

JOURNAL
of the
SENATE OF THE
TWENTY - THIRD LEGISLATURE
of the
STATE OF HAWAII

Special Session of 2005

Convened Tuesday, July 12, 2005
Adjourned Tuesday, July 12, 2005

TABLE OF CONTENTS

	PAGE
First Day, Tuesday, July 12, 2005	1
 Communications received after adjournment:	
House communications.....	13
 History:	
Senate Bills.....	14
Senate Resolutions	15
House Bills	16

THE
TWENTY-THIRD LEGISLATURE
STATE OF HAWAII
SPECIAL SESSION OF 2005
JOURNAL OF THE SENATE

FIRST DAY

Tuesday, July 12, 2005

The Senate of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, was called to order at 10:10 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 Kim who was excused.

At 10:14 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:25 o'clock a.m.

MOTIONS TO OVERRIDE VETOES

At this time, the President made the following announcement:

"Members, before we start, I just want to let all of you know that we will have a Roll Call vote on all of the bills before us."

S.B. No. 960, H.D. 1, C.D. 1:

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. 960, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 1035, seconded by Senator Espero.

Senator Inouye noted:

"Mr. President, this bill appropriates much needed funds for tsunami preparedness and other natural disasters. It is long overdue.

"As the Indian Ocean tsunami of December 26th has shown, lack of preparedness and awareness can lead to catastrophic devastation and loss of life. In Hawaii, as an island state, we are especially vulnerable to a variety of natural disasters, including tsunamis, hurricanes, earthquakes, and even volcanic eruptions, yet we are still quite unprepared to deal with them. Shelter space is inadequate. Siren systems need repairs, maintenance and updating. Telephone book evacuation maps are out of date, and the Hawaii State Civil Defense staff is not funded around the clock. They must rely on the state's 911 system if an emergency takes place after business hours. This is simply unacceptable. Delays and misinformation can lead to lives being lost.

"This bill is absolutely essential to the safety of Hawaii's citizens and visitors. It is a bill that could save lives, and I strongly urge you to vote with me to override the Governor's veto.

"Thank you."

Senator Taniguchi rose and said:

"Mr. President, I have comments in support of this measure that I'd like to have inserted into the Journal. Thank you."

The Chair having so ordered, Senator Taniguchi's remarks read as follows:

"Mr. President, I rise to speak in support of the motion to override the veto of S.B. No. 960, H.D. 1, C.D. 1, for the following reasons.

"In the Governor's objections to this bill, she states that the principal in the Hurricane Reserve Trust Fund needs to be retained to pay claims and purchase reinsurance following a hurricane.

"What the Governor fails to mention is what hurricane are we looking at to pay claims and purchase reinsurance. It is not the next hurricane that strikes Hawaii that may require use of the Hurricane Reserve Trust Fund principal but the hurricane after the next hurricane.

"What we attempt to accomplish in this bill is to provide a means of protecting people and property from the next hurricane, in other words, we are concerned about public safety in relation to the next hurricane.

"The Governor also states that unless another fund is established in its place, the Hurricane Reserve Trust Fund will be the sole source of monies to provide hurricane insurance to the market when the private market is unable to do so. The Governor is correct; the monies in the Hurricane Reserve Trust Fund may be used to provide hurricane insurance if the private sector retracts from the market.

"After Hurricane Iniki in 1992, one of the reasons we established the Hurricane Reserve Trust Fund was to provide hurricane coverage. At that time, it was quite uncertain whether the private insurers would again offer hurricane coverage. Several years later, the private insurers were again offering hurricane coverage. Should we preserve the principal of the Hurricane Reserve Trust Fund to provide the private sector with an ability to bail out of the market when they choose so? I think it is more important to look at public safety as a whole when the next hurricane strikes and not look at the hurricane after next, and start addressing the underlying problems of risk through preparedness.

"In 1993, the original law was passed for hurricane preparedness and mitigation. In 2002, we further strengthened that law to add hazard mitigation initiatives and incentives for private homeowners. Through this bill we add another component of in-residence saferooms to add another option for homeowners to protect themselves from hurricanes.

“Again I want to emphasize the importance of public safety now through preparedness.”

Senator Hogue rose in support of the motion and said:

“Mr. President, can I have the remarks of the good Senator from the Big Island put into the record as if they were my own? I will be voting to override.”

The Chair so ordered.

Senator English rose in support of the motion as follows:

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

“I’d just like to say that this is very important for Hana and for Moloka`i and Lana`i because of the lack of civil defense sirens in the area. This will provide badly needed funding for sirens to go into our rural and remote communities and they’ve been crying for this for a long time.

“Thank you.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 960, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CIVIL DEFENSE,” 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, 24. Noes, none. Excused, 1 (Kim).

S.B. No. 1262, S.D. 1, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator English moved that the Senate override the veto of S.B. No. 1262, S.D. 1, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 1044, seconded by Senator Kokubun.

Senator English noted:

“Mr. President, this measure establishes an ORMA or an Ocean Recreation Management Area for the Waianae Coast. It also sets out a procedure to set up a regional baseline study similar to an environmental impact statement.

“Mr. President and members of the Senate, I urge you to support a veto override of this bill because the Waianae Coast is simply overtaxed with its intermingling of commercial use, traditional access, and fisheries. It’s a very important bill to the area.

“The bill is put together in a way to allow for the creation of the ORMA after the baseline study is done and I think that this will be the most beneficial and supportive measure for all parties concerned in the Waianae Coast. Therefore, I ask for the member’s support of a veto override.

“Thank you.”

Senator Hemmings rose in favor of the motion and said:

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

“Mr. President, colleagues, this is an essential piece of legislation for another reason other than the ones enunciated by the good Senator from Hana. We have a very serious problem in Hawaii from my perspective in Kailua and it applies to Waianae and the coastal areas of many of these beautiful islands, and that is the excessive growth of the tourist industry.

In my estimation, we’re exceeding the point of diminishing returns and what is happening is the areas that traditionally are utilized for the recreation and the welfare of the local people are being inundated by commercial operators.

“This will be indeed a good baseline study for the Waianae Coast to find out what their carrying capacity is for the visitor industry as well as protecting the resources of the people of Waianae. I’m hoping something similar can be done in the future on the Windward Coast where we are being inundated with the visitor industry and losing access to our traditional recreational areas in the Kailua/Lanikai area.

“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. 1262, S.D. 1, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE WAIANAE COAST,” 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, 24. Noes, none. Excused, 1 (Kim).

S.B. No. 1473, S.D. 1, H.D. 1, 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. 1473, S.D. 1, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 1046, seconded by Senator Chun Oakland.

Senator Baker noted:

“Mr. President, this bill requires the Department of Health to obtain approval of the Governor prior to new or expanded uses of land under its jurisdiction in the Waimano Ridge area for such uses as a sex offender treatment facility, drug treatment facility, expanded uses of the state laboratory or other matters. It also requires the Department of Health to submit an updated master plan to the Legislature.

“Mr. President and colleagues, this is a bill that really came to us from the grassroots. It’s an indication that the Legislature listened to the community and heard their pleas for some oversight over what’s happening in their area. Because the jurisdiction of this land was transferred to the Department of Health, it falls under the general laws exception within the article of the State Constitution, and therefore the lands are subject to legislation to regulate the use of those lands since the lands are state owned and used by the Department of Health.

“In addition, the Department of Health has indicated in the past that it’s not a good steward of these lands. It refuses to involve the community. It has not been forthcoming with the community, and the Legislature, as the Body that tries to listen to the community and respond, enacted this measure.

“The UH’s bad past practices have really forced us to legislate exactly what notification and other requirements the Department of Health must follow to ensure a collaborative effort between the DOH and the affected communities.

“This is in response to the community. It’s a good piece of legislation, and I urge my colleagues to vote to override. Thank you.”

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

“Mr. President, I would also encourage my colleagues to vote in support of the override.

"I just wanted to add one note. The community has been working with the Department of Health to get better communication so that we can be informed and involved with any future uses. The Governor's veto message notes the fact that they have agreed to and committed to implementing a master plan for this area.

"I just wanted to let you know that the final straw for the Pearl City Neighborhood Board was when the Department of Health official who was appointed to act as a liaison to the community informed the board that his last day of work was June 30th and there is no replacement that has been announced. So once again, the community voice has been shackled and the Governor's veto really reinforces that shackle.

"So I just would encourage all my colleagues to vote in support. Thank you."

Senator Nishihara rose in support of the motion and said:

"Mr. President, I rise to support the override also.

"As the good Senator from Pearl City has noted, the community has been long suffering in this issue. There've been numerous bad faith efforts on the part of the administration through the Department of Health. As having attended a lot of the meetings with the neighborhood boards, it seems to be a persistent problem that is best addressed through this measure.

"So I urge my fellow colleagues to override this measure. Thank you."

Senator Trimble rose in opposition to the motion and said:

"Mr. President, I rise in opposition.

"I believe that it is inappropriate to set up one set of procedures selectively that does not apply to all state lands. For that reason, I don't think this is a path that we want to go down. There have been historical examples of perhaps inappropriate actions by state agencies in not listening to the communities. I'm not sure we want to get into a position where every one of these suspected to have occurred, occurred and that the Legislature act in this manner.

"So, I will be voting against this measure. Thank you."

Senator Hogue rose in support of the motion and said:

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

"I think it is very important that the Legislature listen to the community. We all speak to our neighborhood boards and I think if this bill initiates a process in which the community can be heard then it is something that we should all support.

"Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 1473, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WAIMANO RIDGE," 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, 23. Noes, 1 (Trimble). Excused, 1 (Kim).

S.B. No. 1592, S.D. 1, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kokubun moved that the Senate override the veto of S.B. No. 1592, S.D. 1, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 1048, seconded by Senator Hooser.

Senator Kokubun noted:

"Mr. President, as all of you are aware, in the 2004 Session a bill was passed by the Legislature to re-institute and to review the Hawaii state plan, the state functional plans. The Governor vetoed that measure. In her veto message, essentially what she said was that the administration did not consider planning a priority and in fact she had left the position of director of the Office of Planning vacant since she had taken office.

"Mr. President, for that reason, during this Session we re-looked at the bill and feeling again that there is a great necessity for us to look forward and that for the Legislature to set goals through a planning measure for the State of Hawaii was a very, very good idea and something that we needed to carry through.

"For that reason also, and remembering the Governor's veto message from the previous Session, we made this a legislative measure. We asked that the state auditor provide the staff that would help develop that plan so that it wouldn't really put burdens on the administration. But again, it's the essence of the measure that we thought needed to move forward.

"So Mr. President, I really think that the administration has made a statement that planning is not a priority for them. Now they want to take that responsibility back and I think it's going both ways on the same issue. So, this Session I really think that the measure that we passed was good for the State of Hawaii and is something that all of us agreed to. In fact the measure was on the consent calendar for Third Reading here in the Senate, Mr. President, so I think this is something that we should do and I urge all my colleagues to vote in favor of this override.

"Thank you."

Senator English rose in support of the motion and said:

"Mr. President, I rise in support of the motion to override.

"Members, this is a very important measure for us. As the Chair of the Energy, Environment, and International Affairs Committee I have to look at our issues of sustainability in terms of environment and energy. This plan is sorely needed by all of us because it will help to recognize the State of Hawaii's commitment to sustainability. As the Senator from Kaneohe has pointed out, we are looking at carrying capacity in these islands, how much is enough, when do we say no to growth and to development, and when do we say yes to it.

"This will help us to bring the functional plans into the modern era. This will help us to recognize that Hawaii has to become more sustainable in our approach in a very systemic level. So I'm asking all of you to support the override of this veto so that we may move forward with creating a truly sustainable plan for Hawaii.

"Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 1592, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE PLANNING," 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, 24. Noes, none. Excused, 1 (Kim).

S.B. No. 1685, S.D. 2, H.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Ige moved that the Senate override the veto of S.B. No. 1685, S.D. 2, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 1038, seconded by Senator Taniguchi.

Senator Ige noted:

“Mr. President, S.B. No. 1685, C.D. 1, allows a tax official of any county of the state to disclose any records relating to the administration of real property taxes to any duly accredited tax official from the state for tax purposes. It also allows counties to inspect any tax return of any taxpayer, allows the Department of Taxation to inspect income tax returns and estimates for tax purposes only, and allows transient accommodations tax return to be examined by any county tax official.

“Mr. President, this was an effort on behalf of the four counties in an effort to be more diligent in the collection of their taxes. We worked very carefully with the Department of Taxation and in fact I do have testimony from the director of tax that if we were to make his amendments, which were accepted by the Conference Committee, that he would fully support this measure and recommend passage. So, I’m at a loss to understand why the Governor would choose to veto this bill.

“The Governor claims that the bill would violate basic taxpayer protections with regard to confidentiality. However, those basic protections are currently in the law and these same protections apply in this instance when county officials would get access to state information.

“I do believe that this bill provides for a more effective implementation enforcement of tax laws at both the county and state levels and urge all 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. 1685, S.D. 2, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TAX,” 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, 24. Noes, none. Excused, 1 (Kim).

S.B. No. 1772, S.D. 1, H.D. 2, 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. 1772, S.D. 1, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 1049, seconded by Senator Ihara.

Senator Chun Oakland noted:

“Mr. President, the purpose of this measure is to require each applicant for the medical assistance to identify the employer of the proposed beneficiary of medical assistance. This measure also requires that the Department of Human Services submit an annual report to the Legislature that identifies all employers who employ 25 or more beneficiaries of medical assistance programs administered by the Department of Human Services.

“S.B. No. 1772 assists public policymakers in aggregating information that will be one more tool for us to use to identify best ways to tackle the problem of uninsured people in Hawaii.

It also assists public policymakers and others to identify groups of workers that might benefit from workforce training programs working with their employers.

“Thank you.”

Senator Slom rose in opposition to the motion and said:

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

“This bill is a very interesting bill. It has nothing to do with public policy. Everyone knows that this is the anti-Wal-Mart bill. It’s a way of helping labor unions attack a corporate citizen. And it’s also a way of stigmatizing those employees who are receiving public medical assistance.

“It takes away the flexibility from the Department of Human Services. It gives more power to the Legislature to interfere in employer/employee rights and management. And if in fact it were really about public policy and about helping people get medical insurance, we wouldn’t raise the general excise tax and we would modify the prepaid healthcare act so that more people can qualify.

“This is a blatant example, however, of again this Legislature trying to meddle and trying to attack a corporate citizen. Thank you.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 1772, S.D. 1, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO EMPLOYERS,” 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 (Kim).

S.B. No. 1808, S.D. 1, H.D. 1, 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. 1808, S.D. 1, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 989, seconded by Senator Ihara.

Senator Kanno rose in support of the motion and said:

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

“Our State Constitution mandates that the Legislature drafts the laws to establish policies governing the people of Hawaii. Any delegation of our legislative powers to the executive branch for rulemaking is administrative in nature and does not give the executive branch the power to make or change to laws through rulemaking.

“Last year the administration proposed an omnibus bill to reform the state worker’s comp system. By seeking the enactment of the worker’s compensation omnibus bill during the Regular Session of 2004, the administration implicitly recognized that without changes to Chapter 386 of the Hawaii Revised Statutes, the administration lacked sufficient authority to implement policy changes in these areas. Lawmakers found that the omnibus bill would disrupt the balance achieved in the existing statutes and rules and rejected the omnibus bill resoundingly. Despite the Legislature having made clear the balance achieved by the existing laws and rules, the director of Labor and Industrial Relations sent to the Governor for approval amendments to the administrative rules that through rulemaking in 2005 would achieve what it could not during the 2004 and 2005 Legislative Session.

“The changes to the Hawaii Administrative Rules on worker’s compensation would represent substantial changes in the law regarding compensability, medical care and treatment, and other benefits and create formalized contested case procedures for initiating and handling claims that shifts and increases costs to the claimant and the employer. The rule changes constitute a substantial departure from the legislative purpose and intent as is now found in Chapter 386 and the existing administrative rules.

“The rule of formulating policy is reserved exclusively for those in the legislative branch. The Hawaii Supreme Court ruled in the *Sherman v Sawyer* case in 1980 that, quote, ‘legislative power is defined as power to enact laws and to declare what law shall be.’ Under the separation of powers doctrine, the authority of the executive branch is restricted to executing and applying the laws enacted by the Legislature.

“In response to the rules that have been implemented, we received a letter from the American College of Occupational and Environmental Medicine. The president of the ACOEM, Dr. Cheryl Barbanel, states that the ACOEM does not endorse the approach to the use of treatment guidelines incorporated into the worker’s compensation reform rules recently issued by the Department of Labor and Industrial Relations. I’m quoting her, ‘essentially, the DLIR has overlaid a portion of the scientific-based ACOEM occupational medicine practice guidelines on top of the commercial-based ODG treatment guidelines to create a confusing amalgam of guidelines.’

“The decision by the department creates the potential for conflict, uncertainty and cost to the system. For these reasons, I urge my colleagues to override the Governor’s veto.

“Thank you.”

Senator Slom rose to speak in opposition and said:

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

“This bill is a sham. For several years now businesses in this community, particularly small businesses, have cited worker’s compensation and the failure of this system as the number one problem. For several years this Legislature has made an attempt to change the worker’s comp laws but to change them to make sure that they were like the old system and that they didn’t take care of businesses and they didn’t take care of injured workers. In fact, the June 28th dog and pony show held in the House Labor Committee, with a parade of so-called injured workers, did not indicate to the public or to anyone else that those workers and their complaints, some of which were highly legitimate, were because of the old system and prior to the rules adopted by the director of the Department of Labor and Industrial Relations.

“What this Legislature wants to do by overriding this piece of legislation is to reinstate the old rules to make sure that Hawaii continues to have the worst worker’s compensation system in the United States. And that’s not me saying that – that’s various groups and ratings organizations that always, always, up to two weeks ago have put us at the bottom at the list, have ranked us F for failure. And we are a failure. We have failed the workers. We have failed businesses, and we have failed the taxpayers with a system that is much more expensive and much more needy than any system across the United States.

“It’s also interesting to note that the Legislature last year, as the good Senator and Chairman of the Labor Committee pointed out, trashed the omnibus bill. And what was the

keystone hallmark of that omnibus bill? It was to stop fraud. Fraud is rampant in Hawaii’s system. We have workers that are complaining about it. We have businesses that are complaining about it, but we don’t do anything about worker’s compensation fraud. The labor unions have fought this for more than 20 years because they see fraud as a code word for protecting employers. And those of us who are employers, those of us who are taxpayers, and those of us who support meaningful worker’s compensation reform have always said we don’t care who commits fraud. If it is a business, if it is a doctor, if it’s an insurance company then prosecute them. Have the tools and allow the insurance commissioner to do his work. Take the shackles off.

“And let’s not make a joke about this. This bill will not improve worker’s compensation. It will not help businesses. It will not help those injured workers. And what it does is take away the legitimate functions of a department in rulemaking. The rulemaking functions are not interfering with the Legislature. In fact we were so disappointed because we have in hearings year after year departments that come before us and they have not made their rules and therefore the legislation that we pass is not fully effective because they are dependent on the rules.

“Here we have a department who has worked with all the groups and all the stakeholders in the community who has had all of the hearings and heard all of the testimony and tried diligently to improve the system. And instead we have the labor unions themselves and their witting accomplices in this Legislative Body to say we don’t want your stinking changes. We want to keep the old system exactly the way it was. We want to keep people needy. We want to keep them from getting the fast and prompt treatment that they need and we want employers to pay through the nose. And that’s the system that we have right now and I think that’s really a shame.

“Finally, the most interesting of all about this bill as we watched it go through the Legislature this Session was how it was timed, how these bad rules and bad things were okay after the next election, assuming of course that a Democrat were elected Governor, but looks like that’s a certainty now anyway. The law would then come back into formation. So the law was finally changed, but it still is very convenient till after this administration is out.

“I think that we all owe a great deal to the courage and the commitment of the Department of Labor chairman and his staff and the fact that they have been open and they have been transparent and they have been trying to solve the problem. And by your overriding this veto you’re saying we don’t want solutions; we want to keep it the way it was, and we want to keep injured workers as our plantation workers.

“I urge my colleagues not to sustain this veto. Thank you.”

Senator Hemmings rose in opposition also and stated:

“Mr. President, I rise to speak in favor of the veto and against the motion to override it.

“Unlike the previous speaker, I’m not too sure about the next election but I do know that a very important tool in the process of administering the laws of the State of Hawaii are rulemaking. And I will say that there’s a great example of what a good administration can do with the rules that oftentimes the Legislature fails to do for 20, 25 years. In fact, back in the ’80s, Mr. President, when you and I were a little younger and served in the House of Representatives there was talk about quarantine reform. And special interest, minorities, excuse the poor pun but the tail wagged the dog for too many years and there was no

quarantine reform. But this administration, in its wisdom through rule changes, instituted quarantine reform and we have all been the beneficiaries of it, most especially military people coming to these islands.

“The point is that the argument that the Legislature should have a 100 percent say on how laws are administered is not correct. We make the foundation the law and oftentimes we actually put into the law we make that they shall be administered through rules and regulations. So there is a precedence set for rulemaking.

“The second thing that should be addressed and why my colleagues should vote against this motion to override the veto is because this situation right now is anti-labor. Fraud hurts everybody. Fraud hurts most especially the people in the worker’s comp program because every cent and every minute and every dollar and all the energy that goes into sustaining the fraudulent claimants, the fraudulent doctors, the fraudulent medical associations, and others who like the system the way it is because it’s an open spigot is less money that the employers of the State of Hawaii have to pay for the real beneficiaries of worker’s compensation or less money they have to pay for pay raises or pay their taxes or other things. And this worker’s comp hemorrhaging because of fraud in the system has really hurt the working people in this state more than anybody else.

“So, for all of you who stand up and self righteously say that we’re helping labor continue to collect fraudulent money from the worker’s comp system, you’re really doing a disservice to the people that we should be helping. So Mr. President, I would urge my colleagues to reconsider this motion to override the veto and vote against it.

“Thank you, Mr. President.”

Senator Sakamoto rose in support of the motion and said:

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

“Mr. President, people have talked about the merits of what these rules would do and have come up with numbers that are very high numbers. I’m not going to argue what the proposed rules or enacted rules say. But my question, Mr. President, is do the ends justify the means? If you can get a good result by going around the law, do the ends justify the means?”

“The previous speaker talked about less money for business. Do the ends justify the means? Medical providers talked about the ODG guidelines and not having a complete discussion about them and they were rammed through the process. Do the ends justify the means?”

“I’m for worker’s comp reform. The Chamber of Commerce and a number of labor leaders were working together last year unable to come up with something then this measure was rammed through perhaps out of frustration that working together was taking too long. But do the ends justify the means if something takes too long? Do the ends justify the means to drag in many people who are working hard – business people, workers, providers, insurance people – to improve the system by working together in the workplace with work rules, working together with attorneys to lessen the contentiousness of the issue. Bringing this issue forward in the manner it does, does that help? I think not.

“The ends do not justify the means, and I, for one, will continue to work for a reform that will help injured workers, help employers, help our community to get workers back to work sooner as opposed to later.

“Thank you, Mr. President.”

Senator Hogue rose in opposition as follows:

“Mr. President, I rise in opposition to the motion on the Floor and I vote to sustain the veto which I think is very important.

“Rule making allows flexibility. If you put it into statute, if you codify the rules, which the bill is right now, you work against flexibility and you actually hurt the system. I want to read into the record something that was produced by the Department of Labor and Industrial Relations, and it says, based on the enactment of the medical guidelines in California, the University of California at Berkeley estimated a cost savings of anywhere from 36 percent to 53 percent if we have these rule changes. We stated that Hawaii could realize the same type of cost savings, a midrange figure of 37 percent or perhaps \$98 million if we have the rules. In 2002 the worker’s compensation system, which is made up of insured, noninsured, self-insured spent \$267 million in total costs – \$105 million in medical costs and \$130 million in certain indemnity payments as wage replacement, TTD, and disability PPD.

“Now, DLIR applied a University of California, Berkeley, study that noted that the use of evidence based treatment guidelines would save medical costs in California around 36 percent to 53 percent. Using these same estimates and applying these cost savings to Hawaii, we estimate that Hawaii will save anywhere from \$49 million to \$67 million in medical costs. The DLIR also estimated additional cost savings that were the result of using evidence-based treatment guidelines, which reduced the amount of time workers remain out of work. This will allow them to return to work faster, which is I think what we want, right – to earn their full salary and consequently reduce their temporary total disability. Evidence-based treatment guidelines also reduce over utilization and improper and excessive treatments that are harmful to injured workers.

“Bottom line – if the Legislators override this, they will reinstate a system that harms injured workers and drives costs to insurmountable heights for Hawaii’s employers. To me it seems like a common sense situation. It’s there in dollars and cents. A previous speaker talked about balance. The current system is way out of balance, so I would encourage you, in this particular situation, to sustain the veto.

“Thank you.”

Senator Chun Oakland rose in support and stated:

“Mr. President, I stand in support of overriding this veto.

“The people that have approached me have been the medical professionals as well as the injured workers. There were a few unions that talked with me, but overwhelmingly it was medical professionals and injured workers who had concerns about the rules that were going to be implemented. That is why I am voting for this override. I do look forward to communicating and working with the Department of Labor, as all of our colleagues are, to find solutions that will help provide timely and appropriate care to our employees to support the efforts, as the Senator from Hawaii Kai has indicated, if there is fraud, to be able to identify that, whether it’s on the part of employers, employees, insurance companies, and providers.

“I have heard from the providers of medical care and the injured workers and they want this overridden. Thank you.”

Senator Hooser rose to support the motion and said:

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

"I'll keep my comments brief. There's no question that worker's compensation reform and improving the system is an important issue for business – small business, large business – for all of us, for the workers, for the medical professionals. Two of the previous speakers, my colleagues, talked about the process and how the process was the wrong process and therefore justifies the override. I'd like to speak for a moment to the content of the rules that were put into place. I'll say for the record that these rules aren't good for workers; they're not good for doctors; they're not good for small business. They're good for insurance companies.

"There's no guarantee that \$98 million, if it's saved at all, is going to go into reduced premiums, but rather are more likely to go into increased profits to the insurance companies. In fact, history shows that Hawaii over the last 10 years has had declining benefits paid out to workers where the national average is pretty constant. In Hawaii we've actually been paying out less to workers, but if you look at the premiums charged to the state, you'll see a dramatic increase in money charged by insurance companies while at the same time they're paying out significantly less to workers.

"I would say, Mr. President and colleagues, the issue, and I think research clearly shows that the issue is not fraud by workers. The issue is excessive profits by insurance companies. I would say again for the record that this bill is not good for, or the rules that are in place, I should say, do not support injured workers, are not good for the medical professionals, and have no insurance or assurance that small business will benefit at all, but the only people we know that will benefit will be the insurance companies who are already benefiting greatly.

"For those reasons and others, I urge my colleagues to vote in support of the override."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 1808, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION LAW," 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 (Kim).

S.B. No. 1877, H.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kokubun moved that the Senate override the veto of S.B. No. 1877, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 1051, seconded by Senator Hooser.

Senator Kokubun noted:

"Mr. President, I think the essence of this measure is that we respect our state statutes and I'm asking the administration to really take a look at it from that perspective. Historically, the Office of Planning was established to assist all the departments in terms of their planning efforts.

"In the 2003 Session, the administration introduced a measure to transfer the Office of Planning to DLNR, including the Land Use Commission. Basically, this would create kind of a super agency in terms of the land use process. The Legislature rejected that proposal and disagreed with the fact that we would create this super planning agency for land use. After the Session, the Governor, by executive order, made the change administratively and directed the Office of Planning to

report directly to the Department of Land and Natural Resources.

"Mr. President, this really flies in the face of respect for our statutes. Again, I think it brings to question, as in the previous measure, what limits can the administration exercise in terms of trying to do things administratively if they don't get the Legislature to amend the statutes.

"Mr. President, I think that we attempted to do this previously in the 2004 Session and the Governor vetoed the measure. But I think we feel strongly that planning, again, is an important function for our state and we think that the Office of Planning should maintain its integrity in the Department of Business, Economic Development, and Tourism and we reject the notion that a transfer can be done administratively. We reemphasize in this bill that the Office of Planning is administratively connected to DBEDT, and for that reason, colleagues, I ask that you support this measure.

"Thank you."

Senator Slom rose in opposition and said:

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

"I certainly concur with many of the remarks of the last speaker, particularly of adhering to the statutes and particularly the idea that the Office of Planning should be allowed to float and give counsel to various departments, but that's not what this bill does. What this bill does is force the bill out of DLNR and forces it into DBEDT and does not provide for flexibility or for adhering to the statutes or for advising other departments. What it really does is just say that the Legislature's pigeonholing of the Office of Planning is better than the executive branch. So I certainly would support a move to really get back to the idea of allowing the Office of Planning to have more autonomy and more independence and be able to advise other departments, but that bill is not doing that.

"Further, this bill also is an underhanded blindside attempt to go after the current and newly appointed director of the Office of Planning, the former member of the Board of Education who spoke up so courageously and independently, and of course I'm talking about Ms. Thielen, to require that now the Office of Planning director be subject to the confirmation process of the Legislature. So we in fact are not going back to the statutes. We are not going to more openness. We are going to a heavy-handed legislative method of denying the executive their prerogatives and saying, basically, we will still use force and compulsion but it will be our department that we want, rather than the executive's.

"Thank you."

Senator Kokubun rose in rebuttal and said:

"Mr. President, just in short rebuttal to the comments from the good Senator from Hawaii Kai.

"In fact this measure was amended during the Session and confirmation is included, but this will be prospective. This will not have any kind of effect on the existing appointment to the director of the Office of Planning. So I think that argument is really off the table.

"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. 1877, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE

OFFICE OF PLANNING,” 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, 20. Noes, 4 (Hogue, Slom, Trimble, Whalen). Excused, 1 (Kim).

H.B. No. 160, H.D. 2, S.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Menor moved that the Senate override the veto of H.B. No. 160, H.D. 2, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1036, seconded by Senator Baker.

Senator Menor noted:

“Mr. President, this bill would basically clarify and revise the existing laws pertaining to the authority of the insurance commissioner to assess insurers and the procedures for making those assessments. More specifically, the bill would impose reasonable limitations on the authority of the insurance commissioner to impose these assessments, as well as to require a review and report back to the Legislature on the amount of the annual assessments, how the assessments were determined, and how the assessments were utilized.

“I believe that this bill will enhance fiscal accountability and I think that this is especially important in light of the fact that in recent years it has been brought to the Legislature’s attention that the assessments have resulted in excessive reserves in the fund which contains the assessments that funds important programs for the insurance commissioner’s office.

“So, accordingly, I would respectfully ask my colleagues to vote in favor of this veto override. Thank you.”

Senator Slom rose in opposition to the motion and said:

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

“It’s really interesting about this bill, H.B. No. 160, because it came out of Consumer Protection and yet this bill is definitely anti-consumer protection. It severely limits the insurance division’s ability to protect the public. And it was interesting that my good colleague from the island of Kauai just two bills ago was complaining that the insurance companies, the insurance industry were benefiting and pushing the worker’s comp rules reform bill but I would expect him to really be in opposition to this measure because the footprints of the insurance industry are all over this.

“What they are basically trying to do is intimidate the insurance commissioner and the regulator. It’s a punitive effort from several different aspects. The compliance fund – we fought this battle last year when the Legislature tried to dissolve the compliance fund. The DCCA and its various divisions, one of the very few successful and improved divisions, they’re entirely self-sufficient. Those that are being regulated have to pay the cost, and still with all of this, in terms of assessments, as the good Chairman just spoke about, the division was able to reduce the assessments on the insurance industry for each of the last two years. All of that information is made public. It comes before the Ways and Means Committee. It comes before the Commerce and Consumer Protection Committee. So there’s no secret there. There’s nothing there. The only secret is why this Legislature would suddenly switch sides and say that we want a bill that basically was drafted, supported, and urged by the insurance industry that removes the flexibility of the regulating industry – DCCA and the insurance commissioner.

“I find it really ironic that we’re always talking about consumer protection and this bill takes away protection of the consumer. Thank you.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 160, H.D. 2, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE COMPLIANCE RESOLUTION FUND,” 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 (Kim).

H.B. No. 180:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Kanno moved that the Senate override the veto of H.B. No. 180, as contained in Gov. Msg. No. 1054, seconded by Senator Ihara.

Senator Kanno noted:

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

“In the interest of fairness and equity, excluded employees should be compensated at a level that is at least equal to their counterparts that are covered by collective bargaining. Provision of this type of benefit is also essential in successfully recruiting and retaining skilled and knowledgeable individuals to perform various tasks necessary in maintaining efficient and effective government operations.

“Finally, this measure does not preclude individuals from receiving greater compensation and benefits packages than those provided to civil service employees as hard work, dedication, and talent may still be appropriately recognized and rewarded based upon the merit principle.

“I urge my colleagues to support the override.”

Senator Slom rose in opposition and said:

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

“We talk about fairness and flexibility. If everything were equal, then in fact we would have no differentiation between part-time and fulltime workers. We would have no differentiation between civil service and excluded. And the word excluded is important and people that take the positions take the positions knowing full well that they are excluded, that they are not in the same category, but they take them because they have a choice and because for them that choice may be preferable.

“What we’re doing is not only blurring the lines of differences between individuals and categories, but erasing those lines. And I would suspect that what this is going to do is going to reduce the overall job opportunities. Why would somebody take a position where there was less salary and less benefits? For several reasons – maybe they don’t want to be part of the civil service bureaucracy; maybe they want their own flexibility – but the main thing is that they have their choice and what we would be doing by overriding the veto on this bill is eliminating that choice.

“Thank you.”

Senator Whalen rose in opposition to the motion and said:

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

“Since we got out of Session I’ve been busy about town working and doing things, and one thing I noticed is that there are these two guys that I work with and one guy works really hard and the other guys a goof-off. Well, they’re both doing the same type of work. Under the socialist philosophy, what this bill is trying to promote is that if you both have the same kind of job, you both get paid the same, it doesn’t matter what kind of job you do because everything is equal. And legislatively we can make everyone have the same piece of the pie, but it doesn’t work like that in real life.

“The reason why we can do this now is that we had the civil service reform a few years ago to try to help the state get out of its financial difficulties as well as try to get more efficiency out of our system. And this is another attack from that same faction of the Legislature who feels that all sorts of competition or free enterprise is evil and we need to stamp it out especially in government. I think that’s one reason why we do struggle to be efficient, not that people don’t care, but we do struggle to be efficient because we’re constantly doing things like this where we stamp down any sort of reason for somebody to work harder to get more money. If I’m a goof off and my good friend here we get paid for making speeches the same amount of money, why should I stand up to make speeches? Let him make them all.

“So I would encourage my colleagues here to not override the veto. Thank you.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 180, entitled: “A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEES,” 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, 20. Noes, 4 (Hemmings, Hogue, Slom, Whalen). Excused, 1 (Kim).

H.B. No. 1224, 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. 1224, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1040, seconded by Senator Tsutsui.

Senator Fukunaga rose to speak in support and said:

“Mr. President, I rise to speak in favor of the motion to override the Governor’s veto of H.B. No. 1224, S.D. 1, C.D. 1.

“In 2003, the Legislature enacted Chapter 255D, Hawaii Revised Statutes, the Hawaii Simplified Sales and Use Tax Administration Act. The Act directed the Department of Taxation to enter into streamline sales and use tax agreements with other states to simplify and modernize the administration of sales and use taxes. The department was required to consult with an advisory council to be appointed by the Governor. However, the Governor did not appoint any members to this advisory council nor did the Department of Taxation take any steps to pursue implementation of the statute until April 2005 after the Senate amended H.B. No. 1224 to repeal the advisory council.

“The amendment was made because, in the absence of appointments to the council, the Department of Taxation was prevented from performing its duties under Chapter 255D, Hawaii Revised Statutes. The Governor’s subsequent nomination of individuals who were confirmed by the Senate

for the advisory council (just in case H.B. No. 1224 did not pass the Legislature) was subsequently superseded by the Legislature’s passage of H.B. No. 1224 in its conference draft form.

“H.B. No. 1224, C.D. 1, represents the Legislature’s final position on this issue and therefore I urge my colleagues to vote in support of the override.”

Senator Taniguchi rose in support of the measure and said:

“Mr. President, I have comments in support of this measure that I’d like to have inserted into the Journal.”

The Chair having so ordered, Senator Taniguchi’s remarks read as follows:

“Mr. President: I rise to speak in support of the motion to override the veto of H.B. No. 1224, S.D. 1, C.D. 1.

“Mr. President, the purpose of H.B. No. 1224, S.D. 1, C.D. 1, is to improve the administration of the general excise and use taxes by requiring the Department of Taxation, together with three designees selected by the President of the Senate and three designees selected by the Speaker of the House of Representatives to:

1. Identify issues that need to be resolved to effectuate the orderly enactment and operation of a streamlined sales and use tax that is based on the streamlined sales tax project’s model agreement and act;
2. Draft policy recommendations to resolve these issues for the Legislature; and
3. Conduct for the Legislature, informational briefings on its policy recommendations and its efforts to comply with this bill.

“Furthermore, this measure requires the Department of Taxation to submit proposed legislation prior to the convening of the 2006 Regular Session for its enactment prior to January 1, 2007.

“The Governor’s objections to this bill primarily focus on the repeal of the advisory council as ‘unwarranted’ and the deadlines established in the bill for the Department of Taxation as ‘unrealistic.’

“It should be noted, Mr. President, that the advisory council was established by act 173, Regular Session of 2003, and the Governor’s five nominated members were only confirmed in the closing days of this past Legislative Session, almost two years hence. I recognize that these members represent preeminent individuals from the tax practitioner and business communities and I would hope that they could continue to serve as appointed designees to assist the Department of Taxation in its efforts to comply with the purposes of this act.

“Further, I do not find the deadlines established in this bill for the Department of Taxation as unrealistic given the progress other states have made to date in enacting all or part of the conforming legislation of the streamlined sales tax project’s model agreement and act. It is anticipated that states that enacted the conforming legislation and are found to be in compliance with the model agreement will continue as the governing states of the interstate agreement of the future. I hope that our state will soon serve in such an important capacity.

"Mr. President, this measure is important in positioning our state to capture tax revenues from electronic commerce transactions. The National Conference of State Legislatures estimates that in 2003 Hawaii lost approximately \$112 million to \$117 million in state and local revenue due to our inability to capture tax revenues from electronic commerce transactions. By 2008, Hawaii will lose between \$157 million and \$245 million if nothing is done by that time.

"I urge my colleagues to support the override of this bill's veto."

Senator Hemmings rose to speak against the motion and said:

"Mr. President, I rise to speak against the motion to override the Governor's veto of H.B. No. 1224.

"Mr. President, I think the record should reflect that this is probably one of the worst years in the history of the State of Hawaii for the working men and women of Hawaii as far as paying taxes go. This bill sounds fairly nice on the surface with it all streamlining and cooperating with other states. But what this is laying the foundation for is for the taxpayers who wish to escape the punitive tax environment of Hawaii to purchase goods and commodities over the internet will now get taxed and just will add to the tax burden of the already beleaguered working men and women of Hawaii who have seen the conveyance tax raised probably \$40 million this year, who have seen the potential of having \$180 million to \$200 million taken by the excise tax increase, assuming the county passes it. This will add to that burden.

"This 2005 will go down as the worst year in the history of the State of Hawaii for increasing taxes in one of the worst states in the nation for taking the hard earned wages of the men and women of Hawaii and giving it to government for oftentimes misappropriate and ill conceived and ill executed programs.

"I urge my colleagues to really think about this and think about who they're really serving. Are you serving the constituents that pay our salaries or are you serving the institution of big government to maintain control and power? The tax environment in Hawaii is indeed a tax hell and this is just turning up the heat.

"Thank you, Mr. President."

Senator Fukunaga rose in rebuttal as follows:

"Mr. President, I have a point of rebuttal to the prior speaker.

"The use tax that the taxpayers who buy over the internet or who purchase through catalogs from out-of-state vendors is currently required under state law. There is a line in our income tax forms which requires taxpayers to voluntarily pay the use tax on all purchases made on out-of-state goods. This bill simply seeks to enforce the use tax, which is on the books today.

"Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 1224, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," 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, 21. Noes, 3 (Hemmings, Hogue, Slom). Excused, 1 (Kim).

H.B. No. 1317, H.D. 1, S.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 H.B. No. 1317, H.D. 1, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1056, seconded by Senator Ihara.

Senator Chun Oakland noted:

"Mr. President, the purpose of this act is to require the Department of Human Services to submit a report to the Legislature on the impact of carving out pharmaceutical benefits management from managed care plans and prohibit the Department of Human Services from taking any action to remove pharmaceutical benefits management from managed care plans that provide healthcare coverage for Hawaii's Medicaid beneficiaries.

"Removal of the pharmacy benefits from health plans that provide Quest medical benefits to our most vulnerable citizens is not sound public policy. In order to ensure Quest members are receiving the highest possible quality of care, health plans need to be able to coordinate and fully manage both pharmacy and medical benefits. When medical and pharmacy care is fragmented, patient care suffers.

"The establishment of a separate pharmacy benefit could create additional complexities and confusion for Quest members. Physicians would also most likely find the separation of benefits an additional administrative burden. Increasing the barriers for Quest members to receive the care they need is not a public policy we should be promoting.

"Finally, a major study was conducted for Arizona by the Lewin Group, a national healthcare consulting firm with more than 35 years of experience, on whether or not the state should move forward with a pharmacy benefit carve out for its Medicaid program. The study recommended against a pharmacy carve out since it was not anticipated to create additional savings.

"Thank you, Mr. President."

Senator Baker rose in support and said:

"Mr. President, I have some remarks on this measure in support of the override I'd like to have inserted into the Journal."

The Chair having so ordered, Senator Baker's remarks read as follows:

"Mr. President, I rise to support overriding the Governor's veto of H.B. No. 1317, H.D. 1, S.D. 1, C.D. 1: Relating to Medicaid.

"Access to timely, quality and effective healthcare should be the hallmark of our Medicaid program whether the services are delivered in a fee for service plan or a managed care plan. The appropriate use of pharmaceuticals coordinated with other healthcare services is an important component of any healthcare plan. Fragmentation of care can cause patient care to suffer. Without H.B. No. 1317 in place as law, the Department of Human Services plans to carve out the pharmacy benefit from the plans, in effect putting departmental staff rather than clinicians in charge of a major component of a QUEST recipient's medical care.

“As part of their QUEST expansion waiver request to convert the aged, blind and disable recipients from a fee for service plan to a managed care plan, DHS proposed to carve out the drug benefit from the QUEST plans, believing that DHS would reap huge rebates from drug manufacturers. The DHS proposal is not based on sound health policy but on a desire to find additional revenue for other matters. While I applaud the desire to maximize revenues, their analysis is flawed and their projected goal is unrealistic. In addition, the proposed DHS policy would result in additional costs elsewhere in the system. Parenthetically, I would note, the waiver has not been granted by the federal authority. It represents a major policy shift and the waiver request was completed with out sufficient legislative oversight or public input.

“Through out the entire debate in committee and in informal meetings on this matter, DHS has never been able to document, verify or justify their assertions of huge savings. First we were told that the carve out would save \$25M and then that the carve out would save \$10M. While cost efficiency should be a consideration in any health plan contract, it cannot be the only driving factor. A major flaw in their assertion is this. On January 1, 2006, over 50 percent of the most costly population from a drug benefit standpoint – the aged – will lose their Medicaid benefit as a result of the Medicare Modernization Act passed by the Congress. Aged, blind and disabled represent about 50 percent of the QUEST population but consumes about 75 percent of the pharmacy expenditure. However, with the majority of the ABD moving off the Medicaid rolls and into Medicare, DHS will have a much smaller number from which to secure rebates from drug manufacturers. With a diminished pool of clients, DHS would have to negotiate rebates of almost 50 percent in order to realize the savings in their testimony to our Joint Committees of Human Services and Health. Our research shows that the trend across the country is that drug manufacturers are reducing their discounts not increasing them. Best estimates are that rebates are in the 5 to 8 percent range. Additionally, the only way that any entity receives consistent rebates is if there is a high utilization (high volume) of the preferred, brand name drugs. That means that physicians will have to prescribe expensive brand name drugs even if a generic is just as efficacious and less costly. So instead of pursuing less costly therapies DHS would actually be promoting use of higher cost drugs in order to generate rebates. That’s not good public health policy in my view.

“Is DHS’s decision to carve out the pharmacy benefit driven by concerns over quality or efficiency in the delivery of the current services? No, the plans have been recognized nationally as providing quality care and locally external audits have acknowledged that the plans are efficiently and effectively administered. And in countless presentations during the ten years since QUEST’s implementation, DHS has praised the plans cost effectiveness and delivery of quality care. So what DHS wants to do now sacrifices quality and efficiency for an illusive possibility of maybe generating some revenue for the State. That’s not a good trade off nor is it good public healthcare policy.

“The Governor’s arguments don’t take into account that the plans are already saving the State significantly with the managed, coordinated care contracts currently in place and that any rebates or discounts the plans receive on their implementation of the pharmacy benefit is calculated into the cost of the total medical service plan and contract each provider has with DHS. The plans receive a capitated fee for each enrollee. If costs go up or medications go up, the plans do not recoup those costs. A pharmacy carve out could end up costing the State additional dollars and not generate appreciable revenue. That was confirmed by a recent study done for the State of Arizona by the Lewin Group, a national healthcare

consulting firm with over 35 years of experience, a pharmacy ‘carve-out’ was not recommended since ‘it was not anticipated to create additional savings.’ In effect, through managed care the State is already realizing the savings. And if DHS implemented a carve-out for the remaining smaller fee-for-service population, the savings could not reach the DHS estimates and those clients may receive less coordinated care as a result. Since DHS intends to carve out only 39 of 100 drug classes, recipients and physicians could find a system fraught with confusion and additional paperwork – not good public policy.

“However, DHS continues to espouse the belief that they can reap millions by taking the pharmacy benefit in-house without fully considering all the impacts and ramifications of that action. Toward the end of the conference period, DHS said they weren’t going to implement the carve-out now but gave no assurances that Legislators’ concerns or the public’s concerns would be address.

“There’s another reason to override this veto. H.B. No. 1317, C.D. 1, calls for DHS to provide an in-depth report to the Legislature to verify their assertions and provide the Legislature with appropriate information on which to base future decisions in this area. Had DHS been more forthcoming and collaborative perhaps this measure wouldn’t be necessary. However, when such an important policy consideration as changing the composition of the scope of medical care plans for Medicaid recipients is contemplated, it needs to be thoroughly examined and evaluated. All stakeholders, including the Legislature, need to be included, consulted and engaged. Enacting this measure into law will ensure appropriate oversight and consultation in the future. I urge my colleagues to join me to override the Governor’s veto on this important bill, H.B. No. 1317, C.D. 1. Mahalo.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 1317, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO MEDICAID,” 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 (Kim).

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 2005.”

Offered by: Senators Hanabusa, Hemmings.

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

At 11:39 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:56 o'clock a.m.

ADJOURNMENT

Senator Hee moved that the Senate of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, adjourn Sine Die, seconded by Senator Hogue and carried.

At 11:57 o'clock a.m., the President rapped his gavel and declared the Senate of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, adjourned Sine Die.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate

**HOUSE COMMUNICATIONS RECEIVED AFTER THE ADJOURNMENT
OF THE SPECIAL SESSION OF THE LEGISLATURE SINE DIE**

Hse. Com. No. 1, informing the Senate that the House has reconsidered H.B. No. 160, H.D. 2, S.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 8, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 2, informing the Senate that the House has reconsidered H.B. No. 180, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 3, informing the Senate that the House has reconsidered H.B. No. 1224, S.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 8, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 4, informing the Senate that the House has reconsidered H.B. No. 1317, H.D. 1, S.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 5, informing the Senate that the House has reconsidered S.B. No. 960, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 8, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 6, informing the Senate that the House has reconsidered S.B. No. 1262, S.D. 1, H.D. 2, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 7, informing the Senate that the House has reconsidered S.B. No. 1473, S.D. 1, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 8, informing the Senate that the House has reconsidered S.B. No. 1592, S.D. 1, H.D. 2, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 9, informing the Senate that the House has reconsidered S.B. No. 1685, S.D. 2, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 8, 2005, and approved said bill by an affirmative vote of two-thirds of all

members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 10, informing the Senate that the House has reconsidered S.B. No. 1772, S.D. 1, H.D. 2, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 11, informing the Senate that the House has reconsidered S.B. No. 1808, S.D. 1, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated June 29, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, is entitled.

Hse. Com. No. 12, informing the Senate that the House has reconsidered S.B. No. 1877, H.D. 1, C.D. 1, heretofore vetoed as set forth in a Governor's Message dated July 11, 2005, and approved said bill by an affirmative vote of two-thirds of all members of which the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Special Session of 2005, 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. 960 A BILL FOR AN ACT RELATING TO CIVIL DEFENSE.					13				1	5	
S.B. No. 1262 A BILL FOR AN ACT RELATING TO THE WAIANAE COAST.					13				2	6	
S.B. No. 1473 A BILL FOR AN ACT RELATING TO WAIMANO RIDGE.					13				2	7	
S.B. No. 1592 A BILL FOR AN ACT RELATING TO STATE PLANNING.					13				3	8	
S.B. No. 1685 A BILL FOR AN ACT RELATING TO TAX.					13				4	9	
S.B. No. 1772 A BILL FOR AN ACT RELATING TO EMPLOYERS.					13				4	10	
S.B. No. 1808 A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION LAW.					13				4	11	
S.B. No. 1877 A BILL FOR AN ACT RELATING TO THE OFFICE OF PLANNING.					13				7	12	

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 2005.	11			11
S.R. No. 2 INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE.	11			11

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. 160 A BILL FOR AN ACT RELATING TO THE COMPLIANCE RESOLUTION FUND.					13				8	1	
H.B. No. 180 A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEES.					13				8	2	
H.B. No. 1224 A BILL FOR AN ACT RELATING TO TAXATION.					13				9	3	
H.B. No. 1317 A BILL FOR AN ACT RELATING TO MEDICAID.					13				10	4	