

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

Special Session of 2007

Convened Tuesday, July 10, 2007
Adjourned Tuesday, July 10, 2007

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**THE
TWENTY-FOURTH LEGISLATURE
STATE OF HAWAII
SPECIAL SESSION OF 2007
JOURNAL OF THE SENATE**

FIRST DAY

Tuesday, July 10, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Special Session of 2007, was called to order at 11:45 o'clock a.m., by Senator Colleen Hanabusa, President of the Senate.

The Divine Blessing was invoked by the Honorable Norman Sakamoto, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators Inouye, Kim and Whalen who were excused.

At 11:48 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:30 o'clock p.m.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 1 to 3) were read by the Clerk and were disposed of as follows:

Senate Concurrent Resolution

No. 1 "SENATE CONCURRENT RESOLUTION ESTABLISHING A COMMITTEE ON CONFERENCE TO CONSIDER AMENDMENTS TO MEET THE GOVERNOR'S OBJECTIONS TO SENATE BILL NO. 837 S.D.2, H.D.2, C.D.1."

Offered by: Senator Hemmings.

No. 2 "SENATE CONCURRENT RESOLUTION ESTABLISHING A COMMITTEE ON CONFERENCE TO CONSIDER AMENDMENTS TO MEET THE GOVERNOR'S OBJECTIONS TO SENATE BILL NO. 1191 S.D.2, H.D.2, C.D.1."

Offered by: Senator Hemmings.

No. 3 "SENATE CONCURRENT RESOLUTION ESTABLISHING A COMMITTEE ON CONFERENCE TO CONSIDER AMENDMENTS TO MEET THE GOVERNOR'S OBJECTIONS TO SENATE BILL NO. 1922 S.D.2, H.D.1, C.D.1."

Offered by: Senator Hemmings.

At this time, Senator Hemmings withdrew S.C.R. Nos. 1 to 3, and the Chair so ordered.

MOTIONS TO OVERRIDE VETOES

At this time, the President made the following announcement:

"If there are no objections from the members, we will be taking a Roll Call vote on all of the measures before us."

S.B. No. 932, S.D. 2, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of S.B. No. 932, S.D. 2, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 1041, seconded by Senator Ige.

Senator Hemmings rose in opposition and said:

"Madam President, I rise to speak against the motion to override.

"Madam President, at first blush this bill, as it went through the Session, sounded like a wonderful program that would assist the criminals that have been sent to the mainland in being repatriated to the State of Hawaii. Unfortunately, as the Governor so aptly pointed out, it really is a bill that will endanger the wellbeing of the inmates, but more importantly will endanger the wellbeing of the citizens of Hawaii for the simple reason it's going to mandate returning up to 300 criminals within the next year or so to Hawaii when there's literally no space to accommodate them. So what that means is, because this will be mandated by law, the state prison system will have to release into our community, criminals that otherwise should be in jail paying their debt to society and also protecting society from their criminal acts.

"So, in reality, though well intended, this bill is going to be very dangerous for those people that we are supposed to be helping protect – the society that lives by the rules and law.

"Also, this bill does not provide adequate transition times so the executive branch of government can make the necessary arrangements to accommodate this change. So, I would recommend to the Majority Party, the conscientious thing to do on the part of our constituents to protect their health and safety and protect their welfare – the welfare of the law abiding citizens of the State of Hawaii – is to confirm the veto of this and override the motion to override the veto.

"I'm urging my colleagues to please vote 'no' on this motion."

Senator Espero rose in support of the override and said:

"Madam President, I'd like to rise in support of the motion.

"Locally and nationally, the trend is to look at offender reentry programs which will not only benefit the communities where these prisoners are from, but will benefit the prisoners as well. We have an issue with recidivism with many of our offenders, and this bill looks at it in a very comprehensive manner. The majority of those who are currently in prison, the

offenders, will be released in the future, and we haven't done enough in order to accommodate the needs of these individuals.

"This measure provides funding for several programs throughout the state. It provides staffing within the Department of Public Safety, and it moves the Department of Public Safety forward where there has been very little movement in the last several years. Unfortunately, because of lack of leadership in the Department of Public Safety, the trend in ideas have been to just lock them up, send them to the mainland, they'll be taken care of on the mainland.

"This bill does mention that if there are inmates or offenders currently in mainland programs which are successful, those inmates have the option of saying 'No, I do not want to come back,' and they can complete their programs in the mainland. So it does not force those who are currently in successful programs to come home.

"I believe that with strong management and organization and coordination, we can bring home the prisoners within that one year period because this is where they should be transitioning and this is where we should have the programs. And if we're looking at community-based services and programs or other ways to assist these individuals, we should do this.

"So colleagues, this is looking at a new way of dealing with our prisoners, our inmates. As you may know, we recently had a hearing on Maui and one big issue that came up was this bill. Many of them on Maui are supportive of it. We are looking at building a new prison in the Puunene area on Maui, and we can use this measure to catapult Hawaii to be a leader in dealing with our prison population. We can look at best practices; we could look at culturally sensitive practices; we could look at a way where we can truly integrate our inmates in a way where the recidivism rate will go down and it will benefit not only our communities but the inmates as well so they have the skills, they have the tools, they have what it takes for them to successfully integrate back into our system. A large number of our inmates are Native Hawaiians and this is one of the measures that will look at the total situation that we have.

"Please, colleagues, support the override. Thank you."

The motion was put by the Chair and, Roll Call vote having been requested, the veto of S.B. No. 932, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO A COMPREHENSIVE OFFENDER REENTRY SYSTEM," 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, 4 (Hee, Hemmings, Slom, Trimble). Excused, 3 (Inouye, Kim, Whalen).

S.B. No. 1066, S.D. 2, H.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of S.B. No. 1066, S.D. 2, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 1045, seconded by Senator Ige.

Senator Slom rose to oppose the override and said:

"Madam President, I rise in support of the veto.

"I find many objectionable parts to this bill, and also a hypocritical part. We've been complaining for the last couple of months now that the State of California, their Assembly, has been on the verge of passing a container tax which will affect and impact the cost of living and the standard of living for the

people in Hawaii because of our dependence on shipping. That tax is slated to be \$30 per container.

"This bill, although it talks about invasive species, is nothing more than a tax, a container tax, which attempts to start modestly at \$1 per container, and with any history that we know about any taxes or fees, before we know it, the \$1 will soon rise to \$5, to \$10, to \$20, thus again impacting the standard of living and the cost of living for Hawaii's overburdened consumers and families right now.

"But there are other problems with this bill as well. First of all, it establishes yet another special fund. We've had our difficulties with special funds and yet we want to create another one.

"The bill is aimed at a tax on containers, outgoing containers. That means it's an unfair disadvantage for those shipping lines that use containers exclusively as compared to their competitors that in fact do not use containers. The containerized cargo, which of course is more efficient and cost effective, actually would be penalized because of that.

"In addition to that, we're looking at a situation where we are saying that we're going to help invasive species eradication. This Legislature has been very concerned and very generous over the last couple of years in funding and also creating methods of stopping invasive species, particularly between the neighbor islands. We should continue to do this, but we should continue to do it honestly and directly, in terms of general fund appropriations.

"So, as we'll see in other bills as well, the funding apparatus is extremely important and we should not be passing another tax under the guise of environmental protection. We should be supporting environmental protection and funding it adequately under the general funds.

"Thank you, Madam President."

Senator Trimble rose in opposition and said:

"Madam President, I also rise in support of the veto.

"I want to, for the moment, address a couple points that I think the previous speaker could have elaborated for another 15 or 20 minutes on. Hopefully, I'll take less time than that.

"The first on is that when you have a fee, the fee should be applied against that which you want to inspect or classify or regulate. In this case, it is not a fee because you are not applying it to every number, every air bill number. You're not applying it based on weight of the merchandise. You are applying it not on all cargo, but only to containerized cargo. And quite frankly, invasive species get here from sources other than merchandise. They can come here on craft, airplane craft, on sailboats, on ships, but those would not be assessed a fee. It is not going to be a fee based on non-containerized cargo but only on containers, whether the container is full or empty.

"So for these reasons, colleagues, while the bill is needed, its funding mechanism is flawed and I hope you'll agree it is fatally flawed.

"Thank you."

Senator Kokubun rose in support of the override as follows:

"Madam President, I stand in support of the override of the veto.

“Madam President, it’s no secret that we have just been inundated with invasive species over the last 10 years. In fact, we have had to deal with so much on the ground and really the damage control is so expensive with respect to issues like the coqui frog or the gall wasp that is hitting all of our wiliwili trees, and now with the varroa mite that’s been discovered here in Hawaii affecting our honey bees. These go to the heart of the quality of life here in Hawaii. It’s been proven over and over again that the prevention of the invasion of these types of detrimental species is much more cost effective than having to deal with them once they come here.

“Yes, this is an additional fee on cargo coming in, but I think it’s appropriate because this is one of the major avenues how invasive species come to Hawaii. So this legislation, I think, is very appropriate. There is a definite nexus between our ability to prevent these species from coming into Hawai‘i by providing the resources for monitoring and therefore saving us many, many dollars in the long run.

“I would ask my colleagues to support the override of this veto. Thank you, Madam President.”

Senator Trimble rose in rebuttal and stated:

“Madam President, I rise in brief rebuttal.

“I, in fact, agree with everything the former speaker said. But I am not aware that the coqui frog arrived here in a container. We are not putting a fee on merchandise. We are putting a tax on the box that the merchandise comes in, and not all merchandise comes in boxes, and we are applying that tax to boxes that have no merchandise in it at all.

“I agree that invasive species is an issue that we need to address. I’m only asking that the financing mechanism be an appropriate one that applies to cargo and not containers.

“Thank you.”

The motion was put by the Chair and, Roll Call vote having been requested, the veto of S.B. No. 1066, S.D. 2, H.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO INVASIVE SPECIES,” 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, 4 (Bunda, Hemmings, Slom, Trimble). Excused, 3 (Inouye, Kim, Whalen).

S.B. No. 1191, S.D. 2, H.D. 2, C.D. 1:

At this time, Senator Hemmings offered the following amendment (Floor Amendment No. 2) to S.B. No. 1191, S.D. 2, H.D. 2, C.D. 1:

SECTION 1. Senate Bill No. 1191, S.D. 2, H.D. 2, C.D. 1, is amended by amending section 3 on page 4, lines 5 through 6 to read as follows:

“There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be”

Senator Hemmings moved that Floor Amendment No. 2 be adopted, seconded by Senator Gabbard.

Senator Hemmings rose in support of the amendment and said:

“Madam President, this is hopefully an amendment that the Majority Party will consider to disengage from the political divisiveness that sometimes becomes part of this process and engage in honest checks and balances between the executive and legislative branch of government.

“We did make the policy decision, which was supported by the executive branch of government, that we had to do something with pedestrian safety. I don’t think anyone denies that. We did make a decision that we would spend state money in allocating funds to improve pedestrian safety in the counties. No one argues with that. But at the last minute in Conference Committee, for reasons we think we understand but are not adequately divulged, the funding source was changed from the general fund, which the Governor could have supported, to the highway fund. The public never gets an explanation for why these things happen. They just happen and everybody hides behind the ulterior motive of protecting the pedestrians.

“I might add that the Governor is a fiscal conservative. When she took office, with the prior one-party government, we had a \$250 million deficit. Last year we closed our books with approximately a \$750 million surplus. So, good fiscal management makes a big difference in the taxpayer’s pocketbooks.

“With this particular amendment, we can have a win-win. First and foremost, the people of Hawaii and pedestrian safety can be protected. Secondly, we can do it in a cost effective manner that is going to make it more accountable and easier for the taxpayers to pay for over the next two years. This amendment will just simply return the funding to general revenue.

“Now what’s wrong with getting it from the state highway fund? Well, there are several things wrong with it. State highway fund matching funds can be four-to-one for federal related projects which have to go through a long process to get implemented. So it’s the cost effectiveness that we lose with using highway funds. And secondly, these funds once appropriated will delete the availability of those funds for other needed projects in the state highway fund. There’s a point to be made too that the counties collect a fuel tax for doing just these types of things so that we should be working in concert with them to protect pedestrian safety. The County Council should make the hard decisions we have to make. Are they going to choose between pedestrian safety or \$600,000 signs in Nuuanu Valley announcing that you’re driving through Nuuanu Valley? We should also hold them accountable for pedestrian safety.

“Also, it should be noted in voting on this measure that this Legislature down through the years has raided over \$150 million from the state special funds and highway funds and put it into the general fund for other uses.

“So when asking the Majority Party to consider voting on this amendment, I’d like to have us work in a bipartisan manner to meet the Governor’s request in her veto message to have pedestrian safety adequately funded as the bill originally stated. By doing so, we can show the public that we’re willing to work together to do what’s good and cost effective for them, rather than what’s politically expedient for one party or the other. We’d love to meet you half way on this, Majority Party. You can do so by your vote right now by voting in favor of this amendment.

“Thank you, Madam President.”

Senator Baker rose to oppose the amendment as follows:

“Madam President, I rise in opposition to the floor amendment.

“It’s unfortunate that we’re having to quibble over the method of funding for something that I think we all agree is very important, but let me explain why the method of funding that the Legislature, in its wisdom, adopted at the end of the Legislative Session, I believe unanimously on both sides, is still an appropriate method of funding.

“First of all, since the Legislature adjourned, the Council on Revenues has downgraded their outlook for general fund revenues. Even in the Governor’s budget directives to her departments, attachment A, which she sent out to all of us, page 2 – and it’s posted on their website – page 2, No. 2, under the general statement of policies, she admonishes her agencies to fund programs where appropriate with federal or non-general funds because there may be a lack of available general funds. The Legislature was ahead of the curve on this one and authorized these expenditures from the highway special fund.

“Well, what about the highway special fund? There’s in excess of \$91 million balance in the fund now, and that takes into account the items that were appropriated in H.B. No. 500, the executive budget bill. In addition to which, a bill that the Governor already signed will provide over the next two years, in each year, \$9.2 million of revenue going into the highway fund and next year we will have an additional \$14 million going into the highway special fund, so a significant replenishment over and above anything that this measure would require for these very important pedestrian safety projects. In addition to which I think this Senate has indicated over the last several years, and particularly this last Session, that we are interested in making sure that the highway fund is viable, that the projects that are authorized are appropriate, and that to the extent possible we look for partnerships. And we did so with this measure as well.

“The county councils and the mayors knew of the Legislature’s intent to partner with them on some key intersections and they have already stepped forward and included in the budgets that they passed the matching funds for the funding in this bill. So there will be a public partnership, a state/county partnership, to make sure that we can take care of some of the most important projects that are needed for pedestrian safety. These are projects that are ready to go. They don’t need the federal match. They don’t need the federal involvement, and actually, the federal government has said in a number of their directives that improvements to roadways and intersections for pedestrian safety are an appropriate use of highway funds – both federal funds and state funds – to do the kinds of things that are going to help make our roadways safer for all of us, whether it’s adding countdown timers, whether it’s re-striping, or any of a number of other actions that are going to make it safer and easier for those that might not be as mobile as others to cross our roadways.

“Madam President and colleagues, I believe that this is really a policy call that the Legislature has already made and I would encourage my colleagues to vote the floor amendment down and vote to override this measure.

“Thank you very much.”

Senator Trimble rose in favor of the amendment and stated:

“Madam President, I stand in favor of the floor amendment.

“Colleagues, the bill was supported by the Governor, supported by the administration for the length of the Legislative Session because previous drafts of the bill took the money from

the general fund. This argument between the Governor and the Legislature, the holding of people hostage to the dispute is not unintentional. It represents part of an orchestrated plan to try and divide the Governor from her supporters and it involves the use and misuse of nonprofit organizations like the AARP. And I only have to point to a second case that happened recently which had to do with the blaming of the Governor by Meals-On-Wheels that the Governor was holding back funds that they deserved. This is not an isolated instance and we will see more of it.

“And quite frankly, this will continue to go along until Frank, yeah, Frank Bridgewater not only comes out on the editorial page today, but in the week preceding the election. And if he is silent and the other editorial boards are silent, this cahootery will continue.

“Thank you.”

The motion to adopt Floor Amendment No. 2 was put by the Chair and, Roll Call vote having been requested, failed on the following showing of Ayes and Noes:

Ayes, 4. Noes, 18 (Baker, Bunda, Chun Oakland, English, Espero, Fukunaga, Hanabusa, Hee, Hooser, Ige, Ihara, Kokubun, Menor, Nishihara, Sakamoto, Taniguchi, Tokuda, Tsutsui). Excused, 3 (Inouye, Kim, Whalen).

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of S.B. No. 1191, S.D. 2, H.D. 2, C.D. 1, as contained in Gov. Msg. No. 1046, seconded by Senator Ige.

Senator English rose in support of the override and stated:

“Madam President, I rise in support of the motion to override the Governor’s veto.

“Members, I ask for your support of this because this is, as was mentioned earlier, a very, very good bill. The Ways and Means Chair outlined the sources of funding that will help to replenish the highway fund – \$14 million a year from the rent-a-car surcharge; \$9.2 million from the gas tax, 1 cent from the gas tax.

“But really, the fundamental discussion here, colleagues, is that this is a policy call on behalf of the Legislature. This is our job. What we do is figure out where the money should come from, which set of funds, which pool, and then allocate it from there. It’s really and truly a policy debate with the executive. There’s no hidden agenda here. There’s no underhanded thought or malice contained in this. What’s going on here is really and truly a policy debate. And in fact, the framers of the constitution intended us to have these types of debates.

“Now, the merit of this – the people want this. We want this. This is now in the Governor’s court. We will override her veto here and now, we’ll send this back to her, and she has the rest of the year to deal with the people and whether or not she will release these funds. I hope she will release the funds, but it is really her call. The Legislature has done its job – we’ve heard the constituents, we’ve allocated the funds, we’ve helped the counties to deal with this issue. We’re overriding this veto and it’s up to the Governor to make it happen. If she insists on not releasing the funds, then at the end of the year when nothing has happened – more fatalities, more accidents – we will know that it was not because we did not take action.

“So, I ask for your support of this. I ask that we move forward in overriding the Governor’s veto so that we can

implement these pedestrian safety clauses contained in this measure. Thank you.”

Senator Slom rose in opposition to the override and said:

“Madam President, I rise in support of the veto.

“Several things need to be mentioned here. First of all, an innocuous amendment which would have achieved the objective of the executive branch, the legislative branch has voted down unceremoniously strictly on party lines. I heard outside during the press conference this term ‘it’s a policy debate; it’s a policy issue’ many times. If it is a policy issue, it’s a flawed policy.

“As the Senate Minority Leader had said earlier, and as everyone acknowledges, the change in the funding mechanism took place only at the eleventh hour during Conference, without the ability for direct community input, without the ability for a public hearing, without real discussion on the issue.

“We are all in support of pedestrian safety. We are all in support of giving up more resources. But the fact of the matter is we pay the highest gasoline taxes, fuel taxes in the nation. As the last speaker just pointed out, that price of that tax went up by one penny. The rental car surcharge, which was supposed to have sunset in August of this year is going to be extended for at least another year by another dollar – \$3 per day. And yes, that came from the administration. My colleagues know I voted against that provision.

“We continue to force more taxes upon our individuals. And some people say, well, we’re only talking about \$3 million. But as was discussed outside, as was discussed here, as was discussed for the last several years, the idea of leveraging that money with federal funds means that we’re not talking \$3 million, we are talking \$12 million. Are our roads in the condition that we want them to be? Are the potholes taken care of, the resurfacing? A serious discussion on new highway, design and construction . . . the answers of course are no. And yet we will continue to raid this fund.

“It would be real easy to support this bill as we all did during the course of this Session with the original funding mechanism, with the direct general appropriation because that’s the honest way to do it. And if we’re concerned about the Council on Revenues, as we should be, we should take note, then we should also be concerned about putting additional taxes and fees on our residents. We just passed a new tax a few minutes ago, the container tax, which is going to adversely affect us.

“But still, in all we should prioritize, and if we all agree that pedestrian safety is up near the top of the heap, then we should finance that openly and through general funds because we don’t know what’s going to happen with these programs in the next two fiscal years. But the honest way to do it is to make sure that we all agree on the program and all agree on funding.

“And for the life of me, I find it very interesting and ludicrous that is we’re talking about policy, that the policy always seems to come down in a predetermined measure with predetermined votes. If we are open to discussion and open to solving the real problems rather than posturing and rather than showing the Governor that we can override her vetoes because we have a four-to-one majority, then we would look seriously at making these changes. And if that particular amendment were not the proper one in terms of style or language, then we propose another. But that’s not what’s happening today. That’s not what’s going to happen in the minutes and hours ahead of us.

“So, I find it a shame that those of us that support pedestrian safety are forced to vote against this because we do believe in fiscal responsibility, and we do believe in transparency, and we do believe in honesty. When you introduce a bill and you select a funding source, then you should stay with that funding source or amend it to pass the bill.

“Thank you, Madam President.”

Senator Baker rose in rebuttal and stated:

“Madam President, just a point of brief rebuttal.

“I’m looking at the status sheet for S.B. No. 1191, S.D. 2, H.D. 2, C.D. 1. This measure came before this Body, everybody had an opportunity review, it laid over for 48 hours, people had an opportunity to debate, look at in their caucus. There was not one objection raised to the method of funding in that measure. There was not one objection raised on this Floor to the method of funding in that measure. The Senate voted 25 ayes.

“Thank you.”

Senator Hemmings rose against the override as follows:

“Madam President, I rise to rebut and speak against, once again, the override of this veto.

“Yes, the Senate did vote in favor of this bill, and at the time we thought, under the circumstances, that it was a prudent thing to do. One of the wonderful things about a true democracy when you have ‘give and take’ between the two branches of government, you have debates like today where the public really benefits and they get to see the differences in not only what we do but how we do it.

“Unfortunately, what the Majority Party fails to mention is their 40 year history of not even calling one of these sessions for this very purpose. So yes, I personally as one person did vote in favor of this bill when it went through the legislative process. Had I known what the Governor had revealed to us now, I certainly would have voted otherwise.

“It was mentioned by a previous speaker how smart we are because after the Session, the Council of Revenues downgraded the amount of revenue that’s going to be coming in. Well that’s a non sequitur. How could you make a decision on information you do not have when the decision was made?

“What is wrong with our working together with the executive branch of government and passing the amendments that were offered? Why is this getting down to partisan bickering when it doesn’t need to be so?

“One of the previous speakers in rebuttal outlined a scenario that by the end of the year if someone dies on our highways because they were byways or in an intersection because of not funding this measure, obviously it’s going to be the executive branch of government’s responsibility. I will tell you unequivocally that the executive branch of government has done an absolutely amazing, wonderful cost-effective job of protecting the people of Hawaii in many, many areas and the Governor has guaranteed that though she may not release these specific funds because of the method of funding, she will do what is necessary to implement pedestrian safety throughout this state and work constructively with the counties. So I resent the implication that the Governor is putting the people at risk with this veto.

"But I resent even more the partisanship of this vote. We offered a simple solution. What you said was we're going to do what is partisanly expedient rather than what is prudent fiscally. What would ultimately accomplish all our goals is to protect pedestrian safety.

"So I urge my colleagues to vote to sustain the veto and vote 'no' against the motion to override. Thank you, Madam President."

The motion was put by the Chair and, Roll Call vote having been requested, the veto of S.B. No. 1191, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PEDESTRIAN SAFETY," 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, 2 (Hemmings, Slom). Excused, 3 (Inouye, Kim, Whalen).

S.B. No. 1922, S.D. 2, H.D. 1, C.D. 1:

At this time, Senator Hemmings offered the following amendment (Floor Amendment No. 3) to S.B. No. 1922, S.D. 2, H.D. 1, C.D. 1:

SECTION 1. Senate Bill No. 1922, S.D. 2, H.D. 1, C.D. 1, is amended by amending section 2 on page 4, lines 16 through 21 to read as follows:

"The purpose of this part is to appropriate funds for a central facility or permanent home for the academy for creative media, including the acquisition and installation of equipment suitable for the academy for creative media programs."

SECTION 2. Senate Bill No. 1922, S.D. 2, H.D. 1, C.D. 1, is amended by deleting section 3 in its entirety and renumbering subsequent sections accordingly.

SECTION 3. Senate Bill No. 1922, S.D. 2, H.D. 1, C.D. 1, is amended by amending section 4 on pages 6 through 7 to read as follows:

"SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,870,000 or so much thereof as may be necessary for fiscal year 2007-2008 and \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 for a facility for the academy for creative media, including the equipment and installation suitable for the academy for creative media programs.

The appropriation authorized by this part shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2009, shall lapse as of that date.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this part."

Senator Hemmings moved that Floor Amendment No. 3 be adopted, seconded by Senator Gabbard.

Senator Hemmings rose in support of the floor amendment and said:

"Madam President, once again we have an opportunity to correct a bill that is palatable to the Governor but for one caveat that appeared coincidentally once again in the waning days of the Legislature in Conference Committee.

"This is creative media. We all agree, and I want to compliment the good Senator from Makiki on all the work she has done in assisting the creative media legislation. We support it wholeheartedly. But we don't support putting in at the last minute a favorable lease for one particular interest group that coincidentally has a former leader who has strong ties to the Majority Party – in fact, a former Senator.

"This is a sweetheart deal, and it is contained in Section 2 of this bill. This amendment is a good amendment. It's going to protect the good bill and creative media bill that was worked on so hard and is such an opportunity for the State of Hawaii, and it allows you to get off the hook by making a sweetheart deal with a former colleague. Why don't you do what's right for you and what's right for the taxpayers, and most importantly, what's right for the University of Hawai'i?

"The last time I read the Constitution, it said that the University of Hawaii was supposed to be somewhat autonomous and that we should not be micromanaging affairs such as cutting sweetheart deal leases for cronies of certain people in the Legislature.

"So this amendment is a good amendment. Once again, it creates a win/win for everybody. By adopting this amendment, we would delete the section that carves out a special deal for public broadcasting and does what the bill was intended to do in the first place – to create a fertile, wonderful environment funded for creative media in our university system and assist them in following in this potential path to a great industry for the State of Hawaii.

"So here's another opportunity for you to choose between partisanship and business as usual or the spirit of cooperation with the executive branch of government in amending this bill so it becomes a win/win for everybody. I wholeheartedly plead for you to adopt this amendment so that this bill can be a clean well-funded support for what is intended to be creative media.

"Thank you, Madam President."

Senator Fukunaga rose in opposition as follows:

"Madam President, I rise to speak in opposition to this amendment.

"I think the good Senator from Hawaii Kai and from the Waimanalo area really hits the nail on the head when he says that creative media is something that all of us has supported over this past Session. Unfortunately, the administration's proposal for this amendment has come forward at the very last hour over the last several months after the Legislature had worked long and hard on this measure, and on the very last day of voting, the University of Hawaii had raised concerns about the bill and it was unfortunately too late for us to have made any further amendments.

"Over the past six weeks, the Academy for Creative Media, the Corporation for Public Broadcasting, PBS Hawaii, and numerous other individuals have worked very, very hard to try and find a way to resolve the problems presented by this particular measure. However, the sad thing before us is this – at this point the House has indicated that they are not willing to consider any further amendments. So if we want to save creative media, if we want to save the MELE program that is so unique and very, very memorable in bringing together Hawaii musicians and the best of Nashville, then our only recourse at this point is to override the Governor's veto.

"I would remind my colleagues that the letter from the Governor was delivered on Thursday of last week after many of

us have spent weeks and many, many long hours looking for ways to correct the problems, to come up with a win/win, to work with the university, to work with all parties to find a bill that will meet everyone's needs.

"For those reasons, I urge my colleagues to vote against Floor Amendment No. 3. Thank you."

Senator Hemmings rose in rebuttal and stated:

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

"Madam President, it's very difficult for me to speak against the previous speaker because I know how hard she's labored and worked on creative media aspects of this bill, and she's exactly right. And I think the Governor is 100 percent behind the creative media aspect of this bill.

"She talks about last minute skullduggery, implying that the Governor sent this message down so late, and why so late, and you know, this override and the intent to override is dated June 25th, so it's certainly not last minute. But I'll tell you what is last minute – what is last minute, I believe, confirmed by the Committee member of our Party that sits on this Committee, is that this sweetheart deal was put in at the last minute. It was put in at Conference Committee. So I don't get it.

"The Governor comes down with a reasonable veto intent to override message of potential vetoes, states three weeks ago what her intent is and why; how this violates the autonomy of the UH and how it's a sweetheart deal; how it hurts taxpayers because these guys will be getting rent free at the University of Hawaii's expense, and we're told on this Floor, well, this is a last minute message. It's not. What is last minute is how the amendment was put in to give the sweetheart deal to one particular special interest group.

"Once again, even though the House did vote not to amend, which comes as no surprise, we certainly can do what's necessary here, and maybe the House can make a motion to reconsider. So I urge members to take this opportunity to rise to the occasion, to be bipartisan and not contradict yourselves and this vote and the logic, and vote for this amendment.

"Thank you, Madam President."

The motion to adopt Floor Amendment No. 3 was put by the Chair and, Roll Call vote having been requested, failed on the following showing of Ayes and Noes:

Ayes, 5. Noes, 17 (Baker, Chun Oakland, English, Espero, Fukunaga, Hanabusa, Hee, Hooser, Ige, Ihara, Kokubun, Menor, Nishihara, Sakamoto, Taniguchi, Tokuda, Tsutsui). Excused, 3 (Inouye, Kim, Whalen).

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of S.B. No. 1922, S.D. 2, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 1047, seconded by Senator Ige.

Senator Fukunaga rose in support of the override as follows:

"Madam President, I rise to speak in favor of the override of the Governor's veto of S.B. No. 1922.

"The Governor has raised a number of objections to this bill, but if you read the legislative history of the autonomy amendment very closely, you will see that the Legislature is acting quite properly within its mandate to determine matters of statewide concern.

"The Governor's first objection says that the bill's mandate of a lease of a particular property to a particular private entity – this is PBS – would likely be construed as a special and not a general law. However, if you look at the facts, the land under the facilities of the existing public broadcasting studio and facility on the campus of the University of Hawaii is and will continue to be owned by the University of Hawaii. The bill simply makes a temporary land use transfer by lease to PBS Hawaii that serves as a related public purpose of media production like that of the ACM. Furthermore, ACM is an entity under the University of Hawaii which would continue to own the land.

"Additionally, the Governor has pointed out that the University of Hawaii's autonomy provides the board of regents' exclusive jurisdiction over the internal structure, management, and operation of the University of Hawaii. However, the intent of this constitutional amendment was to give the University of Hawaii the independence that it needed to meet its goal of academic excellence, research to benefit the community, and economic development. As applied to S.B. No. 1922, economic development is fostered by the development of a creative media industry which will be incubated by the Academy for Creative Media.

"In creating the constitutional provision, the Legislature intended that economic development of the state should be tied to quality higher education. A thriving creative media industry is an ideal ingredient for economic development and a first rate university system. The Legislature knew that the constitutional provision could be misinterpreted. That's why it included within that constitutional amendment a statement that this section shall not limit the power of the Legislature to enact laws of statewide concern. And in the legislative history of this amendment, the Legislature made very clear that the autonomy mandate was not intended to limit the exclusive jurisdiction of the Legislature over creation or funding of programs at the University of Hawaii.

"That is precisely what this bill does, and for those reasons, I urge my colleagues to vote in favor of the override."

Senator Fukunaga requested the following fact sheet on S.B. No. 1922 be inserted into the Journal:

FACT SHEET S.B. 1922, RELATING TO CREATIVE MEDIA

Highlights of the Academy for Creative Media Provisions of S.B. No. 1922

Requires that the University of Hawai'i (UH) enter into a 35 year lease with PBS Hawai'i and requires PBS to provide studio space to the UH Academy of Creative Media (ACM). Appropriates \$4,870,000 for ACM production equipment/related facilities.

Background of PBS Hawai'i

PBS Hawai'i is an affiliate of the national Public Broadcasting Service, a private nonprofit corporation. KHET was state-funded until 2000, when it became a private nonprofit organization in face of dwindling State support. Prior to the change, Hawai'i Public Television was administratively attached to the Department of Commerce and Consumer Affairs. PBS Hawai'i's broadcast facility and studio is located on the campus of the UH at Manoa.

Background of the Academy for Creative Media

The ACM is the fastest growing new program at the UH. However, the ACM does not have a central facility or permanent home on any campus and does not receive any funding for program needs, other than faculty salaries and office overhead which are State funded.

Basis of Governor's Proposed Veto

The Governor proposes to veto the bill based on two constitutional provisions. One relates to legislative power over public lands. The other relates to powers of the Board of Regents.

I. Public Lands

Basis of objection: *"The bill appears to violate Section 5 of Article XI of the Hawai'i Constitution by requiring the University of Hawai'i to lease a specific property to a specific private party (PBS) at no cost and on specific terms and conditions."*

Argument for veto override: The land under the facilities of the existing public broadcasting facility and studio on the campus of the UH is and will continue to be owned by UH. The bill effectuates a temporary land use transfer by lease to PBS Hawai'i that serves a related public purpose of media production, like that of the ACM. Furthermore, the ACM is an entity under the jurisdiction of the UH, which would continue to own the land.

PBS Hawai'i does not have a "no cost" lease. PBS Hawai'i has been situated on the UH campus since 1966. It was then closed-circuit network serving the Manoa campus and the University's Laboratory School. This bill does not provide the use of the facility at no cost to PBS Hawai'i. This bill requires that PBS Hawai'i provide an interim home for the ACM in space equal to 40% of the net usable square footage of the facility, including any newly constructed space. The ACM will be the only subtenant of the facility. PBS Hawai'i will be responsible for the costs of renovation and construction of any additional space to the existing facility.

Under the measure, PBS Hawai'i is responsible for the annual maintenance and operating costs of the building and shall continue to pay for the costs attributed to the ACM based on current allocations of cost to square footage.

The UH testified in favor of this bill. In fact, the UH stands to gain by receiving a \$4,870,000 appropriation for improvements to the broadcasting facility.

II. Powers of Board of Regents

Basis of objection: *"University of Hawai'i autonomy provides the Board of Regents 'exclusive jurisdiction over the internal structure, management and operation of the University.' 'The bill violates the terms on which the University holds the land by setting aside the authority of the Board of Regents to control and manage the land and substituting the Legislature's determination of how the land should be used for the Regents."*

Argument for veto override:

- (1) The intent of the constitutional provision was to provide the UH with the independence needed to meet its goal of academic excellence, research to benefit the community, and economic development. As applied to S.B. No. 1922, economic development is fostered by the development of a creative media industry which will be incubated by the ACM.

In creating the constitutional provision, the Legislature intended that economic development of the State should be tied to quality higher education. A thriving creative media industry is an ideal ingredient for economic development and a first-rate University of Hawai'i system.

- (2) The Legislature knew that the constitutional provision could be misinterpreted. That's why it included within that constitutional amendment a statement that, "This section shall not limit the power of the legislature to enact laws of statewide concern." Although S.B. 1922 lacks an explicit declaration that the measure enacts a law of statewide concern, the furtherance of diversifying quality higher education program opportunities and invigorating and supporting such programs to enhance the State's long term economic development, which is what this measure accomplishes, are issues of statewide concern and as such, demonstrates an appropriate exercise of legislative authority.

Senator Hemmings rose to speak against the motion and said:

"Madam President, I rise to speak against the override and in favor of the veto.

"The constitution is a pretty interesting document. I might add that parenthetically in some places it reads like a city ordinance – it has so much minutiae in it. But as far as the powers of the board of regents, it's pretty clear and it is enunciated in Section 6. It says, 'The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university.' It's a very important statement. 'This section shall not limit the power of the legislature to enact laws of statewide concern.'

"Obviously, the framers of the constitution in 1978 fully intended the board of regents to have the autonomy to determine how they want to use their resources for the betterment of the University of Hawaii. I'd be willing to bet if you ask any one of the regents, that the loss of revenue in this deal is certainly not in the best interest of the University of Hawaii. So the question then arises, does this rise to the occasion of statewide interest? Well, liberally construed, I guess you could say that, but you could say that of pretty much anything, couldn't you.

"The facts are that the Constitution of the State of the Hawaii is very succinct that we here at the State Legislature should not be wheeling and dealing on specific items such as leasing property at the University of Hawaii. And that's what this is all about. This is all about taking care of special interest at the last minute and not about what's good for the university, its autonomy, and what's good for the future of that institution.

"I might add, with the new board of regents and with the help of this Legislature, Madam President, the university's horizons have brightly broadened and they're doing quite well. It's an institution we can be proud of and we can be very proud of what we've done in the last several years to fund it adequately in their programs. Once again, this is a difficult vote for us because we do support the great efforts regarding creative media but we do not support this sweetheart deal that I think flies in the face of fairness and objectivity in reading of the Constitution of the State of Hawaii.

“So therefore, I urge my colleagues to vote ‘no’ and fix this. Thank you, Madam President.”

Senator Hooser rose to support the override and stated:

“Madam President, I rise with brief remarks in support.

“I just want to point out for the record, just in case people listening to the debate or watching it might think that somehow things were slipped into the bill in the dark of the night or after the whole thing was done, that this bill, like the previous one, I have to say, followed the process – it was voted on and discussed in an open process, and again like the previous one, in spite of all these defects, supposedly, that are coming forth in the debate today, the bill was voted on unanimously on the Final vote just like the previous bill. It had bipartisan support, so I’m not quite sure why the bill turns from unanimous support to one that all of a sudden is filled with all these negative, detrimental things that were snuck in.

“This is a good bill. Like all bills, it could be better, but it was done properly. We had unanimous support, and I urge all of my colleagues to vote in support of the motion.”

The motion was put by the Chair and, Roll Call vote having been requested, the veto of S.B. No. 1922, S.D. 2, H.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CREATIVE MEDIA,” 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, 4 (Bunda, Gabbard, Hemmings, Slom). Excused, 3 (Inouye, Kim, Whalen).

H.B. No. 30, H.D. 2, S.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 30, H.D. 2, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1049, seconded by Senator Ige.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 30, H.D. 2, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO INTERNATIONAL TRADE AGREEMENTS,” 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, 4 (Gabbard, Hemmings, Slom, Trimble). Excused, 3 (Inouye, Kim, Whalen).

H.B. No. 310, H.D. 2, S.D. 2, C.D. 2:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 310, H.D. 2, S.D. 2, C.D. 2, as contained in Gov. Msg. No. 1051, seconded by Senator Ige.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 310, H.D. 2, S.D. 2, C.D. 2, entitled: “A BILL FOR AN ACT RELATING TO TECHNOLOGY,” 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, 1 (Trimble). Excused, 3 (Inouye, Kim, Whalen).

H.B. No. 718, S.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 718, S.D. 2, C.D. 1, as contained in Gov. Msg. No. 1053, seconded by Senator Ige.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 718, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO KAKAAKO,” 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, 22. Noes, none. Excused, 3 (Inouye, Kim, Whalen).

At 2:33 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:22 o’clock p.m.

H.B. No. 1270, H.D. 2, S.D. 2, C.D. 2:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 1270, H.D. 2, S.D. 2, C.D. 2, as contained in Gov. Msg. No. 1055, seconded by Senator Ige.

Senator Trimble rose in opposition as follows:

“Madam President, colleagues, I’d like to explain to you my ‘no’ vote on H.B. No. 1270.

“It has to do with the assignment of the task to the legislative auditor. Traditionally, the function of the legislative auditor has been to do hatchet jobs on administrative agencies. We have a Legislative Reference Bureau. They are the appropriate party to assign this to if we wish to do it by a legislative body.

“Next, when we look at what has transpired over the past two years, there are meetings, there are meetings. We don’t see it coming toward a conclusion. In fact, if you just look at the circumstances, you would say perhaps it should be audited. But who would we call to audit it because the legislative auditor, quite frankly, has not been audited as to whether their reports are relevant and timely. They have not been audited in terms of a management audit.

“So I believe that this is being assigned to an agency which is inappropriate. Thank you.”

Senator Kokubun rose in support and stated:

“Madam President, I stand in support of the motion to override the Governor’s veto on H.B. No. 1270.

“First of all, I think the auditor does much more than hatchet jobs, although I’m not sure exactly what that infers. Audits can be very critical, and I think they’re meant to be investigative. So I applaud, actually, the work that the legislative auditor has done. Sometimes I think maybe it’s the Legislature that needs to follow up more on the recommendations from the auditor.

“But notwithstanding that editorial comment on my part, I think that the need here is for some history on this particular measure. If you’ll recall, perhaps it was prior to the good Senator from Waikiki serving in the Senate, that there was a bill in 2004 that asked that the state plan and 12 functional plans be reviewed by the administration in order to see if there was relevancy there because those plans were done in the late 70s. We passed the measure, moved it out, and the Governor vetoed

it. Essentially, her message was that the departments were too busy to do any kind of a review of the state plan and/or the functional plans and how they pertain to the existing work of those departments. We did not override that veto. We allowed that to be the administration's policy statement with respect to long-term planning.

"The following year in 2005, the Legislature put together a measure that then established the Hawaii 2050 Sustainability Plan and the taskforce that was going to carry out at least the drafting of that plan. And we felt that we needed to do it legislatively as opposed to administratively because of the obstacles encountered by the administration, so we assigned it to the legislative auditor. That's how that office got involved with our whole effort with respect to sustainability.

"Whether the good Senator from Waikiki is aware at all of what's now being proposed, because, in fact, there was legislation previously adopted in 2006 based on a report from the taskforce asking for a one-year extension and that the draft sustainability plan will be submitted to the 2008 Legislature. It will be completed this year. In fact there is going to be a summit where the draft plan will be unveiled on September 22nd of this year.

"So, Madam President, I believe that the objections raised by the good Senator from Waikiki failed to hit the mark. I think this is something that the Legislature has supported and I think it's a very, very worthy cause.

"Let me also just quickly mention this is an extensive community-based planning effort which has generated statewide community support. I think at this point in time, critical mass has been obtained throughout the state which indicates this will be a very positive venture for state government.

"Thank you."

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 1270, H.D. 2, S.D. 2, C.D. 2, 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, 19. Noes, 2 (Slom, Trimble). Excused, 4 (Bunda, Inouye, Kim, Whalen).

H.B. No. 1503, H.D. 1, S.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 1503, H.D. 1, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1056, seconded by Senator Ige.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 1503, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EMPLOYMENT," 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, 3 (Hemmings, Slom, Trimble). Excused, 4 (Bunda, Inouye, Kim, Whalen).

H.B. No. 1605, H.D. 1, S.D. 1, C.D. 1:

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

override the veto of H.B. No. 1605, H.D. 1, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1057, seconded by Senator Ige.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 1605, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRAFFIC CONTROL," 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, 3 (Hemmings, Slom, Trimble). Excused, 4 (Bunda, Inouye, Kim, Whalen).

H.B. No. 1764, H.D. 1, S.D. 1, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 1764, H.D. 1, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 1060, seconded by Senator Ige.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 1764, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF REVENUE BONDS TO ASSIST HAWAII HEALTH SYSTEMS CORPORATION OR ANY OF ITS REGIONAL SUBSIDIARY CORPORATIONS," 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, none. Excused, 4 (Bunda, Inouye, Kim, Whalen).

H.B. No. 1830, H.D. 2, S.D. 2, C.D. 1:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 1830, H.D. 2, S.D. 2, C.D. 1, as contained in Gov. Msg. No. 1062, seconded by Senator Ige.

Senator Slom rose in opposition to the override as follows:

"Madam President, I rise in support of the Governor's action and in opposition to this bill.

"I think that it's unfortunate that this bill is misnamed – the safe haven bill – because I don't find it to be a safe haven for babies. I find many problems and unintended consequences with this bill, starting with the fact that we have a bill looking for a problem; we don't have a problem. And the so-called solution is probably fraught with many perils, not the least of which is as has been discussed widely for a long period of time now, the lack of factual information, genetic information, medical information about the baby itself.

"I find it interesting that we move further and further as a state from responsibility and from one being responsible for their own actions to a truly no-fault state – no one is ever at fault. Certainly the baby is not at fault, but the argument that's been presented to us is a false and fallacious one – that is it's either this bill or the dumpster. That's not the options that are given to us. We have many programs that are state supported, federal supported, privately supported to take care of unwanted children in terms of adoption, in terms of other programs that we have, and yet we're going to pass a bill that is basically going to say no questions asked; you can easily abandon this baby.

"The bill calls for the baby abandonment within 72 hours. One of my questions is, who's on the clock? If there's not information given, who's going to be able to tote up that 72

hours? Secondly, how do we know, and it's a rhetorical question, that the person abandoning the baby is truly the baby's mother? Thirdly, do we care at all about real parental rights and father's rights? We've passed a fatherhood commission, but yet, basically with this bill we're cutting out the father – responsible fathers, fathers who want to be involved – completely out of any part of this law.

“We don't know the costs – not just the financial costs, but emotional costs and other costs involved. And instead of reinforcing existing programs and maybe making changes if changes are necessary, what we're doing is going along with the idea that because most states have a similar type of bill, then we should have one too. Yet, I don't remember seeing any research or hearing any testimony as to how these bills are actually working in other states as well.

“So again, we always talk about the keiki; we always talk about protecting the keiki, and yet in so doing, we diminish the rights and the real responsibilities of those people that brought these keiki into the world, and we're sending mixed messages in terms of supporting the very programs that would help provide for a healthy childhood with full information and full disclosure.

“Thank you, Madam President.”

Senator Hemmings rose to speak against the override and stated:

“Madam President, I rise to speak against the motion to override the bill.

“What about the baby, colleagues? What about this young, innocent baby that's brought into the world by a mother, who might have a loving father, a father that has been praying for a child all his life, a father who may welcome the opportunity to bring a child up, to rear a son or daughter, and to give that child the love and support it needs? What about the rights of that child to have a father? What about the rights of that father to have the child? Do we let a potentially distraught mother or maybe mentally unstable mother make a unilateral decision like that after the baby has been born within 72 hours to change the course of the child's entire life, to change the course of the father who's looking forward to having a son or daughter?

“Think about what we're doing here. What's going to happen? What are the results of this bill? What I predict is we'll have an increase as we do every time we try to social engineer and eliminate consequences for people's deeds in their lives. We'll have an increase of safe haven or abandoned children because the state has now sanctioned taking away from this young child – this little baby girl or boy – their heritage and possibly the loving family of a father who'd want them. Is this really what this Body wants to do? I don't think so.

“I urge that you vote ‘no’ on the motion to override the Governor's veto and you sustain it for the sake of life and for the sake of the young baby, and for the sake of the loving parents who will not have an opportunity to make a decision in this life-changing event. Passing this bill will even endanger children more than assist them. I recommend you vote ‘no’ against the motion to override.

“Thank you, Madam President.”

Senator Baker rose to support the override and stated:

“Madam President, I rise in support of the motion to override the Governor's veto.

“Madam President, I had the good fortune to serve as the Chair of the Health Committee for four Sessions in this Legislature and presided over the first consideration of this measure, I believe, along with Senator Chun Oakland at that time, who was then and still is the Chair of Human Services. We passed the measure after much soul searching. It was vetoed. The veto wasn't overridden at the time, and I thought, well, maybe that was a good thing, maybe some of the arguments that we heard today were correct.

“I've had a chance to read a lot of e-mail that have been forwarded to us from other jurisdictions to talk about the experience that those states have had, and I began to think about what kind of individual would it be that might avail herself of this kind of legislation. To me it wouldn't be an individual that has a supportive spouse. It wouldn't be an individual who had a supportive family. It wouldn't be an individual who thought that there were other options to support her and support the child and maybe be able to provide that nurturing upbringing. To me, someone who would avail themselves of this particular option would be very desperate and without hope.

“As someone who came to talk to me about this measure noted, we hope that no one would ever have to do this because we would hope that there would be other supports and other safety systems there to provide for someone who might feel very desperate upon the birth of a child – alone and perhaps with no place else to turn. But if this option, this additional provision would help save one child, then it's worth the vote we would cast.

“I ask my colleagues to join me in voting to override.”

Senator Trimble rose in opposition to the override and said:

“Madam President, I rise in support of the Governor's veto.

“I don't think I've ever been lobbied as much as on this bill, and most of the lobbying came from outside the State of Hawaii. After a while I began to realize that we don't have snowplows in Hawaii. Everybody that was calling me was from a state where there are snowplows.

“We don't need to enact legislation in Hawaii simply because it is appropriate someplace else. We have a different culture. We have different access. We have better access to prenatal care. We have a better health system. And we have a ‘hanai’ system. So, if you count up these things, we have a support system that is in place.

“In the four years that I was on Human Services and the bill was introduced, I kept asking people that were in favor of this bill to demonstrate that there is a problem. And it never was.

“And finally, I have a slightly different take than the previous speakers to my right. I envisioned that the abandoner, quite frankly, could be somebody other than the mother and perhaps even the father.

“I think that the legislation is flawed and I wish that you would consider the arguments that have been presented today and vote to uphold the Governor's veto.

“Thank you.”

Senator Chun Oakland rose to support the override and said:

“Madam President, I stand in support of overriding the veto of this measure.

“On April 21, 1990, a baby was found lying face down on the step bank of Lake Wilson. In 1995, two men made a gruesome discovery of a body of a baby wrapped in a white blanket in a shoebox on Tantalus. In 2001, a Kauai woman had placed her newborn baby in a rice sack and then transferred that newborn in the trash can behind her house. And in 2005, a fetus was discovered wrapped in a shirt in a shallow grave at a Kalihi home.

“Safe havens work to prevent infanticide and bring birth mothers with their unharmed babies to hospitals where they receive care and help. Mothers are allowed to remain anonymous and without the fear of prosecution. With the right protocol in place, mothers are given more information about traditional adoption. Nationwide, one-third of relinquished babies are ultimately kept by their mothers, one-third are placed for traditional adoption, and one-third remain safe haven babies.

“This measure is not against the hanai system of adoption or established adoption procedures or genealogical history lineage or heritage. It’s about saving the lives of our most innocent and helpless among us – our newborn babies. In fact, adoption, the hanai system, genealogy, medical history and heritage are only related to the bill if we first ensure the safety of that newborn. If the newborn baby is thrown in a dumpster and dies, adoption, genealogy, medical history and heritage become a moot issue.

“There was concern that fathers may not be able to reunite with their son or daughter. In this bill, it does not preclude that from happening. The father shall have rights to be reunited, and if you review page 7, (1), (F), which provides in relevant part including whether the parents plan on returning to seek custody of the child in the future.

“Of our 48 states with baby safe haven laws, only one has a sunset clause, but it’s set to be repealed in 2008. I urge my colleagues to support this measure. Thank you.”

Senator Hemmings rose in rebuttal and stated:

“Madam President, I rise on a point of rebuttal.

“Two of the points that were made by the proponents of the override need to be reconsidered so that we make a socially responsible decision. Tragic, tragic, tragic incidences where babies were found dead, but we’re just speculating on what the circumstances of the birth were. More than likely because of the way these babies were found, they weren’t even born in a hospital, so this bill would not really afford the mother the opportunity to utilize this. We also do not know what the mental condition of the mother who would commit infanticide or allow a baby just born to die is and whether or not a safe haven would be a reasonable alternative to someone who is obviously so mentally tormented they’d allow their newborn baby to die.

“So what are we doing with this bill? Are we really solving the problem or are we making an opportunity for future irresponsibility and taking away the opportunity for those who may wish to have a new baby in their life. There was speculation by a previous speaker that many times the mother cannot rely upon the father’s family or the father’s relatives to care for this child. Well, many times she could, and rather than abandon the baby, the baby could go to the grandmothers, or to the father’s family, or an alternative besides abandonment.

“This is bad social policy, and as is with so many times in the area of reproduction, bad social policy implemented by legislatures has not resulted in enlightened societies where the problem goes away. The result is just the opposite – the problem becomes worse.

“I find it incredibly ironic we’re passing this bill and yet a baby in the womb of a mother two days before birth can be killed by a third party and this Legislature will do nothing about it.

“Thank you, Madam President.”

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 1830, H.D. 2, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CHILD PROTECTION,” 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, 3 (Hemmings, Slom, Trimble). Excused, 4 (Bunda, Inouye, Kim, Whalen).

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 2007.”

Offered by: Senators Hooser, Hemmings.

On motion by Senator Ige, seconded by Senator Gabbard 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 Hooser, Hemmings.

On motion by Senator Ige, seconded by Senator Gabbard and carried, S.R. No. 2 was adopted.

At 3:53 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:53 o’clock p.m.

ADJOURNMENT

Senator Ige moved that the Senate of the Twenty-Fourth Legislature of the State of Hawai‘i, Special Session of 2007, adjourn Sine Die, seconded by Senator Gabbard and carried.

At 3:54 o’clock p.m., the President rapped her gavel and declared the Senate of the Twenty-Fourth Legislature of the State of Hawai‘i, Special Session of 2007, adjourned Sine Die.

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. 932 RELATING TO A COMPREHENSIVE OFFENDER REENTRY SYSTEM.									1	8	
S.B. No. 1066 RELATING TO INVASIVE SPECIES.									2	9	
S.B. No. 1191 RELATING TO PEDESTRIAN SAFETY.									3	10	
S.B. No. 1922 RELATING TO CREATIVE MEDIA.									6	11	

NUMBER AND TITLE	Offered Referred	Report of Committee	Adoption	Action of House	Subsequent Action
S.C.R. No. 1 ESTABLISHING A COMMITTEE ON CONFERENCE TO CONSIDER AMENDMENTS TO MEET THE GOVERNOR'S OBJECTIONS TO SENATE BILL NO. 837 S.D.2, H.D.2, C.D.1.	1				1
S.C.R. No. 2 ESTABLISHING A COMMITTEE ON CONFERENCE TO CONSIDER AMENDMENTS TO MEET THE GOVERNOR'S OBJECTIONS TO Senate bill no. 1191 S.D.2, H.D.2, C.D.1.	1				1
S.C.R. No. 3 ESTABLISHING A COMMITTEE ON CONFERENCE TO CONSIDER AMENDMENTS TO MEET THE GOVERNOR'S OBJECTIONS TO SENATE BILL NO. 1922 S.D.2, H.D.1, C.D.1.	1				1

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 2007.	12			12
S.R. No. 2 INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE.	12			12

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. 30 RELATING TO INTERNATIONAL TRADE AGREEMENTS.									9	1	
H.B. No. 310 RELATING TO TECHNOLOGY.									9	2	
H.B. No. 718 RELATING TO KAKAAKO.									9	3	
H.B. No. 1270 RELATING TO STATE PLANNING.									9	4	
H.B. No. 1503 RELATING TO EMPLOYMENT.									10	5	
H.B. No. 1605 RELATING TO TRAFFIC CONTROL.									10	6	
H.B. No. 1764 RELATING TO THE ISSUANCE OF REVENUE BONDS TO ASSIST HAWAII HEALTH SYSTEMS CORPORATION OR ANY OF ITS REGIONAL SUBSIDIARY CORPORATIONS.									10		
H.B. No. 1830 RELATING TO CHILD PROTECTION.									10	7	