

JOURNAL
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TWENTY - SECOND LEGISLATURE
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STATE OF HAWAII

Special Session of 2003

Convened Tuesday, July 8, 2003
Adjourned Tuesday, July 8, 2003

TABLE OF CONTENTS

	PAGE
First Day, Tuesday, July 8, 2003	1
 Communications received after adjournment:	
House communications	45
 History:	
Senate Bills	46
Senate Resolutions	47
House Bills	48

THE
TWENTY-SECOND LEGISLATURE
STATE OF HAWAII
SPECIAL SESSION OF 2003
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FIRST DAY

Tuesday, July 8, 2003

The Senate of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, was called to order at 11:43 o'clock a.m., by Senator Robert Bunda, President of the Senate.

The Divine Blessing was invoked by the Honorable Norman Sakamoto, Hawaii State Senate, after which the Roll was called showing all Senators present with the exception of Senator English who was excused.

At this time, the President made the following remarks:

"First of all, I'd like to welcome and give you an aloha today.

"We are convening today to seek overrides of the Governor's vetoes of several key measures approved by the 2003 Legislature. We are directing our efforts at bills that have a significant impact on public health, safety, and welfare.

"Foremost among them is S.B. No. 1305 which makes appropriations from the rainy day fund for health and human services organizations across the State. The Governor slashed \$150,000 for medical exams of foster children, halved money for Kuhio Park Terrace's family center, and deleted funding for the Maui AIDS Foundation. Struggling Kahuku Hospital saw its grant cut by \$400,000, a severe blow to its financial health, only to have the Governor reverse her decision after a public outcry. Poor children will go without dental care because \$450,000 was stricken from the bill. The consequences to public health, safety, and welfare of S.B. No. 1305 are many, and that's why the Legislature voted 69 to 1 in favor of this bill.

"The Governor has since reversed herself on her line item veto of Kahuku Hospital and said that her vetoes of two appropriations to the Judiciary were incorrect. However, insofar as she already signed S.B. No. 1305 into law as Act 215, the Legislature must override her veto if Kahuku is to get a full appropriation.

"The second vetoed measure, S.B. No. 745, is also a matter of public health and safety but this one has life or death implications for the people of Maui. Maui County is a county with three islands of small and distant communities and a single emergency center. The bill reflects the initiative and hard work of Maui residents who worked long and hard to bring the proposal to life, only to have it killed at the last minute. Sixty-eight Legislators in all, 21 in the Senate, voted for this proposal because of its obvious merits. While the Governor vetoed the bill because of the impact on the budget, the money would not be released until July 2004, giving the county and the Department of Health enough time to plan for this operation, while giving time for the economy and budget situation to improve. The residents of Maui County deserve no less.

"There are other measures which we will be taking up, but those I described reflects our priorities. In many of her veto messages, the Governor expressed her concern over the condition of the state budget. We certainly share that concern, but the money to help the needy is from the rainy day fund, not from the general fund, and the Maui air ambulance funds will not be due for another year. We are optimistic that the economy and the state's financial situation will improve in the months to come. If not, the Governor can restrict money, as every Governor before her has done on occasion, but vetoing a bill removes that option.

"It is in difficult times that so many people are in need of help. It is our responsibility and our obligation, I believe, to join together in delivering a message of hope and optimism to those who have nowhere else to turn and who are looking to us for our support and our leadership."

Senator Hemmings responded as follows:

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

"Mr. President, colleagues, this is indeed unprecedented. In your opening remarks you did clearly spell out some of the issues that we'll be addressing today. And quite frankly, they may have merit and we'll debate that as time permits.

"What we do want to challenge with our opening remarks is what we're doing here procedurally. This Session has not been utilized in the recent history of the State, and certainly since the Constitutional Convention in 1978 when these provisions were put into the State Constitution.

"I would like to think, and we would have joined with you, if in the ensuing years prior to this, this Legislature would have acted on behalf of the people's interest in convening sessions like this to address problems with legislation, problems with appropriations, and problems that are being brought to this session today. But the facts are, because of politics, the Majority Party has unprecedentedly never exercised its alternative to call a session to override vetoes specifically as mandated by Article III, Section 16, of the Constitution.

"As short as last year, there was a challenge to the validity of some vetoes of the prior Governor. And rather than convening a Special Session, this Legislature or some Legislators chose to take it to the courts, rather than resolve the issue here in this Chamber, as your loyal opposition, your Republicans, advocated.

"So we question today not what we're doing, but why we're doing it. We would like to suggest that this is petty politics at its worst. I think the evidence probably is more important than my words, the deeds. This is an expedition to find political opportunity. Even the message of July 3rd, sent out by the President's office, clearly states that we be prepared for the

possibility of a Special Session. If this was needed, why was it a possibility? Why wasn't it called for as could be?

"Further evidence, the O.D. This O.D. has no specific messages on the items you just mentioned. It says veto messages, item number six. Has communication been open? Has it been honest? Has there been an effort to try to find common ground so we could solve these problems without going into this Special Session? My words don't mean as much as the deeds of the Majority Party, and the answer is clearly no.

"There was no clear message on why this Session was being convened. There were rumors; there was talk. We had to attend a press conference yesterday to find out specifically what the Majority Party was honing in on. Of course there was a lot of conjecture and rumor about it, but it was never written down; it was never communicated to us; it was never made public. So if this was going to be a constructive session to do the people's work, why couldn't we put the issues on the table?

"This Session is procedurally flawed and we're prepared, in good conscience, to do what is best for the people of Hawaii and not necessarily what is politically expedient. We hope that we can, during the next several hours or whatever time it may take, find some common ground to avoid as much conflict as possible.

"Thank you, Mr. President."

MOTION TO OVERRIDE VETO

S.B. No. 317, S.D. 2, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kawamoto moved that the Senate override the veto of S.B. No. 317, S.D. 2, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 686, seconded by Senator Espero.

Senator Kawamoto rose in support of the motion and said:

"Mr. President, I'm here, again, to fulfill a promise we made three years ago. We promised we would commemorate the start of the Korean War 53 years ago. And we promise, now that we're here, that we'll complete the promise of remembering those that fought in the 'forgotten war.'

"Mr. President, we pledged three years ago to support the veterans of the Korean War and all the veterans in this state to support the celebration of the end of the Korean War. Today we have 400-some-odd names on the wall out in the courtyard, and we want to do this right, make the closure of this commemoration of the Korean War veterans.

"Also, again, like the Governor said, the State of Hawaii will not forget those that fought in the Korean War, called the 'forgotten war.' Therefore, Mr. President, I call on my colleagues on both sides of the aisle because this is important. We've lost a lot of folks and this Korean War is something that we need to keep in our hearts throughout our lives.

"Therefore, Mr. President, I call for a Roll Call vote."

At 11:59 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:22 o'clock p.m.

At this time, the President made the following observation:

"Members, before we begin discussions on S.B. No. 317, I'd like to inform you that we will be working under supplemental calendar number one."

Senator Hemmings rose and said:

"Mr. President, colleagues, shall we begin. I often wonder if these poor veterans are being used as pawns in this political show today, because there may be some information that they do not have that should be a part of this discussion.

"First of all, what is being vetoed is \$30,000. It's important to note that for the last two years – in 2000 this Legislature appropriated \$70,000; in 2002 . . ."

Senator Hanabusa interjected:

"Mr. President, is the speaker speaking in favor or in opposition to this measure?"

The President posed the question and Senator Hemmings answered:

"I am speaking solidly against the motion to override the Governor's veto on S.B. No. 317. Thank you, good Senator from Waianae.

"So, what are we doing here? We are convening a Special Session for \$30,000 to an organization that's been operating for three years and already has received \$90,000. I can see in the gallery today some human service people who are lamenting loss of human service funding to some needy programs.

"When, as we have requested for year-in and year-out, is this Legislature going to set priorities? I would suggest we do it now by not sustaining this veto override.

"I'd also like to weave into this discussion, if, Mr. President and Democrat colleagues, Majority colleagues, if we had known via your press conferences or the rumor or the press speculation on today's activities, if we had known that this was a bill to be considered for an override, quite possibly we could have sat down together and solved the problem.

"Yesterday we received a copy of a letter where the Office of Veteran's Services will provide \$18,000. The letter is from Deputy Colonel Gary Ishikawa. And the remaining money needed to complete the \$30,000 would be found in waiving of fees both at the county and state level. So the facts are, is this needed or is this just a political show for these gentlemen?

"I think there's another extenuating circumstance that maybe hasn't been completely thought out. We mentioned it yesterday and I'm sure you have talked it over, but it's worth bringing up today. It concerns legislative appropriations through veto overrides.

"In an attorney general opinion which we got yesterday, not entirely sure of what was going to be on the table today, which by the way the Majority Party could have done as they've done in years past but failed to do, it says the Legislature should consider the latest Council of Revenues' report because a veto override is a re-appropriation of the monies vetoed. Parenthetically or part of that is the Constitution of the State of Hawaii, Article VII, Section 7, states if the Legislature in appropriating funds exceeds the estimated revenues, this fact shall be made public, including the reasons therefore. So, under the attorney general's opinion and under the constitution, it's our belief that if we spend money out of the general fund, subsequent to the May 17th Council of Revenues' projections that exceed the spending limit, this Legislature either has to

balance the budget or pass a resolution saying the budget is out of balance.

“Once again, I would suggest to you, to avoid this, we not override this veto. This veto makes sense on the merit of it. I think the good veterans here will get their \$30,000 as the adjutant general has outlined, and everyone can be happy. It’s much better than this political farce on this particular issue.

“Colleagues, I’d like to say vote your conscience, but what I’d like to ask you is just vote what’s good for the people who have elected us and what’s fair and what is in compliance with the constitution and the intent of this Legislature.

“Thank you, Mr. President.”

Senator Hogue rose in opposition to the motion and said:

“Mr. President, I also rise in opposition.

“I want to repeat some words that were sent down in the governor’s message because I think it is very, very important to this discussion. The people of Hawaii want fiscal discipline. That’s why they voted in this particular governor. If \$30,000 is not necessary to be spent out of the general fund because General Lee has gone out and found that money in some way, then it is, to borrow the words of the good Senator from Waimanalo, farcical to override this veto.

“The Governor, in her message wrote, ‘without fiscal discipline and prudent management of the budget now, it will be impossible to restore trust and integrity to government and expand and diversify the economy.’ The State Department of Defense has gone out and found the \$30,000. We salute you, Korean War veterans, the State is behind you, but we must have fiscal discipline. There must be fiscal integrity, and therefore, the Governor’s veto must not be overridden.

“Thank you, Mr. President.”

Senator Chun Oakland rose on a point of inquiry and said:

“Mr. President, point of inquiry to the two previous speakers.

“I’d like to know what resource or source of funding you are pointing to.”

Senator Hogue responded:

“I’ll be glad to answer the good Senator’s question here, and perhaps we should pass out the e-mail to everyone. We just got a copy of it. It says the Office of Veteran Services will provide \$18,000 in fiscal year ’04 to the 50th anniversary commemoration of the Korean War Commission. That will allow the commission to complete the activities regarding the 50th Anniversary of the Korean War.

“In order to provide the funds, the Department of Defense assisted the Office of Veteran Services to purchase maintenance equipment in fiscal year, I believe this is ’03. This equipment – turf rake, hydromulcher and real deal, and an aerator – will allow the staff to repair and maintain the grounds of the Hawaii State Veterans Cemetery in fiscal year ’04. The projected savings in the R&M for grounds is estimated at \$8,000 for fiscal year ’04. The savings generated by five vacant positions in other areas of the department account for the other \$10,000. So I think that answers that question. Although three of the positions are occupied by temporary workers, savings continue to accrue because they are paid on an hourly basis.

“Although the Department of Defense cannot solicit private donations, the department is able to provide information to local businesses on how they can support Korean War commemorative activities and events. The nonprofit, The Friends of the 50th Anniversary Commemoration of the Korean War, Inc., is the organization that is accepting donations for these events. These funds will help support a veteran’s parade in Waikiki on July 26 and a musical tribute to be held at Waikiki Shell on July 27. The State Department of Defense will continue to lend its support to ensure that our Korean War veterans receive the recognition they so richly deserve.

“Does that answer the question?”

The President then said:

“Senator Hogue, could you distribute that letter to the rest of us. We have not received that.”

Senator Chun Oakland rose and said:

“Thank you, Mr. President, it doesn’t answer my complete question, but that will suffice for now.

“Thank you.”

Senator Kawamoto rose in rebuttal and said:

“Mr. President, just a rebuttal.

“I find that very difficult to believe, because right now, the Office of Veteran Services relies on the youth challenge for free labor to help anytime we have memorial services like Memorial Day. They’re there, they’re working, cleaning up, getting things ready.

“Whenever we ask for money – because we asked in the past for money for a position at the state cemetery – we never get it. To find \$10,000 in the OVS budget is very difficult for me to believe. Regardless of that, regardless of if they can find the money or not, the veterans came to us, the Legislature, to help them commemorate and celebrate the end of the war. This is a last hurrah for them. The 50 years . . . they asked us to come up with the money to do this for them, and this is our response – our response is yes, we believe in what you’re doing, we believe in the fact that we need not to forget those that fought in the forgotten war, not to forget.

“So, we’re saying that we, the Legislature, will override this regardless of how much the money is. They asked for \$30,000. They asked for more than that but we said this is all we can give you and they accepted that fact. We went to Conference and worked hard on this bill. Again, they’re given an opportunity when we had the session where we looked at all the bills that were overridden and we, the Legislature, again felt that this is a bill to again accomplish and fulfill the promise we made to them two years ago.

“So, on behalf of yourself and myself, who are former veterans, and to all the veterans of the State of Hawaii, 120,000 strong, I ask all my colleagues on both sides of the aisle again to vote ‘aye’ on this bill.

“Thank you.”

Senator Kim rose to speak in support of the motion and said:

“Mr. President, I rise to speak in support.

“Mr. President, I’ve heard this morning that we’re using the veterans for this political purpose. And yet I believe that last

week Monday, they came and asked us to please override the veto. We're not doing this because we just want to. The people have spoken; the people have come out and they've asked us.

"Now, the veterans came and I believe they asked for \$100,000 this year. They came to my office and they sat down with me, and I told them that it was a very tough budget year, that we're not sure and I wasn't sure that we could give them that amount of money and if they could please cut down some of their activities and be as frugal as possible. And \$30,000 was all that the Conference Committee could come up with.

"Mr. President, the vote for this measure was 73 to 0; three excused. So, I guess if it was a priority then, I guess a couple weeks, a month, two months later it's no longer a priority, and certainly, I only heard \$18,000 somehow coming up. And certainly, we didn't get the information; we didn't get the communication; they didn't get the communication. It didn't come out Monday when we had a public hearing. That information was certainly not transmitted to us, so we had no way of knowing. Certainly, if those monies can come up, I congratulate the entities that will get the money and certainly the Governor may not have to release all of the monies if they're able to come up with it.

"Mr. President, let me just read you some remarks that were made on Tuesday, June 5, 2001, regarding a veto override. The speaker stood up to say:

'I would say, Mr. President, if it was a close call and a bill was passed in a very controversial way and the Governor vetoed it, maybe there's justification. But when 76 of us vote unanimously to do something, and he, for suspect reasons, vetoes it, I think it's not only a responsibility but also a duty to override that veto.'

And that was said by our Minority Leader across the way. It goes on to say:

'Nevertheless, I would think that the Majority Party would want to assert its independence and be bold on this issue. I've heard from several Legislators who worked very hard on legislation during this last Session and that the Governor is threatening to veto some very important legislation. I would think you'd want to defend not only your honor but also all the hard work you did.

'Several Legislators in the Majority Party have said that we want to send a clear message to the Governor on some issues. Well, this is the best way to do it. Certainly in keeping, I think this monolithic "circle the wagon" attitude is counterproductive to democracy and what we all hold dear and what we all work so hard to do on behalf of the people who elected us.'

"I think those are great words and I would hope that the speaker, our Minority Leader, certainly remember what he said in the Journal and certainly would be consistent when it comes to all vetoes that was unanimously passed.

"Thank you."

Senator Trimble rose to speak in opposition to the motion as follows:

"Mr. President, I rise in opposition to the veto override.

"The question before us is about fiscal responsibility. It's also about when choosing battles, one should consider two things: (1) that the issue is important enough to fight over; and

(2) that it's important it's small enough that it's a battle you can win.

"When we look at this particular issue, we have gone beyond the original point of the Korean War celebration. The previous Minority speakers have said that it can be accomplished without this veto override. So, why is the discussion continuing? The answer must be that it's about power. It's about the power of the people on the other side of the aisle to say 'no, it's coming from us, not from you.'

"To me, this smacks of politics in its lowest form. I think it is well if we could all stand back for a moment and look how people from outside this room view us. When we have a discussion about a veto override of \$30,000, which is being provided for in another matter, people will question the value of this body. Please consider this carefully before you vote.

"Thank you, Mr. President."

Senator Ihara rose on a point of inquiry and said:

"Mr. President, I rise on a point of inquiry.

"I'd like to have someone respond to the Minority Leader's assertion that this body is required to pass a resolution that declares the budget is out of balance."

At 12:41 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:54 o'clock p.m.

Senator Taniguchi rose and responded:

"Mr. President, I rise to try to respond to the Senator from Kaimuki's inquiry about the points made by the Minority on whether there's a reason to have or if there's a need to have a resolution to spend.

"I believe the part of the constitution that the Minority is relating to talks about the expenditure ceiling. To exceed the expenditure ceiling, we would need a resolution with two-thirds of the vote to exceed that expenditure ceiling. That was established starting, I believe, back in 1978 and it increased a little bit depending on the growth of the state.

"What we're talking about today is just overriding a bill that was part of a budget that was balanced at the time we passed the budget. So I believe that we would not need the two-thirds resolution to do that."

Senator Hemmings rose in rebuttal and said:

"Mr. President, I rise on a point of rebuttal.

"I'd first like to address the constitutional issue. No one's going to deny the facts, and that facts are that when we adjourned this Legislature, we made appropriations that with the Council of Revenues' projections of May 17 became more than we have the ability to pay.

"Regarding the prior speaker, the good Senator Chairman of the Ways and Means Committee and good Senator from Manoa's statement, I don't think it fits and it's a non sequitur.

"I will refer to a letter dated July 7th from the attorney general's office. I know all through the day the Majority Party is going to say how come we don't have this letter? How come we weren't advised of this? There are two very cogent solid reasons why you don't. First and foremost is that no one had

any inking as to specifically what was going to be discussed today. Reference was made to a hearing last week Monday. Fifty, I believe, vetoes were discussed. Today, we're addressing a handful. We members of this Legislature that should, on behalf of our constituents, have been informed about what was being overridden and when, did not know even at the start of this Session when you acknowledged that by gaveling this session into recess so that you could produce an O.D. that told us what we're going to be discussing today.

"Nevertheless, after guessing what issues would be discussed today, I petitioned the attorney general's office to give us opinions on these issues. And the attorney general's office worked all night and produced us a number of opinions that are dated July 7.

"On this particular issue, he has a very strong opinion. But to answer the question why you don't have these opinions, number one is because you would not even let the public or us know specifically what we should have opinions on. And then another simple reply to that is, you never asked. I did. But in the spirit of cooperation, this opinion has been distributed to everybody in here.

"But the real issue that the good Senator from Manoa tried to address, which is undeniable, is we're re-appropriating, by overriding this veto, money that we do not have. That's not my opinion. That was clearly enunciated by revenue projections, which budgets are based on by the constitution. On that particular issue, the attorney general says, 'We advise that the Hawaii Constitution, as implemented by Hawaii Revised Statutes §37-112, requires the Legislature to "use the latest council estimate" in appropriating funds. If the Legislature, in appropriating funds, uses a revenue estimate that differs from the estimate prepared by the Council, then the Legislature "shall make that fact public together with reasons for using the differing revenue estimates."'

"The good Senator from Kaimuki's question is extremely pertinent. The letter goes on to say: 'We believe that when the Legislature convenes in special session to consider overriding bills vetoed by the Governor that contain appropriations, the Legislature should consider the latest Council on Revenues' report, even if it used a previous report during the preceding regular session, because the override operates as a re-appropriation of the moneys vetoed.'

"To answer the good Senator from Manoa's rebuttal, it's not on solid ground. It's not on solid ground legally by the chief legal officer of this state, which you have a copy of now. But more importantly, it's not on solid ground fiscally. You're asking the Governor to re-appropriate an expenditure with money she does not and will not have.

"I do want to in this rebuttal also point out some things that the good Senator from Kalihi so kindly enunciated. I am so proud that I have stood up in the last several years, and I did so in the 1980s when the young lady Senator from Kalihi was in the House with me and said that oftentimes in a process of good government that a veto override is warranted. But to say last year when a Majority Party member, one of them, petitioned the court to override a veto, that convening a session is hypocritical or opposing it on my part this year is without merit and without logical foundation, why didn't the same rules apply last year or for the previous 40 years? Why this year is a veto override session the first under the terms of the constitution which this one is being implemented in the history of the state?

"I stand by my position. Veto override sessions under normal circumstances, as a course of doing business, sometimes

are necessary. I question the political motives of it being done for the first time that we have a Republican Governor.

"I do want to point out that to keep the political shenanigans . . . the public hearing last week was political opera or a show at its worst. In a marathon hearing, we heard responses to all 50 bills, not having a clue what was being brought to bear today.

"So, the good Senator from Kaimuki asked a good question. It's been answered by the attorney general and it's been answered by the Constitution of the State of Hawaii. I ask once again for this political show for \$30,000, which the administration thinks they can cover, do you really want to have this become a contentious constitutional issue?

"Now, I know some of you are going to stand up and say that the Governor cannot find the \$30,000. Well, we disagree with that too. And if we were here to meet to solve problems, which the Governor has done on this particular issue, this wouldn't be an issue. But once again, we're not meeting to solve problems. We're meeting for political purposes.

"Thank you, Mr. President."

Senator Baker rose in support of the motion and said:

"Mr. President, I rise to support the veto override and to follow-up on the question that Senator Chun Oakland posed.

"After looking at the memo from the Deputy Adjutant General to a representative of the Office of the Governor, I'd like to point out what these funds that the administration is pulling from savings and other areas, they say, will be used for. It will help support a veterans' parade and a musical tribute.

"In looking and talking with the Majority Attorney and the Chair of Ways and Means, it's our belief that these funds for such purposes must be specifically authorized; you can't take funds authorized for one purpose and expend it for another. It's the Legislature that authorizes. It's the executive that expends, but they cannot expend without legislative authorization. That's why it's important to override this veto.

"If there is the authorization and they want to use the savings rather than this, the authorization is in hand to use it for funds appropriated to the department. I think it's very clear when you read their memo that what they want to use those funds for is not something that's been authorized except by this appropriation.

"Thank you."

Senator Kim rose in rebuttal as follows:

"Mr. President, I rise to speak in rebuttal to our good Minority Leader.

"Mr. President, certainly it has taken the Majority Party a long time to realize that we need to exercise our veto powers and this is not the first time. I believe in 2000, I remember the headlines saying the Legislature for the first time overrode the veto. We overrode the Governor on the age of consent bill, I believe.

"So, yes, it's taken us a long time and our good Minority friends across the way have certainly talked to us and it certainly has sunk in. So I believe that as we've taken a long time to learn, certainly the veto overrides may be something that they're going to see as a regular basis in the future.

"Thank you."

Senator Whalen rose to speak in opposition to the motion as follows:

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

“Mr. President, this whole issue we’ve heard one side say it’s a political matter and it’s just a showboat. And the other side says no, it’s fulfilling a promise to our forebears, veterans who protected us and fought for our freedoms. But I would tend to side with this being a political show based on the uncontroverted fact that we know that the Governor in this state, the way it’s set up, has the absolute discretion whether or not to release funds, whether they’ve been appropriated or if she vetoes them. If they’re in the budget or if there’s an appropriation bill, the Governor has the absolute discretion which we cannot override in any way to simply restrict the funds.

“In her message she said, and there’s also no argument, that the Council on Revenues have downgraded their forecast. There’s less money than they told us that there would be. In the process of doing that, she didn’t do what the former Governor did many times, especially many times to West Hawaii, the Big Island, which is have money in the budget, don’t veto it, just never release it. She went and was willing to play the bad guy to say look, we don’t have money and I’m just going to veto this portion of the appropriation because the money is just not there. We have to cut back on our expenses.

“We’re running back now to override that veto, knowing full well and actually expecting her to withhold funds if the revenues don’t arise, if they don’t come up, or money is found someplace else, knowing full well and expecting her to maintain a balanced budget throughout this whole cycle. That being the case, she’s already made a decision saying that priorities being priorities, and a very difficult decision to make, she is vetoing this to balance our state budget.

“Now we’re coming back to try and overturn this veto, knowing full well that she probably will maintain that position, that she won’t release the money. So what have we accomplished? Really nothing, Mr. President, except for political grandstanding for elderly folks who have given so much to our country to try and raise some sort of expectation in their mind that if this veto override goes through, they’ll get the money, when in all reality it’s almost 100 percent sure they still will not get that money. But it will make us who vote for the override to say one more time, don’t forget me in the next election, I supported you folks.

“And I go back to my point of saying, it does seem very much a political grandstand, because practically speaking, we won’t be accomplishing anything with this override.

“Thank you.”

Senator Slom rose to speak in opposition and said:

“Mr. President, I, too, rise in opposition to the override.

“A lot has been said, and what we’re doing here today is a show, whatever you want to call it, to try to pit one group of people against another to try to have us say that veterans are more important than foster children, or that the Korean War is more important than World War II, for example. As the good Senator from Waipahu knows, I support the military. I can’t do anything other, because my father is buried at Punchbowl, a veteran to World War II. And if I didn’t support and respect and remember the efforts of all of our military and all of our wars, he’d come out of there and kick my butt.

“This is not a question of being forgotten, because no one forgets the achievements of these men and women from the Korean War, or from Vietnam, or from the Persian Gulf, or from Iraq today, except maybe some of our colleagues in this very body who rose and spoke against the United States military just a few short months ago.

“I think it should be important to note that you don’t give or get respect based on appropriations. It’s not a question of money. It is a question of attitude. It is a question of beliefs. There is no one in this body today that does not want to give the recognition that the Korean War veterans so richly deserve, and in fact they are getting that recognition. From a pure dollar standpoint, they have received over \$90,000 for commemoration activities over the past several fiscal years.

“And so we got down to \$30,000 and some people would say, \$30,000, what’s \$30,000? It’s nothing. It is the principle of the thing. Because we are asking all kinds of people to do without this year until those revenue estimates improve. And so, we’re not going to be put in this position of picking one group over another because all are worthy, all are important – if we had the revenues.

“As the Minority Leader has pointed out and has not been argued at all, it’s not a question as with the past Governor of the revenues were there but they weren’t being released, or a position that the past Governor didn’t want to take because he dug his feet in and said this is the way it’s going to be. This Governor has made every effort not only with the Korean War veterans, but also with the other bills that we’re going to be deciding, the other bills that we’re going to look at.

“For her personally, for her cabinet level people to work with these individuals, first of all, at the beginning of the Session to let them know what the realities were – and the realities, the fiscal realities got worse – but continuing to work with them to solve a problem. There’s no one that’s in disagreement here. And so, for the Majority Party to say, okay, so you’re going to raise the funds anyway but we still are going to override the veto, just doesn’t compute and doesn’t give any additional respect. As a matter of fact, it takes respect away from those men and women who have fought for the very principles that we’re debating here today.

“So it is a question of whether or not we’re really seriously here to try to solve problems and to help people out, and if that’s the case, it’s been done. The \$30,000 that we’re talking about still comes from the same source. Whether the Legislature gets credit for giving that money after they had first taken it away from someone else or it comes from the Department of Defense, it still is the same source of money. It still is the same expending agency. It still is the commemoration of events for the anniversary. And it still is a continuation of general fund appropriations that have previously been made.

“One other comment that I have to make in this debate on the override of the veto, as the good Vice President of the Senate brought up, I don’t think that the Minority Leader is being inconsistent at all. I don’t think members of the Minority are being inconsistent. We have always said, if there is a matter of principle or if there is a reason to override, then we should do that. It’s good to know that the Majority is just learning now that that is a responsibility. It was very clear in bills that we debated before, and it is true – bills that pass 76 to zero both houses, bills that had widespread community support.

“What we’re doing here is fracturing the community, however. We didn’t have the community rushing forward as

they did two years ago for age of consent, a non-fiscal bill by the way, age of consent which was a moral issue, which was an outrage that our state would have the lowest age of consent anywhere. And people came forward and said what are you doing, why would you allow this to happen? And still, the Majority Party did not want to do it because of the symbolism, the symbolism that the last override was 1957 with a Republican appointed governor on a tax issue. They didn't want to do it, but the public pressure was there.

"Where is the public pressure today, Mr. President? Where is the public pressure except for the so-called public hearing that we had last week that was not even a legal public hearing. We have groups of people and that's what we're doing – cruelly trying to pit them against one another.

"A couple of years ago, I introduced a bill to make a \$25,000 appropriation for Hawaii's share to the World War II memorial for World War II veterans. It didn't pass. It was \$25,000 one time. Hawaii was and remains the only state in the Union that is not participating in that. So when we talk about supporting the veterans, some of our colleagues here are very selective in their report and their support.

"And when it comes to a situation right now where you have the Governor of the State, you have her cabinet officials, you have everyone saying we want to solve this problem, then that's what we should do is solve the problem and not engage in this political override.

"Thank you, Mr. President."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 317, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE FIFTIETH ANNIVERSARY COMMEMORATION OF THE KOREAN WAR COMMISSION," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

At 1:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:53 o'clock p.m.

S.B. No. 745, S.D. 2, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Baker moved that the Senate override the veto of S.B. No. 745, S.D. 2, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 688, seconded by Senator Tsutsui.

Senator Baker rose to speak in support of the motion and stated:

"Mr. President, I rise in support of an override of the Governor's veto of S.B. No. 745, C.D. 1.

"This measure requires the Department of Health to establish statewide emergency aeromedical services, appropriates state funds to provide emergency aeromedical helicopter services for the County of Maui, and appropriates funds to integrate ground ambulance services with the emergency aeromedical helicopter services by providing additional ground ambulance personnel.

"In her veto message, the Governor states that the measure is objectionable because it establishes statewide services without

statewide funding and subjects the State to liability should services be required, but unavailable to persons outside of Maui County. First of all, it is not uncommon to initiate a program in one part of the State and to expand it as necessary and financially feasible. The Legislature recognized the need for such services in Maui County and the County will provide support in the form of matching funds for the provision of emergency helicopter services.

"Secondly, the State is already involved in the provision of emergency air ambulance services through its subsidy of Hawaii County's emergency services helicopter and its facilitation of agreements with the military for the provision of such services on Oahu. At no time during the numerous Senate hearings on this measure was the risk of liability raised as a concern, and if the State is truly concerned about its potential liability for nonfeasance, it should support, rather than refuse to fund the provision of air ambulance services for the County of Maui.

"Additionally, it is only Maui County that has so much population outside of the critical 'golden hour' for trauma or serious injury. For Maui island alone, under the best of circumstances it takes over 45 minutes just to travel to the island's only emergency room from South, West and East Maui via often congested two-lane roads, and that doesn't factor in the response time for a ground ambulance to reach the scene. The need exists on Lana'i and Moloka'i as well. Throughout the hearings, paramedics spoke about the critical need for this service and how Hawaii Air Ambulance is not always available on a timely basis and it not suited for scene transport. And I might add that Hawaii Air Ambulance supports this measure!

"Additionally, ground ambulance services are already mandated services for the Department of Health and yet, everybody recognizes that there are many underserved areas in our state for ground ambulance services. However, the attorney general doesn't seem to be troubled by any exposure created by that so-called mandate.

"The Governor further objects that the measure 'would impose a substantial financial burden on the State during a fiscally challenging time.' The balanced budget passed by the Legislature factored in this appropriation, which isn't scheduled to be expended until the next fiscal year beginning July 1, 2004. Should an adjustment be required, the Legislature will have an opportunity to do so when it reviews the budget during the next Regular Session.

"Further, once the appropriations become effective, the Governor still has the authority to restrict the release of these funds should fiscal conditions warrant it at that time in 2004. It's simply too early to make that determination now. By vetoing this bill, the Governor has in effect, put on hold or wasted months and hours of planning and collaboration on the part of medical emergency service providers, hospital and medical personnel, community groups, the Maui County Mayor's office and the Mayor, County councilors, and legislators.

"The Governor has also stated that the provision of these services will be one of her top priorities next year. So why wait? I believe we should give Maui County, working with the Department of Health, a running start so that emergency air and ground ambulance service will be ready to be in service July 1, 2004. Failing to override this veto only forestalls implementation of this much needed service.

"This bill actually represents a win/win for our community: it combines State and County resources, and by setting the policy, it gives credibility to our pursuit of additional private

and federal funds. It demonstrates a commitment to providing for the health and safety of our citizens. It addresses a core function of government, health and safety. And in this area, Maui County is underserved.

“Mr. President, the bottom line for this bill is that it will save lives. I urge my colleagues to vote in favor of overriding the Governor’s veto of this bill.

“Thank you.”

Senator Hemmings rose to speak against the motion and said:

“Mr. President, I rise to speak against the motion to override the veto.

“I’m hoping, unlike the prior discussions, when we bring out salient points with facts, that the Majority Party will try to answer the questions and address the issues rather than obfuscate and dodge the issues in their discussion.

“First of all, the prior speaker, the good Senator from Maui, defeated her own argument by pointing out that this bill does not take effect until July 1, 2004. Hence, no urgency not to have this bill vetoed. Next Session, we can take a look at the fiscal state of Hawaii and we can address this issue.

“It’s important that in rebutting my comments, that once again the Majority Party Senators look at the Council on Revenues’ projections and look at the law, and look at the constitution, and look at the attorney general’s opinion that all points to the fact that this general fund revenue expenditure will in fact exceed the Council on Revenues’ May 17 projection, and therefore, this Legislature will have to pass a resolution saying we’re spending money we do not have. Second of all, to say that is just not enough. To make the Governor or the executive branch of government spend money it does not have, just will not happen.

“The second issue is liability. It is a factor. As I so stated earlier in our discussions, just yesterday afternoon in discussing what we heard from your press conference, we had to guess on what bills were going to be subject to the veto override session of today. And we did include S.B. No. 745 and we did yesterday ask the attorney general to render an opinion. For the record, we will, in hopes of finding common ground, distribute to you all the attorney general’s opinions that we seek, but you should have one on your desk dated July 7, which we received this morning. I’d like to read into the record said, ‘If someone on Kauai were critically injured and serious injury or death could have been avoided had emergency medical helicopter services been available, that person or that person’s estate could sue the State because this bill made the provision of such services an expressly stated mandatory component of the State Comprehensive Emergency Medical Services System. If the State does not have the resources to provide a service throughout the State, a mandatory statutory duty to provide that service throughout the State should not be imposed.’

“To make a long story short, by overriding this veto, we do expose the state, according to the attorney general, to tremendous liability because of the inequities of this as far as counties go and the availability of service. Kauai should especially be leery.

“The third thing is the tremendous unfairness of this bill, and even the good Mayor of Maui County will tell you that there’s no expediency, that this thing can be addressed next year. But it’s also unfair for other counties, especially the County of Oahu, which takes care of their medical emergencies through the resources of the county. And just this large sum of money

going to one county will be an annual expenditure, we don’t know. But what we would suggest is, in looking at the fiscal availability of money and Maui County, it probably is better than the availability of money here on Oahu, and for Maui County to get this assistance at the expense of the rest of the state is unfair to all the taxpayers of the state.

“We all, all of us, want good medical service to take care of emergency situations. This bill exposes the state to liability. This veto override will make the state liable for money to be paid that we do not have, and it’s unfair to counties.

“I would recommend that in the interest of fairness and legality and liability that we sustain this veto and not override it. I urge my colleagues to do what is legally and fiscally prudent, rather than what is politically expedient for the next election.

“Thank you, Mr. President.”

Senator Tsutsui rose in support of the motion as follows:

“Mr. President, I rise in support of the veto override.

“Today we are brought back to reaffirm our commitment to the health and well being of Hawaii’s residents. S.B. No. 745 proposes in part to appropriate sufficient funds to establish helicopter services for the rapid transport of severely ill or injured persons. Maui County has been without emergency aeromedical service since 1997 after the private helicopter company performing this service ceased its operations.

“Two years later, the Legislature was specifically advised of Maui County’s need for a rapid transport system through a report prepared by the Department of Health Advisory Committee. Significantly, this report discussed the small window of time in which treatment of injuries, particularly in the cases of head trauma, can be impacted by the delays in providing the required specialized medical care.

“As the population of Maui County continues to grow, together with the number of visitors to the island, the need for emergency aeromedical services is much overdue. It seems that the liability issue has been a big concern to a lot in the Minority Party. It’s very interesting that the many hearings that we’ve had in both the House and Senate, not once has the administration ever raised that concern.

“When I was notified of the Governor’s intent to veto this measure, I was both shocked and disappointed. I soon learned that I wasn’t alone. Both Democratic and Republican Legislators from Maui were all surprised by the Governor’s decision. A Republican Representative was quoted in one of the Maui papers as saying, ‘She wasn’t supposed to veto that one. That’s way too bad and I’m very disappointed.’ Our Mayor also indicated that he had no idea of the Governor’s intention and did not expect her to veto that measure.

“For those who called this Session petty politics, I ask when did saving lives and providing basic healthcare coverage become petty politics?

“If this measure passes today, it will certainly be a great day for our Tri-isle County. It will help the elderly, accident victims, and anyone else who requires emergency medical care. Visitors and residents alike can rest assured that whether they’re fishing in Kaunakakai or camping in Hana, that aeromedical services are available. The facts are that this service is desperately needed and over the next few years it will save many, many lives.

"This is an opportunity for all of us today to just play a small part in giving someone a second chance, that priceless gift of life to someone's loved one. This is the kind of measure that can truly change someone's life. Putting people first is what this bill is all about, and today I'm proud to support the veto override of S.B. No. 745.

"Thank you, Mr. President."

Senator Trimble rose to speak against the motion as follows:

"Mr. President, I rise in opposition to the override.

"Let us step back again and say, is this measure so important that we have to decide today? Is this measure so important that it was necessary to call a Special Session? I agree our needs are great. I agree that our resources are few, but when you look at the effective date of the expenditure, it's July 1st, next year. So why are we talking about it today?

"An earlier speaker talked about the balanced budget that was passed by this Legislature. That raises an interesting question, because in the second year of the biennium, no funding was provided for the hospital system. I would assume that the hospital system also saves lives. So we have an interesting conflict here today. We're talking about overriding the Governor's veto for ambulance service and yet we as a body did not fund the operation of the state hospital system next year. I have a difficult time reconciling these two. Why don't we compare the two again when we meet next January.

"Thank you."

Senator Hogue rose in opposition to the motion and stated:

"Mr. President, I also rise in opposition.

"I just wanted to bring up the point because the question was raised as to why the attorney general or anyone from the administration did not come forward previously. I think that we have to recognize that we here in the Legislature and in this legislative body are always accepting new facts and we're always accepting new information, and when this particular money is not going to be expended until July 1st of next fiscal year, I think it seems appropriate that we listen to this new information and kind of mull it over and determine what impact that it actually might have. Is it possible that this liability or potential liability for the entire state, brought up by the attorney general, will put the state at risk for millions and millions of dollars? I think we have seen what has happened with regards to Felix when the state was put at risk, and I think that it is appropriate to at least consider this new information.

"So, I don't think that we should be aghast at the fact that new information has been provided. In fact, we should be thankful that new information has been provided.

"I, for one, also believe the speakers on the other side of the aisle that we should be concerned about public safety. I think that we should be concerned about saving public lives, and if we just save one, then that's well worth the price. However, this money is not even going to be expended until next year, and therefore, I think we need to address all of these concerns brought forward. It seems that it is our duty to be cautious and prudent and responsible to all of our constituents around the state.

"So, I encourage my colleagues across the aisle to at least consider this new information and not override this veto. Thank you, Mr. President."

Senator Hanabusa rose to speak in favor of the motion as follows:

"Mr. President, I rise to speak in favor of the override of S.B. No. 745.

"Mr. President, I've just read the July 7, 2003, letter from the Attorney General Mark Bennett, and what caught my eye is the reference in his last paragraph, basically, found on page two, where he warns us of potential liability. What was missing in this letter, and I believe probably maybe intentionally so, is the whole concept of sovereign immunity and that which a person, an individual, can sue the state for. To issue a letter such as this, without a reference to Sections 661 and 662 of the Hawaii Revised Statutes gives me great cause to wonder why.

"Mr. President, as we all know, that which we do in this Legislature is covered under an immunity. And then when we enact laws, it does not, in and of itself, get rise to anything actionable. And this is an appropriation issue. An appropriation issue is clearly that which falls within the jurisdiction of this body.

"To issue us a letter that says that what we may result with or just could result with someone from Kauai suing the state because Kauai didn't get a helicopter, is not sound legal basis.

"Some of the other opinions that have been issued, cites to at least provisions of the Hawaii Revised Statutes, at least the constitution, and in this case, it is nothing more than an opinion, and an opinion that I think we should all take issue with, because what you don't want is a statement such as this floating around where the attorney general of the State of Hawaii is saying, 'hey, you know what, you don't appropriate, you may expose yourself to liability.' Appropriation, in and of itself, does not, Mr. President, expose us to liability. That is within the purview of this legislative body.

"So, Mr. President and my colleagues, I believe that this is something that should not, should not be what guides us in deciding as to whether this bill should be overridden. Clearly, I believe that this letter, maybe written under different circumstances, we don't know what prompted the letter to be written, but a major concern I think any lawyer sitting in this chamber would agree with me. You cannot talk about being sued as a state without a reference as to how sovereign immunity and the state tort liability act are impacted. And those are clearly silent in this letter, and I think intentionally so.

"Thank you, Mr. President."

Senator Whalen rose in opposition and said:

"Mr. President, I rise in opposition. I'd like just to comment on the last speaker's statements.

"As was noted earlier, these opinions from the attorney general's office came out over and overnight session and obviously there wasn't enough time to do as thorough research as we would like and probably as they wanted to give us. However, I think it is misleading for the prior speaker to talk about this being simply an appropriation bill and that we can't be sued over an appropriation or lack of appropriation, which she is correct on. However, the letter and the bill clearly mandate air service for the entire state, yet only making an appropriation for Maui.

"The issue isn't Maui's appropriation. The issue is that we are now setting out a standard of care for the state. We are saying this is the minimal type of service that we are going to provide and the issue, as described in the letter, is someone in

another place where the state has no air ambulance service. It doesn't take much to get a lawyer to sue anyone, as you very well know, to take the state to court. And this is not an issue of . . . well, it all is sovereign immunity. However, we have opened ourselves up to get sued left and right and this body is very loathed to restrict a lawyer's ability to sue, hiding behind the trial lawyer's desire to represent those people and make sure everyone is made whole, and just as a tangent, but they refuse to take those cases where they're not going to get a lot of money for.

"Back to the point, the point is, once we establish this level of service and we don't provide it throughout the state, somebody gets hurt, they go to court with an expert saying, hey, if we had a helicopter, if you had this quick type of access, they wouldn't have died or they would have had lesser injuries or lesser damages, etc. Ergo, you are responsible state, not because you made an appropriation to Maui, but because you set up the standard statewide and you did not provide the service. That is the issue in the letter and that is not a misnomer or a misleading statement. These kinds of cases roll through the court all the time.

"Now, the exact legal analysis, I don't have time. I didn't know we'd be getting into it to see if there are possible defenses, which there are, but it wouldn't stop a lawsuit from going forward. In fact, the state has paid out on these types of lawsuits in the past where its claimed, such as the highways and everything else, if the rail guard was just 10 feet longer this drunk wouldn't have went off the side or whatever else. We lose it all the time or we lose money all the time, and that's the point of this and that's the issue that we should address.

"Vote for it in a heartbeat if we could put some kind of immunity in there that we can't get sued if there is no helicopter or it breaks down on the way or whatever else. I've got no problem with that. But opening us up for more liability, I am deeply concerned about that and I would suggest that we do fix this matter.

"Based on our history here, I imagine the veto will be overridden. I hope that we will keep these thoughts in mind and that we will go back and fix the problems in the bill down the road as well.

"Thank you."

Senator Hemmings rose in rebuttal as follows:

"Mr. President, I rise on a point of rebuttal.

"I want to respond to the good Senator from Waianae who seemed to impugn the integrity of the attorney general with her statements questioning his ability, but also questioning his honor and his intent. And possibly, the good Senator could read into the record the entire letter. The good Senator from Kona did talk about this issue but the second paragraph of the letter says, 'Section 2 of the bill will amend section 321-224 (a), Hawaii Revised Statutes, which lists the functions and duties of the Department of Health for the State Comprehensive Emergency Medical Services System. As amended by this bill, section 321-224 will require the Department of Health to establish emergency medical services throughout the State that must now include "emergency aeromedical services," which is defined to mean "a secondary response system that provides immediate critical care and transport by rotary-wing aircraft of a patient to a facility that provides specialized medical care.'" This is the exact provision that sets up the state's liability, not the funding source as was clearly pointed out by the previous speaker.

"I don't pretend to have a law degree, but I do know what common sense is and I do know by the good speaker from Waianae's previous words that the attorney general is quite learned in these things and has a tremendous track record of going to court in his private practices and winning issues like this. I resent impugning his integrity on this issue.

"Second of all, there was a question asked about petty politics – can saving lives be petty politics? And there's a simple answer. This veto override doesn't save one life in this coming year, not one, because the bill does not take effect until next year. All we have to do if this is of priority to us, which I think it should be, is come back next Session and do it right. We don't have to override this veto for petty politics because it will not save any lives. It's simply a political gesture and I recommend that we do what's prudent and fair, rather than what's politically expedient.

"Thank you, Mr. President."

Senator Hanabusa rose in rebuttal and said:

"Mr. President, in rebuttal.

"Mr. President, there's something to be said about when someone says I don't know how to read. The provision that I was referring to begins with 'However, section 6 of the bill appropriates money for the provision of emergency "aeromedical helicopter services,"' blah, blah, blah, and then goes on to say, 'If someone on Kauai were critically injured and serious injury or death could have been avoided had emergency medical helicopter services been available,' it is referring to the appropriation and that is what I refer to.

"And Mr. President, the good Senator from Kona talks about a guardrail not being 10 feet longer, Mr. President, we've litigated those issues. Yes, that is under the state tort liability act, but that is not what we're talking about here. This Legislature always makes statements of policy as to what we would like to have. We would like to have aeromedical services across the state. It's a question of when we appropriate it. We would like to have every child to have the perfect education, but it's always a matter of where the money comes from and who gets appropriated what and who doesn't get appropriated another thing. This is all within that purview.

"I have the greatest respect for Mark Bennett, but like I said, an opinion such as this, that's talking about liability and exposure to the state, the question has to come up, Where is the reference to sovereign immunity and the state tort liability act? Because that is what is being told to us as the problem if this bill is enacted.

"Thank you, Mr. President."

Senator Baker rose in response and said:

"Mr. President, there is an urgency in enacting this legislation, and the Legislature was prudent in pushing off the funding to 2004. Why? Because we need the time to plan to make sure that the ground ambulance services are integrated into the helicopter services, that staff is trained and made available.

"If we don't pass this now, we're sending a message that we don't know whether we're going to do this. We don't know whether it's going to be important next year. We don't know whether lives are going to be important to us and to follow through. We're putting it off another year. That's another year where people are not going to have access to timely critical care.

“There are so many parts of Maui County, most of it in my district, I confess, but a lot of it in Senator Kalani English’s district, some of it in Senator Tsutsui’s district where the time is so long just to get to the only – only – emergency room we have on the island that we’re almost automatically out of the golden hour. That’s not the case almost anywhere else in the state, and there are other places with ground ambulance services that are totally underserved or inadequate. That situation exists in Maui County, too.

“This bill is going to help us meet our responsibility already set forth in the statutes. It’s very important that we go forward with these services because we need the planning time; we need the commitment; we need the enabling legislation. I appreciate the fact that my colleagues from around the state have recognized that this service is so important and supported us throughout the entire process.

“This bill and the final version of it, when it was introduced and finally enacted, had virtually the same language that was referenced by the Minority. It had at least six hearings. Not once did anybody from the attorney general’s office nor anybody from the Department of Health say that there was a problem with this language. And I will tell this body, here and now, that we had assistance in drafting this from experts in the Department of Health, from experts in emergency medical, and from attorneys.

“I think that the explanation given to us by our Majority Leader and Senator from Waianae, who’s very learned in this area, should help us have the comfort and the confidence we need to override this veto and go forward. I appreciate the support from my colleagues in the past, and I ask again that you join with me to override this veto. And Mr. President, I request a Roll Call vote.”

Senator Menor rose to speak in favor of the motion as follows:

“Mr. President, I rise to speak in favor of this veto override.

“Mr. President, I’m offering these comments in support also in support of the Senator from Waianae’s criticisms and remarks about the attorney general’s opinion. I believe that her comments are not based on partisan or petty politics, but rather on a careful analysis of prevailing Hawaii law in the tort area.

“I think that the problem with the attorney general’s opinion is that there is a significant flaw or gap, and that gap is that the opinion doesn’t address, as the Senator from Waianae has eluded to, it doesn’t really address the long standing principle of law in Hawaii, which basically states that a government agency or entity is generally immune from tort liability in cases where an injured person initiates a claim for damages against a government agency or entity which the injured person claims resulted from the fact that the government agency did not expend or approve funds for particular projects or programs. And again, that falls within the sphere of appropriating or approving governmental funds. This principle law basically is called the discretionary function exception with respect to our state tort liability act. And again, that’s a well established principle of law.

“And so, Mr. President, to the extent that the opinion does not address the discretionary function exception and doesn’t adequately explain why such an exception would not immunize the state from the sort of litigation or lawsuit that this opinion eludes to, I don’t think this body should be relying upon this opinion in casting their vote on this override, and accordingly, I would urge my colleagues to vote in favor of the override today.

“Thank you.”

Senator Whalen rose in rebuttal and said:

“Mr. President, we’ve heard a lot of general legal terms and I can’t pretend to have as much experience as my older colleague from Waianae, the Senator with her vast history of litigation. However, I am familiar with issues of this nature. In that general sense, I somehow got through the Bar exam, etc., and practiced for awhile.

“But to say in one paragraph he talks about appropriation and then talks about live tort liability (this is the attorney general’s letter), and saying ergo, the two things have to go together and somebody would sue over a lack of appropriation, I think is too simplistic.

“The point being made is that we are establishing a certain standard of care for the State of Hawaii. We are mandating. We are telling the department you have to provide this aeromedical services. We are saying you have to do that, but we’ve only given money for the County of Maui. It’s the same way with the roadways. It’s the same way, as my colleague from Waianae mentioned, which I’m glad she did because it sparked some kind of thought in my head which doesn’t usually happen, but everyone remembers the Felix situation. That whole thing arose because a standard was mandated. We weren’t applying the money, as it was said, so now we’ve been sued and we have this consent decree and everything else. And I’m not saying this is exactly the same situation, but yes, there is sovereign immunity for different types of discretionary acts, but our discretion we are telling the department you have to do this.

“This isn’t an appropriation issue. We are now setting up this level, this standard of care, Mr. President, and if we fund it or not, it doesn’t mean that we are somehow saying there’s nothing in the bill that says if we don’t fund it that there’s no responsibility for the department to put it up, or something along that nature which I think would solve everyone’s problem or at least my problem with it. I’m happy for Maui. I’m glad Maui is getting it. I’m worried about the state getting sued time and time again because we don’t have the helicopter service on parts of the Big Island or Kauai, which is just as far apart as Maui, even bigger. And we have areas where it takes an hour just to get to the place.

“Mr. President, this isn’t an issue of Maui got theirs and we didn’t get ours, or something like that. This is an issue of opening up ourselves to further liability. Now, the fact that it wasn’t brought up earlier, I don’t know. I wasn’t in on the hearing at Health; I’m not on Judiciary. I don’t know the testimony. Maybe they just thought of it; that was their mistake. But it doesn’t mean we stick our heads in the sand and pretend it doesn’t exist.

“And as everyone has been saying earlier, whether a pro or a con, whatever, about this thing being a year from now before it takes effect, that’s undeniable. We can put in this bill with the immunity in there and still have this take effect next July and nothing will have been lost. But knowing these hearings as they go, being in the Legislature for quite a few years now, if we do anything to limit liability, the certain special interest groups will be down here pounding down doors saying you can’t do that because somebody got hurt somewhere and we just want to make them whole, etc.

“I have sympathy for victims, but the state can’t be the ‘sugar daddy’ for everyone to pay for everyone’s problems. And we need to deal with this issue, Mr. President, and that’s

why I urge our colleagues to take an unemotional detached view at this and say yes, we can still get the helicopter service up and running by next July and solve this problem, and that's the route we should take.

"Thank you, Mr. President."

Senator Hooser rose to speak in support of the motion as follows:

"Mr. President, I rise in support, in enthusiastic support of this bill.

"The County of Kauai has been named numerous times in this debate and I want to stand and make it very, very abundantly clear that as the Senator from District 7, the Senator that represents the people of Kauai and Niihau, that the people of Kauai enthusiastically support this bill and want Maui to have their emergency medical helicopter service.

"During this entire process, Mr. President and colleagues, during this entire process, from the day the bill was first debated, not one person from my island has called up and said, 'what about me; what about us?' Not one council member, not the Mayor, not any member of the public has come and said, 'Well, Maui is getting theirs. Well, what about ours?' And even more than that, I took the time myself, personally, and this morning I talked to the Mayor's administrative assistant. I also called the head of our emergency medical response and I asked him today, I said do we need a helicopter? What is the scoop on this helicopter? What do you think from your professional opinion? And he said, 'Gary, Maui has three times the population. They have three or more islands to serve. They have a much greater need. Kauai is not there yet.'

"Kauai, as much as everybody wants more, more, more, Kauai is served well by its ambulance service. We have two emergency rooms. We're doing just fine over there, and I don't want it to be thought of here that one island is being pitted against another. The people of Kauai support Maui and support this bill, and I urge my colleagues to vote in support.

"Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 745, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 3, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

Senator Baker rose to support the measure as follows:

"Mr. President, I rise to speak in support of the motion to override the Governor's line item vetoes of certain appropriations in S.B. No. 1305, now Act 215.

"I feel strongly that the State of Hawaii's elected leaders have a duty to care for all of Hawaii's residents, particularly those among us who face unique problems that make it difficult

for them to fend for themselves. Whether it's called the Aloha spirit, or simply core little 'd' democratic values, I know that at least Hawaii's Democrats have always taken pride in leaving no one behind. It is with that sense of Aloha spirit, compassion and concern for those less fortunate that I ask my colleagues to override these appropriation items vetoed.

"Senate Bill No. 1305, C.D. 1, passed both houses of this Legislature with only a single 'no' vote. But funds for many of the important, worthwhile and necessary safety net programs contained in this bill were line item vetoed by Governor Lingle. This bill and our action to override the vetoes are symbolic of our legacy as a government that cares for all of its people. The beneficiaries of the programs to be funded by S.B. No. 1305 are often the most vulnerable in our society: our keiki, the elderly, the abused, the disenfranchised, the neglected, the uninsured and the poor.

"These programs and services funded are not new programs. They're not new services. They're not expansions, and they're not frivolous. While each has its own justification, and I'm sure my colleagues will speak on them, as well as their need for funding, all of these programs in 1305 have a common thread: the State's continuing obligation to look after those who may fall through the cracks without the programs provided by this measure. With the funding in S.B. No. 1305, we're barely meeting that need. None of the programs received expansion money or even a full measure of what they requested. And yet, without the funding provided by S.B. No. 1305, many of the most vulnerable in our society will have nowhere to turn for much-needed services, and we must not, Mr. President, turn our backs on them.

"This measure is truly an emergency measure. It's a stopgap. It draws resources from the tobacco settlement money deposited into the 'Rainy Day' fund – exactly why the Legislature created that fund. All for those in this Chamber, the skies may look clear and blue, but for many in our community, it's not simply raining; it's pouring.

"Last week, the Governor announced that she would not restrict funds appropriated to Kahuku Hospital and two programs under the jurisdiction of the Judiciary if the Legislature took action to override her line item vetoes for those programs. The Governor justified her retraction of the veto of Kahuku Hospital funds by stating that her Director of Health recently made her aware of Kahuku Hospital's critical need for those funds. Mr. President, I want to state for the record that this information is not new, it was available throughout the entire Regular Session. In fact the Senate alone had at least three hearings on these programs. For the Governor to say that this information just came to her attention at this critical juncture shows a lack of attention to detail by the department at best or just disingenuousness on their part at worst.

"Because of the critical need for these services, the constituencies served by these programs can ill-afford either lack of attention or disingenuousness. Without an override, these funds will not be available to Kahuku Hospital. Even if the Governor wanted to retract her veto, she cannot. It's already a fait accompli and these funds would not be available for the Domestic Violence Clearinghouse or to assist victims of intrafamilial sex abuse. Because the Governor signed the bill into law with those line item vetoes in it, she can't take it back now. We must override to make those funds available.

"Moreover, every single item contained in this measure has gone through the same laborious and painstaking process and legislative scrutiny as those programs for which the Governor said she would not oppose our actions. Each program serves a vital and significant role in giving a hand up to those in need in

our community. In some cases, it is their only hope. The agencies providing services do so on a shoestring budget, many actually saving the State money in the long run and meet critical needs in our community in a most cost-effective way. They provide that ounce of prevention so we don't have to pay for the pound of cure later!

"The Governor has stated that the rainy day fund should be saved for a fiscal crisis. I submit we're in that fiscal crisis now! The Governor has also implied that the Legislature, in appropriating these funds, is acting in a fiscally irresponsible manner. Nothing could be further from the truth. Several years ago, the Legislature and former Governor took a visionary step by establishing an emergency budget and reserve fund for just these types of critical circumstances. It should also be noted that the Legislature only took funds from the next anticipated tobacco settlement fund deposit. Even with passage of all of the items in S.B. No. 1305, there would still be over \$52 million in the rainy day fund. But more importantly, since S.B. No. 1305 does not appropriate from the State's general fund, the funds coming out of the rainy day fund used for S.B. No. 1305 cannot be used – cannot be used – to balance the State's operating budget. In fact, since the funds in S.B. No. 1305 are taken from the rainy day fund, I believe it's questionable whether the Governor can even restrict the use of those funds once her veto has been overridden.

"In short, the modest appropriations in S.B. No. 1305 are fiscally responsible. This bill prudently invests in health and human service programs that will end up saving the State an immeasurable amount of future financial and social capital. Colleagues, please join me in overriding the Governor's line item vetoes, each and every one of them, in S.B. No. 1305.

"Thank you."

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

"Mr. President, I rise in opposition to the veto.

"First let me say, as the person that was alluded to, the vote was 75 to 1. The person that voted against this bill was me. The person that voted against raiding the rainy day funds last year was me. The person that voted against the traffic cams when the vote was 75 to 1 was me. The person that voted against special funds, creating more of them because they would be raided, was me. So, if we're going to play the numbers game, then let's look at what has actually happened – what was said, what was forecast, and what has happened.

"If we're talking about the rainy day fund, it may be raining on somebody's parade, but that was not – that was not – the purpose of the creation of this emergency fund. This emergency fund was created specifically for catastrophic statewide economic problems, such as those that could have, could have occurred after 9/11, could have done something to the basic economic infrastructure of this state as a whole.

"Instead, we had a raid last year and we're having an attempted raid again this year to utilize these funds for existing programs for operating expenditures and the operating nature of ongoing programs of ongoing organizations. To me, that is not the purpose of an emergency fund, the rainy day fund, or a catastrophic occurrence.

"The tobacco funds – we've argued about that in the past, and again, the purpose of those funds, as it was sold to the public and sold to us, was to take care of our keiki. Well, I'd like to see some of these keiki sometime because we're always talking about the keiki. When we raise our salaries, it's for the

keiki. When we get computers, it's for the keiki. Everything we do is for the keiki. The tobacco fund was supposed to be for the keiki, to stop the keiki from smoking, and what happened was we got so punch drunk with seeing all the money that everybody and her sister came in to decide how we're going to use those funds for purposes other than for the keiki.

"And now we had a steady parade the other day of people coming in here talking about how they had to have these funds. Interestingly enough, some of these same organizations got money last year; they're back again this year. It is not an emergency for them. It is an expanded expenditure. It is not their basic funding, which has been untouched.

"As the Governor has said, as the head of the Department of Human Services has said, as the head of the Department of Health has said and has pointed out with facts, figures, and specifics, the safety net has not been endangered in any way. No basic core monies have been reduced or eliminated. No monies where there were required federal grants that required state matches were touched in any way. No funds where there were private partnering requiring state matches were touched in any way. What was touched were those funds that were new, or expanded programs, or represented duplication of efforts, or represented flawed items within bill 1305. That was not mentioned by the previous speaker.

"In addition to that, it is pretty interesting that we had a discussion from one of the providers last week who was talking about how efficient the private sector was in administering these programs. And I would agree. I think the private sector has been extremely effective in administering these programs. But this same organization, as a matter of fact, used to come before the state, used to come before DHS or DOH and apply for RFPs for contracts to compete for the funds, to prove their accountability, to prove their worth. Now, they're going through another process. They're going to the Legislature and asking for a grant. They're going even further asking for money from the rainy day fund to be tapped, rather than to have their own bill or to go to these various departments.

"It was interesting also, specifically in the question or the issue of foster care and children's care, that the private sector agency, which is suggesting that we give them more money in this particular bill, neglected to mention that \$4.2 million has been allocated for the next fiscal year or the current fiscal year, and \$6.8 million after that for foster care and child placement services. Now, if she were right, that the bureaucracy is overburdened and not doing its job, then what this Legislature should do is reduce the funding for the current bureaucracy and privatize more of the efforts. There's more than \$10 million right there which would more than cover all of the existing expenditures in 1305. But that was not proposed.

"The issue was raised about how inefficient they are, how cost-efficient the private sector nonprofit agency was, yet it's okay to continue spending that money and just spending more money. The issue was also raised that the state has an obligation to take care of basically everyone, and I would object to that. The state has an obligation to take care of those people who are unable, not unwilling but unable, to take care of themselves, and even that has got to be tempered to its financial resources.

"When we talk about putting people first, what is it that we're really talking about? Where do the funds come from in the first place for all of the money that the state has to hand out? It comes from people – hard-working, overburdened people that don't get any subsidies themselves but are always the first, second, third, and last to be taxed. So if we're talking about putting people first, then let's talk about all the people. Let's

put them first in terms of reducing and alleviating the tax and regulatory burdens that we've put upon them. But we don't do that. We're talking about selective people and selective agencies. And further in this bill, we are not holding those agencies accountable for results, not holding them accountable for the way the money as expended as we do in the regular process that this Legislature is funding and funding quite heavily for social services expenditures.

"The allegation was made that people have no other place to go, no place to turn to. And we see that each year there are more and more programs that come before the Legislature, many of these programs that were always historically privately funded. And now they come to the Legislature because somehow, some way, they think that we've got money here. They haven't learned the trick that we've played on them. We don't have a damn penny here unless we first take it away from them. And what we do is play one group of people against another, trying to show that one group is more needy than the other. That's not putting people first.

"And then I heard some of the outrageous comments that were made: if midnight basketball ends, these young people that have been partaking in this project, a Clinton era project, if midnight basketball ends or is not totally funded to the level and extent that these people demand the funding, why immediately the next day these kids will turn to crime, they'll go on drugs, they'll go on rampages, they will do violence to others. Well, I guess that doesn't say very much for the programs to date because it sounds like an addiction to me – you have to keep doing it and keep funding it and keep increasing expenditures, otherwise nothing has been learned and nothing has been done, and that's part of the accountability.

"To say that people have no place to go and they have no other means is not stating the truth. The funding is there. What these agencies try to do in terms of priorities is certainly up to them. And obviously, not every activity has the same weight or same importance of others.

"What the argument of this bill comes down to though, really is not about this bill, and it's not about the keiki, and it's not about the individual agencies. It is an attitude that says, even though the people in this state voted for a change and want fiscal restraint, we're not going to do it. We're going to continue to tax and spend the way we always have, and if you don't like it, we've got the political muscle and the number of votes to overturn it, even though nobody's arguing that the money is not there. That's ludicrous. That's fiscally irresponsible.

"But again, again, you might be able to make the case if you had a chief executive who was arrogant, or intransigent, or didn't care, or wasn't sensitive. That's not our Governor. Our Governor sat down with these agencies prior to the Legislative Session beginning, and talked to them during the Legislative Session, and talked to them after the Legislative Session, as did the various department heads. And at no time, at no time was there a statement that we're not going to give you this. At all times, was the idea, how can we work together, how can we find additional funds, how can we find additional support for you. And as a matter of fact, that's what the Department of Human Services has done in finding additional federal funds, in supporting additional partnering relationships. So there has been an attempt to cooperate. There has been an admission that most of these programs are very valuable, that we want to find a way while still keeping the constitutional commitment to try and help the needs of the people. But these organizations have to help as well, and many of them just don't want to do it because they feel they can come to their favorite legislator or

their favorite Majority Party and get what they couldn't get on their own in a separate fiscal bill.

"And to say that the rainy day fund is not the same as the general fund, again we've got to go back, where does the money come from? Ultimately, where does all of this money come from? It doesn't come from government. It doesn't come from my colleagues. My colleagues never line up here and reach in their own pockets to support these things, whether it's Korean War veterans or keiki. It's a lot easier to take the money from somebody else and to appropriate those funds, and that's what we're trying to do here today.

"Now, unless you believe that the Governor is not keeping her word and is not compassionate, and if the same is true of the Department of Human Services director, and the same is true of the Department of Health director, and all of those other people that are involved in any and all of these items within this bill, unless you believe that they are not compassionate, there's no reason for you to override this bill. There is every reason to say okay, let's find those areas where we can work together.

"Let's talk about Kahuku Hospital for just a moment because the allegation is that the Governor didn't know, didn't care, or wasn't paying attention, and that she should have known this information. At the phony hearing last week, I was very impressed with a gentleman, a small business owner from Kahuku, who had been on the board of directors of the hospital for 4 days, and he was very committed to helping the hospital, as we all are committed to helping those institutions. But what did he say, what did he say was the real cause of their immediate financial problems, immediate? Number one, a nurse's strike, a public employee nurses strike that got a fantastic settlement which raised the cost to the hospital tremendously. And number two, what did he say? The cost went up tremendously because of malpractice insurance – two areas that your Minority nationally and locally have been trying to work on to reduce the impact because it impacts all of us in the community. It takes dollars away from healthcare and human services, and yes, our keiki.

"But I don't see any support from my colleagues in the Majority Party for making any of these changes. They're not concerned about it. They just want more money, more money, more money. Well, the money is not there. You can't give it if it's not there. The Governor would love to be able to say, 'yes, yes, yes, yes, yes' to everybody, but sometimes you can't do that because the responsible thing is to say 'no.'

"Those of us who are parents, who have multiple children would love to do anything and everything we can for our children, but we notice two things. Their demands seem to escalate. They seem to want more and more and more things. Then they get more expensive; and most of us don't have an expanding revenue source, and so we have to explain to them, we have to explain to them how we can't do it. We love them very much; we're not disrespecting them; we're not not caring about them, but we can't do it. Why? To keep the family together and that all of us are going to go through this, and that when the times get better, that we will look at these things, not that they're not entitled to them, not that we don't want to give it to them, but that we have a first responsibility and it's tough, it's really tough saying 'no.'

"And for a lot of people, 40 years of saying yes is still not enough. They don't want to say no. They don't want to be honest enough to say look, we've got to bite the bullet and do it. Instead, interestingly enough, even at that hearing last week, people were still comparing some of the wonderful programs in Oregon and California. Why is California \$38 billion in debt?

Because of policies and spending by their state government leaders, the Majority Party leaders, by the way.

“So if we are really concerned about all of the people and putting people first, then we will also make sure that we don’t continue to mortgage their future. We will repair this economy. We will tell people that the rainy day fund, which is a part of the foundation of our bond rating and our fiscal responsibility, will remain in tact. And instead of trying to pick it apart by this group and that group and every other group, we will say we’re going to hold on to this and we’re going to treat everyone fairly. And then, and then we’re going to go look at these criticisms of the bureaucracy and how the expenditures of certain monies might be better under private circumstances. And that’s how you help all of the people. And we are compassionate, and we are sensitive, and we want to help people, but you’ve got to draw the line at some point and say, first, in order to best help them, we can’t spend them into debt and into oblivion. And that’s our message for today.

“Thank you, Mr. President.”

Senator Hooser rose in support of the override and said:

“Mr. President, I rise in support.

“I’d like to offer a contrary opinion on a number of points that have been raised and have not been raised. I’d like to start with saying that I know many of the people in this room are some of the most generous people that I have the pleasure to be associated with, that give money and time and lots of energy out of their own pockets, out of their own personal lives to a vast number of community projects, community people. The Chair of the Human Services Committee, for one, would put everyone to shame with the amount that she gives personally on behalf of the community. And I know many others in this room do the same thing.

“Mr. President, this bill supports a wide variety of community programs vital to the protection and maintenance of the very fragile social fabric of our state. These community programs serve children who are at risk of sexual abuse, children whose lives are threatened daily by exposure to drugs, alcohol and violence. Many of these services target the very poor or the very young and those in our community least able to fend for themselves.

“Mr. President, colleagues, most of us in this room live in an ivory tower. We drive our air-conditioned cars. We live in our fancy neighborhoods, far removed from the communities we’re talking about serving today. Most of us just don’t understand what these programs do, what these people face on a daily basis. It’s far too easy for us to forget about these people that today we seek to help.

“It is far too easy to look the other way, to blame our lack of help on something called fiscal responsibility, blame our lack of support on the budget. Let’s just tell them we don’t have the money. Let’s just tell them to come back next year, then they can ask us again. Let’s just tell them to do it themselves. Well, for some of these people, there is no next year. For some of these kids, for some of these young mothers, for some of these folks, we are the only shot they have in getting out of a bad place that they’re in. Next year they may be dead, or addicted, or so battered that they will take years to recover, maybe never recover at all.

“But let’s look these people in the eye . . . let’s look these people in the eye and tell them there’s no money. Let’s lie to them, because we all know the truth. The truth is that when we say there’s no money, what we’re really saying is it’s not a

priority. We spend billions of dollars in this Legislature in this state government – billions of dollars. We spend it on things we believe are a priority. And I’m here today with many of you to say, for me, serving these people is my highest priority.

“The Governor says we have a \$150 million operating budget shortfall – \$75 million a year for two years. The fact is, the funds for these programs and services do not come out of that general fund. They come out of the rainy day fund, which that is one of the purposes of this fund. The fact is that we’re sitting on over \$220 million in the bank in special funds for emergencies – \$220 million we’ve got buried in our backyard waiting for something bad to happen. Well, I think if you ask these people, Mr. President and colleagues, they’ll tell you bad things are already happening.

“We have people, through no fault of their own, in dire need of help – people that are crying for help in our community, people that are being beaten and raped, people that are in need of medical care, young people at risk in our housing projects, and we’re going to look them in the eye and tell them there’s no money, all the while, while we have \$220 million buried in the backyard. What do we tell them when they find out we’re paying our football coach \$800,000 a year? Do we tell them, yeah, but that’s out a different budget. What do we do when we tell them we’re spending \$60 million on tourism promotion? How do we explain giving hundreds of millions of dollars to special interest, business tax credits, building aquariums and new resorts? What do we say? We say yeah, but, but. What do we say? We say this is different, yeah, but it’s a different budget; it’s a different pot of money, but that’s not a priority. The truth is, you’re not a priority is the truth of the matter. That’s the message we’re telling them.

“Well, we’re here today to say something different. We’re here to say to these people that you are a priority and we are willing to reach into one of those places – the rainy day fund with \$50 million, plus or minus – and take a very tiny amount out to say that we’re going to fund these important programs. We’re going to say to these people that these programs and these communities are a priority.

“I don’t know about you, but on my island, we look out for each other. Where I live, we help our neighbors. Where I live, those who have more, give more. Where I live, we give a hand up to those who have less.

“I ask all of you here to support unanimously this very important piece of legislation. Thank you.”

Senator Aduja rose in support of the override and said:

“Mr. President, I rise in support of the motion to override the Governor’s line item vetoes as delineated in S.B. No. 1305.

“Mr. President, as your Senator from Kaneohe to Kahuku, I am pleased with the Governor’s decision to retract her line item vetoes for three social services organizations that she subsequently determined to be essential to public safety, health, welfare, education. These services organizations in particular are: (1) Kahuku Hospital; (2) intrafamilial sex abuse treatment; and (3) Maui’s Domestic Violence Clearinghouse.

“Mr. President, your Windward Senator initially took serious issue on the Governor’s decision to line item veto funding to Kahuku Hospital. As a critical care hospital that services the Windward and North Shore Coast from Kaaawa to Haleiwa, it is the healthcare safety net for 20,000 Windward residents, including students and employees of the Brigham Young University and Polynesian Cultural Center, as well as the 1 million North Shore and PCC circle island visitors per year.

"As we all know, the North Shore is famous for its winter swells, which can reach the heights of 20 feet or more. Without Kahuku Hospital, many surfers, be it professionals, local kids, or uninformed unintended tourist, as well as acute accident victims and victims of stroke, heart attack and other diseases, will lose access to that short window of critical care opportunity in the event that Kahuku Hospital is unavailable. The next available hospitals, Wahiawa General Hospital or Castle Memorial Hospital, are an hours drive away.

"This rainy day appropriation is undoubtedly essential to the public safety, health and welfare of the Windward and North Shore communities and their visitors.

"Mr. President, I also take serious issue to our Minority colleagues' constant reiteration to the press and to the public that (1) an override is stupid, as asserted by the House Minority Leader; and (2) our Minority colleagues' highly erroneous and misleading knowing correlation to the general fund or lack thereof, when in fact S.B. No. 1305 deals with the emergency rainy day fund, which is derived from the Hawaii State Tobacco Settlement Fund and not from general funds. The state was awarded \$80 million in federal funds of which its addition to the general fund and its subsequent release by the Governor for specific appropriations have not been fully disclosed to the Legislature but for her lean toward education and drug related appropriations.

"Mr. President, I am your co-manager on the Joint Ice and Drug Abatement Task Force. As your co-manager, I cannot agree with the Governor's line item veto of the \$150,000 appropriation for forensic medical exams for foster children, as a high percentage of foster children are from broken homes due to their parent's or the child's addiction to ice. I further cannot agree with the Governor's line item veto of \$100,000 toward transitional living facilities for unserved street youth. Again, many of these children and teenagers are homeless as a result of their parent's or the child's addiction to ice. Without this program, they may be forced to live on the street, turning to crime, drugs, or trading unwanted sex for a place to sleep or food to eat.

"I further cannot agree with the Governor's veto of \$150,000 to the Bridge of Hope, as many, if not all, of the recipients of this work/study program at the University of Hawaii are recovering from ice addiction.

"Mr. President, as an attorney who practices in the area of probate and guardianships, I definitely see the tremendous value of Na Keiki Law Center. When given the choice, it makes much more sense to see a child placed under a willing guardianship, rather than to place the child within the child protective services where resources are extremely limited.

"CPS should be the absolutely last resort, not the only resort because the child or his or her potential guardians are unable to retain legal services. Many of these children's children are products of broken families or parentless families as a result of ice addiction and its suicidal and/or homicidal tendencies.

"Mr. President, the ice epidemic is extremely daunting and demoralizing, but until we can achieve a significant grip on its prevention and eradication, our paradise state will suffer exponentially in terms of our quality of life and visitor business destination attractiveness. These services, inter alia, suffered from the hand of the Governor's line item veto. These services serve but small steps towards ice prevention. However small these steps are now, they will ultimately result in great strides as any and all services that convert or attempt to convert ice

victims into contributing members of our society are clearly essential public safety, health, welfare, or educational programs.

"As the adage goes and as reiterated by your Senator from South and West Maui, an ounce of prevention today, saves a pound of cure. Thank you, Mr. President, for this opportunity to voice my support for the motion to override the Governor's line item vetoes within S.B. No. 1305."

Senator Kawamoto rose in support of the motion as follows:

"Mr. President, I rise in support of the override of S.B. No. 1305.

"I'd like to speak towards section 13, which allocates \$300,000 to the Waipahu Community Day Health Center and Youth Daycare Center. Let me set the crisis, let me set the emergency of this community. Mr. President, this community is 106 years old. We have 18 ethnic groups that live in this community. We have the highest population on government assistance. We have a very large, large population of elderly people. We have over half of the adult residential care homes in Waipahu, over 260 of them. Yes, we take in residents from places like Hawaii Kai, different areas that do not allow adult residential care homes by their covenants. We take them in and we take care of them. The only problem with my clients is that they grow old.

"Mr. President, we have the highest multi-generations under one roof. Mr. President, we have a great deal of crisis of elderly abuse.

"Today, we stand with the demise of the long term care bill. We've been trying to have a long term care bill for as long as I've been here (10 years), even before that, and they couldn't come up with it. I propose what we're trying to do here in the Waipahu Adult Day Health Center is another alternative to long term care. We propose that we run a pilot program to show that if you pay up front and prevent these elderly people from going into what we call ICF, intermediate care facilities, we will save some money for the state. We're looking at paying maybe \$1,400 a month for an elderly person to go to the adult day health facility. We propose that against what we're paying right now. Right now, for any one of our Medicaid patients to go into ICF units, we pay \$5,000 to \$6,000 a month. This is quite a bit of savings. We're looking at that.

"I had an opportunity to go to California and they have 283 homes for these care facilities, five of which are in Sacramento. I met the doctor there who runs these facilities. Their patients get from Medi-Cal \$70 a day to take care of them. So I asked him, what's the possibility for us to get something like this? So he gave the idea. The Waipahu community didn't stand alone and say we wanted to take care of our elderly people. We went out the last three, four years and we talked to the Hawaii Housing Development Corporation. They gave us a remnant piece of property for a dollar a year for 39 years. We went to the City Council and we asked them for some blocked grant funds. They gave us \$2.7 million to build the building. We are in the midst of opening up this building. We are about ready to lease this building out for a dollar a year to those two organizations – Head-Start and Health Care for ALL. This, I believe, if the pilot project works, will be an alternative to long-term care and would save the State a lot of money.

"I wasn't an advocate of this kind of activities until my dad, who passed away. Five years ago, we had to take care of him, not me, but my brother did. I saw the stress. I saw the degradation of the lifestyle that he had. I saw what things happened to his family. We don't want this to happen because we want to take care of our people, and we want to provide less

stressful situations to avoid the elderly abuse, to avoid the degradation of lifestyles of individuals and different families. We want to provide that. This is not keiki but these are elderly people. Their only fault, again, is that they grow old and they need help.

“So, Mr. President, as we look at this, again as we try to improve the quality of life of our people here in Hawaii Nei, we ask our colleagues to please vote and pass this. It’s a concept and idea that someday I hope that if we’re proven right that we’ll provide this kind of adult day health center throughout the State of Hawaii.

“Thank you.”

Senator Hemmings rose to speak against the motion and said:

“Mr. President, I rise to speak against this motion.

“I want to also point out that oftentimes the media reports out that the Legislature did this, the Legislature did that, and the first point I want to make is that this is indeed a rainy day, but it’s been raining for years in Hawaii. It’s not the Legislature that failed to address these issues. It is not the Legislature that failed to have budgets that reduced spending and brought accountability. It is the Majority Party. We are on the brink of financial insolvency because the Majority Party continued to tax and spend beyond the economy’s ability to pay.

“I also think it’s extremely important to tell the human services community, who we all sympathize with, no denying, that they have been held hostage year in and year out by the Majority Party. I ask you now, if these appropriations are so important, and if they were so important last year, and if they were so important the year before, why are they always stuck in raid bills, one-time appropriations? Why aren’t they general funded programs? Well, I’m going to answer the question because I have been asking a lot of questions today and the Majority Party seems to dodge them.

“The facts are that you want to hold them hostage to force Legislators to vote to raid the rainy day fund, the hurricane relief fund, the employment retirement system, and the list goes on, in order to balance the budget, to spend money out of those funds that really should be spent out of the general fund. If these programs are so necessary on a year-to-year basis, why aren’t they funded out of the general fund? The hypocrisy is insulting, especially to the human services programs.

“It’s also important to go on record with the safety net – \$1.2 billion each year to assist the needy individuals. The taxpayers have been extremely generous with human services and will continue to be.

“The recent line item vetoes are approximately \$3 million. To give the Lingle Administration credit, it’s also been pointed out already that three of the veto overrides that you’re putting on the desk today have already been taken care of. She did not send down a specific veto message on Kahuku Hospital and on the two programs funded through the judiciary. Those problems have been solved, yet you continue to want to make political hay out of it. What hypocrisy.

“These funds aren’t in the general funds but what is in the general funds? For two years, I personally had made an issue out of the fact that this Legislature continues to fund culture and art programs while the State Foundation on Culture and the Arts continues to buy art to put into storage. But you all turned your back on that. The State’s out of money. We have to hold hostage the human service programs. We spent one-time

special fund appropriations, but yet we continue to spend out of the general fund money to buy art.

“I met with the State Foundation on Culture and the Arts and those good people recognize this and they’re willing to work with us. Right now, we’re spending out of the general fund several millions to buy books. Right now, we’re spending close to a million to fund Bishop Museum. Right now, we’re sending money to Waianae to their cultural center and other programs out of the general fund. The State Foundation on Culture and the Arts is willing to look at that and pay those general fund appropriations out of their fund. They’re sitting on \$5 million now and they have \$5 million coming in the next two years. But you, Majority Party Legislators, said ‘no, no, no, no, we’re going to continue to buy surplus art.’”

The President interjected:

“Senator Hemmings, could you keep your remarks to S.B. No. 1305, please.”

Senator Hemmings responded:

“S.B. No. 1305 is extremely salient, as salient as was a previous speaker’s remarks regarding long term care, which I did not protest, Mr. President.

“The point is, you’re holding hostage human service programs while you continue to spend tremendous money in the general fund that should have been better spent.

“So, I’d like to submit to you that while you have taxed and spent this state to the brink of insolvency, not my opinion but the opinion of the Council on Revenues, while you continue to tax people for being sick, to tax people for being hungry, to continue to have the most regressive deduction systems unlike federal tax deductions, one of the most in the nation which taxes the poor the most, you put on this cloak of self-righteousness care for the really needy in our society while you’re buying surplus art. It’s a hypocrisy.

“I urge you to vote ‘no’ against this veto override and come back next Session and let’s set priorities and do what’s right. And most importantly, Mr. President, let’s put human services programs in the general fund appropriation so they’re not subject to one-time appropriations and held hostage for money that may not be there in the future if we continue to spend to balance the budget.

“Thank you, Mr. President.”

Senator Trimble rose in opposition to the motion and said:

“Mr. President, I rise in opposition to the veto override.

“I sometimes wonder why I’m here right now. I guess I’m here because you’re here. Then I have to ask myself, well, why are you here? I gave the little analogy about picking battles and picking those that were important enough to go to battle but small enough to win. When I look at the veterans, Korean veterans, I don’t see that it was important enough to go to battle over because it was being handled in a different manner, and it wasn’t a battle we could win because the Governor does have control over spending.

“The same comment could be made about air ambulance service because it doesn’t go into effect until July 1st. Now we come to 1305 and when we look at the Department of Health budget, when we look at the Department of Human Service budget, when we look at the \$1.3 billion, we see 375 different nonprofits that contract with the Department of Health; we see

202 nonprofits that contract with the Department of Human Services. And they have a burn rate of almost \$4 million a day. It's not that our society will collapse because 17 dollar amounts were line itemed out or reduced. What I see is hurt feelings, hurt feelings from my fellow Senators.

"You know, if you only knew how the rest of the world viewed us, they're not nice to you because you're nice guys. They're nice to you because they want money. And when the Legislature has grants-in-aid to specifically named nonprofits for ongoing programs, not one-time affairs, not experiments, but for ongoing affairs, they are undertaking a process that if the executive branch tried to do it, would violate procurement law. And I sometimes wonder, because of comments I hear from the outside world, whether we're using or abusing nonprofits to our own individual advantage.

"You know, the Legislature could have done many important things, but I looked at yesterday's newspaper . . . I'm sorry, I'm referring to the article at the top which said 'ethics enforcer remains undaunted,' failed legislation has not deterred state director. When I look at the failure of the Legislature – and I would have supported a Special Session if we wanted to look at our ethics, which should be called conflict of interest – I would have welcomed the Special Session if we addressed a problem that the good Senator from Kalihi brought to public light."

Senator Baker interjected:

"Point of order, Mr. President. I think we've been very indulgent in having the Minority ramble all over the issue. Can we please ask them to stick to the point of the item before us."

Senator Trimble continued:

"The point of the matter is that there is much wailing and weeping over \$3 million, and yet this body has failed when it could have obtained it from other sources. There has been much wailing and weeping that the safety net has disappeared, when in fact the safety net has not disappeared and all that you are trying to protect is doling out money directly to nonprofits so that there will be a tie between them and you. And that is the way the rest of the world views this body. And if you want to keep that perception going, then continue on your course. I, on the other hand, will vote against the motion on the floor. I will vote to uphold the Governor's veto.

"Thank you."

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

"Mr. President, I stand in strong support of overriding the line item vetoes of S.B. No. 1305, C.D. 1.

"First of all, I appreciate the Governor's support of the important programs that she did approve in this bill. We are funding critical program areas that require our attention and state resources to support our strained safety net of services for our elders, children and families. The items that were vetoed in S.B. No. 1305, C.D. 1, unfortunately also serve to protect our most vulnerable and my hope is that the Governor and her advisors will realize the critical nature of the programs that she has vetoed.

"The areas that were line item vetoed serve children that have been physically abused, neglected, and sexually assaulted. They serve people who have been raped and victims of domestic violence. They serve youth who are homeless, over 1,000 youth in Waikiki alone. They serve youth in Kalihi, approximately 1,500 of them, who live in an area ranked second

to the greatest high risk community in the state. They fund a growing number of uninsured people through our community-based primary healthcare centers. They fund the growing number of elders and disabled in need of alternative long-term day settings so that they may continue to remain in their home. They fund the health needs of our rural communities who rely on our network of rural hospitals for the full spectrum of emergency and other health services.

"Some claim that we are funding new or expanded programs or duplicative services. This is the furthest from the truth. Most of the programs not only have done an outstanding job for years to help and respond to our communities' needs, but have done it in a cost-effective and responsible manner, and in a way that has positively benefited literally thousands of lives.

"As a state, the nonprofit sector, business, and government has pulled together its resources and done so much that we can be proud of with the limited resources we have had for the past decade. The budget cuts over the years have been grueling and the nonprofit sector and government workers have stepped up to the plate to help the people of Hawaii, but they are reaching a point that they can no longer provide these services with insufficient funds in support.

"Some of my colleagues who have spoken today continue to demean and discredit the integrity and efforts of our community and many of our legislative colleagues and legislative staff who have worked tirelessly to shore up our safety net. I would like to invite them to be a part of the conversations and the deliberative process we have gone through, because I have not seen them at these meetings.

"I have also heard that we are not being fiscally prudent by overriding this bill because we have a shortfall. This, too, is furthest from the truth. We established the rainy day fund so that we would not be caught in a terrible situation like we were when Desert Storm was declared in 1991, Hurricane Iniki hit us in 1992, on 9/11, and the closures of our major plantations in '93, '94, and '95. Those were my first five years in office and that's when the people of Hawaii needed our help. I don't want that repeated. Thousands of families were left without jobs, without homes, and with very little hope.

"The rainy day fund was created to protect our most vulnerable during these times when general funds are scarce and world events beyond our control take place. Our recent Iraq War, the attack of our nation on, again, 9/11, and national economic instability in Japan has contributed much to Hawaii's fiscal situation. Fortunately, the Legislature and the former Governor had the foresight to create this rainy day fund so that we would be able to preserve our safety net of services for the people of Hawaii. It was not to balance the budget – it was to help our families.

"We have been able to build the emergency budget and reserve fund to almost \$60 million in the past five years. To me, that was fiscally prudent, and we were one of the few states to use our tobacco settlement money for this purpose. I'm very proud of what you folks have done, including some of my Ministry friends.

"I know that most of you know I personally would have wanted to see more funds invested in our safety net because the need is so great. Most of the items contained in the rainy day bill do not reflect the true need in our community where we funded programs in the thousands of dollars, but in actuality needed hundreds, or in some cases, millions. We can't do it, but we wanted a mechanism in place to help as many people as we could.

“The tactic to discredit and misinform our community, I’m very disappointed. That needs to stop! Our focus should be on caring for and supporting our children, our kupuna, and those who are most vulnerable in our Hawaii ohana. And for the Senate Minority Leader, I welcome the partnership with all of you and the administration to build these services into the core base of our operating budget. And as our economy gets better . . . and it was getting better in 2001. I remember that was the first session we had some freedom to invest in things not by court order, but because it was the right thing to do, and then 9/11 hit again. So, as we get better, as our economy gets better, I hope we do have this commitment to incorporate this into our core. We’ve wanted to do this for years.

“Thank you, colleagues, I appreciate your time and your support of this very important override.”

Senator Hanabusa rose to speak in favor of the motion and said:

“Mr. President, I rise in favor of the override of the Governor’s veto of S.B. No. 1305.

“Mr. President, the speeches by the good Senator from South Maui and my Vice Chair of Judiciary, the good Senator from Alewa Heights, really sets forth the need for the safety net, and I won’t go back and overstate what they’ve stated so eloquently.

“However, Mr. President, the Governor’s veto of S.B. No. 1305 calls into question to me whether there’s procedural flaws, and in addition, whether my good colleagues, the Minority Party who really supports the three sections that she has since rescinded her position on, that they may have to join us with this override in order to effect her policy.

“Mr. President, as you and my colleagues know, Article III, Section 16, is very dear to my heart. As the good Senate Minority Leader said, as some of us disagreed with the vetoes of Governor Cayetano and one of us at least chose to do it in court, and we all knew what he was referring to. He was referring to me. Mr. President, that section was Article III, Section 16, which we are debating right now.

“I would like to share with you, Mr. President, and the other members as to why and how it impacts S.B. No. 1305. One of the things that we do know is that when a governor exercises a veto, or in this case a proclamation which gives notice of her intent to return bills on the 45th day, and thereby giving us, the Legislature, notice of this intent, she has to follow, when she does do this veto, the constitution in the strictest sense. And that is because, if you read all the various types of case law that’s developed over the country, the reason is because the legislative act, the act of making laws, belongs to the Legislature. The only time under a separation of powers that you transgress that, when the governor is able to exercise legislative power, is in the act of a veto. And that is a negative act. In other words, it prevents law. But, notwithstanding, that is the only time that you’re permitted to actually, or the governor’s permitted to invade our branch of government. Now that is the theory and what is behind this.

“What the law says, what the constitution says is that the governor first gives notice, 10 days, and I will say she counted 10 days very well. And the next thing is that she must return the bills on the 45th day. If she fails to do that (return the bills on the 45th day), of course it then becomes law. The other alternative a governor has is to sign a bill and to make it law, or not return it and it becomes law.

“We have before us Gov. Msg. No. 658 dated June 26, 2003, in which the Governor said, this is to inform you, Mr. President,

that on June 26, 2003, the following bill was signed into law: S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, and it is now Act 215. In other words, S.B. No. 1305 is Act 215. Then, by Gov. Msg. No. 693, dated July 2, 2003, S.B. No. 1305, S.D. 1, is also identified. Interestingly, that statement of objections, in that situation, is dated July 3, 2003, though the Governor’s message is July 2nd, but I guess that’s what happens when you’re crossing the International Date Line. And in this message, what the Governor says is, I am returning herewith, without my approval, S.B. No. 1305, entitled: ‘A BILL FOR AN ACT RELATING TO STATE FUNDS.’ That’s S.B. No. 1305.

“Mr. President, you can’t have an Act that is an Act, which is 215, being returned without approval. You can’t have both. And I will tell you, there have been situations, and when I read these cases primarily out of the State of Colorado, I could not understand how the Governor’s objections could be subject to scrutiny, until I read this one. You can’t have both. You can’t have something that is law, Act 215, and saying it’s being returned without my approval – because it’s already been returned with her approval. It’s signed and it is law.

“So, Mr. President, besides the fact that we have that, and then we now have, thanks to the Minority Party, a letter from the attorney general – colleagues who sit on Felix, it is signed by Russell Suzuki – dated July 7, 2003, saying that at the end, and his conclusion is very confusing because Russell Suzuki says, ‘because the Governor will not be exercising her power to line item veto sections 3, 14, and 20, of S.B. No. 1305, by delivering the bill and signed statement of objections, any attempt by the Legislature to override the notice of intention to veto that was delivered on June 20th would be unnecessary.’ And then he goes on to say, ‘S.B. No. 1305 was signed into law on June 26 as Act 215.’

“Now, Mr. President, I know one of my good colleagues across the aisle there said that I didn’t know how to read, but I am reading this and I think I’m comprehending it clearly. First of all, the Legislature does not override the notice of intention to veto. We override whatever bill is sent down – that’s what we override. We override her objections and we enact that bill. That’s the first thing. So that’s a misstatement. But how can we override or how can they say that they sent this bill down which is already Act 215?

“So, Mr. President, the only way we can do this correctly is we are going to have to override these specific items. And for my good colleagues across the aisle, that includes Sections 3, 14, and 20, which the Governor has kindly said she is not going to veto . . . though I don’t know how she can not veto it when it’s already law.

“So, Mr. President, colleagues, if there is anything I have learned, and it’s too bad my younger colleague isn’t there from Kona, who made a comment about being the older person with more experience. He might have been able to enjoy this little lesson in what Article III, Section 16, of the Constitution says.

“Mr. President, I’d also like to say something else. In Judiciary, we had a situation where there was a bill for our consideration which was one that dealt with the recall, and that was a situation where if a bill is enrolled to the Governor and we believe that there is something wrong, we can recall it. The reason I raise this is because after over 100 years of doing it in New York, in the case of *King v Cuomo*, which my members of the Judiciary Committee were provided copies with, the New York Supreme Court said wait a minute, you can’t do that, because it just doesn’t look right. One, it’s not provided for in the constitution, and two, it leads people to believe something is afoot. How can you give it to the Governor and yank it back

and we don't know why or what you're going to do with the bill.

"Mr. President, that's the same thing. This bill was returned to you signed into law as Act 215. You can't somehow miraculously take it back and say it's not law, it's not an Act. Well, whatever it is, the constitution says she is supposed to return it with line items. She did not do that. So, we have to deal with the bill. And again, Mr. President, that's what we work on. It is when that bill is in the possession of the originating house that we get to act. If the bill is not in the possession of the originating house, we don't act on it.

"This bill is in our possession in the form of Act 215 which she sent to you, and based upon that, I would say all of us should vote to override the veto on S.B. No. 1305 so we can clear up this mess. It may have been inadvertent, but it is a mess and we have to follow the constitution. That's what governs all of us.

"Thank you, Mr. President."

Senator Hemmings rose on a point of inquiry and said:

"Mr. President, point of personal inquiry.

"Mr. President, there was a motion to act on all the 20 overrides with one motion. Will we be voting on them individually or are we voting on them in totality?"

The President replied:

"We will be voting on them individually."

Senator Hemmings then said:

"With that in mind, Mr. President, could we have a short recess?"

At 4:45 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:49 o'clock p.m.

Senator Hemmings rose in rebuttal and said:

"Mr. President, in closing rebuttal I'd like to say that this has been a most healthy debate, and I'm very sincere about that.

"The bottom line is the bottom line, and we've all expounded on our perspectives of these things. It's important to note that the safety net is growing, not being made smaller. Even if all of these line items went through, the safety net would continue to grow.

"Second of all, I'd like to acknowledge the good Senator who did say that this funding process for the needy in our society should be general funded and accounted for in general appropriations so they can be a yearly function of this Legislature.

"With that in mind, we believe the Governor has done the prudent thing and we'll stand by her decisions, but we would like to say, as the Minority, that we do think this has been a healthy debate and we'll let the public judge accordingly.

"Thank you, Mr. President."

Senator Chun Oakland rose and said:

"Mr. President, may we have a Roll Call vote."

The Chair so ordered.

Senator Kim rose in support of the motion and said:

"Mr. President, I rise in support of overriding the Governor's veto on S.B. No. 1305, C.D. 1.

"Mr. President, what we have in 1305 is a laundry list of social programs, and we have social problems throughout our State. This is a nonpartisan effort on all of these programs and it affects all of our districts. I don't believe there's any district in the state that is not somehow covered by all of the programs in S.B. No. 1305.

"It's interesting that one of my colleagues across the way would state that certainly this is not the purpose, these programs are not the purpose of the rainy day funds. Well, it's interesting that the Governor would choose to pick and choose only some of the items within 1305. So, while the figure or the sum total of 1305 amounted to \$10.4 million, the Governor chose to veto \$4.2 million of this. So, in some sense, you cannot be a little bit pregnant. It cannot be that this is not the purpose of the rainy day fund. Is it the purpose or is it not the purpose? Is it all of these programs or some of these programs? And are we nickel-and-diming it? Why only \$6.2 million she chooses to fund and not the \$4.2 million? Is the \$4.2 million going to save us from being bankrupt tomorrow? I don't think so, Mr. President. So, I find that problematic.

"Mr. President, whether the agency directors or departmental directors have compassion or not, the fact of the matter is that I support my district. I am elected by my constituents, and my constituents, the people of Kalihi, have certainly for years been told 'no' – no, to improvements to the district, putting all the social burdens within the area of Kalihi. And when it comes time to help the people in Kalihi, those who are at risk, those who need it most, we have said 'no' to them.

"Mr. President, the \$500,000 is not a lot of money for prevention. Mr. President, if many of these programs, as the \$500,000 to help the Youth Service Center in Kalihi, do not go forward, it would cost the state more money. Is that fiscal responsibility? Is that fiscal constraint, where this small amount of money for prevention could cost the state more in our general fund in years to come?"

"The cut in our youth services funding will eliminate or reduce programs that have been part of the community. And it's strange that this cut comes at a time, as was brought up by my colleague from Kahuku, where heightened concern of the ice epidemic is at its high, Mr. President. And at the same time, there's a clear upsurge in gang activity.

"It is tragic that the community that helped launch the very notion of youth service centers will now be without them. This literally means that hundreds of Kalihi/Palama teens who had access each day to after school activities, who previously had taken part in evening and weekend programs, and holiday events will now be left to their own vices during non-school hours.

"Mr. President, this veto will impact Kalihi/Palama, and there is no one who can dispute the fact that if there is any community that needs youth service centers to help the children and the teens at risk, it is Kalihi.

"Mr. President, my colleague from Kauai talked about us who sit here possibly in our ivory towers and in our air conditioned cars and our nice houses, but forget that many of us were not in ivory towers. Many of us grew up in

neighborhoods, we grew up in poor areas. I, for one, Mr. President, if it was not for the youth programs, if was not for the programs at Palama Settlement, I may not be here today. So, I'm just one of many, many youth out there who had these programs, and because of them, I did not become a ward of the state; I did not become a problem of the state, did not cost the general fund more money. And these are the kinds of things that we must think about and we must act upon, Mr. President.

"I urge my colleagues to vote in favor of overriding this veto. Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 3, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

Senator Hemmings rose on a point of inquiry as follows:

"Mr. President, point of inquiry.

"Would it be permissible under the request for a Roll Call vote, which I think we unanimously support, that for the subsequent 19 line item vetoes that we ask the Clerk to record 'no' votes, or do we have to go through this procedure for each bill?"

At 4:57 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:00 o'clock p.m.

Senator Chun Oakland rose and stated:

"Mr. President, I rescind my request for a Roll Call vote."

The Chair so ordered.

The Chair then made the following observation:

"We will now go by consent on all sections. Mr. Clerk."

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 4):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 4, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 4, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 5):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D.

1, Section 5, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 5, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 9):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 9, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 9, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 10):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 10, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 10, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 11):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 11, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 11, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 12):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the

Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 12, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 12, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 13):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 13, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 13, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 14):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 14, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 14, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 17):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 17, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 17, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

At 5:04 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:04 o'clock p.m.

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 18):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 18, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 18, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 19):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 19, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 19, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 20):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 20, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 20, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 21):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 21, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 21, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 22):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 22, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 22, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 23):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 23, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 23, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 25):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 25, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 25, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 27):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 27, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 27, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 28):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 28, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 28, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1 (Section 31):

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Chun Oakland moved that the Senate override the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 31, as contained in Gov. Msg. No. 658, seconded by Senator Hanabusa.

The motion was put by the Chair and carried, the veto of S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, Section 31, entitled: "A BILL FOR AN ACT RELATING TO STATE FUNDS," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

S.B. No. 255, S.D. 2, H.D. 1, C.D. 1:

At this time, Senator Hemmings offered the following amendment (Floor Amendment No. 1) to S.B. No. 255, S.D. 2, H.D. 1, C.D. 1:

SECTION 1. Senate Bill No. 255, SD2, HD1, CD1, is amended by amending Section 2 to read as follows:

"SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§205- Private restrictions on agricultural uses and activities; not allowed. Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural that are subdivided into lots on which dwellings are allowed by county ordinance, and such dwellings are residential rather than agricultural in nature, shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after the effective date of this section, except leases, utility easements, and access easements, that subject such agricultural lands to any servitude, including but not limited to covenants or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable subject to zoning restrictions enacted by the county ordinance pursuant to section 46-4, except that restrictions taken to protect environmental or cultural resources shall not be void or voidable."

Senator Hemmings moved that Floor Amendment No. 1 be adopted, seconded by Senator Trimble.

Senator Ihara rose on a point of order and said:

“Mr. President, point of order.

“In order to have a floor amendment, don’t you need to have a main motion?”

At 5:08 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:14 o’clock p.m.

At this time, Senator Hemmings withdrew his motion to adopt Floor Amendment No. 1 and Senator Trimble withdrew his second.

Senator Hemmings moved that S.B. No. 255 be amended as follows:

“Mr. President, I wish to make a motion to amend this bill. In doing so, to be in compliance with Article III, Section 16, of the Constitution, as we previously stated, we’re in uncharted water here. This is the first time we’ve had a Session of this nature at least since statehood.

“So, in doing so, I would like to move in compliance with Article III, Section 16, of the Constitution that we amend the bill to meet the Governor’s objections.”

Senator Hemmings then offered the following amendment (Floor Amendment No. 1) to S.B. No. 255, S.D. 2, H.D. 1, C.D. 1:

SECTION 1. Senate Bill No. 255, SD2, HD1, CD1, is amended by amending Section 2 to read as follows:

“SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§205- Private restrictions on agricultural uses and activities: not allowed. Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural that are subdivided into lots on which dwellings are allowed by county ordinance, and such dwellings are residential rather than agricultural in nature, shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after the effective date of this section, except leases, utility easements, and access easements, that subject such agricultural lands to any servitude, including but not limited to covenants or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable subject to zoning restrictions enacted by the county ordinance pursuant to section 46-4, except that restrictions taken to protect environmental or cultural resources shall not be void or voidable.”

Senator Hemmings moved that Floor Amendment No. 1 be adopted, seconded by Senator Trimble.

Senator Hemmings rose in support of the amendment as follows:

“Mr. President, here’s an opportunity for the Majority Party to do what is prudent for this piece of legislation, but also to send a message out to the community that this has not been a session of just politics, that indeed we want take bad legislation

and rather than override a veto, we want to improve it. The constitution clearly states that the Legislature may convene at or before noon on the 45th Day, without call, for the sole purpose of acting upon any such bill returned by the Governor. We can either override the veto or we can address the Governor’s concerns.

“I have submitted, as a floor amendment, amendments that do address the Governor’s concern in what everybody agrees is a tremendously flawed bill. We will acknowledge, as the Governor has, that the intent of this bill is laudable. We do want to, and no one, I think, will debate the fact that we want to preserve prime agricultural lands for agricultural use. But this bill goes too far because it preempts leases from having covenants on it. And that, among other things, will severely restrict the state’s ability to issue leases on ag land with covenants to protect the taxpayers and landowners of the State of Hawaii.

“In addition, it would also preempt the conveyance for land that has utility easements, access easements, and other easements. This is a very simple amendment that will allow prime agricultural lands to be protected, while also protecting lease rights and rights to protect the State of Hawaii, most particularly in its ability to manage its lands. It also is worded in such a way that it also complies with the county ordinances, which are the ones that give out permits for housing and dwellings on agricultural land.

“So, it’s a win-win for the counties, who will continue to have the flexibility for land use in their counties. It’s a win for the state that can continue to protect its interest by having codicils in leases. And it’s a win for the people of Hawaii if we do indeed not override the veto but amend the bill and send it to the Governor in its corrected form, as she has requested.

“Therefore, I urge my colleagues to put aside their partisan swords and to address the issues and vote on the merit of it. This amendment has merit. It demands passage.

“Thank you, Mr. President.”

Senator Inouye rose in opposition to the amendment and said:

“Mr. President, I speak in opposition to the proposed amendment to S.B. No. 225, C.D. 1.

“Mr. President and colleagues, I believe this amendment comes a little too late. We’ve had numerous hearings and changes, hence reflects S.D. 2.

“Mr. President and colleagues, I believe, and I remind all of us, in the process of public input and scrutiny of any bills, that both houses legislate. And that’s what the legislative process is all about. Amendments to any bills before us today are circumventing this process. The public deserves better.

“S.B. No. 255, C.D. 1, was one created by they agriculture community and supporters in general. I also believe this amendment is a home rule issue relating to the counties and their zoning laws, and we should hear from them as well.

“I ask my colleagues to reject this amendment. I will, Mr. President, and my Committee will be happy to work in addressing concerns on this bill and make the necessary changes in the upcoming Session of 2004. Therefore, I ask my colleagues to vote ‘no’ to the proposed amendments.

“Thank you, Mr. President and colleagues.”

Senator Whalen rose in support of the amendment as follows:

“Mr. President, I rise in support of the amendment.

“I’m sorry, I was thinking, pondering what the Agriculture Chair was saying as I formulated my thoughts, as I said, in support of the amendment. Mr. President, obviously, this is well within our rights and obligations as this body to reconsider the action that we took to take into consideration what the Governor has, the concerns that she expressed. This is really the first time we’ve done it and it seems out of the ordinary because we’ve never really gone after a Governor’s veto except for the age of consent, and for that, it was basically philosophical difference of opinion that he had.

“But just as we’re going to hear with the auditor’s bill, how the very same bill, the concept, was vetoed last year under Governor Cayetano, the argument is going to be made today that we fixed that bill and that’s why it’s back again this year.

“There’s no reason why we can’t fix this bill right now. The problem with the bill as written . . . and actually we did hear it. I was on the Committee and I’ve heard it, and I heard it numerous times that it’s overly broad, that it encompasses too many things. And in this particular case, what we’ve done here, all the testimony and support that has talked about residential homes in ag lands puts these restrictive covenants in there to stop people from basically having a farm.

“The amendment restricts it to residential areas, which is what the concern was, and limits it down so that you don’t have a situation, which under this bill, the bill as written . . . and I won’t repeat this, don’t worry, before anyone gets excited about point of order. I want to talk about the original bill here for a minute that we’re going to try to override the veto on. That is so broad that you could have an area where someone puts restrictive covenants in for an organic farmer, or native Hawaiian plants, etc., but let’s just stick to the organic farm for a moment. They sell the lots. Someone starts growing organic food with all that and the cost involved, the intensive labor. Right next to it, someone puts up a GMO, genetically modified cornfield. Even though there’s covenants and this landowner invited these guys and sold that farmland for that purpose, there’s nothing that the covenant could do to stop this under the bill that’s before us right now that we’re going to try to override.

“You could have an ordinary farm right next to it and the guy’s got certified organic right next to him, you got the other guy who plants it and he says he’s going to grow organic. He buys the land, ‘ah, I change my mind. It’s cheaper, it’s faster, I’m just going to start spaying pesticides and fertilizers all over.’ Well, there’s nothing that organic farmer can do, even though he loses his certified organic farm because the of the over-spray, etc., etc.

“This bill that we passed out, there were complaints, there were concerns, and even now, the farm bureau and others are saying we need to fix it. Why wait a year? Why not fix it right now with a bill that the Governor has indicated addresses her concerns? We can fix it, pass it out, and be done with it and we don’t have to go back and rehash it next year. This is the proper course of action. There’s no reason to say, ‘eh, just pass this bill.’ We know there are problems and we’ll deal with it next year when we have the answer sitting on our desk.”

Senator Hooser rose and said:

“I have a question for the Minority Leader. I wanted to know if the Governor has reviewed this amendment and indicated her support?”

The President posed the question, and Senator Hemmings replied:

“Good question. The Governor is in Japan. We proposed and discussed several amendments and this was the one that the Governor agreed to and thought that in order to comply with her veto message and comply with Article III, Section 16, of the Constitution, this would be the prudent thing to do. That’s the answer to your question.

“Thank you.”

Senator Hooser then rose in opposition to the amendment as follows:

“Mr. President, I rise in opposition.

“I’ve got many concerns about this amendment and I’ll try to focus most of them on the amendment and save the more extensive remarks when we discuss the bill in its entirety.

“I believe, with all due respect to the people who drafted the amendment, that it is poorly written, is contrary to state law, and actually would perpetuate the very thing we’re trying to limit. First of all, HRS, Chapter 25, states in the state land use district regulations, they only permit farm dwellings within the state agricultural land use district. Every home in the agricultural district must in fact be a farm dwelling. By law, there’s no difference between a residential farm-dwelling and a farm farm-dwelling. In fact, I’m not sure if every county is a case, but in the County of Kauai, every building permit has to sign a farm dwelling agreement which says that the people constructing the home have to be farmers and in fact have to derive an income. So I believe this is contrary to law by allowing some kind of distinction when in fact existing law says there is no distinction.

“Secondly, by allowing that there is a distinction or by trying to support that, what we’re really doing is validating the very thing that we’re trying to restrict or trying to get a handle on. We’re validating that it’s okay to go in on agricultural land, prime land, and otherwise, and build houses and not be a farmer. By that distinction, I think we support that and that’s contrary to the intent of the bill.

“Furthermore, by trying to say, to define who’s a real farmer by not a farmer, we’re saying the nature of their dwelling, and I know some real farmers who have some really, really nice dwellings. So, just because someone has a nice house doesn’t mean they’re not a legitimate farmer. And just because someone has a house that looks like a farmer, doesn’t mean they are a farmer. We can’t judge. And that’s where it gets muddy.

“We have many, many subdivisions in my district that might have 100 different lots or 100 different homes. You can look at some of those dwellings and say, there’s a farmer. You can look at others and say, there’s not a farmer. And you don’t really know.

“With all due respect, I appreciate the support of the intent by the Minority members in recognizing the serious importance of this issue in our state, but this particular amendment, I am not able to support.

“Furthermore, we’re talking about the bill says private restrictions. It doesn’t say public restrictions. It’s my

understanding that public state leases or county restrictions are allowed. This restricts private restrictions.

“And also, it allows very clearly – very, very, clearly – that the counties can pass ordinances to make exceptions. So if a GMO farmer, or an organic farmer, or whoever, any developer that wants to can go to the county governments and ask them for exceptions to this rule. And that’s where the power and the authority should be. It should be with the people who live on that island. The big problem with agricultural subdivision phenomena is there is very little control, very little public input. And what this does is put that input where it belongs – into the communities where the people live, into those communities where the real farmers are.

“So, for those reasons and others which I may touch upon when we talk about the main motion, I encourage my colleagues to vote in opposition to this amendment.”

Senator Whalen rose in rebuttal and said:

“Mr. President, yes, this is a rebuttal.

“With all due respect for the Senator from Kauai, I think he misreads the amendment, because just as he described in the testimony and as we discussed this bill during the Session, he talked about homes being built up in these gentleman farmer places where it’s more of a residential area that they’re trying to build up using that excuse. And there’s a bunch of them in my district where they have gotten the county to approve stuff where there’s a bunch of houses on ag land and they put the ag area somewhere else on this parcel of land. And it doesn’t say residential homes versus agricultural homes. It talks about agriculture or nature. And any of you who have rural districts with large plots of land will know exactly what this bill is talking about.

“The counties do it all the time because for instance on the Big Island, you can have your home, you can build an ohana home, and you can have a worker’s cottage. Well, the worker’s cottage has to be related to the farm, but the home and the ohana next to it doesn’t have to have anything to do with the farm. You don’t have to be a farmer. They’re just homes on there. And many developers have used those exemptions throughout this state, especially our rural areas, to take ag land and build up these gentleman farmer places, basically subdividing it trying to get around the rules, and then they put these restrictive covenants in there to stop them from actually having a farm because people there aren’t really interested in farming. They’re just looking for an open space; they’ve got the money to buy larger sections of land.

“Well, that’s what this amendment deals with. Those kinds of developments cannot have any restrictions on them. And that’s all the examples that were given to us throughout all the hearings, including the Senator from Kauai. The only thing this doesn’t encompass are legitimate farm areas where you’ve got these non-development areas with homes and ohanas and everything else developers use to build up these subdivisions and ag zones.

“Both the original and the amendment have much of the local control. The Senator said that the other one is better. But they are the same, so that’s not the issue. The issue comes down to, as I described earlier, the way the current bill is, the reason why the Governor vetoed it, and the reason why she will sign this one, as she said, is because this one allows for reasonable restrictions on agricultural land that are agriculturally related. But if it’s going to be a residential type subdivision, etc., no, forget it, there’s no restrictions. And that deals with the objections we heard during the hearings. It didn’t

just pop up now. It deals with the concern that we all have about losing ag land, and it accomplishes the purpose of settling the situation.

“The problems that . . . and I don’t know where one of the other speakers came from, but I’ve heard it over and over again that all interested parties say this bill is flawed and we’re going to have to address it next Session. Let’s address it now, send it to the Governor, it’s signed, and we won’t have to deal with it anymore. And that would be the proper and wise course of conduct.

“Thank you.”

Senator Inouye rose and said:

“Mr. President, I call for the vote.”

The motion to adopt Floor Amendment No. 1 was put by the Chair and, Roll Call vote having been requested, failed to be adopted on the following showing of Ayes and Noes:

Ayes, 5. Noes, 19 (Aduja, Baker, Bunda, Chun Oakland, Espero, Fukunaga, Hanabusa, Hooser, Ige, Ihara, Inouye, Kanno, Kawamoto, Kim, Kokubun, Menor, Sakamoto, Taniguchi, Tsutsui). Excused, 1 (English).

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Inouye moved that the Senate override the veto of S.B. No. 255, as contained in Gov. Msg. No. 686, seconded by Senator Hooser.

Senator Inouye rose in support of the motion and said:

“Mr. President, I rise to speak in favor of an override of the Governor’s veto of S.B. No. 255, C.D. 1.

“This measure prohibits private agreements that restrict agricultural activity on lands classified as agricultural lands, except where necessary to protect environmental and cultural resources.

“With the decline in the State’s production of sugar and pineapple, the future of agriculture in Hawaii lies in diversified agriculture. But the industry faces obstacles in its efforts to develop and succeed. As reported in the media yesterday, more and more prime agricultural land is being lost to housing development. When farmers and homeowners live in close proximity, conflicts in lifestyle may arise, leading to the imposition of restrictions on agricultural activity, including height restrictions on crops or windbreaks, restrictions on equipment usage, or limits on the number of farm animals that may be kept. These restrictions make it difficult, if not impossible, for farmers to farm.

“If farmers are not allowed to farm, how will we, as a state, meet our constitutional and statutory mandates to promote and develop our agricultural industry? Article XI, Section 3 of the State Constitution states, in relevant part:

‘The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.’

“In addition, the Hawaii State Planning Act mandates that planning for the State’s economy be directed towards achieving, among other objectives, the growth and diversification of agriculture throughout the State and assuring the availability of

agriculturally suitable lands with adequate water to accommodate present and future needs.

“The Governor’s veto message states that this measure is too far reaching and prohibits landowners from placing any restrictions on agricultural use. This simply is not true. The measure authorizes the counties, pursuant to their zoning powers, to allow or disallow restrictions, and further provides that restrictions for the purpose of protecting environmental or cultural resources are not void or voidable. Therefore, the administration’s objection to the bill is flawed.

“In the numerous hearings before both houses, there were really no opposition to this bill. This measure is the result of the grassroots efforts of citizens throughout the State who are concerned about the future of diversified agriculture in Hawaii. People like the Wootens from Anahola, Pari Korn of Naalehu on the Big Island, the Braytons of Lahaina, Maui, Lisa Ferentinos of Waimanalo, Oahu, and dozens of others, farmers and non-farmers alike, who wish to see our agricultural lands protected and preserved.

“I urge my colleagues to support their efforts and to vote in favor of an override of S.B. No. 255, C.D. 1. And Mr. President, I close with asking for a Roll Call vote. Thank you.”

Senator Slom rose in opposition to the motion as follows:

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

“So what we have here is a bill that is not disputed. There are flaws in the bill by some of the very people that were the sponsors – the agricultural community. We had an opportunity to amend this bill and fix this bill, and it was voted down because that’s not what we’re here for today, to fix things. We’re here to override the Governor and that’s all, not to have solutions.

“The question, the issue of home rule, it was kind of interesting. I heard two of my Democratic colleagues, one was complaining because the amendment would not have provided home rule, the other was complaining because the counties would have the ability to make changes. So, I don’t know where their position is on home rule. I know that the amendment would have protected this. The Governor would have signed this bill.

“Instead of saying, well, we know it’s flawed but let’s go ahead and pass it anyway because we’ll fix it next year. We’ve done this for 40 years and God must really like lawyers because he’s created so many of them and they do so well, particularly by the Hawaii Legislature. We should take pride in the work that we turn out, solve problems when people are willing to get together, but yet that’s not, again, the overall objective of this not-so-special Special Session today.

“As to the question of whether this bill is overly broad, it is an opinion certainly. Some of us believe that it is overly broad and that it causes some unintended consequences. Others do not. Fair enough, it’s a certain amount of discussion that we could have, but people are not seeking discussion or solutions on this today.

“The thing that I find the most interesting, however, is that during the past 40 years during one-party rule, when all of the major laws were passed by that party, the idea was to protect agriculture. Was it protected? No. The idea was to preserve it. Was it preserved? No. The idea was to expand it. Was it expanded? No. So, the very same people that want to override this Governor’s veto today, that do not want to fix the flaws in the bill today, are the very same people that talk about for 40

years they were in control and they have had the policies and the laws that have led to the loss of agriculture.

“We all here are pledging that we want to save agriculture. We want to save agricultural usage. But we want to do it by legitimate bills that have legitimate answers and solutions. And as far as the grassroots effort, I think that the main push for this bill we all know comes from environmental advocacy organizations who, for their own reasons, are pushing this. They’re not thinking about all of the people. If we talk about all of the people, it’s true, we do have a problem of people that want houses versus people that want agriculture.

“But as I say, with all the laws that we have passed and all the pontifications we’ve made, all the wonderful statements that have come out of this body, we’ve continued to lose agriculture because we have not looked at it from a proper standpoint and we’ve passed flawed legislation. And if you override this veto, you’re going to continue that process.

“Thank you.”

Senator Baker rose in support of the motion and said:

“Mr. President, I rise in support of the veto override of this measure.

“Mr. President, I received an e-mail from a constituent who happens to be of the same party persuasion as the previous speaker, and it so eloquently pointed out the reason we need to override this veto. I want to share it with my colleagues. She writes:

“This important bill will encourage Hawaii’s growing diversified agriculture industry, one of Hawaii’s fastest growing industries, and protect agricultural land from inappropriate uses. Some alleged agricultural developments place restrictive conditions, covenants, and other CCRs, including imposing height restrictions on growing crops in agricultural subdivisions and other private agreements, that restrict or even prohibit bona fide agriculture activities on agricultural lands. When such CCRs are proposed, real farming operations become difficult, if not impossible.

“Please support the Constitution of the State of Hawaii, which supports our farm community and also promotes diversification of our economic base. How can farmers survive if restrictive covenants won’t let them farm their lands. Every day, our farm families face a growing number of complaints from people who are not farmers, but who vocally complain about the smell, noise, fertilizer application, or blocking of views.

“This is not about politics,” she goes on to say, “it is about the survival of a way of life for those in Hawaii who do not believe that we should put all of our eggs in one basket. I remind you of an American farmland trust bumper sticker that says: “No farms, no food.” Why should we sustain ourselves on imported produce when we have so much abundance here in Hawaii.

“Please override the Governor’s veto of this bill. Your vote may be the only thing that helps save farming in our State. Sincerely, Joanne Johnson, Maui County Council, Parks and Agriculture Chair”

“Thank you, Mr. President.”

Senator Hooser rose in support of the motion as follows:

“Mr. President, I rise in support of this measure override.

“In terms of the flaws, and everybody acknowledges that there’s flaws in this bill, I would want to state for the record that everybody certainly doesn’t acknowledge flaws.

“Just a short time ago on June 30, we did have a public hearing. Some had mocked it in various ways, but we did have an opportunity for the public to come forward and talk about this bill and many other bills. And on that day, it was talking about the veto override. It wasn’t talking about the bill as we talked about in the past. And on that day, we had the Kauai Farm Bureau tell us strongly, please override this veto. We had the Maui Farm Bureau say emphatically, we want this veto overridden. We had the Hawaii Farm Bureau Federation say the same thing – they said this is an important bill; we want you to override this veto. We also had the Hawaii Agricultural Research Center, formerly the Hawaii Sugar Planters Association. These are real farmers. They said the same thing. They said the need for this legislation is immediate.

“This was overwhelmingly the testimony that we’ve gotten. And I, for one, would like to thank the environmental community for getting behind the farmers, and getting behind the people, local people, that live in the community and are tired of seeing their lands taken out of agriculture.

“Before I go any further, I’d like to take just a moment and thank the good Senator from Hilo, the Chair of the Committee on Water and Land for shepherding this bill through a very complex process. And for the members of the House on the various committees who also made significant contributions. A lot, a lot of work has gone into this bill – a lot of thought, a lot of discussion. I counted up the number of times, I think there was 12 opportunities for public input, all in all, between the House and the Senate.

“S.B. No. 255 is a good bill. This is a bill that supports our farmers, protects our agricultural lands, and helps to preserve our rural lifestyle and local culture. Not all of you might be able to relate to rural lifestyle and local culture, but certainly the neighbor island Senators and the Senators who represent country areas here can relate to that.

“S.B. No. 255 is a bill that will in fact help keep the country, country. Where I live, each day we lose more and more country. In the past 10 years alone, I’ve seen nearly the entire North Shore and East Shore of my island gobbled up by rapid development, most of which has occurred on agricultural lands under the guise of the so-called agricultural subdivision.

“In some places, entire ahupuaa from the mountains all the way to the sea have been taken out of the hands of real farmers and real ranchers and turned into gentleman estates. Some people would call them fake farms – places where little or no farming at all takes place, or because of restrictions it’s virtually impossible to do any real farming. And I would repeat that state law requires every one of these people to sign a document or I should say state law requires that these people farm the land.

“The proliferation of these gentleman estates has resulted not only in the critical loss of good agricultural land, but it has driven up the cost of all ag land, good and marginal, driven up the cost so high that it is virtually impossible for local residents and for real farmers to find affordable land to farm. Farmland is no longer priced based on its agricultural use potential but is priced on view plains and the exclusivity of the gated neighborhoods.

“To make matters worse, these agricultural subdivision gentleman farms are putting into place increasingly restrictive covenants that restrict and effectively prevent real farmers from actually doing any meaningful farming at all. Examples of restrictions include limitations placed on the height of trees that you’re allowed to grow (you need GMO trees just to make sure the height doesn’t go above the restricted covenant), prohibitions against wind breaks, against smells and noise that would be typical on most real farms. I’ve seen clauses and ag subdivision requirements that prohibit all farm animals, now listen to this, okay, these are agricultural subdivisions required by law to people who are supposed to be farming and there are covenants that prohibit all farm animals except those approved by design committee. Okay, try visualizing that – the farmers all lined up with their chickens and cows getting them approved by the design committee.

“I’ve got a book here, Agriculture Hawaii, full of ads and articles about farming. It advertises machinery in buildings. Most of this stuff is not allowed on these agricultural subdivisions. Most of the stuff doesn’t pass muster with their restrictive covenants.

“Another clause prohibits animals, okay, now you have to listen closely, animals that make loud or repetitive noises. Okay, this is an agricultural restriction. I’ve got them right here if you’d like to look at them, an agricultural restriction on property zoned for agriculture that’s required by state law that they have to farm the land and there’s a covenant that prohibits animals that make loud or repetitive noises. So, the cow can moo as long as it’s not repetitive mooing. Another prohibits barbed wire. Another says it’s against the rules if you allow your hay to blow in the wind. And still another bans unsightliness, okay, unsightliness on a farm. And then it defines a greenhouse and/or shade-house as unsightly.

“The State’s public policy regarding the importance of agriculture in Hawaii is clear and unequivocal. Article XI, Section 3, of the State Constitution states, and I’m going to repeat it. I know it’s been said already once today, but I’m going to repeat it because I think it goes to the core, the absolute core of this debate today. ‘The state shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. The Legislature shall provide standards,’ I’ll repeat that, ‘the Legislature,’ that’s us, ‘shall provide standards and criteria to accomplish the foregoing.’ The proliferation of these types of agriculture restrictions have made a mockery, a mockery of the state’s efforts to preserve and protect agricultural land, and thus, a mockery of our State Constitution.

“These types of restrictions are what this bill is designed to prevent. This bill simply says that private restrictions limiting agricultural use of agricultural lands are not allowed – private restrictions. Exceptions are allowed, it’s very clear, for restrictions authorized by county ordinance. The bill also allows exceptions in order to protect environmental or cultural resources. If any county wants to allow certain restrictions, they can.

“This bill is prospective. It’s not retroactive. Any project in place now will not be impacted by it. Any developer, any landowner, anybody whatsoever who thinks this is too broad or they want to have a restriction, they can go to their county council and they can ask them. They can put their restriction before the public and the public can then decide, the county government, if it’s in the public interest to do that.

“If any property owner feels that their project needs restrictions to be successful, and some have already said that,

they can seek an exception, either through the counties at any time, or they can come back to us at the Legislature through the regular legislative process.

"It's been said in many, many forums that this bill is going to prevent agriculture subdivisions. This bill is not going to stop or prevent agricultural subdivisions, but it will require those subdivisions to allow real farmers to farm. This bill will help keep the country, country.

"In the Governor's veto message, the primary reason given for the veto is the bill is too far reaching. Mr. President, colleagues, members of the public, I believe this statement demonstrates a fundamental difference in values between the Governor, between the Minority Party, and between those of the rest of us in this room today. It's a difference in values when it comes to preserving our agricultural lands and supporting our farmers. While the administration believes far reaching is a bad thing, I and many other people in this body believe that far reaching is a good thing. We believe that we should go as far as we can to support our farmers, to preserve our agricultural lands, and to keep our country, country.

"This is about a fundamental difference in values. This is not about politics and it's not about making anyone look bad. This is about supporting farmers and protecting agricultural lands.

"While the Governor would like to veto this bill and pass something later on that is less far reaching and contains more exceptions, we are here today to say that we disagree. We are here today to say that we support this bill. We are here today to say we support the farmers of our state who have overwhelmingly asked us to override this veto.

"This bill received unanimous support by both Majority and Minority members in both the House and the Senate twice, in Third and Final Reading. There are some members here, both in the Majority and Minority Party, who have voted on it four or five times in Conference Committee and Committee, and voted yes every single time. Everyone in this room has already voted unanimously for this bill on two separate occasions.

"The bill has no – zero, zip, nada – no budget implications. The Governor's message is flawed as it states the bill does not allow any agricultural restrictions. This is not true, as we've said before. Exceptions are allowed by county ordinance and for environmental and cultural reasons.

"Again, the Kauai Farm Bureau, the Maui Farm Bureau, the Hawaii Farm Bureau Federation, Hawaii Agriculture Research Center, the Sierra Club, and many, many others have testified repeatedly in support of this bill and all are requesting a veto override. We have received hundreds of e-mails, letters, and faxed testimony from people all across our state, urging us to override this veto and pass this very important piece of legislation.

"This is a very important piece of legislation. Some would say more important than any one we're dealing with. It hasn't gotten a lot of attention because it doesn't affect the budget. We probably got more testimony, I certainly have, more fax testimony, more e-mail, and more letters than any other bill.

"Passing this bill today will put an immediate stop to the continuing deterioration of our valuable agricultural lands caused by this abuse of ag restrictions. Those developers again who feel they deserve exceptions are free to request them from the counties.

"I urge all of my colleagues on both sides of the aisle to put personalities and politics aside and to focus and think purely on the underlying merits of this particular piece of legislation. If you believe as I do that this is a good bill, that it will support farmers and protect agricultural lands, then please vote as you already have done unanimously twice before. Please vote in support of the override. Support our farmers and support keeping the country, country.

"Thank you."

Senator Trimble rose to speak against the motion and said:

"Mr. President, I rise in opposition to the veto override.

"Eloquent words from the Senator from Kauai. I do support agriculture. I think that the intentions of this bill are excellent. The unintended consequences of this bill, and I'll just say three that were given to me, and you know, the country is filled with attorneys and they have different opinions as to what the bill will do. You did state very eloquently the most absurd in the restrictions and I don't disagree with what you said.

"The three examples that I would put is that the Department of Agriculture of the State of Hawaii thinks that this bill, if it became law, would restrict them from having conditions or restrictions in the leases that they issue. Here we have a difference of opinion.

"The second item is that you could put non-compatible uses next to each other and that would have undesirable consequences.

"The third one has to do with easements. It is entirely possible that an easement for access is considered a restriction that would not be allowable under this law.

"So, for these three reasons, and I believe that the information that was given to me by the administration is honest, straightforward, is accurate, have led me to come to a different conclusion than you have. But we both do, in our hearts, support the agricultural industry in Hawaii and want to see it continue.

"Thank you, Mr. President."

Senator Whalen rose in opposition as follows:

"Mr. President, I rise in opposition to the motion.

"Believe it or not, I wasn't going to say anything because I felt what I had said had already been said. Most of you said, golly, what did we do to make that mistake to get him up again. Well, let me tell you. It was the speech from the Senator from Kauai, the statements in there. The one that really got me going was his statement that this clearly reflects a difference in his philosophy, the Majority Party's philosophy, and the Minority's philosophy.

"I've been working hard to save agriculture in this State long before he was elected to the Legislature and have worked very hard on various issues. Most of the stuff that was talked about, even the e-mail that the Senator from Maui read, has nothing to do with this bill. It has to do with the right to farm bill, which I actually authored but for some reason it didn't pass, maybe because there was an R after my name instead of a D. But it didn't get anywhere, and I even worked with some Democrats, etc., and it got shot down in Judiciary because again, you know, interests are what they are. The Majority Party shot it down. And it was a true right to farm bill that would deal with these

issues so we wouldn't have to piecemeal it out like this. If you're a legitimate farmer, you can do what farmers do, period.

"Now, that was when I was in the House. Now I'm talking about the Senate. Keeping the country, country – that's what this bill is going to do. I say baloney, because nobody buys into it. And those of you who are from more urban areas might not understand. Five acres sounds huge, but you cannot have a viable family supporting farm on five acres. No matter what you're growing, unless it's like marijuana or something. But other than that, you can't do it.

"So, anyone who's buying into these lots like that are not legitimate farmers that are going in there to diversify, etc. They're folks going in there because they like the country lifestyle and they may want to grow some crops to keep it under the ag zones, or classification for property taxes, or just to kind of be nice. It's more of a relaxation or a hobby than it is to be a real farm. That doesn't mean that they're not quote, unquote, 'farmers.'

"However, the other Senator from the Big Island who spoke up, who I was reprimanded earlier, or the amendment was reprimanded, that it talks about residential or agricultural in nature versus residential in nature. In her speech she talked about when homeowners and farmers live in close proximity. That's even a greater blurring of the issue because the farmers generally are homeowners, and yet we're pitting homeowners against farmers that somehow they are incompatible with each other and have natural conflicts.

"The thing that bothers me, Mr. President, about this and all this talk about working together and being nonpartisan, that amendment that was offered dealt with the over-breadth, the vagueness and the broadness of this current bill, which was testified to, which there was opposition to in the hearings at least that I was at, maybe in the House or somewhere else there was none. And there are farmers who didn't get the invitation to come testify at the hearing last Monday who are very concerned about this and agricultural people. Because when it's explained to them, unlike that e-mail from Maui that talks generally about the right to farm and people trying to shut you down with the smells and the chickens and all that stuff, which they are attacked on constantly, this has solely to do with restrictions on the land when you go in there to lease it as such. The amendment clearly took care of that.

"And the statement by our friend and colleague from Kauai, that it doesn't deal with the state, is wrong because it says private agreement. The agreement between the state and an individual leasing an agricultural lot from the state is a private agreement. Just because the state is involved doesn't somehow make it a non-private. And the state has numerous restrictions on what you can grow, how you can grow it, what types of products you can grow, whether or not you can sell them on the property which is also an agricultural activity because if you can't sell them, why grow them.

"So, there's 101 restrictions that the state puts on, legitimate, everyone would argue, but this bill will wipe it out. And it doesn't just take care of properties that are . . . down the line, for instance, if there's a restriction on your property right now, it will stay there. It says, anything that gets filed in the Bureau of Conveyances once this thing passes, it's on out. So, for the leases and whatnot that the state has, or if you go to sell your property or anything else, all those covenants are now gone automatically once you file that new ownership, which you have to if you're dealing with real property.

"You guys are getting bored I realize, and I will stop because it's getting late. But I wish for once that we could have honest

debate and honest discussion. The amendment was offered. If the issue was not enough time to review it, I could clearly understand that and appreciate the desire to get real accurate input before we amended it. But there was just a shotgun thing saying this doesn't do it. Matter of fact, this is even worse because it will cause a proliferation. Well that's a flat out mischaracterization and absolutely wrong.

"The amendment does take care of the issues, and in my mind, solve the problems that this current bill obviously has by any sort of rational reading of it. And then to hear the same folks say that we need to work together and that one party's got different philosophies than the other, etc., that doesn't sound very bipartisan, or asking for everyone to get together onboard. Some of the other stuff you can't help it – she's a Republican Governor . . . Republicans, Democrats, whatever. But this one, I felt this was our one shot to really work together because we do all care about this. And there was an amendment that took care of the concern, took care of the Governor's concern. Other years, we would have simply let the veto ride and fixed it the next year. This year we're trying to do something different and it still gets shot down willy-nilly, namby-pamby by an off-the-cuff I don't think it will do the job, and everyone votes no. Not everyone, 19 people voted no. That doesn't sound bipartisan. It sounds extremely partisan from my thinking and I'm just very disappointed of this issue, of all of them, that we're still so partisan on it. It just amazes me."

Senator Ihara rose in support of the motion and stated:

"Mr. President, I rise in support of the veto override for S.B. No. 255, C.D. 1.

"Mr. President, I consider this bill, in part, a landmark county home rule bill because I have a lot of concern about the examples of restrictions given by the Senator from Kauai that should not be allowed. I also want to note, though, that the counties can allow exactly those restrictions that he pointed out. A county, by county ordinance, can by this bill ban the height of trees. A county can, still under this bill, ban windbreaks; can ban activities that cause smells. A county can ban barbed wire and greenhouses and blowing hay. A county can even ban farm animals that not only smell, but make repetitive sounds. I wanted to point out that even with this bill, a county can allow restrictions that we intend to not allow.

"So, it does give the counties the power to allow those restrictions. I wanted to point it out, and I speak in favor of overriding the veto. Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 255, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Hemmings, Hogue, Slom, Trimble, Whalen). Excused, 1 (English).

HOUSE COMMUNICATION

Hse. Com. No. 1, informing the Senate that the House has reconsidered H.B. No. 282, H.D. 2, S.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 2, 2003, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, is entitled, was read by the Clerk and was placed on file.

MOTION TO OVERRIDE VETO

H.B. No. 282, H.D. 2, S.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Taniguchi moved that the Senate override the veto of H.B. No. 282, H.D. 2, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 690, seconded by Senator Kim.

Senator Taniguchi rose in support of the motion and said:

“Mr. President, I rise to speak in favor of the motion to override the Governor’s veto of this bill.

“Mr. President, members, H.B. No. 282 is a measure that would grant the state auditor the ability to conduct financial statement audits of all departments, offices, agencies, and political subdivisions of the state. This measure, if enacted, would allow the auditor to be reimbursed by these agencies for conducting such audits. I firmly believe that this bill should be enacted.

“The Governor states in her objections, quote, ‘by allowing the Legislative Auditor to decide unilaterally when to conduct or contract for financial audits of the executive branch agencies and then to claim reimbursement for the cost of all such audits, this bill invites duplication and waste of limited resources for the many departments, offices, agencies, and political subdivisions that must budget for and schedule their own audits.’

“I believe the Governor’s veto is misplaced. First, the auditor will not unilaterally decide when to conduct these audits. Article VII, Section 10, of the State Constitution clearly states that the responsibility of conducting financial post audits, as well as audits of transactions, accounts, programs, and performance of all departments is that of the state auditor, not the departments themselves. Clearly, the responsibility of financial oversight of our state government is to fall in the hands of a separate branch of government, not within the hands of the agencies themselves.

“During last year’s campaign session, the Governor was obviously convinced that this was the right thing to do, as she included in her campaign doctrine, a new beginning, the following promise: ‘As Governor, within the first 180 days of my administration I will authorize a complete independent audit of the state’s finances in cooperation with State Auditor Marion Higa.’ Now, the Governor claims that this mechanism invites duplication and waste of limited resources and that, quote, ‘if the Legislature wants the legislative auditor to conduct more audits of executive branch agencies, it should appropriate sufficient funds directly to the legislative auditor for that purpose.’

“Again, the Governor is incorrect in that it is not the intent of this measure to have multiple financial audits conducted. Funds for single financial audits, as required by federal law, are already budgeted by this Legislature within each department’s budget. This measure would simply reallocate the expenditure of these funds to the auditor. To further clarify this position, I will propose in the next supplemental budget a clear reduction of audit funds in each department and the transfer of such funds to the state auditor.

“Finally, I would like to point out that this bill pass the Senate with an overwhelming 23 to 1 vote when this bill passed Final Reading.

“For those reasons, I urge everyone to support the override of this bill. I also request a Roll Call vote.”

The Chair so ordered.

Senator Slom rose in opposition to the motion and said:

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

“First and foremost, certain individuals have tried in recent days and weeks to make this into a battle or a contest between the Governor and the legislative auditor. Let’s make sure that we understand very clearly that that, in fact, is not the case, has not been the case. The Governor had expressed her respect and admiration for the legislative auditor for many years, during the campaign, after the election, during the Legislative Session.

“Personally, I’ve probably known the legislative auditor, since I’m a classmate of hers, for more years than anyone else in this body. I, too, have a great respect and on many occasions have spoken about the good work that the legislative auditor has done. I’ve also chastised my colleagues for not implementing the work that she had done and the departments for not taking seriously the results of the audits. So, let’s just make sure that that’s not part of the issue, that there is no problem in terms of personalities or problems in terms of the respect or integrity for the auditor. The Auditor does a terrific job.

“But let’s also understand clearly that prior to the Legislative Session and during the Legislative Session, the Governor had met with the Auditor and with the Chair of the finance committees, and a proposal was made to increase funding for the legislative auditor so that in fact she could double her management audits. And somehow, some way that wasn’t done.

“There is an issue of separation of powers. We can argue that and debate that, but again we’ll allow probably the lawyers to do that. Whether or not it is in the purview of the legislative auditor to have financial audits of the state executive branch, I personally think that that is not in the purview for a number of reasons. One, is that the auditor, while that office has the power of conducting both financial and management audits, the overwhelming kinds and types of audits that have been done have been management audits. They are costly; they take a great deal of time, but they have been done very well. Maybe that’s part of the reason why the office did not want to take on more responsibility for more management audits.

“Secondly, in terms of the state providing financial audits, while we have criticized the state and the past administration for its spending and for things that it has done or has not done, I don’t think there’s been criticism specifically of the financial audits that were done. And, as a matter of fact, to my recollection even during past administrations, the financial audits in terms of form and substance garnered national awards in terms of what they were supposed to do. And I would fully expect that this administration, this executive branch will continue in that vein.

“So, it is a question of what are we trying to find by the audits? The Governor has pledged transparency and full accountability. She hasn’t changed from that. So, I guess the issue is whether or not we need the legislative auditor to duplicate the efforts of the executive branch audits in order to provide that transparency and accountability.

“To date, I don’t know of anyone that has raised the issue that there is not accountability and that there’s not more transparency in this administration than there ever has been in the past. So I don’t think that that is an issue. I don’t think that the folks that are directly involved and charged with the responsibility of the audits will change what they’re doing

unless they change for the better and make the audits more open, more transparent.

“The question of funding, though, is an interesting one. The first bill that we always pass every year, whether the financial conditions are good or bad, whether it’s raining outside or not, the first bill we always pass is the bill to pay ourselves, cause we do have our priorities straight – pay us first, make sure we get our money. And included in that bill are the appropriations for all the legislative agencies, including the legislative auditor.

“Now, it would seem to me that the honest and best way of providing additional financial responsibility for the auditor would be to provide the funding in that bill, in that initial bill that provides funding for all of the other activities. But instead, the proposal is to take the funding out of the executive branch, out of the executive departments. Again, number one, we would have duplication; number two, I don’t know whether we would get anymore accountability or anymore independence. I don’t see that the problem has been raised. But we do have a problem in terms of cost and primarily because what we have basically done in this bill is to give the legislative auditor a blank check. She can go in to contract out the cost of any audit and then bill the executive departments for that audit. That is money that would be further taken away from those departments, including the Department of Human Services, the Department of Health, that would go for other projects. It’s got to come from somewhere.

“Again, if we really felt honestly that the department should have more money – I’m speaking now of the legislative auditor – then that appropriation should have been specifically spelled out and put into the initial appropriations bill, but we didn’t do that.

“So, in looking at what are the pluses and the minuses here, I don’t see that the pluses will occur by adding on to the responsibilities beyond the legislative duties and the management audits that are required now. Again, I go back to the real point – if we want to have savings, if we want to have accountability, if we want to have results, then we’ve got to implement the studies because the legislative auditor has no power of enforcement. Maybe we want to look at that. Maybe that’s the direction that we should be going in.

“In any event, I don’t think we should be going into a direction here creating a problem that in fact does not exist, and for these and other reasons, I would oppose the override of the veto.

“Thank you.”

Senator Hanabusa rose in favor of the motion and said:

“Mr. President, I rise to speak in favor of overriding the Governor’s veto on H.B. No. 282, C.D. 1.

“Mr. President, contrary to my good friend from Hawaii Kai, the issue here is not a separation of powers issue, and let’s first begin by understanding where this auditor’s bill came from. My good friend from Hawaii Kai knows very well where it came from. It was when the Felix Investigative Committee did its investigation which resulted in the settlement with the Kapiolani Health Systems. As a portion of that settlement, the Legislative Auditor was to be reimbursed. And we’ve discovered at that time that there was no way that the attorney general’s office could reimburse the auditor for the work she did on the investigative committee. And like everything else, like the override of vetoes of the former Governor, it causes us to pause and go back and check the fundamental document that governs us all – the constitution of this state.

“Mr. President, the obligations of the auditor is set forth not in the legislative portion of the constitution, but in Article VII, Section 6, which speaks to none other than taxation and finances. That’s Article VII. Section 10 of that provision speaks to the auditor and it says, ‘It shall be the duty of the auditor to conduct post audits of the transactions, accounts, programs, and performances of all departments.’ And it goes on and on. This is separate and apart from what we, the Legislature, may ask the legislative auditor to do because that’s in the following section or the following sentence. So, when the people of this state enacted the constitution, they decided that it would be the auditor, and the auditor would have this responsibility and she is to report not only to the Legislature, but also to the Governor when she does these audits.

“We’ve heard about the duplication of services, Mr. President. So, to look at the duplication of services, I went to Article V of the Hawaii State Constitution, which talks about the executive branch. It’s got to be in there if we’re duplicating services or if we’re even arguing that it’s a separation of power. Executive branch departments are given authority in accordance with statutes. Now, we all know the constitution overrides the statutes. The constitution has said it is the auditor’s responsibility. Notwithstanding, 26-6 talks about the Department of Accounting and General Services or, as we call it, DAGS. DAGS has a provision that says it shall pre-audit and conduct the after-the-fact audits of the financial accounts of all state departments – the financial accounts. Now, even if we were to say, well maybe that’s the same, go back to Article VII, Section 10, and it’s the duty of the auditor to conduct post audits of the transaction, accounts, programs, and performances of all departments, officers, etc., etc., etc. Her responsibility, which the people of this state, not us, has given her – not the Legislature by enacting an HRS Section, but under the constitution of the State of Hawaii is to conduct these audits.

“So, Mr. President, to say that this is a duplication of service, to say that this is a separation of powers issue is not true. This is a bill that is long overdue that fulfills all of our obligation under the constitution and one that overrides any other provision of HRS, because it is the auditor who the people of this state has said shall conduct these audits. And that overrides any department of the state.

“Now, how it’s financed, as we all know, it’s going to have to come from the departments. And as the good Chair from WAM has said, he will reallocate these resources because he is mindful, as he has stated in his speech, that there is a requirement under the constitution that we fulfill this.

“Again, this is not something that talks about whether the administrative branch should do it or the legislative auditor do it. This is in the constitution, a constitutional mandate, one that I think over the years we may have ignored, but one that has now been brought to our attention and we cannot ignore because the constitution is what governs all other laws of this state.

“Thank you, Mr. President.”

Senator Slom rose in rebuttal and said:

“Mr. President, rebuttal.

“I always appreciate the lessons from the good Senator from Waianae, and especially today since we find out that the Majority is learning so many things that they were ignorant of before and they’re turning around. For example, they were ignorant that last year the Governor, Governor Cayetano, vetoed the bill which was not even as egregious as it is today. To

blithely say that there is no separation of powers issue does not make it so. There could very well be an issue that is raised and an issue that is discussed.

"I would find it very difficult for any chief executive of this state, regardless of political party, to agree to a bill such as this. And all we have to look at is the former Governor, a Democrat, who vetoed it, very quickly, and the Republican Governor now. Both make basically the same argument. The issue of what the legislative auditor is to do is intriguing also because of the term post audits. And one must ask the question, what exactly is a post audit? And is the post audit the same thing as a financial audit, which is being sought in this bill. And I would argue that in fact it is not the same thing.

"I would also argue that in terms of the departments, the departments themselves have conducted, as I've said, in both prior administrations and the current administration, that which is required of them, while the current legislative office has also talked about how under pressure they are in terms of trying to do their primary responsibility, which is the management audits ordered by this Legislature. The fact remains that in terms of cost, we are giving the legislative auditor a blank check, and people might suggest that it is proper that the departments pay to be audited twice. Again, that is an arguable point but we don't know how much that is. However, if there were an appropriation in a general appropriation bill, then in fact the auditor's office would come forward and would discuss what the cost would be, how many audits there would be, what the average cost is, and so forth. We don't have that. It's not in this bill.

"And also, I think we have a situation where basically we should understand that the auditor's office would be faced with two options. One is to continue to contract out the audits, as is done now by her office as well as by the state offices, or two, to ramp up and staff up by adding a lot more staff which adds a lot more additional cost and live bodies to state government. We don't know what the process is going to be because the legislative auditor's office has not disclosed that. And I think it's something that basically we should understand.

"So, the fact that the argument has been made that it was ignored or overlooked for years, I don't think is a very substantial argument because I know how wise and experienced my colleagues are and they wouldn't have ignored it or just overlooked it or not been aware of it unless all of a sudden now, for other reasons other than what we're discussing today, they find it to be extremely important. Again, I reiterate our absolute and strong and unwavering support for the legislative auditor and the work that she has done and the work that she will continue to do, but if the idea is to gain more accountability, more transparency, then also what we have to do is perhaps look at giving her additional tools.

"That brings me to the final point of rebuttal, and that is that the good Senator brought up the Felix Investigating Committee, a committee in which I am proud to be a member of. And yes, we have heard of the frustrations that the auditor's office has suffered in terms of trying to get information for this legislative body. But that frustration has not come because this bill did not exist. In large measure, the frustration came because a federal judge protected his appointees or people that were coming under his jurisdiction and refused to allow subpoenas to be issued by the legislative auditor. In terms of executive departments, such as the Department of Education, the Department of Health in the past, again, subpoenas and requests for information by the legislative auditor in the Felix matter were not observed.

"This leads one to believe two things: (1) we certainly needed a change in these departments; and (2) the Felix Investigating Committee should continue to do its work and to have additional powers so that we in fact get the answers. But in no case is this bill going to impact and help us in that area. What it will do is duplicate, it will raise the question of separation of powers, and it will cost additional money.

"Thank you."

Senator Hanabusa rose in rebuttal also and said:

"Mr. President, a short rebuttal please.

"Mr. President, my reference to the Felix Investigative Committee was not in context of the frustration. My reference was, the reason why this whole issue came to be was because we could not accept that the legislative auditor could not accept the monies which were appropriated or which the attorney general wished to have appropriated to her as a result of the settlement because she had no mechanism and the revolving fund is part of this bill.

"As to the statements about this is not a separation of powers issue and then the good Senator from Hawaii Kai disagrees, it is not, because it is not stated as such within the constitution. That's why it's in a different section of the constitution.

"With respect to the statement that it has nothing to do with financial audits. Mr. President, I do wish that he would read the constitution. It says it shall be the duty of the auditor to conduct post audits of the transactions, accounts, programs, and performances of all departments, offices, and agencies in the state and its political subdivisions and to certify to the accuracy of all financial statements issued by the respective accounting officers and to report the auditor's findings and recommendations to the Governor and the Legislature at such times as shall be provided by law. The financial audits, which you find in Section 26-6, as to DAGS are really technically subject to the legislative auditor. So, it is the same thing. As a matter of fact, it may be the step ahead of that, which is to insure that what we are getting in terms of reports are accurate.

"Mr. President, it makes sense. The people of this State when they enacted this provision of the constitution wanted an independent assessment, not the executive branch looking at itself. They wanted an independent assessment. It just happens, by the way it's structured, that yes her budget comes under the Legislature, but this is a separate mandate within the constitution.

"Thank you, Mr. President."

Senator Kim rose in support of the motion and said:

"Mr. President, I rise to speak in support of overriding the Governor's veto on H.B. No. 282.

"Mr. President, our good Senator from Hawaii Kai said that all of a sudden it seems like we think this is important, this bill is important. Well, obviously we thought it was important last year, under another administration, and we think it's important this year. We thought it was so important last year that we went and fixed the bill. We fixed the bill, and based on candidate Lingle, at the time, who knew that the Governor vetoed the bill also said, as it was brought up by our Senator from Manoa, that she supported audits by the state auditor. And as such, we went ahead and fixed the bill.

"Now, I'm tired of hearing from my colleague, as well as from Mr. Randy Roth, that Governor Cayetano vetoed a similar

bill last year for basically the same reasons and that was exactly what our colleague from Hawaii Kai also said. Well, that is not true, Mr. President. I have here the veto message from Governor Cayetano and let me read why he vetoed this bill:

‘This bill is also objectionable because there are no criteria for determining what a “reasonable” fee may be. For example, it is not clear whether the Legislative Auditor would be allowed under this bill to pass the cost of an outside auditing firm plus a surcharge to the audited entity.

‘Finally, this bill is objectionable because \$275,000 is appropriated from the general revenues of the State into the newly created audit revolving fund, but section 5 of the bill appropriates \$600,000 out of the audit revolving fund. There is no indication whether the Legislative Auditor will receive an additional \$325,000 during the fiscal year to cover the balance of the appropriation.

‘For the foregoing reasons, I am returning House Bill No. 1821 without my approval.’

“The Governor’s message, this current Governor’s message, she vetoes for two reasons. One, it is unduly cumbersome and potentially wasteful. And the other reason is that if the Legislature wants the legislative auditor to conduct more audits of the legislative branch agencies, it should appropriate sufficient funds directly to the legislative auditor. No mention of any of these things that Governor Cayetano vetoed because it’s not in the bill. All of the objections raised by Governor Cayetano were taken out of the bill. It was fixed and it was changed and it went up to the Governor. And based on her campaign rhetoric to us that she said that she in fact supported audits in cooperation with the state auditor and in fact said she would do it within 100 days of her administration, instead vetoes this very similar measure within 180 days of her administration.

“Mr. President, I urge all of my colleagues to support this measure that doesn’t just span this administration, but also the Democratic administration. Thank you.”

Senator Trimble rose in opposition to the override and said:

“Mr. President, I rise to support the Governor’s veto and oppose this override.

“The statements have been made before; I’ll make them again. Before I start, I think I was the one Senator that opposed this measure, so I’ll own up to it.

“The Governor vetoed the bill last year. A few minor changes were made. The Governor again vetoed essentially the same bill this year. There are several problems. Problem number one is you don’t have to look very far beyond the title. We call the office the legislative auditor. It’s funding should be appropriated through that of Act 1.

“When I worked for the State of Hawaii in the executive branch, I had the chance to deal with the legislative auditors office three times . . . interesting experience. The third time I was still naïve and said, well, this time (it wasn’t a she then, it was a he) he will issue the first positive management report about a state program. And I spent weeks of time with the auditors and then there was no feedback. And so, come November, I called the legislative auditor’s office up. I was dealing with Dallas Wyland and I said, ‘what happened?’ He said ‘there will be no report.’ ‘What do you mean there will be no report?’ He says, ‘Well, you don’t understand. We’re not here to say nice things about anyone.’

“As soon as the Legislature ends we start the process and identify 120 potential audits. After six weeks of investigation, we cut it to 60. We start going looking in depth. After two months, we cut 30, and then we write the report in depth and the most egregious examples of mismanagement in the State of Hawaii. That is their function. Their function is to give us, the Legislature, the ammunition we need to improve programs and hopefully, through public exposure, embarrass public agencies into improving their performance.

“The legislative auditor is a tool of this body. If we want her to expand her work, then we should appropriate it. Yes, when Governor Lingle was running for the office of governor, she said that the legislative auditor did important work, and she did contact the legislative auditor’s office, as the Senator from Hawaii Kai said, and offered to allow her to increase the amount of funding to allow her to do twice as many audits. I suggest to you, based on my experience that the reason why the legislative auditor didn’t take up the offer was that she already had enough of the nasty stuff and doubling it would not produce the same number of headlines.

“The next problem I have with this besides separation of powers is that the reason why DAGS has contracts to do audits with accounting firms, with CPA firms, with external – and we’re using the word a little bit differently than Marion Higa used the word when she asked for the override – the CPA firms are external to the state government. There is a set of standards by which they comply, but from DAGS’ point of view, they want that accounting firm to be accountable in terms of meeting deadlines. They don’t have that option if it is done by the legislative auditor. They do lose control and they are afraid when they lose this control, that the bond rating of the State of Hawaii is in jeopardy and that receipt of federal funds is in jeopardy. It is a legitimate argument. I please hope you consider it.

“The last thing and last reason why I voted against the bill was a little bit of cynicism. I saw two other bills that come out through the Legislature and it looks like the Legislature was in an empire-building mode. The first one transferred or sought to transfer the conducting of tours; the second one had to do with the selling of the Journals; and the third one was dramatically expanding the scope of the legislative auditor, and I just thought it was bad public policy. So, for these three reasons, I oppose the bill and I oppose the veto override.

“Thank you.”

Senator Baker rose in support of the motion and said:

“Mr. President, I rise to support the effort to override the veto of this bill.

“Just a point of clarification, since our colleagues on the other side of the aisle seem to be constantly referring to the position as the legislative auditor. This is the state auditor. Actually, the references in both the constitution and the original organic HRS document, and subsequent revisions, all speak to the auditor. To call that office holder the legislative auditor is to imply that somehow the Legislature controls that office. That’s not the case. The duties, as outlined by the Senator from Waianae, clearly indicate that there’s a degree of independence from legislative influence. That office has been vested with certain independence both from the constitution and in the HRS giving that position additional power and authority in the audit function. She’s not beholden to the Legislature. She’s appointed by the Legislature and her budget is authorized as an agency of the legislative branch, but her role is clearly that of a statewide watchdog.

“Thank you.”

Senator Kawamoto rose in support of the override as follows:

“Mr. President, I rise in support of the override of H.B. No. 282, H.D. 2, S.D. 1, C.D. 1.

“Mr. President, no one is above the law – no agency, no government agency is above the law. The law that we make here stands whole. We have some agencies up there that try to interpret the law and run with that interpretation and make rules.

“Mr. President, the bottom line is that accountability and openness is best achieved by audits administered independently of those being audited. The powers of the auditor should be enhanced in order to maintain accountability and transparency in government operations, of which I’m the Chair. As Legislators, we have the responsibility to ensure that public funds are well spent in the intent and manner in an effective way.

“I urge my colleagues to join me in overriding the veto of H.B. No. 282. Thank you.”

Senator Slom rose and said:

“Mr. President, I’ll be brief . . .”

Senator Hanabusa interjected:

“Mr. President, point of order.”

The President then stated:

“Senator Slom, you have spoken twice.”

Senator Slom then said:

“Oh, I can’t rebut the short rebuttals of all the rebuttals that were made?”

The President then stated:

“You are out of order.”

Senator Slom continued:

“Sorry, Mr. President, I hate to be out of order when I’ve been rebutted so many times incorrectly. Thank you, Mr. President.” (Laughter.)

Senator Hogue rose in opposition and said:

“Mr. President, I stand in opposition to the veto override and I stand in favor of the good Senator from Hawaii Kai.

“One argument which I believe is cogent to this has not been brought up, and it really speaks to the separation of powers. Whether or not we call this person the legislative auditor or the state auditor, the point is that the state auditor is funded by the Legislature, and her work, or if it’s a him, his work, is reviewed by the Legislature. So, there is this separation between the legislative branch and the executive branch. Therein lies the potential for a conflict of interest with the way that this bill is written right now.

“In my short tenure as a certified public accountant, I learned about conflict of interest. If there is even the appearance of conflict of interest, then you’ve got to stop the audit. And here,

there is the appearance of a conflict of interest because the auditor or the legislative auditor, whatever we want to call this person or this department, would be obtaining funds or would be reimbursed by funds from the department in which he or she is trying to audit. You can see where we have the appearance of a conflict of interest. Would information be forthcoming if that department knew that somehow their funding might be problematical? I think that there would be an appearance of conflict of interest there, because certainly there would be the possibility that monies or time spent would be hurried along, maybe the answers would not be most forthcoming. There would be all sorts of problems that could be considered, potential conflict of interest.

“So I think that the Governor is absolutely right on the money when she says that there is a potential for separation of powers here. And that is an issue. It’s a very, very strong point. By you crossing the line and allowing the auditor to actually be funded by the people that she is actually auditing, you have crossed this separation of powers.

“So I think that you should really consider this point, which I think is totally appropriate when you consider your vote.

“Thank you, Mr. President.”

Senator Kim rose in rebuttal as follows:

“Mr. President, I rise for a short rebuttal.

“Mr. President, I really couldn’t follow our last speaker when he spoke of a conflict of interest by the auditor being funded or being reimbursed by that department. These departments already have money allocated for audits. These departments already have to pay an auditor to audit the department. According to the constitution, that auditor should be the state auditor. So, when you talk about there being a conflict, it really behooves me to understand that argument.

“The audit of the HTA was funded and reimbursed by the HTA. I don’t see anybody dragging their feet or not putting things into that, and that there’s a conflict of interest because the HTA had to reimburse the auditor for the audit. The money was already appropriated within the HTA for an audit. It’s just a matter of who would conduct this audit. Certainly that holds no water. And the fact that she is funded by the Legislature . . . well, so is the Governor’s Office. Everybody’s funded by the Legislature.

“Also, it surprises me that the Governor, when she was campaigning, didn’t bring up anything about separation of powers or that it would be a duplication of services. Clearly, she states as Governor, ‘within the first 180 days of my administration, I will . . .’ She didn’t say I will meet with the auditor and offer to double her budget, she said, ‘I will authorize a complete independent audit of the State’s finances in cooperation with State Auditor Marion Higa.’ And she also spells her name correctly. She says, ‘Financial accountability and openness are essential if government leaders are to make sound decisions and then be held accountable for the actual results. They are absolutely necessary to break the vicious cycle of corruption and favoritism in state contracting and to restore trust and integrity in government service.’ And it goes on to the next line to say, ‘As Governor, in the next 180 days, I will (and the very first bullet is) authorize this complete independent audit.’ And it does not mention anything about duplication or waste of monies, or so forth and so on.

“So, it really behooves me that all of a sudden if Marion Higa does this audit, somehow, somewhere it’s not right or it’s

a conflict, or whatever. So, if we talk about petty politics, certainly this may be right for that.

“Thank you.”

Senator Trimble rose in rebuttal as follows:

“Mr. President, two short things. The first one is that if it’s not politics when the Governor vetoed last year, why did not we come into Special Session?

“The second thing is, and it gets back to separation of powers and an ongoing discussion. I mentioned earlier that the person from the legislative auditor’s office that I met was a fellow by the name of Dallas Wyland. Over time he became the deputy auditor, then in ’98 he left the State of Hawaii and went to Oregon. I want to read a statement from him because it has a bearing. He is referring to the Governor’s veto: ‘I support your veto of the bill that would allow the state auditor to have a revolving fund to bill agencies the cost of audits over which agencies have no control. I worked in the State of Hawaii’s auditor’s office until 1998. Now in Oregon, we in the Legislative Fiscal Office have concerns about our own secretary of state audit division’s ability to pick and choose audits and bill state agencies for time and expenses, all without state agencies being able to influence or control costs. Here, the only audit cost containment efforts reside with the Legislature through the budget process.’

“Thank you.”

Senator Hogue rose in rebuttal and said:

“Mr. President, I also rise in rebuttal and just to clarify my remarks.

“I think that the potential, once again, for conflict of interest is there. And I think it’s very cogently been brought up by the good Senator from Waikiki and that is the ability for the auditor to pick and choose. Yes, monies are appropriated by departments for audits. They are constantly auditing themselves to try to manage their accounts much better.

“If suddenly some of the audits by the state auditor fell by the wayside, would in fact these departments be best served? And so, therein lies another potential problem besides the obvious conflict of interest. Because if in fact there is this idea of headline grabbing, and maybe in some cases it actually goes on, then those departments where the headline can be grabbed, there is this potential for the appearance that those departments will be gone after willy-nilly.

“So, just because of that appearance, we should not go forward with this particular bill. So Mr. President, once again, I urge my colleagues to vote ‘no’ to the override.

“Thank you.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 282, H.D. 2, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE AUDITOR,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 2 (English, Whalen).

At 6:51 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 7:02 o’clock p.m.

S.B. No. 768, S.D. 1, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kanno moved that the Senate override the veto of S.B. No. 768, S.D. 1, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 688, seconded by Senator Menor.

Senator Kanno rose in favor of the motion as follows:

“Mr. President, I rise to speak in favor of the override of the veto of S.B. No. 768, C.D. 1, relating to collective bargaining.

“This measure reinstates binding arbitration for public employees in certain bargaining units in the event of an impasse between the employer and the exclusive representative of the collective bargaining unit.

“Some see this measure as being pro-management because public sector unions would not be able to strike. Others see it as pro-union since the specified units will never have to go on strike to resolve labor issues. In truth, Mr. President, this measure levels the playing field between the employer and labor union. If the unions retain a right to strike, the employer could easily prolong negotiations, consequently saving money and eventually assenting to modest pay raises in the end that are paid for with the savings. Meanwhile the union rank and file are forced to forego paychecks which could take years from which to recover. I believe that this is not the basis for sound management of public sector resources.

“Current law in Chapter 89, Hawaii Revised Statutes, requires the arbitrator to consider the financial ability of the employer to meet the costs awarded in arbitration, without predicating the award on an increase or imposition of new taxes, fees, or charges, or the tapping of special funds. This ensures that an arbitration award will be fair and reasonable to the employer, without causing a deficit in the general fund. The same assurance is not present in a strike situation. A strike could very well place the State in not only financial jeopardy, but also adversely affect the health, safety, and general welfare of our community.

“Mr. President, a strike by public employees would have a devastating effect on the State. Police, fire nurses, and corrections officers have all retained the right to binding arbitration and those critical services are not at risk of suspension from a strike. This measure would extend that same right to other public employees. The arbitration system has a proven track record. Final and binding arbitration should be and is a means of last resort to resolve contract negotiation impasses.

“Some may argue that the right to strike is a fundamental right of the working person, and in some cases, it is the only tool an employee has to bargain with. Unfortunately, as recent public and private sector strikes have shown, nobody wins in a strike . . . particularly a protracted one. Although I may never be able to convince my colleagues who adamantly support an employee’s right to strike, I believe that in the case of public sector strikes, the adverse effects caused by such a strike go beyond just affecting the employer. The public-at-large, through no fault of their own, suffers from strike. I believe that the damage to the public is avoidable since there is a more constructive means of achieving a settlement to a labor dispute. Binding arbitration is the modern way to negotiate and to bring about a mutually favorable outcome for all parties without disrupting government services. An override of the veto of this measure is in the best interest of the public, its employees, and the State.

“Mr. President, I would like to request a Roll Call vote.”

Senator Slom rose in opposition to the motion and said:

“Mr. President, I rise in opposition to the override of the veto.

“Several years ago, a number of us participated in collective bargaining and civil service reform. That’s one of the few things that the former Governor and several of us were in total agreement with – the need to control expenditures, the need to have a fair and equitable situation between public employees and the state government.

“There is a right to strike given the public employees and ideologically and philosophically I oppose that right. If I were given the opportunity to vote on it, I would vote against it. However, it is a right. It is a right and it has been utilized by public employees in the past.

“The process of binding arbitration was thought to be, and as the last speaker said, a modern means of taking care of these situations as a position of last resort and saving the public. What the last speaker did not say, however, is that it is a win-win situation for public employee unions and a lose-lose situation for the taxpayers who even though they are never represented at the bargaining table wind up picking up the tab for all of this. Why is it a lose-lose situation? Because the unions have absolutely nothing to lose. When they go to binding arbitration, despite the standards and the course of conduct that the arbiters are supposed to use, the unions always come in with a figure that they want, regardless of what the fiscal implications are or what the fiscal condition of the state and its taxpayers are. And historically, every usage of binding arbitration in this state has resulted in a figure that was far superior to what the so-called employer, the state government, was able to provide and was advocating at the bargaining table.

“So, from the union’s standpoint, it’s a great ploy – you don’t have to strike; you negotiate or do collective bargaining in a haphazard way; and then you go to binding arbitration and you always, always get a higher salary and a higher increase.

“Now, the right to strike is a right that we have given our public employees, and it is also something that comes with risk, because for a union to decide that they’re going to strike, first of all they have to talk to their members and have general agreement that they’re going to have support from their members. Secondly, they have to convince the public and the Legislature that the reason that they’re striking is because they have no other means. Thirdly, they have to worry about if they can recoup, even with salary increases, what’s going to be lost during the time of the strike. Historically and traditionally, no one, no one wins during a strike, and yet they have to take that risk and they have to weigh those factors. With binding arbitration, in fact, there is no risk, there’s nothing to do.

“Well, what is this bill all about? Again like so many of the other bills we’ve discussed today, it is saying in your face we don’t want any changes. We don’t want the reforms that have been activated. We don’t want to live under the conditions that we’ve had for two years. And let me remind you, for two years, we have had a situation of strikes and no binding arbitration for the units that are now seeking to restore this law. And primarily, let’s face it, we’re talking about the Hawaii Government Employees Association and their leader, Mr. Okada, who cries wolf every day and threatens the people – we’re going to shut down this, we’re going to shut down that, we’re going to shut down everything else – even though he knows full well that they and his members have a contract

through June 30 of next year. But still, it’s threats because that’s what they like to do, threaten the people and threaten the taxpayers of this state.

“So, to think that they honestly come to the bargaining table, and honestly, collective bargaining is wrong, however, when they’re faced with a choice that they have to have good evidence and good resolve to strike, they’ll think twice about it. With binding arbitration, don’t have to think about it at all because they’re going to continue to get the rewards of those arbiters.

“The arbiters, yes, they have a number of different things that they’re supposed to look at, but they are not forced to look them. And as I say, the primary thing that they do not look at is the state’s financial ability to pay.

“We, during this past Legislative Session, took a position that no warm bodies were going to be lost, but at the same time, no salary increases were going to be granted because the money is not there. If you have binding arbitration, even if the money is not there, the state is under an obligation to find it. How can they find it? The only way possibly is to tap into special funds or to raise taxes, a move that this union has supported continuously – to raise taxes and to tap into funds.

“It is also interesting, Mr. President, that this is not a union supported move. It seems to be the HGEA and Mr. Okada that continue to come before us and say that we must have this. We don’t have people on the streets demanding it. We don’t have problems that have been created. We do have negotiations that have gone on, and this would be a step backwards for collective and civil service reform.

“I urge my colleagues to think very carefully about this before you overturn this veto, because you’re not overturning the Governor’s veto, what you’re doing is overturning any kind of civil service reform that we worked long and hard to preserve in this state.

“Thank you.”

Senator Espero rose to speak in support of the motion and said:

“Mr. President, I’d like to rise in support of this measure to override the veto.

“The right to strike versus binding arbitration – both sides have compelling reasons why their position should be moving forward. However, when you look at it from a very simple point of view, I looked at two questions: which method will provide a timely, cost-effective, organized, civil response and result where we will get a contract, and which method will have the least negative impact on the people of Hawaii. And if you just look at these two questions, I think the answer is obvious that binding arbitration is the best way to go.

“It’s been mentioned that we do have binding arbitration already for hundreds of public workers in our unions, and this measure will just add to that list. If you look at the Governor’s veto message, I quote, ‘Public worker strikes inconvenience the public and are hard on public workers and their families. Elected officials and labor leaders all have strong incentive to avoid them. In short, public worker strikes are a no win proposition.’ Then she goes on to say, ‘Assuming appropriate modifications and limitations could be agreed upon by myself and the four county mayors. Binding arbitration perhaps could be extended to other government workers in a way that would prove beneficial to the affected workers, to government employers, and the public.’

“Unfortunately, when the Governor hears this, we have a good bill in front of us today. That’s what we’re voting on. We don’t have to wait for the Governor to provide us with one because this has been an issue that the Legislature has tackled for many, many years, and I urge all of my colleagues to support this measure to override.

“Thank you, Mr. President.”

Senator Trimble rose in opposition to the motion and said:

“Mr. President, I rise in opposition to overriding the Governor’s veto.

“Just two bills ago we were talking about home rule and doing what the counties wanted. It seems that in this issue of binding arbitration, the four counties would prefer to keep the status quo. And if we were concerned about the fiscal condition of the counties, we would honor or at least listen to the comments of the mayors. That is the first reason why I oppose the override.

“The second one has to do with reasons that have already been stated that this is not universally supported by the public labor unions in Hawaii.

“The third reason is that it appears to be a giant step backwards.

“The fourth reason is that given our current financial shape and condition, if we’re going to do it at some time, we should not consider doing it now. It would be fiscally irresponsible for us to allow a system that appears to be a situation where salaries can be increased without consideration of the ability of the state to pay them.

“For those four reasons, I oppose the override. Thank you.”

Senator Kanno rose in rebuttal as follows:

“Mr. President, I rise in rebuttal.

“I’d like to quote from the Hawaii Revised Statutes, Section 89-11, subsection (f), and this is our current law: ‘An arbitration panel in reaching its decision shall give weight to the following factors and shall include in its written report or decision an explanation of how the factors were taken into account.’ It then lists 10 different items that must be met. One of which is: ‘The financial ability of the employer to meet these costs; provided that the employer’s ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues.’ One of the other points is: ‘The present and future general economic condition of the counties and the State.’

“So, if the arbitration panel is following what the law mandates that they do, they cannot require the state or the counties to raise taxes in order to afford the decision of the arbitration panel. That’s an important point for us to move forward on. This is in our statute now for those sectors of the employees that are currently covered by this law – police, fire, corrections officers, emergency personnel – and this section would be in effect for those bargaining units that were being discussed today and there are no changes to this section.

“Thank you.”

Senator Hemmings rose to speak against the motion as follows:

“Mr. President, I rise to speak against the motion to override the veto to S.B. No. 768, regarding binding arbitration.

“This bill by far and away has the most devastating, the overriding of this legislation has the most devastating effect on the Hawaiian economy and on the state budget. It makes the \$3 million allegedly put back into the budget in 1305, pale by comparison. What we do have, in discussing this issue, is we have evidence, precedence in history. And the facts are, under the terms of mandated binding arbitration, we have added not tens but hundreds of millions of dollars to the state’s obligation for public worker payroll. This is not a one-time appropriation. It goes on, and on, and on. This will have a devastating effect if we do not do what is prudent here as the Governor is requesting.

“In regards to some of the other utterances from those supporting this veto override, there was one quote from the veto override message, but it conveniently omitted the guts of the Governor’s message. I will summarize, not reading the whole thing, by saying this has a perverse effect on encouraging both sides to take extreme positions, making negotiated settlements an exception, rather than the rule. Under a system of binding arbitration, recent negotiations often have been effectively replaced by decisions of third party arbitrators. This has dramatically reduced the accountability of union leaders and public officials.

“The idea that one of the criteria, as pointed out by the Chairman of the Labor Committee, that they’re not supposed to raise taxes to pay for these arbitrated settlements begs the question, Where will the money come from? If we do indeed not raise taxes for this, then obviously the money would have to come out of existing cash flow. If we do not have the money, which the State of Hawaii due to tax and spend policies of the Majority Party does not have, then it will have to come out of other programs. Are we going to take it out of the human service budget?

“I might even warn good labor leaders that are sitting in the balcony tonight listening to this argument, do you want to follow the path of California? Ask public workers what’s happening to them up there. Do you want to get to the point where the state is broke and we literally have to lay off public workers in order to make ends meet? You and I both know that is not what we want to do, Mr. President.

“I would say that we should stick with a system that has proven success where both sides have a vested interest in negotiating a reasonable settlement. If we had a history or arbitration did come out with something reasonable, we would consider it. But the facts are that arbitration all too often splits the baby in half, which results in a huge increase in the cost for labor wages.

“Let’s work constructively together. To the credit of some of the labor leaders in this year’s negotiations, they recognized, after the Governor showed them the books, we did not have the money for pay raises. Is that going to continue? I think not.

“I would suggest it’s in everybody’s best interest, especially organized labor, to negotiate and preserve their right to strike as a tool and incentive to have the state bargain in good faith, rather than face the alternative, as they are doing in California now, where they have to reduce wages, they cannot meet payroll, and they have to lay people off. The State of Hawaii is solvent because we have a Governor that’s willing to make difficult decisions. Once again, the State of Hawaii has arrived at this position where we cannot afford to meet our budget requirements due to circumstances beyond our control, but

more than ever, due to the tax and spend policies of the Legislature for years now.

“To summarize, it’s in everyone’s best interest not to override this veto. The financial impact makes the rest of our work today pale in comparison. I urge you to do what is fiscally prudent and what is fair, and ultimately what’s in the best long-term interest of taxpayers and public employees – vote against this veto override.

“Thank you, Mr. President.”

Senator Menor rose to speak in favor of the motion as follows:

“Mr. President, I’d like to speak in favor of this veto override.

“Mr. President, the previous speaker has represented or contended that overriding the Governor’s veto with respect to this measure would have a devastating impact on our state. I would respectfully disagree and submit that not overriding this veto would in fact have the devastating impact on the people of Hawaii.

“I think that what we need to recognize is the fact that another public employee strike in the State of Hawaii would really have a detrimental impact on the quality of lives of many of the constituents whom we represent. And if we in fact are genuinely committed to serving the public, then it seems to me that we ought to be supporting the override of the Governor’s veto of legislation which attempts to steer state labor management disputes away from destructive strikes and instead into a situation where we can avoid disruptions in the kinds of activities that occur in our state.

“I would remind my colleagues that one example of this would be the 1994 strike which seriously affected and harmed various segments in our community. One result of that strike, for example, was the fact that the Bureau of Conveyances had to be shut down, which meant that important real estate transactions, including mortgage recordings, and the filing of loan documents and title documents for the purpose of closing home sales could not be conducted. If this were to occur today, many consumers whom we represent, including those who are benefiting from refinancings and who therefore are saving millions of dollars through that process, would be hurt as a result of a public employees strike. The shutting down of these kinds of services could also have a ripple effect throughout the economy if it hurts not only our real estate industry, but also our construction industry as well.

“I would also like to point out that other vital public services that were affected by the 1994 strike included the closing down of building inspections, automobile registrations, and driver’s license renewals. And again, if these kinds of activities were to be shut down today, I think that all of us would agree that the public would be negatively affected in that regard. In other words, the kinds of public services that the public and our constituents have come to rely upon will be negatively affected if we don’t override this veto and pave the way or set the stage for a possible public employees strike in the event that collective bargaining negotiations break down in the future.

“Now, another point that I wanted to address is the fact that the critics of this measure, or the veto override, allege that the current process is somehow biased in favor of public workers. However, I would like to point out that a careful reading of Section 89-11 that governs our arbitration procedures clearly spells out procedures that are fair and impartial. For example, the Chair of the Labor Committee has mentioned that there are

very specific factors that the arbitrator must consider to insure that any decision that’s arrived at is fair and reasonable. In addition, there are procedures for the selection of an impartial arbitrator, as well as the requirement that the arbitrator must clearly explain and justify any findings that they reach which are in favor of either the state or the representatives of the public employees who are involved in that arbitration process.

“So, I think that we have a fair process, and the fact that previous state administrations may not have fared as well as they would have wanted to in the arbitration process, in my mind it doesn’t justify eliminating a procedure or process that in general is set up to be fair and impartial. If the state is not satisfied with some of the results that we’ve obtained in the past, then I think that the answer is for the state administration to do a better job of representing and advocating the interests of the administration and not, again, to eliminate a process which seeks to strike an appropriate balance between, on the one hand, resolving labor disputes, and on the other hand, not putting the state in a situation where the quality of the lives of our constituents will be impacted by a public employee strike.

“So, for all of these reasons, I think that binding arbitration is fair, and accordingly, I would urge my colleagues to vote to override the Governor’s veto of S.B. No. 768, C.D. 1.”

Senator Hogue rose in opposition to the motion as follows:

“Mr. President, I rise in opposition to this veto override, and I give you one big word – accountability, accountability, accountability.

“There are risks involved in a potential strike. If the risk, so well brought up by the previous speaker, were out there, then they would be considered in the negotiations before a strike ever actually ended up taking place. If the voters didn’t like the way that the administration negotiated its way during a strike settlement, they could vote the governor out. If the workers didn’t like the way the union leaders negotiated for them, they could vote those union leaders out. Ironically, that just happened in the HSTA. So, there is accountability in the right to strike – accountability by the voters, accountability by the workers and the members of the union.

“But how is there accountability by a third-party arbitrator? We know who the Governor is. We know who the leaders are of the union. Does anybody remember who the third-party arbitrator was? I don’t remember. I don’t think there’s anybody on the streets who remembers. So when that person finally comes to their decision, are they really held accountable? Supposedly, there are standards, and yet these third-party arbitrators have put our state in debt tens, maybe even hundreds of millions of dollars with some of their decisions.

“So I think that when you are considering your final decision, I think you have to look to this word – accountability. If you have a right to strike, we have accountability. Without it, we don’t.

“Thank you, Mr. President.”

Senator Slom rose in rebuttal as follows:

“Mr. President, brief rebuttal.

“If what was being sought was a level playing field here, then we would have both parties to this argument complaining about the present process and saying that we need a level playing field. What we have is one party that’s complaining. As the good Senator from Waikiki pointed out before, the counties are absolutely adamant in not wanting to go back to an

old system where it was completely out of their hands in terms of settlements and money that they'd have to pay.

"If we go back to this situation, we might as well shut down the Department of Budget and Finance cause they'll have nothing to do. They won't be able to budget. They won't be able to actuarially take care of expenditures that are made.

"It's so interesting that some of these same labor leaders that fought so hard for the right to strike now say, 'oh, we don't want to inconvenience the public; we want binding arbitration.' Why? Because they have been so successful with binding arbitration. As I've said initially, they have no risk whatsoever. They're going to get more money than is there. And if the money is not there, we have to raise it somehow or take it away from existing programs.

"All I hear from the union that pushes this is threats and extortion – give us the money and everything will be okay. They also try to make the similarity between police and fire, and clerks in the conveyance department. Well actually, the good Senator from Mililani made a great case for total privatization of those employees.

"The idea that we provided binding arbitration for certain individuals in certain areas I think is very clear, but to say that everyone else, or at least in these anointed collective bargaining units, should get that same benefit, is not a logical argument.

"We are faced with a situation, again today, where we've got to get our state under fiscal control. As an employer, the state has got to be fair, has got to bargain honestly, and as was said, if they don't, it will be the public that will demand that changes be made. That has not been the case. There have not been any problems since we changed the collective bargaining law. We have contracts in place. The Governor certainly has kept her promise about keeping warm bodies. It would certainly have been a lot easier to balance the budget and take care of some of the other needs we discussed today if we got rid of people, but she made that pledge not to do it. But if in fact we go back to this system of no risk binding arbitration, then all bets are off.

"And to say that the arbiters have to look at a ten-point scale or standard is correct; they have to look at it. They must also give it weight, but they don't have to follow it and they don't have to prioritize it the way maybe the Legislature would prioritize it. And what happens if they reach their settlement award? What kind of amended action or appeal process does the state have at that point? None. That's it. Binding arbitration is just that and the HGEA knows that and that's why they want this. They are not thinking about the best interest of all of the public. They are not thinking about the best interest of all the unions. And they're certainly not thinking about the best interest of the taxpayers of this state.

"Thank you."

At 7:35 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 7:41 o'clock p.m.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 768, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COLLECTIVE BARGAINING;" was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

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

At 7:42 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 7:51 o'clock p.m.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 1 and 2) were read by the Clerk and were disposed of as follows:

Senate Resolution

No. 1 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE FIRST DAY OF THE SPECIAL SESSION OF 2003."

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 1 was adopted.

No. 2 "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE."

Offered by: Senators Hanabusa, Hemmings.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, S.R. No. 2 was adopted.

At 7:52 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 8:13 o'clock p.m.

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

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

"It's my understanding that if the Legislature is appropriating funds exceeding estimated revenues this fact shall be made public, including the reasons why. And I didn't feel that when Senator Hemmings asked the question earlier that it received a sufficient answer.

"Thank you, Mr. President."

Senator Kim rose on a point of personal privilege and said:

"Mr. President, point of personal privilege, please.

"Mr. President, on Sunday in the Star Bulletin I was one of the co-authors of an article called 'Dangerous Equations' about the University of Hawaii. Members, no, I'm not going to read it in its entirety but I would like to ask that I be able to submit the article into the Journal.

"Thank you."

The Chair having so ordered, Senator Kim's article reads as follows:

University of Hawaii's Money Crisis

Dangerous Equations

President Evan Dobbelle has run UH's finances into the red with huge pay raises and empty promises

By Dr. Amy Agbayani, Sen. Donna Mercado Kim,
Dr. Ralph Moberly and Rep. K. Mark Takai

Evan Dobbelle became president of the University of Hawaii system on July 1, 2001. As we look back on his two years as president, we don't see the university headed toward the world-class status Dobbelle claimed he would deliver if we set him free from bureaucratic constraints. We don't see students better served with campus resources. We don't see faculty and researchers better nurtured to innovate. We don't see our communities enriched by a better town-gown relationship.

In Dobbelle's two years, we see an institution where student tuition is being raised while administrative salaries are boosted by more than \$4 million, where substance and services take a back seat to marketing and public relations, and where a globe-trotting president fails to bring home the money he promised.

While claiming credit for boosting public perceptions about the university and its role in our community, Dobbelle has lost the confidence of significant campus and community leaders, including some members of the Board of Regents. Dobbelle is disrespectful of the regents, ignoring their counsel and failing to work cooperatively with the entire board, exceeding his delegated authority, displaying poor judgment, failing to follow through on commitments, and failing to be a proper steward of our university's limited financial and human resources.

Dobbelle's administration now faces an internal crisis of confidence and a credibility gap between what he promised he would do and what he actually has done.

Salary increases

President Dobbelle's policies have significantly increased overall administrative costs for the university system despite the Board of Regents' repeated admonitions that such changes shouldn't require more money. A broad administrative reorganization pressed by Dobbelle, including new positions and higher administrative salaries, has boosted overall salary costs of the top layer of administrators by more than \$4 million annually, while the university is facing severe budget challenges. (The \$4 million figure does not include the recent pay hikes for UH-Manoa deans and coaches, including football coach June Jones.)

In September 2000, before Dobbelle's appointment, the regents adopted a plan to establish a UH-Manoa chancellor separate from the president. According to the minutes of the regents' January 2001 meeting, the regents agreed to separate the positions with the condition that the move "was to incur no additional costs." Except for the new UH-Manoa chancellor position, the idea was simply to shift administrative tasks and positions dealing primarily with the Manoa campus to the new chancellor's office, leaving the president's office to handle issues common to the system as a whole.

Despite the absence of additional resources for this reorganization, salaries for Dobbelle's current top-level administrators at all 10 campuses have increased from \$3.58 million in June 2001 to \$7.64 million today -- an increase of more than \$4 million. In other words, to administer the same educational system, the university now is paying twice as much money for similar high-level administrators.

In justifying his reorganization plan to legislators earlier this year, Dobbelle said the university is spending "\$1.89 million a year less on administrative costs than it did 10 years ago." Yet, according to the UH Office of Human Resources, the salaries for UH executive and managerial positions actually increased

by more than 23 percent from October 1994 to October 2002 (from \$16.3 million in October 1994 to \$20.2 million in October 2002).

The reorganization alarmed Manoa faculty members because of the academic budgetary and communication impacts that would follow, and because they were repelled by the stealthy manner in which it was advanced. Policy that affects academic matters calls for prior consultation. Lack of consultation between the faculty and administration on the reorganization plan led to a resolution to censure Dobbelle, which was placed before the faculty senate in November 2002. After a meeting in which Dobbelle apologized to the senate's executive committee, the resolution was tabled. But it was not withdrawn, and the resolution may be brought up for a vote the next time collegial governance is ignored.

In a legislative briefing earlier this year, J.N. Musto, the faculty union's executive director, pointed out that while salaries for some university administrators have increased substantially during the past two years, faculty members will receive no increases in salaries for the next couple of years. Each of the 2,800 full-time faculty members state-wide could have received a pay raise of more than \$1,400 using the \$4 million now going to higher salaries for administrators.

'A few key people'

Dobbelle's own initial salary of \$442,000, approved by the regents, was nearly triple that of his predecessor, Kenneth Mortimer, and, with benefits, was ranked fourth highest in the nation in a survey of university presidents by the Chronicle of Higher Education. By comparison, the new president of the massive University of California system is paid \$375,000. The UC system has an enrollment of 200,000 students, whereas the UH system has 46,000 students.

Dobbelle insisted that his picks for several key UH positions receive generous compensation packages, justifying his approach as "a few key people with higher salaries and a lot of responsibility."

Eyebrows were raised when Dobbelle's first appointments were announced. J.R. "Wick" Sloane, vice president for administration, is paid \$227,000, an increase of \$100,000 over the former salary for the same position. Paul Costello, vice president for external affairs and university relations, earns more than twice the salary of his predecessor. With the approval of the regents, neither position was advertised in open competition, as is generally required by state law.

Dobbelle has appointed six friends or former associates to highly paid executive and managerial positions. These include Sloane; his wife, UH Foundation President Elizabeth "Betsy" Sloane; Costello; Executive Assistant Prescott Stewart; Assistant Kristin Blanchfield; and Senior Adviser for Global Affairs Michael Lestz. Dobbelle has hired other friends and former associates as well-paid consultants.

The hiring of Costello and Sloane was the focus of a February 2002 article in the Chronicle of Higher Education. Dobbelle told the Chronicle that he couldn't imagine why anyone would see his hiring of Costello and Sloane as "cronyism," which he defined as "hiring people you know who aren't qualified."

According to a financial disclosure filed with the State Ethics Commission, in the year prior to becoming the chief financial officer of the university, Sloane received a \$70,000 salary in 2001 for providing "finance advice" to a company called B China B Plastics. Despite a lack of significant experience in large and complex public university administration and

financing, Sloane now receives \$227,016 each year as chief financial officer of our university.

Equally surprising are the salaries Dobelle awarded two personal aides -- Stewart, his executive assistant, who is paid \$111,552, and Blanchfield, his assistant, paid \$93,168. Each receives substantially more than a UH full professor, the highest faculty rank, earning an average of \$80,500, and more than members of the governor's cabinet, who earn \$85,302 a year. A faculty member may take 20 years or longer to reach the rank of full professor, with tough peer reviews and productivity requirements along the way. Meanwhile, Dobelle brings in relatively young staffers well above that full professor level.

Retirement bonuses

Dobelle also recommended large bonuses for retiring administrators, costing taxpayers and current and future retirees hundreds of thousands of dollars and incurring inflated retirement costs over the longer term.

For example, a Manoa executive turned his duties over to a successor and then got a 50 percent raise, from \$120,000 to \$180,000, and was effectively given a one-year leave at the higher salary until he retired June 30. Similarly, a high-level Bachman Hall interim executive will step down soon and then will return to the faculty ranks, going on a "professional improvement leave" for nine months at an annual salary of \$254,040 before retiring.

Normally, any university staffer granted such a paid leave must pay back the university by returning to work so that the university and the public will benefit from his or her new or sharpened professional skills. In these cases, that requirement was waived and both UH executives will retire or have retired with substantial boosts to their retirement benefits as a result of the extra time at high salaries.

Interim administrative appointees who return to the faculty ranks typically return to the lower faculty salary level. However, in this situation, Dobelle is allowing this interim appointee to continue to receive his interim executive's salary of \$254,040 while on the nine-month leave.

Before working at Bachman Hall, the interim executive was a 30-year faculty member making about \$85,000 a year. He received \$238,800 the first year and \$254,040 the second year as an executive.

Retirement benefits for state employees who work for more than 30 years, who are in the contributory system and who receive more than \$200,000 for their final three years will receive approximately \$120,000 annually. If these employees were working for approximately \$85,000 for their highest three years, each would receive approximately \$51,000 annually in pension income. In other words, these employees will receive a boost of more than 100 percent in their retirement income -- the \$120,000 annually is even higher than their original \$85,000 salary.

\$1.5 million for branding

Dobelle shelved the proposed UH logos after a public uproar because of the inappropriate designs and high costs. The university's marketing initiative was \$1.5 million for this year, recently reduced to \$1.1 million. However, since Bachman Hall does not have money even for the scaled-back initiative, Dobelle has required each campus to pay an assessment to fund the effort.

According to Costello, the Manoa campus was assessed \$749,582 taken from the student tuition account. Likewise, the community colleges this year were collectively assessed \$305,743. With the university facing multimillion-dollar budget cuts, it is highly unwise, if not irresponsible, to spend so much money on marketing.

Dobelle's fund raising

In several instances, Dobelle has deflected criticism of his spending decisions by publicly promising to raise money to cover specific expenditures, but these commitments have so far proved hollow.

Soon after assuming office, Dobelle responded to criticism of the \$1 million in renovations to College Hill, the president's home, by pledging to raise private funds to cover the cost overruns. In November 2001, Dobelle said he had raised \$50,000 from a private foundation. But more than a year later, in a legislative hearing in January 2003, Dobelle had nothing more to show beyond the initial foundation grant.

"I haven't made that a highest priority," Dobelle said. "We will begin to raise the money, but I couldn't make that a priority over scholarships for students." He told lawmakers that "it's very hard to raise capital costs" for the house. "We continue to ask, but it is not the major priority."

A letter in March from the UH Foundation clarified that Dobelle had raised \$112,270 from private sources for the College Hill project, leaving him nearly \$900,000 short of his promise.

Legislators now are worried about Dobelle's commitment to raise \$150 million in private funds to match state spending for the new medical school in Kakaako. At an October 2001 legislative hearing, Dobelle was asked what would happen if the university doesn't raise the \$150 million. "I don't think that way," he answered. "We will raise the \$150 million."

Fifteen months later, in a January 2003 legislative hearing, the president again was asked to update the Legislature about the fund-raising efforts for the medical school. "We will raise the funds," was Dobelle's answer once again. In March, legislators learned that only \$500,000 had been raised to date -- less than 1 percent of the total promised.

On May 1, the Legislature finally received a "preliminary fund-raising plan" for the campaign. Despite taking more than one year to formulate this preliminary plan, Dobelle admitted that it must be presented to the Board of Regents for its "review and approval prior to any presentation to donor prospects." To date, the regents have yet to receive this proposal.

University nearly broke

Although the university ended the 2003 fiscal year on June 30 in the black, this fiscal year is already looking bleak. It has been suggested that the university is facing at least a \$2.4 million budget deficit overall by June 2004. Additionally, the system-wide administration faces nearly a \$500,000 deficit in funds to cover the salaries of Dobelle's highly paid administrators. Moreover, the chancellor of Manoa has asked for an additional \$10 million in cuts from Manoa's academic and research units to cover an anticipated budget deficit and new campus initiatives for the budget year that began on July 1.

The budget situation for Manoa is so critical that on June 27, administrators sent an e-mail saying that "effective immediately, campus mail services will be temporarily suspending the processing of any outgoing mail until Monday,

July 7.” In a June 30 follow-up e-mail, university employees were told that mail requiring postage was temporarily suspended “due to the depletion of the campus mailroom’s postage meter account.”

During discussions on the budget at the June regents’ meeting, Regent Ted Hong asked about a \$439,000 shortfall in the budget for administrative salaries. Sloane explained that the university will be using \$1 million in interest from university accounts to pay for the shortfall. After being questioned further about the use of interest income on “fixed costs,” Sloane replied: “This is not a way to do this ... Some of these positions are only going to be here for a year and so we are taking this one year at a time, but we take seriously where this is heading us towards.”

As early as last October, Sloane began looking into every budgetary nook, including the use of research overhead funds, to pay for Bachman Hall administrators. These funds are required by the Legislature to be spent in support of research. The funds come from reimbursements for indirect overhead costs like electricity incurred in connection with federal research projects.

Their use is regulated, and misuse may result in the loss of federal research funds. A state law requiring that the university set aside 12 percent of the overhead funds to pay for several faculty housing projects was dropped by the Legislature in 2001. However, the university has continued to set aside the 12 percent for the housing projects.

Although budgeting \$2.5 million for 2002 and \$3.1 million for 2003 from the research overhead for these housing costs, Dobelle’s administration has transferred only \$1.27 million to the housing account each of the past two years.

Researchers who earned the grants have a basic question: Have the additional millions that were budgeted for housing assistance been used to cover Dobelle’s administrative overruns? State law specifies that the regents -- and only the regents -- have the authority to determine the amount of this transfer. To date, they have not done so.

In her March 2003 audit, the state legislative auditor also found that the monies from the research and training revolving fund have been used for “questionable purposes,” such as aesthetic improvements to Hamilton Library.

The expenditure of research overhead funds has been a “major source of discontent among the faculty researchers,” a faculty union leader told legislators. Faculty members “are very dissatisfied about the possible misuse of these funds and the auditor’s report only reinforces their continued skepticism and concerns. ... This is bad for morale,” said Musto, the faculty union director .

Defiance of board

Signaling a loss of confidence in Dobelle’s judgment, the Board of Regents voted last October to limit substantially or remove the president’s discretionary authority. The board, concerned about Dobelle’s habit of informing regents of his plans only at the last minute, inserted a definition for “consultation” in the regents’ administrative rules to make clear that the president must “obtain input, comment and advice from the board or the board’s designee prior to making a recommendation to the board for decision-making and, in certain instances, prior to administrative action.”

Additionally, in the minutes of the October meeting, the regents clarified that “the interpretation of board policies rests with the board.”

Other changes reflect the regents’ concerns about high administrative salaries.

“The amendments further clarify that all actions pertaining to executive employees as well as exceptions to policies requires the prior approval of the board,” according to minutes of the regents’ Oct. 18 meeting. In addition, the board now requires that it approve all consultant contracts of \$100,000 or more, and any with significant policy or systemwide impact.

In a slap at Dobelle’s travel costs, including first-class upgrades for Dobelle’s staff as well as himself, the board imposed a new requirement for the president to submit a monthly travel report that includes “total expenses of each trip and funding sources.”

Dobelle has indicated he has spent nearly half his tenure on the road. “Almost 240 of the 570 days I’ve been president (I’ve been) in a hotel room somewhere in the country raising money,” he said at one point.

Conclusion

Our beloved university is in turmoil -- from highly paid administrators who have not proven their worth to concerns about cronyism, from constituencies who have been ignored and million-dollar logo and marketing plans to questionable expenditures of research funds, from inattention to administrative arrogance and deception.

We all welcomed Evan Dobelle’s arrival in July 2001. Many of us, including the media, have given Dobelle much latitude to succeed. However, after two years of high expectations from the Dobelle administration, the 10-campus university is in disarray, is unfocused and faces an uncertain future.

We care about our University of Hawaii -- and the university is at a critical point.

How to start getting things under control

>> The Board of Regents, in its current review of the president, should carefully consider the issues raised here, critically assess his responses, then seek a concrete plan for dealing with these multiple concerns. The board also should consider hiring its own external auditor and its own external attorney to investigate these issues.

>> Members of the Board of Regents are restrained from complaining publicly. The board’s traditions discourage public criticism of the president or his practices. However, breaking with their tradition of deference to the administration, the regents should provide sufficient information for the public to be assured that the criticisms and concerns are being addressed, and that there is improved accountability for how the funds of the university and the University of Hawaii Foundation are being expended.

>> The legislative auditor should continue her efforts to audit specific university funds and accounts.

>> Taxpayers and members of the UH community across all 10 campuses must demand a full accounting of all tuition and taxpayer money entrusted to Hawaii’s only public institution of higher education. These individuals should identify other issues and problems and bring them to the attention of the regents.

-- The authors

About the authors

Dr. Amy Agbayani

She has been employed at the University of Hawaii for 30 years and serves as the Director of Student Equity, Excellence and Diversity at UH-Manoa. She was honored as a UH distinguished alumna and received numerous awards from national and local associations for her work on behalf of students, women, underrepresented ethnic groups and immigrants. She is president of the Filipino Community Center and has served as chairwoman of the Judicial Selection Commission and the Hawaii Civil Rights Commission.

Sen. Donna Mercado Kim

She is vice president of the state Senate. She has been in the Senate for the past 3½ years and has served as chairwoman of the Senate Tourism Committee. Kim previously served on the Honolulu City Council for 14 years, 13 of which she served as chairwoman of the Zoning Committee. Before that, she served in the House of Representatives for three years. She attended the University of Hawaii until her junior year and graduated cum laude from Washington State University.

Dr. Ralph Moberly

He retired from the University of Hawaii in December 2002 after 43 years as a faculty member and administrator. He was a professor of geology and geophysics. Additionally, he served in various positions including as chairman of the Department of Geology and Geophysics, chairman of the Department of Ocean Engineering, and associate director of the Hawaii Institute of Geophysics. He continues teaching undergraduate courses part time.

Rep. K. Mark Takai

He is the chairman of the House Higher Education Committee. He has been in the state Legislature for nine years, serving as vice chairman of the Higher Education Committee for seven years. He graduated from UH-Manoa with a bachelor's degree and a Master of Public Health degree. As a student, he served as the ASUH president and as editor-in-chief of Ka Leo O Hawaii, the UH-Manoa campus newspaper.

An Analysis of Executive Salaries (One Day Prior to Dobelle's Arrival versus Today)

The following analysis compares the salaries of Dobelle's current top-level administrators at all 10 campuses to the salaries paid to people in the same or similar positions one day prior to Dobelle's arrival.

Position	June 30, 2001	Today	% increase
President	\$167,184	\$442,008	164
Chief of Staff*	N/A	200,000	N/A
General Counsel	\$130,008	256,248	97
Vice President for Academic Affairs	133,968	260,000	94
Vice President for External Affairs	82,440	210,768	156
Vice President for Administration	125,664	227,016	81
Vice President for International Education*	N/A	218,520	N/A
Vice President for Research*	N/A	234,000	N/A

UH Manoa Chancellor*	N/A	254,016	N/A
UH Hilo Chancellor	130,000	227,976	75
Hawaii Community College Chancellor	85,680	200,000	133
Sub-Total	\$854,944	2,730,544	219
Additional Administrative Salaries	\$2,727,933	4,905,221	
Total	\$3,582,877	\$7,635,765	113

*These four positions are newly created positions.

The Vice President for External Affairs was originally called the Executive Director of University and Community Relations.

ADJOURNMENT

Senator Kawamoto moved that the Senate of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, adjourn Sine Die, seconded by Senator Trimble and carried.

At 8:15 o'clock p.m., the President rapped his gavel and declared the Senate of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, adjourned Sine Die.

**HOUSE COMMUNICATIONS RECEIVED AFTER THE ADJOURNMENT
OF THE SPECIAL SESSION OF THE LEGISLATURE SINE DIE**

Hse. Com. No. 2, informing the Senate that the House has reconsidered S.B. No. 317, S.D. 2, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 2, 2003, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, is entitled.

Hse. Com. No. 3, informing the Senate that the House has reconsidered S.B. No. 745, S.D. 2, H.D. 2, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 2, 2003, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, is entitled.

Hse. Com. No. 4, informing the Senate that the House has reconsidered S.B. No. 1305, S.D. 1, H.D. 1, C.D. 1, heretofore line-item vetoed as set forth in a Governor's Message dated June 26, 2003, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, is entitled.

Hse. Com. No. 5, informing the Senate that the House has reconsidered S.B. No. 255, S.D. 2, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 2, 2003, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, is entitled.

Hse. Com. No. 6, informing the Senate that the House has reconsidered S.B. No. 768, S.D. 1, H.D. 2, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 2, 2003, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Special Session of 2003, is entitled.

NUMBER AND TITLE	Received Referred	First Reading	Second Reading	Third Reading	Action of House	Conference Committee	Final Action	Action of Governor	Further Action	Act No.	Vetoed
S.B. No. 255 A BILL FOR AN ACT RELATING TO AGRICULTURE.					45				23 26	5	
S.B. No. 317 A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE FIFTIETH ANNIVERSARY COMMEMORATION OF THE KOREAN WAR COMMISSION.					45				2	1	
S.B. No. 745 A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES.					45				7	2	
S.B. No. 768 A BILL FOR AN ACT RELATING TO COLLECTIVE BARGAINING.					45				36	6	
S.B. No. 1305 A BILL FOR AN ACT RELATING TO STATE FUNDS.					45				12	3	

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE FIRST DAY OF THE SPECIAL SESSION OF 2003.	40			40
S.R. No. 2 INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE.	40			40

NUMBER AND TITLE	Received Referred	First Reading	Second Reading	Third Reading	Action of House	Conference Committee	Final Action	Action of Governor	Further Action	Act No.	Vetoed
H.B. No. 282 A BILL FOR AN ACT RELATING TO THE AUDITOR.					30				31	4	