

## FORTY-THIRD DAY

## Monday, March 31, 2003

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2003, convened at 11:43 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Sam Slom, Hawaii State Senate, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Forty-Second Day.

At this time, the following introductions were made to the members of the Senate as follows:

Senator Hemmings introduced Wright Bowman, Sr., and commended him for his lifelong commitment to the preservation of the Hawaiian Culture and Arts.

Senator Sakamoto recognized the achievements of GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs) Hawaii in providing educational opportunities for students in Hawaii and introduced its project director, Susan Kanagawa.

Senator Aduja introduced and congratulated Dr. Frank Kalama upon his retirement from the Hawaii public school system. Accompanying Dr. Kalama was his wife, Gladys, and grandson, Jonathan Cummings.

Senator Fukunaga introduced Allen Doane, Chief Executive Officer of Alexander and Baldwin, Inc., and commended him on guiding Alexander and Baldwin, Inc., to a #1 ranking in Social Responsibility in Fortune Magazine's 2003 Industry Rankings.

Senator Trimble introduced and commended Tim Irwin, President and Chief Executive Officer of Pleasant Holidays, on being named Travel Agent Magazine's 2002 Person of the Year in the Tours and Packages Category.

Senator Inouye introduced David Carey, Outrigger Enterprises' CEO/President, and commended him on being named Travel Agent Magazine's Person of the Year for 2002.

Senator English then introduced and commended Marsha Wienert, Executive Director of the Maui Visitors Bureau, on receiving Travel Agent Magazine's "Person of the Year - U.S." award for 2002.

At 12:01 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:09 o'clock p.m.

## MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 251 to 256) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 251, dated March 24, 2003, transmitting a report, "Hawaii State Policy and the Nonprofit Sector, Optimizing the Relationship Between Nonprofits and Government," prepared by The Hawaii Community Services Council and The Hawaii Institute for Public Affairs and

submitted to the Office of Planning, Department of Business, Economic Development and Tourism, was placed on file.

Gov. Msg. No. 252, dated March 28, 2003, transmitting the Report of Decentralized Decision-Making, prepared by the University of Hawaii pursuant to Act 115, Section 27, SLH 1998, was placed on file.

Gov. Msg. No. 253, dated March 3, 2003, transmitting a report, "Progress on the Study - Planning for Sustainable Tourism in Hawaii: A Study on the Carrying Capacity for Tourism," prepared by the Department of Business, Economic Development and Tourism pursuant to Act 259, SLH 2001, was placed on file.

Gov. Msg. No. 254, dated March 13, 2003, transmitting the Report on a Request to Establish a Task Force to Study the Feasibility of Establishing a Freshwater Fishery at the Wahiawa Reservoir, Oahu, prepared by the Department of Land and Natural Resources pursuant to H.C.R. No. 200 (2002), was placed on file.

Gov. Msg. No. 255, submitting for consideration and confirmation to the Public Utilities Commission, the nomination of CARLITO P. CALIBOSO, term to expire June 30, 2004, which replaces Gov. Msg. No. 240, dated March 6, 2003, was referred to the Committee on Commerce, Consumer Protection and Housing.

Gov. Msg. No. 256, informing the Senate that on March 28, 2003, she signed into law House Bill No. 1077 as Act 2, entitled: "MAKING EMERGENCY APPROPRIATIONS FOR THE OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR," was placed on file.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 304 to 306) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 304, informing the Senate that the House has disagreed to the amendments proposed by the Senate to the following House bills:

H.B. No. 324, H.D. 1 (S.D. 1);  
H.B. No. 401, H.D. 1 (S.D. 1);  
H.B. No. 562 (S.D. 1);  
H.B. No. 980, H.D. 1 (S.D. 1);  
H.B. No. 1076, H.D. 1 (S.D. 1); and  
H.B. No. 1607, H.D. 2 (S.D. 1),

was placed on file.

Hse. Com. No. 305, transmitting H.C.R. No. 43, which was adopted by the House of Representatives on March 28, 2003, was placed on file.

By unanimous consent, action on H.C.R. No. 43, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE EXPLORATION OF OPTIONS FOR REDESIGNING THE BENEFIT LEVELS OF 'A' STATUS PLANS DEFINED UNDER HAWAII'S PREPAID HEALTH CARE ACT," was deferred until Tuesday, April 1, 2003.

Hse. Com. No. 306, transmitting H.C.R. No. 58, which was adopted by the House of Representatives on March 28, 2003, was placed on file.

By unanimous consent, action on H.C.R. No. 58, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A SUNRISE REVIEW OF THE REGULATION OF CONDOMINIUM ASSOCIATION MANAGERS," was deferred until Tuesday, April 1, 2003.

#### JUDICIARY COMMUNICATION

Jud. Com. No. 4, submitting for consideration and consent, the nomination of FAYE KOYANAGI to the Office of Judge, District Court of the First Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of six years, was read by the Clerk and was referred to the Committee on Judiciary and Hawaiian Affairs.

#### STANDING COMMITTEE REPORTS

Senators Fukunaga and Kim, for the Committee on Economic Development and the Committee on Tourism, presented a joint report (Stand. Com. Rep. No. 1219) recommending that the Senate advise and consent to the nomination of TED LIU as Director of the Department of Business, Economic Development and Tourism, in accordance with Gov. Msg. No. 14.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1219 and Gov. Msg. No. 14 was deferred until Tuesday, April 1, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1220) recommending that S.C.R. No. 62 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1220 and S.C.R. No. 62, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A SUNRISE ANALYSIS OF THE REGULATION OF CONDOMINIUM ASSOCIATION MANAGERS," was deferred until Tuesday, April 1, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1221) recommending that S.C.R. No. 106 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1221 and S.C.R. No. 106, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO RECOGNIZE ON-LINE COURSES FROM ACCREDITED INSTITUTIONS," was deferred until Tuesday, April 1, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1222) recommending that S.R. No. 74 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1222 and S.R. No. 74, entitled: "SENATE RESOLUTION REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO RECOGNIZE ON-LINE COURSES FROM ACCREDITED INSTITUTIONS," was deferred until Tuesday, April 1, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1223) recommending that S.C.R. No. 96 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1223 and S.C.R. No. 96, entitled: "SENATE CONCURRENT RESOLUTION SUPPORTING THE HAWAII

HOMEOWNERSHIP CENTER," was deferred until Tuesday, April 1, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1224) recommending that H.B. No. 192, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1224 and H.B. No. 192, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ACCRETED LANDS," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1225) recommending that H.B. No. 285, H.D. 1, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1225 and H.B. No. 285, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ADMINISTRATIVE PROCEDURE," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1226) recommending that H.B. No. 373, H.D. 2, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1226 and H.B. No. 373, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO POLITICAL SPEECH," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1227) recommending that H.B. No. 385, H.D. 2, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1227 and H.B. No. 385, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PREVENTION OF WORKPLACE VIOLENCE," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1228) recommending that H.B. No. 651, H.D. 2, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1228 and H.B. No. 651, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INFORMED CONSENT," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1229) recommending that H.B. No. 914, H.D. 2, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1229 and H.B. No. 914, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ADULT RESIDENTIAL CARE HOMES," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1230) recommending that H.B. No. 1198, H.D. 2, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1230 and H.B. No. 1198, H.D. 2, S.D. 2, entitled: "A BILL FOR AN

ACT RELATING TO CHILD LABOR," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1231) recommending that H.B. No. 1214, H.D. 2, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1231 and H.B. No. 1214, H.D. 2, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LAND LIABILITY," was deferred until Wednesday, April 2, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1232) recommending that H.B. No. 1217, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 1232 and H.B. No. 1217, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES," was deferred until Wednesday, April 2, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1233) recommending that H.B. No. 1161, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 1161, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PSYCHOLOGIST LICENSING REQUIREMENTS," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, April 2, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1234) recommending that H.B. No. 1172 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 1172, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM SECURITIES ACT," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, April 2, 2003.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1235) recommending that S.C.R. No. 95 be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 95, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A REVIEW CONCERNING THE REGULATION AND LICENSURE REQUIREMENTS OF PROFESSIONS AND VOCATIONS BY THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS," was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1236) recommending that S.C.R. No. 81 be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 81, entitled: "SENATE CONCURRENT

RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A SUNRISE REVIEW OF THE REGULATION OF HYPNOTHERAPISTS," was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1237) recommending that S.R. No. 57 be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 57, entitled: "SENATE RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A SUNRISE REVIEW OF THE REGULATION OF HYPNOTHERAPISTS," was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1238) recommending that S.C.R. No. 61 be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 61, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A STUDY OF PROPOSED MANDATORY HEALTH INSURANCE COVERAGE FOR HEARING AID DEVICES AND SERVICES," was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1239) recommending that S.C.R. No. 84, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 84, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A COMPARATIVE STUDY ON HEALTH INSURANCE MARKET CONDITIONS," was referred to the Committee on Ways and Means.

#### ORDER OF THE DAY

#### HOUSE COMMUNICATION

#### MATTER DEFERRED FROM FRIDAY, MARCH 28, 2003

H.C.R. No. 62, H.D. 1 (Hse. Com. No. 303):

By unanimous consent, action on H.C.R. No. 62, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE OFFICE OF THE GOVERNOR TO DETERMINE THE IMPACT OF THE COMPACT OF FREE ASSOCIATION ON THE STATE OF HAWAII, AND REQUESTING HAWAII'S CONGRESSIONAL DELEGATION TO INTRODUCE LEGISLATION IN CONGRESS CALLING FOR FURTHER REVIEW OF THE MIGRATION ISSUE AND FOR INCREASED AID FOR THE EDUCATIONAL AND SOCIAL IMPACT OF THE COMPACT, AND ANY NEWLY RENEGOTIATED COMPACT, ON THE STATE OF HAWAII," was deferred until Tuesday, April 1, 2003.

At 12:11 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:23 o'clock p.m.

### THIRD READING

H.B. No. 1307, H.D. 1, S.D. 1:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, H.B. No. 1307, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

### ADOPTION OF RESOLUTIONS

#### MATTERS DEFERRED FROM FRIDAY, MARCH 28, 2003

Stand. Com. Rep. No. 1216 (S.C.R. No. 33, S.D. 1):

Senator Kawamoto moved that Stand. Com. Rep. No. 1216 and S.C.R. No. 33, S.D. 1, be adopted, seconded by Senator Hogue.

Senator Menor rose to speak in support of the measures and said:

"Mr. President, I rise to offer some brief remarks in support of Stand. Com. Rep. Nos. 1216 and 1217.

"Mr. President, I believe that the testimony received by your Committee on Commerce, Consumer Protection and Housing with respect to these resolutions has made it abundantly clear that legal action against Chevron/Texaco is necessary if the State of Hawaii is to stand any chance of recovering millions of dollars in back taxes that the oil company has apparently failed to pay. During the hearings that the CPH Committee conducted on this issue, the Committee heard from a nationally recognized accounting and tax expert, Professor James E. Wheeler of the University of Michigan and the University of Hawaii, who explained in detail the complex and elaborate tax evasion scheme that Chevron and Texaco may have entered into with their joint venture, Caltex, and the government of Indonesia.

"Mr. President, the specifics of this tax evasion scheme are summarized in the resolutions that are before all of you. So in the interest of time, I will not revisit them at this time. However, I would like to point out that according to Professor Wheeler, the State of Hawaii may be owed over \$470 million in back taxes. Moreover, I would like to emphasize that it is especially important for Hawaii to proceed with litigation since it appears that the oil company not only avoided paying the State of Hawaii millions of dollars in taxes at prior years, but that the company continues to pursue this practice of tax evasion, according to Professor Wheeler.

"Mr. President, there are several compelling reasons why I believe the State should proceed with legal action immediately. First of all, our State faces difficult economic times and we need the millions of dollars that the oil company may owe Hawaii, to fund important programs and services. We also need to stop any tax fraud that may be occurring and start receiving the unpaid taxes that the oil company owes the people of Hawaii. There also exists a likelihood that Hawaii's consumers overpaid and continue to overpay for gasoline, since the State imports a significant percentage of its crude oil from Indonesia where the oil company is accused of conspiring to purchase crude oil at deliberately inflated prices as part of a tax evasion scheme.

"The State also cannot look the other way if laws are being broken, and there is substantial evidence pointing to the oil company's potential involvement in unlawful activities, including accepting kickbacks, filing false income tax returns, and falsely reporting business transactions. The government also has a basic obligation to enforce the law, not only as a matter of principle, but also in fairness to the honest taxpayers of our State who have to pay more than their share to cover the shortfall of those who do not.

"The State must enforce the laws that we have on the books if it wants to maintain the public's faith in our government institutions. At this time when many Hawaii families are struggling to make ends meet, we cannot let one of the wealthiest companies in Hawaii, and in the world, break our laws with impunity and leave the taxpayers of Hawaii holding the bag.

"Finally, I believe that there is much to gain if legal action is successful, and little to lose, since the Chicago-based Winston & Strawn, one of the largest and most highly respected law firms in the nation on tax issues, is willing to take on this case at no cost to the State.

"For these reasons, Mr. President, I ask my colleagues in the Senate to vote in favor of these resolutions so that they may serve as a catalyst to initiate a legal process which I think ultimately will benefit the people of Hawaii.

"Thank you."

Senator Hemmings rose to speak against the resolutions as follows:

"Mr. President, I rise to speak against S.C.R. No. 33, S.D. 1, and its companion, S.R. No. 21, S.D. 1.

"I would suspect a law firm willing to take this issue on is not doing it pro bono. I would suspect they're more than likely doing it on a contingency, which is often the case in situations like this.

"There are many things that could be said about this issue because they have been discussed for well over 10 years. I can remember as far back as the Waihee administration – a great man, a knight of the people riding into this issue on his steed, fighting the big bad oil companies on behalf of the consumers of Hawaii.

"Well, after years of litigation, as we know for a matter of record, that litigation amounted to a settlement that probably barely covered lawyer's costs on the issue, especially the cost to the taxpayers' in pursuing the litigation.

"Mr. President and colleagues, this year we have tried, as we said in the early days of the Session and the opening day, that we have tried to be bipartisan, and oftentimes, nonpartisan in addressing many of the issues that face us. And I think we've been very successful in the Senate. We've done many wonderful things that in the past would not have been done simply for partisan reasons . . . which leads me to have to wonder not what we're doing here, but why we're doing it.

"Last year we saw, in the waning days of the Session, another issue concerning the price of gasoline in the State of Hawaii – hence, the infamous gas cap bill. That ties right in to this movement here, in my estimation. This is nothing more than an ongoing effort on a witch-hunt against big ugly oil companies that are gauging the consumers. Well, the facts speak otherwise. Gas prices in Hawaii, for instance, are

currently less than they are in the states and areas on the mainland that were indexing our alleged gas cap legislation too.

“This resolution completely ignores the fact that there has been federal review of this issue, and the local pursuit of it judicially resulted in little or nothing. If there is indeed a reason to pursue this, it certainly should not be a partisan effort on the part of political entities that hope to make election assets out of it, as was done this last election.

“I’m hoping that we would defer these resolutions and do what’s prudent and allow the IRS and the State Attorney General’s Office to make a fair determination on what’s best to protect the taxpayers’ interest.

“Maybe if we’re really interested in the taxpayers here, we can look into ways to reduce the cost of gas in the State of Hawaii. I think the previous speaker knows, as we all do, the single biggest cost in a gallon of gas in the State of Hawaii is taxes – the highest tax in the nation for gas here in Hawaii.

“In speaking against this, I not only challenge what it is doing, but I want you to ask yourselves what is the real intent here. Quite frankly, I was ashamed at the gas cap legislation last year and the result of political deception that came about as a result, where voters that were supposed to make informed decisions on who would represent them were sent lies about their voting record.

“So I’m hoping the motives of this are not such, but unfortunately, prior experience dictates otherwise. The prudent thing to do is send this back to Committee.

“Thank you, Mr. President.”

Senator Baker rose to speak in support of the measure as follows:

“Mr. President, I rise in support of these resolutions.

“When corporations shirk their responsibilities as part of our society, they must be taken to task, and that’s what these resolutions address. During the Consumer Protection Committee hearing of March 10, significant testimony was presented that pointed to an ongoing complex and fraudulent transfer pricing scheme perpetrated for more than three decades by Chevron and Texaco. This scheme involved the purchase of Indonesian crude oil at inflated prices and kickbacks in the form of price rebates and free oil from the Indonesian state-owned oil company. The net result is a loss of millions of dollars in taxes that should have been paid to the State of Hawaii and others.

“Preliminary public documents from a federal IRS case have indicated that such a scheme did in fact exist and resulted in significant tax loss to the US as well. Tax fraud, most probably, was also committed. Subsequently to this investigation, Chevron and Texaco have merged, which means that over time it will become even more difficult to track this fraudulent practice if it is not brought to light and stopped now. As long as Chevron Texaco continues this transfer pricing scheme, Hawaii will continue to lose tax revenue and suffer inflated prices at the pump. Hawaii consumers already pay among the highest gas prices in the country, even if you take out the amount of tax that we pay.

“Through these transactions, the oil companies could be still evading the payment of billions of dollars in federal taxes, in addition to the millions in State taxes, by overstating their costs of doing business and taking a credit on foreign taxes paid on overstated revenue. Oil was sold to Chevron’s and Texaco’s domestic subsidiaries at inflated prices, and gasoline made from

that oil was likely sold at inflated prices as well. Because more than one-third of our imported oil came from Indonesia during the period in question from 1990 to 1997, it is highly likely that Hawaii consumers paid, and are still paying, these inflated prices at the pump.

“This Administration has an opportunity and I believe an obligation to Hawaii’s consumers to continue to pursue this litigation, not just because it will help our budget shortfall, which a recovery would, but because it is the right thing to do. We have an obligation to our constituents who expect us to protect them from fraud and dishonest practices. We also have an obligation to ensure that questionable business practices of this company are thoroughly investigated and any illegal activities stopped. I would also point out that there is no financial risk to our State. The law firm contracted by the previous administration to pursue this matter has undertaken this case at no cost to the State of Hawaii. It’s a win-win situation for our taxpayers. The State stands to gain millions of lost tax revenue and there is no negative impact on our budget!

“We know all too well about the so-called creative accounting that was done for companies like Enron and Tyco. It is of no comfort to me that Chevron Texaco’s auditor was Arthur Andersen, and I’m sure that our constituents probably feel the same way. If the business practices of Chevron Texaco were not questionable, why then did the Internal Revenue Service have to ask the federal court to make Chevron produce documents important to its investigation of the foreign tax credits received as a result of its ‘creative’ accounting practice? And why did Chevron insist that the court seal these documents? Wasn’t it just to prevent State’s like Hawaii from pursuing additional litigation and additional recovery? The documents in the public domain are quite damaging; it is likely that additional documents produced in the course of the litigation will be even more so.

“I believe, Mr. President and colleagues, that this litigation against Chevron Texaco must go forward. To do less would be to knuckle under to the special interests and large corporations. We have a duty to protect our citizens from possible fraudulent practices and to recover lost tax revenue on their behalf. Taxpayers of this State should not be subsidizing huge profits of big oil. I urge my colleagues to join me to support this important measure.

“Thank you.”

Senator Slom rose to speak in opposition to the resolutions and said:

“Mr. President, I rise in opposition to the Senate concurrent resolution and resolution.

“I’ve never been known as one to knuckle under to anybody or anything, and I see these resolutions as just another attempt at wealth envy by some in our State. The period of time of three decades was mentioned and I can recall, during those three decades, going to many hearings, sitting in on hearings, hearing charges and allegations. And that was during a period of time when the Majority Party, actually four decades, controlled this State lock, stock, and barrel – the executive branch, the judicial branch, the legislative branch.

“I can remember two former attorney generals who were very active in the courts, and they came up empty. I can remember tax directors never saying a word about any kind tax problem. And when we read the resolution, we’re struck by the terms – may have, apparently, if, allegedly, potentially, probably, could have – and yet we’re urging further litigation.

“Well, isn’t it wonderful that the law firm from Chicago has stepped forward as a pro bono effort to help the State. I haven’t seen too many of these law firms that have ever come forward to help this State or certainly to help the people. And when the statement is made ‘there’s no financial risk; there’s no expenditure,’ that’s just not true. We may cover up our expenditure in terms of the time and the personnel that are involved. And we’ve seen this over the last couple of years when the past attorneys general were involved in these and other exploits. Those of us in the Senate saw hearing after hearing where people came from departments, and they’re still coming, saying we couldn’t get any relief or any help or any assistance from the attorney general’s office, so give us the power and more expenditure to hire our own attorneys.

“If the resolution sought to provide new information or to urge that the new administration pursue any evidence which has been forthcoming, then I don’t think there’d be any problem because we can all support this. And you know what? The good news is the administration is doing just that. The attorney general is doing just that. But that’s a far cry from saying, ‘let’s have litigation based on suppositions and allegations. Let’s go after the company because it is large, because it is successful, because it is a primary energy producer in this State. Let’s go after them.’

“And to make the analogy in the huge leap between Chevron Texaco and Enron is disingenuous at best, dishonest, and knowingly so, at worst.

“The fact that we have a study – the Gramlich and Wheeler study – well that’s reassuring. We’re the study capital of the free world! This body authorizes more studies than any other place on the face of the earth. We have a study which will show just about anything you want. But show hard evidence! Show evidence that will stand up in court, because that’s the bottom line if you want successful litigation. And that’s what our attorneys are doing right now, seeing if in fact there are any additional evidence or charges that will hold up in a court of law. We had all kinds of promises before of fraud, of wrongdoing, and none of them were substantiated in court.

“And now we have crocodile tears for the taxpayers and consumers of this State. Isn’t it nice that individuals in this body are worried about being overtaxed and yet they continue to advocate and introduce higher taxes, newer taxes, increased fees. You want to help the consumers and the taxpayers, cut the taxes, reduce the taxes, eliminate the taxes. We have the power to do that.

“And by the way, just in case anything is found by the oil companies or anyone else, that they in fact added to the cost of consumers, there’s nothing in the resolution, there’s nothing in past actions that gives anything back to the consumers. It would go back to the State.

“So Mr. President and colleagues, all I see here is a chumming expedition, which is all the more interesting since we had the Majority Attorneys, the Majority Party, the Majority tax directors, everyone else looking into this situation for 10 years. It’s not a question that the merger between the two companies at this point, several years ago, is going to hide anything. It’s just that when you talk about the may’s, and the if’s, and the would be’s, and the could be’s, there’s nothing there.

“We should prioritize our efforts. We should be concerned about consumers. We should also be concerned about those people within our midst in our community that are well documented and well known that do owe taxes to the State, but

for some reason have been given a pass up to this point and not been taken to task for the taxes that they owe.

“It’s fun to talk about the billions of dollars and millions of dollars that may be out there, but our job is to deal with the realities that we have, including balancing our budget and making sure that we don’t add to the discomfort and burdens of individual family and small business consumers in this State. And so far, we haven’t done that and these resolutions would not help in any way.

“Thank you, Mr. President.”

Senator Trimble rose in opposition and said:

“Thank you, Mr. President. Ain’t witch-hunts grand. A lot of words have been spread on this . . . what do I call it . . . it’s not really a feel-good resolution, but it gives us a sense that we’re really doing something.

“We had the opportunity, as a body, several weeks ago when this Session started, to look at a couple pieces of legislation that really would have reduced the cost of gasoline in this State. We chose not to hear them. We could have reexamined the divorce law. We chose not to do that. We could have reduced the price of gasoline taxes in Hawaii. We chose not to do that. But in the last month or the last six weeks of the Legislature, we needed something to feel good about, so let’s have a witch-hunt and blame the oil companies for the high price of gasoline.

“I think this is the wrong approach at the wrong time. I will be voting ‘no’ on these resolutions. Thank you, Mr. President.”

Senator Menor rose in response and said:

“Mr. President, I just want to offer some brief responses to some of the comments made by the previous speakers.

“I think that the comments about witch-hunt really mischaracterize the intent and important purpose of these resolutions and ignore the fact that there is, again, substantial evidence to indicate that a tax evasion scheme was being perpetrated by the oil company, resulting in millions of dollars being deprived and lost to the State of Hawaii.

“I’ll note some of those items of evidence or documents for this body’s consideration. As already mentioned, Professor Wheeler together with Professor Jeffrey Gramlich put together a very comprehensive and impressive report. And I would suggest that those who criticize these resolutions take a close look at this report because it’s impressive coming from two nationally recognized accounting and tax professors. But in addition, it’s very detailed, not only in terms of the statements and conclusions and findings that they reached, but also in citing specific documentation already in the public domain, which I believe offers enough evidence for the State to proceed against this oil company for bilking taxpayers and the residents of this State out of millions of dollars.

“In addition to this report, I would also note, and my Vice-Chair has discussed this previously, that there was ongoing litigation initiated by the Internal Revenue Service against Chevron Texaco for tax evasion. This was in connection with an IRS audit that was conducted of Chevron and Texaco back in the 1980s and 1990s. And the litigation needed to proceed because of the fact that Chevron and Texaco were stonewalling the IRS requests for the production of important documents and information to verify one way or the other whether a tax evasion scheme was being entered into. In connection with that litigation to force Chevron and Texaco to produce documents,

some important pieces of information and documentation were generated and produced which support the State moving ahead with its case.

“For example, I note for my colleagues’ reference, an affidavit that was submitted by a Brian Halm, who at the time of the IRS audit was the branch chief in the examination division of the Internal Revenue Service in San Francisco, California. This affidavit indicates that there appears to have been some tax evasion by the oil companies at the time of the audit in preceding years. In addition to Brian Halm’s affidavit, I also would direct my colleagues’ attention to a technical advice memorandum issued by the IRS in connection with that litigation. There is also a report entitled, ‘The Economics of Lifting Sumatran Crude,’ which is a confidential Chevron and Texaco document of about 30 pages in length that is in the public domain, and which again I think offers some additional compelling evidence for the State to proceed with its litigation.

“But the most damning, Mr. President and my fellow colleagues, the most damning comments and evidence came from the federal magistrate who conducted hearings on the IRS’s request for production of documents. The name of the magistrate is Judge Langford. And in a hearing on the issue of IRS access to these documents, Judge Langford states, and I quote verbatim, ‘This Court has thoroughly and carefully reviewed both the Governor’s proffer in support of probable cause and the documents themselves submitted for in-camera review. The Court concludes that the proffer, along with the documents themselves, adequately supports a finding to believe that (a) one or more crimes or frauds have been committed or attempted; and (b) that the attorney client communications at issue were created in furtherance of those crimes or frauds, including a showing of the clients (in this case, Chevron’s) intent.’

“Based on this kind of strong comment coming from a federal judge, Mr. President, it’s not surprising that instead of proceeding with the case and litigating it in court, that in 1994, Chevron agreed to enter into a settlement with the IRS in which they paid close to \$700 million to settle the IRS’s claims with respect to the nonpayment of taxes. I don’t think that if the parties in this case were not involved in some kind of activity which was highly questionable, that such a settlement would have occurred.

“So again, I think all of the previous comments saying that this is a witch-hunt, that we don’t have enough evidence, that’s not true. And for those who say that we ought to let the Attorney General’s Office continue to review and study the issue, I think we’ve got enough studies and reviews. It’s time to take decisive action for the consumers of Hawaii. Let’s proceed with this litigation against the oil company in the future.

“Thank you.”

The motion was put by the Chair and carried, the report of the Committee was adopted and S.C.R. No. 33, S.D. 1, entitled: “SENATE CONCURRENT RESOLUTION URGING THE STATE TO PURSUE LITIGATION AGAINST CHEVRONTEXACO FOR NONPAYMENT OF TAXES,” was adopted with Senators Hemmings, Hogue, Slom and Trimble voting “No.”

Stand. Com. Rep. No. 1217 (S.R. No. 21, S.D. 1):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 21, S.D. 1, entitled: “SENATE RESOLUTION URGING THE STATE TO PURSUE LITIGATION AGAINST CHEVRONTEXACO FOR NONPAYMENT OF TAXES,”

was adopted with Senators Hemmings, Hogue, Slom and Trimble voting “No.”

Stand. Com. Rep. No. 1218 (S.C.R. No. 42, S.D. 1):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the Committees was adopted and S.C.R. No. 42, S.D. 1, entitled: “SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII TOURISM AUTHORITY TO DESIGN, IMPLEMENT, AND EVALUATE A CULTURAL TELEVISION AND FILM PILOT PROJECT,” was adopted.

**RE-REFERRAL OF  
SENATE CONCURRENT RESOLUTION**

The Chair re-referred the following Senate concurrent resolution that was offered:

Senate Concurrent Resolution	Referred to:
No. 153	Jointly to the Committee on Water, Land, and Agriculture and the Committee on Energy and Environment, then to the Committee on Ways and Means

**ADJOURNMENT**

At 12:53 o’clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o’clock a.m., Tuesday, April 1, 2003.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate