

## FIFTY-SIXTH DAY

**Wednesday, April 23, 2003**

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2003, convened at 12:17 o'clock p.m. with the President in the Chair.

The Divine Blessing was invoked by Associate Pastor Dennis Sallis, Hope Chapel, after which the Roll was called showing all Senators present with the exception of Senator Hanabusa who was excused.

The President announced that he had read and approved the Journal of the Fifty-Fifth Day.

**MESSAGES FROM THE GOVERNOR**

The following messages from the Governor (Gov. Msg. Nos. 453 to 457) were read by the Clerk and were placed on file:

Gov. Msg. No. 453, letter dated April 22, 2003, requesting that S.B. No. 1443 be amended to provide appropriations and authorizations required to fund the arbitrated settlement awarded to Bargaining Unit 11, Firefighters, for fiscal years 2004-2005.

Gov. Msg. No. 454, dated April 22, 2003, transmitting the Comprehensive Annual Financial Report of the State of Hawaii for Fiscal Year Ended June 30, 2003, prepared by the Comptroller pursuant to Section 40-5, HRS.

Gov. Msg. No. 455, advising the Senate of the withdrawal of the nomination of GARRY SMITH to the Crime Victim Compensation Commission, under Gov. Msg. No. 288, dated April 7, 2003.

In compliance with Gov. Msg. No. 455, the nomination listed under Gov. Msg. No. 288 was returned.

Gov. Msg. No. 456, advising the Senate of the withdrawal of the nomination of DEBORAH M. LIM to the Civil Rights Commission, under Gov. Msg. No. 343, dated April 14, 2003.

In compliance with Gov. Msg. No. 456, the nomination listed under Gov. Msg. No. 343 was returned.

Gov. Msg. No. 457, advising the Senate of the withdrawal of the nomination of MICHAEL H. FURUKAWA to the Commission on Water Resource Management, under Gov. Msg. No. 403, dated April 14, 2003.

In compliance with Gov. Msg. No. 457, the nomination listed under Gov. Msg. No. 403 was returned.

**DEPARTMENTAL COMMUNICATION**

Dept. Com. No. 31, from the State Auditor dated April 22, 2003, transmitting a report, "Evaluation of the State's Integrated Special Education Database System," (Report No. 03-05), was read by the Clerk and was placed on file.

**HOUSE COMMUNICATION**

Hse. Com. No. 589, informing the Senate that the Speaker on April 22, 2003, made the following changes to the conferees on the following bill:

H.B. No. 512, H.D. 1 (S.D. 2):

Discharged Representative Hamakawa as lead co-chair.  
Appointed Representative Arakaki as lead co-chair and Representative Hamakawa as second co-chair,

was read by the Clerk and was placed on file.

**CONFERENCE COMMITTEE REPORTS**

Senator Inouye, for the Committee on Conference on the disagreeing vote of the House to the amendments proposed by the Senate to H.B. No. 192, H.D. 1, presented a report (Conf. Com. Rep. No. 2) recommending that H.B. No. 192, H.D. 1, S.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 2 and H.B. No. 192, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ACCRETED LANDS," was deferred for a period of 48 hours.

Senator Menor, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 295, S.D. 1, presented a report (Conf. Com. Rep. No. 51) recommending that S.B. No. 295, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 51 and S.B. No. 295, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE TOWING," was deferred for a period of 48 hours.

Senator Menor, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1200, S.D. 1, presented a report (Conf. Com. Rep. No. 52) recommending that S.B. No. 1200, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 52 and S.B. No. 1200, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CAPTIVE INSURANCE," was deferred for a period of 48 hours.

Senator Menor, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1630, presented a report (Conf. Com. Rep. No. 53) recommending that S.B. No. 1630, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 53 and S.B. No. 1630, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NONPROFIT CORPORATIONS," was deferred for a period of 48 hours.

Senator Hanabusa, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 933, S.D. 1, presented a report (Conf. Com. Rep. No. 54) recommending that S.B. No. 933, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 54 and S.B. No. 933, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STALKING," was deferred for a period of 48 hours.

Senator Hanabusa, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1267, presented a report (Conf. Com. Rep. No. 55) recommending that S.B. No. 1267, H.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 55 and S.B. No. 1267, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TOBACCO," was deferred for a period of 48 hours.

Senator Hanabusa, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1274, S.D. 1, presented a report (Conf. Com. Rep. No. 56) recommending that S.B. No. 1274, S.D. 1, H.D. 1, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 56 and S.B. No. 1274, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MANSLAUGHTER," was deferred for a period of 48 hours.

Senator Kim, for the Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House to S.B. No. 1460, S.D. 1, presented a report (Conf. Com. Rep. No. 57) recommending that S.B. No. 1460, S.D. 1, H.D. 2, as amended in C.D. 1, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 57 and S.B. No. 1460, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONTRACTS ENTERED INTO BY THE HAWAII TOURISM AUTHORITY," was deferred for a period of 48 hours.

#### STANDING COMMITTEE REPORTS

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 1603) recommending that H.C.R. No. 93 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1603 and H.C.R. No. 93, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING A STUDY OF THE FEASIBILITY OF MEDICAL SAVINGS ACCOUNTS," was deferred until Thursday, April 24, 2003.

Senator Fukunaga, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 1604) recommending that H.C.R. No. 128, H.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1604 and H.C.R. No. 128, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING TELECOMMUNICATIONS AND CALL CENTERS TO INITIATE CUSTOMER RIGHT TO KNOW PROCEDURES REGARDING ALL INBOUND AND OUTBOUND COMMUNICATIONS," was deferred until Thursday, April 24, 2003.

Senator Fukunaga, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 1605) recommending that H.C.R. No. 135 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1605 and H.C.R. No. 135, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM TO ESTABLISH A TASK FORCE TO DEVELOP AN

EMERGENCY ACTION PLAN TO ASSIST AND EMPOWER THE WAI'ANA'E COMMUNITY AND OTHER COMMUNITIES AROUND THE STATE TO FOSTER GREATER SELF-SUFFICIENCY," was deferred until Thursday, April 24, 2003.

Senator Kawamoto, for the Committee on Transportation, Military Affairs, and Government Operations, presented a report (Stand. Com. Rep. No. 1606) recommending that the Senate advise and consent to the nomination of CAPTAIN GERALD L. COFFEE to the Civil Defense Advisory Council, in accordance with Gov. Msg. No. 287.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1606 and Gov. Msg. No. 287 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1607) recommending that the Senate advise and consent to the nomination of TRISH MORIKAWA to the Hawaiian Homes Commission, in accordance with Gov. Msg. No. 304.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1607 and Gov. Msg. No. 304 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1608) recommending that the Senate advise and consent to the nomination of GAIL U. KELIIOKA-SHERLOCK to the Island Burial Council, Island of Hawai'i, in accordance with Gov. Msg. No. 307.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1608 and Gov. Msg. No. 307 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1609) recommending that the Senate advise and consent to the nomination of RHODA FEINBERG PH.D. to the Correctional Industries Advisory Committee, in accordance with Gov. Msg. No. 350.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1609 and Gov. Msg. No. 350 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1610) recommending that the Senate advise and consent to the nomination of THEODORE G.M. JUNG to the Correctional Industries Advisory Committee, in accordance with Gov. Msg. No. 351.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1610 and Gov. Msg. No. 351 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1611) recommending that the Senate advise and consent to the nomination of WAYLEN K.K. TOMA to the Correctional Industries Advisory Committee, in accordance with Gov. Msg. No. 352.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1611 and Gov. Msg. No. 352 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1612) recommending that the Senate advise and consent to the nomination of JULIE KAI BARRETO to the Defender Council, in accordance with Gov. Msg. No. 353.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1612 and Gov. Msg. No. 353 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1613) recommending that the Senate advise and consent to the nomination of RON AGOR to the Board of Registration of the Islands of Kauai and Niihau, in accordance with Gov. Msg. No. 387.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1613 and Gov. Msg. No. 387 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1614) recommending that the Senate advise and consent to the nomination of COLIN KAALELE to the Hawaiian Homes Commission, in accordance with Gov. Msg. No. 302.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1614 and Gov. Msg. No. 302 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1615) recommending that the Senate advise and consent to the nomination of MAHINA MARTIN to the Hawaiian Homes Commission, in accordance with Gov. Msg. No. 303.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1615 and Gov. Msg. No. 303 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1616) recommending that the Senate advise and consent to the nomination of CLARICE CORNETT to the Correctional Industries Advisory Committee, in accordance with Gov. Msg. No. 349.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1616 and Gov. Msg. No. 349 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1617) recommending that the Senate advise and consent to the nomination of MICHELLE L. DREWYER to the Defender Council, in accordance with Gov. Msg. No. 354.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1617 and Gov. Msg. No. 354 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1618) recommending that the Senate advise and consent to the nomination of STEVE PFISTER to the Board of Registration of the Island of Maui, Molokai, Lanai, and Kaho'olawe, in accordance with Gov. Msg. No. 323.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1618 and Gov. Msg. No. 323 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1619) recommending that the Senate advise and consent to the nomination of KATHRYN GHEAN to the Board of Registration of the Islands of Maui, Molokai, Lanai, and Kaho'olawe, in accordance with Gov. Msg. No. 388.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1619 and Gov. Msg. No. 388 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1620) recommending that the Senate advise and consent to the nomination of ROBERTA CHONG KEE to the Board of Registration of the Island of Oahu, in accordance with Gov. Msg. No. 389.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1620 and Gov. Msg. No. 389 was deferred until Thursday, April 24, 2003.

Senator Hanabusa, for the Committee on Judiciary and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1621) recommending that the Senate advise and consent to the nomination of KEN HIDESHI TAKAYAMA to the Commission to Promote Uniform Legislation, in accordance with Gov. Msg. No. 425.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1621 and Gov. Msg. No. 425 was deferred until Thursday, April 24, 2003.

Senator English, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 1622) recommending that the Senate advise and consent to the nominations to the Environmental Council of the following:

SHAD S. KANE, in accordance with Gov. Msg. No. 301; and

DAVID S. BYLUND, in accordance with Gov. Msg. No. 360.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1622 and Gov. Msg. Nos. 301 and 360 was deferred until Thursday, April 24, 2003.

#### ORDER OF THE DAY

#### ADVISE AND CONSENT

Stand. Com. Rep. No. 1596 (Gov. Msg. No. 242):

Senator Inouye moved that Stand. Com. Rep. No. 1596 be received and placed on file, seconded by Senator Kawamoto and carried.

Senator Inouye then moved that the Senate advise and consent to the nomination of BERT H. SAKATA to the Kaho'olawe Island Reserve Commission, term to expire June 30, 2007, seconded by Senator Kawamoto.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

Stand. Com. Rep. No. 1597 (Gov. Msg. Nos. 292 and 293):

Senator Baker moved that Stand. Com. Rep. No. 1597 be received and placed on file, seconded by Senator Chun Oakland and carried.

Senator Baker then moved that the Senate advise and consent to the nominations to the State Council on Developmental Disabilities of the following:

DONNA P. BISHAW, term to expire June 30, 2006 (Gov. Msg. No. 292); and

ELVIRA LEE, term to expire June 30, 2006 (Gov. Msg. No. 293),

seconded by Senator Chun Oakland.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

Stand. Com. Rep. No. 1598 (Gov. Msg. Nos. 294, 295, 296, 297, 298, 299 and 300):

Senator Baker moved that Stand. Com. Rep. No. 1589 be received and placed on file, seconded by Senator Chun Oakland and carried.

Senator Baker then moved that the Senate advise and consent to the nominations to the Disability and Communication Access Board of the following:

ANTHONY S. AKAMINE, term to expire June 30, 2007 (Gov. Msg. No. 294);

RONALD AWA, term to expire June 30, 2007 (Gov. Msg. No. 295);

RICHARD R. CHAVES, term to expire June 30, 2007 (Gov. Msg. No. 296);

SHARON FOUNTAIN, term to expire June 30, 2006 (Gov. Msg. No. 297);

FRANCINE M. KENYON, term to expire June 30, 2007 (Gov. Msg. No. 298);

LUCY MILLER PH.D., term to expire June 30, 2007 (Gov. Msg. No. 299); and

PATRICIA NIELSEN, term to expire June 30, 2007 (Gov. Msg. No. 300),

seconded by Senator Chun Oakland.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

Stand. Com. Rep. No. 1599 (Gov. Msg. No. 289):

Senator Aduja moved that Stand. Com. Rep. No. 1599 be received and placed on file, seconded by Senator English and carried.

Senator Aduja then moved that the Senate advise and consent to the nomination of GAE BERGQUIST-TROMMALD to the

State Foundation on Culture and the Arts Commission, term to expire June 30, 2007, seconded by Senator English.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

Stand. Com. Rep. No. 1600 (Gov. Msg. No. 310):

Senator Aduja moved that Stand. Com. Rep. No. 1600 be received and placed on file, seconded by Senator English and carried.

Senator Aduja then moved that the Senate advise and consent to the nomination of WILLIAM D. SOUZA to the King Kamehameha Celebration Commission, term to expire June 30, 2006, seconded by Senator English.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

Stand. Com. Rep. No. 1601 (Gov. Msg. No. 321):

Senator Aduja moved that Stand. Com. Rep. No. 1601 be received and placed on file, seconded by Senator English and carried.

Senator Aduja then moved that the Senate advise and consent to the nomination of CARL L. SIMONS to the Board of Directors of the Natural Energy Laboratory of Hawai'i Authority, term to expire June 30, 2007, seconded by Senator English.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

Stand. Com. Rep. No. 1602 (Gov. Msg. No. 255):

Senator Menor moved that Stand. Com. Rep. No. 1602 be received and placed on file, seconded by Senator Baker and carried.

Senator Menor then moved that the Senate advise and consent to the nomination of CARLITO P. CALIBOSO to the Public Utilities Commission, term to expire June 30, 2004, seconded by Senator Baker.

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

"Mr. President, with your indulgence, I wanted to offer some brief remarks in support of Stand. Com. Rep. No. 1602.

"Mr. President, it's a pleasure for me to be able to recommend to this distinguished body the confirmation of Carlito Caliboso to the important of chairmanship of the Public Utilities Commission. There is no question that Carlito possesses the necessary intellect and qualifications to be able to grasp and to analyze the kinds of complex issues that the Public Utilities Commission is responsible for reviewing and deciding upon.

"He really will bring with him an impressive educational and professional background. Carlito earned a Bachelor of Business Administration degree in Finance and Management from the College of Business Administration of the University of Hawaii

in 1984. He earned his law degree from the William S. Richardson School of Law at the University of Hawaii in 1991, where he was the articles editor for University of Hawaii Law Review. As an attorney, Mr. President, I can tell you that selection to the Law Review represents one of the highest honors that a law student can attain.

"In terms of his professional career, he has been employed as a systems analyst with Bank of Hawaii and Central Pacific Bank, and has been a partner in the law firm of Catalani Nakanishi and Caliboso where he has specialized in real estate and commercial finance law.

"Another positive aspect of Carlito's nomination to the PUC is that he has stated that his first order of business will be to improve public access to the agency. He has also pledged to provide a balanced perspective as he seeks to reconcile the various issues that will come before him as the commissioner.

"Finally, as someone who immigrated from the Philippines with his family when he was just two years old, Carlito, to me, is a shining example of how someone in this country can rise to a position of prominence and success through hard work and dedication. And with all due respect to the Senator from Waipahu, Senator Kawamoto, one of Carlito's other assets is the fact that he is currently a resident in God's country, Mililani Mauka.

"For the reasons that I've stated, I ask my colleagues to join me in confirming Carlito Caliboso as chairman of the Public Utilities Commission.

"Thank you."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Hanabusa, Ige, Kanno).

At 12:21 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.

#### FINAL READING

S.B. No. 78, S.D. 2, H.D. 1:

Senator Chun Oakland moved that S.B. No. 78, S.D. 2, H.D. 1, having been read throughout, pass Final Reading, seconded by Senator English.

Senator Trimble rose to speak in opposition to the measure and said:

"Mr. President, I rise to speak in opposition to this measure.

"Colleagues, all of us are opposed to elder abuse. I think all of us recognize that it is a problem in Hawaii and it is a problem that needs to be addressed.

"In this measure, when we pass this measure, we will be doing several things, either intended or unintended, and please join me for a couple moments and reflect before we cast a vote on what we're actually doing. We are defining abuse as physical or psychological. We're setting up civil penalties where the judge's discretion is limited. We're setting a floor at \$500 a day. My first problem is that I don't think that we should be limiting the judge to a minimum penalty of \$500 a day. I think the judge should have more discretion.

"If this measure is passed by this body, the first result will be, I anticipate, and if I'm wrong, please correct me, that those caretakers providing this service will see an increase in their insurance rates. As a cost to business, this will be passed on to those that use the care facilities or the people that send them there, and in many cases, the payment comes from the State of Hawaii. So, the taxpayers of the State of Hawaii will be paying the insurance that will be used perhaps to defend in terms of legal fees or civil remedies, and I'm just not sure that this is the right approach for us to be taking.

"I have voted for and I do support unannounced visits. I think perhaps a better alternative will be to have more unannounced visits. And because I differ in the approach that I think is most appropriate, I will be voting against this measure and I urge you to do likewise.

"Thank you."

Senator Chun Oakland then rose in support of the measure and said:

"Mr. President, I rise to speak in strong support of this measure.

"Abuse and neglect of the elderly has been called Hawaii's 'hidden epidemic.' Elder abuse is physical or mental mistreatment or injury that harms or threatens an elderly person. It includes physical, sexual, emotional, and financial abuse, as well as neglect or abandonment. Abuse can happen in institutions like nursing homes, as well as at home. Most of the reported cases involve abuse by a family member or other relative.

"The sad truth is that many elders do not report abuse. Some are physically or mentally impaired. Many dependent elders put up with the abuse due to fear of losing whatever support the abuser may be providing, such as a place to live or personal care, or are unable to notify anyone else.

"Hawaii already provides for extended sentences for criminals who commit crimes against elders. S.B. No. 78 would provide for enhanced civil penalties for caregivers who abuse or neglect elders.

"S.B. No. 78 authorizes the Attorney General to seek civil penalties on behalf of the State in cases where an elder has been abused or neglected by a caregiver. A caregiver who is found to have abused or neglected an elder will be fined up to \$1,000 for each day that the abuse occurred, and must pay for the costs of the Attorney General's investigation.

"This measure does not bar the criminal prosecution of an abusive caregiver and the elderly victim (or the victim's estate) may also pursue private legal action, including obtaining a temporary restraining order against the abuser or suing for breach of contract, tort, or civil fraud.

"With regards to the previous speaker's concern about increasing costs, we worked very diligently with a number of the organizations that were concerned about premiums going up as a result of the original bill. And as a result, that is why the Senate has taken the position and accepted the position of the House, which takes away the private cause of action. So, here before us is a civil remedy only.

"Mr. President, this bill, for the first time, imposes civil penalties against abusive caregivers, and sends a very strong message that we will not tolerate the abuse or neglect of our elders. By passing this measure, Hawaii will join seven other

states that have enacted enhanced civil penalties for elder abuse. It is an important measure and I urge your support.

“Thank you.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 78, S.D. 2, and S.B. No. 78, S.D. 2, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO ELDER ABUSE,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 1 (Trimble). Excused, 2 (Hanabusa, Kanno).

S.B. No. 394, H.D. 1:

On motion by Senator Menor, seconded by Senator Espero and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 394, and S.B. No. 394, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Kanno).

S.B. No. 1058, S.D. 1, H.D. 1:

On motion by Senator Menor, seconded by Senator Espero and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1058, S.D. 1, and S.B. No. 1058, S.D. 1, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CAPTIVE INSURANCE,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Hanabusa).

S.B. No. 1306, H.D. 1:

Senator Menor moved that S.B. No. 1306, having been read throughout, pass Final Reading, seconded by Senator Espero.

Senator Hogue rose to speak in opposition to the measure and said:

“Mr. President, I rise in opposition to this measure. Colleagues, I will be brief.

“This bill authorizes the PUC to have flexibility to establish a surcharge for providing TRS services. Essentially, it could lead to higher costs for consumers. All of us receive our bills in the mail. Essentially, many of us may not realize why surcharges seem to be added from time to time, and it’s because we vote for measures such as this. And potentially, when you get your next wireless bill, if we vote for this thing you’ll have a surcharge on their and you’ll be paying a little bit more.

“So, I urge you to vote ‘no.’ Thank you.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1306, and S.B. No. 1306, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TELECOMMUNICATIONS RELAY SERVICES,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Hemmings, Hogue, Slom, Whalen). Excused, 1 (Hanabusa).

S.B. No. 773, H.D. 2:

Senator Kanno moved that S.B. No. 773, having been read throughout, pass Final Reading, seconded by Senator Kokubun.

Senator Slom rose to speak in opposition to the measure as follows:

“Mr. President, I rise in opposition to the bill.

“The bill says that what it really seeks to do is to give flexibility to the Department of Labor, but it does not. What it really does is to open up new avenues for claimants to get unemployment compensation that they would not normally be entitled to. It sets up an alternative base period, allows them the option in which to get additional payments.

“The Committee cited 12 states in which similar type legislation has been enacted and said that the rates in the reserve fund and the benefits only went up between 4 and 6 percent. I would remind my colleagues again that Hawaii has one of the highest unemployment compensation tax rates in the United States, that the unemployment compensation tax on all employers just went up in March, that if this bill is enacted it will increase unemployment compensation rates again, and again, the final reminder is that only employers pay unemployment compensation tax – no employee ever pays any part of UI.

“Thank you, Mr. President.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 773, and S.B. No. 773, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO UNEMPLOYMENT INSURANCE,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 2 (Hanabusa, Taniguchi).

S.B. No. 1373, S.D. 1, H.D. 1:

On motion by Senator Kanno, seconded by Senator Kokubun and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1373, S.D. 1, and S.B. No. 1373, S.D. 1, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO STAFFING FOR FEDERALLY FUNDED PROGRAMS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hanabusa, Taniguchi).

#### RECONSIDERATION OF ACTIONS TAKEN

S.B. No. 373, S.D. 1 (H.D. 2):

Senator Menor moved that the Senate reconsider its action taken on April 10, 2003, in disagreeing to the amendments proposed by the House to S.B. No. 373, S.D. 1, seconded by Senator Espero and carried.

In accordance with the Conference Committee Procedures agreed upon by the Senate and the House of Representatives, the managers on the part of the Senate recommended that the Senate agree to the amendments proposed by the House to S.B. No. 373, S.D. 1, on the following showing of Ayes and Noes:

Ayes, 2 (Menor, Espero). Noes, none. Excused, 1 (Whalen).

Senator Menor moved that the Senate agree to the amendments proposed by the House to S.B. No. 373, S.D. 1, seconded by Senator Espero.

Senator Menor noted:

“Mr. President, the amendments that are contained in the House bill that are not contained in the Senate bill are basically for the purposes of clarifying some important terms pertaining to this measure. For example, one amendment in the House bill would specify that the measure refers to power of sale foreclosure under Section 667-5, Hawaii Revised Statutes, as opposed to the rarely used alternate power of sale foreclosure process under Part II of Chapter 667, Hawaii Revised Statutes.

“It also makes some technical, nonsubstantive changes for clarity and style.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 373, S.D. 1, and S.B. No. 373, S.D. 1, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES,” was placed on the calendar for Final Reading on Thursday, April 24, 2003.

S.B. No. 658, S.D. 1 (H.D. 3):

Senator Baker moved that the Senate reconsider its action taken on April 10, 2003, in disagreeing to the amendments proposed by the House to S.B. No. 658, S.D. 1, seconded by Senator Tsutsui and carried.

Senator Baker moved that the Senate agree to the amendments proposed by the House to S.B. No. 658, S.D. 1, seconded by Senator Tsutsui.

Senator Baker noted:

“Mr. President, the amendments made by the House revert the bill to its original Senate position.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 658, S.D. 1, and S.B. No. 658, S.D. 1, H.D. 3, entitled: “A BILL FOR AN ACT RELATING TO EMERGENCY CONTRACEPTIVES FOR SEX ASSAULT SURVIVORS IN EMERGENCY ROOMS,” was placed on the calendar for Final Reading on Thursday, April 24, 2003.

S.C.R. No. 6, S.D. 1 (H.D. 1):

Senator Fukunaga moved that the Senate reconsider its action taken on April 22, 2003, in disagreeing to the amendments proposed by the House to S.C.R. No. 6, S.D. 1, seconded by Senator Kanno and carried.

Senator Fukunaga moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 6, S.D. 1, seconded by Senator Kanno.

Senator Fukunaga noted:

“Mr. President, the House has amended this resolution by having the Legislative Reference Bureau do the study in a manner which would focus the resolution more closely on specific areas, and we believe it’s a good amendment.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 6, S.D. 1, and S.C.R. No. 6, S.D. 1, H.D. 1, entitled: “SENATE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE EFFECTS OF BIG BOX RETAILERS ON LOCAL SMALL AND MEDIUM RETAIL BUSINESSES,” was placed on the calendar for Final Adoption on Thursday, April 24, 2003.

Senator Ihara rose on a point of personal privilege as follows:

“Mr. President, I rise on a point of personal privilege.

“Mr. President, I’d like to enter in the Journal, for the Record, my objection to a specific section of this Session’s Conference Committee Rules. I mentioned this objection in our debate on S.C.R. No. 146 on the Chair veto. I noted in that debate that I had a greater objection to another section in the Conference Rules, and this is Rule 8(b) and I’ll quote, ‘no Conference Committee Report concerning a measure with fiscal implications shall be reported out of a Conference Committee without the signatures of the chairs (or their designee) of the fiscal committees of each chamber.’ Mr. President, this is an after-the-fact veto. The Committee majority of all of the Chairs and all of the members can adopt a conference draft at a duly held meeting, but instead of the committee report reporting the actions of that Committee, this Rule would allow the report to be withheld by an after-the-fact action, which is a veto not exercised at a public meeting.

“Mr. President, this section, I believe, violates Article III, Section 12, of the State Constitution. This section requires that all decisions of legislative committees, including conference committees, must be made in public. Mr. President, this issue was addressed twice – once in a January 1999 opinion by the House Majority Attorney, and a March 7, 2000, opinion by the Attorney General. Both of these opinions agree to two items that I’ll note in the opinions – that the constitutional convention delegates, and I’ll quote, ‘contemplated that all actions and decisions of a committee of the Legislature shall be carried out at committee meetings open to the public, and the committee report on a bill, which the committee recommends for passage, shall only be a reflection and record of the committee’s actions and decisions at the committee meetings.’

“They also continue and say that ‘in the contemplation of the Constitutional Convention, a committee report recommending the bill for passage and circulated after the committee meeting is a record of the decisions and actions already taken on the bill by the committee at its decision making meeting. And since the report itself is neither the instrument nor the forum for decision making, decisions making cannot be determined by or be dependent upon the signatures of the committee members individually solicited and obtained outside of the committee meeting.’

“Mr. President, I also note that in Mason’s Manual of Legislative Procedure, which is the parliamentary rules for both the House and Senate, Section 663 says, ‘The chair is never justified in making a report that has not been approved by the committee.’ Section 664-2 says, and I quote, ‘A committee should report only such recommendations as have been agreed upon by a majority vote at a meeting to which all members were invited, and at which a quorum was present.’ Section 665-1 says, ‘Committee reports must be authorized by a majority of a quorum meeting as a committee, but it is not necessary that the report be signed by all members agreeing to it.’ And finally, in section 4 it says the signing of a committee report is the action of the committee itself and not of the members.

“So, Mr. President, for the record, these are my reasons why I believe that using conference committee reports for a decision making purpose violates not only Mason’s Legislative Manual, in the sections I quoted, but also Article III, Section 12, of the State Constitution.

“Thank you.”

**ADJOURNMENT**

At 12:48 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 6:30 o'clock p.m., Thursday, April 24, 2003.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate