELF-SERVICE STORAGE FACILITIES," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Nishimoto, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1751) recommending that S.B. No. 603, SD 1, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 603, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CORRECTIONS," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1752) recommending that S.B. No. 26, SD 1, as amended in HD 1, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 26, SD 1, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE OFFICE OF THE PROSECUTING ATTORNEY FOR HAWAII COUNTY," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

Representative Takumi, for the Committee on Consumer Protection & Commerce, presented a report (Stand. Com. Rep. No. 1753) recommending that S.B. No. 1201, SD 2, HD 2, as amended in HD 3, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1201, SD 2, HD 3, entitled: "A BILL FOR AN ACT RELATING TO TECHNOLOGY," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

**S.B. No. 339, SD 1, HD 1:**

On motion by Representative Saiki, seconded by Representative Evans and carried, S.B. No. 339, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMATION CHARGING," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

**S.B. No. 1163, SD 1, HD 1:**

On motion by Representative Saiki, seconded by Representative Evans and carried, S.B. No. 1163, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO AERONAUTICS," passed Third Reading by a vote of 49 ayes, with Representatives Ing and Quinlan being excused.

At this time, the Chair stated:

"Members, please remember to submit to the Clerk the list of Senate bills on the consent calendar for which you will be inserting written comments in support or in opposition. This must be done by the adjournment of today's floor session."

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

S.B. No. 602, HD 1  
 S.B. No. 885, SD 2, HD 2  
 S.B. No. 909, SD 2, HD 2  
 S.B. No. 902, SD 1, HD 1  
 S.B. No. 850, HD 2  
 S.B. No. 194, HD 2  
 S.B. No. 1244, SD 2, HD 2  
 S.B. No. 969, HD 2  
 S.B. No. 491, SD 1, HD 1  
 S.B. No. 1006, SD 1, HD 1  
 S.B. No. 997, SD 1, HD 2  
 S.B. No. 429, SD 2, HD 2  
 S.B. No. 288, SD 2, HD 2  
 S.B. No. 603, SD 1, HD 2  
 S.B. No. 26, SD 1, HD 1  
 S.B. No. 1201, SD 2, HD 3

S.B. No. 339, SD 1, HD 1  
 S.B. No. 1163, SD 1, HD 1

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

The House of Representatives reconvened at 9:25 o'clock a.m.

**ORDINARY CALENDAR**

**UNFINISHED BUSINESS**

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1732) recommending that S.B. No. 545, SD 2, as amended in HD 1, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 545, SD 2, HD 1 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. Strong support. I just wanted to thank the senator from Maui for having the foresight since Hawaii was picked for the 2020 festival and making sure that we have a commission to prepare for it. And after having discussions with DBEDT in the Finance hearing, it kind of, I think, encouraged me even more to support things like this, because we have no type of relationship with any other Polynesian nation. And that was said by the director of DBEDT, that he wishes they had one, but that they don't have one right now.

"And so, I'm hoping that if this does get appropriation and if they actually are able to have a commission, that we have some specific directives as to how we're going to build those relationships, whether it's learning more about geothermal energy from New Zealand, or whether it's about learning how to manage land properties from Tonga, or any of these nations and the different things that they go through that we're facing here as an island nation as well. But I'm hoping that the outcomes of this festival can be more than just hosting it for one year, but can be an increase of relationship between us and other Polynesian nations. 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. 545, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO THE FESTIVAL OF PACIFIC ARTS," passed Third Reading by a vote of 51 ayes.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1736) recommending that S.B. No. 559, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 559, SD 1, HD 2 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm rising to speak in strong support of the measure. This measure, this bill, requires the State to expand strategies and mechanisms to reduce greenhouse gas emissions statewide in alignment with the principles and goals adopted in the Paris agreement.

"This is an incredibly important step for the State to take. We need to do it across the environmental sector, and I'd like to tell you why. Michael Cox, who served as a climate change adviser to EPA's Region 10 and worked at the EPA for 25 years, has submitted a letter of resignation to the EPA administrator, Administrator Pruitt. And he did this because the Trump Administration is seeking to defund the EPA by 31%, layoff 25% of its employees, and axe 56 programs, including two that focus on protecting children from lead. And this was revealed by a budget memo that was published by the Washington Post.

"Mr. Speaker, I would like to have permission to insert Mr. Michael Cox's letter to Administrator Pruitt into the Journal, and it will detail what is going on. It's a very respectful, heartfelt resignation, and I think he deserves a lot of credit for it. Thank you."

Representative Thielen submitted the following letter:

March 31st, 2017

Dear Administrator Pruitt, My name is Michael Cox. Today is my last day after working at EPA for over 25 years. I am writing this note because I, along with many EPA staff, are becoming increasingly alarmed about the direction of EPA under your leadership. I understand there are people in the country who distrust EPA, and think we are overreaching our mission. I believe we need to listen to those voices and try to make changes where warranted.

However, I, and many staff, firmly believe the policies this Administration is advancing are contrary to what the majority of the American people, who pay our salaries, want EPA to accomplish, which are to ensure the air their children breathe is safe; the land they live, play, and hunt on to be free of toxic chemicals; and the water they drink, the lakes they swim in, and the rivers they fish in to be clean.

I assume you are aware of the current low morale of EPA career staff. I have worked under six Administrations with political appointees leading EPA from both parties. This is the first time I remember staff openly dismissing and mocking the environmental policies of an Administration and by extension you, the individual selected to implement the policies. The message we are hearing is that this Administration is working to dismantle EPA and its staff as quickly as possible. I have highlighted several areas below which are emblematic of why morale at EPA is the lowest since I started in 1987.

1. Denying Fundamental Climate Science: This strikes at the core of the concerns from EPA staff. It was surprising, no shocking, when you stated on National television that carbon dioxide is not a primary contributor to climate change. This is settled science and we have too many other important scientific issues to investigate related to climate change to waste our time debating this issue. I am reminded of a Congressional hearing several years ago when Congressman Henry Waxman asked the CEOs of the major tobacco companies if smoking caused lung cancer. All of the CEOs categorically denied that smoking caused lung cancer. We know, of course, that was not true. You will continue to undermine your credibility and integrity with EPA staff, and the majority of the public, if you continue to question this basic science of climate change.

We are seeing the effects of climate change on the landscape right now. If you do not believe me, travel to Alaska during your tenure and talk with the Alaskans whose way of life is being fundamentally changed because of climate change; visit the Pacific Northwest and see where the streams are too warm for our salmon to survive in the summer; visit the oyster farmers in Puget Sound whose stocks are being altered from the oceans becoming more acidic; talk to the ski area operators who are seeing less snowpack and worrying about their future; and talk to the farmers in Eastern Washington who are struggling to have enough water to grow their crops and water their cattle. The changes I am referencing are not impacts projected for the future, but are happening now.

It was encouraging that the President did not withdraw from the Paris Climate Agreement. However, the message from the President's other actions sends the signal to the rest of the world that the USA is no longer a leader in reducing greenhouse gas emissions and moving to a clean energy economy. You are correct that we do not need to choose between jobs and environmental protection. The question is what jobs? Are they jobs to move us forward to a cleaner energy economy or backwards to a dirtier fossil fuel economy?

Your statement that "we got a bad deal" in the Paris Climate Agreement highlights another case where you have not done your homework. The Paris Agreement, while not perfect, was a huge step forward in battling climate change and moving the world in the direction of newer cleaner energy technology.

Fortunately, there are other global leaders, including China and India, who understand the urgency of the problem and are taking action. Domestically we have Governors, Mayors, CEOs, and Tribal leaders who will fill the void created by the lack of Federal leadership. They will take on the task of reducing greenhouse gases that are causing warming and put in place actions that will make their communities more resilient from climate change. And they will do this while their communities continue to prosper.

2. "Our Big Day Today": The email headline that greeted EPA staff on Tuesday March 28th was "Our Big Day Today." The question many of us had was who is "our" referring to? Was it the many EPA career staff that worked for years developing the work that was rescinded or revoked? Was it the EPA career staff that should be jubilant the President came to EPA to

poke a finger in our eye (or as many people indicated to give us the finger)? Was it the fossil fuel industry that will benefit most from the President's action? Or was it the coal miners present at the event who are being given false hope their jobs are coming back?

We were frankly insulted that the President would come to EPA to announce that he is overturning the work to battle the most urgent environmental problem of our generation – climate change. It was beyond comprehension that an Administration could be so arrogant and callous.

3. Giving False Hope: The President is right that we need to help the coal miners who have been displaced and help retrain them for the future. The President is, however, wrong that coal jobs will be coming back after the repeal of the climate change actions. To state otherwise is false and misleading. It is amazing that an Administration that touts itself as business savvy has not done its homework on the market forces at play with coal.

The number of people employed in coal production in the USA has been declining since the high point in 1925 when over 860,000 people were employed to the current low point in 2017 with about 77,000 people employed (U.S. Department of Labor). The steady decline in employment in the coal industry happened, in general, as coal production increased. The cause of the decline was simple: automation, not job killing regulations.

According to coal companies themselves, the decline in production of coal in the USA will not be reversed to any great extent. There are no major new coal plants coming on line and the price of the most common replacement fuel, natural gas, will continue to decline with the advent of new production. Even if there is an increase in coal production, the number of jobs associated with the increased production will be small due to the automation of the industry.

4. Indefensible Budget Cuts: We were told that you tried to advocate for a smaller reduction in the EPA budget, yet in the end, the budget passed back to OMB had even deeper cuts. The clear message to EPA staff was either you supported the additional cuts or you have little to no influence with the Administration.

We would appreciate a more detailed description of why you are recommending that certain EPA programs be reduced or eliminated. We would love to know, for example, why resources for Alaska Native Villages are being reduced when they are presented with some of the most difficult conditions in the country; why you would eliminate funds for the protection and restoration of the Puget Sound ecosystem which provides thousands of jobs and revenue for Washington State; and why you would reduce funds for a program that retrofits school buses to reduce diesel emission exhaust inhaled by our most vulnerable population – children. To be credible you need to provide details why you believe these programs should be reduced or cut.

5. Appointing Political Staff Who Are Openly Hostile to EPA: We were surprised and dismayed when it was announced that the new EPA Chief of Staff, and several other staff, had worked for Senator Inhofe. As you know, Senator Inhofe is one of the harshest critics of EPA and the most vocal climate change denier in Congress. This sends an unmistakable and disturbing message to EPA staff that you have no intention of engaging with EPA staff and working together to accomplish what Congress and the American people have entrusted us to do.

6. Continuing to Demonize EPA: You have had several speeches and interviews over the past several weeks where you continue to demonize EPA, and by association EPA career staff. This has to stop. Criticizing the organization you lead is not the type of leadership that will produce results. As a leader, you need to motivate and inspire your staff. The course you are on will continue to alienate EPA career staff; the same people whom you need to accomplish your agenda and fulfill the expectations of the American people.

7. Lack of Understanding of What We Do at EPA (especially in the Regions): In the Regions, we work very closely with our states and Tribes. When you talk about "cooperative Federalism" it implies that this is some new concept and that we are not currently working with our states and Tribes. This is contrary to my experience and that of many others in the Region. It leaves the impression that you do not understand how closely we work with our states and Tribes now. Also, we have not heard you talk specifically about working with tribes and fulfilling our tribal treaty obligations. Working with Tribes is a high priority for us and one we take very seriously.

You have talked about paying attention to process and rule-making. You are right. However, your remarks that EPA has not been paying attention to process or rule-making are not consistent with the experiences of many EPA staff, me included. I can provide you with dozens of examples, in

Region 10 alone, where we have participated in extensive public engagement with states, Tribes, communities, and industry. These types of statements indicate to us that you and your staff do not understand the fundamental work we do at EPA.

8. Please Step Back and Listen to EPA Career Staff: If, by some miracle you or your staff actually read this note, I can only hope you take a step back and realize that you are the leader of an organization of very hard working, dedicated professionals who believe deeply in their work. America is a world leader in protecting our citizen's human health and our environment. Do you really want your legacy to be the person who led the rollback and reversal of the amazing gains we have made over the past 40 years?

I understand the challenges you face when going up against ideologues that appear to cherish fulfilling campaign promises more than doing the analysis and evaluation of what makes sense. But, we are counting on you to advocate for EPA. Unfortunately, up to this point, we have no evidence of this.

Good luck and just remember that EPA staff will respond to leadership that takes into account the science and the opinions of individuals who have devoted their entire lives to fulfilling the mission of EPA — to protect human health and the environment. We understand that our positions may not always prevail, but please take the time to listen to expert voices that might differ from yours and your immediate staff. You may be surprised that you can find common ground on many issues. The health of the American people and our country depends on you.

Michael Cox

Representative McDermott rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative McDermott submitted the following *CO2 is Life* wordpress article, as found on *Climate Depot website*:

CO2 is Life  
The Definitive Source for Exposing the Global Warming Hoax  
Climate "Science" Pillars of Sand: Eroding the Foundation of the Hoax

*[image of sand castles removed]*

Real science is founded in the "scientific method." It relies on data, experimentation, falsification of a hypothesis and reproducibility. "Science" that isn't reproducible is black magic, superstition, witchcraft, coincidence, Oracle's riddles, and Soothsayer's visions. Climate "science" isn't founded in the scientific method, it instead rests upon the pillars of:

1. Peer Reviewed Literature
2. Scientific Consensus
3. Professional Science/Academic Organization support
4. Computer model "evidence"
5. A hypothesis
6. This is a real "science"

Listen to any Congressional Testimony by Michael "Hockeystick" Mann, and he will rattle these off as if he was auditioning for an auctioneer's job. The Mann deserves an Oscar more than he deserves his "Nobel Prize."

*My impressions from the hearing were not positive. Mann spoke for almost half of the time and boldly asserted the most extreme alarmist positions and factoids (quoting from my own notes): "devoted his life to science [about himself]", "few individuals who represent tiny minority [about other three witnesses]", "scientists continuously challenge each other [implying he is a scientist]", "extremely broad agreement on the basic facts," 97%, "climate change is real, human caused, and has heavy impact", "fingerprints of human-caused climate change on extreme events", "anti-science forces launched a series of attack on scientists", "time for republicans to put away doubts and focus on solutions", "discourage investigations of climate scientists," and "support by multiple national academic societies."*

Everything Michael Mann says is practiced, focus group tested, tightly controlled and intended to win the hearts and minds of the American voter. It has absolutely nothing to do with science, and everything to do with funding, policy, and politics. The talking points are widely distributed to all the left-wing support groups, so everyone is singing the same toon (Must watch video of when simply reciting talking points can go seriously wrong). For climate realists to win his fight, they have to master Mann on

the field of politics, not science. Winning the scientific battle, and losing the political battle, is losing the war.

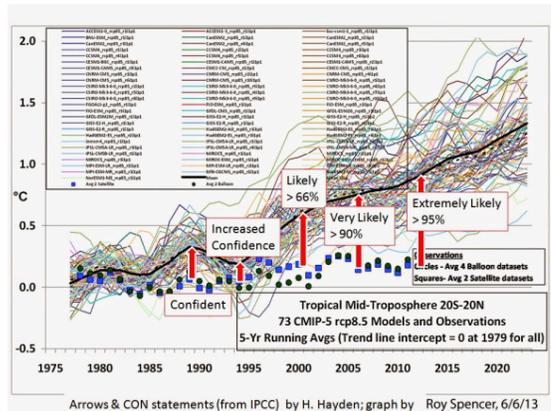
To win the political battle, climate realists must topple the pillars of sand that are supporting Michael Mann's arguments. Fortunately, most of these pillars of sand holding each other up, so toppling one topples others as well.

Let's tackle "Peer Review" first because most others rest upon it. Michael Mann and other alarmists will claim that 97% of "Peer Reviewed" literature support the hypothesis of man-made global warming. That may be true, but very few of papers published in scientific journals follow the scientific method. Much of what has been published can't be reproduced. Being published in a "Scientific" journal doesn't mean it followed the scientific method or is reproducible. Many articles published in "scientific" journals are nothing more than editorials, speculation, activism, and/or propaganda. It is likely none of the climate research follows the scientific method, and what

Being published in a "Scientific" journal doesn't mean it followed the scientific method or is reproducible. Many articles published in "scientific" journals are nothing more than editorials, speculation, activism, and/or propaganda. It is likely none of the climate research follows the scientific method, and what experimentation does exist is a complete joke. Reproducibility means nothing when the experiment being replicated doesn't prove what it was intended to in the first place.

What that means is that the golden standard, the bedrock supporting the entire field of climate change, the hallowed "Peer Review," doesn't require any science to get approved. What kind of scientific "peer review" doesn't require any science? Simple, a very very corrupt one. One whose treachery and tyranny were exposed in the climate gate emails. That is the only way something like the "Hockeystick" could ever make it past any "peer review" process, if real science was required, it wouldn't make it past the mailbox.

In the future, anyone testifying before congress should be required to submit their supporting evidence in advance so that an impartial analysis can be applied to see if it truly qualifies as real science. The first question directed towards any climate alarmist should simply be what journal published the research on which you base your opinion, and does that journal require the application of the scientific method and reproducibility. Climate alarmists should also have to explain how the results of the IPCC climate models are scientific "evidence" supporting their claims. In reality, the results of the IPCC climate models reject the AGW theory, they don't support it.



Second, comes the scientific "consensus." The problem with this concept is that the "science" journals aren't publishing science, they are publishing opinion. As mentioned above many published articles don't apply the scientific method, and/or detain reproducible experiments. What good is a "scientific consensus" if the research it is based upon isn't science? It is a farce. The second question directed towards any climate alarmist should simply be "if the journals on which the "consensus" are based aren't publishing real science, what good is the "consensus." Isn't this more like the blind leading the blind? If the requirement of applying the scientific method and reproducibility aren't requirements for journals supporting the "consensus," couldn't the "consensus" be based upon Comic Books? Just how valid is the research supporting the "consensus."

*[image of Action Comics cover removed]*

Third, comes the support of Professional Science/Academic Organizations. These are the groups performing and publishing the research that isn't reproducible and doesn't apply the scientific method. Once again, what kind of "scientific" organization would allow a "scientific peer review" to pass such garbage as the "Hockeystick?" Additionally, the "opinion" of the organizations are usually of the leadership, not the rank-and-file. And even if the opinion reflects a "poll" of its members the questions are often too vague to have any validity or meaning, and the frustrated opposition may have simply resigned as members. Lastly, the membership of these organizations may require no credentials at all

Additionally, the membership of these organizations may require no credentials at all other than a valid credit card. The below dog is a member of the Union of Concerned Scientists. No, really, he is, just click the above link. The third question directed towards any climate alarmist should simply be what research is supporting the opinion of the organization, and who is represented by that opinion? The leaders or the members? If the members, what questions were used to reach the opinion? Did the people forming the opinion base their opinion on research that didn't require the application of the scientific method and reproducibility?

[image of dog removed]

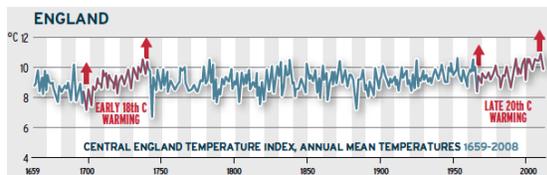
The fourth pillar is the computer model "evidence." Climate "science" is the only field of science that I'm aware of that doesn't apply the scientific method, run experiments and considers computer simulations as evidence. If computer forecast models counted as factual evidence every climate "scientist" would be working on Wall Street. All one would need to do is write some code that shows the markets going up, and whalal, you're a multi-trillionaire. The fourth question directed towards any climate alarmist should simply be if computer models are evidence and represent facts, why do computer financial models always fail? BTW, computer models show absolutely no warming in the lower troposphere with a doubling of CO2, absolutely zero.

### Stock Market Timing – Flash Crash Model



The fifth pillar is the only part of the scientific method that applies to climate "science." There is a legitimate hypothesis, and that hypothesis is that anthropogenic greenhouse gasses cause climate change/global warming. In reality, it has to be global warming because the only mechanism by which CO2 can affect the climate is by absorbing outgoing longwave infrared radiation. The problem is, when the null hypothesis "climate change is due to natural causes" is tested, it isn't rejected. Simply applying the scientific method to the available data results in the AGW hypothesis being rejected.

The entire field of climate "science" is based upon a hypothesis that is rejected when the scientific method is applied. And they call the "deniers" the flat earthers. The fifth question directed towards any climate alarmist should simply be "have you tested the hypothesis "climate change is due to natural causes" and was it rejected?" If they say yes, have them produce the data. There isn't an ice core data set anywhere that shows that the temperature change over the past 150 years is statistically different from the Holocene average, at least not any I've found. More importantly, if you use unadjusted data, it is hard to make a case for any real warming over the past 300 years.



The last pillar of sand is that the climate alarmists always claim that the "science" is "settled" and that it is proven with 95% certainty that man has caused 100% of warming over the past half-century, blah blah blah. First science is never "settled," science is a process of exploration and understanding. Understanding something as infinitely complex as the global climate will never be settled. If something is understood it can be modeled, and the climate experts have proven beyond any reasonable doubt that they can't do that. Second, science doesn't ever "prove" anything, real science "rejects" a hypothesis, it never "accepts" or proves a hypothesis. BTW, note how global warming and climate change are used interchangeably in this graphic. Also, just what does "humans are responsible for climate change" even mean? Put down a highway or build a city and you cause climate change, but it isn't due to CO2. Lastly, the "publishing climate scientists" and those with "greater climate expertise" are the very people publishing the garbage in the un-scientific journals, and are heavily vested in the outcome. In other words, they are a tainted jury. They represent the Science Research Industrial Complex Eisenhower warned America about in his farewell speech. The last question directed towards any climate alarmist should be "does your income depend on climate research funding, or does the person writing the un-scientific article for the un-scientific journal that influenced your opinion depend on climate research funding?"

Second, science doesn't ever "prove" anything, real science "rejects" a hypothesis, it never "accepts" or proves a hypothesis. BTW, note how global warming and climate change are used interchangeably in the below graphic. Also, just what does "humans are responsible for climate change" even mean? Put down a highway or build a city and you cause climate change, but it isn't due to CO2. Lastly, the "publishing climate scientists" and those with "greater climate expertise" are the very people publishing the garbage in the un-scientific journals, and are heavily vested in the outcome. In other words, they are a tainted jury. They represent the Science Research Industrial Complex Eisenhower warned America about in his farewell speech. The last question directed towards any climate alarmist should be "does your income depend on climate research funding, or does the person writing the un-scientific article for the un-scientific journal that influenced your opinion depend on climate research funding?"

- 1) Depending on exactly how you measure the expert consensus, it's somewhere between 90% and 100% that agree humans are responsible for climate change, with most of our studies finding 97% consensus among publishing climate scientists.
- 2) The greater the climate expertise among those surveyed, the higher the consensus on human-caused global warming.

#### Studies into scientific agreement on human-caused global warming



Expert consensus results on the question of human-caused global warming among the previous studies published by the co-authors of Cook et al. (2016). Illustration: John Cook. Available on the SKS Graphics page

In the end, climate "science" is all one big house of cards.

Representative McDermott also submitted the following *The Chronicle* opinion letter, as found on *Climate Depot* website:

#### The Sun, Not People, Causes Global Warming

Apr 13, 2017

The sun is one astronomical unit, or about 93 million miles from Earth. The sun is surrounded by the heliosphere comprised of material expelled from the sun with magnetic qualities, and with charged particles.

As the sun warms, the heliosphere increases in size and density and gives more planetary protection from galactic cosmic rays, high energy charged particles from supernova exploding stars.

Cosmic rays may be pushed away from the Earth by the electromagnetic fields of the sun and Earth or destroyed by charged particles in the heliosphere. When the sun is at its maximum heat in the approximate 200-

year cycle of total solar irradiance, cosmic rays are attenuated some 85 percent and Earth's low wet clouds are at their minimum.

Cosmic rays penetrating our atmosphere cause troposphere ionization from which low wet clouds form; these reflect sun heat, so Earth's oceans are warmed less. Sun energy reflection by clouds/ice is bond planetary albedo.

Albedo is least when the sun is warmest (1990 AD climate optimum) and maximum when the sun is weakest (Mini Ice Ages) in the approximate 200-year cycles of sun heat, TSI. TSI variation is about one half of a percent. "Global warming" is dead until 2100 AD.

Habibullo Abdussamatov, who has a doctor's degree in astrophysics, is director of solar research at the Pulkovo Observatory in St. Petersburg and head of solar experiments on the International Space Station (Russian section). He says sun TSI maximized early in 1990s.

Abdussamatov says sun heat (TSI) is decreasing like the Maunder Sun Spot Minimum (1645 AD to 1715 AD), which was the coldest MIA of the Little Ice Age (from 1280 AD to 1830 AD). Now the Wolf Sunspot Minimum happened 1280 AD to 1350 AD and was characterized by cold, torrential rains, crop losses, starvation, freezings and killer diseases, including the Bubonic plague. Europe and China lost over half their populations. Probably other populations suffered likewise since this was global.

Abdussamatov says there is no evidence that people cause global warming. Sun warming of the Earth and oceans always occurs before carbon dioxide increases, as shown by antarctic ice cores that recorded the last 800,000 years of warming, cooling and CO2 levels.

The sun is the culprit, not CO2. Abdussamatov says sun maximum TSI was 1366 watts per square meter of projected Earth area (which is 134.3 times 1,012 square miles), which gives 1.8345 times 1017 watts, 24/365.

One watt-second equals 1 joule. There are 3.154 times 107 seconds per year year, so in one year the sun makes available 5.7854 times 1,024 qatt-seconds or joules of energy just outside our atmosphere.

About 70 percent gets absorbed by the Earth/oceans. So about 4 times 1,024 joules warm the Earth/oceans each year. A 1 megaton (of TNT) yield nuclear bomb produces 4.18 time 1,015 joules of energy. Therefore, billion 1 megaton nuclear explosion equals a year's worth of absorbed sun energy by Earth and oceans. This is 2.74 million, 1 megaton nuclear explosions PER DAY.

I am thankful the sun's nuclear machine TSI was designed, built and regulated to one-half percent.

Global warming is over. Mini Ice Age 19 is at your door. What are you doing to save your family?

John F. Cramer

Representative McDermott also submitted the following *CO2 Science website* article, as found on *Climate Depot website*:

[The Antarctic Peninsula: No Longer the Canary in the Coal Mine for Climate Alarmists](#)

Paper Reviewed

Oliva, M., Navarro, F, Hrbáček, F., Hernández, A., Nývlt, D., Pereira, P., Ruiz-Fernández, J. and Trigo, R. 2017. Recent regional climate cooling on the Antarctic Peninsula and associated impacts on the cryosphere. *Science of the Total Environment* 580: 210-223.

Climate alarmists generally contend that current temperatures are both *unnatural* and *unprecedented*, as a result of global warming caused by anthropogenic CO2 emissions; and they claim that this "unnaturalness" is most strongly expressed throughout the world's polar regions. In this regard, they often point to warming on the Antarctic Peninsula (typically the Faraday/Vernadsky station) as the proverbial *canary in the coal mine*, where over the past several decades it has experienced warming rates that are among the highest reported anywhere on Earth.

However, in recent years two studies have challenged this assessment. Carrasco (2013) reported finding a decrease in the warming rate from stations on the western side of the Antarctic Peninsula between 2001 and 2010, as well as a slight cooling trend for King George Island (in the South Shetland Islands just off the peninsula). Similarly, in an analysis of the regional stacked temperature record over the period 1979-2014, Turner *et al.* (2016) reported a switch from warming during 1979-1997 to cooling thereafter (1999-2014). And now, in 2017, we have a *third* assessment of

recent temperature trends on the Antarctic Peninsula confirming that the canary is *alive and well!*

As their contribution to the debate, Olivia *et al.* (2017) report in the journal *Science of the Total Environment* how they "complete and extend [the study of Turner *et al.*] by presenting an updated assessment of the spatially-distributed temperature trends and interdecadal variability of mean annual air temperature and mean seasonal air temperature from 1950 to 2015, using data from ten stations distributed across the Antarctic Peninsula region." And what did that assessment reveal?

In describing their findings, the eight European researchers write "we show that [the] Faraday/Vernadsky warming trend is an extreme case, circa twice those of the long-term records from other parts of the northern Antarctic Peninsula." They also note the presence of significant decadal-scale variability among the ten temperature records, which they linked to large-scale atmospheric phenomenon, such as ENSO, the Pacific Decadal Oscillation and the Southern Annular Mode. Perhaps most important, however, is their confirmation that "from 1998 onward, a turning point has been observed in the evolution of mean annual air temperatures across the Antarctic Peninsula region, changing from a warming to a cooling trend," especially over the last decade (see figure below). This cooling has amounted to a 0.5 to 0.9 °C decrease in temperatures in most of the Antarctic Peninsula region, the only exception being three stations located in the southwest sector of the peninsula that experienced a slight delay in their thermal turning point, declining only over the shorter period of the past decade. It is also pertinent to note that, coincident with the above findings, Olivia *et al.* cite independent evidence from multiple other sources in support of the recent cooling detected in their analysis, including an "increase in the extent of sea ice, positive mass-balance of peripheral glaciers and thinning of the active layer of permafrost."

In light of *all* the above, the evidence is clearly mounting against those who point to warming on the Antarctic Peninsula as proof of CO2-induced global warming. For in the most incredible manner, warming trends that were once among the highest recorded on earth have slowed and even *reversed* to show *cooling*.

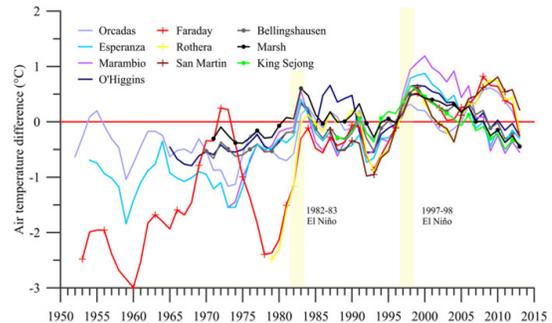


Figure 1. Temporal evolution of the difference between the mean annual air temperatures and the 1966-2015 average temperature for each station (3-year moving averages). Source: Olivia *et al.* (2017).

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Carrasco, J.F. 2013. Decadal changes in the near-surface air temperature in the western side of the Antarctic Peninsula. *Atmospheric and Climate Sciences* 3: 275-281.

Turner, J., Lu, H., White, I., King, J.C., Phillips, T., Scott Hosking, J., Bracegirdle, T.J., Marshall, G.J., Mulvaney, R. and Deb, P. 2016. Absence of 21st century warming on Antarctic Peninsula consistent with natural variability. *Nature* 535: <http://dx.doi.org/10.1038/nature18645>.

Posted 13 April 2017

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

"Thank you, Mr. Speaker. I rise in opposition. In a previous life of mine, I just happen to have been a ground-to-air navigation technician. What that means is actually, basically, compasses in the sky. For those that are younger, it's the modern-day GPS system. The significance of that is, in the '80s, the wisdom of the Air Force, they combined my career field with weather equipment technicians, so I became, in the 1980s, a weather equipment technician, and ever since then weather has been a passion of mine.

"So I look at things a little differently, and I've been studying weather for the past 40 years. And just for an example, just the title of this book, Why Scientists Disagree About Global Warming. I do believe that climate changes. I do not believe that it is man-made caused. So for those reasons. I stand in opposition."

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

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

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

"Strong support, just wish to enter comments in the Journal. Weather is not climate. Thank you."

Representative LoPresti's written remarks are as follows:

"SB 559, SD 1, HD 2 is an imperative step forward if we want to see Hawaii have a habitable future. In 2016, the world's average concentration of CO2 passed the dangerous and symbolic milestone of 400 parts per million. The longest established greenhouse gas monitoring station at Mauna Loa here in Hawaii predicts that the CO2 concentration will stay above 400 ppm and not again fall under 400ppm for generations. The ramifications of this is that such a large concentration of greenhouse gases is rightly considered the most severe threat to political stability and human life on our planet. It is of the utmost importance that we treat this issue with the urgency and moral attention it deserves.

"The view that humans are a large contributing factor in global warming is the position of the Academies of Science from 80 countries plus many scientific organizations that study climate science and 97% of scientists who study climate as a profession. More specifically, around 95% of active climate researchers actively publishing climate papers endorse the consensus position. I have not come across many issues or opinions that get a 97% consensus, especially in the scientific community. SB 559, SD 1, HD 2 is a step in the right direction, and I strongly support this measure for my children and for yours.

"Last but not least, the counter narratives that are selling uncertainty are being perpetuated by organizations such as the Heritage Foundation and the Heartland Institute. Both organizations have worked vigorously through the early 1990's to dispel what they also called 'myths' about secondhand smoke and the negative effects of cigarettes. Since the year 2000, they have shifted from tobacco as their main issue to climate change after losing many times in US courts. None of either organization's experts consists of climate scientists who are actively publishing."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 559, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO CLIMATE CHANGE," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Cachola and Ward voting aye with reservations, and with Representatives Kong and McDermott voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1738) recommending that S.B. No. 908, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 908, SD 1, HD 2 pass Third Reading, seconded by Representative Evans.

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

"In strong support. Just a real quick comment, because we're dealing with the airport authority and other boards. On page three of this bill, it says the board composition, three members appointed from a list of nominees submitted by the President of the Senate, three members appointed from the list of nominees submitted by the Speaker of the House, two members appointed from the list of nominees submitted from the board itself, two members appointed by the governor, the director of

Business, Economic Development and Tourism, or the director's designee shall serve.

"So the reason why I bring that up is because I want to thank the committee and the Chair for changing that line 16 and 17 by making it two members that are going to be nominated by the board. And this is, I think, an example of how to make a well-balanced board that's not politically inclined but actually has the expertise to do what they need to do for small business. And I would like to see these type of boards, the composition of these boards, implemented into other things, like the airport authority and other things that we're discussing as far as how people are nominated. And I want to thank the chairs for doing this. Thank you."

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

"Mr. Speaker, strong support, written comments in the Journal, but with a brief comment as an introduction to that. Mr. Speaker, as the previous speaker indicated, this is a very important bill for small business. Small business is very, very important for economy. But what is missing in the bill are the funds.

"This organization has very little funding to carry out its very, very responsible mandate, and that is to be the watchdog for the small business community. If a regulation is too burdensome and it causes the mom-and-poppers to go out of business, they need to meet, they need to discuss and get that regulation either nullified or at least ameliorated to a degree. But oftentimes they don't have the funds to even fly in all the members from the neighbor islands. So, Mr. Speaker, a great bill, and I will have further comments in the Journal. Thank you."

Representative Ward's written remarks are as follows:

"Thank you, Mr. Speaker. At this time, I rise in strong support. This bill amends the Small Business Regulatory Review Board (SBRRB) to better represent and protect local small business interests.

"Small Businesses are vital to our state's economy, and this makes sure that small local Hawaii businesses domiciled in the State have their interests adequately represented and protected by the board.

"Small businesses create jobs and stimulate our economy. A 2014 SBA Office of Advocacy report noted that small businesses made up to 63% of new private-sector jobs.

"Small businesses foster pride in the local community and keep money local. The mom and pop stores don't export their profits to the mainland. A 2013 study showed that small businesses in British Columbia recirculated about 2.6 times as much revenue in the local market as the chain competitors, produced significantly more jobs than chain stores (with like revenue) and, importantly, found that if the market were to be shifted by just 10% towards local business: 31,000 extra jobs would be created. No similar study in Hawaii could be found, but there are a number of other similar studies showing the benefits of small business.

"It is important to take steps to make Hawaii more small business friendly, and this bill points us in the right direction.

"It is for these reasons that I would implore every elected official to vote to support small business. 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. 908, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT," passed Third Reading by a vote of 51 ayes.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1742) recommending that S.B. No. 133, SD 2, HD 1, as amended in HD 2, pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 133, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC

EMPLOYEES' FRINGE BENEFITS," passed Third Reading by a vote of 51 ayes.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1744) recommending that S.B. No. 1016, SD 1, as amended in HD 1, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 1016, SD 1, HD 1 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I was going to vote no on this measure, but I'm going in support with reservations. While I know this is important for a lot of the representatives in their districts, there is one bridge in my district that's been a source of contention between the DOT and the community, Honolulu Bridge. And there's a lot of concerns that with this law, that there's no exemption or there's no community review that a two-lane bridge could be put in which would exasperate the conditions that are occurring in that area. So hopefully the DOT will work with the community and hopefully the committee chairs can look at this issue when giving this broad blanket EIS exemption. Thank you."

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

"With reservations. I want to echo the sentiments of my colleague from Maui. Of the 11 bridges that are listed there is one in my district, and they did start that one. But my concern is that this exemption is for 20 different chapters of the HRS that allow them to expedite the process. So when the proposal was put forward in 2012, the 11 bridges were identified as if we get a five year exemption to expedite the process we would have started the bridges, but many of these bridges haven't even been started.

"And so I guess my concern is watching the different DOT projects and making sure that we're not making an extension of an exemption so that we can delay more of what needs to be addressed in our communities. But as well, if we are going to exempt, then what are we exempting and for what reasons, because there's lots of concerns about how many exemptions this bill includes, and whether or not this is taking into consideration cultural and natural resource things that should be looked at in regards to safety. So those are my concerns. Just reservations, thank you."

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

"In support with reservations. My reservations is that when we passed this measure back in 2012, it was quite controversial at that time. People were afraid that we were going to set aside any of the environmental checks upon the DOT moving along with these bridges.

"But I think members need to understand that we did it in the context of moving about, at that time, to draw down some of the ARRA monies that the Federal Government had set aside for the states for doing these kinds of infrastructural construction projects.

"One of the bridges in particular that I noticed is still on the list is the Roosevelt Bridge, Mr. Speaker, and the Roosevelt Bridge was actually a bridge that we put on late in the legislative process to address a major thoroughfare between Waipio Gentry, Waikele, Waiawa area, and the town of Mililani. It's one of the major routes along Kamehameha Highway between the town side and on the country side of Mililani.

"My reservation is that the DOT has had over five years to expedite this project, and such a major artery, major link in the chain, besides the H-1 Freeway, is this particular section of Kamehameha Highway, the Roosevelt Bridge.

"So I will be watching this, and I think all the folks on my side of the island will be watching this, because this is very, very important, and essential, actually, to make sure that we can get to and from our jobs and to

and from businesses outside the community. For those reasons I stand in support but with reservations. Thank you."

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1016, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Third Reading by a vote of 50 ayes to 1 no, with Representatives Gates, McKelvey, Oshiro and Tupola voting aye with reservations, and with Representative Thielen voting no.

Representative Nishimoto, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1749) recommending that S.B. No. 369, SD 1, as amended in HD 1, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 369, SD 1, HD 1 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. May I request a ruling on a potential conflict, please? At my law firm I represent both AOAOs as well as board of directors of AOAOs," and the Chair ruled, "no conflict."

Representative Har continued and asked that the Clerk record a no vote 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. 369, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUMS," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Har voting no.

At 9:38 o'clock a.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 545, SD 2, HD 1  
S.B. No. 559, SD 1, HD 2  
S.B. No. 908, SD 1, HD 2  
S.B. No. 133, SD 2, HD 2  
S.B. No. 1016, SD 1, HD 1  
S.B. No. 369, SD 1, HD 1

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1754) recommending that S.B. No. 620, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 620, SD 2, HD 2 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I just wanted to make a few comments, and I'll register a no vote as well. I guess one of my concerns is that in the Hawaii jurisprudence it doesn't require a physical presence in the commerce clause in order to do taxation, but under the U.S. Supreme Court it is necessary. And so back in New Jersey, when Amazon first started thinking about taxing, the reason why they did it is because they had a plant, they had a factory in New Jersey, so they started to tax, even though they were doing online sales in that state.

"And so as you can see, Amazon already skipped ahead and decided to do it voluntarily. But the reason why I bring that up is because there's a part in the bill that states, provided that a person with no physical presence in the State is engaged. That part that says no physical presence, per the federal law, that's actually not allowable. But if you have a computer, or a server, or something in that state, then you can tax, which I think at this

point probably every online service probably has something within our state. So that was one concern.

"The second part is, because people are voluntarily doing it, is it maybe more prudent to have DOTAX go ahead and pursue private agreements with some of these companies so that they can start doing it.

"And lastly, I think we've been the body that wants to get that GET tax. And one of the things that it doesn't do is it doesn't provide a means to enforce that individual taxpayers pay their GET, and it doesn't have any penalties. So it's basically going to put a burden on businesses, and we may not get that GE tax.

"And so I know that we've been talking about taxes and revenues and it's so important to us, so in order to have a bill that's actually going to bring in taxes to the State, we need to have some type of enforcement mechanism within there, as well as some type of fine or something that makes it where people would have to comply. So with those reasons, I'm in opposition. Thank you."

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

"Mr. Speaker, in opposition. Mr. Speaker, this body bemoans the fact that the cost of living in Hawaii is so high. We give rhetoric, we give speeches, we almost cry. But when we have a bill like this to save people money in Hawaii, we say, oh, yeah, tax some more.

"This is a private sector opportunity to save the people of Hawaii money. I probably would suggest that the private sector has probably saved more money for the public than we at this body in the Legislature have saved, i.e., when Costco came in, when Walmart came in, when Target came in, those are the ones that have lowered the cost of living. But this body is the one that's responsible for it.

"So, Mr. Speaker, when we say, yeah, we want to tax people when they buy their goods so they can save a little money and not pay taxes on the mainland, why are we doing this? If we are serious about saving our constituents, some who have said in various locations are doing two or three jobs just to keep above water, this makes it even deeper for their lives.

"So, Mr. Speaker, for those reasons, this is not a good bill. Inevitably, eventually we will do this. But I think, why are we rushing to do it, because we are the ones with the highest cost of living in this nation, and this is a small token by which we could avoid higher cost of living for our population. Thank you."

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

"Mr. Speaker, I stand in strong support. Thank you. I look at this bill as really supporting small business here in Hawaii. All the small businesses, the vendors, the retailers, they play by the rules, and they have to pay the taxes. So people are buying things, people are paying, and I think this really levels the playing field. I think it's a good idea.

"But I also want to, the details of the bill I think are important to point out, and that is a lot of us, when we work with our banks, we get a report what our interest is at the end of the year for tax purposes. The good thing about this bill is it will cause the retailer or vendor to actually report to the person who is buying, they'll actually get a report as to what they bought, and the transaction dollar amount they bought, and then that report will be used to report to the Department of Taxation.

"So there is going to be a way to enforce this, that I actually think it was a very clever idea on how we're going to make that happen. So I think with that it's going to be a very enforceable bill, and I look forward to continuing this discussion as it moves forward. Thank you."

Representative Ward rose to respond, stating:

"Brief retort if I may, Mr. Speaker. To suggest this is only for small business is to forget that we represent small businesses and the community. And having been a small business before I became a

legislator, I know that when I sold out of state, I didn't have to pay the GE tax. There is a level playing field nowadays in the retail business that if anybody is not on the Internet, they're not really up to speed as being an entrepreneur. And we have in our tax code, if you send something out of state, you don't pay the GET tax.

"So where's the beef about, the small businesses are at a disadvantage? Almost every small business is on the Internet, we have 7 billion customers throughout the world, we are as equally able as anybody on the mainland, Mr. Speaker, so it's a specious argument that this is only for the business community to keep them alive. It's for our constituents, and it's also for the businesses to be able to compete as they do with anybody else in the world. 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. 620, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Fukumoto, McDermott, McKelvey, Ohno, Thielen, Tupola and Ward voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1755) recommending that S.B. No. 224, SD 2, HD 2 pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 224, SD 2, HD 2 pass Third Reading, seconded by Representative Evans.

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 224, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PSYCHOLOGY," passed Third Reading by a vote of 51 ayes, with Representative Cachola voting aye with reservations.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1756) recommending that S.B. No. 1286, SD 2, HD 2 pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 1286, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PRIVATE TRADE, VOCATIONAL, AND TECHNICAL SCHOOLS," passed Third Reading by a vote of 48 ayes to 3 noes, with Representatives McDermott, Tupola and Ward voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1757) recommending that S.B. No. 686, SD 2, as amended in HD 1, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 686, SD 2, HD 1 pass Third Reading, seconded by Representative Evans.

Representative Nakamura 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 Nakamura's written remarks are as follows:

"I vote with reservations. I'm concerned about changing the constitution to use the county's primary source of revenue generation, real property taxes, to invest in our children's education. Our counties collect real property taxes based on assessed values. The proposed bill raises real property taxes on hotel rooms and transient vacation rentals based on the number of rooms and the amount charged per night whether a room is used or not. The charge occurs 365 days a year. For counties, like Kauai, that already charge \$7.05 per \$1,000 of assessed value for properties over \$2 million in value, the new real property tax on investment properties will double under the proposal to \$14.55 per \$1,000 of assessed value. I'm a proponent of increasing the GET for teacher salary increases, early

childhood education, principal and leadership training and development, and special education."

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

"Mr. Speaker, with reservations. Mr. Speaker, in this bill here, it asks to tax visitor accommodations regardless of whether or not they're occupied. My concern is that I have not seen any report on how the taxing would affect our largest economic driver in the State. So we could have a negative impact on our tourism industry that would be not offset or would affect the hundreds of millions of dollars that the general fund receives from the transient accommodation tax. So with those issues, I have to vote with reservations. Thank you."

Representative DeCoite 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 DeCoite's written remarks are as follows:

"I am a strong proponent for funding education for our *keiki*. However, I have concerns that this bill does not stipulate who will be responsible for the reporting on the affects this bill will have on those that these taxes are targeting. The GE tax and sales tax should be the tax to fund education."

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

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

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

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 686, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION FUNDING," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Cachola, DeCoite, Matsumoto, Nakamura, Onishi, Oshiro, Tokioka and Ward voting aye with reservations, and with Representatives McDermott and Tupola voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1758) recommending that S.B. No. 1294, SD 1, HD 1 pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 1294, SD 1, HD 1 pass Third Reading, seconded by Representative Evans.

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

"Strong support. I want to thank the Native Hawaiian Health Task Force for the past two years of the work that they've put in to try to find initiatives and different programs that could possibly help Native Hawaiian health, and specifically because it deals with the Waianae Coast.

"But I did express concerns in the hearing and I'm voting up on this bill with hopes that in conference that they're able to iron things out, because putting an entire curriculum, word for word, the whole entire program into law, is not something that I encourage, because I think as an educator, and you move through a semester, you move through a year of implementing a program, I want them to have the autonomy and flexibility to change it as

they see necessary to reach the outcomes that they've set forth. So I've expressed that to them, and I hope that that gets ironed out. But I am in support of what they do. Thank you."

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

"Reservations. Basically, faculty should be setting university curriculum, not legislators. Thank you."

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

"Mr. Speaker, rising on a no vote. This was a bill which did not go through the normal process of budget review by University of Hawaii Board of Regents, Department of Budget and Finance, and the Governor, and the Board of Education.

"In terms of the university, I think the university has many priorities, and I for one would like to see the university do fewer things but better. I would like to see consideration placed above this to some of the other so-called initiatives of the university which we foresaw, such as the graduation initiative in the Governor's first budget, and also the Hawaii Promise Program.

"In terms of the DOE, this bill says that there shall be professional development curriculum developed and implemented for high school teachers, and there shall be students participating in college readiness programs, *et cetera*, and several pathways. I'm not sure where this ranks in the DOE priority scheme. In fact, DOE has more than enough on their plates, and perhaps we should just have a pathway for college, just plain college, of any variety, not just health sciences.

"The program is supposed to, among other things, the mission of the undergraduate health sciences academy shall be to eliminate health disparities in Native Hawaiian, Pacific Islander, and other underserved communities, *et cetera*.

"My contention is that, if you want to reduce health disparities, provide money to the federally qualified health centers. Provide money for adult dental care. Provide scholarships to people who will be working with these people. Provide monies to smoking and obesity, the two largest preventable health problems in the State of Hawaii and the nation. All of these things can be done, and I think that they will have a more direct impact on reducing health disparities. Thank you."

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

Representative Nakamura 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 Nakamura's written remarks are as follows:

"I vote with reservations. While I fully support the intent of the bill, I'm concerned that this will be a recurring appropriation. This innovative proposal has not been formally approved by the UH Board of Regents and has not been incorporated as a priority in the University of Hawaii budget to the Legislature."

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

Representative Tupola rose to respond, stating:

"Still in support. I just wanted to agree with a lot of my colleagues. Putting a university program into law in the way that it happened is not recommendable. Typically you would go to the Board of Regents, and typically you would run this through a bunch of other committees that would vet out the program.

"I wanted to share that one of the problems that happened was a Native Hawaiian task force was mandated by the Legislature in 2014 to meet and convene, and I think the problem was articulating what they worked on into action.

"And so I'm just sharing that because I feel like perhaps that's where all the confusion came, because it came from a task force that was supposed to work on Native Hawaiian health and they came out with an educational outcome, which typically you would run through a certain way and it didn't go that way, but instead it surfaced as legislation.

"So, I hear all their concerns, and I would agree that there could have been a better way that this came forward to make sure that there was a more well-rounded support from DOE and from UH, because it's going to go through that. It suggests that it go from DOE through UH, but all of the right pieces, I think, weren't put in place, but it was because it came out of a task force. So, 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. 1294, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO NATIVE HAWAIIAN HIGHER EDUCATION," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Cachola, LoPresti, Nakamura and Onishi voting aye with reservations, and with Representatives Choy and Kobayashi voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1759) recommending that S.B. No. 717, SD 2, HD 2 pass Third Reading.

On motion by Representative Saiki, seconded by Representative Evans and carried, the report of the Committee was adopted and S.B. No. 717, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC REAL PROPERTY," passed Third Reading by a vote of 50 ayes to 1 no, with Representative Tupola voting no.

At 9:54 o'clock a.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 620, SD 2, HD 2  
 S.B. No. 224, SD 2, HD 2  
 S.B. No. 1286, SD 2, HD 2  
 S.B. No. 686, SD 2, HD 1  
 S.B. No. 1294, SD 1, HD 1  
 S.B. No. 717, SD 2, HD 2

Representative Nishimoto, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1760) recommending that S.B. No. 501, SD 1, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 501, SD 1, HD 2 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I'm rising to speak in support of the measure, but with suggested amendments for conference committee. Mr. Speaker, if members turn to page four of the bill, the three things that are at issue, really, are the different notice provisions. One is that Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services. Second, to apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to [mybenefits.hawaii.gov](http://mybenefits.hawaii.gov). And then third, that only ultrasounds performed by a qualified healthcare professional and read by licensed clinicians should be considered medically accurate.

"Mr. Speaker, we know Ninth Circuit upheld similar kinds of provisions in a pregnancy center case, but when you take a look at different circuits in the nation, you realize that this issue probably will go up to the United States Supreme Court, and therefore it's important to look at other circuits to see if our bill, as worded, those three requirements in the bill, the notice provisions, if they would withstand Supreme Court review. And we looked

at both the Second and Fourth Circuits, because they enjoined some parts of pregnancy center notices as compelled speech violating the First Amendment.

"So the New York City Department of Health and Mental Hygiene encourages women who are or who may be pregnant to consult with a licensed provider. That was struck. And that was in the Fourth Circuit, in Evergreen. Then Centro Tepeyac is in the Fourth Circuit, and it encourages women who are or may be pregnant to consult with a licensed healthcare provider. And it found these provisions unconstitutional because they're requiring a speaker to advertise on behalf of the government.

"So that's what we have to take a look at these three provisions. And the first provision in our bill, page four, lines four to seven, it simply says that Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services. Okay, that's a status disclosure, and in Evergreen, that's been upheld. It's simply a status disclosure.

"The difficulty comes when we go to the second one, which is, it's saying, to apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to [mybenefits.hawaii.gov](http://mybenefits.hawaii.gov). That's a government message encouraging women to consult with a licensed provider, and that, the Second Circuit enjoined. So we're looking right here at a provision that if this goes up on certiorari, this likely would be struck.

"And then the services disclosure is indicating whether the facility provided or referred clients for abortion, *et cetera*, we took that out, so that's not in the bill."

Representative Ward rose to yield his time, and the Chair "so ordered."

Representative Thielen continued, stating:

"Thank you. Then I wanted to go ahead to just mention, in Centro, the court applied strict scrutiny to both statements, and that's what's going to happen here, because the speech is neither commercial, these are not commercial operations in the pregnancy center, and they're not professional. So it's going to be a strict scrutiny test.

"So if you look ahead at this, that the conference committee could correct this, and I again go to page four of the bill, line eight through ten, and the conference committee could rephrase the notice from the imperative to the indicative mood, for those of you who had grammar in grammar school. This would bring the notice closer to a narrowly tailored and neutral statement of fact, rather than an express or implied endorsement of policy, such as exists in here. We have a government message in this second provision, this second notice provision.

"So the sentence could be rewritten to state, an online application for medical insurance, covering the full range of family planning and prenatal care services, is available at [mybenefits.hawaii.gov](http://mybenefits.hawaii.gov), making it simply in the indicative mood, and I believe withstanding any strict scrutiny challenge. So we have time to correct this so we are not using government messaging, and we would be able to do that in conference committee.

"I also have some, I'd be very glad to share this with the Chair of Judiciary and any other members that would like to see it. I think that it's important that a measure that we put through does not contain, I guess, government messaging language or something that pushes the line too far, and makes the volunteer pregnancy centers become government spokesmen, which they do not want to do, and I agree with that. Thank you."

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

"Mr. Speaker, I stand in opposition to this measure. A couple of points. First of all, let me adopt every single word, every single legal citation, both the New York case, the Baltimore case, my colleague from Legal Aid days just reminds me of how important a reading of this measure is," and the Chair "so ordered." (By reference only.)

Representative Oshiro continued, stating:

"Thank you very much. I'm just so pleasantly surprised, and I agree 110% with my colleague on the other side of the aisle here, but she's exactly spot on. I've read those Fourth Circuit cases, the Second Circuit cases, the Ninth Circuit cases. I've been following the current recomposition of the United States Supreme Court, and she is spot-on, accurate, and really, I think her remarks need to be taken seriously. I'd just like to add on to several things that she may not have emphasized about the fatal defects of the bill.

"So besides from being a square-on violation of the First Amendment, I think there is also a violation of First Amendment's other provision, which is religious freedom. And that's a provision that protects all of us from both having government force religion upon us as well as allowing us to practice our various religious faiths without government involvement. I think we tried to cure the defect by taking out the offending word, abortion, in several parts of the bill, but I think there still lies therein a provision regarding the availability of all FDA-approved methods of contraception. And I think some people may challenge that as still violating their freedom of religion, in that some people, even today, object to abortion. They don't believe that's okay with their sincerely held, deeply held religious beliefs.

"I also think that the bill is overbroad. I think we tried to amend some of the deficiencies to address the constitutional challenges, but I think inadvertently we may have created the situation the bill is overbroad. In fact, I ask people to go back and look at the Department of Health's testimony that was submitted to the Judiciary Committee, and therein they point out to the fact that this bill will now apply not only to limited pregnancy centers, and I think there are about seven or so in the State, but many others who deal in this area of women's healthcare, reproductive rights, prenatal care, pregnancy, *et cetera*, to include hospitals. So that means of all your community hospitals, HHSC hospitals, Queen's, St. Francis, Straub, Kuakini, Castle, Wahiawa, Kahuku, *et cetera*.

"It also would apply to any of your health centers throughout the community. I think we have over 22 of them. And of course, federally qualified health centers, any clinics, your office where you have a obstetrician or gynecologist, would also be affected by this bill. So definitely if this does get to conference they need to address that.

"I also think the bill is somewhat deceptive in the fact that it seems or seemingly seems to not apply to a small discrete minority in our community, but in application, and in fact, it probably will. When we talk about seven free, pro bono pregnancy centers throughout the State, one on Kauai, I think one on Maui, one on Hawaii Island, that service these women who voluntarily come in for their free services, and I think my colleague from the opposite side of the aisle recognizes there is a case that we cite too, I think it was a Georgia or North Carolina case where there was a prohibition against referral for legal services, and in that case, I think it still is good law today. But the reference was made to the ACLU legal office in their community, and the woman went there and obtained legal services and was able to litigate and have her day in court, that woman there was cited for unauthorized practice of law."

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

Representative Oshiro continued, stating:

"Thank you, Representative from Molokai. That lady was cited for that, ACLU took the challenge up, and basically established a rule of law that in the area of professional services, in this area of professional services, they are not considered commercial speech. And this is one of the sub-exceptions on the area of compelled speech, commercial speech, so that pro bono services, because they serve a clearly important community value and purpose, are allowed in this capacity. So the same principle is applied here for the certified, licensed, registered doctors, nurses, APRNs, *et cetera*, who provide these pro bono free services to these women.

"The penalties are disproportionate to the offense, and this bill would create the only civil cause of action of all the states that have looked at this

particular measure. New private cause of action authorizing an injunction and potentially awarding treble damages, costs and attorney fees to the aggrieved party. What would actual damages be on this bill? It could be a pregnancy. It could be a birth complication. Those will be all brought to bear upon the not-for-profit, pro bono, free pregnancy center. They could also be sued for merely not putting up the right sign, having it displayed properly, having a electronic form of the copy available, or not having a 8 1/2 x 11 printed copy available in their waiting room.

"There are also less burdensome alternatives. I think my colleague from across the aisle talked about the strict scrutiny standard that's going to be applied here. So you look at what's the less burdensome alternative to imposing this requirement of posting these notices in the waiting room, in maybe several different languages. Well, the Department of Health already has an advertising budget. They advertise on TV, on radio, on the Internet, on banner pop-ups on a web search. Those are all less burdensome alternatives to get the word out that MedQuest offers free or low-cost comprehensive health services to women. It could also be done on advertisements, daily media sources, social media. There could also be signs posted at all government buildings with offices. Department of Health licensing offices, the BSDI office, benefits office, Medicaid office, Social Security office. Numerous places, less burdensome so these limited number of free centers.

"Mr. Speaker, I'll be submitting additional written comments, but I just wanted to, again, go back to when I started my remarks this morning, to really thank my colleague from across the aisle. She has done a great job in doing the research, reading the law and applying it to this particular bill. And I really hope we take her advice, recommendation, seriously. I don't want to see us in court on this matter. It may create bad law out of these bad facts. Thank you."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I rise again still in opposition to this bill.

"Given the significant legal analysis and overview of the constitutional deficiencies of the current draft that my esteemed colleague from District 50, Kailua-Oahu and Kaneohe Bay, has presented, I hope members take advantage of her familiarity with this specialized area of law and seek her wise counsel. Although she and I part company on her vote in support and my vote in opposition, we are nonetheless one and the same on the germane legal arguments.

"I, however, do not believe that the striking of the word 'abortion' in several paragraphs in the current draft cures the bill of its legal infirmities. The First Amendment does not permit the government to compel speech by forcing a person to promote a procedure contrary to her or his religious beliefs. Likewise, despite the amendments to this draft which took out the word 'abortion,' the message required by this bill still contains the word 'contraception,' which can refer to an abortifacient. This form of approved contraceptive is still today considered by some religious organizations to be incongruent with their sincerely held beliefs and practices. The mandated message also facilitates abortions by directing the patient to a website which explains how abortions can be paid for. In short, objection to abortion is a sincerely held religious belief. The Supreme Court in Wooley v. Maynard, 430 U.S. 705 (1977), has said that "[t]he First Amendment protects the right of individuals . . . to refuse to foster . . . an idea they find morally objectionable." The objectionable idea here is that the State of Hawaii or the 'government' deems abortion to be an acceptable pregnancy option. The citizens who do not share that view are imposed upon. This bill infringes on this basic right, and we should not pass it.

"Still, I am delighted and even happy that she took the time and energy to research the current Federal Appellate Circuit court cases from the 2nd and 4th Circuits that are instructive and may be the better approach for an appellate review of the important fundamental constitutional rights raised in this measure. The two First Amendment rights worth describing in the general sense are: (1) Freedom of Speech and (2) Freedom of Religion.

"Overbroad Application:

"The present draft of SB 501, SD 1, HD 2 is overbroad and covers too many health care providers and may have significant unexpected consequences. The Department of Health's testimony before the Committee on Judiciary, filed on April 4, 2017, clearly and plainly sets forth the problem as follows:

*The amended version broadens the definition of a "limited pregnancy center" and now includes all family planning/pregnancy service providers, all federally qualified health centers (FOHC), community health centers, hospitals, clinics, and private physician offices/practices. The DOH contracts with 14 health care providers for family planning services with over 25 sites statewide. The new definition may also require redundant actions by current health care providers and facilities to comply with federal laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) and 45 CFR 164. (emphasis provided).*

"Imagine the following healthcare providers taken from the Hawaii Obstetrics and Gynecology Specialty Directory (within 10 miles of Honolulu) having to comply with the new regulation:

Advance Reproductive Medicine  
Advanced Reproductive Center Hawaii  
Alan R. Papst MD  
Aloha Nursing & Rehab Centre  
Ann Pearl Nursing Facility  
Arcadia Retirement Residence  
Avalon Care Center-Honolulu, LCC  
Benton H. Chun MD  
Castle Medical Center  
Central Medical Clinic  
Chung & Huang MD  
Clarence T.C. Ching Villas at St. Francis  
Dr. Behling LLC  
Dr. Jon H. Morikawa, MD  
Fertility Institute of Hawaii  
Gary M. Fujimoto Inc.  
Garden Isle Healthcare & Rehabilitation Center  
Glenn N. Hayashi MD Inc.  
George Goto MD Inc.  
George Shimomura MD Inc.  
Gordon C. Ontai MD Inc.  
H. Lorrin Lau MD Inc.  
Hale Anuenue Restorative Care Center  
Hale Ho Aloha  
Hale Ho'ola Hamakua  
Hale Kupuna Heritage Home, LLC  
Hale Makua Health Services (Kahului)  
Hale Makua Health Services (Wailuku)  
Hale Malamalama  
Hale Nani Rehabilitation and Nursing Center  
Hale Ola Kino  
Harry and Jeanette Weinberg Care Center  
Hawaii Family Planning Center  
Hawaii Permanente Medical Group  
Hawaii State Hospital  
Hi'olani Care Center at Kahala Nui  
Hilo Medical Center  
Hospice Hawaii, Inc.  
Honolulu Medical Group  
Honu Women's Health, LLC  
Island Nursing Home  
Island OBGYN  
Jane B. Service MD  
John C. H. Lee MD Inc.  
Jon S. Fujita MD  
Ka Punawai Ola  
Kahi Mohala Behavioral Health  
Kahuku Medical Center  
Kailua Osteoporosis Center  
Kaiser Mapunapuna Clinic  
Kaiser-Moanalua, Honolulu, HI  
Kaiser Permanente – Moanalua Medical Center  
Kaiser Permanente Koolau Clinic  
Kalihii-Palama Health Center  
Kapiolani Medical Center for Women & Children  
Kapiolani Medical OB/GYN Associates  
Ka'u Hospital Rural Health Clinic

Ka'u Hospital  
Kauai Veterans Memorial Hospital  
Kauai Care Center  
Kevin C. Chen, Inc.  
KFH – Malama Ohana Nursing & Rehab Center  
Kohala Hospital  
Kona Community Hospital  
Koolau Women's Health Care, Inc.  
Kuakini Medical Center  
Kula Hospital  
Kulana Malama  
Lana'i Community Hospital  
Lau & Shigezawa MD  
Leahi Hospital  
Lee & Wongs MD  
Legacy Hilo Rehabilitation & Nursing Center  
Life Care Center of Hilo  
Life Care Center of Kona  
Liliha Healthcare Center  
Lynette M. Furukawa MD  
Lynnette W. Tsai MD  
Maluhia  
Maui Memorial Medical Center  
Manoa Cottage Kaimuki  
Maunalani Nursing and Rehabilitation Center  
Medical Corner  
Moloka'i General Hospital  
Nakasone Teruya Tanoue Yoshino  
Naval Health Clinic Hawaii  
North Hawaii Community Hospital  
Nuuanu Hale  
Oahu Care Facility  
Ohtani Fujita Perkins & Sato MD  
Onlinecare Generic Practice  
Pacific Invitro Fertilization Hawaii  
Pacific Women's Care  
Pali Momi Medical Center  
Pali Women's Health Center  
Palolo Chinese Home  
Pearl City Nursing Home  
Peter McNally, MD  
Pillai-Allen Anita MD Office  
Planned Parenthood of Hawaii  
Professional Center Building  
Pu'uwai 'o Makaha  
Queen's Health Care Center  
Ramin C. Jamm MD LLC  
Rehabilitation Hospital of the Pacific  
Redentor C. Rojas, MD  
Renee L. Sato, MD, LLC  
Robert Cameron Allin, MD  
Ronald I. Ayab Inc.  
Samuel Mahelona Memorial Hospital  
Shriners Hospitals for Children – Honolulu  
Stalling Kwan, MD  
St. Luke's Clinic  
Straub Hawaii Kai Family Health Center  
Straub Medical Center  
Straub Pearlridge Clinic  
The Care Center of Honolulu  
The Queen's Medical Center  
The Queen's Medical Center – West Oahu  
Tokairin Donn S. MD Office  
TTNYD & D, OBGYN Inc.  
University Women's Health Specialists  
Wahiawa General Hospital  
Wilcox Medical Center  
Windward Obstetrics & Gynecology  
Yamada & Lin's MD

"Penalties are Disproportionate to the Offense:

"The penalties are disproportionate to the offense. The bill creates a new private cause of action authorizing an injunction and potentially awarding triple damages and cost and attorneys' fees to an aggrieved party. What are the 'actual damages' allowed under this bill? It's not clear, but one example could be for resulting pregnancy or birth complications. So failure to put up a sign could lead to an injunction which shuts down the center or huge damages which would do the same thing. No other state with a pregnancy center bill has such a draconian penalty. Even the California measure, commonly known as the 'bully bill,' does not provide such severe and oversized penalties as that found in SB 501, SD 2, HD 2.

"Freedom of Speech:

"The freedom of speech issues arise here because the 'speech' that is being proscribed is the publication and display of 72 words, in three sentences, that the bill requires to be posted in a 'limited service pregnancy center.' It must be in 22 point font and printed on no less than a size 8.5" x 11" paper and posted. Also available must be printed copies of the same notice in 14 point type and made available to all. It is akin to having a private person or group 'advertise' for the government. The offending words are as follows:

*Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.*

*To apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.*

*Only ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate.* (emphasis provided)

"The paragraph is comprised of three (3) sentences and I reference them in the following manner as Sentences No. 1, No. 2, and No. 3.

- (1) *Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.*
- (2) *To apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.*
- (3) *Only ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate.*

"In the Court of Appeals for the Second Circuit case, Evergreen, Ass'n Inc. v. City of New York, 740 F. 3d 233 (2014), the appeals court struck down the law that required the pregnancy centers to advertise on behalf of the City of New York. The same violation occurs here in sentences No. 1, No. 2 and No. 3 and it will suffer the same fate.

"In the Court of Appeals for the Fourth Circuit case, Stuart v. Camnitz, 774 F. 3d 238 (2014), the court found unconstitutional the law that required an abortionist to show the patient an ultrasound and describe the baby before an abortion. The court held that the fetal facts have 'ideological implications,' 'because they all fall on one side of the abortion debate' and 'promote a pro-life message.' Here the offending words are found in sentences No. 1 and No. 3. Thus, the First Amendment protections have been applied and are afforded to persons regardless of whether they are proponents or opponents of abortion or contraceptive services.

"Furthermore, in Centro Tepeyac v. Montgomery County, 722 F. 3d 184 (4th Cir. 2013), the court, in affirming the lower Maryland district court ruling that found unconstitutional the county law mandating signage at limited pregnancy centers, held that:

*When core First Amendment interests are implicated, mere intuition [of a problem] is not sufficient. Yet that is all the County has brought forth: intuition and suppositions.*

"Like in the Centro Tepeyac case, the legislative record is too lean and thin on any actual evidence of any wrongdoing or misleading conduct to warrant such a fierce and hostile restraint on a person's free speech right. The Centro Tepeyac appellate court stated that '[b]ecause the dangers of compelled speech are real and grave, courts must be on guard whenever the state seeks to force an individual or private organization to utter a statement at odds with its most fundamental beliefs.' The same principle applies here as the testimony, both written and oral, in support of the perceived or existing 'evils' necessitating this new regulatory scheme has

been based substantially on conjecture and with very little specific corroboration of wrongdoings and devoid of anything more substantial than anecdotal evidence and hearsay opinion. This has been, in my humble opinion, one of the most troubling aspects of this measure; a lack of any community outcry or concern or mindfulness on the matters asserted herein. In fact, until this measure came to the committees (Health and Judiciary) on which I sit, I had no idea that there may be issues of concern for my community and my constituents. The bill says it is necessary because women need to receive accurate information about pregnancy. There is no finding that pregnancy centers are doing anything wrong. Testimony from some bill sponsors, on the other hand, accuses pregnancy centers of deceptive practices and providing misleading and false information. But, again, there is a lack of evidence or proof except some vague generalizations and imprecise dates, times, places, and persons.

"Additionally, the bill is less than candid and honest because although a plain reading of the language used in the bill does not target religious-based limited pregnancy centers because of their beliefs, the testimony of many bill supporters does. When courts review this statute, the testimony will be largely off the record, so the statute will appear to be neutral. Moreover, the charges made against the religious pregnancy centers are allegations without any supporting evidence, not even anecdotal. Legislation should be based on reliable facts, not unjustified claims.

"Moreover, in all my years, I have not heard once from any woman, girl, parent, counselor, consumer advocate, or House District Democratic Party of Hawaii advocate mention any measure of the kind contemplated in SB 501. This is a bill of first impression for me and my appreciation for this issue arises only recently in 2017.

"All this brings us to the NIFLA v. Becerra (Harris) 9th Circuit case that is presently on appeal to the U.S. Supreme Court. As pointed out by my colleague from District 50, Kailua-Oahu and Kaneohe Bay, it stands in contrast to the decisions of the Court of Appeals for the Second Circuit and Court of Appeals for the Fourth Circuit. And, whereas we voted differently from each other on the Judiciary Committee vote and herein on 3rd Reading, we both subscribe and agree that the logic and legal rationale of the Court of Appeals for the Ninth Circuit may not be endorsed by the U.S. Supreme Court and therefore may be overturned.

"NIFLA stands for 'National Institute of Family and Life Advocates' and according to the NIFLA President's update, February 2017, Vol. V, No. 2, regarding the proposed Hawaii Law:

*NIFLA will, as we have done with the California and Illinois laws, file a lawsuit in federal district court seeking an injunction to prohibit the enforcement of this law if it is enacted. We are working with our friends and fellow attorneys with the Alliance Defending Freedom (ADF) to prepare such a law suit, if necessary.*

"As such, although we do not know if the U.S. Supreme Court will hear the NIFLA v. Becerra (Harris) case and grant certiorari, it seems quite certain that should this measure become law, it will be challenged in the local federal district court for violating a person's constitutional rights under the Federal Constitution.

"Free Exercise of Religion:

"The First Amendment also protects a person's freedom to practice his or her religion as well as be free from any government establishment of religion. This fundamental right comes to bear on this bill because the measure would compel a person with a sincerely held religious belief to post and promote a government message that he or she does not subscribe to. The written and oral testimony submitted in both the Health and Judiciary Committees clearly show that many if not all of the pregnancy crisis centers that provide free or pro bono services are part of a religious institution and/or subscribe to sincerely held religious beliefs regarding pregnancy and abortion and contraceptives. Hence, requiring them to post and therein advertise and promote a government program that provides free or low-cost access to abortion and/or all FDA-approved methods of contraception and pregnancy-related services for eligible women, goes against their core beliefs on these matters. In fact, a review of the public testimony and record from the Health and Judiciary Committees' public

hearings, reveal that this measure is facing its most severe opposition from the following organizations – Malama Pregnancy Center of Maui (Wailuku, Maui), The Pregnancy Center, Ka Hale Malama Ola (Kailua-Kona, Hawaii), A Place for Women in Waipio (Waipio, Oahu), Aloha Pregnancy Care and Counseling Center (Kaneohe, Oahu), and the Pregnancy Problem Center (Pearson Foundation, Honolulu, Pearl City).

"Upon closer inspection and review I found that the two (2) of the affected limited service pregnancy centers, *Malama Pregnancy Center of Maui* (Kahului, Maui), and *A Place for Women in Waipio* (Waipio, Oahu), are church ministries or religious outreach activities and part and parcel of two (2) churches. The two churches are *Emmanuel Lutheran Church and Schools of Maui* and *Calvary Chapel Pearl Harbor*. As such, the Free Exercise of Religion clause is applicable to these two centers in addition to the Free Speech concerns expressed earlier. And, the law requires that laws that burden religious practice be both neutral toward religion and generally applicable. In *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), the Supreme Court stated that '[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous scrutiny.' That essentially means that because the law contemplated in SB 501 would compel a religious-based organization to promote and publicize a practice that it does not agree with, it would be evaluated under the most exacting constitutional test of 'strict scrutiny.' In short, the law would be found to be unconstitutional against a person's free exercise of religion rights if it was not most narrowly tailored to accomplish a most compelling government purpose. That is a very high bar to pass.

"The other four (4) centers – *Aloha Pregnancy Care and Counseling Center* (Kaneohe, Oahu), and the *Pregnancy Problem Centers* (The Pearson Foundation of Hawaii, Inc., Honolulu office, Pearl City office) and *Ka Hale Malama Ola* (Kailua-Kona, Hawaii), do not appear to be a church like the previous centers in Wailuku, Maui or Waipio, Oahu. They have, however, expressed strong opposition to the bill. For example, Ms. Ruth Prinzivalli, President of the Pearson Foundation of HI, Inc. dba Pregnancy Problem Centers, wrote in her testimony filed with the Committee on Judiciary, dated April 5, 2017, in relevant part,

*We were founded in 1970 by Robert Pearson and his wife, Mary Jane who began encouraging young women to give birth to their unborn children as they believed abortion an intrinsically evil that kills an unborn child and is detrimental to the mother as well. They adopted some of these babies that they saved and they are now successful, contributing members of American society. The Pearsons along with the help of the Knights of Columbus established the Mary Jane Home to provide housing for pregnant women in need of it. When the Pearsons left Hawaii, The Pearson Foundation of HI, became incorporated in 1986 as a private, non-profit 301c, and continued the Mary Jane Home until it came under the auspices of Catholic Charities where it continues today.* (emphasis provided)

"Clearly, the description of abortion as 'intrinsically evil that kills an unborn child' and current operation under the auspices of 'Catholic Charities' has some overtones of a 'religious' based organization although not operating as church or religious order.

"Likewise, the *Aloha Pregnancy Care and Counseling Center*, in its written testimony of its Director, Mr. Garret Hashimoto, filed with the Committee on Judiciary, dated April 5, 2017, provided the following relevant statement:

*This bill violates First Amendment guarantees of freedom of religion. Our pregnancy centers are faith based ministries that are prolife and oppose abortion. Such opposition to abortion means that as a matter of religious principle we do not perform or refer for abortion. This bill, if enacted, would mandate that we, as faith based ministries, violate our religious convictions and become abortion referral agencies.* (emphasis provided)

"Clearly, although the *Pregnancy Problem Center* is probably not a church like the *Malama Pregnancy Center of Maui* (Kahului, Maui) and *A Place for Women in Waipio* (Waipio, Oahu), which are part of the *Emmanuel Lutheran Church and Schools of Maui* and *Calvary Chapel*

*Pearl Harbor*, respectively, it does appear to have religious or conscientious objections to the proposed regulation.

"The *Wooley v. Maynard*, 430 U.S. 705 (1977), is a case that presents the Free Speech and Religious Freedom principles simply and clearly. In this case, the New Hampshire license plate law forcing display of the state slogan, 'Live Free or Die,' offended Mr. Maynard's religious beliefs as a Seventh Day Adventist. Covering up the slogan (compelled speech) was a criminal violation and when he repeatedly failed to pay the fine he was jailed. He went to federal court, won, but lost at the appellate court, and then appealed to the U.S. Supreme Court, which held the New Hampshire law to violate Mr. Maynard's First Amendment rights.

"The U.S. Supreme Court took particular attention to the summary of Mr. Maynard's objection wherein he expressed, 'I refuse to be coerced by the State into advertising a slogan which I find morally, ethically, religiously and politically abhorrent.' (emphasis provided).

"In my humble opinion, the same fate awaits SB 501 in that even if you could argue that the law would serve a compelling government purpose (accurate timely information to a woman of government sponsored free or low-cost reproductive services and contraceptives, via government funded health insurance, etc.), it would not pass constitutional strict scrutiny analysis for there are less burdensome ways to achieve the purpose without imposing upon the free speech and religious rights of these citizens and their churches and those centers operating under religious doctrine and belief.

"Indeed, there are readily available less burdensome alternatives for the State of Hawaii to promote its government message. The Department of Health has an advertising budget that has paid for anti-smoking and anti-drinking ads. The Department of Health has also promoted sign-up for free tuberculosis screening, children immunizations, colon cancer, skin cancer, and prostate cancer screening and prevention programs with other non-government organizations. The Department of Health advertises for people to sign up for health insurance under the Affordable Care Act and regularly runs television advertisements promoting its anti-obesity campaigns and pedestrian safety programs.

"Similarly, the State of Hawaii Department of Human Services also has an advertising budget to promote its services and promote enrollment in the State of Hawaii Medicaid program, or Med-QUEST program. There are also semi-annual mailers sent to each subscriber by the current health plans notifying the party of the open-enrollment season and prompting the enrollee to consider or reconsider the most appropriate plan and directing them to the relevant website or web page. Directing people to the website required in the bill is something the Department of Human Services already does. Of course, there are also scores of State of Hawaii Department of Health and Department of Human Services Branch Offices scattered throughout the community on all islands and most are accessible by public transportation and are open most days of the year.

"Mr. Speaker, if we are truly seeking to help women obtain accurate and timely information on free or low-cost government sponsored insurance programs that enable women to receive all of their federally approved pregnancy options, even abortion, there are less burdensome ways of achieving this without unnecessarily imposing upon our fellow citizens whose actions so far only disclose a sincere desire to freely assist those women who may rationally and consciously choose a non-abortion path for the unplanned pregnancy.

"With that thought in mind, regarding the appropriate legal standard and test to apply, and the uncharted constitutional legal waters we are crossing, it seems peculiar and curiously odd that two of the 'usual suspects' expected to be engaged in this public debate and discussion are conspicuously absent. One must wonder, as I have, where is the Hawaii Attorney General's opinion or commentary on this measure that just screams out for some legal guidance and illumination for the lay person and those unfamiliar with the law. The same can be said for the American Civil Liberties Union ('ACLU') that for many years was viewed as the staunch defender and zealous advocate for the minority or under-dog no matter how unappealing he may appear or be when matters of First Amendment rights are threatened or diminished. But, not wanting to infer any non-

purposeful motive or deliberate or accidental abeyance at this present time, let us not be cajoled into thinking their opinions and commentary are not desired and useful. To be sure, it is not if, but at what time will the Attorney General of the State of Hawaii be eventually summoned to review and set forth his legal argument on the issues found herein. And, I would hope for and seek the same from my friends at the ACLU; for certain Constitutional rights and principles transcend and trump other laws and policies.

"Finally, let it never be said that in opposing this measure that I opposed a woman's right to choose under the established precedent found in Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992) and its progeny. That is the supreme law of the land since 1973 and remains the law of the land today. Truly, under my oath of office as a Hawaii State Representative am I duty bound to obey the U.S. and Hawaii Constitutions to the best of my abilities. A parallel oath as an attorney also compels me to this standard of conduct and action. In closing, I not only find my opposition to this measure in fulfillment of that duty to protect and defend our most sacred and revered truths and ideals, but necessary and vital to that never-ending pursuit of liberty and justice for all.

"Accordingly, I respectfully dissent from my friends and colleagues and cast a vote in opposition for the reasons so expressed herein."

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

"Thank you, Mr. Speaker. I stand in support. And I also echo the previous speakers' concerns about this case going to the U.S. Supreme Court and the freedom of speech rights of these centers. However, I disagree with their analysis, and I have taken cases up to the Hawaii Supreme Court and I have won, so I believe I have a basis for this disagreement.

"I disagree with their analysis. It's not necessarily what the Second and the Fourth Circuit opinions apply, because the Ninth Circuit went directly in opposition to the Second and Fourth Circuit. It's what prior U.S. Supreme Court opinions have stated, and in those prior U.S. Supreme Court opinions, in fact, I could quote Justice Scalia in saying that, when you apply rules of general applicability, such as speed limit laws, you don't need strict scrutiny. Otherwise, all of our laws are going to be subject to strict scrutiny, and all of our laws are going to be subject to a U.S. Supreme Court analysis.

"And that is why I agree with JUD Chair's amendment to SB 501, in requiring applicability to all pregnancy centers, not just the religious-based ones, because then it becomes a law of general applicability. For those reasons, I stand in support. Thank you."

Representative Matsumoto 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 Matsumoto's written remarks are as follows:

"Mr. Speaker, I rise with reservations.

"This bill unfairly targets pro-life, faith-based organizations and compels them to post or provide a notice on where to find things like contraception. This opens up doors for lawsuits as any person who is 'aggrieved' by a violation of the notice requirement to sue for actual damages and attorneys' fees.

"I have issues with the constitutionality of this bill, as my understanding is that there are lawsuits pending in different states that have similar laws. The 4th Circuit found the law violated faith-based pregnancy centers' right to free speech, whereas the law was upheld in a 9th Circuit case but has been submitted to the U.S. Supreme Court for certiorari. The Supreme Court's decision on whether to accept the case is April 20th and it would be scheduled for fall of 2017.

"While I understand that this bill will allow women to know where they can obtain the wide spectrum of reproductive health services, I have concerns that certain pregnancy-related services may be problematic for faith-based communities and institutions."

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

"Thank you, Mr. Speaker. In opposition. I want to thank my colleagues for their comments, and permission to enter the comments of my colleague from Kailua as if they were my own, and thank her for her work as well. She's been diligent about this, as well as contacting the Attorney General's Office, making sure that we're speaking to the legal points of the issue. I'd also like to submit the comments of the Representative from Wahiawa as if they were my own," and the Chair "so ordered." (By reference only.)

Representative Tupola continued, stating:

"And I will disclose that I'm not a lawyer, and so it takes me sometimes three times longer to understand some of these things. But I think from reading the bill and doing some research on it, I'll just share a snippet of what the Representative from Puna was covering. The Ninth Circuit Court upheld a Californian version of this bill, but the plaintiffs have applied for the Supreme Court for review. The firm handling the case is expecting an answer by April 20. That's in a couple weeks. So in a couple weeks they'll determine whether or not the case will be heard at the Supreme Court level.

"So a couple of circuits were brought up as far as this exact bill being introduced in different places, and I would say that in regards to compelled speech in commercial areas, it says, there are Supreme Court holdings stating that when professional services are provided at no charge, there must be a compelling state interest in order to limit the freedoms guaranteed under the First Amendment. And that's kind of what my two colleagues were alluding to as far as compelled speech in commercial environments, because their needs to be a compelling interest in the state to do that.

"And so the reason I bring that up is because when we first heard the bill in Health, what I heard the testifier saying was that we want people to know what services are offered at these limited pregnancy centers. We don't know, people don't know, we need to disclose that. So it went from we need everyone to clarify what they're offering, to now everybody needs to clarify it. So currently the bill says that it includes limited service pregnancy centers and all entities that solicit clients and provide pregnancy-related services. And that's where my colleague from Wahiawa was bringing up community health centers, he's bringing up physicians, because now it's anybody who solicits clients and provides pregnancy-related services.

"And so I would also emphasize the fact that in the other states where this bill was similar, that the penalties and the proportion and amount, I guess, for not putting a notice on this up, were not in those bills, but yeah, ours does have that. I think the first penalty was like \$500 for not putting it up. The reason why I bring that up is because it's adding a burden to physicians and other places where they already have a lot of an administrative burden.

"So I just think maybe taking a step back and looking at whether or not this is good public policy for all would behoove all of us to kind of look into this and see what problem are we trying to solve. What is the problem? Is it that we need everyone to know these services are available? Then I would agree with my colleague from Wahiawa. Then let's pursue multiple means of getting that word out through multiple channels, whether it's commercials, whether it's advertisements in state buildings. But if the problem is that we need people to know what's offered there, then, okay, maybe they should give out handouts of what they offer.

"So I'm going back to the root of it, because we create laws that are supposed to solve problems. And so I think that if there was this outstanding problem that we're solving and this is the key to it, then I would be in favor of it. But all the extra parts that are involved in it now

that it's kind of changed a lot through each committee are what give me reserve and opposition to this bill. Thank you."

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

"Mr. Speaker, in opposition. I want to thank the Judiciary Chair for making substantial changes to the measure. But ultimately what was the point of this whole thing? Where did it come from? Why is it even before us? It's before us because there's seven Christian centers that offer alternatives to abortion. They don't believe in abortion. So if a woman comes in there, they're encouraging, they offer alternatives, but they don't do abortions. And that's what this is about.

"In the Judiciary Committee we had about 30 testifiers against this, from the various organizations. It's a ministry for these folks, it's a matter of religious freedom. There were two testifiers in support, two. And they both had an economic interest in it. One was the Planned Parenthood lobbyist and the other was an abortion doctor. They both make money off of abortions. Where these people of faith came down, took time off of work, spent three or four hours sitting there, trying to plead their case in a democracy, and we turned our back on them. Thirty to two, it was embarrassing. And we still passed it. And I am told, I wasn't at the other hearings, but it was similar throughout the other hearings. Why would we do that? This is very disheartening for me. This is my 11th year here. I've seen us do this time and time again, overwhelming number of people say we don't want something, and we turn our backs on them and still do it anyway because we think we know better.

"So who is pushing this? Where did it come from? What part of the community, outflow of community support said, we need this, we want these notices on these pregnancy centers? Well, where is it from? It's from Planned Parenthood. For God forbid if we miss out on one child, being able to abort that one child who makes his way to the pregnancy center and the girl is talked out of having an abortion, Planned Parenthood loses money. And that's what this is about. It's about money. Thank you."

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

"Thank you, Mr. Speaker. I rise in support. I just wanted to note that I think for me this bill is not about abortion or freedom of speech or religion or anything of this sort, but rather it is about consumer protection and transparency. People in several of our hearings have testified that there are services being provided by some of these centers in question that are medical services that one can get at a doctor's office, medical advice one can procure at a hospital or other legitimate medical institution.

"The testifiers, when asked at the most recent hearing, acknowledged yes, medical services are being provided, because we have trained medical personnel on staff. Medical services are being provided, and it doesn't matter, I think in this case, whether it's for money or not, because I can no more mislead anyone else that I'm a doctor and provide any sort of prescriptive advice or medical counsel that could cause harm to someone without liability on myself. It would be, well, one, fraudulent, it would be negligent, and ultimately it would be criminal. And that's not something that I think anybody wants to endure.

"Mr. Speaker, the acknowledgement that there are folks out there in the community who utilize the services of pregnancy centers under the assumption in approaching these institutions and these businesses that they are legitimate medical service providers, and then internalize that advice they get and make decisions that affect their own lives and health care based upon that, and premised upon that, is incredibly dangerous. It's why we have a need for transparency. It's why we have a need for this bill. And it raises a real question when, in the very same testimony, some of the providers say they absolutely do not want to be required to comply with basic medical standards and regulations.

"And the reason this is important, and when we talk about a compelling state interest, the reason this is important is because there are a number of stories out there that were heard in testimony as well as out in the community. One in particular I want to cite, which is someone I know, who after meeting someone, was seeking emergency help to avoid a

pregnancy, and went to one of these centers seeking Plan B, seeking information, seeking it itself, and was told, in fact, we want to help you with the most legitimate intent, which I think is fantastic, except that the advice given was, hang tight, we'll schedule time where we can sit down and talk further next week. Which completely undermines the purpose and intent of Plan B. Which is advice that is medically inaccurate, if not by omission, directly. And what wasn't known at the time is that this person has multiple, multiple medical conditions each on their own which can be life threatening, which, complicated by a pregnancy, could endanger one's life. This is the danger that we are talking about here, because that is certainly not the only story, it's not an isolated incident.

"Mr. Speaker, this bill is important because we need to vet and put forth basic transparency that ensures public health and safety above all else. When lives are being put in danger, and when testifiers from the American College of Obstetricians and Gynecologists are saying they're the ones that are having to do the cleanup work, and having to see patients and provide medical services to correct misinformation and correct other issues that arise on a regular basis, this raises a serious concern.

"Mr. Speaker, this bill, while acknowledging the good intent I think on a lot of folks' part out there to provide legitimate counseling, and especially support in a time of crisis, I think still allows for a situation that is dangerous, and it's why we need to move forward."

Representative Holt rose to yield his time, and the Chair "so ordered."

Representative Lee continued, stating:

"Thank you. I'll wrap up just by saying, this is not about religion or abortion or freedom of speech. It's, I think for us, about providing basic transparency to help ensure that there is a practice that will not hurt people, will not endanger lives as it moves forward. And it's our obligation to ensure that transparency, and this bill is just one step, and one really small step. I think it should go much further in ensuring the health and safety of our community. Thank you."

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

"Request for ruling on a possible conflict of interest. I have two doctors in the family," and the Chair ruled, "no conflict."

Representative Cachola continued to speak in opposition to the measure, stating:

"I'll be voting no on this measure at this time, the way it's written. I know that it's about transparency. But they're providing penalties like, if you didn't give notice to a patient because you're too busy, the first offense is \$500, the second offense is \$1,000. You're putting a lot of burdens on the way doctors practice. We already have over 500 shortage of doctors as estimated, and this again is a disincentive for doctors to further continue to practice medicine.

"Until such time that data is correct, some of the provisions in the bill to make it so burdensome on the part of practicing physicians, they are being required to do a lot of things and they'll be penalized if they don't, and it's an additional burden and expense on their part. So at this point in time, until such time is corrected, I'll be voting no. Thank you."

Representative Thielen rose to respond, stating:

"Thank you, Mr. Speaker. Still in support, but with that amendment. Mr. Speaker, may I have permission to submit remarks to the Journal? Thank you."

Representative Thielen's written remarks are as follows:

"These remarks to the Journal are in memorandum format, as the legal issues presented in SB 501 require application of case law to the statutory provisions.

"SB 501, HD 2, requires limited service pregnancy centers to disseminate on-site a three-sentence written notice regarding family-planning services to patients or clients. In testimony before the House Judiciary Committee, opponents of the bill announced that, if it passes, they would challenge it in federal court, appealing to the United States Supreme Court if necessary.

"This memorandum reviews three recent federal appellate decisions regarding mandatory notice disclosures for pregnancy centers. State and local governments enacted these laws after finding several centers deceptively hindered their clients from obtaining abortion or emergency contraception. Plaintiffs subsequently challenged the laws on First Amendment grounds.

"Both the Second and Fourth Circuits held some of these disclosures unconstitutionally compelled speech from the pregnancy centers. Evergreen Ass'n v. City of New York, 740 F.3d 233 (2d Cir. 2014); Centro Tepeyac v. Montgomery Cnty., 722 F.3d 184 (4th Cir. 2013). The Ninth Circuit, however, found California's law appropriately regulated professional speech. Nat'l Inst. of Family & Life Advocates v. Harris, 839 F.3d 823 (9th Cir. 2016).

"Only this last decision binds Hawai'i courts, but given the existing circuit split, the Supreme Court may ultimately settle this issue. There, the conservative majority of justices would probably attend closely to the reasoning set forth in the Second and Fourth Circuit decisions. Although the Supreme Court retains full freedom to fashion an independent jurisprudential path, this memo recommends three changes to the current draft to improve its chances on judicial review. It also reviews general legal principles applicable to this legislation and then summarizes the holdings from the three circuits.

#### "I. Recommended Amendments to SB 501

##### "A. Summary

"1. *Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.* SB 501, p. 4, lines 4-7.

"Retain as is. This should pass intermediate scrutiny, if the court views the sentence as regulating commercial or professional speech.

"2. *To apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.* Id. at 4, lines 8-10.

"May not pass intermediate scrutiny if court determines this endorses or encourages a particular action. Reword to emphasize availability of services. For example:

An online application for medical insurance, covering the full range of family planning and prenatal care services, is available at mybenefits.hawaii.gov.

"3. *Only ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate.* Id. at 4, lines 11-13.

"Likely would not pass intermediate scrutiny. Suggest accomplishing the goal of promoting safe and reliable ultrasounds through the licensing rules and regulations governing healthcare professionals (HRS Chapter 451D), physicians and surgeons (HRS Chapter 453), nurses (HRS Chapter 457), and nurse aides (HRS Chapter 457A).

"4. Drafters should consider requiring another notice in applicable cases:

This Center does not have a licensed medical professional on staff.

"This should stand even under strict scrutiny.

##### "B. Discussion

"As a threshold issue, SB 501 defines 'limited service pregnancy center' to include any facility offering the specified services, not merely those opposing contraception or abortion. See id. at 3, lines 6-19. This definition should remain generally applicable to withstand viewpoint discrimination or free exercise challenges. The bill should also preserve its severance clause, so that each required notice receives individual review.

"The first required disclosure informs readers 'Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.' SB 501, HD 2, at 4, lines 4-7.

"The second directs readers '[t]o apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.' Id. at 4, lines 8-10.

"The last states that '[o]nly ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate.' See id. at 4, lines 11-13.

"If the Supreme Court adopted the Second Circuit's rationale for applying strict scrutiny, it could strike down all the three written notice requirements in the current draft. To determine whether the State employed the least restrictive means, the hypothetical comparison would be a public advertising campaign. Under strict scrutiny, if the State could achieve necessary disclosures through its own advertising, then it cannot offload that task to unwilling speakers. Outside of commercial or professional contexts, the State probably could only require the minimal disclosure of licensing status, such as the Status Disclosure in Evergreen or the Unlicensed Notice in National Institute.

"The drafters should consider requiring a notice for centers that do not staff medical personnel, neutrally and concisely advising clients of this fact. While this would not eliminate the policy concerns motivating SB 501, it could mitigate some harms. Moreover, similar notices have survived strict scrutiny review in three federal circuits.

"If tailored to regulate professional speech and conduct, the State could require the other notices, at least under current case law. These disclosures should only convey neutral and truthful information. The drafters should also emphasize that the time-sensitive nature of pregnancy-related decisions favors direct dissemination to clients over general public advertising.

"Under this standard, the first notice qualifies, as it merely states the availability of public programs. The second required disclosure, on the other hand, encourages the reader to undertake a specific action: namely, applying online for medical insurance coverage. Although the exhortation here seems minimal, a court could strike this down as a departure from truthful neutrality. The drafters could remedy this by rewording the notice from the imperative to the indicative mood.

"Finally, the third disclosure likely crosses the line by directly commenting on the quality of the services provided and implying a government preference. This sentence should be removed. Instead, the drafters could perhaps consider direct regulation of ultrasounds through the medical licensing laws.

##### "II. Background Legal Principles

"Courts use a hierarchy of scrutiny standards to evaluate the constitutionality of a law. These compare the government objective against the means employed. The most stringent standard, strict scrutiny, requires the government demonstrate (1) the law employed only the means necessary (2) to attain a compelling government interest. Next comes intermediate scrutiny, which requires the government demonstrate (1) the law employed substantially related means (2) to attain an important government interest. Finally, the most lenient standard, rational review, requires the government demonstrate (1) the law employed reasonable

means (2) to attain a legitimate government interest. Several gradations exist between each of these standards.

"When evaluating a First Amendment challenge, a court must first determine whether the law at issue regulates speech according to content or viewpoint. 'Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.' Reed v. Town of Gilbert, 135 S. Ct. 2218, 2227 (2015). This apparently invokes the strict scrutiny standard for any content-based law. But see, e.g., Renton v. Playtime Theatres, 475 U.S. 41, 48 (1986) (applying intermediate scrutiny to content-based zoning restrictions).

"Viewpoint discrimination, an egregious species of content-based laws, manifestly advantages one side of a publicly debatable question. Rosenberger v. Rectors of the Univ. of Va., 515 U.S. 819, 829 (1995). This warrants heightened review; viewpoint discrimination can invalidate a speech restriction even if the underlying speech ordinarily would not receive constitutional protection. R.A.V. v. City of St. Paul, 505 U.S. 377, 384 (1992) (offering as example a law 'proscribing only libel critical of the government.').

"Because '[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech,' courts treat compelled speech as a content-based speech restriction. Riley v. Nat'l Fed'n of the Blind, 487 U.S. 781, 795 (1988). Generally, therefore, '[l]aws that compel speakers to utter or distribute speech bearing a particular message' will invite strict scrutiny. Turner Broad. Sys. v. FCC, 512 U.S. 622, 642 (1994). See also Wooley v. Maynard, 430 U.S. 705, 714 (1977) ('[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.').

"Nevertheless, the government can exercise regulatory control over speech in professional and commercial contexts. 'The power of government to regulate the professions is not lost whenever the practice of a profession entails speech.' Lowe v. SEC, 472 U.S. 181, 228 (1985) (White, J., concurring). Regulating medical practice falls within this general police power. Gonzales v. Carhart, 550 U.S. 124, 157 (2007). See also Planned Parenthood v. Casey, 505 U.S. 833, 884 (1992) (upholding law compelling physicians to disclose certain information to women seeking abortions). And crucially, '[t]he State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient.' Roe v. Wade, 410 U.S. 113, 150 (1973).

"Considerable doctrinal uncertainty remains, however, over the precise parameters of professional regulation. One influential concurrence has identified a 'rough distinction' between licensing requirements and public advocacy. Thomas v. Collins, 323 U.S. 516, 544 (Jackson, J., concurring). For instance, the government may prohibit unauthorized practice of medicine, but not public or private speech 'urging persons to follow or reject any school of medical thought.' Id. The operative distinction appears whether a 'personal nexus' exists between speaker and audience. Lowe, 472 U.S. at 232 (White, J., concurring). In other words, a professional commenting on issues of public moment receives greater free speech protections than a professional exercising fiduciary control over a client's affairs.

"Based on these precedents, as well as its own case law, the Ninth Circuit has identified a continuum between public advocacy (subject to the highest constitutional protections) and professional conduct (subject to any reasonable regulation). Pickup v. Brown, 740 F.3d 1208, 1227-29 (9th Cir. 2013). Professional speech occupies a midpoint between these poles, meriting intermediate scrutiny, because professional relationship chiefly exists 'to advance the welfare of the clients, rather than contribute to public debate.' Id. at 1228. Other circuits have recognized a distinct professional speech doctrine. See, e.g., King v. Governor of New Jersey, 767 F.3d 216 (3d. Cir. 2014). The Supreme Court, however, has not endorsed any specific test.

### "III. Decision Summaries

#### "A. Fourth Circuit

"Following public hearings in 2009, the Montgomery County Council found that 'requiring a disclaimer for certain pregnancy resource centers is necessary to protect the health of County residents.' Centro Tepeyac, 722 F.3d at 186. Some residents, the Council feared, might mistakenly believe the centers provided medical services and delay seeking necessary treatment. Id. at 186-87. The County therefore mandated that centers post two disclosures:

- (1) 'The Center does not have a licensed medical professional on staff';
- (2) 'The Montgomery County Health Officer encourages women who are or may be pregnant to consult with a licensed health care provider.'

Id. at 186. This law applied to any 'organization, center, or individual that: (A) has a primary purpose to provide pregnancy-related services; (B) does not have a licensed professional on staff; and (C) provides information about pregnancy-related services, for a fee or as a free service.' Id.

"Centro Tepeyac, a non-profit corporation, filed suit on First Amendment grounds, seeking injunctive relief, monetary damages, and attorney's fees. The organization provided services for pregnant women, including free pregnancy tests, confidential counseling, and baby supplies (e.g., diapers, clothes). Id. at 187. It did not, however, refer women for abortion or emergency contraception. Centro Tepeyac argued the law unconstitutionally compelled it and other pro-life centers to disclaim the value of the counseling services provided.

"After observing that regulations of professional or commercial speech might warrant less stringent review, the district court, for procedural reasons, applied strict scrutiny to both statements. Id. at 189. It found a compelling government interest in ensuring citizens obtained appropriate and necessary medical care. Id. Notifying clients about a lack of medical staff or services satisfied that interest in a neutral and truthful manner. Id. at 190. Once prospective clients had this information, though, the court found it superfluous to expressly encourage women to seek a licensed health care provider, because public service announcements could provide an adequate substitute. Id. Reviewing for abuse of discretion, the Fourth Circuit affirmed all these holdings on en banc review. Id. at 192.<sup>1</sup>

#### "B. Sixth Circuit

"In 2011, New York City enacted its own notice and disclosure law. Evergreen, 740 F.3d at 241. Public hearings had elicited wide-ranging testimony for and against the bill. According to several witnesses, some centers deceptively obstructed clients from receiving abortion or contraception services, using pretextual sonograms, spurious legal or medical information, or even just repeated appointment cancellations. Id. at 240-41. Opponents of the bill argued the clinics offered necessary alternatives to abortion, and that the required notices effectively required them to promote abortion. Id. at 241. The Council ultimately passed the measure on consumer protection and patient health grounds. Id.

"The final law, as distilled by the Sixth Circuit, contained three major provisions:

- (1) 'Status Disclosure' indicating whether licensed medical professionals operated or supervised the facility;
- (2) 'Government Message' encouraging women who are or who may become pregnant to consult with a licensed provider;
- (3) 'Services Disclosure' specifying whether the facility provided or referred clients for abortion, emergency contraception, or prenatal care.

Id. at 238.

<sup>1</sup> The dissenting opinion by Judge Niemeyer also applied strict scrutiny, but would have invalidated the entire statute.

"Five pregnancy centers sought and received an injunction against the law on First Amendment grounds. Id. at 241-42. After finding the law sufficiently definite to withstand a vagueness challenge,<sup>2</sup> the Second Circuit individually examined the required disclosures under both intermediate and strict scrutiny. Id. at 242-45. The Status Disclosure, it found, properly secured the city's interest in protecting patient health and preventing consumer fraud. Id. at 247. Because a public service announcement could not inform women whether a particular clinic had licensed staff, the law achieved its compelling interest by the narrowest available means. Id.

"By contrast, the Government Message 'require[d] a speaker to advertise on behalf of the government[.]' Id. at 250. While the government could advertise or subsidize publicly useful programs, it could not enlist unwilling speakers 'to affirmatively espouse the government's position on a contested public issue.' Id. at 251.

"The Services Disclosure also failed under both strict and intermediate scrutiny. Like the Fourth Circuit, the Court found the Status Disclosure sufficient to secure the government interest in preventing fraud or disseminate health information. Id. at 249. The Court further identified the context of this disclosure: namely, 'a public debate over the morality and efficacy of contraception and abortion.' Id. By requiring clinics to broach these topics upon first contact with clients, the law necessarily altered 'the way in which a pregnancy services center, if it chooses, discusses the issues of prenatal care, emergency contraception, and abortion.' Id. at 249-50. On politically controversial issues, the Court held, '[t]he centers must be free to formulate their own address.' Id. at 250.

#### "C. Ninth Circuit

"In 2016, the California Legislature enacted the FACT Act, after finding crisis pregnancy centers substantially hindered women from receiving accurate information about their reproductive rights and available medical services. Nat'l Inst., 839 F.3d at 829. For licensed medical providers offering certain family planning services, the Act required the following notice:

California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number].

Id. at 830 (hereinafter 'Licensed Notice').

"For unlicensed centers offering certain pregnancy-related services, the State required an alternative notice:

This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services.

Id. at 830 (hereinafter 'Unlicensed Notice').

"Three religiously-affiliated nonprofits brought suit on First Amendment grounds, arguing the law infringed free speech and free exercise of religion. Id. at 831. The district court upheld the Licensed Notice, alternatively as either regulated professional conduct or regulated professional speech. Id. at 832. It also rejected the viewpoint discrimination and free exercise challenges. Id.

"On appellate review, the Ninth Circuit first found both Notices were content-based, but viewpoint-neutral, compelled speech. Id. at 836. Next, it declined to apply strict scrutiny, citing rulings in other circuits that had upheld mandatory abortion-related disclosures on more lenient review. Id. at 837. See also Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570, 576 (5th Cir. 2012) (applying rational review to mandatory sonogram requirement); Planned Parenthood Minn., N.D., S.D. v. Rounds,

530 F.3d 724, 734-35 (8th Cir. 2008) (applying rational review to mandatory 'informed consent' discussions prior to abortion).

"Instead, the Court invoked the professional speech doctrine and subjected the Licensed Notice requirement to intermediate scrutiny. Id. at 838-39. The Licensed Notice neutrally informed patients that publicly-funded services existed, without encouraging or even implying a preference. Id. at 842. Although the Court acknowledged advertising might secure the same objective, intermediate scrutiny did not require choosing the least restrictive means available. Id. Given the time-sensitive nature of pregnancy decisions, the State could reasonably prefer directly informing patients over a generic advertising campaign. Id.

"As for the Unlicensed Notice, the Court found it survived even strict scrutiny. Id. at 843-44. The Unlicensed Notice neutrally, truthfully, and concisely informed women that traditional professional regulations did not apply to these particular clinics. Id. at 844. The disclosure neither commented on the quality of unlicensed clinics, nor did it urge patients to undertake any particular action. Id.

"Finally, the Court disposed of the free exercise claim by noting the disclosure requirements were 'a neutral law of general applicability, subject only to rational basis review.' Id. at 845. Because strict and intermediate scrutiny incorporate the rational basis standard, the Court concluded the Act did not violate the free exercise clause. Id.

#### "IV. Conclusion

"In light of these decisions, the drafters should (1) retain the first disclosure in SB 501; (2) modify the second disclosure to neutrally state the availability of services rather than expressly encourage their use; and (3) remove the third disclosure, accomplishing these objectives through the healthcare licensing laws instead. See HRS Chapters 451D, 453, 457, and 457A."

Representative McDermott rose to respond, stating:

"Mr. Speaker, I appreciate the remarks of some of my colleagues, but we don't make policy based on anecdotal stories. The biggest thing that these centers do is they provide, the ones that have it, an ultrasound opportunity for the young lady to see the child. Once the young lady sees the child, the abortion option is almost always off the table, because they see this living, breathing human being in their stomach.

"And this is about abortion, make no mistake about it. We had two people testify in support, Planned Parenthood and the abortion doctor. And I asked, Planned Parenthood lobbyist said, quote, 'we want women to have all the information possible,' unquote. I said, okay, fine, then would you be willing to furnish the ultrasound to the women before you abort their child? Oh, I can't answer that question, that's not in the bill. No, they won't, because if these pregnancy centers offer the ultrasound, by a semi-retired OB/GYN, which is the case in the one that I know of, that's a licensed medical professional, the young lady will not have the abortion. She won't, and Planned Parenthood loses money.

"Now, with regard to education, all this talk, you can ask any 13-year-old girl who goes to high school where to get an abortion, they know Planned Parenthood. I think we've done a good job advertising that. Certainly Planned Parenthood has. There's no high school student that doesn't know where to go to get an abortion. Planned Parenthood. It doesn't matter if you have money, you can be 13 years old, we have no parental consent, no parental notification, no restrictions at all. And yet, it's not enough for us. We need more. We want to put these centers out of business, chase them out of business. Even if they have a semi-retired OB/GYN, they're reading the ultrasound, that's not good enough.

"And again, I go back to the only people who were there had an economic interest, a direct economic interest in terminating lives of children that are inside the mother's womb. Thank you, sir."

<sup>2</sup> The partial concurrence would have invalidated the entire statute because the 'inherently slippery definition' of a pregnancy center in the statute 'authorizes and encourages arbitrary enforcement.' Id. at 251-52 (Wesley, J., concurring and dissenting). The district court had enjoined the entire statute on these grounds.

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

"Thank you, Mr. Speaker. In support. I just need to make a comment that if Planned Parenthood was not around, there would be illegal abortions available, and if you're in high school and you ask around, someone will tell you where you can go get that illegal abortion. Because when I was in high school in the '60s, in 1968, I had friends that got illegal abortions, and the word was out on the streets where you could get them.

"The reason we are at where we are today is because we do not want illegal abortions. They're dangerous, they're a threat to the person that gets them, and their lives are in danger by keeping it illegal. So I feel strongly, I had to make that statement to set the record straight. Thank you."

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

"Thank you, Mr. Speaker, I rise in opposition. Before I begin, Mr. Speaker, may I please adopt the words of the Representative from District 50, as well as the Representative from Wahiawa," and the Chair "so ordered." (By reference only.)

Representative Har continued, stating:

"Thank you, Mr. Speaker. I agree with a previous speaker who said this is a measure of consumer protection. Accordingly, I believe that this bill should have gone to the Committee on CPC so these issues could have been vetted regarding the consumer protection issues. I absolutely agree with that previous speaker.

"In addition, before the Health Committee, one of the concerns I have about this bill is that the Department of Health noted that with respect to the civil penalties, they would not be able to enforce this measure. They said that they would need additional funding for additional positions. Accordingly, this bill also should have gone to the Committee on Finance, so these issues could have been vetted. Because at this point in time, there's nobody to enforce this measure. So for those reasons, in addition to the rest of the opposition that's been mentioned, I stand in opposition. Thank you."

Representative Tupola rose to respond, stating:

"Thank you, Mr. Speaker. I rise still in opposition, wanting to insert the comments from my colleague from Kapolei as if they were my own," and the Chair "so ordered." (By reference only.)

Representative Tupola continued, stating:

"I also agree with the comment that it is about consumer protection, and that we're talking about transparency, and to those people who have spoken to the merits of the bill and whether or not this is good policy, good public policy or bad public policy, that's where wherein the conversation lies.

"And so I bring that up because we can bring up vignettes from both sides of the story. We can say people who went on this side and went to a limited pregnancy service center had a horrible experience, we can say stories of people who went on this side, went to Planned Parenthood, had a horrible experience. All of that says, everybody will have their own experience. Every experience will be different. Every individual story will be different.

"But what we're trying to do is fix whether or not this is good public policy and whether or not it's going to be enforceable, and whether or not it puts a burden on those who are actually going to be involved, and whether or not this is in possible, I guess, conflict, with freedom of speech. So thank you very much, Mr. Speaker."

Representative San Buenaventura rose to respond, stating:

"I apologize. I still stand in strong support. Two things. One, I was disappointed that attorney general did not submit an opinion, because freedom of speech was a big issue in this case.

"And the second thing I'd like to point out, in this federal climate that we have here, where the defunding of Planned Parenthood seems to me highly likely, there are going to be a number of consumers who will be flocking to these limited pregnancy centers, in which case we need to do the best that we can to ensure that they are completely informed about all of their options. And what we have produced here, what JUD Chair has produced with its latest amendment, was, I believe, the best of all possible solutions. Thank you very much."

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

"Thank you, Mr. Speaker. In support. Mr. Speaker, just some short comments. First, I do want to note that this has a defective date, so I really appreciate all the comments that are being stated on the floor today. I'd also just want to point out and correct the record that there were numerous other testifiers in support of this measure, including Hawaii State Commission on the Status of Women, We Are One, Hawaii Section of ACOG, Healthy Mothers Healthy Babies Coalition of Hawaii, and the Hawaii Women's Coalition. So there is broad public support for this, Mr. Speaker. 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. 501, SD 1, HD 2, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Third Reading by a vote of 41 ayes to 10 noes, with Representative Matsumoto voting aye with reservations, and with Representatives Cachola, DeCoite, Har, Kong, McDermott, Oshiro, Say, Tokioka, Tupola and Ward voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1761) recommending that S.B. No. 502, SD 1, HD 1 pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 502, SD 1, HD 1 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. Mr. Speaker, I rise in support, but with the strongest of reservations. Mr. Speaker, the purported intent of this measure is to remove discriminatory language governing requirements for insurance coverage of assisted reproductive technology by requiring parity of coverage for in vitro fertilization for same-sex couples, male-female couples for whom male infertility is an issue, and women regardless of marital status. The intent of this measure is absolutely laudable, and I support it wholeheartedly.

"My grave reservations, however, stem from the fact that this bill requires a new insurance mandate. As we all know, insurance mandates increase premiums across the board for all policyholders, also known as our constituents.

"Senate Bill 502, SD 1, HD 1 introduces a new insurance mandate, mandatory insurance coverage of an oocyte donor, also known as an egg donor, or mandatory insurance coverage of a surrogate. An egg donor or surrogate are third parties, and are not covered by the insured or the insured's dependent spouse. To be clear, these two coverages are not covered under the current law mandating a one-time only benefit for in vitro fertilization procedures pursuant to HRS Section 431:10A-116.5.

"The written and verbal testimony of HMSA, Kaiser and HMAA all made clear that this, in fact, is a new benefit, because it is not currently offered to any of its members. The testimony of HMSA reads, in relevant part, HMSA's current IVF policy does not cover surrogacy or donors in any form regardless of sex, sexual orientation, or marital status. While we understand the IVF-service itself is not changing, who that service/benefit applies to would change. Covering services for an individual who is not a member's spouse or a third party is a significant difference.

"Quoting the testimony of Kaiser Permanente, in relevant part, currently, Kaiser does not cover egg donor or surrogacy for any of its members, regardless of sex, sexual orientation or marital status. Therefore, by

passing this bill as is, the committee is creating an additional benefit for an additional class, which subverts the intention of the bill which is to create parity.

"The testimony from the Hawaii Association of Health Plans states, while health plans currently cover in vitro fertilization benefits for their members, covering services that have so many long-term health, legal, and cost implications for a surrogate, a third-party, who is not otherwise a beneficiary is problematic. The demand and related costs for expanded services as described in this bill are unknown. Insurers would have to assess the impact and build the added costs into employer premiums, which would be done gingerly as we seek to balance essential benefits with the burden to employers.

"So it is clear that Senate Bill 502 is creating a new insurance mandate, yet the committee report which came out of the Committee on Health states, your committee notes that this measure does not, nor is it intended to, expand the State's in vitro fertilization insurance mandate to require coverage for additional procedures. The mandate will continue to be limited to requiring coverage of in vitro fertilization procedures such as egg retrieval, fertilization, and embryo transfer.

"The committee report goes on to say, this measure clarifies that, where IVF procedures are performed on an oocyte donor or surrogate of the insured or of the insured's dependent spouse, the scope of coverage required for egg retrieval, fertilization, and embryo transfer will be determined as though these procedures were being performed on the insured or on the insured's dependent spouse.

"The standing committee report contradicts itself, because it clearly states that no new benefits are intended. Yet the standing committee report goes on to state that this measure clarifies that where IVF is performed on an egg donor or surrogate of the insured or the insured's dependent spouse, coverage will be allowed for egg retrieval, fertilization, and embryo transfer. This contradicts itself because by allowing these procedures on the egg donor or the surrogate, we are providing a new benefit, since egg donors and surrogates are not currently covered under current law."

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

Representative Har continued, stating:

"Thank you to the Representative from Molokai. My second and more important reason for opposition to this bill is because pursuant to state law, before any new insurance mandate can be instituted, an audit must be conducted on the social and fiscal implications of such a mandate. Specifically, HRS Section 23-51 states, in relevant part, before any legislative measure that mandates health insurance coverage for specific health services can be considered, there shall, not may, shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report that assesses both the social and financial effects of the proposed mandated coverage.

"Mr. Speaker, to the best of my knowledge, there have been no concurrent resolutions introduced or heard this legislative session with respect to this new insurance mandate requiring coverage for an egg donor or a surrogate. Therefore, to pass this measure without first conducting the audit means we are in violation of state law. HRS Section 23-52 delineates the reasons for the audit, including social and fiscal impacts of the insurance mandate. Notably, HRS 23-52 2(D) states, the fiscal impacts to the extent to which insurance coverage of the healthcare service or provider can be reasonably expected to increase or decrease the insurance premium of policyholders.

"Logic dictates that any insurance mandate will increase premiums for policyholders, namely our constituents. Therefore, we not only have a legal obligation, but a fiduciary obligation to conduct the audits before passing this measure so that we understand how much our constituents will have to pay in terms of the increase to their policies.

"Finally, Mr. Speaker, pursuant to the Affordable Care Act, which has not been repealed, has not been replaced, under the ACA, states must

cover the cost for any new insurance mandates instituted after December 2013. Specifically, section 1311(d)(3) of the ACA requires states to defray the cost of any benefits required by state law to be covered by qualified health plans beyond the essential health benefits.

"Here, IVF is not an essential health benefit. And therefore, if we were to pass this measure, the cost could potentially be borne by the State. Anyone having a background in IVF understands that the cost could be potentially astronomical. In this case, we have no idea how the State will budget to cover such costs, which is why the audit is needed. How can the State be expected to budget for such a cost, if we have no idea what the cost will be?

"The saving grace at this point for the bill is number one, it is going into conference, and number two, I do support the intent of the bill, which is why I am standing with reservations. So it is my sincere hope that these issues will be addressed in conference committee, and that we will comply with state law and first conduct the audit. Without the audit, we have no way of knowing how much this new mandated benefit will cost our constituents and potentially the State.

"More importantly, we will not be able to bring this bill to fruition legally, which is ultimately the fair and equitable thing to do, regardless of sex, sexual orientation or marital status. But until these issues are resolved in conference, I respectfully must stand in support but with the strongest of reservations. Thank you, Mr. Speaker."

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

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

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

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

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

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 502, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO IN VITRO FERTILIZATION INSURANCE COVERAGE," passed Third Reading by a vote of 45 ayes to 6 noes, with Representatives Cachola, DeCoite, Har, Matsumoto, McKelvey and Oshiro voting aye with reservations, and with Representatives Choy, McDermott, Say, Tokioka, Tupola and Ward voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1762) recommending that S.B. No. 249, SD 2, HD 1 pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 249, SD 2, HD 1 pass Third Reading, seconded by Representative Evans.

Representative Takayama rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Takayama's written remarks are as follows:

"I rise in opposition to SB 249, SD 2, HD 1, which proposes to reduce retirement pensions for state judges.

"I believe our society should encourage the best and brightest in the legal profession to serve as judges because they serve such a crucial

function in reaching fair decisions and rendering just punishment. This measure sends the entirely wrong message to those considering applying to be judges, by seeming to de-value their contributions to our justice system.

"This measure also fails to specify whether it applies to current judges or only future judges, and in so doing stifles full public deliberations.

"For these reasons, I am opposed to SB 249, SD 2, HD 1."

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

"Thank you very much, Mr. Speaker. With very strong reservations."

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

"Thank you, Mr. Speaker. I rise in opposition. Mr. Speaker, I will be quoting an op-ed piece that was submitted to the Honolulu Star-Advertiser on April 4, 2017 by retired Chief Justice Ronald Moon, who was a friend and a mentor. I'm going to read it into the Journal because I believe it epitomizes my opposition to this bill.

"There have been a series of legislative proposals in 2016 and 2017 that target only judges, and attempt to radically change how they are selected, retained and compensated. Fortunately, most of these measures have been defeated.

"However, one such bill is still advancing: Senate Bill 249, SD 2, HD 1, which would significantly reduce retirement benefits for future Hawaii judges.

"I strongly oppose this bill. It is highly unusual because it would reduce retirement benefits for only a single group of prospective employees. Typically these reductions are made across the board. For example, in 2011, the state Legislature reduced retirement benefits for future judges, legislators and senior executive branch officials, and other future state and county employees.

"Some may try to frame the 2017 bill as a 'cost-saving measure,' similar to the 2011 bill. Cost saving is important, but it appears not to be the true motivation. Our state Employees' Retirement System has testified that, 'from a business perspective, the ERS believes the reduction proposed in this 2017 bill may be disproportionate to the small number of members affected by this legislation.'

"I agree. The relatively small number of people it would affect — there are only 82 full-time judges in the state Judiciary — will not meaningfully reduce the future fiscal responsibilities of the state.

"So the question is, why are judges being discriminated against? The context of the bills in 2016 and 2017 is telling. Although less obvious than attempts to change how judges are selected or retained, make no mistake about it — this bill that targets only judges appears to be another attempt to impose undue pressure on the Judiciary. More specifically, the bill again attempts to cause the Third Branch and its judges not to abide by the constitutional Doctrine of Judicial Independence.

"Judges are duty-bound to base every decision on the facts and the applicable law, and not on politics, popular opinion or outside influences. That is why it is so important to insulate judges' decision-making from apparent political pressure. That is why I oppose the current bill.

"In fact, in 2006, voters approved a constitutional amendment to create a Commission on Salaries, charged with making recommendations on the salaries of judges, legislators and senior executive branch officials. I fully supported this system because this created an independent body to make decisions that would be approved or disapproved as a whole. In other words, the Legislature cannot pick and choose which branch of government, if any, gets a raise in any given year.

"Accordingly, I submit that the 2017 bill, SB 249, violates the intent of the voters in creating a system for equal treatment of the three branches of government, and therefore is unconstitutional.

"This is not about current judges, who have no financial stake in this bill. This is about the quality of our future Judiciary. Our judges serve the people. We need to be able to continue attracting the most qualified candidates to become judges: those with the integrity to do what's right, the experience to make the best decisions in each and every case, and the heart to serve our community.

"So, Mr. Speaker, while this bill does have a defective date, similar to the previous bill, I do not support the intent of this bill, unlike the previous measure. So for these reasons, and for the reasons cited by Chief Justice Moon, I stand in opposition. Thank you."

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

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

"Mr. Speaker, I'll be voting no, and ask that the words of the Representative from Kapolei be entered as my very own, as well as the commentary submitted by former Chief Justice Moon. Thank you," and the Chair "so ordered." (By reference only.)

Representative Matsumoto rose in opposition to the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Matsumoto's written remarks are as follows:

"Mr. Speaker, I rise in opposition.

"This bill unfairly targets judges and sets a disconcerting precedent. Who's to say the police aren't next? Emergency Medical Services? Our state has a severe problem with unfunded liabilities for our pension system, however, selecting one class of people is not the solution. I also have concerns about the cost of implementation and the potential deterrent effect of a reduced benefits package in attracting qualified individuals for judgeship.

"Will the State really save money by reducing the percentage of compensation of judges' retirement allowance from 3% to 2%? ERS reported that it will cost between \$50,000 and \$100,000 to modify the system to process this change. When the cost will be made up and when the State will actually start to accrue savings is very unclear because the State would spend that much to affect a very small number of state employees.

"In addition, I also have a concern that this reduced benefits package would deter qualified individuals from pursuing a judgeship. Attaining and retaining the best possible candidates to serve our communities as judges. We need to explore other avenues of generating revenue for the State, but we cannot start with reducing new judges' retirement."

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

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

"Mr. Speaker, in opposition. It is hard to put a dollar cost on justice. If judges do a good job, they're worth every dollar. If judges don't do a good job, anything is too much. I am opposed to this bill."

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

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

"Mr. Speaker, also in opposition, and may I adopt the remarks of the Representative from Kapolei? Mr. Speaker, we know that tampering with the jury is illegal. This is tampering with the judges and is equally illegal, and I think it flies in the face of our founding fathers, who established the separation of powers. This is a division of powers. Thank you," and the Chair "so ordered." (By reference only.)

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

"Mr. Speaker and members, with reservations. And I hope that the conference committee, when they meet, they will continue the arguments that are heard here. Thank you very much."

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

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

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

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

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

"Mr. Speaker, I just wanted to make a comment in opposition as well. There's three things that are kind of going through my mind as far as this bill is concerned, and one of them was brought up in the hearing, in the Finance hearing, and it had to do with the pressure of the amount of case load that some judges have and the need for us to recruit highly qualified individuals, and attract lawyers that might want to even apply to be a judge.

"And it was brought up by my colleague from Kauai in the hearing that the case load for the judges in Kauai is the heaviest in the State. There's currently two circuit court judges, one family court, and one district court judge. Between the family court and the district court judge, they have to do overage for each other. So sometimes the family court judge will cover the district court judge's cases and vice versa, because of the amount of load that they have.

"And so I think that when we look into this, and knowing that this is only going to apply to judges that are going to be newly elected this coming year, then it is going to disincentivize or make it less attractive for people to want to do this, because they know that they'll be getting less pay for maybe what they could make more as a lawyer.

"The second thing that I think about as well that was mentioned in the salary commission is that the salary commission was instituted so that we could have a fair look at a group of government officials as one, and I think one of the concerns that was brought up in the hearing was about vestiture, and perhaps the differences between us and the other branches.

"And so certain judges may vest with one term, but they also have an age requirement. As for our office, we don't have an age requirement to be an elected official. A judge must also meet years of service and age requirements as general contributory employees. A judge also meet the same years of age requirements as police, fire investigators, ACO sewer workers, water safety workers. But they are the only class that actually has a mandatory retirement age. We do not.

"And so there are differences between us, and maybe what they're going through, but I still feel strongly that us taking a good look at it as a group and being fair as far as the salary commission determining things that

happen in a package is super important, but we should also realize that with 82 judges out there, with very few judges that, a handful of them are actually going to retire this coming year. We need to make sure that we're also making this where more lawyers or potential judges actually want to apply to do these things. And so, with those comments, I'm in opposition. And can I have a quick recess, please, Mr. Speaker?"

At 10:49 o'clock a.m., Representative Tupola requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:51 o'clock a.m.

Representative Tupola moved to recommit Stand. Com. Rep. No. 1762 and S.B. No. 249, SD 2, HD 1, seconded by Representative Ward.

At 10:51 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

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

At this time, the Chair stated:

"There's a motion which has been seconded to recommit the bill that we're currently discussing. Members, please confine your remarks to the recommitment, not on the merits of the bill. The question would be whether or not the bill should be recommitment. An example would be, if you're against the recommitment, this bill does not need any more work, therefore it should continue to go on to conference. Hypothetically, argument for the recommitment would be, possibly, the bill needs more work, and I still have concerns with it, therefore I support the recommitment. That simple. If it fails, we go back to the original bill. At this point, discussion on the recommitment."

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

"Thank you, Mr. Speaker. I rise in support of the motion. I think with the concerns that we've heard, in addition to the fact that in the hearing there was no supporters of the bill, that we should deeply consider the fact that many of us have concerns about taking this step forward, that maybe we should discuss the differences between the three, and if something should happen, if it happens at the salary commission level, so for every single reason I said earlier and those, I stand in support of the recommitment. Thank you."

Representative Evans rose to speak in opposition to the motion to recommit, stating:

"Thank you, Mr. Speaker. I'm in opposition to the recommitment. I believe that we've had great discussion today, and I also believe in the process. I believe our chairs have brought to the body a bill, they've defected the date. Clearly, they see there's more work to be done on it and that they want it to continue, and I support the chair in this process, so I oppose this motion. Thank you."

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

"Thank you, Mr. Speaker. I support the recommitment, and I oppose the underlying bill. Mr. Speaker, when I look at the list of opponents to the bill, it's amazing to see the various groups that sometimes are at loggerheads all joined together to oppose the bill.

"Then I look for the list of supporters. Zero, absolutely zero. And the procedure we have in this body is, if there's no support for a measure, it gets tabled. So now we have an opportunity to do that. Thank you."

Representative Har rose in support of the motion to recommit 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 Saiki rose to speak in opposition to the motion to recommit, stating:

"Mr. Speaker, I rise in opposition to the recommittal. And I would just like to note that, as mentioned, that this legislation does have a defective date, so it will go into the conference committee where it can be considered. Thank you."

Representative Souki rose to speak in opposition to the motion to recommit, stating:

"Mr. Speaker, in opposition, let this bill proceed to the conference committee."

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

"Mr. Speaker, in support of the recommittal. Mr. Speaker, a recommittal is an oops, we made a mistake. It's a good *mea culpa*, it's a good time to say, you know, we're not perfect. But we slipped this one a little bit too fast, a little bit too out of the ordinary, and as the opposition indicates, there's nobody for this bill, so why should we be for it if nobody is for it?"

"I think it's a good chance for humbling ourselves and saying, well, we kind of made a mistake. Are we too proud to say that we are mistakenly doing this? I don't think we should be. I think those who can learn from feedback are the wiser of the sort, and I think the wiser decision is to proceed with the recommittal, as we have done on this floor a number of times.

"So, Mr. Speaker, it's a *mea culpa*, oops, we made a mistake, let's get on with keeping the judges judges and not doing otherwise. Thank you."

The motion was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Ito being excused.

(Main Motion)

At this time, the Chair stated:

"The motion to recommit has failed, we are back on the main motion. Any discussion? And members, I need to humbly remind you, if you've already spoken twice on this measure, you cannot speak a third time unless you are going to change your vote. Discussion on the bill, the current bill before us, Senate Bill 249, Senate Draft 2, House Draft 1."

At 11:03 o'clock a.m., Representative Tupola requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:05 o'clock a.m.

Representative Thielen rose to respond, stating:

"Mr. Speaker, I'm rising against the bill. You know, we could take the opportunity to at least show the Judiciary and the community at large how much we believe in the separation of powers between the three branches.

"If we have enough noes, or certainly enough with reservations, so the bill is somewhat hobbled as it goes into conference committee, and then maybe the conferees will recognize that the Legislature should not use its legislative powers to try impact the Judiciary.

"We all took civics, at least I hope we did, and this is a classic case of what you should not do. This is bad policy. So I hope that we will send it over deeply wounded, and that it won't come out of conference committee. I think it's embarrassing as a policy of this body. Thank you."

At 11:07 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

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

Representative Ward rose, stating:

"Mr. Speaker, I call for a roll call vote."

At 11:10 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

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

Representative Ward rose, stating:

"Mr. Speaker, as the call for a roll call vote would imply all of the past bills that we've taken in, I therefore withdraw my call for a roll call vote. But this is a little bit more censorship than I would prefer. This is a body of the democracy of America."

At 11:12 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:12 o'clock a.m.

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 249, SD 2, HD 1, entitled: "A BILL FOR AN ACT RELATING TO RETIREMENT," passed Third Reading by a vote of 39 ayes to 12 noes, with Representatives Cachola, McKelvey, San Buenaventura, Souki, Takumi and Tokioka voting aye with reservations, and with Representatives DeCoite, Har, Kobayashi, LoPresti, Matsumoto, McDermott, Oshiro, Say, Takayama, Thielen, Tupola and Ward voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1763) recommending that S.B. No. 207, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 207, SD 2, HD 2 pass Third Reading, seconded by Representative Evans.

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

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

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

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

"Mr. Speaker, no vote, and I'd like to refer my comments into the Journal from the testimony of the Hawaii Government Employees Association testimony in the Finance Committee on April 4, with some of the concerns that they had with this request for us to not pass this bill. Thank you very much, Mr. Speaker."

[Note: This space intentionally left blank.]

Representative Tokioka submitted the following:



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION  
AFSCME Local 152, AFL-CIO  
RANDY PERREIRA, Executive Director • Tel: 808 543 0011 • Fax: 808 528 0922

The Twenty-Ninth Legislature, State of Hawaii  
House of Representatives  
Committee on Finance

Testimony by  
Hawaii Government Employees Association

April 4, 2017

**S.B. 207, S.D. 2, H.D. 1, PROPOSED H.D. 2 –  
RELATING TO EMPLOYEES**

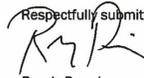
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of Parts II and III of the proposed House Draft 2 of S.B. 207, S.D. 2, H.D. 1 which authorizes the HHSC Maui Region privatized employees the ability to purchase credited service to the Employer-Union Health Benefits Trust Fund (EUTF) and repeals in its entirety, the content of Act 1, Second Special Session, Session Laws of Hawaii 2016, respectively.

On July 20, 2016, with two-thirds support of both chambers, the Legislature overrode Governor Ige's veto of S.B. 2077, which provided employees in the Maui Region of the HHSC the choice of a cash severance payment or modified retirement benefits, making the legislative intent to assist the affected employees absolutely clear.

In order to avoid yet another costly lawsuit and additional delays, both legislative chambers have been thoroughly vetting proposed legislation that would resolve the concern of employees choosing between severance and retirement, as contained in H.B. 233 and 234. Now, at the last possible opportunity, the Ige Administration has floated proposed language that is dramatically antithetical to the dialogue of the past two entire legislative sessions. By no measure has this proposed draft been properly vetted by all stakeholders nor ensured that it will pass legal muster. Further, this proposed language does not comport to prior legislative intent.

The affected employees have been in limbo regarding their employment and retirement benefits for too long and the amendments contained in the proposed draft serves only to exacerbates the confusion and uncertainty, therefore we respectfully request the Committee to defer Parts II and III of the proposed draft. We raise no objections to Part I of the proposed draft which provides a funding mechanism to implement a negotiated severance package.

Thank you for the opportunity to testify in strong opposition to the proposed House draft of S.B. 207.

Respectfully submitted,  
  
Randy Perreira  
Executive Director

888 MILILANI STREET, SUITE 401 HONOLULU, HAWAII 96813-2991

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

Representative Oshiro's written remarks are as follows:

"I support this bill because it may be the only vehicle to provide the Department of Budget and Finance with the appropriation for collective bargaining cost items related to the transition of operation of Maui regional hospitals to Maui Health Systems, a Kaiser Hospital, LLC, and also authorizes the affected employees to purchase credited service to qualify or increase the percentage of the base monthly contributions that the State pays to the EUTF. Furthermore, with HHSC projecting a cash flow deficit in fiscal year 2017 and seeking but not receiving \$36 million and \$35 million for fiscal years 2018 and 2019, respectively, in HB 100, HD 1, this bill may be the means to address both ongoing operating needs while putting to rest recently agreed upon supplemental contracts with the relevant union representatives and management.

"It is, however, of concern that one of the affected unions, namely the Hawaii Government Employees Association ('HGEA'), opposes this draft, stating in written testimony that 'Now at the last possible opportunity, the Ige Administration has floated proposed language that is dramatically antithetical from the dialogue of the past two entire legislative sessions. By no means has this proposed draft been properly vetted by all stakeholders nor ensured that it will pass legal muster.' (emphasis provided). Furthermore, the HGEA asks that the committee strike Parts II (purchase credited service), and III (repeal of Act 1, 2016) from the proposed draft, while supporting the funding provisions in Part I.

"Mr. Speaker, this is an important measure for it not only sets the course of collective bargaining and the precedent of large scale privatization in Hawaii but that it affects so many workers and their families, and the essential healthcare system and provider for the citizens of Maui. I have never been comfortable with my decision to support the privatization of the HHSC Maui Region in 2015, and with the subsequent fall-out of foreseeable constitutional and contractual violations and remedies proposed and enacted in 2016 that may not have or provided us with a permanent and long-standing fix.

"I will therefore be watching this bill carefully over the next several weeks and hope the best for a just and fair resolution to all concerned. Upon the final draft, if any, will I cast my final and important vote."

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

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

"Mr. Speaker, I speak in favor of this measure. I think it's very timely, and it's providing an increase in service for the people in Maui County. It helps the laborer in separation benefits and in health benefits. So I speak very strongly for this measure."

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

"In strong support, Mr. Speaker, and would like the robust words of the previous speaker entered into the Journal as if they were my 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. 207, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYEES," passed Third Reading by a vote of 49 ayes to 2 noes, with Representatives Cachola, LoPresti, Lowen, Matsumoto and Oshiro voting aye with reservations, and with Representatives Har and Tokioka voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1764) recommending that S.B. No. 704, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 704, SD 2, HD 2 pass Third Reading, seconded by Representative Evans.

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

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

"Thank you, Mr. Speaker. In opposition. Mr. Speaker, it may seem strange to the members that I'm voting against a bill that was introduced on the Senate side by someone I've known all her life, but her bill was gutted and replaced with this one, which is going to really harm our housing for local people. It will really seriously reduce it. Thank you."

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

Representative Nakamura 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 Nakamura's written remarks are as follows:

"I vote with reservations. I'm concerned that all counties have differing land use policies and zoning codes regarding transient vacation rentals and bed and breakfast operations. All counties have different policies and resources allocated to enforcing their regulations. On Kauai, the land use policy is to aggressively enforce against illegal transient vacation rentals and bed and breakfast operations. I believe the proposed bill, as written,

encourages and may give illegal operators the belief that the payment of GET taxes gives them the authority to run an illegal vacation rental."

Representative McKelvey 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 McKelvey's written remarks are as follows:

"Thank you, Mr. Speaker. I rise in support, but with serious reservations on this measure. Mr. Speaker, my reservations have to do with the fact that this measure has a lot of technical issues that have never been fixed despite the fact that many people have noted them. One particular issue is that this measure sets aside \$1 million for each county to enforce taxation law when it is clear to anyone that the counties have no authority to enforce taxation law whatsoever. I am very disappointed that the previous committee, in gutting and replacing this measure before its third reading on the House side, wouldn't take the time to change the language from 'tax' to 'zoning matters' as was suggested in public testimony on previous versions of this bill earlier this year. Giving the counties \$1 million to enforce laws that they have no jurisdiction over, means that we are giving them a million dollar blank check. Funny, when you consider the fact that we are wrestling over these types of amounts in TAT allocation for the county.

"The other thing that this measure fails to do is provide any meaningful funding for affordable housing and rentals which will be lost due to legalization of air BNB's. The fact of the matter is, with other measures moving forward to tax non-residential and primary residential properties for education, the exasperating effect upon the loss of rental houses will be made worse by the passage of this measure as well. It's disappointing that they had no mechanism in place to help to ensure that the rental market doesn't become absorbed completely by this and other bills becoming law.

"Finally Mr. Speaker, the other thing that this bill fails to do is to take into account other types of entities that do transient vacation or interim rentals through the internet. What about the camp grounds that have popped up? What about some of the condo hotels that are offered through other online vendors? Will they be under this volunteer agreement as specified by this bill? I think not. For this and many other reasons, Mr. Speaker, it is clear this measure is, in the words of Saturday Night Live, not ready for prime time player. Thank you very much."

Representative DeCoite 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 DeCoite's written remarks are as follows:

"Our priority should be to protect our communities from illegal short-term rentals. We want our visitors to have alternative lodging options, but it should not be at the expense of our local residents. This bill may circumvent existing laws because the bill has been gutted and replaced with language from HB 1471, HD 1. This could negatively affect the counties ability to enforce against illegal vacation rentals. This will not solve the problems my district and communities across our state have with illegal vacation rentals, and will continue to hurt the amount of housing available to future generations."

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

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

Representative Matsumoto 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 Matsumoto's written remarks are as follows:

"Mr. Speaker, I rise with reservations.

"The issue of vacation rentals has been an ongoing battle with the State for decades, and with the rise of the internet, smart phones, and applications, there are additional issues to consider. The reality is that vacation rental platforms such as Airbnb, VRBO, Homeaway, etc. and the internet are not going away, and we need solutions to address issues of illegal vacation rentals. According to the Department of Planning and Permitting (DPP), the last time the City and County of Honolulu issued a Nonconforming Use Certificate was in 1989. The city has not approved any permits since then because of complaints that the practice was ruining neighborhoods. My constituents have voiced concerns of illegal rental activities in their neighborhoods – from different people rotating in and out next door, to the growing concerns of affordable housing supply dwindling due to illegal vacation rentals.

"Last year, Airbnb confirmed with Pacific Business News that in Hawaii, they have approximately 10,000 active listings. There are two parts to this issue: tax collection and illegal rentals. According to the DPP, as of November 23, 2016, there are 816 active transient vacation units and bed & breakfast homes that have permits.

"This bill needs to be more than a mechanism to collect tax revenue – we need to solve the root problem and address the illegal rentals, which is why I prefer the Senate Draft 2 version of the bill, specifically the addressing of compliance and enforcement. We have an opportunity to create oversight and ensure that transient accommodation operators are paying their fair share of taxes and call for DPP to pursue aggressive actions against illegal transient vacation rentals and B&Bs."

Representative Holt 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."

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

Representative Tupola rose and asked that the Clerk record a no vote 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. 704, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO VACATION RENTALS," passed Third Reading by a vote of 44 ayes to 7 noes, with Representatives Cachola, DeCoite, Har, Holt, LoPresti, Lowen, Matsumoto, McKelvey, Nakamura, Oshiro and Tokioka voting aye with reservations, and with Representatives Ing, Kobayashi, Lee, Quinlan, Thielen, Tupola and Ward voting no.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1765) recommending that S.B. No. 1290, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 1290, SD 2, HD 2 pass Third Reading, seconded by Representative Evans.

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

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

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

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

"Thank you, Mr. Speaker. With reservations. And I do know that this bill has some ways to go, but the reservations is the primary concern of the zeroed-out amount that goes to the counties. So I know it's still going to conference, and hopefully some of those things will be listed out and

amended in there, but for right now, reservations. Thank you, Mr. Speaker."

Representative DeCoite 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 DeCoite's written remarks are as follows:

"It is the authority of the State Legislature to determine how the transient accommodations tax will be apportioned, however we cannot deny that the tax was originally secured to assist the counties. In 2014 Act 174, the State-County Functions Working Group did a study observing that the counties are responsible for 54% of net expenditures directly supporting tourism, while the State provides 46%. The original language of this bill supported a 45% allocation of the remaining TAT revenue to the counties after specific appropriations, with the State receiving 55% to the state general fund. The county should get its fair share."

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

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

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

"Mr. Speaker, no vote. And just a comment that this is probably the unkindest cut of all to the counties for the amount of money they're going to lose with this bill. Thank you, Mr. Speaker."

The motion was put to vote by the Chair and carried, and the report of the Committee was adopted and S.B. No. 1290, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO THE TRANSIENT ACCOMMODATIONS TAX," passed Third Reading by a vote of 50 ayes to 1 no, with Representatives Cachola, DeCoite, Har, McKelvey, Oshiro, Tokioka and Tupola voting aye with reservations, and with Representative Ward voting no.

At 11:19 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:29 o'clock a.m.

Representative Luke, for the Committee on Finance, presented a report (Stand. Com. Rep. No. 1766) recommending that S.B. No. 1183, SD 2, HD 1, as amended in HD 2, pass Third Reading.

Representative Saiki moved that the report of the Committee be adopted, and that S.B. No. 1183, SD 2, HD 2 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. I rise to speak in favor of Senate Bill 1183, Senate Draft 2, House Draft 2. Mr. Speaker, this was an honest attempt to once again provide sufficient funds for the city's overpriced, over-budget rail project.

"This bill attempts to force the city to look at alternative means of financing and re-evaluate the rail's budget to implement serious cost-cutting measures. This provides a two-year extension amounting to \$792 million, and reduces the state administrative fee, which is also known as the skim, from 10% to 1%, totaling \$397 million. Therefore, this bill would provide about \$1.2 billion, which is just enough to cover the rail's deficit of \$1.3 billion.

"Mr. Speaker, two years ago, the State provided a five-year extension for the rail project, which provided about \$1.5 billion more to complete the rail. Not long after that, the citizens of the State were told once again that

the rail needed additional funds. The call for cost control and accountability have pretty much been ignored.

"So here we are again. The lack of information and detailed budget have forced the Legislature to conduct our own scrutiny of this project. For instance, why was the Pearl Highland Transit Center estimated to cost \$200 million two years ago, and it is now estimated to cost \$330 million? Why did the cost of insurance premium rise from just \$10 million a few years back to \$100 million, and this is just the premiums?

"There are many more questions about rising cost items that still remain unanswered. The only reason HART and the Mayor gave is that the current calculations are more accurate today and the figures were wrong two years ago. That is simply not good enough, and that is definitely not comforting. That is why it was important for the Legislature to do our own analysis. We owe that much to the public.

"So here are the facts. The current estimate for the rail project is \$8.165 billion. The GET estimate until 2027 together with federal funds will generate in \$6.8 billion. The \$8.165 billion amount includes over \$1 billion in contingency, which is an unaccounted for amount which is meant to take care of cost overruns. So according to HART's budget, the rail is short \$1.3 billion, and this bill helps close that gap.

"So what about bond financing? When the city and HART came before the Legislature two years ago, they claimed they needed \$900 million more because they needed to bond finance, and they needed enough money after 2022 to pay off the bonds. According to HART's own document, the amount of GET revenues collected will be more than their expenditures come 2024. That is the reason why the Legislature gave the five year extension to provide enough money on the back end to allow the City and County of Honolulu to float bonds.

"Two years have passed since the city and HART used bond financing as an excuse to get additional GE tax dollars, and they still have not bond financed. So, it raises questions about whether bond financing is real or not. And because we have little faith in what the city and HART and the Mayor have said so far, we did our own calculation for the amount needed if the city were to take advantage of bond financing.

"At the hearing, HART admitted that the amount they are planning to bond is \$1.4 billion, of which \$1.1 billion is for the Civic Center and \$300 million for the Pearl Highlands Transit Center."

Representative Kong rose to yield his time, and the Chair "so ordered."

Representative Luke continued, stating:

"Thank you, Representative. So, if the city were to bond \$1.4 billion in 2018, as opposed to delaying bond financing to a later time, and start paying principal and interest beginning 2019, which would only be \$190 million per year, the city could potentially pay off the bond by 2026, leaving a surplus of \$510 million in 2029. This is another reason why based on our own calculation, the Finance Committee authorized a two year extension.

"This was a reasoned approach, and I would hope that reason would prevail at the city as well. It is incumbent upon the Mayor, the city and HART to use this opportunity to take control of costs and its budget, and look at all viable options. Threatening the public with property tax increase is doing a disservice to our citizens. The city must first do whatever they can to instill confidence and trust in this project, and I am certain, if given the opportunity, they will do that. Thank you very much."

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

"Thank you, Mr. Speaker. In support. The rail project is an important component of Honolulu's public transportation system, which would serve thousands of daily passengers, residents and visitors of this island in the future. I cannot underscore how critical this is for the many who depend on what we do and how we vote today.

"Mr. Speaker, over the last two years and more, concerns and uncertainty surrounding this project continue to be well publicized. Concerns brought to the forefront include matters relating to fiscal, contract management, personnel issues, lack of transparency, accountability, communication, among others. To compound this, questions first asked in 2015 are still being asked this year.

"Mr. Speaker, it's a frustrating predicament for the general public, including the members of this body. While these concerns and frustrations are understandable and deserved in many ways, we should not lose focus of the larger picture.

"Mr. Speaker, if you drive through the first 10 miles of guideway from Kapolei through beautiful Waipahu, Pearl City, Aiea and Halawa, you will see the progress this project has made thus far. Given the financial resources and time invested, it is imperative that we continue to work together and see this through.

"Mr. Speaker, the current House draft's intention is to provide an additional \$1.2 billion, as mentioned by the Finance Chair, through a two-year extension and a dramatic reduction in the state administrative fee. This would get Honolulu closer, much closer, to completing its goal of a 20-mile system from Kapolei to Ala Moana, highlighted in the FFGA, and based on the figures provided by the city and HART.

"This bill also provides an opportunity, Mr. Speaker, for the city to assist with capital costs if necessary, if necessary, to provide various options that are not currently in the current ordinance. In addition, this bill, Mr. Speaker, would afford our neighbors on the neighbor islands a chance to adopt their own ordinance to support transportation projects on their islands that would greatly benefit their residents and visitors. Mr. Speaker, this is a bill that's responsible and prudent, and a response to the immediate needs of today. *Mahalo.*"

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

"Thank you, Mr. Speaker. In support. I would like the words of the Transportation Chair entered into the record as if they were my own, particularly with emphasis on the neighbor islands portion. Thank you," and the Chair "so ordered." (By reference only.)

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

"I stand in support, Mr. Speaker. Mr. Speaker, I hate to do this, but I want to break out my Nostradamus hat again that I put on at second reading, and I said if this didn't go 30 years or in perpetuity, the city would have to increase property taxes. And what did we see in this morning's paper? The Mayor there with 8% to 10%, and my concern is the widow who's living in Pearl City, single-family home on a fixed income, and how is she going to pay that? Right now, we export fully one-third of it to the visitor. I think that's a pretty good deal.

"Mr. Speaker, where is the vision? I support the chairs and what they're doing here, but I'd like to see us go farther. The vision, Mr. Speaker, is it's got to go to the University of Hawaii. Everybody knows that. I think that's kind of like the dirty secret. Because if it stops at Ala Moana, it's simply a white elephant.

"We need to get those kids from the west side out of their cars, taking the train all the way to the beautiful Manoa campus in an air-conditioned rail car. They will do that. I have children right now who drive every day to the UH campus. If given the opportunity to ride in an air-conditioned train where they can do their homework and not be bothered, they would do that, Mr. Speaker. So it's got to go to the University of Hawaii.

"Now, is everybody happy with the way things have gone? Of course not. When you go into battle in the military, as soon as the first shot's fired, the battle plans go out the window because there's unforeseen circumstances. Now we've extended it another two years, but what if, in the process, they come across a brown field, or a dump, which has

hazardous materials, asbestos and all sorts of stuff that's going to increase the costs exponentially?

"Now, the average person on the street's not happy with the barrage of negative media, the terrible news stories every day over costs, over costs. A few months ago there was a positive story, and it was buried on page B19, that one of the contractors was going to refund the city \$200 million. It wasn't on the front page, it was buried. And that's what the average citizens are up against.

"Mr. Speaker, the average person is unhappy with the conduct of the current project, because all they hear is the negative information. They don't hear about the blizzard of positive economic activity that is going to occur when this thing is finally built. The shops, the condominiums that will be built along the rail line to provide young families the opportunity to own something and grow equity so someday they can buy their dream home, maybe out in the country.

"Mr. Speaker, there's a lot of criticism of the Mayor. He's no particular friend of mine, we're different parties, he's endorsed my opponent, but he's appeared before the people at least twice on the ballot, and he's been rehired to do the job. So in spite of the negative aspects as some people want to point out with regard to his performance, he's still been rehired, just this last year, because he says he's going to finish the job.

"Now, Mr. Speaker, my vision for this project is it runs all the way to the University of Hawaii. I have had the opportunity to have lunch with a former governor about six to eight weeks ago, and he said you guys should just pass the tax one time, wipe your hands of it, and let the city take care of it after that. I agree with him. This is a city project, but yet we keep micromanaging them, keep asking them to come back for dribs and drabs. Let them run the project, give them the opportunity, and they can be accountable for the tax. We give them the opportunity to use it, it's up to them, and I think they will use it.

"One last thing is, this is the most important public works project we have ever undertaken in the State. No one has built a train system in the State before. So there's things that we're learning, there's a steep learning curve. We don't know everything. But I would also like to say, where is the leadership from the Governor? Where is he on this? People tell me, they say, Bob, you got 76 egomaniacs running around there, where is the leadership? Seventy-five, okay. Where's the leadership? Well, that leaves space for one, everybody can say, let's not talk about me. But where is the leadership? This is the most important project in the State. Where is the Governor, what is his position on this? I'd be interested to know, the people would be interested to know.

"And with that, Mr. Speaker, and with all respect for the chairs, they both did a great job, Transportation Chair, I really liked his measure. I respect the Finance Chair. I'd just like to see us dream and have a bigger vision. Thank you, sir."

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

"Mr. Speaker, I rise in opposition. Mr. Speaker, if I can summarize, I think a theme that has been, even with those who are for this particular bill, is if you fail to plan, you plan to fail. And this has been a tradition, a theme, a continual stream, if you will, of mistakes and oversights. I think the Finance Chair did a great job of talking about the lack of accountability, the lack of transparency, the lack of cost controls.

"But it's where, when you've got something that is so costly, and you have in the Finance Committee testimony that says, well, when we cut our contracts, we didn't specify the technology and the timeline with specificity, we had to renegotiate it and it went up by millions of dollars.

"Mr. Speaker, I find that really inexcusable, unacceptable. Those kinds of things are, quite frankly, shocking. But I think the biggest thing that I'm shocked at is the lack of leveraging and the opportunity costs that we're paying right now. Opportunity costs are those things that you pay when you don't take advantage of something else. And Mr. Speaker, I've spoken continually on this floor regarding what they do in Hong Kong and Japan. They sell development rights for those who want to build beautiful

buildings and make money on it as shopping centers, workforce housing, condominiums, even hotels. You can't go anywhere in the system in Europe without having some kind of a retail outlet, even underground, or even in Washington, D.C. with the Metro.

"But, as underachievers as we are, as we did with APEC, we got on the world stage, we hit a home run, and then what did we do? Nothing. We just had 20-some nations with the ICUN World Conservation Congress. We hit another international homerun. What did we do with it? Nothing.

"So what are we doing with development rights, what are we doing with private sector money? There's no private sector money that's come forth. And Mr. Speaker, I will admit that I'm suggesting as an amendment that when the conference committee meets that they make some private sector money contingent upon public sector money. The opportunity cost of not selling those development rights is phenomenal.

"And they say, well, the land and the titles are so mixed up, we don't know what to do. Well, I would say, as my colleague said, where's the leadership? Where's the ability to coagulate those opportunities and take advantage of that? So Mr. Speaker, my position is, not one more public dollar until the private dollars are sought, and sought with genuine vigor. Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. Can you please register a no vote for me? I just wanted to briefly explain and thank the chairs, thank the Transportation Chair for the work you put in it, and I agree with everything you said.

"And I think a lot of what we discussed in Finance Committee is that this isn't about our stance on mass transportation. It's about what we think about taxes and funding for this project that's had extreme overrun in costs. And so I want to thank the Finance Chair for her work on it, and because we had a seven-hour hearing, we all got a fair share of asking the questions that we really wanted to get the answers for, for ourselves as well as for our constituents.

"People mentioned that the general public doesn't really understand what's going on, that's why they're against it. And I would agree, that in the hearing a lot of us were struggling to understand what all the changes are, why is this overrun in costs, what does this chart mean, what's going to happen with the bus lines, what are we going to do in regards to this?"

"Honestly, Mr. Speaker, for an ask, if it was into perpetuity, would be in the billions of dollars that they're asking. I think I would expect that they come with a business plan, details, maybe even a Power Point binder, something where we can kind of look through and try to see through their eyes, try to see through their lenses of whatever vision it is that's supposed to be cast, because we have to turn around and tell that to our communities. We have to turn around and say, oh, I supported this for these reasons.

"And finding out that the city hasn't spent one dollar on the project isn't comforting. Finding out that all these suggestions that people have given about maybe cutting down the costs as far as going grade-level or maybe changing to maglev, that's not going to be possible. Finding out that possibly bus routes will be cut, but we're not really sure how we're going to change things.

"Again, lack of details is where I kind of stood when I left that hearing, and I just, it's difficult, I think, for a lot of us to make this decision. It's difficult for us to even speak out on it.

"I'll share personally that some of the men who lead the labor movement are my relatives, they are my friends, they are men that I love. And they've been fighting for this, but yet, the presentation that's brought forward to us by the city is incomplete. So difficult for us to go back, and I made a commitment to my community that I wasn't going to vote for tax increases or tax extensions. And I want to stay and commit to that for my community. And maybe I would have been convinced if I saw something

so amazing, but I wasn't. I still was very hesitant pushing forward to support something that we still don't really know is going to come to pass. We don't know all the details.

"And so, with those concerns that I have, I know that my vote is not needed to make this bill pass, and I wish everyone luck in committee and hope that it gets worked out. But I personally have made a commitment, I'm going to stick to that. Thank you."

Representative Say 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 Say's written remarks are as follows:

"Mr. Speaker, I rise in support of Senate Bill No. 1183, House Draft 2, but with grave reservations.

"While this measure would provide the City and County of Honolulu (City) with an additional \$1.2 billion during the calendar years of 2027 through 2029, the City and the Honolulu Authority for Rapid Transit (HART) need that money within the next two to three years to remain in compliance with contractual obligations under their agreement with the Federal Transit Administration (FTA).

"The timing of the financing is critical to the project. If the City and HART are not able to obtain the extra \$1.2 billion this year, the City will have to issue bonds to cover the cost. That would mean that the taxpayers of Honolulu would have to pay both the principal and interest on the bonds, a scenario that was never contemplated in the City's Financial Plan of their budget.

"Furthermore, because the funding mechanism would utilize bond proceeds instead of General Excise Tax (GET) Surcharge collections, Honolulu's taxpayers would be on the hook to pay off the bonds through increased real property taxes by themselves.

"Let me remind this body that we enacted the GET Surcharge so that a large portion of the tax burden would be borne by the nearly 8.5 million visitors to our island each year. This was intended to help stabilize the revenue generation for decades to come.

"In my opinion, the best way to ensure the construction of the rail project for the full 20 mile, 21 station route as originally planned would be for this body to extend the surcharge for 10 years or more. Not only would this alleviate the need for the City to consider real property tax increases, but it would also reassure the FTA that both the City and this State are committed to providing sufficient financial resources to get the job done.

"I would also like to point out a technical problem with the bill, as it is currently drafted. While the bill would restrict the use of funds collected from the surcharge and require the City to 'repeal any ordinance in conflict with the bill upon the effective date of this Act,' the proposed restrictions would also appear to conflict with Section 17-114, Revised Charter of Honolulu (RCH), which states:

*There is established a special fund into which shall be transferred the county surcharge on state tax and all revenues generated by the authority, including interest earned on the deposits and all other receipts dedicated for the development of the fixed guideway system. All moneys collected from the county surcharge on state excise and use tax and received by the city shall be promptly deposited into the special fund. Expenditures from the special fund shall be for the operating costs of the authority and the capital costs of the fixed guideway system and for expenses in complying with the Americans with Disabilities Act of 1990 as may be amended.*

"While the City Council may propose amendments to the City Charter, the authority to amend the Charter rests with the voters of Honolulu. To amend this provision in accordance with this bill, the City Council would need to approve a proposed amendment, which would then need to be ratified at the next election scheduled for November 2018.

"Perhaps one could argue that the enactment of this bill would simply render Section 17-114, RCH, void. But under that scenario, would that mean the City would have to enact new legislation to authorize the collection of the surcharge?"

"Given the FTA extended its deadline with the City and HART to April 30, 2017, it is unclear how this technical issue might impact compliance with the FTA deadline.

"It is my hope that the question of establishing a more robust funding mechanism as well as a solution to this technical issue may be found during conference. However, because this bill, as presently drafted, contains a clean effective date, there is the possibility that we might not have another opportunity to work on this bill. I truly hope we do, and because this is the only vehicle remaining that addresses the rail project, and solely for that reason, I support this measure with profound objections."

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

Representative Oshiro's written remarks are as follows:

"I rise in support but with strong reservations on SB 1183, SD 2, HD 2.

"My first reservation is because I believe that the proposed two (2) year GET surcharge extension from 2027 to 2029 is not enough time with the current projected revenue rate and total to finish the rail project to Ala Moana Center, given the need to put aside sufficient funds to service the bond debt costs. Even with the 'return' of most or 90% of the 'skim' or 'service fee' that the State of Hawaii has taken from the taxpayers of the City and County of Honolulu since 2007, it is still not enough to finish the rail project to Ala Moana Center as required by the Full Funding Agreement of the Federal Transportation Administration.

"For one thing, while we all agree that the projected construction cost for the 20-mile, 21 station line from East Kapolei to Ala Moana Center is about \$8,165 billion, and the additional amount from a two-year GET surcharge extension to 2029 and 'skim' reduced from 10% to 1% will generate about \$1.2 billion, there is disagreement on whether the City and County of Honolulu will need an additional \$1.4 billion or \$2 billion dollars to pay and service the debt service on the bonds. I, however, must part company with my House colleagues and agree with the City and County of Honolulu that the present draft and financing plans do not raise enough money to cover the debt service costs. We are, by our decision in this draft, significantly shorting the rail project.

"To cure this funding shortfall, and raise enough money to cover the debt service costs the City and County of Honolulu has asked for a ten (10) year extension of the GET surcharge to 2037. This additional ten (10) years would allow a reliable and sustainable source of revenue to cover the anticipated debt service cost that is predicted to be needed from the end of 2018 through and including 2022 or 2023, for the selling of about \$3 billion in bonds, according to Mr. Robert Yu, Chief Financial Officer, Honolulu Authority for Rapid Transportation. He likened the necessity of bond financing to buying a car on credit and needing to pay the interest on the loan. He also told us that he would not need to finance the construction but only if it had all the money today. So, if we assume that the additional ten (10) years will generate about \$300 million a year or about \$3.0 billion in ten years, the predictable revenue source is both secure and foreseeable. This is also conservative since the GET could increase on average every three years by 3% or 4% but in no case is it expected to remain flat or decrease over the next ten years. Furthermore, this existing GET surcharge is already fixed in the day-to-day consumption and payment for both goods and services of residents and guests of the City and County of Honolulu. And, as many of us know from our own travels abroad, the visitor or tourist benefits greatly from the public transportation systems of such places as San Francisco, Seattle, Portland, Denver, Chicago, D.C., Boston, and New York. The tourist coming to Hawaii should not be given a 'free ride' to enjoy the Honolulu Rail as they wiz about the City and County of Honolulu on our Honolulu Train.

"Allowing the tourist to get a 'tax break,' and no longer pay the GET surcharge after 2029, while local residents and homeowners will pay from either higher property taxes or new city taxes does not make any sense. For one, tourists have been paying since 2007 and no one can tell me that it has hurt the visitor industry because they must pay the one-half percent GET surcharge while guests in the City and County of Honolulu. To the contrary, the number of tourists has continued to climb and set new records year-in and year-out. Imagine how much GET and therefore GET-surcharge the State of Hawaii and the City and County of Honolulu, respectively have collected. As my astute CPA colleague from Manoa Valley would say, 'If you think we only collect about 30% of the GET from tourist, you better get your head examined.' And, he is right, for the tax receipts reveal that the increase in GET receipts and collections is probably higher than the ball-park calculations that we all use, which I think was based upon some UH or DBEDT study done in the '80s or early '90s. But, in any case, even at 30%, the cost of rail via the GET surcharge should be exported to our tourist. It makes sense. Extension of the GET surcharge is good and sensible tax policy. Best of all, it helps our local families and our constituents.

"As my colleague from Aina Haina and Hawaii Kai mentioned at our last debate on this same measure, the 8% to 14% increase in property tax would mean an increase of between \$1,000 and \$1,500 a year, and that would be imposed upon local families, who will still be paying the GET surcharge until 2029 when it ends. And the 40,000-plus residents on Oahu who rent their homes will see additional rental costs added onto their current rent. For landlords or investors, the additional costs will be passed onto the renters or tenants. If the property is commercial or retail, the additional costs will be placed upon the shopper or buyer and this service or that product or goods. There is no 'free lunch,' and the shifting of the taxation for the construction for rail will be solely felt by the local families and businesses, and all the while the visitor and tourist enjoys an unexpected windfall from our misapplication of fundamental tax policy regarding exportation of the burden for the general good.

"I also have concerns that the present bill, drafted and put together by a small cadre of my colleagues, did not receive and will not receive the important public vetting and critique from the public hearing process. Granted, some hearings are not useful or purposeful but at least some semblance of public engagement is portrayed or suggested. Here the bill draft is like nothing else seen before. Neither as a prior Senate draft (Ten years of service charge at 100%) (\$30 million for ten years or \$300 million) going to the City and County of Honolulu, or House Transportation draft (extended the GET surcharge another 20-30 years), among other things, bears any resemblance to this draft. Without any public vetting or review, it was not known until after the current draft was filed and made available that the Mayor of the City and County of Honolulu, with the advice and counsel of the City and County of Honolulu Office of the Corporation Counsel, pointed out that there may be some legal deficiencies that must be corrected to avoid a possible Governor's veto or collateral legal challenge. The entire letter is inserted herein and it speaks for itself.

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REVISIONS TO SB 1183, SD2, HD 2.

April 10, 2017

The Honorable Joseph M. Souki  
Speaker of the House of Representatives  
415 South Beretania Street, Room 431  
Honolulu, Hawaii 96813

Dear Mr. Speaker:

The rail general excise tax surcharge bill, SB1183, SD2, HD2, has serious constitutional flaws and runs the risk of being vetoed by Governor Ige should it be passed in its current form.

Therefore, we are requesting that the bill be amended to address:

1. Special legislation issues;
2. Possible impairment of rights and obligations under existing contracts and proceedings; and
3. An apparent inconsistency with the definition of "capital costs" in the existing statute.

In addition, I would request that you amend the bill so the surcharge is extended to 2037. This will give us sufficient funds to build the full 20 miles and 21 stations, as is mandated by the Full Funding Grant Agreement with the Federal Transit Administration.

Attached is a summary of the recommended changes to the bill and an amended version of the bill that would address these concerns, except for the extension to 2037, which we are requesting you include in your amendments.

The Honorable Joseph M. Souki  
Speaker of the House of Representatives  
April 10, 2017  
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We appreciate your immediate attention to this matter.

Sincerely,

Kirk Caldwell  
Mayor

cc: All Members of the House of Representatives  
The Honorable Ronald D. Kouchi, President of the Senate  
All Members of the Senate

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**Overview:**

1. SB 1183 HD2, if enacted in its current form, would risk possible challenge as unconstitutional special legislation. The changes to Part III of the bill and the new Section 11 in Part IV are recommended to prevent a constitutional challenge.
2. The proposed revision to the definition of "capital costs" simply corrects what appears to be an oversight and makes it consistent with the legislature's intent to prohibit the use of the county surcharge for administrative costs, such as overhead and personnel.
3. The language in the new Section 9 is standard language that is routinely used to ensure legislation does not run afoul of the Contracts Clause of the U.S. Constitution. It is necessary here because SB 1183 HD2 would impose new restrictions on the use of the county surcharge that might otherwise affect rights and obligations under existing contracts or proceedings.

**Summary of Revisions:**

1. Adds a new Section 2 that amends the existing definition of "capital costs" in §46.16.8(g), HRS, to conform to the prohibition on using the county surcharge for the administrative or operating costs of a rapid transit authority.
  - If enacted, SB 1183 HD 2 would create a direct conflict between §46.16.8(c) and §46.16.8(g). SB 1183 HD2 amends §46.16.8(e) to prohibit counties with populations greater than 500,000 from using the county surcharge for "administrative or operating costs, including personnel costs, of a rapid transit authority." However, §46.16.8(g), defines "capital costs" to expressly allow counties with populations greater than five hundred thousand to use the county surcharge for "non-recurring personal services and other overhead costs that are not intended to continue after completion of construction of the minimum operable segment of the locally preferred alternative for a mass transit project."
  - The new Section 2 would strike the conflicting language from §46-16.8(g) so that the legislature's intent, that counties with populations greater than 500,000 not use the surcharge for administrative or operating costs, would be unambiguous.
2. To avoid any constitutional concerns that SB 1183 HD2 is special legislation, the proposed revisions would apply uniformly, to all counties adopting the county surcharge, the following requirements:
  - a. That counties not restrict the use of county funds for transportation systems supported by the county surcharge.
  - b. That counties may only expend the county surcharge for purposes authorized by statute.
  - c. That counties must repeal any ordinances contrary to (a) or (b) before the county surcharge is levied.
  - d. That all conditions under (a) – (c) above must be met before the county surcharge is to be levied, and if they are not, the authorization to levy the surcharge shall be rescinded.
3. The proposed revisions adds a standard "savings clause" at Section 9, to ensure that SB 1183 does not run afoul of the contracts clause of Article I, Section 10 of the United States Constitution.

"Again, it is my hope that better angels of ourselves and cooler heads will prevail and that a somber and critical examination of the present draft be done, and, should there be any errors, a conference committee be convened to work out the differences and produce a bill that provides the duly elected City and County of Honolulu's council leaders and the Mayor with the tools of the one-half percent GET surcharge to convince their constituents that the city will come into compliance with our contract with the FTA, and rail will be completed to the Ala Moana Center, with its 21 stations and 20 miles beginning in Kapolei, Oahu.

"In my prior comments in support of the previous House draft, I was eager to give credit where credit is due. In doing so, I gave credit to Speaker Souki for his indefeasible and unwavering support and confidence in Honolulu Rail's project. He still deserves it again for using his influence to get this bill to this stage in the 2017 Session. He and the Mayor of the City and County of Honolulu deserve to be recognized for their brave leadership and heroism in advancing good public policy and a public common good that only in hind sight many years after they have left their respective stations of authority and power, will the citizens of Hawaii and Honolulu appreciate their political courage and statesmanship.

"But, there is another ceaseless advocate that also deserves to be recognized even if such recognition comes late, without fanfare, and only to his posterity and family years from now. I am talking about a man from the community on the North Shore of Oahu called Waiialua. His name is Clyde Hayashi and he is the Director of Hawaii Laborers-Employers Cooperation and Education Trust (LECET) and he deserves this recognition for I have not seen anyone with such passion and earnest drive to ensure that Hawaii has a world-class public transportation and rail system. His physical presence at the State Capitol on a nearly daily basis demonstrates his commitment and dedication, even placing himself between his members and constituents and exposing himself to personal

and professional injury and financial ruin. His integrity and advocacy is beyond reproach. Indeed, whenever you speak to Clyde about rail and its importance to our future and development of affordable housing and preservation of rural lands for farming and open space, you set off this dormant explosion of hope, desire, and frustration. Clyde is a man that has very little patience for childish antics and duplicity when the fate of his members hangs in the balance. He always talks about the 'rice bowl' on the members' kitchen table. The great importance we all have to protect that ability to work, even hard work, for one's family. To them he owes his unyielding duty of loyalty and to them he commits 110% and more. I've seen him run from meeting to meeting, catching a plane from Honolulu to Hilo and then back to Honolulu to attend another meeting or take a later flight to Kauai to meet with his member or constituents on various issues of the day. Maybe it's the gallons of coffee he consumes in a single sitting or his strong work ethic and commitment to that call of duty that drives him. He is undaunted, unafraid, armed with only his trusty laptop and extensive knowledge of the Full Funding Agreement's various terms and conditions, and even paragraphs and sub-paragraphs.

"Mr. Speaker, let me close my remarks with adopting those that Mr. Hayashi shared with me several weeks ago.

Rail is the only transportation infrastructure project being built or being considered to provide significant traffic relief to the residents of West and Central Oahu. If Rail is not built, there is presently no other transportation plan or proposal in place to address the traffic mess that West and Central Oahu residents face daily. Without rail, residents/drivers will surely demand that the State provide another solution for this worsening traffic nightmare.

In other rail systems, workers and their families, young and old people, those who have more difficult economic situations, use rail. Regular people use rail, which will be the case of our rail system and they will be hurt the most if rail is not completed. Rail will allow many working families to do without one, two, or even three cars, especially if they live in a TOD affordable housing project near a rail station. Estimates are that costs of owning a car is about \$9,000 to \$11,000 annually. There is no other project which will provide working families with a possibility of saving roughly \$10,000 to \$30,000 per year.

The completion of the Honolulu Rail Project will provide our community with the best opportunity for building more affordable housing, especially around rail stations. Our thousands of members and their families will possibly be able to purchase or rent a unit in one of the affordable housing projects that will be built. With properly planned TOD, it will help us to build a modern, sustainable Honolulu.

"I wholeheartedly agree with Mr. Hayashi and his vision for the City and County of Honolulu and his word and thoughts have become my own. With that said and for the reasons expressed above, I stand in support with reservations of this current draft of SB 1183, SD 2, HD 2. Thank you, Mr. Speaker."

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

"Thank you very much, Mr. Speaker. With reservations. And I would do written comments, but I think by the time I write it, it's going to be faster if I just mention some of the few things that I have concerns about.

"As the Transportation Chair said, there have been many issues that have been brought up with the financing, with the cost overruns and everything else. But at this point, the rail is at the stadium already. Are we going to tear it down and stop?

"I think all of us want to see this thing work, and how we figure it out is the questions and the concerns for my reservations, because I don't think that the plan for the \$1.2 billion is going to be enough. And I say that because we are in the highest amount of hotel occupancy and revenues that the State has ever had.

"Over the past three or four years, looking out from the Capitol, if you look at all of the state birds that were flying, the cranes were flying, they're not flying anymore. We have a couple of projects going on. Rail is it. So for all the men and women, the trades that have asked us to support this, I want to make sure that we have the funding so that we don't have to come back again.

"One of the things that was brought up by the Representative from Kahala, or Aina Haina, is if we fail to plan, then let's plan to fail. Well, I would use this example. The administration was specifically trying to solve a problem on the west side of every island with air conditioning in schools. And I believe that they did their best to plan to make that thing succeed. I don't even know if we've gotten anywhere yet with that. And it was all about taking care of our *keiki*, and we planned that, I'm sure the administration planned it, because they used a lot of consultants and they had a lot of people working on it.

"Now, if you just look at that little AC project, that's just a little project. Multiply that by 1,000, and that's the rail project. So I just don't think that the two years is enough, and I do commend the Finance Chair and the Transportation Chair for all of their work. I know that a lot of details were brought up that brought concerns to this body, but I just don't want to see us two years from now, especially if the FTA comes back and says, this plan is not going to work, we're going to pull back our money.

"So for those reasons, Mr. Speaker, I hope this bill goes into conference, and I hope we can fix it there. But for those reasons at this point, I'm with reservations. Thank you very much."

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

Representative Fukumoto's written remarks are as follows:

"Mr. Speaker, I rise in support of SB 1183, SD 2, HD 2.

"My community has made it clear to me in my conversations at their door, in election results, and in their responses to my surveys, that they want the rail project to get done. But, they've also made it clear that they are tired of cost overruns and they're losing faith that city leaders will complete the project as promised. Two years ago, when I surveyed my district, people were overwhelmingly in favor of a GET increase to finish the rail. This year, they were overwhelmingly opposed to a permanent increase. Again, I think my district supports rail, and I know they would rather see a GET increase than an increase in their property taxes. But, the best solution by far would be for the city to manage its budget and find a way to provide rail without any additional tax increases.

"That said, the project could be permanently abandoned if the State doesn't step in with bridge funding while the city handles its budget. Therefore, I think the changes made to this bill by the Finance Chair are an acceptable compromise to get the rail built. Instead of the city's request for a permanent extension, and then for a 20-year extension, and then for a 10-year extension, the latest draft provides a 2-year extension and a reduction in the State's cut of the revenues. This almost completely covers the new deficit reported by the city.

"In short, I think this funding is a good compromise for my constituents who want to see rail finished but are tired of seeing their money wasted. This provides enough to keep the project moving, but it requires better management of the project by the city. Until the city can give the people of Hawaii confidence in its ability to responsibly handle their money and the cost of their projects, giving them a permanent authorization is irresponsible and not something my community can support.

"Thank you, Mr. Speaker."

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

"Thank you, Mr. Speaker. In support of this version of the bill. And if I could have the words of the Finance Chair inserted as if they were my own," and the Chair "so ordered." (By reference only.)

Representative Matsumoto continued, stating:

"Just a few comments. This issue's been a matter of public debate for decades, and two years ago I hesitantly supported the GET surcharge extension for rail because I felt like we just needed to finish the project. And at this point the question really isn't whether we want rail or not, it's how we're going to pay for it. And we're going to have to pay for it somehow. And I feel that this bill is a creative balance of support and accountability to ensure the completion of the rail project.

"By tasking the city to use its own funds to help pay for rail, the Legislature's ensuring that the City and County of Honolulu, as we all say, has some skin in the game, and they cannot continue to come to the State to bail the project out.

"The relationship between the Legislature and the City and County of Honolulu needs to be symbiotic, with each side holding up their end of the bargain. We've agreed to fund the rail many times now, without seeing the results from the city and county that were promised. It's time that they really put their money where their mouth is.

"While the extension of the GET tax is not necessarily the ideal solution, it's a better alternative to raising real property tax, in my opinion. In a recent poll, over 81% of the participants said no to increasing property taxes for rail. And if the city doesn't get enough funding, they have threatened that they'll raise property taxes approximately 8% to 14% to cover the cost. The 8% to 14% is in addition to the amount that they say that they have to raise property tax in order to cover the cost of operation and maintenance, which is another 8% to 10%. And that's not to mention the estimates to include additional taxes and property taxes to fund education, if that bill passes.

"And I struggled with this decision, because two years ago we were told that five years was enough. And now this year the city was asking for an extension in perpetuity or a 10-year extension. And while I'm frustrated, I feel that this bill is at least a good compromise, placing the least amount of burden on our residents.

"I've kept an open line of communication with my constituents through mailers and surveys, we had two town halls about this issue, and I'm basing my vote on what I believe is best for my community. Continuing on with what we've been paying for the past decade, while not ideal, is preferable, in my opinion, to raising property taxes drastically, which will affect all families.

"And as I've mentioned before, and I'll mention again, the city and HART need to work more effectively and identify creative solutions to finish the rail project. And the State should not have to revisit this issue again. Thank you, Mr. Speaker."

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

"Thank you. I'm in strong support, and I ask to insert the words of the Finance Chair as if they were my own," and the Chair "so ordered." (By reference only.)

Representative LoPresti continued, stating:

"I agree with everything the previous Representative said. One of the things I like about this version is it does close that gap of \$1.3 billion, and it forces accountability. I agree with my colleague from Ewa Beach, at least the first half of what he said. We must complete the project, and I believe we must eventually get to UH Manoa, but we can't get there if we don't at least finish the first portion.

"One thing that I mentioned in Finance, and I'm going to do it again here, is talking about the time of people's lives spent in traffic. I live in Ewa Beach. If I can cut off just 15 minutes on a commute, each day that's a half hour. Each week, that's 150 minutes a week. Each year, assuming you work 50 weeks out of the year, 7,500 minutes a year. That's 5.2 days of my life I get back to spend with my children. And you multiply that by, assume just under 20,000 people, that's 100,000 days of life given back to the people on the west side, every year.

"These are the compelling reasons why I think we need to see this through, but the leverage that is put upon us, the leverage of the pain, and the leverage of the need to complete this, and the leverage of the amount of money that we put into this, I'm not going to succumb to that and just say, give it all to them, without accountability.

"I strongly support the project, but we, the State, I think, have to step in and force some accountability. And so this version does that, I believe. It does that because, among other things, it requires the city council and the Mayor to remove the, I think absurd, measure that prevents them from spending a penny on this project.

"Because they have not, we asked this many times in Finance, they have not spent a penny on this project yet. A lot of people don't realize that, Mr. Speaker. The way it's all been paid for is through the GET. And essentially what the city has done, has tied its own hands and come to us and said, we're going to starve unless you spoon feed us. And they have the power to untie their own hands.

"But we're not just saying untie your own hands, we're also saying, here's the 1.3, we're trusting you again. You came here two years ago, you said now these are the real numbers, and we gave them the money, actually we gave them more than they asked, and then a few months later, you know what, those numbers weren't right. And this time we asked, are you sure this time? You're really, really sure? Yes, we're really, really sure. Okay, we're going to give you that much money. And now they're saying, oh yeah, that's not enough either.

"We need accountability, we need truthfulness, and we need transparency. This is giving what they said they need, and telling them to step up and stop tying your own hands as well. Thank you."

Representative Ward rose to respond, stating:

"Mr. Speaker, still in opposition. Mr. Speaker, when we go to the bank, they ask for collateral or a personal signature. So the structure of the incentive is, if your house or your business or whatever you're buying goes south, there's accountability.

"If we look at the structure of the situation between the State and the city, the learned speaker from Ewa Beach reminded us, as the Representative from Kalihi reminded us in the Finance hearing, not one dollar has come from the city and county in this project. I couldn't believe that. Seven years of working and millions of dollars, they haven't put one dollar in? And they even have an ordinance that says, you will not spend city money for this thing.

"The structure of the incentives is lopsided. There's no skin in the game. That's the more colloquial, popular term. But when you have it where, look, they've got nothing to lose, except now they've got a blackmail clause that says, we're going to raise your property taxes. Totally unfair.

"The way that we've structured this has been so lopsided, Mr. Speaker. You have to cede between the hireling and the employee. Those who have an interest in getting the job done are the owners, the employees are the hirelings of the ones that, well, you know, whether I do it or not doesn't make that much of a difference.

"So Mr. Speaker, we've got to really examine what skin in the game we're going to have in this conference bill to make sure that they have either bonds or they have, as the Chair of Finance said, at least they're going to pay for their own rent and their own employees. They've got 200 employees that they have just down the street here, that they have some incentive to do well. Because again, if you walk away from a loan, the bank's going to come and take your house, your car, or your signature loan and garnish wages, *et cetera*.

"Right here we've got a freewheeling city and county, they can do whatever they want and there's no repercussion. And then they hold us hostage by saying, we're going to raise your taxes. Totally unfair and just an amazing term that we are now at, or this particular turning point in history.

"So I hope that the momentum of the discussion on the floor today gets compacted into the conference committee, and this thing will be over. Thank you, Chair."

Representative Cullen rose in support of the measure and asked that the remarks of Representatives Luke and Aquino be entered into the Journal as his own, and asked that his written remarks be inserted in the Journal, and the Chair "so ordered." (By reference only.)

Representative Cullen's written remarks are as follows:

"Mr. Speaker, this measure is working to bail out HART and the Mayor of the City and County of Honolulu for a second time. It is imperative that the rail project be finished for our residents that live west of the H-1 and H-2 merge. This will alleviate the congestion created during rush hour traffic.

"I would like to point out that the State has been working with engineers on projects regarding the capacity of the current freeway system and their fiscal impacts. Some of the proposed projects include adding a shoulder lane for Kualakai Parkway to the Kunia exit going in the eastbound direction. Other proposed projects that have gone into effect include extending shoulder lane hours and adding an additional lane to the zipper lane. I can personally attest to the positive impact of the traffic projects, which have shortened drive times. In morning traffic, the 18.2 mile drive from my residence takes 15 minutes less on average when I am able to utilize the zipper lane, bringing my morning commute to one hour.

"As a result of mismanagement by HART, the Honolulu City Council and the Mayor of the City and County of Honolulu, the rail project faced many delays. The constant drawbacks for the project caused the population to be wary of the half-truths presented as 'progress' for construction. City leaders and HART lost public support for a project gravely needed by the western half of Oahu. The mismanaged project has been met with a decline of public sympathy for construction work and the governing board. As a county, we cannot blame the project; rather, we must focus on its completion with the resources already in place. By utilizing modes of transportation in place such as city buses, the rail project can eventually run in conjunction to create transportation available for all.

"Oahu has the lowest tax rate on hotel and rental properties of its total taxable property tax in the City and County of Honolulu. Should the City and County of Honolulu and the Mayor proceed with their current practices, then any funds should come from an increase in hotel tax. The county should not use scare tactics on the residents, who already pay some of the highest rates in the nation. Our constituents are already wary of the project, and any further intimidation by the city will lower public support for a bailout of the rail project.

"Mr. Speaker, I have a dream that one day mass transit will create a better future for the island's traffic crisis."

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

"Mr. Speaker and members, I did not intend to speak, but I'm speaking in favor. With this project I hear so much negativity. And this project is the biggest project that we've ever had. And will have, probably. Providing jobs, a new mode of transportation that hopefully will save us thousands of hours and time, and with the multiplier, adding dollars to our income.

"I do want to thank the chairman. She's done an excellent job in providing enough dollars for the continuation of the rail, and I think if everything goes well, it will be okay. The budget is sound.

"However, there are some caveats. Now, of course, the burden goes to the county. Rightfully so. They need to have some skin in the game. But this is a real gamble here and now. If they're going to have bonding, which they're going to have to have, do they have the six votes in the council to pass it? I count five.

"So, members, look at these items here. Hopefully, the council will have the courage and say, yes, this is my responsibility, my baby, and I'm going to get those six votes.

"But you know who I think are the real heroes? People who have worked hard for this project. Of course the Finance Committee, they have put this project together. And I give a lot of credit to the Mayor. He has taken shellacking after shellacking and he has come back. He hasn't given up. He has a vision, as we all should have a vision.

"And this project is a vision. It's not for today, it's not for next week. It's for the future. And as statesmen, this is our responsibility, to look not for today, but for tomorrow, for our children and our grandchildren.

"Yes, mistakes have been made, as the Representative across the aisle said. Were you going to come back? Do you have a plan? Things go wrong. Costs go up. Casualties happen. Things happen. Suits. Delays. Years of delays. All accounting for a lot of the high costs that we have. Simply speaking, we look at what they have now. But they failed to look back as to why this all happened.

"Yes, information has been given, possibly incorrectly to the Mayor, or the Mayor has given us incorrect information here. But this is all part of the progress of the project.

"So I'm asking you all to support the rail, support the Finance Chair, the Chair of Transportation. We all want this to pass. We all have a vested interest in it. So I ask this body to pass this measure. Thank you very much."

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

"In support. First, I would like to adopt the words from the Finance Chair and from the Speaker of the House," and the Chair "so ordered." (By reference only.)

Representative Ing continued, stating:

"I just want to note that HART was established in the '70s. They tried to go through the media, the mayor at the time didn't want to really work with the Legislature. It caused a lot of rifts, a lot of poor taste in a lot of legislators' mouths. Neighbor islanders felt like they weren't benefitting from the substantial tax increase on the whole state. The project was dead, HART was dead by 1978, only to be revived back in 1986 as a light rail system, where we actually did move, increase the GE tax by half a percent. And then it died again a couple years later, because the city was not willing to put any skin in the game.

"So this discussion that was around from 10 years before I was even born, Mr. Speaker, we're finally dealing with it today. And I think the effort by the Finance Chair and the Transportation Chair and this body as a whole will be the anecdote to these decades of tension between the city and the State. Thank you."

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

"Thank you, Mr. Speaker. Mr. Speaker, please note my reservations, and may I please adopt the words of the Representative from Lihue and the words and the passion of the Speaker of the House? Thank you, Mr. Speaker," and the Chair "so ordered." (By reference only.)

Representative Oshiro rose to respond, stating:

"Mr. Speaker, in support with reservations. I just ask that the conference committee reflect upon and examine the memorandum, or letter that was sent to the body, dated April 10, 2017, from the Mayor of the City and County of Honolulu.

"In this brief letter, he raises several issues that he asks for the conference committee to consider, otherwise it may face a governor's veto. Number one, special legislation issues. Number two, possible impairment of rights and obligations under existing contracts and proceedings. And number three, an apparent inconsistency with the definition of capital costs in the existing statute.

"I also would like to have the record show that I'd like to adopt the words of the Speaker of the House from Maui. It echoes his previous comments back in 2015, and even going back further to 2005, when we started on this path. So I want to thank him publicly again for his statesmanship and leadership on this very, very, very important issue. Thank you," 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. 1183, SD 2, HD 2, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Third Reading by a vote of 41 ayes to 10 noes, with Representatives Har, Oshiro, Say and Tokioka voting aye with reservations, and with Representatives Brower, Cachola, Johanson, Kobayashi, Lowen, Nishimoto, Quinlan, Thielen, Tupola and Ward voting no.

At 12:13 o'clock p.m., the Chair noted that the following bills passed Third Reading:

S.B. No. 501, SD 1, HD 2  
 S.B. No. 502, SD 1, HD 1  
 S.B. No. 249, SD 2, HD 1  
 S.B. No. 207, SD 2, HD 2  
 S.B. No. 704, SD 2, HD 2  
 S.B. No. 1290, SD 2, HD 2  
 S.B. No. 1183, SD 2, HD 2

### LATE INTRODUCTIONS

The following late introduction was made to the Members of the House:

Representative McDermott introduced sixth grade students from Holomua Elementary School, and their teacher, Mr. Patrick De Vega.

### THIRD READING

#### S.B. No. 562, SD 1, HD 1:

Representative Saiki moved that S.B. No. 562, SD 1, HD 1 pass Third Reading, seconded by Representative Evans.

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

"Thank you, Mr. Speaker. Strong support, permission to insert written comments. Thank you."

Representative Morikawa's written remarks are as follows:

"Lifeguards, also known as water safety officers, perform a valuable service at county and state beaches. They help residents and visitors enjoy our beautiful sandy beaches by watching over them and performing first aid and education as needed. Where water safety officers are not present, proper signage is necessary to warn people of beach hazards. For many years, the counties have been responsible for guarding county beach parks and currently provide lifeguard services at a few state beach parks, under agreements with the respective counties. For over 10 years, the counties have had immunity from liability to provide these services, but that immunity ends this year. This bill is an effort to give lifeguards at state beaches liability protection, and mandates that the attorney general shall defend them in litigation. Whether this is the right fix or not is yet to be determined, but we must provide residents and visitors as much water safety protection as possible.

"Kauai is more prone to ocean hazards, because we are exposed to the open ocean, don't have other islands to break currents, and have many beautiful sandy beaches. On Kauai, our water safety officers enhance a visitor's experience as soon as they arrive at our airport. We need to give them the assurance that they are protected in the performance of their duties."

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

"Thank you, Mr. Speaker. I'm rising with reservations. Mr. Speaker, Act 170 was the limited liability protection established a number of years ago for county lifeguard services. It worked very well, and as I understand it, there wasn't one specific example that had been referenced of personal negligence by an ocean lifeguard.

"The bill as it came over from the Senate was to expand that, I think it was to make the bill Act 170 permanent in state law, and the Judiciary Committee, the bill was changed, and it was changed to mandate the attorney general to defend county lifeguards.

"I've received information since then from people that are really objecting to that change, and then I wanted to have members take a look at what that could do to our state budget. You know, each year we get a bill from the AG's Department, and it has the list of all of the different cases that they've settled, sometimes for hundreds of thousands of dollars, sometimes, I believe, up in the millions. And I think there are a couple of members in here that consistently vote no on that measure, because they want more accountability from the Department of the Attorney General.

"Well, what this bill is now saying, that the AG shall defend all county lifeguards, so obviously we're going to see a bill coming from the Attorney General's Office with some more substantial amounts, when the way the law had worked, worked well, and wasn't creating a problem for the public, for the lifeguards, for the safety of our beaches.

"So I'm really concerned about it, with the information that came after our hearing in Judiciary. I wish members would take a look at this and see whether it might not be more sensible to go back to the Senate version in conference committee, and then just extend the life of the Act 170 for, say, another five years, to let members take a look at the broader area, to see whether that act should be made permanent. I think having the AG be mandated to defend is going to make the Finance Committee Chair's job an awful lot harder. Thank you."

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

"Thank you very much, Mr. Speaker. I stand in support. I'd like to just briefly thank the Chair of Judiciary for hearing the bill and moving something out. Thank you very much."

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

"Thank you, Mr. Speaker. I rise in support. It's been the practice that when we have a state park and DLNR has decided they need lifeguards at the state park, the Legislature funds those lifeguards and then they contract with the county, and they become part of the county's ocean safety, whatever they call it in the fire department, one of their divisions or whatever.

"But the whole point of this, and the reason I like this bill, is because they are at state parks, it's very defined, very carved out, it's not going to defend all county lifeguards. What it's doing is it will defend those lifeguards that provide lifeguard services at designated state beach parks. And I think it's only right that if it's the state's beach, and the state's park, that they should defend the lifeguards that are there protecting the people. Thank you."

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

"Thank you, Mr. Speaker. In support. I felt compelled to rise as one of the people who continually votes against the claims against the state bill.

"However, as the previous speaker noted, and I'd like her words added into the Journal, this is a very limited application, and the underlying concerns that I've had with the claims against the state no way factor into this measure," and the Chair "so ordered." (By reference only.)

Representative McKelvey continued, stating:

"And I thank the Judiciary Chair for moving it forward, because on our neighbor islands in particular, in south Maui, Makena Beach in particular, we've had incidents where people have been maimed and killed in the high surf. And the lifeguards are spread thin, they do an immaculate job in all conditions, and so just to keep this going and to ensure that we do have lifeguards, so we don't hurt our visitor industry and can provide protection for locals and visitors alike is very important. Thank you very much."

The motion was put to vote by the Chair and carried, S.B. No. 562, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO TORT LIABILITY," passed Third Reading by a vote of 50 ayes, with Representative Thielen voting aye with reservations, and with Representative Ichiyama being excused.

At 12:20 o'clock p.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 562, SD 1, HD 1

**ANNOUNCEMENTS**

Representative Gates, for the Committee on Ocean, Marine Resources, & Hawaiian Affairs, requested a waiver of the 48-hour advanced notice requirement for the purpose of hearing the following measures on Wednesday, April 12, 2017, at 10:00 a.m. in Conference Room 312, and the Chair "so ordered."

- S.C.R. No. 41, Authorizing the Issuance of a Sixty-Five Year Term, Non-Exclusive Easement for Repair and Maintenance of the Existing Seawall Seaward of and Fronting Tax Map Key Number: (2) 3-9-11:7; Waiohulu-Keokea Homesteads and Beach Lots, Waiohulu-Keokea (Kihei), Wailuku, Maui, Hawaii;
- S.C.R. No. 85, Requesting the Office of Hawaiian Affairs to Convene a Task Force of Hawaiian Leaders, Legal Scholars, and a Broad Representation of Members of the Hawaiian Community to Review and Consider Whether its Fiduciary Duty to Better the Conditions of Hawaiians and Manage its Resources to Meet the Needs of Hawaiian Beneficiaries Would be Better Served by Having Trustees Appointed Rather Than Elected;
- S.C.R. No. 88, SD 2, Urging the United States Army Corps of Engineers, Department of Land and Natural Resources, and Others, to Collaborate to Research and Develop a Plan for Increasing Water Circulation and Improving Water Quality in Pokai Bay on Leeward Oahu;
- S.C.R. No. 7, Recognizing the Historic Success of Community Stewardship Under the Traditional Konohiki Fishing Rights System in Sustaining an Abundant Nearshore Environment and a Thriving Population and Culture, and Urging the State to Support the Development, Adoption, and Implementation of Culturally-Grounded, Community-Driven Fisheries Management Proposals to Steward, Restore, and Perpetuate our Nearshore Resources and Maintain and Protect Associated Cultural Traditions and Values; and
- S.C.R. No. 96, SD 1, Requesting the Department of Land and Natural Resources, in Collaboration with the National Oceanic and Atmospheric Administration, to Explore the Possibility of Using Autonomous Unmanned Surface Vessel Technology to Detect and Clean Up Ocean Debris Before it Reaches Hawaii's Reefs and Beaches.

Representative Matsumoto: "Thank you, Mr. Speaker. I just wanted to remind all the members that the Women's Legislative Caucus annual IHS Easter basket is happening on Thursday, so spend your recess day doing great work, but also getting all of your supplies and things for the Easter baskets. We only have a few, and we had 160 last year, so if we can really push over these next two days to bring everything in Thursday, and you can drop them off in my room in 303."

Vice Speaker Mizuno: "Can I be permitted to ask who's going to be the Easter Bunny this year?"

Representative Matsumoto: "That is still a surprise."

**COMMITTEE REASSIGNMENTS**

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

<u>S.C.R. Nos.</u>	<u>Re-referred to:</u>
16, SD2	Committee on Finance
174	Committee on Ocean, Marine Resources, & Hawaiian Affairs, then to the Committee on Finance

**ADJOURNMENT**

At 12:22 o'clock p.m., on motion by Representative Evans, seconded by Representative Ward and carried, the House of Representatives adjourned until 12:00 o'clock noon, Thursday, April 13, 2017. (Representative Ichiyama was excused.)

**HOUSE COMMUNICATIONS**

House Communication dated April 11, 2017, from Brian L. Takeshita, 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 measures:

- H.B. No. 90, HD 1, SD 2
- H.B. No. 100, HD 1, SD 1
- H.B. No. 186, HD 1, SD 2
- H.B. No. 209, HD 1, SD 1
- H.B. No. 427, HD 2, SD 1
- H.B. No. 475, HD 1, SD 2
- H.B. No. 492, HD 2, SD 1
- H.B. No. 632, HD 1, SD 1
- H.B. No. 655, HD 1, SD 1
- H.B. No. 832, HD 1, SD 1
- H.B. No. 880, HD 1, SD 2
- H.B. No. 909, HD 2, SD 1
- H.B. No. 918, HD 1, SD 1
- H.B. No. 936, SD 1
- H.B. No. 937, HD 1, SD 1
- H.B. No. 942, HD 1, SD 1
- H.B. No. 1006, HD 1, SD 2
- H.B. No. 1028, HD 2, SD 1
- H.B. No. 1229, HD 1, SD 1
- H.B. No. 1230, HD 1, SD 2
- H.B. No. 1322, HD 2, SD 1
- H.B. No. 1325, HD 1, SD 1
- H.B. No. 1389, HD 1, SD 1
- H.B. No. 1469, HD 1, SD 2
- H.B. No. 1498, HD 1, SD 1