

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

Second Special Session of 2007

Convened Wednesday, October 24, 2007
Adjourned Wednesday, October 31, 2007

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

FIRST DAY

Wednesday, October 24, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawaii, Second Special Session of 2007, was called to order at 9:16 o'clock a.m., by Senator Colleen Hanabusa, President of the Senate, in accordance with the Proclamation issued by Governor Linda Lingle on October 23, 2007, as follows:

P R O C L A M A T I O N

WHEREAS, under Section 10 of Article III of the Constitution of the State of Hawaii, the Governor may convene both houses of the Legislature or the Senate alone in special session; and

WHEREAS, the Hawaii Supreme Court has determined that chapter 343, Hawaii Revised Statutes, requires that an environmental assessment be performed with respect to certain improvements at Kahului Harbor intended for and to be used by a large capacity inter-island ferry; and

WHEREAS, the immediate operation of a large capacity inter-island ferry is in the public interest and proposed legislation to allow its operation and harbor improvements to continue to be constructed, while environmental reviews are conducted, require immediate action by the Legislature; and

WHEREAS, the United States Supreme Court and the Hawaii Supreme Court have ruled unconstitutional certain of Hawaii's extended term sentencing laws, leaving the State without the ability to impose extended terms of imprisonment upon certain convicted persons whose incarceration is necessary for the protection of the public; and

WHEREAS, the amendment of Hawaii's extended term sentencing statutes to enable the imposition of extended terms of imprisonment is in the public interest and proposed legislation to allow such amendments require immediate action by the Legislature;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, pursuant to the power vested in me by Section 10 of Article III of the Constitution of the State of Hawaii, do hereby convene both houses of the Twenty-Fourth Legislature of the State of Hawaii in special session on Wednesday, October 24, 2007, at 9 o'clock a.m., primarily for the consideration of legislation to allow the immediate commencement of operation of a large capacity inter-island ferry and to enable the imposition of extended terms of imprisonment.

DONE at the State Capitol, Honolulu, State of Hawaii, this 23rd day of October, 2007.

/s/ Linda Lingle
 LINDA LINGLE
 Governor of Hawaii

APPROVED AS TO FORM:

/s/ Mark J. Bennett
 Mark J. Bennett
 Attorney General."

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 2, transmitting the proclamation convening the Twenty-Fourth Legislature of the State of Hawaii in special session on Wednesday, October 24, 2007, at 9:00 a.m., was read by the Clerk and was placed on file.

The Divine Blessing was invoked by the Honorable Rosalyn H. Baker, Hawaii State Senate, after which the Roll was called showing all Senators present with the exception of Senators Fukunaga, Inouye, Sakamoto and Whalen who were excused.

SENATE RESOLUTION

The following resolution (S.R. No. 1) was read by the Clerk and was disposed of as follows:

Senate Resolution

No. 1 "SENATE RESOLUTION AMENDING THE RULES OF THE SENATE OF THE TWENTY-FOURTH LEGISLATURE OF THE STATE OF HAWAII."

Offered by: Senator Hanabusa.

On motion by Senator Ige, seconded by Senator Hemmings and carried, S.R. No. 1 was adopted.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1 and 3 to 112) were read by the Clerk and were referred to committees:

Gov. Msg. No. 1, submitting for consideration and consent, the nomination of RANDAL K.O. LEE to the office of Associate Judge, Intermediate Court of Appeals, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 3, submitting for consideration and confirmation as the Director of the Department of Labor and Industrial Relations, the nomination of DARWIN CHING, term to expire December 6, 2010, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 4, submitting for consideration and confirmation as the Director of the Department of Public Safety, the nomination of CLAYTON A. FRANK, term to expire

December 6, 2010, was referred to the Committee on Public Safety.

Gov. Msg. No. 5, submitting for consideration and confirmation as the Chairperson of the Board of Land and Natural Resources, the nomination of LAURA H. THIELEN, term to expire December 6, 2010, was referred to the Committee on Water and Land.

Gov. Msg. No. 6, submitting for consideration and confirmation to the Island Burial Council, Island of Hawai'i, the nomination of JAMES G. LEE JR., term to expire June 30, 2009, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 7, submitting for consideration and confirmation to the Island Burial Council, Islands of Kaua'i and Ni'ihau, the nomination of MICHAEL Y.M. LOO, term to expire June 30, 2008, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 8, submitting for consideration and confirmation to the Island Burial Council, Islands of Kaua'i and Ni'ihau, the nomination of MICHAEL Y.M. LOO, term to expire June 30, 2012, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 9, submitting for consideration and confirmation to the Island Burial Council, Island of Oahu, the nomination of ANGELA LISA LEIMAILE EHIA-QUITEVIS, term to expire June 30, 2008, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 10, submitting for consideration and confirmation to the Island Burial Council, Island of Oahu, the nomination of ANGELA LISA LEIMAILE EHIA-QUITEVIS, term to expire June 30, 2012, was referred to the Committee on Agriculture and Hawaiian Affairs.

Gov. Msg. No. 11, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Hurricane Relief Fund, the nomination of GARY Y.K. CHOCK S.E., term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 12, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Hurricane Relief Fund, the nomination of MICHAEL P. HAMNETT, term to expire June 30, 2009, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 13, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Hurricane Relief Fund, the nomination of DENNIS MICHAEL SUGIHARA, term to expire June 30, 2011, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 14, submitting for consideration and confirmation to the Public Utilities Commission (PUC), the nomination of LESLIE HARUO KONDO, term to expire June 30, 2008, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 15, submitting for consideration and confirmation to the Public Utilities Commission (PUC), the nomination of LESLIE HARUO KONDO, term to expire June 30, 2014, was referred to the Committee on Commerce, Consumer Protection and Affordable Housing.

Gov. Msg. No. 16, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Strategic Development Corporation, the nomination of BLENN AKIRA FUJIMOTO, term to expire June 30, 2008, was referred to the Committee on Economic Development and Taxation.

Gov. Msg. No. 17, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Strategic Development Corporation, the nomination of BLENN AKIRA FUJIMOTO, term to expire June 30, 2012, was referred to the Committee on Economic Development and Taxation.

Gov. Msg. No. 18, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Strategic Development Corporation, the nomination of DARREN T. KIMURA, term to expire June 30, 2010, was referred to the Committee on Economic Development and Taxation.

Gov. Msg. No. 19, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Strategic Development Corporation, the nomination of DANTON S. WONG, term to expire June 30, 2009, was referred to the Committee on Economic Development and Taxation.

Gov. Msg. No. 20, submitting for consideration and confirmation to the Hawai'i Teacher Standards Board, the nomination of KELLY MICHELE NOELANI CASTELLANO, term to expire June 30, 2010, was referred to the Committee on Education.

Gov. Msg. No. 21, submitting for consideration and confirmation to the Hawai'i Teacher Standards Board, the nomination of GAIL EDYTH WEAVER, term to expire June 30, 2009, was referred to the Committee on Education.

Gov. Msg. No. 22, submitting for consideration and confirmation as the Administrator for the State Health Planning and Development Agency, the nomination of RONALD E. TERRY, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 23, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of SHAWN CANNON, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 24, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of AVERY B. CHUMBLEY, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 25, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of ANDREW DON MD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 26, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of ROGER K. GODFREY, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 27, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of ROSANNE C. HARRIGAN EDD, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 28, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of CATHERINE L.N. KIM, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 29, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of BARRY TOSHIO MIZUNO, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 30, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of MABEL JEAN ODO, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 31, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of CLIFFORD L. NAKEA, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 32, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of BARRY KOJI TANIGUCHI, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 33, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of RICHARD JAMES VIDGEN, term to expire June 30, 2011, was referred to the Committee on Health.

Gov. Msg. No. 34, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of PATRICIA ANNETTE LANOIE BLANCHETTE MD, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 35, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of CLEMENTINA D. CERIA-ULEP, term to expire July 1, 2010, was referred to the Committee on Health.

Gov. Msg. No. 36, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of STEPHANIE A. MARSHALL, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 37, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of MICHAEL REED MASUDA, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 38, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of MARIE MILKS, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 39, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of PAUL DOUGLAS NIELSON MD, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 40, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of JERRY ROBERT SMEAD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 41, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of MARC SHLACHTER MD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 42, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of ELDON L. WEGNER, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 43, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of MARY C. WESSELKAMPER, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 44, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Oahu Regional Board, the nomination of DONALD WILLIAM WOOD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 45, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of SIDNEY MITSUO FUKU, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 46, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of BRENDA SUE HO, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 47, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of ROBERT DAILY IRVINE, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 48, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of BRIAN M. IWATA, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 49, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of DENNIS DON LEE, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 50, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of CAROL IADELUCA MYRIANTHIS, RPT, PSYD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 51, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of ALAN M. OKAMOTO, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 52, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation East Hawai'i Regional Board, the nomination of CRAIG Y. SHIKUMA MD, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 53, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of ALISTAIR WILLIAM BAIROS, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 54, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of BARRY BLUM, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 55, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of JOHN D. CORNILLEZ, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 56, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of JAMES W. HIGGINS, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 57, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of DAVID BRUCE MAKALIU KAAPU, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 58, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of BRUCE MAKARERICZ, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 59, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of RICHARD M. MCDOWELL MD, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 60, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of LEON PASKER, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 61, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of RICHARD J. TAAFFE, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 62, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation West Hawai'i Regional Board, the nomination of ELIZABETH HEIMAN ZAGORODNEY, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 63, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of NORMAN AKITA, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 64, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of LAVERNE L. BESSERT, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 65, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of LINDA FAYE COLLINS, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 66, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of TIMOTHY BLAKE CRANE, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 67, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of ROSELIND BARBARA BULATAO-FRANKLIN, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 68, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of RICHARD B. GODING MD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 69, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of RANDALL J. HEE, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 70, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of JODY KJELDTSEN, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 71, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of DAVID JOHN PETERS, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 72, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of MARIANO TORRES MD, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 73, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Kauai Regional Board, the nomination of ESTELITA CABAL TRINIDAD, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 74, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of ZADOC WHITE BROWN JR., term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 75, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of GRANT Y.M. CHUN, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 76, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of GINA MARIE FLAMMER, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 77, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of G. STEPHEN HOLADAY, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 78, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of DONNA LEE MCCLEARY MD, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 79, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of LEE EIJI MIYASATO, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 80, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of HOWARD K. NAKAMURA, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 81, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of KAREN TOSHIYO OURA, term to expire June 30, 2009, was referred to the Committee on Health.

Gov. Msg. No. 82, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of BETTY JANE OTT, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 83, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of SUSAN K. STEWART, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 84, submitting for consideration and confirmation to the Hawai'i Health Systems Corporation Maui Regional Board, the nomination of RICHARD CLAY SUTHERLAND, term to expire June 30, 2010, was referred to the Committee on Health.

Gov. Msg. No. 85, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Public Housing Authority (PHA), the nomination of ANNE MARIE BECK, term to expire June 30, 2011, was referred to the Committee on Human Services and Public Housing.

Gov. Msg. No. 86, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Public Housing Authority (PHA), the nomination of RENE BERTHIAUME, term to expire June 30, 2011, was referred to the Committee on Human Services and Public Housing.

Gov. Msg. No. 87, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Public Housing Authority (PHA), the nomination of SHERRILEE K. DODSON, term to expire June 30, 2011, was referred to the Committee on Human Services and Public Housing.

Gov. Msg. No. 88, submitting for consideration and confirmation to the Commission on the Status of Women, the nomination of ELENA M.H. CABATU, term to expire June 30, 2010, was referred to the Committee on Human Services and Public Housing.

Gov. Msg. No. 89, submitting for consideration and confirmation to the Advisory Board on Veterans' Services, the nomination of HERBERT C. LUM, term to expire June 30, 2010, was referred to the Committee on Intergovernmental and Military Affairs.

Gov. Msg. No. 90, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of LITO M. ASUNCION, term to expire June 30, 2011, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 91, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of MARCELLA ALOHALANI BORNSTEIN BOIDO, term to expire June 30, 2009, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 92, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of EARNEST CHUNG, term to expire June 30, 2008, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 93, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of EARNEST CHUNG, term to expire June 30, 2012, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 94, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of CANISIUS TKEL FILIBERT, term to expire June 30, 2010, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 95, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of DOMINIC K. INOCELDA, term to expire June 30, 2008, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 96, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of DOMINIC K. INOCELDA, term to expire June 30, 2012, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 97, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of GERALD HISASHI OHTA, term to expire June 30, 2008, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 98, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of GERALD HISASHI OHTA, term to expire June 30, 2012, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 99, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of MAUREEN NAMAKAOKALANI RAWLINS, term to expire June 30, 2009, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 100, submitting for consideration and confirmation to the Language Access Advisory Council, the

nomination of TIN MYAING THEIN, term to expire June 30, 2010, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 101, submitting for consideration and confirmation to the Language Access Advisory Council, the nomination of SUZANNE MARIE ZENG, term to expire June 30, 2011, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 102, submitting for consideration and confirmation to the Procurement Policy Board, the nomination of DARRYL WAYNE BARDUSCH, term to expire June 30, 2008, was referred to the Committee on Tourism and Government Operations.

Gov. Msg. No. 103, submitting for consideration and confirmation to the Procurement Policy Board, the nomination of DARRYL WAYNE BARDUSCH, term to expire June 30, 2012, was referred to the Committee on Tourism and Government Operations.

Gov. Msg. No. 104, submitting for consideration and confirmation to the Procurement Policy Board, the nomination of KEITH T. MATSUMOTO, term to expire June 30, 2011, was referred to the Committee on Tourism and Government Operations.

Gov. Msg. No. 105, submitting for consideration and confirmation to the Procurement Policy Board, the nomination of PAMELA A. TORRES CPCM, term to expire June 30, 2010, was referred to the Committee on Tourism and Government Operations.

Gov. Msg. No. 106, submitting for consideration and confirmation to the Hawai'i Community Development Authority (HCDA), the nomination of JOSEPH L. DWIGHT IV, term to expire June 30, 2008, was referred to the Committee on Water and Land.

Gov. Msg. No. 107, submitting for consideration and confirmation to the Hawai'i Community Development Authority (HCDA), the nomination of JOSEPH L. DWIGHT IV, term to expire June 30, 2012, was referred to the Committee on Water and Land.

Gov. Msg. No. 108, submitting for consideration and confirmation to the Kaneohe Bay Regional Council, the nomination of BENJAMIN KEOLAMA'AKHI LINDSEY, term to expire June 30, 2009, was referred to the Committee on Water and Land.

Gov. Msg. No. 109, submitting for consideration and confirmation to the Land Use Commission, the nomination of KYLE JAMES KALEO CHOCK, term to expire June 30, 2010, was referred to the Committee on Water and Land.

Gov. Msg. No. 110, submitting for consideration and confirmation to the Land Use Commission, the nomination of NORMAND R. LEZY, term to expire June 30, 2008, was referred to the Committee on Water and Land.

Gov. Msg. No. 111, submitting for consideration and confirmation to the Land Use Commission, the nomination of NORMAND R. LEZY, term to expire June 30, 2012, was referred to the Committee on Water and Land.

Gov. Msg. No. 112, submitting for consideration and confirmation to the Commission on Water Resource Management, the nomination of DONNA FAY K. KIYOSAKI, term to expire June 30, 2011, was referred to the Committee on Water and Land.

INTRODUCTION OF SENATE BILLS

On motion by Senator Ige, seconded by Senator Hemmings and carried, the following bills passed First Reading by title and were referred to committees:

Senate Bill

No. 1 "A BILL FOR AN ACT RELATING TO TRANSPORTATION."

Introduced by: Senator Hanabusa.

Referred to: Jointly to the Committee on Judiciary and Labor, the Committee on Transportation and International Affairs and the Committee on Energy and Environment

No. 2 "A BILL FOR AN ACT RELATING TO SENTENCING."

Introduced by: Senator Hanabusa.

Referred to: Committee on Judiciary and Labor

The following revised Senate leadership assignments were announced by Senate President Hanabusa:

Majority Leader:
Senator Gary L. Hooser

Majority Floor Leader:
Senator David Y. Ige

Majority Caucus Leader:
Senator Shan S. Tsutsui

Majority Policy Leader:
Senator Les Ihara, Jr.

Majority Whips:
Senator Norman Sakamoto
Senator Suzanne Chun Oakland

President Emeritus:
Senator Robert Bunda

Minority Leader:
Senator Fred Hemmings

Minority Floor Leader:
Senator Paul Whalen

The President also announced the following revised standing committees of the Senate, their respective chairs and members:

AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair
Senator Kalani J. English, Vice Chair
Senator Mike Gabbard
Senator Clayton Hee
Senator Russell S. Kokubun
Senator Sam Slom

COMMERCE, CONSUMER PROTECTION AND AFFORDABLE HOUSING

Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair
Senator Will Espero

Senator Les Ihara, Jr.
 Senator Norman Sakamoto
 Senator Brian T. Taniguchi
 Senator Gordon Trimble

ECONOMIC DEVELOPMENT AND TAXATION

Senator Carol Fukunaga, Chair
 Senator Will Espero, Vice Chair
 Senator J. Kalani English
 Senator David Y. Ige
 Senator Sam Slom

EDUCATION

Senator Norman Sakamoto, Chair
 Senator Jill N. Tokuda, Vice Chair
 Senator Suzanne Chun Oakland
 Senator Mike Gabbard
 Senator Clayton Hee
 Senator Clarence K. Nishihara
 Senator Brian T. Taniguchi
 Senator Sam Slom

ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair
 Senator Gary L. Hooser, Vice Chair
 Senator Les Ihara, Jr.
 Senator Russell S. Kokubun
 Senator Gordon Trimble

HEALTH

Senator David Y. Ige, Chair
 Senator Carol Fukunaga, Vice Chair
 Senator Rosalyn H. Baker
 Senator Ron Menor
 Senator Paul Whalen

HUMAN SERVICES AND PUBLIC HOUSING

Senator Suzanne Chun Oakland, Chair
 Senator Les Ihara, Jr., Vice Chair
 Senator Gary L. Hooser
 Senator Norman Sakamoto
 Senator Fred Hemmings

INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Lorraine R. Inouye, Chair
 Senator Shan S. Tsutsui, Vice Chair
 Senator Fred Hemmings

JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair
 Senator Clayton Hee, Vice Chair
 Senator Mike Gabbard
 Senator Russell S. Kokubun
 Senator Clarence K. Nishihara
 Senator Sam Slom

PUBLIC SAFETY

Senator Will Espero, Chair
 Senator Clarence K. Nishihara, Vice Chair
 Senator Norman Sakamoto
 Senator Paul Whalen

TOURISM AND GOVERNMENT OPERATIONS

Senator Clarence K. Nishihara, Chair
 Senator Donna Mercado Kim, Vice Chair
 Senator Shan S. Tsutsui
 Senator Gordon Trimble

TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair
 Senator Mike Gabbard, Vice Chair
 Senator Will Espero
 Senator Gary L. Hooser
 Senator Lorraine R. Inouye
 Senator Shan. S. Tsutsui
 Senator Gordon Trimble

WATER AND LAND

Senator Clayton Hee, Chair
 Senator Russell S. Kokubun, Vice Chair
 Senator Carol Fukunaga
 Senator Jill N. Tokuda
 Senator Paul Whalen

WAYS AND MEANS

Senator Rosalyn H. Baker, Chair
 Senator Shan S. Tsutsui, Vice Chair
 Senator Suzanne Chun Oakland
 Senator J. Kalani English
 Senator Carol Fukunaga
 Senator Gary L. Hooser
 Senator Lorraine R. Inouye
 Senator Donna Mercado Kim
 Senator Ron Menor
 Senator Jill N. Tokuda
 Senator Fred Hemmings
 Senator Paul Whalen

ADJOURNMENT

At 9:23 o'clock a.m., on motion by Senator Ige, seconded by Senator Hemmings and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, October 25, 2007.

SECOND DAY

Thursday, October 25, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Second Special Session of 2007, convened at 11:44 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Will Espero, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators Baker, Hee and Menor who were excused.

The President announced that she had read and approved the Journal of the First Day.

ADJOURNMENT

At 11:47 o'clock a.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, October 26, 2007.

THIRD DAY

Friday, October 26, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Second Special Session of 2007, convened at 12:02 o'clock p.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable J. Kalani English, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators Ihara and Inouye who were excused.

The President announced that she had read and approved the Journal of the Second Day.

At 12:04 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:04 o'clock p.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 113 and 114) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 113, letter dated October 25, 2007, informing the Senate that the Governor has amended the expiration date for the term of the Chairperson of the Board of Land and Natural Resources, Laura H. Thielen, Governor's Message No. 5 (dated October 23, 2007) to December 31, 2010, was placed on file.

Gov. Msg. No. 114, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Health Systems Corporation, the nomination of RAYMOND SHIGEO ONO, term to expire June 30, 2009, was referred to the Committee on Health.

STANDING COMMITTEE REPORTS

Senator Fukunaga, for the Committee on Economic Development and Taxation, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Strategic Development Corporation of the following:

BLENN AKIRA FUJIMOTO, in accordance with Gov. Msg. Nos. 16 and 17;

DARREN T. KIMURA, in accordance with Gov. Msg. No. 18; and

DANTON S. WONG, in accordance with Gov. Msg. No. 19.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1 and Gov. Msg. Nos. 16, 17, 18 and 19 was deferred until Monday, October 29, 2007.

Senator Taniguchi, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate consent to the nomination of RANDAL K.O. LEE to the office of Associate Judge, Intermediate Court of Appeals, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2 and Gov. Msg. No. 1 was deferred until Monday, October 29, 2007.

Senators Taniguchi, English and Menor, for the Committee on Judiciary and Labor, the Committee on Transportation and International Affairs and the Committee on Energy and Environment, presented a joint report of the majority of the Committees (Stand. Com. Rep. No. 3) recommending that S.B. No. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Ige, seconded by Senator Whalen and carried, the joint report of the majority of the Committees was adopted and S.B. No. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed Second Reading and was placed on the calendar for Third Reading on Monday, October 29, 2007.

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

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

"On behalf of myself and Senator Tsutsui, the Maui delegation, we'd like to acknowledge Senator Baker, our colleague, for being honored for her work with cancer.

"Let me read from the *Honolulu Advertiser*:

'State Sen. Rosalyn Baker of Maui yesterday received the Exemplary State Elected Official Comprehensive Cancer Control Award at the 2007 Hawaii Comprehensive Cancer Control Coalition meeting.

'The meeting was held at the Japanese Cultural Center.

'Baker's work in cancer control includes championing an increase in the state's cigarette tax in 2006 and steering legislation that resulted in Hawai'i becoming a more smoke-free state.

'Baker, a 31-year cancer survivor and healthcare advocate, has served as vice chairwoman of the Hawaii Comprehensive Cancer Control Coalition for the past two years.

'Hawai'i has for years banned smoking in workplaces, and on Nov. 16 extended the ban to prohibit smoking in bars, restaurants and other places that serve liquor and within 20 feet of the entrances and windows.

'The law includes a \$100 fine for a first offense for a business and a \$50 fine for smokers who violate the law.'

"We're very proud of Senator Baker for her work in this area and I'd like to ask the Senate to please congratulate her."

ADJOURNMENT

At 12:09 o'clock p.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 9:00 o'clock a.m., Monday, October 29, 2007.

FOURTH DAY

Monday, October 29, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Second Special Session of 2007, convened at 9:17 o'clock a.m. with the President in the Chair.

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

The President announced that she had read and approved the Journal of the Third Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 115 to 124) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 115, advising the Senate of the withdrawal of the nomination of MICHAEL Y.M. LOO to the Island Burial Council, Islands of Kaua'i and Ni'ihau, under Gov. Msg. No. 8, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 115, the nomination listed under Gov. Msg. No. 8 was returned.

Gov. Msg. No. 116, advising the Senate of the withdrawal of the nomination of ANGELA LISA LEIMAILE EHIA-QUITEVIS to the Island Burial Council, Island of Oahu, under Gov. Msg. No. 10, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 116, the nomination listed under Gov. Msg. No. 10 was returned.

Gov. Msg. No. 117, advising the Senate of the withdrawal of the nomination of LESLIE HARUO KONDO to the Public Utilities Commission (PUC), under Gov. Msg. No. 15, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 117, the nomination listed under Gov. Msg. No. 15 was returned.

Gov. Msg. No. 118, advising the Senate of the withdrawal of the nomination of BLENN AKIRA FUJIMOTO to the Board of Directors of the Hawai'i Strategic Development Corporation, under Gov. Msg. No. 17, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 118, the nomination listed under Gov. Msg. No. 17 was returned.

Gov. Msg. No. 119, advising the Senate of the withdrawal of the nomination of EARNEST CHUNG to the Language Access Advisory Council, under Gov. Msg. No. 93, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 119, the nomination listed under Gov. Msg. No. 93 was returned.

Gov. Msg. No. 120, advising the Senate of the withdrawal of the nomination of DOMINIC K. INOCELDA to the Language Access Advisory Council, under Gov. Msg. No. 96, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 120, the nomination listed under Gov. Msg. No. 96 was returned.

Gov. Msg. No. 121, advising the Senate of the withdrawal of the nomination of GERALD HISASHI OHTA to the Language Access Advisory Council, under Gov. Msg. No. 98, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 121, the nomination listed under Gov. Msg. No. 98 was returned.

Gov. Msg. No. 122, advising the Senate of the withdrawal of the nomination of DARRYL WAYNE BARDUSCH to the Procurement Policy Board, under Gov. Msg. No. 103, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 122, the nomination listed under Gov. Msg. No. 103 was returned.

Gov. Msg. No. 123, advising the Senate of the withdrawal of the nomination of JOSEPH L. DWIGHT IV to the Hawai'i Community Development Authority (HCDA), under Gov. Msg. No. 107, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 123, the nomination listed under Gov. Msg. No. 107 was returned.

Gov. Msg. No. 124, advising the Senate of the withdrawal of the nomination of NORMAND R. LEZY to the Land Use Commission, under Gov. Msg. No. 111, dated October 23, 2007, was placed on file.

In compliance with Gov. Msg. No. 124, the nomination listed under Gov. Msg. No. 111 was returned.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 1 and 2) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 1, transmitting H.B. No. 1, which passed Third Reading in the House of Representatives on October 26, 2007, was placed on file.

On motion by Senator Ige, seconded by Senator Whalen and carried, H.B. No. 1, entitled: "A BILL FOR AN ACT RELATING TO TRANSPORTATION," passed First Reading by title and was referred jointly to the Committee on Judiciary and Labor, the Committee on Transportation and International Affairs and the Committee on Energy and Environment.

Hse. Com. No. 2, transmitting H.B. No. 2, which passed Third Reading in the House of Representatives on October 26, 2007, was placed on file.

On motion by Senator Ige, seconded by Senator Whalen and carried, H.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO SENTENCING," passed First Reading by title and was referred to the Committee on Judiciary and Labor.

STANDING COMMITTEE REPORTS

Senator Nishihara, for the Committee on Tourism and Government Operations, presented a report (Stand. Com. Rep. No. 4) recommending that the Senate advise and consent to the nominations to the Procurement Policy Board of the following:

DARRYL WAYNE BARDUSCH, in accordance with Gov. Msg. Nos. 102 and 103;

KEITH T. MATSUMOTO, in accordance with Gov. Msg. No. 104; and

PAMELA A. TORRES CPCM, in accordance with Gov. Msg. No. 105.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 4 and Gov. Msg. Nos. 102, 103, 104 and 105 was deferred until Tuesday, October 30, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 5) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Public Housing Authority (PHA) of the following:

ANNE MARIE BECK, in accordance with Gov. Msg. No. 85;

RENE BERTHIAUME, in accordance with Gov. Msg. No. 86; and

SHERRILEE K. DODSON, in accordance with Gov. Msg. No. 87.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 5 and Gov. Msg. Nos. 85, 86 and 87 was deferred until Tuesday, October 30, 2007.

Senator Chun Oakland, for the Committee on Human Services and Public Housing, presented a report (Stand. Com. Rep. No. 6) recommending that the Senate advise and consent to the nomination of ELENA M.H. CABATU to the Commission on the Status of Women, in accordance with Gov. Msg. No. 88.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 6 and Gov. Msg. No. 88 was deferred until Tuesday, October 30, 2007.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 1 (Gov. Msg. Nos. 16, 17, 18 and 19):

By unanimous consent, action on Stand. Com. Rep. No. 1 and Gov. Msg. Nos. 16, 17, 18 and 19 was deferred until Tuesday, October 30, 2007.

Stand. Com. Rep. No. 2 (Gov. Msg. No. 1):

By unanimous consent, action on Stand. Com. Rep. No. 2 and Gov. Msg. No. 1 was deferred until Tuesday, October 30, 2007.

THIRD READING

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

Senator Taniguchi moved that S.B. No. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Menor.

Senator Taniguchi rose in support of the measure with reservations and stated:

"Madam President, I rise to speak in support of S.B. No. 1, S.D. 1, with reservations.

"First of all, I would like to thank my fellow Co-Chairs and members of the Joint Committee, especially those members who attended the Neighbor Island hearings. After over 25 hours of hearings on four different islands, I feel we have forged a bond that usually only comes with experiencing battle together.

"I would also like to thank all our Senate staffers who jumped in to help us, without hesitation. I need to especially thank Terrence Aratani and Susan Miyao from my office who, on very short notice, arranged for the sites of the hearings, made flight arrangements for the Committee members and staff, and who organized the thousands of testimonies at the Capitol hearing.

"And Madam President, I would also like to thank you for the leadership you have shown. Without your contributions, we would not have a bill today.

"Everyone who serves in this Chamber has heard from the public on the question of whether or not we as a body should take action to allow the Hawai'i Superferry to operate while the state performs a review of the ferry's potential environmental impacts. I know I have heard from people all over Hawai'i through our public hearings, phone calls, 6,000 or so emails, and by people just stopping to talk to me about what action we should or should not take. For those of us who traveled to Kauai, Maui and Kona, we saw first-hand the passion of those on both sides of the issue, and the alarming extent to which this one issue has divided our community.

"We cannot allow these divisions to fester, or allow the Governor to impose a 'unified command' of punitive government reaction to bona fide expressions of free speech and protest. At this point, only legislative action can begin to balance the legitimate concerns between those who seek a viable transportation alternative and those who expect that the laws to protect our environment will be carried out. We must accept our responsibility as Legislators, no matter who is to blame, to address the concerns of a divided community, because only by taking some kind of action can we begin to bring healing to these divisions.

"I believe that the process established by Hawaii's Environmental Policy Act, Chapter 343, should have been followed. The Department of Transportation should not have granted an exemption from Chapter 343 that was not supported by the law. Hawai'i Superferry should not have placed itself in financial jeopardy by ignoring the possibility that the Hawai'i Supreme Court could require an environmental review in response to the genuine and well-reasoned concerns of the Maui plaintiffs. Initially, I was opposed to a Special Session to help a company and a Governor who had been intent on circumventing what they considered an inconvenience. So I hope you will forgive me for voting with reservations on this bill, but I could not completely support any bill given these circumstances.

"However, it was you, Madam President, who convinced me that it was the Senate – not the Governor, not the DOT, certainly not the Superferry, and not even the House – that would have to do the hard work on a bill. You simply asked me to do the best job possible; you were the one who asked us, or maybe you ordered us, to go to the Neighbor Islands and get their input, and you told us that whatever we came up with, you would support it. When we went to Kauai, we told the people there that the original draft of this bill, the one that seemed to let the Governor set the protocols and the DOT do the EIS, was just the starting point and that the bill was not a done deal. We told them that we were there to listen. We promised them that we would try to incorporate their concerns into the final product. We promised the same thing on Maui and on the Big

Island. And that is what we have done here. We have amended the original draft to specifically provide reasonable safeguards to our environment while an EIS is being prepared.

"In some ways this bill is a remarkable achievement. We have heard the concerns of a deeply divided community and crafted a solution under difficult circumstances. This bill accomplishes what we set out to do – develop a prudent and reasoned approach to providing an alternative means of inter-island transportation while respecting and protecting the environment and all of the communities of our state.

"Madam President, I know that this bill is not satisfactory to everyone. I would only say that we did the best we could under the constraints of a Special Session. I am hopeful that everyone involved, including the many young people we heard from, will continue to be passionate in their beliefs, but do so in a respectful and productive way.

"Thank you."

Senator Tsutsui rose in opposition to the measure and said:

"Madam President, I rise in opposition to S.B. No. 1, S.D. 1.

"Madam President, before I speak on the bill before us, I would just like to commend you for your leadership on this very controversial issue. I would also like to thank my colleagues here in the Senate who participated in the hearings on the Neighbor Islands. You have all taken the time to listen and incorporate some of those concerns into this Senate draft before us. So once again, I thank you.

"Having said that, however, I still cannot in good conscience support a bill extending special treatment to a single large business at the expense of our clear and longstanding environmental disclosure law. Madam President, this is simply a Special Session for special interest legislation. This bill does not clarify or correct a vague law that the courts have misinterpreted, nor does this bill change the language of Chapter 343 to create a different interpretation of our current environmental disclosure law except pertaining to one business.

"This Special Session is simply an inappropriate way to address a problem that has nothing to do with our environmental law, but everything to do with how the current administration and the Hawai'i Superferry have tried to manipulate it. The dilemma that we've been asked to address arises from a business risk that the Hawai'i Superferry took and a miscalculation by the administration.

"Madam President, we have thousands of small businesses throughout our state and each and every one of them certainly understands the nature of business risk. They deal with cash flow, personnel, expansion opportunities and generally everything that is required to move their business forward. They also understand how certain decisions could result in more risk, and we both know that in their assessment of business risk, certainly they would never include expecting the Governor and this Legislative Body to bail them out in a Special Session.

"Unlike our small businesses, the Hawai'i Superferry had the resources to get the best business and legal advice that money could buy. They not only had the benefit of high-paid lawyers, consultants, and high-powered lobbyists, but they had the strong support of the state administration, particularly this Governor. My point is that they knew that they were taking a chance and now we are here to fix their mistake. We are basically giving them two bites of the apple – two bites that most businesses and individuals will never get.

"The Hawai'i Superferry even fought a bill this past Session that would have spared this Body and taxpayers of this state the need to come back and revisit this very question – a proposal that only six months ago they and the administration rejected in the strongest terms. What brings them back now is that the courts have ruled and they have ruled them wrong.

"The Hawai'i Supreme Court ruled five to zero against an exemption and Maui Judge Joseph Cardoza provided all parties to the most recent court proceedings an opportunity to, one, provide evidence, present expert and other witnesses, and time to cross examine each and every one of those witnesses. After nearly a month of proceedings, the claim that the Hawai'i Superferry had the right to operate without an environmental review was rejected. Significantly, as part of his decision, Judge Cardoza found that there would be irreparable harm if the Hawai'i Superferry operated before a full environmental disclosure statement was prepared and processed.

"As I stated at the onset of my comments, I am grateful for the attempt by my Senate colleagues to add conditions to the original draft of this bill. However, by its very nature as a Legislative Body, where the House and Senate operate through negotiations and compromise, this bill, even with these important conditions cannot and does not address Judge Cardoza's finding of irreparable harm. In this instance, we cannot and we do not know whether we have identified and addressed the appropriate and necessary conditions that will ensure that the Hawai'i Superferry operates in an environmentally, socially, economic and culturally responsible manner. That's why our law requires study, first, and action, second.

"I have no doubt that an inter-island ferry service can provide a significant service to the people of this state, but I am deeply concerned about and opposed to the support of a business which considers itself far and above the law that applies to everyone else. If we are to have environmental laws, we must apply them as they are written and meant to be used.

"Madam President, I want to thank you for your time this morning and as stated earlier, I will be voting 'no' on this measure. Thank you."

Senator Gabbard rose in support of the measure with reservations as follows:

"I rise in support of S.B. No. 1, S.D. 1, with reservations.

"I, too, would like to thank you, Madam President, for your leadership as far as ordering us to go to the Neighbor Islands to listen to testimony there. I would also like to thank the Senator from Manoa for his leadership as well as the other Chairs.

"As you know, the Senator from Manoa was referring to us as the 'Lucky Seven.' I must admit, as I was sitting out there on the stage on Kauai, and Kona, and also on Maui, I did not feel lucky because there was a lot of tension in the air out there. Basically, as we all know, people on the Neighbor Islands accuse us of always being 'Oahu-centric'. There was a lot of feeling out there that they were being jerked around on this whole issue. So, for me to be able to go there and to see face to face and to experience that was very important in terms of my decision-making.

"After 4 days of testimony, we heard repeatedly these two main themes:

1. The arrogance of Hawai'i Superferry and other elected officials in thinking that they could operate a venture of

this magnitude – in essence, a new freeway on the ocean – without doing some kind of environmental review; and

2. The importance of doing things ‘pono’ and protecting our aina and the Neighbor Island way of life.

“The problem is that we, as elected officials, and actually all the people of Hawai‘i were placed in this horrible ‘Catch 22’ situation. The entire state has been held hostage in a sense by deals that have been made without the people really having an opportunity to decide how it should be.

“While this is not a perfect scenario, I do see a benefit in having a new mode of inter-island transportation to allow sports teams, churches, and families to visit the Neighbor Islands. There’s also a benefit for small farmers who are looking for a more economical way to get their produce to market.

“I’m pleased that we did add some mitigating measures to the bill to better protect whales and to guard against invasive species. I’m also pleased the Oversight Task Force will be making periodic reports on the EIS.

“I feel strongly, though, that we should take action to protect our environment IF in the coming months there are negative impacts with ferry operations.

“And finally, I’m pleased that the audit is in there that remained intact because it will show us how and why the people of Hawai‘i have been placed in this lousy situation, and that the point is that we need to make sure that something like this does not happen again.

“Mahalo.”

Senator Baker rose in opposition to the measure and stated:

“Madam President, I rise in opposition to S.B. No. 1, S.D.1, Relating to Transportation.

“This has not been an easy decision for me to make. My district is truly split. Most of the letters to the editor in the *Maui News* recently have been from writers in the 5th Senate district, be it from Kihei in the south to Lahaina in the west. Those letters track e-mail I’ve received both for and against the measure before us. I’ve heard from small business people, local people, newcomers, young people, seniors, some who call themselves the silent majority and others who are very obviously outspoken and vocal. This issue has indeed touched a chord in our community. In many ways, the issue is not just about Hawai‘i Superferry. It is about the process and how contentious issues are resolved. Particularly in rushing the Alakai into service to beat a court deadline, the debate over Hawai‘i Superferry boiled over and other frustrations and concerns surfaced.

“I was and remain a supporter of an inter-island ferry system for Hawai‘i. I believe there is value in alternative modes of transportation both for people and goods. There are two smaller ferries that ply the waters between Lahaina and Lanai, and Lahaina and Molokai. Both provide valuable transportation service to residents and visitors alike. I had hoped that Hawai‘i Superferry would be a complementary service. Perhaps it still can be, but there have been so many missteps to this point that it will take a yeoman effort to bring harmony back to our communities.

“I want to thank the Chair of the Senate Judiciary and Labor committee, the Lead Chair for the Senate on this measure, for taking the Committees to the Neighbor Islands to hear their concerns. The rudeness displayed by some of my constituents

in the Baldwin High School auditorium was uncalled for and not Maui style. Unfortunately, it underscored some of the deeply held concerns about growth and change and a desire to have a measure of home rule on those matters that may greatly impact the Maui landscape and not for the better, many feel. I thank you, Madam President, Chair Taniguchi, Co-Chairs Menor and English for hearing their concerns and amending the bill in an attempt to address issues raised by putting some of the conditions sought into this measure. It is certainly an improvement, but as I have reluctantly concluded, it doesn’t get to some of the core issues raised in our communities and I must stand together with my other Maui colleagues on this matter.

“Some of my constituents will be disappointed in my ‘no’ vote because they support the Superferry and want it back in operation. They can take heart because this measure will probably pass anyway. Others will still object if Hawai‘i Superferry goes back into operation without at least an EA in place first. As the Maui DOCARE chief said very eloquently, ‘I’m not for or against the Superferry. But there will be impacts and we’re not staffed or equipped to be able to handle them.’ So, to address that resource issue, it is my intention to include more resources in the supplemental budget for DLNR DOCARE operations, for invasive species detection and inspections at our harbors and airports. I ask my colleagues in advance for their support.

“In the meantime, I call on the Chair of BLNR to reallocate additional resources to Maui and Kauai to help in this endeavor. It is also my intention to work with others in this Body to craft stronger laws that will apply to all carriers of people, goods and vehicles in order to deter the importation or movement of pests and invasive species to and around our state. The need for better inspection efforts and the need for clarity and enforcement of our environmental protection laws are two of the major takeaway messages from this entire debate. I pledge to do my part to advance those efforts.

“I call upon Hawai‘i Superferry to work more closely with the Hawaiian Islands Humpback Whale National Marine Sanctuary on perfecting a whale avoidance strategy. Madam President, my first two years in the Legislature in the early 1990’s were spent working to adopt laws to prevent harassment of whales while in our near shore waters. We did and the population is rebounding. However, according to Sanctuary maps, there is no clear path from Oahu to Maui that doesn’t transect high whale density areas, based on aerial sightings from 1993-2003. Special mitigation must be provided for these areas.

“My colleagues have or will address other areas so I won’t repeat those concerns now. Even if this measure passes, I do not believe that it will be fair winds for Hawai‘i Superferry if Hawai‘i Superferry chooses to just ‘stay the course.’ Hawai‘i Superferry and DOT officials have yet to acknowledge that my constituents and others have legitimate concerns. A judicial forum, in my mind, is never the ideal place for real compromise or workable solutions for disputes to be achieved. We need to heal the rifts in our communities. I urge the Governor, DOT and Hawai‘i Superferry to use the days ahead to engage in real, meaningful dialog with representatives of the affected Neighbor Island communities and demonstrate a willingness to address their legitimate concerns so our state can move forward.

“Mahalo.”

Senator Slom rose to speak in support of the measure and said:

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

"I, too, want to thank the Senate President for her role in this Special Session. I recall that the Senate President actually had called for a Special Session prior to the court's ruling in this matter. I think things may have been different had we done that, because after all, the buck stops here – it is the Legislature that makes the laws; it's the Legislature that determines what we do; it's the Legislature that has the responsibility and ultimately the decision making for what happens within our state.

"There has been a game going on to try to place blame elsewhere, primarily at the feet of the Governor and the executive branch. We can argue that and we can debate that, but the fact of the matter is that the company adhered to everything that we and every other agency required of them. They also modified, were flexible, were listening to and changed things that we told them that they must do.

"So I kind of bristle when I hear people say that the company has been arrogant; the company is getting special treatment; the company is seeking a bailout. We are seeking to rectify a situation that we've allowed to become something of discussion throughout the United States and around the world. And this idea of divisiveness did not start with the Superferry, nor will it end with the Superferry. We have long had very serious divisiveness within our community. The difference is we've allowed it and encouraged it to become a cultural art form during this particular discussion with the help of certain individuals within this Body, within the community, within the judicial system. We focused our attention on one business, one activity – the Superferry.

"We had prior to this discussion this year, 22 public meetings that were held about the Superferry. When people talk about rushing into action, we're talking about a project that has been discussed and planned and voted upon for more than four years. We're talking about hundreds of millions of dollars of investment that had to be garnered for a risk taking in the State of Hawai'i. And who is the risk for? The visitors? Special interest? Basically, it was for our residents – for those of us who for decades have called for a transportation alternative that would allow us to transport and transfer easily between our islands and our counties – our family, our friends, our vehicles, our equipment, our businesses.

"We've had plenty of input. Up until this time in the 11 years that I've been in the Senate, the number one issue had been the Margery Bronster confirmation. It blew us away that we had nearly 1,000 communications 10 years ago. Here are the communications on my desk, e-mails alone, up to date just as of Saturday. Here are the no votes. Here are the yes votes – people that want and need and have reason to believe in an alternate choice. And that's what it is.

"Small business people, I know a little bit about small business and overwhelmingly small business people say we need this opportunity to go between islands to expand our markets, to compete with the big boxes, to compete with outsiders. We, the local residents; we, the local small businesses want to do that. Farmers and agricultural people want the opportunity to swiftly, efficiently, and easily be able to transport their goods and services between the islands, an opportunity we've never had.

"I have grown up here and lived here since statehood, and I recall prior to statehood the dream always was inter-island ferries to link the islands. But not until the Superferry did we have proposals that would allow us to bring our vehicles, bring our equipment, bring our goods and wares. They were, just as the previous speaker said, they were just regional ferries to take passengers back and forth. But everyone always said this is

what they wanted. They wanted the ability to bring their vehicle, to bring their team sports, to bring their farm equipment, to bring the things that they did back and forth. This was the only opportunity we've ever had.

"I used to ride Seaflyght. Maybe some of my colleagues did as well. Seaflyght was an entirely different animal. The Boeing jet foil, which worked well in Vietnam and sputtered here in our inter-island waters, had you sitting inside a closed cabin, had you breaking down more often than not, and not being able to take anything back and forth. Where are those vessels now? The latest information I had is that they were sold off and operating in Singapore.

"People have said this is not personal; this is not against the Superferry; it's about the process. The process is the Superferry. That's what's before us. That big beautiful boat that's sitting down there at Pier 19, that's real. We're not having this discussion four years ago, because four years ago everybody was enthusiastic. And two years ago, when we passed S.R. No. 79 and the Senate concurrent resolution, it passed here unanimously by some of the same people that are sitting in this room today – neighbor island people – and they said in part on page 2, lines 24 to 35, 'WHEREAS, the vessels that will be used by Hawai'i Superferry Inc. are environmentally-friendly; and WHEREAS, the Hawai'i Superferry, Inc. vessels will use the cleanest and most energy-efficient marine engines in the world and will exceed the strict new 2007 EPA emissions requirements and burn fuel 100 times cleaner than conventional ships,' and it goes on for four pages. And everybody spoke in favor of it, and everybody voted in favor of it.

"Superferry didn't change anything except that they bent over even more so to accommodate the input that they got from citizens of this state. Some of the suggestions and concerns were legitimate and they were imposed – their own restrictions, their own changes at their own cost. But some of the statements that have been made were outrageous. I got one over the weekend, by the way, from a local attorney on the Big Island that likes to file a lawsuit everyday against everybody including the Coast Guard, and he said that the real purpose of the Superferry was to suppress the sovereignty movement. We heard everything.

"The argument about invasive species, it's a legitimate argument. We have a real problem in our state with invasive species, and we should do something about it. Well, what have we done? This Legislative Body has increased spending and personnel and toughened laws, and that's great. The Superferry was abiding by that. But then when we go on to say we're going to add more conditions and we're going to make sure that every vehicle and every person is super clean, well maybe that's okay too if we did that for air transportation, cruise ship transportation, barge transportation, cargo transportation between the islands – but we don't! So how can one not say that this is aimed at one company, one investment, one mode of transportation, because it doesn't apply to anyone else. Why is that? That question has been asked for many months now and nobody has come up with the answer for that.

"This divisiveness within our community, within our state bothers me and it should bother you as well. But to lay it on the doorstep of the Superferry or of the Governor is ludicrous and false. I made a statement in public nearly a month ago now, that the same opponents that we've seen – basically some of the same people that oppose the private space launch facility on the Big Island, and private geothermal energy on the Big Island, and the world's largest telescope and astronomy on the Big Island and elsewhere, and resort and residential developments – the same people that have opposed these investments are the

same people that are opposing this. And I said publicly they're already gearing up for the next negative attack, and what will it be on? It's already there – Disney at Ko 'Olina. People are writing letters saying that we don't want your stinking Disney; we don't want to be like that; we don't want a resort, regardless of the fact of zoning, and permitting, and investment, and jobs, and opportunity, and choices that this and these other private investments bring to our state.

"We don't have the luxury of saying no to everything that comes in because we don't have that many economic alternatives. And I say to you, we are at an economic tipping point in this state. If we are going to allow a small group of people, highly organized, with many people from the outside and many attorneys to determine our fate, then we are not going to have the sustainability, the self-sufficiency, and the individual choice that we talk about, because it's only from continued capital growth investment and those that are willing to take risks in our state that brings us those choices. And that's what this is about – choice.

"The people that don't like the Superferry certainly don't have to use it and won't use it, and that's fine. No one is being forced to do it. I hope they will succeed. Whether they succeed or not will be determined in the marketplace. Whether their scheduling, their pricing, their conditions meet the public's needs and will, that will determine whether they succeed.

"As far as being bailed out, the only ones that are being bailed out right now are us, because we've made certain conditions and promises to the Superferry in exchange for their willingness and ability to pay back \$40 million in bonds. That is a requirement. That's a debt. It's not a bailout. But how can they pay back anything if they're not allowed to sail? How can we find out if they're going to succeed if they're not allowed to sail? All this talk about irreparable harm – the irreparable harm is to the people and the image of the State of Hawai'i. That's the irreparable harm.

"I also bristle when I hear from some individuals and organizations specifically like the Pacific Whale Foundation. They were so great in talking about protecting the whales, and yet the only cases that I have been made aware of, the only cases that have been documented, the only cases that have been reported but not talked about by the Pacific Whale Foundation of whales being harmed have been by the Pacific Whale Foundation and other nonprofit so-called environmental groups.

"Why do we have this double standard? Why do we have this selectivity of invasive species? What's good for one should be good for all. But I'm not saying punish others; I'm saying free the Superferry and allow it to work. Allow these people that want it to have their opportunity to get it. Will changes be made? Can changes be made after it actually sails? Of course they can.

"By the way, the provision to put someone on board from NOAA to watch for the whales, it was my good colleague from Waikiki, Senator Trimble, who pointed out that instead of saying that it should be on the deck, since the deck was in the back of the ship, the position should be either on the bridge or at least the bill changed to say onboard. And I would hope that my colleagues would give great consideration to appointing Senator Trimble in his spare time to be that observer because I think Senator Trimble has demonstrated he's got the vision, the acuity, the wisdom and the magnifying glasses to be able to stand on the back of the ship and tell you what has happened.

"We have serious concerns in our community and no one – no one – is going to sacrifice the environment for a business, a capital investment, or anything else. Our job is to look at and

revisit Chapter 343 come January, but in the meantime, we have a very real situation now. What do we do? We had to come back in Special Session.

"It's also comical when people say, well, we're separate branches of government and we shouldn't be interfering with the judiciary. Oh, I see. Doesn't the judiciary come here and beg for money and beg for more people from the Legislature? This is it! This is ground zero, folks! The Legislature – we make the decisions. And just because there is a decision made by a court does not mean that (a) it is the right decision; (b) it's perfect; or (c) that we should sit on our hands. Lord knows your members of the Minority have many times pointed out in discussing bills that it appears to be unconstitutional, and the will of the Majority is, well, let's just find out and we'll see if anybody challenges it; we'll pass the law. That's why we're going to be talking later this afternoon and in Session, I guess, tomorrow and Wednesday about the bill about extended sentencing, which the State Supreme Court has ruled unconstitutional. We do this all the time. We pass bills and we're not as careful as we should be.

"But to say the court has ruled and that's it is to say we should believe in all of the rulings of the Ninth Circuit Court of Appeals – the circuit court that has been overturned in its rulings more than any other circuit court in the United States – or those people that say we've got to listen to Judge Cardoza, and I'm saying absolutely, let's listen to him back in 2005; let's listen to the US Court in 2005 when both ruled that opponents had no standing and that the time had run. They had plenty of time to voice objections or to make changes. When we debated the resolution there was plenty of time for people to come forward, but they didn't. And then magically and coincidentally, the State Supreme Court ruled two days – two days – before the sailing that there was a problem.

"And one more thing about this \$40 million in investment, we talked in this Body for many years about the problems with our harbors and the lack of infrastructure. And had it not been for the Superferry, we wouldn't have done anything about it, but there was a need to do something to pump money in which was going to be paid back because it's a debt, it's a loan. And that's what we've done.

"Free speech – I value free speech. I also value the right to protest, but the line is crossed when protestors become lawbreakers – when people dress up with phony badges, when they represent nonexistent entities, when they encourage people to break the law, when they don't have respect or courtesy for the Chief Executive of this State, for their own neighbors, their own neighbors who stand up and say I would like this. And when we look at most of these people, come on, you've got to admit it, most of these people look like they're fresh off the boat themselves, and yet they're determining our future and our destiny. But they won't do that! We will do it here in the Legislature. We will vote this up or down, and it will be the law.

"Do I like this bill as it is right now? No, I think there are already too many conditions. I don't think the Legislature has any business telling a private entity what they must do outside of what has to do with normal health and safety rules, but we're doing it anyway. And the main thing is we've got to get this vessel sailing so that the public has these choices, has alternatives, and then can make up their mind, and then allow the marketplace to determine.

"There are restrictions in this bill. There are additional protections for invasive species. There are additional requirements and things that have to be met. So I think when we take all of this into consideration, we should pass this bill.

We should watch what happens with the Superferry, but then maybe it's time to turn our attention to these other transportation entities if we feel so strongly about what it is that we're doing. And as for the whales, maybe we can talk to the whales' relatives in Alaska, in Seattle, in Canada where ferries – high speed ferries – have been operating for many decades.

“We've got to understand that in our state, there's a time for public input and then there's a time for decision making. Today is the time for decisions, and I hope that we'll make the right decision and support the Superferry.

“Thank you, Madam President.”

Senator Menor rose in support of the bill and said:

“Mr. President, I rise to speak in support of this bill.

“Madam President, I would like to offer a few brief observations, if I might, based on the testimonies that were presented during Committee hearings that we conducted on the neighbor islands and Oahu, and input that we received from the public.

“Madam President, I think one of the troubling aspects about the public debate over this bill is how divisive of an issue this has become for the people of our state, and in fact the strident tone of the comments that have just been made by my Senate colleague from Hawai'i Kai reflects the kind of emotionalism and strong feelings that have characterized the deliberations over this bill. It has resulted in animosities and rifts between Oahu residents and neighbor islanders, local born versus residents who have moved to Hawai'i, and proponents of more growth and more economic development versus environmental and Hawaiian sovereignty supporters.

“Madam President, I've had a number of residents of this island telling me that I should push for the Superferry and ignore the concerns of neighbor island residents. Conversely, some neighbor islanders expressed concern over what they see as the over utilization of their beaches, roads, and parks by outsiders, including residents of Oahu, and their desire to place restrictions on the flow of visitors into their islands. There are some, including the previous speaker, who would say that these divisions in Hawai'i have existed for quite some time now, but there's no question that the debate over this issue is magnified and exacerbated them.

“Irrespective of how this issue is ultimately resolved, I believe that as elected officials, we need to do everything we can to move forward and address the divisions in our state. We need to communicate to our constituents that whether they reside on Oahu or the neighbor islands we are residents of the same state and that we will have a difficult time addressing the monumental challenges facing our islands unless we exert our best efforts to work together and devise solutions that take into account the needs and concerns of the diverse segments of our communities.

“For example, the residents of the neighbor islands should respect the right of those of us who live on Oahu to travel freely between the islands to pursue employment, recreation, or other opportunities. On the other hand, if those of us living on Oahu are going to be supportive of projects such as the Superferry that could fuel and direct more growth and increase visitor traffic to the neighbor islands, then we should provide the other counties with the resources that they will need and ensure that laws are in place to preserve their quality of life. So in that regard, I will support the proposals of Ways and Means to provide additional funding and resources for DLNR and the DOCARE program.

“Madam President, I was born and raised on the Big Island and was fortunate to spend a lot of time outdoors enjoying the natural beauty of the Island. As a result, I'm especially sympathetic to the concerns of those who live on the neighbor islands about the dramatic growth that has occurred there and the disruptive effect this has had on their quality of life. I'm also attuned to their concerns as a Legislator representing Central Oahu where growth and development have placed tremendous stress on our schools, roads, and other infrastructure. That is why I am grateful that your Senate Chairs were able to come up with fair and balanced legislation that takes into account the views and concerns of the residents of Oahu and the neighbor islands.

“This approach is important because these kinds of issues that we have been addressing during this Special Session are not just Oahu issues or neighbor island issues, but rather issues of statewide concern. In this regard I believe that the passage of the measure that is before us will enable the residents of Oahu and other parts of the state to take advantage of an alternative mode of transportation that the Superferry will provide while establishing safeguards to protect the environment and other resources for current and future generations of Hawaii's citizens.

“For all of these reasons, I will be voting in favor of this measure and would ask my colleagues to do the same. Thank you.”

At 10:05 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:11 o'clock a.m.

Senator Ihara rose to support the measure with reservations as follows:

“Madam President, I rise to speak in support of S.B. No. 1, but wish to express my reservations on this legislation.

“Like other Senators, I am reluctant to establish a special EIS process for large, high-speed ferries to operate before an environmental impact statement is completed.

“The Hawai'i Environmental Policy Act was adopted in 1974 to require studies to disclose potential environmental impacts and make recommendations for mitigating project impacts – before approval. The reason for requiring studies first was to allow implementation of mitigation measures before a project proceeded. S.B. No. 1 alters this process by allowing the Superferry to sail while studies are being conducted, and before mitigations can be recommended in the EIS and therefore be considered and implemented.

“S.B. No. 1 establishes a concurrent, streamlined permitting process that was not envisioned when S.C.R. No. 149 was adopted in 2004. Three years ago, our support for 'expeditious planning and implementation' of the Superferry project, as stated in the resolution, did not mean the project should proceed before environmental studies were completed.

“Earlier this year, the Senate passed S.B. No. 1276, and we supported this bill to allow the Superferry to sail as planned while an EIS was being prepared. The bill also required implementation of all mitigation measures recommended in the EIS. The Senate had intended to intervene in the project by imposing an additional requirement of an environmental impact statement and implementation of mitigation measures, even though the Department of Transportation decided none was required. In light of the House's unconditional support of the

Superferry at the time, this effort was our only hope of protecting the environment, albeit after the proper studies were completed.

“Some have asked why other water carriers were not required to conduct an EIS and implement mitigations as has been suggested for the Superferry. The University of Hawai‘i Environmental Center’s former director provided us the answer in a recent hearing. Matson, Young Brothers and other water carriers were grandfathered when the Hawai‘i Environmental Act was enacted in 1974.

“Madam President, for different reasons, I believe most people would agree the situation we face today should not have happened. My own view is the Department of Transportation made a mistake in determining that the law did not require an environmental assessment. Last week the Department of Transportation Director acknowledged he was not aware that a project in an exempted category . . . he believed the harbor improvements for the Superferry fell in an exempted category, and I agree it does, but he acknowledged that he was not aware that even though it fell into an exempted category it was still required to conduct an environmental assessment if the project ‘might cause significant impacts on the environment.’

“Accountability for this error points to one of three failures in my view: (1) failure of the Department of Transportation to consult the Attorney General’s Office; or (2) failure of the Attorney General’s Office to provide competent legal advice to the department; or (3) failure of the Department of Transportation to heed the advice of the Attorney General’s Office.

“Thus far, the administration has declined to account for its error. They indicate the Department of Transportation made the right decision regarding the EA, and that a unanimous Supreme Court set new precedent in applying the law in the Superferry case. On the contrary, this is a very established law and I believe the court simply applied the law as it has been applied in the past. To provide a basis of truth, I believe the performance audit as required in this bill can provide the disclosures necessary to ensure accountability for the Department of Transportation’s erroneous decision that an EA was not required.

“I believe the Superferry is also accountable – but to their own stockholders – for relying on DOT’s no EA decision and risking their investments in a court decision.

“Nevertheless, the Legislature is today considering a proposal to allow the Superferry to stay in Hawai‘i and provide inter-island ferry service, even though current law requires stopping ferry operations until an environmental assessment is completed.

“While I prefer to conduct environmental studies before allowing the Superferry to sail, I believe the overall benefits to Hawai‘i warrant an exception in this case – provided sufficient safeguards are in place to avoid negative impacts while an EIS is being conducted.

“I believe the record shows that safeguards are needed. For 22 days, Judge Cardoza heard from experts on both sides, and concluded – and I quote from page 278 of the transcript – Judge Cardoza said, quote, ‘By their technology (meaning the Superferry) and what it represents is a new chapter in the State of Hawai‘i. It does present, without adequate environmental review, a real possibility of irreparable damage to the environment, [and] to the way of life in this community,’ end quote.

“That is why I have sought to add conditions to this bill. While the conditions contained in the bill represent a good start, I believe more is needed – such as safeguards to protect endangered marine mammals by requiring interim mitigations recommended by the National Marine Fisheries Service. I would like to also find a workable way to have vehicle under-carriages washed. And, in exchange for allowing the ferry to operate before the EIS, I believe mitigations recommended in the EIS, when it is finally completed, should be implemented and that this requirement should be in the bill. Superferry has already conducted what they believe are sufficient environmental studies, so I feel it is fair to the Superferry, the Department of Transportation, and other agencies that they should be required to address the recommended mitigations contained in the EIS.

“I am particularly concerned about the danger posed to endangered marine mammals. I think that’s still a gap in this bill. While this bill requires Superferry to apply for a federal incidental-take permit, the permit process could take one to two years, or longer. Only after the permit is issued would mitigations be required.

“I have spoken to a lead staffer in the NOAA Fisheries Office who’s concerned about potential harm to marine mammals. She believes the Superferry is the ‘first large high-speed ferry to operate in U.S. waters.’ There are hundreds around the world and NOAA has researched and have not found one other high-speed, large capacity superferry in U.S. waters. So this incidental-take permit application would be NOAA’s first.

“The Endangered Species Act is intended to protect endangered species to allow their recovery and removal from the endangered species list. Endangered species in Hawai‘i include the humpback whale and other whale species, the Hawaiian monk seal, sea turtles, and others. Hawai‘i is a major migration route for 7,000 to 9,000 humpback whales. For this stock, Hawai‘i is its primary calving grounds where whales give birth to calves. These calves spend much of their time near the surface, and are less able to detect and avoid fast-moving vessels – thus, making them more vulnerable to harm.

“During the incidental-take permit application process, prosecution for whale strikes are discretionary. There are severe penalties for striking endangered species. The department may choose to not proceed with prosecution during the permit process before it has actually been granted because courts tend to accept good-faith efforts on the applicant’s behalf. However, federal law allows citizen lawsuits to seek enforcement of federal laws involving ferry strikes of whales and other marine mammals, but once an incidental-take permit is issued, Superferry would be shielded from prosecution.

“The whale sanctuary manager at NOAA’s Marine Fisheries Service has stated her belief that Superferry’s whale avoidance policy is not adequate to protect whales. This concerns me, but I also understand that it is possible for Superferry and NOAA to agree on ‘interim mitigation measures’ while the permit is being processed. Therefore, I believe a condition should be added to this bill that would require Superferry and the Department of Transportation, and other involved parties to implement interim mitigations recommended by NOAA.

“Madam President, I have many reservations about this bill and urge that additional conditions be added to the bill. Like many constituents in my district, I would like the Superferry to provide inter-island ferry service for our residents, but with adequate safeguards to protect our environment while an EIS is being conducted. The special EIS process established in this

bill for the Superferry is an extraordinary act of this Legislature, and I believe all reasonable conditions should be considered.

“Thank you.”

Senator Bunda requested his vote be cast “aye, with reservations,” and the Chair so ordered.

Senator Chun Oakland supported the measure as follows:

“Madam President, I stand in support of S.B. No. 1, S.D. 1.

“I do know that the majority of Legislators are supportive of an inter-island ferry service in Hawai‘i. I believe there will be wonderful opportunities for families to be together, for athletic teams to come together, for businesses to do business in another and possibly better way, for persons with disabilities to travel, for people who prefer to travel by water rather than air to do so, and many more opportunities.

“I appreciate the work of the Chairs, members and staff of the Judiciary and Labor, Energy and Environment, and Transportation and International Affairs Committees, our Senate President, and my colleagues in the House and Senate very much.

“We do have a responsibility to increase our state’s capabilities to monitor and inspect all transportation systems to reduce the introduction of additional invasive species to our home, Hawai‘i.

“I believe this is a golden opportunity to teach people who travel throughout our state, as well as our residents – and this is Oahu, Maui, Kauai, Big Island, Lanai, Molokai, and Kahoolawe – to be respectful of the resources on all islands as we travel – to know that wherever we travel we should leave things intact or in a better condition, to not take things without permission or take anything from the public’s resources, to know and respect the kapus that we have grown up with regarding our natural resources from the ocean, the streams, our land.

“I support the continued increase in resources to our agricultural, public safety, transportation, and land and natural agencies to mitigate the possibility of invasive species entering and spreading to different parts of our state, to proactively address any public safety concerns, and to mitigate any potential negative impacts that water carriers have on our ocean resources.

“My hope is that as people of Hawai‘i, we will continue to uphold the ‘Aloha Spirit’ and to be able to respect each other even though we may have some differences. That is what makes Hawai‘i, Hawai‘i. I think this issue has brought out the best and the worst in us. I believe the people of Hawai‘i are very caring people and I hope going forward we will work together to make this and other things a reality to bring people together, but also be very respectful of what we have.

“Thank you, Madam President.”

Senator Trimble spoke in favor of the measure and said:

“Madam President, I rise to speak in favor of S.B. No. 1, with reservations, however.

“The bill keeps mentioning large capacity ferry vessel. I don’t know where this term originated. If we look around the world, other people will find it strange that we use this term. If I can just mention a couple of over a dozen – the M/S Silja Europa, which was built in 1993, has a length of 650 ft., a breadth of 112 ft., and it has gross tonnage of 60,000. It is

capable of carrying 3,000 people. It has 3,600 beds, and it’s currently in service in the Baltic. The next one was M/F Danielle Casanova, Italy, no less. The number of passengers are 2,200; number of beds, 1,800; number of cars, 700; gross tonnage, 44,000. I could go on, and on, and on.

“While it is a marketing ploy, probably, that they came up with the name Hawai‘i Superferry, it, by international standards, is not super fast or super large, but it is high-tech, and it is new in Hawai‘i, and it does give our citizens a choice, an option.

“I’ve heard a lot of hysterical testimony in the last few days. I think it is important that we remember what the function of an environmental impact statement is. An environmental impact statement is designed to have an airing, an open consideration of what anticipated problems can be. With the hearings that we have had at the Legislature and the hearings that have taken place in the courts, probably no other change in Hawaii’s history has had as much public airing as the ferry that we are now talking about today.

“Like most of you, I would prefer not to be here today. And unlike most of you, I probably had a little bit further to come with less notice, but I am happy to be here to vote in favor of giving the people a choice, because the problems have been aired and it is up to the State Legislature to decide what is in the public interest, what is in the public good. Clearly, giving our people a choice is in the public interest and for the public good.

“Thank you.”

Senator Espero rose in support of the measure as stated:

“Madam President, I’d like to rise in support of this measure.

“I believe that I am speaking for the silent majority of the residents of our state who are in support of the Superferry – a new mode of transportation which will usher Hawai‘i into an era which will allow a great number of our residents to utilize our ocean resource. This is something that has been done centuries ago and it’s been discussed, and now is a great opportunity for all of us.

“It is unfortunate that it has turned into the debate and discussion which has evolved into today. It has been messy, yet all levels of government have been involved in this. I believe the Hawai‘i Superferry executives and management team have done what we have asked them to do. As was stated earlier, they have broken no laws and they are now at the point where the courts said stop and cease all operations, and they have done this.

“This debate has invigorated the public. It has excited and awakened many individuals with many opinions, and these opinions are important. I don’t think there is necessarily a right or a wrong, however, as a Body, I am certain that next Session we will be taking a very strong look, a very focused look at our EIS laws and try to determine why this process has happened as it has happened and how we have gotten to this point today. I am certain you will see some bills introduced so that something like this never happens again.

“The Executive Branch, it looks like, should have at least asked for an EA. The Judiciary acted on this in 2005 and they allowed the project to proceed, and the State Legislature, we also touched this many years, as recently as last Session. So all three branches of government were involved. Our federal government was involved as well, and yet something happened, something transpired and now we must make a very difficult decision.

“Yes, it’s true that we must take care of our environment, but I think we must also look at what are the wishes of the majority of our residents.

“Next Session begins in approximately 11 weeks, and the time period of when the Superferry operates to that time where we begin our new Session will give us an opportunity to look at their operations, to look at what is working, to see where the weaknesses are. In that sense, there will be a pilot demonstration. And this is just the beginning because the EIS, which will be completed in 6 to 12 months, will begin a whole new debate and discussion on what needs to be done to make this a permanent operation which will benefit the physically challenged residents of our state, which will benefit the senior citizens, those with medical conditions, sports teams, high school teams, small businesses, farmers, tourists.

“In my opinion, the benefits far outweigh the negatives, but we must minimize or eliminate those negatives where we can so that this Superferry, this new way of traveling for Hawai’i residents will become a reality.

“Thank you, Madam President.”

Senator English rose to speak against the measure as follows:

“Madam President, I rise in opposition.

“I oppose this measure on principle. The process was perverted to accommodate this bill, and to me that is distasteful. It is the wrong way for this Body to move.

“Madam President, we’ve been through a lot with this. Personally, as the Chair of the Transportation and International Affairs Committee, I’ve had a good number of years dealing with this particular issue. To this Body’s credit, we have offered compromise, after compromise, after compromise to the Superferry. And we have done this in bill, after bill, after bill. We have passed measures out of this Body and sent them to the House, only to have them routinely rejected by the administration and the Superferry. We sat down with them and told them that this may be unconstitutional. We told them that the likelihood of a court challenge is great, and there is a chance they will lose. It is apparent now that they must have gotten some bad advice, I think, because they moved ahead without really considering the possibilities.

Madam President, I remember the first time the Superferry people came to my office. The matter was presented to me as fait accompli: ‘We have the signed agreement. We have this. We’re just informing you of what we are going to do.’ I listened to their presentation, and then I said to them, ‘You know, I think you have made a bad business decision here, because most businesses will ensure that they have their permits and infrastructure in place before they go ahead and build something.’ In this case it was a multi-million dollar ship. But nevertheless, here we are.

“Madam President, I want to offer into the record S.B. No. 1276, S.D. 3, along with its accompanying committee reports and status sheet, so that we do not forget exactly what the compromise of the Senate provided in the last Regular Session. I would like there to be a complete record of those proceedings.

“I would also like to say, Madam President, that I believe the measure before us is unconstitutional. The constitution requires that we pass general laws; we cannot pass specific laws. Using the pseudonym ‘large capacity ferry vessel’ in place of the name ‘Superferry,’ in my mind does not pass constitutional muster. In fact, throughout our hearings, throughout our

discussions, we could not distinguish between the two terms. People who stood up to testify said, ‘We want the Superferry.’ Technically, what was before us was a bill for a large capacity ferry vessel, and people said it could be any one of a number of companies. We know that only one vessel meets this definition. So while we may rely on this legal fiction of not passing this bill for one interest, that is exactly what we are doing – we’re passing a bill for a single interest.

“We should prepare ourselves for a flood of similar requests in the future, from other companies wanting the same type of treatment. And we should prepare ourselves for the inevitable legal challenge to follow because I think that challenge will stand on solid legal grounds, considering the constitutionality of this action.

“Madam President, I am the only Senator representing four islands – Moloka’i, Lana’i, Kaho’olawe, and East and Upcountry Maui. Within my district, we have the only operating inter-island ferry system in the State of Hawai’i, moving between Maui, Lana’i, and Moloka’i. This ferry system has operated for a number of years. We have not built up their berthing areas. In fact, on Lana’i, they’re only now building up Manele Harbor. In Lahaina they have to wait for the cruise ship tenders to come in before them. Think about residents with their goods coming to shop on Maui, having to first walk through Lahaina with all of their baggage because the TSA won’t let them come in the front at usual. Then they have to go through a security checkpoint, and then wait on the boats outside as the tenders from the cruise ships bring them in. So yes, we have an existing inter-island ferry system in Hawai’i. It is in my district. Eight percent of the people that move from Lana’i, on and off that island, go through the ferry. There is a good percentage on Moloka’i as well.

“All of this, Madam President, is to say that I have never been opposed to a ferry system. In fact I think we need a real ferry system in our state. But this one was truly bungled.

“In the end, Madam President, this bill will undoubtedly move forward. I think it is unconstitutional, and I will be surprised if there is not a challenge. I know that we will all have to go home and talk to our constituents about what happened here. In many ways, this is forcing Hawai’i to enter a new era – an era of disdain, of not being polite to each other, and of not being respectful of others. I had one of our colleagues throw the testimony of opponents on the floor, and that is very symbolic.

“You see, our job is to protect the rights of the minority as well as the rights of the majority. We must not allow the rights of the majority trample the rights of the minority. No. The founding fathers had that debate a long time ago. You see it in the Federalist Papers, the debate and the call to protect us all from the ‘tyranny of the majority.’ You read that again and you understand that it is our responsibility to find the balance between the desires of the majority and the rights of the minority. To bring balance, not to trample on rights. My islands are very small. We have by population a small number of people. But they count as much as everyone else.

“So, Madam President, I will vote ‘no’ on this measure. I will insert the earlier bill and other documents into the record. I ask those who are still contemplating their vote to vote ‘no’ with me. If not, vote with reservations to at least register a protest on this process.

“Thank you, Madam President.”

The Chair having so ordered, S.B. No. 1276, S.D. 3, and its accompanying committee reports and status sheet are identified as ATTACHMENT "A" to the Journal of this Day.

Senator Hooser also rose in opposition to the measure and said:

"Madam President, I rise in opposition to S.B. No. 1, S.D. 1.

"Before I begin my remarks, Madam President, I would like to offer my thanks to you, to the Chair of the Judiciary Committee and to all of the members who took the time to attend the neighbor island community briefings on this issue, and to truly listen to the people on the neighbor islands who came forward to share their mana'o on this very, very important issue.

"I want to again, especially thank the Chair of the Judiciary Committee for giving his word, for standing by his word and truly listening and acting upon the desires of those people who came forward to testify, and to you, Madam President, for truly showing statewide leadership by not only agreeing to hold hearings on the neighbor islands but in fact insisting that we do so, and then taking that time, really unprecedented time, that the Senate President took to actually attend the meetings herself. I thank you personally for that – thank you very much.

"Madam President, as all of us here today know, I speak in opposition to S.B. No. 1 not as the Senate Majority Leader but simply as the Senator who represents District 7 and the people of Kaua'i and Ni'ihau.

"And I will say upfront and directly, I know full well that people in my district as well as people around the state are divided on this issue. Some believe strongly that it is fair, right and just that we amend the laws being proposed today and others believe equally as strongly that to do so and what is being proposed is wrong, terribly unjust and they're appalled that we are even considering the bill now before us.

"There has been much talk over these past few weeks about how the majority of the people in our state want the Superferry, and I have no doubt whatsoever, not one bit of doubt that this is true and I also believe that if done properly, an inter-island ferry system can be good for Hawai'i. But I also believe that most people would not be so eager to offer their support if they knew it had the potential to irreparably harm our environment, as was the conclusion of Maui Judge Cardoza. But this question – this very important question – was not asked in the polls that were conducted. Neither was the question asked: Do you believe the Hawai'i Superferry should comply with all state and federal laws? If it was asked, I suspect an overwhelming majority of the people of the State of Hawai'i would say yes. But yet the Superferry is here today asking us to change the law, just for them. And this, colleagues, is one of the most fundamental points upon which my opposition is based. We are here today to change the law to benefit one particular business, which as we all know is the Hawai'i Superferry.

"Yes, the bill does not name a specific business but only refers to 'a large capacity ferry vessel,' but the entire reason we are here today, and the entire state is aware of it, the entire reason we are here today in this Special Session, in my singular and humble opinion, is to save the Hawai'i Superferry. And I suspect the majority of people in the room today are okay with that. Many people feel that because of the history, background and significance of this particular issue that it is okay to pass this bill designed to help this one particular business. I respect that position; however, I personally believe that it is not okay, and in fact believe that the legislation before us clearly violates

at the very minimum, both the spirit and the intent of our State Constitution.

"Some will argue, I am sure, that this is an extraordinary situation that demands extraordinary measures – and I respect that view, but I just cannot support it.

"As most of you know, I was an early supporter of the Hawai'i Superferry. In 2004 it seemed like a great idea and I signed and supported, like most in the room, a resolution to that effect. I was told by proponents at the time, that the service would provide a low cost inter-island transportation alternative to our residents, that it was environmentally friendly and it would be a boon to our economy. So I said 'yes, it sounds good to me; let's expedite the permits and get this thing going.'

"Needless to say, I was not aware that they were going to ask the state to provide \$40 million in harbor improvements as a start, nor was I aware that they intended to bypass the environmental review process. Expedite means hurry up the paper shuffling; it does not mean cut corners, bypass protections, or make an end run around the law. And certainly expedite does not mean exempt. For the record, I still believe that expanding inter-island travel options, including an inter-island ferry operation, is probably a good idea, but it needs to be done right, and it needs to follow the law, not make the law.

"Perhaps if the situation was different, if the Hawai'i Superferry was just an unwitting victim of an inept decision by state government, I might feel differently. Perhaps if the 'mistaken exemption' which created this whole ungodly mess was simply an inadvertent error that no one could have possibly anticipated, perhaps the whole community might feel differently. But as we all know, this is not the case.

"The Hawai'i Superferry operation is controlled by very wealthy and extremely politically connected individuals. The primary principal is the former Secretary of the Navy who served under Ronald Reagan, a close friend of Henry Kissinger, an appointee to the 9/11 Commission and is closely associated with the top of the top in military and national security circles and other circles of influence. Mr. Lehman's investment group has placed approximately \$80 million dollars into this venture and they can easily afford the best lawyers in town, perhaps the best lawyers in the world. So, no – the Hawai'i Superferry is not a victim. They're not an unwitting, naive and innocent victim.

"The Hawai'i Superferry, the DOT and the Lingle administration have known this outcome was a possibility since day one, and they have worked 'hand in glove' since day one to push this project through. The political process, according to public records, began in 2003 when the Superferry operators began briefing the Lingle administration and various community groups. According to recent testimony, Bob Awana, the former Chief of Staff to Governor Lingle, was personally, personally involved in consulting on the process and helped draft the operating agreement between Hawai'i Superferry and the state. That begs the question, how much money do you need to have the Governor's Office personally negotiate your contracts?

"In 2004, the PUC began extensive public hearings with strong public sentiment pointing out the need for an environmental review. Hawai'i Superferry management and the DOT had to have known at this point, if not far earlier, that the lack of an EA or an EIS would likely pose a big problem. But rather than slowing down and doing it right, they chose to plow ahead.

"In 2005, 2006, the Kaua'i County Council, the Hawai'i County Council and the Maui County Council all passed resolutions calling for the requirement of an environmental impact statement. The Department of Transportation and the Hawai'i Superferry adamantly opposed each and every one of these resolutions.

"In 2005, S.B. No. 1785, also demanding an EIS be conducted, was introduced and passed out of the Senate Energy and Environment Committee but was defeated in the Transportation Committee again after intense opposition from both the State Department of Transportation and the Hawai'i Superferry. If the state and the Hawai'i Superferry would have conceded the issue in 2004 or even 2005, the EIS would likely now have been completed and the Superferry service would be well underway. But as we all know, they did not and chose instead to keep their heads down and just push on through, in spite of growing community and legislative opposition to their position.

"The lawsuits started in 2005, and though the Maui court denied the plaintiff's case, both the Hawai'i Superferry and the DOT were well aware that the matter was being appealed to the Hawai'i Supreme Court. During the 2005 and 2006 Legislative Sessions, further attempts were made in the Senate via budget provisos to force the owners of the Hawai'i Superferry to be more forthcoming in their dealings with the neighbor-island communities who were expressing increasing concern about potential impacts. This is no last minute effort to stop the Superferry, colleagues. This has been going on for a long, long time.

"In 2006, a community group, People for the Preservation of Kaua'i, attempted to present Governor Lingle with a petition containing some 6,000 signatures requesting an EIS and the governor's office refused to even receive that petition.

"Again, if the Hawai'i Superferry and the Department of Transportation had at this point decided to just do things the right way, all of this mess we find ourselves in today could have been avoided.

"Even in 2007 the Environmental Council, a group of citizen volunteers appointed by the Governor and responsible for offering input and advice on the environmental review process, this group, again, citizen volunteers appointed by the Governor, their job is to review environmental laws and the process, they voted 9 to 1 in a decision that stated in no uncertain terms that the DOT had made a mistake when granting this exemption. Once again both the state's own attorneys and the Hawai'i Superferry attorneys fought hard in opposition.

"For three years running, many State Legislators, county councils and private citizens attempted to convince the state DOT and the Hawai'i Superferry to undergo an EIS process, and finally, during the 2007 Session, as we all know, we passed S.B. No. 1276, S.D. 2, a compromise solution that would have required an EIS while allowing the Hawai'i Superferry to operate. Once again, arm and arm and in lockstep, the Department of Transportation and the Hawai'i Superferry vehemently opposed this requirement, thumbed their noses at the Senate and refused the offer of compromise.

"While some might suggest that the language needed further clarification, one thing is very clear and was made very clear in numerous public statements, by people, including myself right here on the Floor of the Senate – the intent was clear. What was imminently clear was the intent, and obviously as is routine, routine in this Legislature, language corrections and amendments, if needed, could have easily been made in the House.

"Once again, if the DOT and the Hawai'i Superferry had accepted our compromise, we would not be here today.

"All along the way, the state administration and the Hawai'i Superferry have fought and resisted the requirement for proper environmental review. They have been together – locked together, arm in arm, like two peas in a pod – every single step of the way. So, no – the Hawai'i Superferry is not an innocent and unwitting victim deserving of special dispensation in the form of a Special Session and this pending legislative bailout.

"They are highly influential, sophisticated, and very wealthy business operators who knowingly and willingly worked closely with the administration in an effort to avoid – at all costs it seems – to avoid and circumvent the proper and legally required environmental review process.

"The Hawai'i Supreme Court ruled unanimously, 6 to 0, that the DOT erred and should not have exempted the project. The Hawai'i Superferry knew full well what they were doing. They took a calculated risk and on August 23rd they rolled the dice and they lost. Blaming the protestors for this debacle, and attempting to fault those in the community who believe in protecting the environment is nothing short than pathetic.

"No doubt, we will hear repeated here today the mantra of how this is all the result of 'a small vocal minority.' That mantra, my friends, is simply shibai. For the record, it was an egregious mistake made by the Department of Transportation and confirmed by a decision of the Hawai'i Supreme Court which ultimately led to the stop of the Superferry – not some mythical and all powerful 'small vocal minority group.'

"The truth is much simpler than that – the Lingle Administration, working hand in glove with the Hawai'i Superferry owners, made a bad decision and have been called on it by the highest court in our state.

"In addition to being unwilling to support special interest legislation on principle, I also believe given the history of this particular situation, a bailout of this nature is totally unwarranted. They just simply do not deserve it.

"Again, for those who believe this is the only way we can fix this sorry state of affairs, I respect your opinion. I do not question your integrity, your principles, nor your intent, but I do disagree. I believe that good people, people of good will and intelligence can agree to disagree. I believe that good people can look at the same set of facts and circumstances and come to different conclusions. However, in my heart, I also believe that in this particular situation, we are poised on the edge of making a very grave error. If passed, this legislation, again in my singular and humble opinion, has the potential to seriously undermine our existing environmental laws and establishes a new standard that is sure to encourage other businesses to follow.

"Worst of all is the message this decision sends to those in our community who believe that playing by the rules is important. What do we tell those people on Maui who fought so hard in court, against overwhelming odds and the tremendous combined legal resources provided by the state attorneys and the Hawai'i Superferry? What do we tell those in my district whose community and political awareness has been incredibly galvanized by this issue? What do we tell our youth, young adults in their 20's and 30's who up until now most would have considered 'disenfranchised' – young adults who up until this point have had little faith in government . . . until, that is, the Hawai'i Supreme Court ruled in their favor, proving to

them, at least for a little while, that the 'fix was not in' and that the system did in fact work.

"What do we tell those folks who played by the rules, fought against overwhelming odds, finally were awarded a victory – and then the Legislature comes along and changes the rules and yanks that victory away before the ink is even dry on the paper it was written on. Yes, technically it is true that the court judgment stopping the Hawai'i Superferry from sailing to Maui does not apply to Kaua'i and there is no legal impediment at this time preventing the Hawai'i Superferry from going to Nawiliwili – they could go tomorrow if they like. But, to most in my community, this legal technicality does not dampen nor detract from the truth – and the truth is that the Department of Transportation should not have granted the exemption and the Hawai'i Superferry should not have been allowed to sail prior to conducting the required environmental review.

"So, what now? It is inevitable that this bill or some version of it will pass and the Hawai'i Superferry will sail soon once again – without the EIS, but yes, with some conditions which I'm truly grateful to the Senate, my colleagues here and the Chair of the Judiciary Committee especially, for making sure that happened and for the significant effort that it took to put those amendments in.

"This issue, without a doubt, has drained our spirit and divided our community. It is time now for all of us to move on.

"Before I close I just have two requests to make – one of my community and one of the Hawai'i Superferry. I am asking those in my community and on Maui and elsewhere, those who may be outraged at the legislative action that is taken this week, please know that I share your outrage, your anger and your disappointment. I agree that the system has let us down. But I ask you to please, please take a deep breath and think about the future before acting in haste. Jumping in the water, putting yourself and your friends in jeopardy, in physical danger, risking arrest – it is just not worth it. Protest and boycott if you must, but please do so peacefully and within the bounds of the law. Better yet, I urge you to focus your energy and join with others of like mind to help change and improve the system.

"To the owners of the Hawai'i Superferry, I ask that you also help heal the rifts and calm the tempers in our community by participating in and embracing a community centered Ho'oponopono process of conflict resolution, prior to launching service. I urge you to accept the assistance and participation of an independent third party facilitator who might gather community leaders together for positive collaborative dialogue, without the presence of government – community leaders and the Hawai'i Superferry without the presence of government for a positive collaborative dialogue. Put off your launch date for now and work instead to help mend the wounds that have been created in our communities and around our state.

"Madam President, colleagues and friends, I thank you for your indulgence in allowing me extended time to share with you my deepest thoughts on this issue – this issue which has taken so much from each and every one of us.

"As you know already, my vote will be NO, but I hope you also understand I respect and honor your decision and your vote, whatever it may be. Thank you."

Senator Slom rose in rebuttal as follows:

"Madam President, just a brief rebuttal, if I may, please, on a couple of points.

"First of all, I thank the previous speaker for his words to his community about protest and so forth. I think they were very well stated. However, the last several speeches, of course, did not touch on whales or species or traffic or anything else; they touched on political concerns. And again, we can argue whether or not decisions that were made, including the decision to exempt, were right or wrong, and that's a legitimate forum. But to put the emphasis on politics and wealth – I didn't know that wealth was under review here today – but to attack people that may be wealthy or may have the ability to attract wealth for a project to help the community I think is outside the bounds of our discussion. Also, to bring in Henry Kissinger, I thought that was interesting. For the previous speaker's edification, I never appreciated nor supported Mr. Kissinger, but I don't know what he's got to do with this argument, as well.

"You know, one thing that hasn't been said today is that if in fact an environmental assessment had been completed or now when an environmental impact statement is completed, will that in fact satisfy the people that are opposed to the Superferry? I don't think there's any person in this room that can honestly say 'oh yeah, well, at that point we'll say everything's been done and it's okay,' because the vitriol that's been aimed at this company and this project will continue to go on. There will be more lawsuits; there will be more protest, and even when the EIS is completed and all of the rules and everything else are done, there still will be the people that from the very beginning don't want this project – they don't want the islands united; they don't want residents to have choices. Oh yeah, it's okay to have the choices between a passenger ferry in three of the islands in Maui County, that's okay, but not the Superferry because it's different; it's new.

"Any of us that watched *National Geographic* on cable last month saw that it is a tremendous advance in terms of technology. Isn't this the Body that's always said 'we want high tech; we want Hawai'i to be on the leading edge of technology' . . . except when it's a transportation alternative for our residents. Apparently so, because that's it. And you know and I know – every one of you, every one of us – that if in fact when everything has been completed, more rules, more restrictions, it still is not going to satisfy those people that are opposed to this project – period. We know that. That's why I brought up the thing about the Disney Resort in Ko 'Olina. They're already churning up the anti-sentiment about that project.

"I want to address something that my good colleague from Maui County mentioned so that there's no misinterpretation – I did not throw the testimony of those that were opposed to Superferry down on the ground. Being clumsy, you know, and my older age, when I tried to put it back down, some of it slipped and fell. You didn't see me throw that on the ground. You've seen me throw things across the room in the past; that was not one of them. So, I just want to correct that.

"In addition, we all have to support our constituents, but whether we're talking about confirmation, we're talking about Superferry, or we're talking about anything else, we have to weigh and balance the statements that are made – all of the statements – that's true, and listen, really listen to everybody. But in the end we have to make a decision, and we make the decision based on common sense and benefit to our constituents, which at the last time I looked on my business card it says State Senator – that means all of the people within the state, not just political contributors, not just people in an isolated area, not just people that are against new technology or new things within our state. State Senate, that's what we're doing.

“And then the final statement, there was a comment made that everything was fine back in 2005 with that resolution, but then we learned about the \$40 million for the pier improvements, which really weren’t pier improvements. They turned out to be barges. Wait a minute, we learned about that? Didn’t we discuss it? Didn’t we have hearings? Didn’t we vote on it? Didn’t we pass it? Of course we did! The \$40 million wouldn’t have been there unless WE voted on it!

“And my final, final, final statement is, this idea about the Governor, and the company, and the wealthy people, and the investors going hand in glove and having the best attorneys and all of that, the best lobbyists – that’s wonderful, but isn’t this the Body that holds the record in overriding the Governor’s vetoes and takes relish in it, joined by the House of Representatives? But the House didn’t go along with the bills that were introduced and even the bill that was passed from this Body. The House didn’t go along with it. And last time I checked also, it’s the same 4 to 1 majority for the same party in both the House and the Senate. So the fact that the Governor – I don’t know whether she’s wearing any gloves or not – is in support of anybody else, has never mattered to this Senate Body and certainly not to the Legislature as a whole. It must mean that the House is concerned about ALL of the people within this state, ALL of our constituents.

“Unless we be thought of as a provincial backwater that says one thing about technology but votes on another, we should be very careful and deliberate. After we’ve had all of these hearings, and all of the input, and all of the rule changes, and all of the conditions, we should be able to make up our minds and go ahead. And I hope that’s what we’re going to do today.

“Madam President, I request a Roll Call vote. Thank you.”

The motion was put by the Chair and carried, S.B. No. 1, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TRANSPORTATION,” having been read throughout, and Roll Call vote having been requested, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Ayes with Reservations, 14 (Bunda, Fukunaga, Gabbard, Hanabusa, Hee, Ige, Ihara, Kim, Menor, Nishihara, Sakamoto, Taniguchi, Tokuda, Trimble). Noes, 5 (Baker, English, Hooser, Kokubun, Tsutsui).

At 11:09 o’clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:13 o’clock a.m.

ADJOURNMENT

At 11:16 o’clock a.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 10:00 o’clock a.m., Tuesday, October 30, 2007.

ATTACHMENT "A"

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 1276
S.D. 3

A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the request for new
2 commercial activity transporting passengers and their vehicles
3 to utilize already crowded harbors has caused concern about the
4 impact of such activity on other harbor users and the
5 surrounding community. Increased traffic congestion, spread of
6 invasive species, and threats to migrating humpback whales are
7 indicative of concerns raised. The legislature further finds
8 that there is confusion and ambiguity regarding the requirements
9 for an environmental impact statement under chapter 343, Hawaii
10 Revised Statutes. The legislature also finds that all major
11 state commercial harbor improvements should comply with the
12 environmental review process. The legislature further finds
13 that the department of transportation may have abused its
14 discretion in determining that the expenditure of substantial
15 public funds for improvements to commercial harbors throughout
16 the State to accommodate the operation of vessels that carry
17 passengers and their vehicles between Hawaii's islands did not

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S.B. NO. 1276
S.D. 3

1 (3) Require that the department of transportation
2 implement any mitigating measures that may be
3 recommended in the environmental impact statement and,
4 to the extent necessary, amend its agreement with any
5 business or entity operating or proposing to operate
6 vessels that carry passengers and their vehicles
7 between Hawaii's islands and for which the operation
8 thereof requires major commercial harbor improvements
9 to require that the business or entity implement any
10 recommended mitigative measure in its operations.

11 SECTION 2. The department of transportation shall prepare
12 an environmental impact statement for the improvements made to
13 commercial harbors throughout the State that require the
14 expenditure of public funds to accommodate any vessels that
15 carry passengers and their vehicles between Hawaii's islands and
16 for which the operation thereof requires major commercial harbor
17 improvements and the secondary and tertiary environmental
18 effects of those operations on the State's environment, all in
19 compliance with chapter 343, Hawaii Revised Statutes, without
20 regard to the:

21 (1) Date of commencement of construction of improvements
22 by the department of transportation;

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S.B. NO. 1276
S.D. 3

1 require an environmental review pursuant to chapter 343, Hawaii
2 Revised Statutes.

3 The legislature is concerned that any mitigating measures
4 that may be contained in an environmental impact statement may
5 not be implemented in the operation of vessels that carry
6 passengers and their vehicles between Hawaii's islands that
7 require commercial harbor improvements.

8 The purpose of this Act is to:

9 (1) Confirm the intent of the requirements imposed under
10 chapter 343, Hawaii Revised Statutes, regarding when
11 the need for an environmental impact statement is to
12 be triggered with respect to major commercial harbor
13 improvements undertaken to accommodate the operation
14 of vessels that carry passengers and their vehicles
15 between Hawaii's islands;

16 (2) Require the preparation of an environmental impact
17 statement pursuant to chapter 343, Hawaii Revised
18 Statutes, for major improvements being made to
19 commercial harbors in the State that require the
20 expenditure of public funds to accommodate the
21 operation of vessels that carry passengers and their
22 vehicles between Hawaii's islands; and

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S.B. NO. 1276
S.D. 3

1 (2) Date or amount of expenditure of public moneys for the
2 capital improvement projects; and


3 (3) Date of implementation of the proposed action by the
4 business or entity operating or proposing to operate
5 vessels that carry passengers and their vehicles
6 between Hawaii's islands and for which the operation
7 thereof requires major commercial harbor improvements,
8 as a condition precedent to the implementation of the proposed
9 action as provided under section 343-5, Hawaii Revised Statutes.

10 For the purposes of this Act, "major commercial harbor
11 improvements" means any commercial harbor capital improvement
12 project that requires the expenditure of over \$1,000,000 per
13 commercial harbor of public funds.

14 SECTION 3. The departments of transportation and health
15 may consider expediting the environmental impact statement
16 process required under this Act.

17 SECTION 4. The department of transportation shall pay for
18 an environmental impact statement under section 2 of this Act
19 out of its existing funds.

20 SECTION 5. This Act shall take effect on July 1, 2007.

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Honolulu, Hawaii
FEB 16 2007

RE: S.B. No. 1276
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committees on Transportation and International Affairs and Energy and Environment, to which was referred S.B. No. 1276 entitled:

"A BILL FOR AN ACT RELATING TO THE ENVIRONMENT,"

beg leave to report as follows:

The purpose of this measure is to add construction of infrastructure improvements of harbor facilities to the triggers for an environmental assessment, and to clarify that the definition of "environmental impact statements" includes traffic congestion effects as a factor to consider in a proposed action.

This measure also requires the preparation of an environmental impact statement for the Hawai'i Superferry, and requires the Department of Transportation to cease further construction of improvements at Kahului Harbor and the Hawai'i Superferry to refrain from commencing operations, until a final environmental impact statement is accepted. This measure makes an appropriation to the Department of Transportation to prepare an environmental impact statement.

In an effort to bring this hearing to the people who would be affected the most, your Committees held additional hearings on Kauai at the Kauai County Council Chambers on February 10, and again on February 10 on Maui at Baldwin High School.

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On O'ahu, your Committees received testimony in support of this measure from the Pacific Whale Foundation; Tropic Orchid Farm, Inc.; one Maui Councilmember (offered county council resolution in support), one Kauai Councilmember, one Hawai'i County Councilmember, and ninety-one individuals. Testimony in opposition was received from the Department of Transportation, State Attorney General, Hawai'i Superferry, Maui Chamber of Commerce, Expeditions, Paradise Television, Maui County Farm Bureau, and Kauai Chamber of Commerce. There were faxes and emails from approximately 160 individuals in support and approximately 444 were in opposition.

On Kauai, your Committees received a petition of at least 6,000 names in support; 116 people testified of whom 113 were in support and 2 were in opposition, and one made comments. There was a county resolution offered by the Kauai County Council.

On Maui, your Committees heard from 105 testifiers, of whom 102 were in support, one in opposition, and two made comments. There was a petition with at least one thousand names in support.

Your Committees find that state commercial harbor improvements that require the expenditure of large amounts of governmental funds should comply with the environmental review process. Your Committees are concerned that new maritime activities that require substantial harbor improvements, such as the Hawai'i Superferry, could have serious effects on vehicular traffic, transport of non-native species between islands, introduction of invasive plant and animal species, increased collisions with whales, and increased warehousing at the harbors, among other issues, all of which have economic and environmental consequences that come within the scope of issues to be reviewed under the environmental impact statement law.

Your Committees believe that consideration of effects of traffic congestion and infrastructure that could result from harbor improvements is necessary in order to protect Hawai'i's fragile ecosystem and delicate environment.

In addition to environmental concerns, your Committees have serious reservations about harbor and traffic congestion. Harbors on O'ahu, Maui, and Kauai are so congested that viability of Hawai'i's shipping industry is threatened unless harbor improvements and expansion are immediately undertaken. Hawai'i

2007-1753 SSCR SMA-1.doc



Superferry adds to the congestion. It is very conceivable that traffic congestion surrounding the harbors would worsen once the Hawai'i Superferry begins transporting vehicles for drive on and drive off service, with its 282 small car capacity and likely other types of larger vehicles and trucks.

Your Committees are concerned that decisions to excuse new maritime activities from obtaining an environmental assessment or an environmental impact statement fail to conform to environmental laws that were enacted to ensure that environmental concerns are given appropriate considerations in decision making along with economic and technical considerations. Your Committees believe that State and federal officials should have been more vigilant in the interests of protecting the environment while seeking to enhance the economy of the State.

Your Committees recognize the legal reservations about this measure as opined by the Attorney General. Nonetheless, your Committees believe that safeguarding the vital interests of its people is paramount. Such vital interests include a healthy environment as free as possible from irreparable damage from such things as offshore pollution and invasive species. Mitigating traffic congestion is also of vital interest. Your Committees find that this measure is consistent with the purpose of chapter 343, Hawaii Revised Statutes, relating to environmental impact statements. Section 343-1, Hawaii Revised Statutes, states, in pertinent part, "[t]he quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment ... the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole."

Your Committees note that if required to conduct an environmental impact statement process, the Hawai'i Superferry would be delayed from starting up its operations, but would not be banned forever from operations. If the Hawai'i Superferry has completed most of the required elements for an environmental assessment or impact statement, or both, as it so testified, this measure would merely formalize what has already occurred.

Your Committees have amended this measure by:

- (1) Deleting the statutory amendments and the purpose section;
- (2) Inserting a new purpose section to more appropriately reflect the measure's intent;
- (3) Inserting provisions to:
 - (A) Require the preparation of an environmental impact statement pursuant to chapter 343, Hawaii Revised Statutes, for the expenditure of public funds for improvements being made to commercial harbors in the State to accommodate the operations of the Hawai'i Superferry;
 - (B) Require that the Department of Transportation implement any mitigating measures that may be recommended in the environmental impact statement and, to the extent necessary, amend its agreement with the Hawai'i Superferry to require that the Hawai'i Superferry implement any recommended mitigative measure in its operations; and
 - (C) Allow the Department of Transportation to assess the Hawai'i Superferry for all reasonable costs for the preparation of the environmental impact statement; and
- (4) Deleting the appropriation.

As affirmed by the records of votes of the members of your Committees on Transportation and International Affairs and Energy and Environment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1276, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1276, S.D. 1, and be referred to the Committee on Ways and Means.

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STAND. COM. REP. NO. **539**
Page 5

Respectfully submitted on behalf of the members of the Committees on Transportation and International Affairs and Energy and Environment,

RON MENOR, Chair

J. KALANI ENGLISH, Chair

The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Transportation and International Affairs
TIA

Bill / Resolution No.:" SB 1276	Committee Referral: TIA/ENE, WAM	Date: 2/14/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
ENGLISH, J. Kalani (C)	✓			
INOUE, Lorraine R. (VC)			✓	
ESPERO, Will		✓		
HOOSEY, Gary L.	✓			
TANIGUCHI, Brian T.	✓			
TSUTSUI, Shan S.		✓		
GABBARD, Mike			✓	
TOTAL				
4 2 1				
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

2007-1753 SSCR SMA-1.doc

*Only one measure per Record of Votes

Revised: 12/18/06

The Senate
Twenty-Fourth Legislature
State of Hawaii
Record of Votes
Committee on Energy and Environment
ENE

Bill / Resolution No.:" SB 1276	Committee Referral: TIA/ENE, WAM	Date: 2/14/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
MENOR, Ron (C)	✓			
HOOSEY, Gary L. (VC)	✓			
IHARA, Jr., Les				✓
KOKUBUN, Russell S.				✓
TRIMBLE, Gordon	✓			
TOTAL				
3 2				
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes

Revised: 12/18/06

STAND. COM. REP. NO. 1028

Honolulu, Hawaii
MAR 02 2007

RE: S.B. No. 1276
S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred S.B. No. 1276, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE ENVIRONMENT,"

begs leave to report as follows:

The purpose of this measure is to require the preparation of an environmental impact statement (EIS) for the expenditure of public funds for commercial harbor improvements to accommodate the Hawaii Superferry.

This measure also prevents Hawaii Superferry from commencing operations until mitigation measures recommended in the EIS are implemented by the Department of Transportation (DOT), and requires the DOT to assess reasonable costs incurred for the preparation of an EIS.

Your Committee received written comments in support of this measure from the Office of Hawaiian Affairs; Cetacean Society International; Hawaii PV Coalition; Sierra Club, Hawaii's Chapter; AANCart; American Friends Service Committee; Maui Outdoor Circle; Maui Clean Air Coalition; Surfrider Foundation; Maui Coral Reef Network; Helping Hands Hawaii; Maui Individualized Learning Center; People for the Preservation of Kaula; and Patrice Pendarvis Studio; and ninety individuals. Written comments in opposition was received from the Department of the Attorney General; Department of Transportation; Conferencehub Corp.; Kaula Chamber of Commerce; Maui Chamber of Commerce; Maui County Farm Bureau; Coloriginals; Clear Channel Radio Hawaii; Hawaii Oceanic

2007-2076 SSCR SMA-1.doc

Technology, Inc.; Ocean Marine Insurance Agency, Inc.; Hawaii Superferry; Over the Top Events; Pacific Sport Events and Timing; Help-U-Sell Paradise Realty; Love to Travel Tours; and eighty-four individuals.

Your Committee finds that state commercial harbor improvements that require the expenditure of large amounts of governmental funds should comply with the environmental review process. Your Committee is concerned that new maritime activities that require substantial harbor improvements, such as the Hawaii Superferry, could have serious effects on vehicular traffic, transport of non-native species between islands, introduction of invasive plant and animal species, increased collisions with whales, and increased warehousing at the harbors, among other issues, all of which have economic and environmental consequences that come within the scope of issues to be reviewed under the environmental impact statement law.

In addition to environmental concerns, your Committee has serious concerns about harbor and traffic congestion. Harbors on Oahu, Maui, and Kauai are so congested that the viability of Hawaii's shipping industry is threatened unless harbor improvements and expansion are immediately undertaken. Operations like the Hawaii Superferry would add to the congestion.

However, the Attorney General raised significant constitutional and legal issues in lengthy comments on this measure and concluded that the "passage of this measure may subject the State to substantial (but presently unquantifiable) liability."

Thus, your Committee has amended this measure by:

- (1) Rewording the purpose section to clarify that the intent of the measure is to reassert the Legislature's intent when it enacted the environmental impact statement law that the Legislature intended for major commercial harbor improvement projects to be subject to an environmental impact statement;
- (2) Deleting all references to the Hawaii Superferry and replacing it with a generic reference to any business or entity that proposes to operate or operates vessels that carry passengers and their vehicles between Hawaii's islands that require major commercial harbor improvements; and

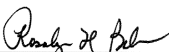
2007-2076 SSCR SMA-1.doc

STAND. COM. REP. NO. 1028
Page 3

- (3) Defining "major commercial harbor improvements" as any commercial harbor improvement project that requires the expenditure of over \$1,000,000 of public funds.

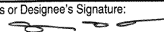
As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1276, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1276, S.D. 2.

Respectfully submitted on behalf of the members of the Committee on Ways and Means,


ROSALYN H. BAKER, Chair

The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:	Committee Referral:	Date:
SB 1276	TIA/ENE, NAM	2/28/07
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____		
The Recommendation is:		
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310
<input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)
	Nay	Excused
BAKER, Rosalyn H. (C)		/
TSUTSUI, Shan S. (VC)	/	
CHUN OAKLAND, Suzanne		/
ENGLISH, J. Kalani	/	
FUKUNAGA, Carol		/
HOOSER, Gary L.	/	
KIM, Donna Mercado		/
MENOR, Ron	/	
TOKUDA, Jill N.		/
HEMMINGS, Fred		/
WHALEN, Paul		/
TOTAL	4	4
	2	1
Recommendation:	<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	
Chair's or Designee's Signature:		
Distribution:	Original File with Committee Report	Yellow Clerk's Office
		Pink Drafting Agency

*Only one measure per Record of Votes

2007-2076 SSCR SMA-1.doc

Hawaii State Legislature
Bill Status

SB1276 SD3

Generated on 8/13/2007 4:06:12 PM

Measure Title: RELATING TO THE ENVIRONMENT.
 Report Title: Department of Transportation; Environmental Impact Statement (\$)
 Description: Requires the preparation of an environmental impact statement for major harbor improvements for any vessel that carries passengers and vehicles between Hawaii's islands that require such improvements. Requires the department of transportation to implement all mitigative measures contained in the environmental impact statement, including amending any operating agreements. Directs the department of transportation to assess businesses or entities operating or proposing to operate such vessels for the costs of the environmental impact statement. (SD2)
 Package: None
 Companion:
 Introducers: TSUTSUI, ENGLISH, BAKER, HOOSER, KOKUBUN
 Current Referral: TRN, EEP, FIN

Date	Status	Text
1/22/2007	S	Introduced.
1/24/2007	S	Passed First Reading.
1/26/2007	S	Referred to TIA/ENE, WAM.
2/2/2007	S	The committee(s) on TIA/ENE has scheduled a public hearing on 02-07-07 at 2:45 pm in conference room 224.
2/7/2007	S	The committee(s) on TIA/ENE has recessed and will reconvene on 02-10-07 at 10:00 am on Kaua'i and 5:00 pm on Maui.
2/10/2007	S	The committee(s) on TIA/ENE has recessed and will reconvene on 02-10-07 at 5:00 am on Kaua'i.
2/10/2007	S	The committee(s) on TIA/ENE deferred the measure until 02-14-07 at 1:30 pm in conference room 224.
2/14/2007	S	The committee(s) on ENE recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in ENE were as follows: 3 Aye(s): Senator(s) Menor, Hooser, Trimble; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Ihara, Kokubun.
2/14/2007	S	The committee(s) on TIA recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in TIA were as follows: 6 Aye(s): Senator(s) English, Hooser, Taniguchi, Tsutsui; Aye(s) with reservations: Senator(s) Espero, Gabbard ; 1 No(es): Senator(s) Inouye; and 0 Excused: none.
2/16/2007	S	Reported from TIA/ENE (Stand. Com. Rep. No. 539) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM.
2/16/2007	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM.
2/26/2007	S	The committee(s) on WAM will hold a public decision making on 02-28-07 at 1:30 pm in conference room 211.
2/28/2007	S	The committee(s) on WAM recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in WAM were as follows: 8 Aye(s): Senator(s) Tsutsui, English, Hooser, Menor; Aye(s) with reservations: Senator(s) Baker, Chun Oakland, Fukunaga, Tokuda ; 2 No(es): Senator(s) Kim, Hemmings; and 1 Excused: Senator(s) Whalen.
3/2/2007	S	Reported from WAM (Stand. Com. Rep. No. 1028) with recommendation of passage on Third Reading, as amended (SD 2).
3/2/2007	S	48 Hrs. Notice 03-06-07.
3/6/2007	S	Floor Amendment No. 7 offered.
3/6/2007	S	Floor amendment adopted as amended (SD 3).
3/6/2007	S	Separated Committee Report.
3/6/2007	S	Report filed.
3/6/2007	S	48 Hrs. Notice 03-08-07.
3/8/2007	S	Passed Third Reading, as amended (SD 3). Ayes, 21; Aye(s) with reservations: Senator(s) Espero, Gabbard . Noes, 4 (Senator(s) Bunda, Hemmings, Slom, Whalen). Excused, 0 (none). Transmitted to House.
3/8/2007	H	Received from Senate (Sen. Com. No. 425) in amended form (SD 3).
3/9/2007	H	Pass First Reading
3/9/2007	H	Referred to TRN, EEP, FIN, referral sheet 31

\$ = Appropriation measure
 ConAm = Constitutional Amendment

FIFTH DAY

Tuesday, October 30, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Second Special Session of 2007, convened at 10:20 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Gary L. Hooser, Hawai'i State Senate, after which the Roll was called showing all Senators present.

The President announced that she had read and approved the Journal of the Fourth Day.

At 10:25 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:27 o'clock a.m.

STANDING COMMITTEE REPORTS

Senator Taniguchi, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 7) recommending that H.B. No. 2 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 2, entitled: "A BILL FOR AN ACT RELATING TO SENTENCING," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, October 31, 2007.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 8) recommending that the Senate advise and consent to the nomination of LESLIE HARUO KONDO to the Public Utilities Commission (PUC), in accordance with Gov. Msg. No. 14.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 8 and Gov. Msg. No. 14 was deferred until Wednesday, October 31, 2007.

Senator Kokubun, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 9) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Hurricane Relief Fund of the following:

GARY Y.K. CHOCK S.E., in accordance with Gov. Msg. No. 11;

MICHAEL P. HAMNETT, in accordance with Gov. Msg. No. 12; and

DENNIS MICHAEL SUGIHARA, in accordance with Gov. Msg. No. 13.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 9 and Gov. Msg. Nos. 11, 12 and 13 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 10) recommending that the Senate advise and consent to the nomination of RONALD E. TERRY as the Administrator for the State Health Planning and Development Agency, in accordance with Gov. Msg. No. 22.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 10 and Gov. Msg. No. 22 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 11) recommending that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Health Systems Corporation of the following:

SHAWN CANNON, in accordance with Gov. Msg. No. 23;

AVERY B. CHUMBLEY, in accordance with Gov. Msg. No. 24;

ANDREW DON MD, in accordance with Gov. Msg. No. 25;

ROGER K. GODFREY, in accordance with Gov. Msg. No. 26;

ROSANNE C. HARRIGAN EDD, in accordance with Gov. Msg. No. 27;

CATHERINE L.N. KIM, in accordance with Gov. Msg. No. 28;

BARRY TOSHIO MIZUNO, in accordance with Gov. Msg. No. 29;

MABEL JEAN ODO, in accordance with Gov. Msg. No. 30;

CLIFFORD L. NAKEA, in accordance with Gov. Msg. No. 31;

BARRY KOJI TANIGUCHI, in accordance with Gov. Msg. No. 32; and

RICHARD JAMES VIDGEN, in accordance with Gov. Msg. No. 33.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 11 and Gov. Msg. Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 12) recommending that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation Oahu Regional Board of the following:

PATRICIA ANNETTE LANOIE BLANCHETTE MD, in accordance with Gov. Msg. No. 34;

CLEMENTINA D. CERIA-ULEP, in accordance with Gov. Msg. No. 35;

STEPHANIE A. MARSHALL, in accordance with Gov. Msg. No. 36;

MICHAEL REED MASUDA, in accordance with Gov. Msg. No. 37;

MARIE MILKS, in accordance with Gov. Msg. No. 38;

PAUL DOUGLAS NIELSON MD, in accordance with Gov. Msg. No. 39;

JERRY ROBERT SMEAD, in accordance with Gov. Msg. No. 40;

MARC SHLACHTER MD, in accordance with Gov. Msg. No. 41;

ELDON L. WEGNER, in accordance with Gov. Msg. No. 42;

MARY C. WESSELKAMPER, in accordance with Gov. Msg. No. 43; and

DONALD WILLIAM WOOD, in accordance with Gov. Msg. No. 44.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 12 and Gov. Msg. Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 was deferred until Wednesday, October 31, 2007.

Senator Inouye, for the Committee on Intergovernmental and Military Affairs, presented a report (Stand. Com. Rep. No. 13) recommending that the Senate advise and consent to the nomination of HERBERT C. LUM to the Advisory Board on Veterans' Services, in accordance with Gov. Msg. No. 89.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 13 and Gov. Msg. No. 89 was deferred until Wednesday, October 31, 2007.

Senator Taniguchi, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 14) recommending that the Senate advise and consent to the nominations to the Language Access Advisory Council of the following:

LITO M. ASUNCION, in accordance with Gov. Msg. No. 90;

MARCELLA ALOHALANI BORNSTEIN BOIDO, in accordance with Gov. Msg. No. 91;

EARNEST CHUNG, in accordance with Gov. Msg. Nos. 92 and 93;

CANISIUS TKEL FILIBERT, in accordance with Gov. Msg. No. 94;

DOMINIC K. INOCELDA, in accordance with Gov. Msg. Nos. 95 and 96;

GERALD HISASHI OHTA, in accordance with Gov. Msg. Nos. 97 and 98;

MAUREEN NAMAOKALANI RAWLINS, in accordance with Gov. Msg. No. 99;

TIN MYAING THEIN, in accordance with Gov. Msg. No. 100; and

SUZANNE MARIE ZENG, in accordance with Gov. Msg. No. 101.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 14 and Gov. Msg. Nos. 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 and 101 was deferred until Wednesday, October 31, 2007.

Senator Hee, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 15) recommending that the Senate advise and consent to the nomination of JOSEPH L. DWIGHT IV to the Hawai'i Community Development Authority (HCDA), in accordance with Gov. Msg. No. 106.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 15 and Gov. Msg. No. 106 was deferred until Wednesday, October 31, 2007.

Senator Hee, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 16) recommending that the Senate advise and consent to the nomination of BENJAMIN KEOLAMA'AKHI LINDSEY to the Kaneohe Bay Regional Council, in accordance with Gov. Msg. No. 108.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 16 and Gov. Msg. No. 108 was deferred until Wednesday, October 31, 2007.

Senator Hee, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 17) recommending that the Senate advise and consent to the nomination of KYLE JAMES KALEO CHOCK to the Land Use Commission, in accordance with Gov. Msg. No. 109.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 17 and Gov. Msg. No. 109 was deferred until Wednesday, October 31, 2007.

Senator Hee, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 18) recommending that the Senate advise and consent to the nomination of DONNA FAY K. KIYOSAKI to the Commission on Water Resource Management, in accordance with Gov. Msg. No. 112.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 18 and Gov. Msg. No. 112 was deferred until Wednesday, October 31, 2007.

Senator Taniguchi, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 19) recommending that the Senate advise and consent to the nomination of DARWIN CHING as the Director of the Department of Labor and Industrial Relations, in accordance with Gov. Msg. No. 3.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 19 and Gov. Msg. No. 3 was deferred until Wednesday, October 31, 2007.

Senator Espero, for the Committee on Public Safety, presented a report (Stand. Com. Rep. No. 20) recommending that the Senate advise and consent to the nomination of CLAYTON A. FRANK as the Director of the Department of Public Safety, in accordance with Gov. Msg. No. 4.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 20 and Gov. Msg. No. 4 was deferred until Wednesday, October 31, 2007.

Senator Tokuda, for the Committee on Agriculture and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 21) recommending that the Senate advise and consent to the nominations of the following:

JAMES G. LEE JR. (Island Burial Council, Island of Hawai'i), in accordance with Gov. Msg. No. 6;

MICHAEL Y.M. LOO (Island Burial Council, Islands of Kaua'i and Ni'ihau), in accordance with Gov. Msg. Nos. 7 and 8; and

ANGELA LISA LEIMAILLE EHIA-QUITEVIS (Island Burial Council, Island of Oahu), in accordance with Gov. Msg. Nos. 9 and 10.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 21 and Gov. Msg. Nos. 6, 7, 8, 9 and 10 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 22) recommending that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation East Hawai'i Regional Board of the following:

SIDNEY MITSUO FUKE, in accordance with Gov. Msg. No. 45;

BRENDA SUE HO, in accordance with Gov. Msg. No. 46;

ROBERT DAILY IRVINE, in accordance with Gov. Msg. No. 47;

BRIAN M. IWATA, in accordance with Gov. Msg. No. 48;

DENNIS DON LEE, in accordance with Gov. Msg. No. 49;

CAROL IADELUCA MYRIANTHIS, RPT, PSYD, in accordance with Gov. Msg. No. 50;

ALAN M. OKAMOTO, in accordance with Gov. Msg. No. 51; and

CRAIG Y. SHIKUMA MD, in accordance with Gov. Msg. No. 52.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 22 and Gov. Msg. Nos. 45, 46, 47, 48, 49, 50, 51 and 52 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 23) recommending that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation West Hawai'i Regional Board of the following:

ALISTAIR WILLIAM BAIROS, in accordance with Gov. Msg. No. 53;

BARRY BLUM, in accordance with Gov. Msg. No. 54;

JOHN D. CORNILLEZ, in accordance with Gov. Msg. No. 55;

JAMES W. HIGGINS, in accordance with Gov. Msg. No. 56;

DAVID BRUCE MAKALIU KAAPU, in accordance with Gov. Msg. No. 57;

BRUCE MAKARERICZ, in accordance with Gov. Msg. No. 58;

RICHARD M. MCDOWELL MD, in accordance with Gov. Msg. No. 59;

LEON PASKER, in accordance with Gov. Msg. No. 60;

RICHARD J. TAAFFE, in accordance with Gov. Msg. No. 61; and

ELIZABETH HEIMAN ZAGORODNEY, in accordance with Gov. Msg. No. 62.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 23 and Gov. Msg. Nos. 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 24) recommending that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation Kauai Regional Board of the following:

NORMAN AKITA, in accordance with Gov. Msg. No. 63;

LAVERNE L. BESSERT, in accordance with Gov. Msg. No. 64;

LINDA FAYE COLLINS, in accordance with Gov. Msg. No. 65;

TIMOTHY BLAKE CRANE, in accordance with Gov. Msg. No. 66;

ROSELIND BARBARA BULATAO-FRANKLIN, in accordance with Gov. Msg. No. 67;

RICHARD B. GODING MD, in accordance with Gov. Msg. No. 68;

RANDALL J. HEE, in accordance with Gov. Msg. No. 69;

JODY KJELDSEN, in accordance with Gov. Msg. No. 70;

DAVID JOHN PETERS, in accordance with Gov. Msg. No. 71;

MARIANO TORRES MD, in accordance with Gov. Msg. No. 72; and

ESTELITA CABAL TRINIDAD, in accordance with Gov. Msg. No. 73.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 24 and Gov. Msg. Nos. 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 25) recommending that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation Maui Regional Board of the following:

ZADOC WHITE BROWN JR., in accordance with Gov. Msg. No. 74;

GRANT Y.M. CHUN, in accordance with Gov. Msg. No. 75;

GINA MARIE FLAMMER, in accordance with Gov. Msg. No. 76;

G. STEPHEN HOLADAY, in accordance with Gov. Msg. No. 77;

DONNA LEE MCCLEARY MD, in accordance with Gov. Msg. No. 78;

LEE EIJI MIYASATO, in accordance with Gov. Msg. No. 79;

HOWARD K. NAKAMURA, in accordance with Gov. Msg. No. 80;

KAREN TOSHIYO OURA, in accordance with Gov. Msg. No. 81;

BETTY JANE OTT, in accordance with Gov. Msg. No. 82;

SUSAN K. STEWART, in accordance with Gov. Msg. No. 83; and

RICHARD CLAY SUTHERLAND, in accordance with Gov. Msg. No. 84.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 25 and Gov. Msg. Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 84 was deferred until Wednesday, October 31, 2007.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 26) recommending that the Senate advise and consent to the nomination of RAYMOND SHIGEO ONO to the Board of Directors of the Hawai'i Health Systems Corporation, in accordance with Gov. Msg. No. 114.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 26 and Gov. Msg. No. 114 was deferred until Wednesday, October 31, 2007.

Senator Hee, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 27) recommending that the Senate advise and consent to the nomination of NORMAND R. LEZY to the Land Use Commission, in accordance with Gov. Msg. No. 110.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 27 and Gov. Msg. No. 110 was deferred until Wednesday, October 31, 2007.

Senator Hee, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 28) recommending that the Senate advise and consent to the nomination of LAURA H. THIELEN as the Chairperson of the Board of Land and Natural Resources, in accordance with Gov. Msg. No. 5.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 28 and Gov. Msg. No. 5 was deferred until Wednesday, October 31, 2007.

ADVISE AND CONSENT

MATTER DEFERRED FROM MONDAY, OCTOBER 29, 2007

At this time, the President made the following announcement:

"Members, as you know, the Senate received several Governor's messages during this Special Session nominating individuals to both interim and full-term appointments to various boards and commissions. The Governor has since withdrawn ten nominations to the full-term appointments that begin on July 1, 2008. These appointments may be considered during the 2008 Regular Session, if the Governor submits these names again.

"However, Committees have held hearings and took action on several of these Governor's messages before they were withdrawn and the committee reports include recommendations for Floor actions on these nominees. When voting on advise and consent measures today, please note that no action – neither confirmation nor rejection – is being taken by the Senate on any Governor's messages that have been withdrawn and such action does not affect the nominee's eligibility for future appointment. This also applies to those nominees for tomorrow that may fall into this category as well.

"For today, please note that Gov. Msg. No. 17 on page 26, Blenn Akira Fujimoto to the Hawai'i Strategic Development Corporation, for the term to expire June 30, 2012, and Gov. Msg. No. 103 on page 27, Darryl Wayne Bardusch to the Procurement Policy Board, for the term to expire June 30, 2012, were withdrawn by the Governor. Therefore, notwithstanding the recommendations in Stand. Com. Rep. Nos. 1 and 4, the Senate is not taking any action on these two Governor's Messages."

At 10:30 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:30 o'clock a.m.

Stand. Com. Rep. No. 1 (Gov. Msg. Nos. 16, 18 and 19):

Senator Ige moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Strategic Development Corporation of the following:

BLENN AKIRA FUJIMOTO, term to expire June 30, 2008 (Gov. Msg. No. 16);

DARREN T. KIMURA, term to expire June 30, 2010 (Gov. Msg. No. 18); and

DANTON S. WONG, term to expire June 30, 2009 (Gov. Msg. No. 19),

seconded by Senator Whalen.

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

Ayes, 25. Noes, none.

ADVISE AND CONSENT

Stand. Com. Rep. No. 4 (Gov. Msg. Nos. 102, 104 and 105):

Senator Ige moved that Stand. Com. Rep. No. 4 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Procurement Policy Board of the following:

DARRYL WAYNE BARDUSCH, term to expire June 30, 2008 (Gov. Msg. No. 102);

KEITH T. MATSUMOTO, term to expire June 30, 2011 (Gov. Msg. No. 104); and

PAMELA A. TORRES CPCMC, term to expire June 30, 2010 (Gov. Msg. No. 105),

seconded by Senator Whalen.

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 5 (Gov. Msg. Nos. 85, 86 and 87):

Senator Ige moved that Stand. Com. Rep. No. 5 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Public Housing Authority (PHA) of the following:

ANNE MARIE BECK, term to expire June 30, 2011 (Gov. Msg. No. 85);

RENE BERTHIAUME, term to expire June 30, 2011 (Gov. Msg. No. 86); and

SHERRILEE K. DODSON, term to expire June 30, 2011 (Gov. Msg. No. 87),

seconded by Senator Whalen.

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 6 (Gov. Msg. No. 88):

Senator Ige moved that Stand. Com. Rep. No. 6 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of ELENA M.H. CABATU to the Commission on the Status of Women, term to expire June 30, 2010, seconded by Senator Whalen.

Senator Inouye requested her remarks be inserted into the Journal. The Chair having so ordered, Senator Inouye's remarks read as follows:

"Madam President, I submit testimony in support of Gov. Msg. No. 88, Elena M.H. Cabatu to the Commission on the Status of Women.

"Ms. Cabatu has spent a considerable time on the mainland. She graduated with a Bachelor of Arts degree from Georgetown University and pursued a career in Washington D.C. before returning to her hometown of Hilo. She is currently employed at Hilo Medical Center and is one of our returning kamaaina who has come home to contribute her experiences and expertise in the community she calls home.

"Ms. Cabatu will be an asset to the Commission on the Status of Women."

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

Ayes, 25. Noes, none.

ADVISE AND CONSENT

MATTER DEFERRED FROM MONDAY, OCTOBER 29, 2007

Stand. Com. Rep. No. 2 (Gov. Msg. No. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 2 be received and placed on file, seconded by Senator Hee and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of RANDAL K.O. LEE to the office of Associate Judge, Intermediate Court of Appeals, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Hee.

Senator Taniguchi rose in opposition to the nominee and said:

"Madam President, I rise to speak in opposition to Gov. Msg. No. 1.

"Madam President, after a lot of thought and consideration, I have regrettably decided to vote against the nomination of Randal Lee to the Intermediate Court of Appeals.

"Judge Lee has many good qualities. He is well liked by his friends and colleagues. He works hard at whatever he does, and he is not afraid to seek changes to the status quo. He answered my questions and the questions of your Committee on Judiciary and Labor in a forthright and honest manner. However, there were a number of testifiers who testified against him and the Hawaii State Bar Association Board of Directors did not find Judge Lee qualified to serve as an ICA judge.

"While the bar association board's vote is not always conclusive for me, it did raise a red flag. Two factors were of more concern – one was the Judge's handling of the discrimination suit, mentioned in much of the testimony against him in which he probably should have just recused himself but didn't, found against the plaintiff and awarded attorney's fees and costs to the defendant in the amount of \$160,000; the other factor was that Judge Lee has only two years of experience as a trial judge. While each of these factors in and of themselves do not constitute sufficient grounds to vote against confirmation, taken together they seem to indicate that Judge Lee should probably acquire a little more experience as a trial judge, especially given the new significant role that the ICA will be playing in our judicial system.

"This matter has been a difficult personal decision for me. Some of Judge Lee's supporters are people I truly respect, and a number are good friends and supporters of mine. However, I'm confident that things will work out for Judge Lee and the judiciary as a whole.

"I ask my colleagues to vote their conscience and not be swayed solely by my decision in this matter. Thank you."

Senator Slom rose in support of the nominee as follows:

"Madam President, I rise in full support of Gov. Msg. No. 1, Judge Randy Lee.

"Let me say, first of all first and foremost, I think Halloween has come a day early to the State Senate and this Special Session. I am appalled at what has taken place since Thursday afternoon when we had a full hearing all day with Judge Lee. We had testimony – pro and con, although heavily weighted pro. We had a vote by the Judiciary Committee. We had a recommendation by the Judiciary Chairman. And then over the last couple of days all of us have heard rumors, have gotten phone calls, have gotten a few e-mails, have gotten a couple of faxes, and even yesterday while we were in Session, a 10-page document slipped under our door. All of these mysteriously now attacking Judge Lee, and done so in a manner so that Judge Lee in fact was not able to have his day in court. There's no fairness because the allegations that have been made, the unsubstantiated claims that have been written about, he won't be given a chance to answer because that's the nature of how we're doing this.

"I also want to ask how many careers of good men and women – talented, honest, hard working, public service oriented – how many of these careers are we going to continue to slander in this Body, not on merit, because one group or another group

of special friends seems to have the weight to be able to change votes.

“We live in a system where majority votes rule, and I know there were a lot of upset feelings yesterday when we passed a major piece of legislation. But that’s the way it works with votes. But if we don’t vote in the open and if we ask our colleagues to vote based on someone who they know says certain things without ever having attended the open hearing or ever giving the opportunity of the nominee to respond or to answer, I think we’ve done a big disservice.

“I, of course, am on that Judiciary Committee. I sat through the hearings. I heard certain allegations. I asked questions, as did others on the Committee. Every single question that was asked of the nominee was answered. And while it was true that several of the members voted with reservations, they voted to pass on this nominee. So the question then becomes, what happened between Thursday afternoon and this morning to have the Chairman of the Judiciary Committee change his mind and change his position, and others as well?

“One must only review certain documents that have been presented to us, as I said, after the fact. One document – which has seemed to carry a lot of weight, particularly with those people who were not at the hearing, did not ask any questions, did not hear any answers – is a 14-page epistle from an attorney who testified against the nominee in the hearing. There’s nothing new in these 14 pages. Every case that was cited, every incident that was brought up was discussed at the hearing except one – except one issue, and that was from a group of disgruntled people in the Nuuanu Cemetery Association incident. And that was the subject of the papers that were slid under our doors yesterday as we met on this Senate Floor.

“The interesting thing about that was that the nominee was asked to broker a deal between two opposing parties in a very highly publicized and contentious case also involving a highly profiled member of the City Council. No one was happy in that situation, and certainly no one was happy with the decision. Judge Lee did not force a decision upon anyone, just as he did not force any settlements on anyone before. He was asked that question; he answered that question, and yet it remains.

“One thing that was not in the 14-page document that you all got was an e-mail that I’m sure you all got from a highly placed businessman who has had a lot of government contracts in the past who was prosecuted by the nominee in a high profile campaign spending violations case. That didn’t seem to be important to mention. It didn’t seem important to mention also that in those cases of both political leaders and business leaders, there were convictions and there were fines.

“As had been testified to, this nominee took on cases in more than 20 years in the Office of the Prosecutor that no one in this community wanted to take because they didn’t want to step on any feet or any toes. This nominee believes in the law so much and believes in right and wrong that he had no hesitation even though his closest friends told him ‘don’t do it.’ This is a small community and retaliation is evident. And it’s interesting that several of the lawyers that testified against the nominee at the Judiciary hearing were talking about their fears of retaliation from Randal Lee. Randal Lee has never retaliated against anyone in his life. Randal Lee has never had a mean bone, a mean streak, or a mean word in his life.

“My criticism of Randal Lee is he’s so naïve. He thinks people really are fair and play by the rules and just wait for the outcome of a vote. And we’ve all been on the winning side of votes and on the losing side of votes – some of us more on the losing side more often than others. But that’s the way the

process is supposed to work. It’s not supposed to work like little termites and goblins and spooks behind closed doors over the weekend, and things that are said that are unsubstantiated.

“I had a great deal of respect for this attorney. I don’t anymore. This 14-page document is filled with innuendos, allegations from losing attorneys, and just plain misstatement of actual facts that can be checked. There are also criticisms that certain individuals didn’t like the decisions that Judge Lee made, and that’s fair enough, but that’s not the basis for disqualifying someone or saying he’s not smart enough or experienced enough or honest enough.

“We do a great disservice when we do that to anyone, any nominee for any board, commission, cabinet level position, or judiciary position, and yet we have a blemished record of doing that far too often.

“Now, let’s take the issue of the Hawaii State Bar Association and their vote. It’s really interesting about the bar association – there’re over 4,000 members of the bar association. It’s a real neat club. As an attorney, you must be a member of the bar association. When they were asked for their comments about Judge Lee, and let me digress a moment because two years ago when he was nominated for the circuit court, same process, they said he was highly qualified. This year, two years later and after two years on the bench, there was a difference of opinion, and of the 19 voting members on the board out of the 4,000 attorneys, out of the 19 members, apparently – and we say apparently because they are supposed to be confidential records, the vote is supposed to be confidential, any comments are supposed to be confidential – but apparently we have learned that there were 16 votes – eight for the nominee’s qualifications as being qualified or highly qualified and eight votes for not being qualified. The president of the bar association had the ability to break the tie. He was asked, in fact, did he have that ability, and the answer was yes, but he chose not to. He chose not to break the tie. We don’t know how he would have voted. He might have voted for the nominee, might have voted against the nominee. We don’t know.

“But here’s what we do know – the vote was a tie and so there was no recommendation made by the bar association. We know that these 19 people, 16 of whom voted, are not the same 19 that were here two years ago, nor the same that were here four years ago, or eight years ago, or 20 years ago. They change. They’re different people.

“We also know that there seems to be a real schism among plaintiff’s attorneys and defenders and prosecuting attorneys. It shouldn’t be, because if the law is held beyond reproach, adhering to the law and justice and equality should be the concern no matter who you are – a prosecutor, a plaintiff’s attorney, or a defender. Yet, some people were very upset that they perceive to be an imbalance on the Intermediate Court of Appeals and they need more public defenders. And so the initial knock against Randy Lee was that he came out of a prosecutorial presence and because of that, we had a tie vote.

“Now, a lot of people have made a lot about this tie vote. In fact, we have football games where there are ties, and in a tie, unless there’s an overtime or unless there’s a tiebreaker, there’s not a winner, there’s not a loser, but some of my colleagues went further. They actually intimidated and they passed on to you, who were not at the hearing, their belief that there was manipulation of that vote, that in fact the initial vote was 8 to 7 in opposition and somehow either Mr. Portnoy, a well respected attorney and probably the number one expert on first amendment and free speech opportunities in this state and probably in the region, that somehow he went out of his way to

manipulate and get one more vote for Randy Lee – totally preposterous!

“It’s interesting to see lawyers turn on lawyers. It’s kind of a thing that many people relish, but not in this instance, because we’re talking about the public and the need to serve the public, and the importance of the judiciary, which already, by some people, has been scarred, the reputation of the judiciary. And we don’t even have to talk about the reputation of the Legislature and the Senate. That’s another matter.

“So we had a tie vote and some people were actively campaigning and saying ‘no, they manipulated that vote.’ They went out when they found that they were allegedly one vote short, they went out and got someone and there were various stories about whether the vote had been sent in an e-mail or whether it did go in or didn’t go in and somebody pushed the send button, and whether they’re too old to know how a computer works, blah, blah, blah. Be that as it may. The official representation from the bar association is it was a tie vote. The tie vote was not broken, and that’s it.

“Is it a red flag? That term has appeared several times and the Judiciary Chairman just used it again. Is it a red flag? Well, it should be something that we look at when the bar association does make a recommendation or non-recommendation. We’ve looked at it in the past. In fact, we have criticized the bar association in the past for their unevenness of procedures and the fact that they do keep everything confidential. They’re currently reviewing that situation, according to the bar itself.

“But why should Randy Lee be penalized? By all means, if you want to take the fact that this bar association board, as compared to the one two years ago, did not vote out a recommendation, fine. But what about the 4,000 attorneys? What about those that in fact did send in e-mail votes or notes of support? The statement that I made in the hearing was that 84 percent of those attorneys sent in positive support for the elevation of Judge Lee. That was never contradicted, countermanded by any of the opponents or anyone else. 84 percent of the actual attorneys said that they support this nominee. So you can take it as you want to – 8-8, 8-7, no recommendation, but 84 percent of the actual working day-to-day attorneys.

“And again, every one of those that opposed Judge Lee had been those who had been on the losing side of a decision. You can take that for what it’s worth as well.

“Judge Lee has only been on the bench for two years, and some people said ‘that’s not long enough. He doesn’t have the experience’ – forget the 20-odd years in the Prosecutors Office, the year in the Public Defender’s Office, his background of community involvement, community service. He needs some more seasoning before we can look at him. It’s interesting that some people in this room here support Barack Obama for President. He’s had less than two years in the U.S. Senate, but he’s qualified to be President of the United States.

“We’re very selective in how we apply certain conditions and certain evaluations. And the fact of the matter is that all of his decisions and all of his actions are public record. And while people may disagree with the outcome, as they do and as they’re free to do, it should not be held against him as a mark against either his honesty, integrity, capabilities, or judgment. It’s just that we have differences of opinion.

“There was another issue that was brought up by this same attorney and again reshaped in the 14 pages here, and that was that Judge Lee violated the sacred Cannons of Ethics in two counts. One was, allegedly, it talks about accepting favors and

gifts, which a judge cannot and must not do. And the second thing, the second cannon said that a judge must not involve himself or herself in political activity. Judge Lee was asked about that. He was asked if he personally solicited anyone after he found out he had been nominated. And he answered in the affirmative – yes he did, as a matter of fact. He talked to the public defender and said, ‘I’ve been nominated for this, would you care to make a statement?’ The public defender said ‘no thanks, I think I’ll pass.’ And his memory was that he may have contacted one or two other people in passing, but that the vast majority of people came to him and said ‘Hey, congratulations Randy. We understand you’ve been nominated. What can we do to support you?’ Well, even if you grab hold of the fact, aha, he contacted the public defender, how can you possibly stretch that to mean a gift, award, or reward, or political activity?

“The judge is a nonpartisan. It’s a nonpartisan function. When we’re talking about political activity, the only time we get into political activity is when people say ‘gee, we don’t have enough diversity; we don’t have enough of this group or that group or another group.’

“There was another issue that was brought up, the rule 16-B from the State Supreme Court – whether or not the nominee had ever been reprimanded. And he had gone to the Vice Chairman of the Judiciary Committee, the former Chairman of the Judiciary Committee, and brought him files talking about that incident, which again can be construed in several different ways. First of all, the ruling by the Supreme Court did not mention Randy Lee by name. It talked about certain documents in a case that had been withheld from the defense, and that is a serious and flagrant violation if in fact it were done knowingly, maliciously, or purposely by any individual, particularly a member of the bar. That was not the case and Randy Lee explained what the circumstances were in that case, as he did in several other cases.

“It was really unusual to hear people attack him as being ethnically challenged and racially motivated. Here’s a man that anyone who has known, anyone who has seen, anybody who has talked to knows all he thinks about is the law. All he wants to do is practice the law.

“But the most egregious thing is, as I say, these late comments that have come in, and particularly to those of you that were not at the hearing, did not have an opportunity to talk with him or ask him questions, he has no opportunity to respond today. And did any of these things, by the way, any of these cases, any of these issues come up two years ago? The answer is no. And none of them are fresh new cases other than the Nuuanu Cemetery and one of the businessmen in the campaign spending violations. All of them were available before but nobody came forward in 2005.

“Well now, some people say, ‘well, it’s okay for Randy Lee to be a circuit court judge, but not to be on the court of appeals because that’s much more important.’ What a slap in the face that is. How can you say that? Either a person is good or not good, qualified or not qualified, experienced or not experienced. I don’t want somebody on the circuit court or the district court that’s not qualified, and Lord knows we’ve have them. But in Randy Lee, you’ve got someone who has sacrificed many things for this community and for many individuals.

“And as I say, had we had the discussion in open hearing, had the questions or the answers not been satisfactory, had the disclosures not been fully made in advance, had we not had an opportunity to ask, and then people decided to vote against Randy Lee, I’d say fine; that’s the way it is. And maybe I would have too, if he didn’t answer questions. I want questions

answered, and when allegations, serious allegations, were raised, I want that nominee to be able to discuss them. He did.

“So, in summary, I want to say again that we certainly should take all factors into consideration, but we should be honest about those factors and about how they were derived. And in this situation here, we’re not only casting aspersions on the nominee, but also the president of the bar association, other members of the bar association. Although, although, there’s at least one member of the bar association board who we’re not casting any aspersions on even though this person reportedly went out of the way to personally campaign against this nominee in this very Chamber, in our offices over this weekend, and nobody finds that troubling to date. Nobody questions that.

“We need an individual like Randy Lee. It is important that the Court of Appeals has taken on more responsibilities – handling every appeal now, before it gets to the Supreme Court. The Chairman of the Judiciary Committee, you are free to vote your conscience. Well, it’ll be interesting to see if everybody changes their vote from how they voted the other day. You certainly are free and encouraged to vote your conscience, and encouraged if you even want to delay this vote and ask the nominee any of these questions that you found in this 14-page rehashed diatribe, and ask why certain people are non-supportive of this candidate and why it doesn’t have anything to do with the law or his experiences.

“We’ve got to judge people individually on their character and on their experience, and if we do that, Randy Lee should be confirmed today. Thank you, Madam President.”

Senator Hooser rose to speak in opposition to the nominee and said:

“Madam President, I rise in opposition to the nominee. I’ll keep my remarks very, very brief.

“I believe all of us in this room take our constitutional responsibility seriously when called upon for advise and consent. We believe in giving the hearings and doing our proper evaluations, but I don’t believe the constitution was written, I don’t believe anybody expects us to pass every single nomination that comes forward, and there’s no question that the vast majority – the vast majority – of nominations that are put before us sail through without objection, without controversy. I think it’s true also that the vast majority of us, if not all of us, find it very difficult to vote in opposition to people. I just think that’s the bottom line, but we do have our job to do.

“I do not sit on the Judiciary Committee, Madam President. Like many members here, though, I did meet with the Chairman, with members of the Committee, and I met with Mr. Lee also. I asked questions of all and discussed the issues and discussed some of the concerns, and came away from those meetings with additional questions, with additional concerns, and fundamentally, two issues, two words that are driving my vote today would be experience and confidence – I believe the lack of confidence by the Committee members. The vote came out with reservations. This is an important position, and I for one want to vote with confidence – with 100 percent confidence – and I find I can’t do that today.

“Prior to the Minority member who just spoke, the testimony in opposition was respectful and honored Mr. Lee. I don’t believe anybody here today, except for the prior speaker, has cast any aspersions on anyone whatsoever. Except for the prior speaker, I did not hear any references about anyone being not smart enough, or not honest enough, or lacking integrity. The remarks have been civil, respectful, and have honored the nominee.

“There’s no mysterious plot, Madam President, not that I know about, certainly. I didn’t get any mysterious papers shoved underneath my door. Perhaps it’s because my door is open most of the time. Certainly, none of us in the Majority have slandered anyone and it’s my intent, and I believe the members’ intent, to carry on this discussion in an honorable and civil and respectful manner.

“I will conclude with those remarks and encourage all the members to again vote their conscience. Thank you.”

Senator Hemmings rose in support of the nominee and said:

“Madam President, I rise to speak in favor of the nominee, Randal K.O. Lee.

“I think the good Senator from Hawaii Kai very clearly illuminated what we’re doing here today. I’d like to also touch on how we’re doing it and why we’re doing it. I’d like to say I’m humored by some of the excuses put forth for what we’re doing here today. It’s a responsibility. I’m especially humored by the comment that we’re doing it respectfully. It would be humorous, but it’s such an egregious remark. I imagine Caesar felt very respectable in the forum as he was stabbed in the back. It was an honorable forum and they did it respectfully.

“Madam President, colleagues, I can tell you from firsthand experience – six years in the 80’s and seven years in the 21st century – that it’s not been easy being a member of the Minority Party. The Majority Party’s powers are so absolute. But I’ve always believed in the best of human kind and of members of this Body, and being a member of the Minority Party, Madam President, I’ve always been an optimist that the sun will come up on a better day and things will get better.

“What’s happening today is just another incident and I think the demise of the integrity of this institution, and how it’s being done is even more egregious. This is unscrupulous, without civility or honor – people doing what is selfish and self-serving, not in the best interest of the people that we take an oath to represent. It’s being done for what’s politically expedient today. Oftentimes, as with several hearings in recent times, such as the Peter Young indictment and conviction, it is mean spirited. They are, in fact, legislative lynchings where people’s integrity is held hostage for the political convenience of the Majority Party.

“I do hope the media when reporting this, as they do with so many things that happen in the Legislature, won’t say the Senate did this. The Senate is not doing this. I’d like to think that the Senate, in the best sense of the word, is an institution we should be proud of. It’s definitely the Majority Party that’s doing this. As with so much that’s happened in this Special Session, it also is so contradictory, and I have to use that word ‘disingenuous.’

“Madam President, I won’t read into the record your words about this nominee several years ago when you lauded him. I won’t read into the record the Chairman of the Judiciary’s similar words in lauding this nominee. I will ask the question, Have you no shame? Vote your conscience? Do you have a conscience? Do you have any scruples that you make decisions upon or do you just go into your caucus room and decide who we’re going to take down before the . . .”

Senator Tsutsui interjected:

“Point of order, Madam President, please have the speaker keep his comments to the measure before us. Thank you.”

Senator Hemmings responded:

"I am. I'm speaking to what is being done today to take a nominee to the Judicial Branch of government and how it's being done. My comments are very germane. I'm sorry that the good Senator from Maui does not appreciate free speech in my responsibility to speak my conscience, because I have one.

"This is just another incident in the erosion of the integrity of this Body. I'm voting for this nominee because he's qualified, because he has a proven record. I really wish you could vote your conscience, but it seems that's something that's a scarce commodity. Thank you, Madam President."

Senator Ihara rose in opposition to the nomination as follows:

"Madam President, I cannot consent to the nomination of Randal Lee for the Intermediate Court of Appeals and must decline to 'advise and consent' to this nomination.

"It is my constitutional duty to render an opinion on the suitability of this nominee to sit as a member of the Intermediate Court of Appeals. I met the nominee late last Friday amongst all of the busyness about the high speed ferry service and was then inclined to support the nominee. I had only read what was in the paper and worked the weekend on Superferry. On Monday, yesterday, I reviewed all of the testimony submitted to the Committee on Judiciary and Labor, including those submitted after the hearing, and have finally formulated my own opinion late last night and cannot in good conscience support this nominee for appointment to this court. Among my reasons are the following.

"It is the opinion of the nominee that when asked, 'has your conduct ever been criticized in a written decision by any court,' he said 'no.' This was to question F-5 on the Judicial Selection Committee application. However, after reading the Supreme Court ruling in *State v King*, I think a reasonable person would believe the nominee's actions as prosecutor were indeed criticized by the court.

"I have concerns regarding the nominee's handling of various cases, as mentioned in opposing testimony. So I won't go over those. But most troubling is information involving a case now on appeal in *Lales v Wholesale Motors Company*. This appeal makes claims currently being considered by the Intermediate Court of Appeals which, if successful, in my opinion may disqualify the nominee from joining this very court.

"I should point out that question F-7 on the Judicial Selection Commission application asks 'is there a case pending on appeal which concerns your behavior or conduct?' And the answer was 'no,' which I think was appropriate at that time. The application to the commission was submitted on July 27th. Ten days later, on August 8th, an appeal was filed in the Intermediate Court of Appeals in *Lales v Wholesale Motors Company*. In conjunction with this appeal, this case, complaint had been filed against the nominee with the Commission on Judicial Conduct. But the commission writes that they are deferring all action on the complaint until the appellate process is completed. Therefore, I believe the nominee should wait until the court – the Appellate Court, the court to which he's applying – has ruled on this matter before being considered for nomination to this particular court.

"Finally, after its review of the nominee, 50 percent, as mentioned previously, of the Hawaii State Bar Association board judged the nominee to be 'unqualified' for the job. In my

view, this is unacceptable for a nomination to the Intermediate Court of Appeals.

"I had hoped my reviews of the testimony would have allowed me to support this nomination, but after reading all of the materials, I am unable to do so. I must respectfully decline this nomination."

Senator Trimble rose in support of the nominee as follows:

"Madam President, I rise to speak in favor of the nomination.

"The judiciary is tiered to provide for the fairest interpretation of the law. Judge Randal Lee's record shows that there have been few reversals on the bench, which leads me to believe that his interpretation of the law is fair. He has widespread community support. So what truly disturbs my constituents, what they cannot understand is what has happened since Thursday?

"So colleagues, let me share with you what they are telling me. They are disturbed that nothing has been presented in a forum that would allow the Judge to answer what is being said. They are disturbed that apparently strings are being pulled over the weekend and behind closed doors. They are disturbed that somebody that prosecuted people that made illegal campaign contributions primarily to those of the Majority Party, that is what they are talking about and they are asking me what I really believe. And I tell them that what I hear down here are words, words, and more words.

"What really matters is the vote. What really matters is what you do today. And this is probably the most important vote that this Body has taken since it voted down Margery several years ago. Thank you, Madam President."

Senator Hemmings rose and said:

"Madam President, could I request a Roll Call vote?"

Senator Inouye requested her remarks be inserted into the Journal. The Chair having so ordered, Senator Inouye's remarks read as follows:

"Madam President, I speak against Gov. Msg. No. 1, Judge Randal K.O. Lee to the Intermediate Court of Appeals.

"I have concerns with regards to Judge Lee's inexperience in civil practice and the fact that he has served only one year on the civil bench.

"One of the deciding factors for me to oppose the nominee is the work of an ICA Judge, as outlined in the testimony of Attorney James J. Bickerton. I read his testimony dated, October 25, 2007 and I quote:

The Work of an ICA Judge

'In years past an ICA judge was responsible for deciding approximately 52 cases per judge per year. With the change in 2006 to a "certiorari" system, each ICA judge must now decide approximately 110 cases per year, a more than 100 percent increase. Although the court acts as a body, the actual decision in each case is largely the product of a single judge, and the other two members of the panel will either sign it or dissent from it. Thus, the "cases per judge" statistic is a useful tool for understanding the caseload.

'To decide this number of cases, each judge must review the briefs, analyze and decide more than two cases per week. Each ICA judge, to keep up his or her end of the process,

must publish at least 16 opinions and write over 30 memorandum opinions per year. This means writing virtually one opinion per week, without considering the time spent deciding at least 40-45 Summary Dispositions (short, one to two page decisions) per judge per year (again nearly one per week).

‘Clearly, this level of work requires judges who have a demonstrated ability to rapidly analyze cases and write opinions on a high volume basis without sacrificing quality of reasoning or analysis, and who have a wide knowledge of the law. There is no room for on the job training or persons with experience only in one or two relatively narrow fields, nor can anyone fall below these caseload expectations as that increases the load on the other already overburdened judges. Moreover, because the ICA now deals with cases of every stripe, Judges must have a deep knowledge of several areas of law, both civil and criminal, as there is no time to learn basic concepts.

‘These criteria mean that, until the per judge caseload changes, the ICA position should be limited to persons who have demonstrated the highest levels of academic and professional achievement and who have extensive experience in appellate law, with substantial experience in analyzing lower court records, conducting legal research, issue analysis and drafting of clear opinions. Experience as a trial judge is of some value in this regard, but the value is limited as there is relatively little writing involved in the Circuit bench position.

‘The load on the ICA is also increased because of the lack of diversity on the current court. Three of the five current ICA judges were career criminal prosecutors, one was a chief deputy attorney general and one was a civil right attorney. There are no civil trial attorneys or criminal defense attorneys on the court, nor are there real estate, family law or tax specialists on the Court. With so much of the ICA’s experience concentrated in one narrow area, the learning curve for the Judges of cases outside those areas is steep, and we have seen errors (and more frequent reversals on certiorari) by the Supreme Court in a number of areas. The ICA position thus requires someone with broad experience.’

‘This bothers me Madam President. We do need diversity in this court.

‘Finally, because the ICA is now in effect the court of last resort for most litigants, inasmuch as further review is discretionary in the Supreme Court, this means that the ICA position is much more important than it was before 2006. Most cases will not receive error correction by the Supreme Court, so it is more important than ever that the ICA decide cases correctly. In effect, we should require the same caliber of applicant for the ICA as we did for the Supreme Court before 2006 – person of the highest demonstrated experience and ability in the legal community. Any lower standard will sell the public short because it will mean that appeals will no longer get the quality of decision that they used to get under the pre-2006 system.’”

The motion was put by the Chair and, Roll Call vote having been requested, failed to carry on the following showing of Ayes and Noes:

Ayes, 9. Ayes with Reservations, 3 (Espero, Menor, Tsutsui). Noes, 16 (Baker, Chun Oakland, English, Fukunaga, Hanabusa, Hee, Hooser, Ige, Ihara, Inouye, Kim, Kokubun, Nishihara, Sakamoto, Taniguchi, Tokuda).

At 11:16 o’clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:29 o’clock a.m.

Senator Sakamoto, Chair of the Committee on Education, requested that the referrals of Gov. Msg. Nos. 20 and 21 to the Committee on Education be waived.

Senator Sakamoto noted:

“Madam President, this matter refers to the nomination to the Teacher Standards Board of Kelly Michele Noelani Castellano and Gail Edyth Weaver. Some of you have received a correspondence from the Governor dated October 29th saying that the Senate did not hold a hearing on the appointment of these two individuals, but we in fact did hold hearings during our Regular Session.

“At the time of the hearings, the issue came up in regard to the *Hawaii Revised Statute*, Section 302A-801(b), in referencing who should be appointed to this body. In that situation, the HSTA raised a question that historically these nominees came from a list from them. Part of the statute refers to coming from constituent groups, agencies, etc., representing the constituency. Based on those needing clarification at that point, during the Regular Session, the Governor had withdrawn these same two nominees.

“Subsequently, there were some opinions back and forth in saying who should be the nominating party for the list to the Governor. In the ongoing conversation, we were asking people for suggestions to clarify this specific section. However, that would have been taken up in Regular Session.

“Subsequently, in the interim the Governor reappointed the same two people and there was no resolution on the appointment process procedure to appoint these specific nominees. So at this point in time, Madam President, my recommendation would be that we need to clarify this section. The administration has opined that the school community council can be a nominating body or a charter school organization, but in fact we haven’t clarified that in terms of should it be the representative collective bargaining, who should it be?

“So at this point, Madam President, I ask that we waive it to the Floor and my recommendation would be, based on not clarifying the process, not in favor of moving forward on these specific two nominees at this point in time.”

The Chair then granted the waiver.

By unanimous consent, the following governor’s messages were placed on the calendar for advise and consent on Wednesday, October 31, 2007:

Gov. Msg. No. 20, the nomination of KELLY MICHELE NOELANI CASTELLANO to the Hawai’i Teacher Standards Board, term to expire June 30, 2010; and

Gov. Msg. No. 21, the nomination of GAIL EDYTH WEAVER to the Hawai’i Teacher Standards Board, term to expire June 30, 2009.

ADJOURNMENT

At 11:33 o’clock a.m., on motion by Senator Ige, seconded by Senator Whalen and carried, the Senate adjourned until 10:00 o’clock a.m., Wednesday, October 31, 2007.

SIXTH DAY

Wednesday, October 31, 2007

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Second Special Session of 2007, convened at 10:32 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Gabriel Guerra, On the Rock (Kapolei), after which the Roll was called showing all Senators present.

The President announced that she had read and approved the Journal of the Fifth Day.

ORDER OF THE DAY

ADVISE AND CONSENT

At this time, the President made the following announcement:

"Members, as I stated yesterday, when voting on advise and consent measures today, no action, neither to confirm nor reject, is being taken by the Senate on any Governor's messages that have been withdrawn, and that such action does not affect the nominee's eligibility for future appointment.

"For today, please note that the following Governor's Messages were withdrawn by the Governor:

On Standing Committee Report No. 14 on pages 8 and 9, nominees to the Language Access Advisory Board:

Gov. Msg. No. 93 – Earnest Chung;
Gov. Msg. No. 96 – Dominic Inocelda; and
Gov. Msg. No. 98 – Gerald Ohta.

On Standing Committee Report No. 21 on page 11, nominee to the Island Burial Council, Islands of Kaua'i and Ni'ihau:

Gov. Msg. No. 8 – Michael Loo.

And also on Standing Committee Report No. 21 on page 11, nominee to the Island Burial Council, Island of Oahu:

Gov. Msg. No. 10 – Angela Ehia-Quitevis.

"Therefore, notwithstanding the recommendations in Standing Committee Report Nos. 14 and 21, the Senate is not taking any action on the above-noted Governor's Messages."

Stand. Com. Rep. No. 8 (Gov. Msg. No. 14):

Senator Ige moved that Stand. Com. Rep. No. 8 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of LESLIE HARUO KONDO to the Public Utilities Commission (PUC), term to expire June 30, 2008, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 9 (Gov. Msg. Nos. 11, 12 and 13):

Senator Ige moved that Stand. Com. Rep. No. 9 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Hurricane Relief Fund of the following:

GARY Y.K. CHOCK S.E., term to expire June 30, 2011 (Gov. Msg. No. 11);

MICHAEL P. HAMNETT, term to expire June 30, 2009 (Gov. Msg. No. 12); and

DENNIS MICHAEL SUGIHARA, term to expire June 30, 2011 (Gov. Msg. No. 13),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 10 (Gov. Msg. No. 22):

Senator Ige moved that Stand. Com. Rep. No. 10 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of RONALD E. TERRY as the Administrator for the State Health Planning and Development Agency, term to expire June 30, 2011, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 11 (Gov. Msg. Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33):

Senator Ige moved that Stand. Com. Rep. No. 11 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Board of Directors of the Hawai'i Health Systems Corporation of the following:

SHAWN CANNON, term to expire June 30, 2009 (Gov. Msg. No. 23);

AVERY B. CHUMBLEY, term to expire June 30, 2009 (Gov. Msg. No. 24);

ANDREW DON MD, term to expire June 30, 2009 (Gov. Msg. No. 25);

ROGER K. GODFREY, term to expire June 30, 2011 (Gov. Msg. No. 26);

ROSANNE C. HARRIGAN EDD, term to expire June 30, 2011 (Gov. Msg. No. 27);

CATHERINE L.N. KIM, term to expire June 30, 2011 (Gov. Msg. No. 28);

BARRY TOSHIO MIZUNO, term to expire June 30, 2009 (Gov. Msg. No. 29);

MABEL JEAN ODO, term to expire June 30, 2009 (Gov. Msg. No. 30);

CLIFFORD L. NAKEA, term to expire June 30, 2011 (Gov. Msg. No. 31);

BARRY KOJI TANIGUCHI, term to expire June 30, 2011 (Gov. Msg. No. 32); and

RICHARD JAMES VIDGEN, term to expire June 30, 2011 (Gov. Msg. No. 33),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 12 (Gov. Msg. Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44):

Senator Ige moved that Stand. Com. Rep. No. 12 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation Oahu Regional Board of the following:

PATRICIA ANNETTE LANOIE BLANCHETTE MD, term to expire June 30, 2010 (Gov. Msg. No. 34);

CLEMENTINA D. CERIA-ULEP, term to expire July 1, 2010 (Gov. Msg. No. 35);

STEPHANIE A. MARSHALL, term to expire June 30, 2009 (Gov. Msg. No. 36);

MICHAEL REED MASUDA, term to expire June 30, 2009 (Gov. Msg. No. 37);

MARIE MILKS, term to expire June 30, 2010 (Gov. Msg. No. 38);

PAUL DOUGLAS NIELSON MD, term to expire June 30, 2010 (Gov. Msg. No. 39);

JERRY ROBERT SMEAD, term to expire June 30, 2009 (Gov. Msg. No. 40);

MARC SHLACHTER MD, term to expire June 30, 2009 (Gov. Msg. No. 41);

ELDON L. WEGNER, term to expire June 30, 2010 (Gov. Msg. No. 42);

MARY C. WESSELKAMPER, term to expire June 30, 2010 (Gov. Msg. No. 43); and

DONALD WILLIAM WOOD, term to expire June 30, 2009 (Gov. Msg. No. 44),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 13 (Gov. Msg. No. 89):

Senator Ige moved that Stand. Com. Rep. No. 13 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of HERBERT C. LUM to the Advisory Board on Veterans' Services, term to expire June 30, 2010, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 14 (Gov. Msg. Nos. 90, 91, 92, 94, 95, 97, 99, 100 and 101):

Senator Ige moved that Stand. Com. Rep. No. 14 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Language Access Advisory Council of the following:

LITO M. ASUNCION, term to expire June 30, 2011 (Gov. Msg. No. 90);

MARCELLA ALOHALANI BORNSTEIN BOIDO, term to expire June 30, 2009 (Gov. Msg. No. 91);

EARNEST CHUNG, term to expire June 30, 2008 (Gov. Msg. No. 92);

CANISIUS TKEL FILIBERT, term to expire June 30, 2010 (Gov. Msg. No. 94);

DOMINIC K. INOCELDA, term to expire June 30, 2008 (Gov. Msg. No. 95);

GERALD HISASHI OHTA, term to expire June 30, 2008 (Gov. Msg. No. 97);

MAUREEN NAMAKAOKALANI RAWLINS, term to expire June 30, 2009 (Gov. Msg. No. 99);

TIN MYAING THEIN, term to expire June 30, 2010 (Gov. Msg. No. 100); and

SUZANNE MARIE ZENG, term to expire June 30, 2011 (Gov. Msg. No. 101),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 15 (Gov. Msg. No. 106):

Senator Ige moved that Stand. Com. Rep. No. 15 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of JOSEPH L. DWIGHT IV to the Hawai'i Community Development Authority (HCDA), term to expire June 30, 2008, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 16 (Gov. Msg. No. 108):

Senator Ige moved that Stand. Com. Rep. No. 16 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of BENJAMIN KEOLAMA'AKHI LINDSEY to the Kaneohe Bay Regional Council, term to expire June 30, 2009, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 17 (Gov. Msg. No. 109):

Senator Ige moved that Stand. Com. Rep. No. 17 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of KYLE JAMES KALEO CHOCK to the Land Use Commission, term to expire June 30, 2010, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 18 (Gov. Msg. No. 112):

Senator Ige moved that Stand. Com. Rep. No. 18 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of DONNA FAY K. KIYOSAKI to the Commission on Water Resource Management, term to expire June 30, 2011, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 21 (Gov. Msg. Nos. 6, 7 and 9):

Senator Ige moved that Stand. Com. Rep. No. 21 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations of the following:

JAMES G. LEE JR. to the Island Burial Council, Island of Hawai'i, term to expire June 30, 2009 (Gov. Msg. No. 6);

MICHAEL Y.M. LOO to the Island Burial Council, Islands of Kaua'i and Ni'ihau, term to expire June 30, 2008 (Gov. Msg. No. 7); and

ANGELA LISA LEIMAILE EHIA-QUITEVIS to the Island Burial Council, Island of Oahu, term to expire June 30, 2008 (Gov. Msg. No. 9),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 22 (Gov. Msg. Nos. 45, 46, 47, 48, 49, 50, 51 and 52):

Senator Ige moved that Stand. Com. Rep. No. 22 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation East Hawai'i Regional Board of the following:

SIDNEY MITSUO FUKU, term to expire June 30, 2009 (Gov. Msg. No. 45);

BRENDA SUE HO, term to expire June 30, 2010 (Gov. Msg. No. 46);

ROBERT DAILY IRVINE, term to expire June 30, 2010 (Gov. Msg. No. 47);

BRIAN M. IWATA, term to expire June 30, 2010 (Gov. Msg. No. 48);

DENNIS DON LEE, term to expire June 30, 2009 (Gov. Msg. No. 49);

CAROL IADELUCA MYRIANTHIS, RPT, PSYD, term to expire June 30, 2009 (Gov. Msg. No. 50);

ALAN M. OKAMOTO, term to expire June 30, 2009 (Gov. Msg. No. 51); and

CRAIG Y. SHIKUMA MD, term to expire June 30, 2010 (Gov. Msg. No. 52),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 23 (Gov. Msg. Nos. 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62):

Senator Ige moved that Stand. Com. Rep. No. 23 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation West Hawai'i Regional Board of the following:

ALISTAIR WILLIAM BAIROS, term to expire June 30, 2009 (Gov. Msg. No. 53);

BARRY BLUM, term to expire June 30, 2010 (Gov. Msg. No. 54);

JOHN D. CORNILLEZ, term to expire June 30, 2009 (Gov. Msg. No. 55);

JAMES W. HIGGINS, term to expire June 30, 2010 (Gov. Msg. No. 56);

DAVID BRUCE MAKALIU KAAPU, term to expire June 30, 2010 (Gov. Msg. No. 57);

BRUCE MAKARERICZ, term to expire June 30, 2009 (Gov. Msg. No. 58);

RICHARD M. MCDOWELL MD, term to expire June 30, 2010 (Gov. Msg. No. 59);

LEON PASKER, term to expire June 30, 2009 (Gov. Msg. No. 60);

RICHARD J. TAAFFE, term to expire June 30, 2010 (Gov. Msg. No. 61); and

ELIZABETH HEIMAN ZAGORODNEY, term to expire June 30, 2010 (Gov. Msg. No. 62),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 24 (Gov. Msg. Nos. 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73):

Senator Ige moved that Stand. Com. Rep. No. 24 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation Kauai Regional Board of the following:

NORMAN AKITA, term to expire June 30, 2010 (Gov. Msg. No. 63);

LAVERNE L. BESSERT, term to expire June 30, 2009 (Gov. Msg. No. 64);

LINDA FAYE COLLINS, term to expire June 30, 2009 (Gov. Msg. No. 65);

TIMOTHY BLAKE CRANE, term to expire June 30, 2010 (Gov. Msg. No. 66);

ROSELIND BARBARA BULATAO-FRANKLIN, term to expire June 30, 2010 (Gov. Msg. No. 67);

RICHARD B. GODING MD, term to expire June 30, 2009 (Gov. Msg. No. 68);

RANDALL J. HEE, term to expire June 30, 2010 (Gov. Msg. No. 69);

JODY KJELDTSEN, term to expire June 30, 2009 (Gov. Msg. No. 70);

DAVID JOHN PETERS, term to expire June 30, 2010 (Gov. Msg. No. 71);

MARIANO TORRES MD, term to expire June 30, 2010 (Gov. Msg. No. 72); and

ESTELITA CABAL TRINIDAD, term to expire June 30, 2009 (Gov. Msg. No. 73),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 25 (Gov. Msg. Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 84):

Senator Ige moved that Stand. Com. Rep. No. 25 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the Hawai'i Health Systems Corporation Maui Regional Board of the following:

ZADOC WHITE BROWN JR., term to expire June 30, 2009 (Gov. Msg. No. 74);

GRANT Y.M. CHUN, term to expire June 30, 2009 (Gov. Msg. No. 75);

GINA MARIE FLAMMER, term to expire June 30, 2010 (Gov. Msg. No. 76);

G. STEPHEN HOLADAY, term to expire June 30, 2009 (Gov. Msg. No. 77);

DONNA LEE MCCLEARY MD, term to expire June 30, 2010 (Gov. Msg. No. 78);

LEE EIJI MIYASATO, term to expire June 30, 2009 (Gov. Msg. No. 79);

HOWARD K. NAKAMURA, term to expire June 30, 2010 (Gov. Msg. No. 80);

KAREN TOSHIYO OURA, term to expire June 30, 2009 (Gov. Msg. No. 81);

BETTY JANE OTT, term to expire June 30, 2010 (Gov. Msg. No. 82);

SUSAN K. STEWART, term to expire June 30, 2010 (Gov. Msg. No. 83); and

RICHARD CLAY SUTHERLAND, term to expire June 30, 2010 (Gov. Msg. No. 84),

seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 26 (Gov. Msg. No. 114):

Senator Ige moved that Stand. Com. Rep. No. 26 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of RAYMOND SHIGEO ONO to the Board of Directors of the Hawai'i Health Systems Corporation, term to expire June 30, 2009, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 27 (Gov. Msg. No. 110):

Senator Ige moved that Stand. Com. Rep. No. 27 be received and placed on file, seconded by Senator Whalen and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of NORMAND R. LEZY to the Land Use

Commission, term to expire June 30, 2008, seconded by Senator Whalen.

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

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

Stand. Com. Rep. No. 19 (Gov. Msg. No. 3):

Senator Taniguchi moved that Stand. Com. Rep. No. 19 be received and placed on file, seconded by Senator Hee and carried.

Senator Taniguchi then moved that the Senate advise and consent to the nomination of DARWIN CHING as the Director of the Department of Labor and Industrial Relations, term to expire December 6, 2010, seconded by Senator Hee.

Senator Taniguchi rose in support of the nominee and said:

“Madam President, I rise to speak in support of Darwin Ching as the Director for the Department of Labor and Industrial Relations.

“Your Committee on Judiciary and Labor heard from Mr. Ching, and I am satisfied that he will serve well in his capacity as director. Testimony received was overwhelmingly in support of Mr. Ching and indicated that he is an innovative and committed individual.

“Mr. Ching has been serving as the acting director for the department and testifiers indicated that he is playing a positive role there. Mr. Ching served as an arbitrator for several years, including arbitrating labor-related issues. From this experience, I believe Mr. Ching has learned that cooperation and consensus-building lead to the best results, as this has been his style of management. Many unions and business organizations expressed similar confidence in his ability as a manager.

“For these reasons, I am asking my colleagues to support the nomination of Darwin Ching as the Director of the Department of Labor and Industrial Relations. Thank you.”

Senator Slom rose to speak in support of the nomination and stated:

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

“On behalf of your Minority, we strongly support the advice and confirmation of Mr. Ching.

“He has a long and distinguished career not only as an attorney and public servant, but also as a teacher and an educator, having taught and having served on the Board of Education. And more importantly, he has demonstrated his ability to be active in the community, be a leader, give of his time, and of his resources.

“There was overwhelming testimony in support from the business community, from the labor community, from almost everyone who has ever been touched by or been affected by Mr. Ching. His department also indicated that even though he has been on the job as interim director for a very short period of time, he’s already achieved many goals; he’s brought people together, he’s discussing issues, and he will work in this very important department.

“So we wholeheartedly endorse him and ask my colleagues to unanimously approve him. Thank you, Madam President.”

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

Ayes, 25. Noes, none.

At this time, Senator Taniguchi introduced Mr. Ching to the members of the Senate.

Stand. Com. Rep. No. 20 (Gov. Msg. No. 4):

Senator Espero moved that Stand. Com. Rep. No. 20 be received and placed on file, seconded by Senator Nishihara and carried.

Senator Espero then moved that the Senate advise and consent to the nomination of CLAYTON A. FRANK as the Director of the Department of Public Safety, term to expire December 6, 2010, seconded by Senator Nishihara.

Senator Espero rose to support the nominee as follows:

“Madam President, I’d like to rise in support of Clayton Frank as the Director of Public Safety.

“Since 2002, the Department of Public Safety has had seven interim directors or directors. As you can see, there is a need for consistency in leadership in this department. This position is not obviously one of the most sought-after positions in our state government. Fortunately, an individual within the Department of Public Safety has stepped forward to take on the challenge before this department for the next three years, and that individual is Clayton Frank.

“He’s a graduate of Kalani High School. He has a B.A. in Sociology from the University of Hawaii and a Master’s in Social Work from the University of Hawaii as well. His greatest strength or asset is his 26 years in the Department of Public Safety. He has been a social worker; a probation officer; a corrections supervisor; acting warden administrator; acting deputy director for law enforcement; inspections and investigations officer; institutions division administrator; warden at OCC; warden at Halawa; and currently the interim director.

“At his hearings, he had many supporters. He had over 50 individuals testify on his behalf, many of them from the Department of Public Safety, individuals who have known him and worked with him for these 26 years. He has received support from the unions, government officials, and he will certainly do a fine job based on our hearings and meetings.

“There is a dark cloud in his career, which we are all aware of, regarding a 1997 lawsuit regarding sexual harassment and gender discrimination. We spoke with Mr. Frank in private and at the hearing regarding this issue, and he has certainly shown remorse and understands the gravity of the issues which transpired back then when the state lost the lawsuit with the judgment of \$4.1 million, where we eventually ended up paying out just under \$2 million. The issues at that time have been discussed, and I believe Mr. Frank has learned from this, that he will be a better man and a better leader because of this, and this episode within his career which we do not condone in any way will certainly not happen again to the best of his ability.

“In essence, in looking at Act 8 or S.B. No. 932 which we just passed last Session, where we are emphasizing reentry and rehabilitation of our inmates, this is an opportunity to give Mr. Frank a second chance to prove that his years within the department are years which will help the department go forward. The members within his department are seeking someone with his knowledge and leadership, and I truly believe,

working closely with this Legislature, that we will make improvements and make progress and improve our prison system.

“We have discussed many issues that we want to accomplish in the next three years, including: repair and maintenance of our prison system; a new prison for Maui; reentry and rehabilitation services for our inmates; staff training, very important; updating training and emergency procedures; and what I believe is a very important issue – bringing back our women prisoners, possibly by as early as next year. That does not mean we have abandoned the men. However, since the women are a smaller subset, it is more financially feasible to look at these women first.

“Mr. Frank can be an average leader, he can be a mediocre leader, or he can be a great leader that the department so desperately needs and wants. I believe he can be that greater leader, and members, I ask for your support. Thank you.”

Senator Tokuda rose in support with reservations and stated:

“Madam President, I rise to speak in support with reservations for the nomination.

“While Mr. Frank has had a long career with Public Safety and has earned the respect of his staff as evidenced in the testimony presented, I would be remiss if I did not voice my strong concerns over moments in his tenure that were far from distinguished.

“In 2001, Mr. Frank was found guilty of sexual discrimination, retaliation, and intentionally inflicting emotional distress upon a female employee. As a result of Mr. Frank’s and his co-defendant’s actions, the State of Hawaii was forced to pay nearly \$2 million in damages. In most other sectors, whether public or private, a verdict such as this would have resulted in immediate termination of employment.

“Mr. Frank and the other individuals named in the lawsuit retained their jobs, suffered no loss in pay, nor were they placed on probation, and as a result of their reprehensible actions were only required to take a class on sexual harassment – a class I should note that all state supervisors and managers (and incidentally, all of us Senators) are required to take already on a regular basis. The fact that Mr. Frank not only remained employed by the department but is now in line to become its director leads me to agree with the Committee Chair that he has in fact been granted a second chance – a second chance to insure that no woman, whether inmate or employee, has to suffer as a result of her gender; a second chance to insure that if sexual discrimination, harassment, assault or abuse occurs it will be taken seriously, dealt with appropriately, and that there will be consequences that match the crime; a second chance to prove that he has learned from his mistakes and will use his new position to put safeguards and procedures in place to prevent this from happening again.

“I had a long and very honest conversation yesterday with Mr. Frank, and I expressed to him my concerns, especially in light of the fact that we are looking at bringing our women home from the mainland, and as a result of this will be needing to increase the number of female corrections officers on staff. I appreciate his willingness to work towards a discrimination-free environment for all of our inmates and employees and it is my sincerest hope that his leadership will not only provide stability to this department, but provide a positive vision that changes the way we all view and approach corrections and law enforcement.

“In closing, I want to acknowledge the brave women that came forward and spoke not only for themselves but for all of those who remain silent. It is for them that I cast my vote with reservations, and while it will not affect the final outcome of this vote, I hope it will serve as a reminder to Mr. Frank that each and every day, he has the chance to do what is right.

“Thank you.”

Senators Hooser, Ihara, Baker and Ige requested their votes be cast “aye, with reservations,” and the Chair so ordered.

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

Ayes, 25. Ayes with Reservations, 5 (Baker, Hooser, Ige, Ihara, Tokuda). Noes, none.

At this time, Senator Espero introduced Mr. Frank and his family to the members of the Senate.

Stand. Com. Rep. No. 28 (Gov. Msg. No. 5):

Senator Hee moved that Stand. Com. Rep. No. 28 be received and placed on file, seconded by Senator Kokubun and carried.

Senator Hee then moved that the Senate advise and consent to the nomination of LAURA H. THIELEN as the Chairperson of the Board of Land and Natural Resources, term to expire December 31, 2010, seconded by Senator Kokubun.

Senator Hee rose in support of the nominee and stated:

“Madam President, members and colleagues, I rise in support of the nominee.

“It goes without saying that this nominee, the nominee for this position is very difficult because of the range of responsibilities under the purview of this department. The fact of the matter is, in fairness to the nominee, it is my opinion that she has not been given a full opportunity to be judged fairly. And thus the Senate was put in the position of making query on how she views some of the problems within the department prospectively.

“As you read the committee report, you will see that the report makes several notes of concerns that were raised by the committee members, and to that extent, I wish to acknowledge the committee members who took a lot of time and effort with the clerk to make comment into the committee report. The committee report does note that there are several concerns that have been raised before the Committee, not the least of which include the Bureau of Conveyances, fishermen, it includes the State Historic Preservation Division, and general growth in particular. It also includes other areas within the Department of Land and Natural Resources.

“It remains to be seen what will become of this department in 2008, but clearly this department is not without many suggestions of how to improve the department, which may or may not include moving functions presently within the department elsewhere.

“Nonetheless, your Committee voted in the affirmative, and I stand before you to ask my colleagues to support this nominee. Thank you, Madam President.”

Senator Slom rose to support the nominee as follows:

“Madam President, I rise in strong support of the nominee.

“The nominee was given a great deal of time in terms of questions about her role since assuming the interim directorship, and I think she answered all of those questions. The department was thrown into further chaos after the 2007 Legislative Session when in fact we emerged with no director, with a very hostile community, and with three separate investigations going on regarding the Bureau of Conveyances. Those three investigations are still ongoing from the Attorney General, the Ethics Commission, and our own Joint House and Senate Investigating Committee.

“The question was at that time ‘Who in their right mind would want to step into this type of position?’ And the short list was even shorter because there was no one that was willing to get involved with all of the controversy and all of the problems that were well-documented. But one person did come forward and said ‘I’ll do it; I can do it,’ and that was Laura Thielen. In the brief period of time that she’s been in this very troubled department, she has already reversed the culture of what is expected of the individuals within the department and what is attainable with this department. She has stated her philosophy in the hearings very clearly and basically she wants to enhance and enforce the mission of the department, and she wants to go from a department that really is a steward of the land to one that takes responsibility and makes decisions for everything that goes on within that large department.

“There are still problems, and it’s going to be a situation where all of us – those of us in the Legislature, as well as employees in the department, and the public – are going to be watching. We’re going to hold her feet to the fire, but I have no doubt in my mind that she is the right person at the right time in the right position. She is capable; she is energetic; she is hard working; she is honest; and she understands and grasps the issues involved. She has said and accepted the responsibility for anything that goes on within that department is going to be her responsibility and her purview.

“So colleagues, I ask that you unanimously confirm Laura Thielen for the very important post of Director of the Department of Land and Natural Resources. Thank you, Madam President.”

Senator Hooser rose in support with reservations and said:

“Madam President, I rise in support with reservations.

“Madam President and colleagues, I am confident and hopeful and believe that the nominee will grow and serve in this position and do a good job. There are many, many challenges before her and I wish her well and offer my personal support in resolving some of these issues and achieving some of the goals she has set for the department.

“My reservations, however, are based on the Department of Land and Natural Resources’ complete absence from the issue that we were called into this Special Session for: S.B. No. 1, S.D. 1, the bill that we have already voted on and passed regarding the controversy and the issue that has consumed our state over these last weeks and months, and some would say years. I was very disappointed. I attended the hearing, spoke to the nominee, and expressed those concerns that the department did not submit testimony, they did not send a representative and did not participate in the Senate hearings nor the House hearings on this issue.

“So, to express that concern that I have, I will be voting with reservations. Thank you.”

Senators Kim, Ige, English and Taniguchi requested their votes be cast “aye, with reservations,” and the Chair so ordered.

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

Ayes, 25. Ayes with Reservations, 5 (English, Hooser, Ige, Kim, Taniguchi). Noes, none.

At this time, Senator Hee introduced Ms. Thielen and her family to the members of the Senate.

At 10:58 o’clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:08 o’clock a.m.

ADVISE AND CONSENT

Gov. Msg. Nos. 20 and 21:

Senator Hemmings moved that the Senate advise and consent to the nominations of the following:

KELLY MICHELE NOELANI CASTELLANO to the Hawai’i Teacher Standards Board, term to expire June 30, 2010 (Gov. Msg. No. 20); and

GAIL EDYTH WEAVER to the Hawai’i Teacher Standards Board, term to expire June 30, 2009 (Gov. Msg. No.21),

seconded by Senator Whalen.

Senator Hemmings rose to support the nominees and said:

“Madam President, first I want to express my gratitude for this being on the agenda today and the opportunity to address this issue. I think it goes right to the heart of the matter regarding the standards board and how we recruit our teachers and what standards they meet.

“There is, I think, a legitimate interpretation problem of the rules governing this procedure. It says, ‘departments, agencies, organizations representative of the constituencies of the board.’ All those words are in the plural and both of these nominees could certainly qualify as constituencies of the board. In speaking in the affirmative to the motion, I think the real important thing here is besides their qualifications – and by the way, they are indeed eminently qualified – one does represent chartered schools, and one is representative of the school community-based management groups, which incidentally were part of the 2004 reinventing education Act. So obviously, we want people like this involved in what the standards are for our teachers.

“When we talk about constituencies of the board, do we really want a monopoly in selecting who qualifies to be a teacher? Or do we really want to have diverse points of view and opinions so that we come together and make better informed decisions. It’s no secret that we have had trouble recruiting teachers, and some of us would surmise that the reason for that is because of the very monopolistic, narrowly focused interest of the standards board that is now constituted.

“So in speaking to the affirmative of these two very qualified public servants, and by the way I’m convinced, as with most teachers, that they’re not doing it because being a teacher or serving on boards like this is a fast track to fame and fortune. They’re doing it because they really have a passion for our children and for their profession.

“So I would say that we really should advise and consent in the affirmative to help broaden the perspectives of the standards board and allow us to overcome this problem and the difficulty we have in recruiting teachers. I’d ask my colleagues to not look at this strictly through the myopic glasses of the special interest groups, such as the Hawaii State Teachers Association, but look at it from the perspective of what’s best for our children, what’s best for the institution – the largest institution of state government, by the way, the Department of Education – and what’s best for the teachers in general. So I’m hoping that you can see fit to have this vote and vote in the affirmative.”

Senator Sakamoto rose in opposition as follows:

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

“This is not a new issue as partly articulated yesterday as we waived these to the Floor from our Committee. But in the Regular Session, this issue did come up and it’s not a new issue. I don’t want to go through everything, but I’ll reiterate part of it.

“During the Regular Session, Gov. Msg. Nos. 717 and 712, respectively, for Gail Weaver and Kelly Castellano, were brought down. During the hearings, the issue did come up on the specific part of Section 302A-801 (b) of the *Hawaii Revised Statutes*, that the current law requires the Governor to appoint members of the Hawaii Teachers Standards Board, quote, ‘from a list of qualified nominees submitted to the governor by departments, agencies, and organizations representative of the constituencies of the Board,’ the Teacher Standards Board. Historically, the HSTA has been viewed as that representative constituency organization and names have been picked from their list. When the issue came up, we sent correspondence to the Governor on April 17. Subsequently through some discussion, the Governor proceeded to withdraw both of those nominees, and she did so in Gov. Msg. No. 788, dated April 23rd, and Gov. Msg. No. 717, dated April 25th.

“I was concerned that these two nominees might feel it was a personal thing with them, and I wrote letters to both of them. So it’s not judging their specific qualifications, but we’re talking about the procedure and the process. In the letters to each of them it said I know that I’m hopeful that ‘the nomination process, HRS 302, will be addressed and clearly defined through administrative rules or legislation during the next term.’ And further, I mentioned that in the hearings the ‘decision to withdraw their nominations was not a reflection on their competency or qualifications, but a reflection on the process.’

“Unfortunately, the Governor has chosen to reappoint the same two people, and at this point they’re saying one of the people would be nominated by their school community council. And as the previous speaker mentioned, we did create the School Community Councils. The issue before us procedurally is, does each school community council from each of the 285 schools, or 284 schools rise to the level of departments, agencies, or an organization representing the constituencies?

“I think that particular type of issue needs to be clarified because perhaps a school community council could send down a list of six, all of those being considered for nomination. Should the Governor pick all of those six, that would certainly not be the intent of creating a board from lists from departments, agencies, or organizations representing constituencies.

“Also, Madam President, the HSTA has said since Session that they were disappointed that the Governor’s Office didn’t contact them or work with them, which perhaps could have resolved the issue at least on one or two of these nominees. But

at this point I would speak against the motion mainly because of the procedure, and we need to address the procedure in Regular Session.

“Thank you, Madam President.”

Senator Hemmings rose and said:

“Madam President, would the good chairman of the Education Committee yield to a question?”

The President posed the question, and Senator Sakamoto having answered in the affirmative, Senator Hemmings then inquired:

“Madam President, I would like the Chairman of the Education Committee to clarify what I understand him to say that the people making the nomination have to be, and have been, representative of the interests of the HSTA solely.”

Senator Sakamoto responded:

“Madam President, I said historically, at least up to the point from these two nominees, the people appointed have been from the list of either the department agency or the HSTA. If you look in terms of one way to interpret representative organization in terms of collective bargaining, that organization would be the HSTA, but not necessarily. I didn’t say exclusively. Historically, that has been the process, and I think it calls into question as we go forward and hopefully in Regular Session, we look at exactly what do we mean if it does mean exclusively them or perhaps expanded to include charter schools or other people, as Charter School Administrative Office, for example.”

Senator Hemmings then commented:

“Madam President, I wanted to thank you and the good Chairman of the Education Committee for illuminating the monopoly the HSTA has in the process. Thank you.”

The President stated:

“I didn’t hear that to be the case. However, your appreciation is noted.”

At this time, Senator Ige moved that Gov. Msg. Nos. 20 and 21 be postponed indefinitely, seconded by Senator Hooser.

Senator Ihara rose in support of the motion and said:

“Madam President, I rise to speak in support of the motion to defer indefinitely. This is for Gov. Msg. Nos. 20 and 21.

“Adoption of this procedural motion will effectively reject the two nominations and the nominees will not be able to serve on the Hawaii Teacher Standards Board. I’d like to explain that this procedural motion is being used because we are not declining the nominations on the basis of their personal merits, as the Education Chair has said, and intend no reflection on these nominees, but reflect only our views on the procedural issue here.

“As the Education Chair has articulated, there are procedural issues in the board’s nomination process that need to be resolved, hopefully next Session. I want to encourage other members to support this motion to defer indefinitely.”

The President noted:

“Senator Ihara, the motion is to postpone indefinitely and I believe we’re using it synonymously here.”

Senator Baker rose in support with reservations as follows:

“Madam President, I rise in support of this motion with reservations.

“It’s unfortunate that the Governor resubmitted these individuals without getting a clarification. I happen to know one of these individuals. She teaches at the charter school in my district and would be an exemplary member on such a board. So while I appreciate the procedural motion and will support it, I’m just regretful that the Governor chose to send these nominees down again when there was a cloud over the procedure. Now the merits of the individuals cannot be considered in the future.

“Thank you.”

Senator Hemmings rose in opposition and said:

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

“Madam President, I want the record to reflect that I think the Minority is grateful the motion was made in such a way that it is a debatable motion and we can have an open forum and discuss it in a democratic manner, and for that we appreciate it.

“What are we doing here? I personally, and with all due respect to the good Senator from Maui, appreciate the Governor’s making an attempt to broaden the base and the vision of the standards board by not having one particular interest group have exclusive dominion over this process. What you see is what you get. The Hawaii State Teachers’ Association is a good organization made up of good members and good people, but no matter how good intent it is, it is simply a group with one specific goal – and that is to protect the interest of teachers, not necessarily the entire education system and not necessarily our children. Their objectives are clear and precise.

“The Governor, in her wisdom, saw that any organization that’s dominated by a monopoly is destined for problems and sent down these nominees. Now the question is whether or not this motion is procedurally correct. I think that the motion, Rule 13, certainly is going to pass, but I wonder and I want to ask the Majority members, ‘Are you, in passing this, acquiescing your duty and responsibility to set the standards by which we manage education to the HSTA and their exclusive dominion over this board?’ I don’t think you really want to do that. I think you want to have a say in who’s on the board and how they serve and what interest they represent.

“It’s here in black and white. It doesn’t say ‘department’; it says ‘departments, agencies, organizations representative of constituencies.’ Those are plurals, different groups. The rule is pretty clear, but we heard from the good Chairman of the Education Committee that it has been, by history, the exclusive dominion of the HSTA. I’m certainly not impugning the HSTA particularly, but the system needs diversity and I would hate to see us, with this motion, acquiesce, as I said, our responsibility to make sure that the teacher standards board is made up of a diverse group of people that really can serve the broad interest of all the people of Hawaii.

“So I would frustratingly ask you to reconsider the motion and proceed with the business as proposed. Thank you, Madam President.”

Senator Sakamoto rose and said:

“Madam President, just briefly, there are other members of the board – educational officers, etc. – so it isn’t all teachers. I think the Senator makes good points and I think next Session we can carefully look at perhaps how we can reframe who appoints who or to what proportion people are appointed.

“Lastly, I would request that some of the documents I referred to, especially that were attached to a letter to you on October 29th, be in our record, in our Journal. Thank you.”

The Chair having so ordered, Senator Sakamoto’s documents for insertion are identified as ATTACHMENT “A” to the Journal of this Day.

At this time, Senator Hooser called for the previous question.

The motion was then put by the Chair and carried, and Gov. Msg. Nos. 20 and 21 were postponed indefinitely.

THIRD READING

H.B. No. 2:

On motion by Senator Taniguchi, seconded by Senator Hee and carried, H.B. No. 2, entitled: “A BILL FOR AN ACT RELATING TO SENTENCING,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 2 and 3) were read by the Clerk and were disposed of as follows:

Senate Resolution

No. 2 “SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE LAST DAY OF THE SECOND SPECIAL SESSION OF 2007.”

Offered by: Senators Hooser, Hemmings.

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

No. 3 “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 Whalen and carried, S.R. No. 3 was adopted.

ADJOURNMENT

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

At 11:26 o’clock a.m., the President rapped her gavel and declared the Senate of the Twenty-Fourth Legislature of the State of Hawai‘i, Second Special Session of 2007, adjourned Sine Die.

ATTACHMENT "A"

October 29, 2007

The Honorable Colleen Hanabusa
Senate President
State Capitol, Room 409
415 South Beretania Street
Honolulu, HI 96813

Dear Senate President:

Re: Interim Appointments for the Hawaii Teacher Standards Board

Thank you for your assistance and leadership as we navigate through this Second Special Session of 2007. After reviewing the list of interim appointments requiring confirmation by the Senate, the two appointments to the Hawaii Teacher Standards Board (HTSB), referred to the Committee on Education, require your attention. The history surrounding the appointment of these two individuals—Kelly Michele Noelani Castellano (GM20) and Gail Edyth Weaver (GM21), is lengthy but necessary to address in order to fully appreciate and understand the difficulty in the situation before the Senate.

During the 2007 Regular Session, Gail Edyth Weaver and Kelly Michele Noelani Castellano were each nominated for membership on the HTSB through Governor's Messages Numbers 717 and 712, respectively. A public hearing was held on April 13, 2007, at which time the matters were deferred due to concerns raised by the Hawaii State Teachers Association (HSTA) regarding the propriety of these nominations on the basis of noncompliance with section 302A-801(b), Hawaii Revised Statutes. The current law requires the Governor to appoint members to the HTSB "from a list of qualified nominees submitted to the governor by the departments, agencies, and organizations representative of the constituencies of the [HTSB]." The HSTA, who from the HTSB's inception had supplied all nominations to the Governor, had not nominated either Ms. Weaver or Ms. Castellano. On April 17, 2007, I transmitted a letter to the Governor inquiring about the origin of these nominations and requesting any other information that would shed light on the situation. The Governor responded to this letter on April 20, 2007, and subsequently proceeded to withdraw the nominations, first orally

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The Honorable Colleen Hanabusa
October 29, 2007
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as to spare these nominees from being subjected to negative votes when the issue does not involve their qualifications but the problems with the process itself. As a practice, the Governor's reappointment of individuals who have previously been disapproved of and withdrawn from consideration should not thereafter be entertained for confirmation. This situation is also unique in that the nominees and the Governor's office are fully aware of the issues surrounding problems with these appointments and the nomination process under section 302A-801, HRS. It is my belief that the Senate should not devote precious time and resources to revisiting this issue at this time. Instead, it is my hope that, upon either the lapsing of the nominations or the failure of the confirmations, the Governor will subsequently work with the HSTA to fill these vacant positions with appropriate nominees that will not only clearly comply with the mandates of the law, but also serve their constituencies well. Accordingly, this matter, which I and others have been working to resolve throughout the interim, can be fully addressed during the upcoming 2008 Regular Session, as appropriate.

Thank you for your consideration of this matter. Please contact me if you have any questions or concerns.

Sincerely,

Norman Sakamoto
Chair, Committee on Education

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Encs.

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The Honorable Colleen Hanabusa
October 29, 2007
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at a hearing held on April 24, 2007, and then formally through Governor's Message Number 788, issued on April 24, 2007, and Governor's Message Number 796, issued on April 26, 2007.

Immediately thereafter, I transmitted letters to Ms. Weaver and Ms. Castellano, expressing my appreciation for their interest and their willingness to serve on the HTSB, while also articulating the concerns raised by the HSTA regarding the Governor's implementation of appointment procedures. I further indicated that we were working toward addressing the problems with the appointment process during the interim and subsequent legislative session. I also solicited input from various concerned and affected parties, including the Governor, the Department of Education, the HSTA, and the HSTB, regarding proposed changes necessary to clarify the intent and purpose of the nomination process for HTSB membership. This is to say that everyone, including the two nominees, has been aware of the problems with the HTSB appointment process and the fact that the Governor's withdrawals did not act to resolve these problems. Even correspondence received from the Governor's office, wherein the Attorney General's office provided some guidance on the nomination process and specifically the nomination of Ms. Weaver, coupled with the Governor's subsequent withdrawal of Ms. Weaver's nomination, reflects that the Governor has been aware of the continuing problems and the lack of resolution.

In anticipation of the need for confirmation hearings in the event of a special session, my office contacted the Governor's office to attempt to glean clarification on the interim appointments, as they were the same individuals whom the Governor had previously withdrawn from consideration. In an email response dated October 19, 2007, a representative from the Governor's office indicated that Ms. Weaver was nominated by the Hawaii Charter School Network and Ms. Castellano was nominated by her school community council. This correspondence raised further concerns regarding the possibility of the solicitation of support for these individuals in light of the initial concerns raised and the growing need for procedural clarification. In response, I also tried to make contact with Ms. Linda Smith to further discuss the matter, who called me this morning to indicate that in her opinion the issue had previously been resolved. However, I and other affected parties do not share her opinion and believe that time is needed throughout the remainder of the interim and during the next regular session to address the problems with the nomination process. Furthermore, in a letter dated October 22, 2007, the HSTA indicated that the Governor's office has not contacted it with regard to the current nominees or the remaining nominees it properly submitted to the Governor and reiterated its concerns with the current nomination process.

In light of the foregoing, if the Senate believes that these appointments must be addressed during this special session, I will be requesting that the Senate not confirm the nominations of Ms. Weaver and Ms. Castellano when the matter is put to a vote on the Senate floor. Alternatively, if the Senate is agreeable, I would like to request that the Senate allow these interim appointments to lapse without hearing or confirmation so

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April 17, 2007

Honorable Linda Lingle
Governor of the State of Hawaii
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Governor Lingle:

Re: Governor's Message Numbers 712 and 717

On March 30, 2007, the Senate received Governor's Message numbers 712 and 717 containing nominations for appointment to the Hawaii Teacher Standards Board for Kelly Michele Noelani Castellano and Gail Edyth Weaver. These nominations were referred to the Senate Committee on Education, which scheduled and conducted a hearing on the nominees on April 13, 2007. At the time of the hearing, the Hawaii State Teachers Association provided a statement indicating concern over the nominations of Ms. Castellano and Ms. Weaver, in contravention of appointment procedures under Section 302A-801, Hawaii Revised Statutes. The statement represented that, since the inception of the Hawaii Teacher Standards Board, nominees have been appointed from a list provided by the Hawaii State Teachers Association. However, this year two of the four nominees submitted to the Governor, who are also sitting members, were not reappointed and instead two other nominees, not submitted by the Hawaii State Teachers Association, were appointed by the Governor to the Hawaii Teacher Standards Board. The Hawaii State Teachers Association indicated that it had or would be transmitting that same statement to your office.

Section 302A-801, Hawaii Revised Statutes, requires the Governor to appoint members of the Hawaii Teacher Standards Board pursuant to section 28-34, [Hawaii Revised Statutes,] from a list of qualified nominees submitted to the governor by the departments, agencies, and organizations representative of the constituencies of the

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Honorable Linda Lingle
April 17, 2007
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board." The law provides that the Governor make appointments from lists of qualified nominees submitted by several groups that would include the Hawaii State Teachers Association. The Senate would like clarification on the origin of the nominations for Ms. Castellano and Ms. Weaver, as, although they may be qualified to be members on the Hawaii Teacher Standards Board, they did not emerge from the Hawaii State Teachers Association list of candidates. Additionally, your office presented testimony at the April 13, 2007, hearing on Ms. Castellano's and Ms. Weaver's appointments, but did not indicate at that time whether, if any, department, agency, or other organization had submitted their names to the Governor for appointment.

Thank you for your time and attention to this matter. Upon the timely receipt of the requested information, the Senate will be able to appropriately address the issue of the nominations of Ms. Castellano and Ms. Weaver to ensure that proper appointments are being made and to allow the Hawaii Teacher Standards Board to remain a thriving entity serving the State of Hawaii.

Sincerely,

Norman Sakamoto
Norman Sakamoto
Senator, 15th District

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LINDA LINGLE
GOVERNOR

April 20, 2007

The Honorable Norman Sakamoto
Chair, Education Committee
Twenty-Fourth Legislature
State Capitol, Room 230
Honolulu, Hawaii 96813

Dear Chair Sakamoto:

RE: Governor's Message Numbers 712, 713, 714, 715, 716, 717 and 718

In response to your April 17, 2007 letter, included are the sponsoring organizations and qualifications for Governor's Message Numbers 712, 713, 714, 715, 716, 717 and 718. As expressed in the April 17, 2007, letter and in accordance with the Attorney General's office, the statute provides that the Governor make appointments from lists of qualified nominees submitted by various groups representative of the Hawaii Teacher Standards Board.

In October 2006, the boards and commissions office sent letters to different organizations, including the Hawaii State Teachers Association (HSTA) and the Hawaii Government Employees Association, requesting nominees for the Hawaii Teacher Standards Board. Some of the organizations responded with letters, some responded verbally, and some did not respond. Of these responses, several were deemed unqualified (i.e., a university professor and an education assistant) by the Attorney General because they did not meet the requirements of the Teachers Standards Board.

Kelly Michele Noelani Castellano, GM 712, was not on the original list of recommendations by the HSTA. The HSTA list only recommended reappointment of the four (4) members who had been appointed in the past: Jonathan Gillentine, Julie Tomomitsu, Wray Jose and Carol Seielstad. Ms. Castellano submitted her application for the Hawaii Teacher Standards Board, through her own interest as an HSTA member, near the deadline for boards and commissions to submit nominees to the Senate. After Ms. Castellano's nomination, the boards and commissions office instructed her to contact the HSTA and ensure their support for her nomination. HSTA verbally communicated to her they would support her nomination before the April 13, 2007 hearing and they would discuss matters of the Board after she was confirmed. Ms. Castellano then proceeded to receive thirty-five (35) letters of support at the hearing, including many HSTA members and administrators. However, HSTA then withdrew their support of Ms. Castellano at the time of the hearing without prior notice to Ms. Castellano or the Office of the Governor. We found her to be

Honorable Norman Sakamoto
April 20, 2007
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an excellent representative of an HSTA member and did not foresee HSTA's last minute opposition to her nomination. Since the April 13, 2007 hearing, Ms. Castellano has contacted the HSTA several times to inquire as to the reason for their opposition. HSTA has only stated they have concerns about the Office of the Governor's lack of communication with the HSTA regarding her nomination.

The sponsoring organizations and expertise of each nominee is as follows:

GM#	Name	Constituency	Expertise
712	Kelly Michele Noelani Castellano	HSTA	Licensed Teacher/Elementary/Oahu
713	Jonathan Gillentine	HSTA	Licensed Teacher/Elementary/Oahu
714	Annette A. Nishikawa	HGEA	Education Officer/Intermediate/Oahu
715	Alvin Haawao Parker	HGEA	Education Officer/Elementary/Oahu
716	Orlene Analei Karratti Pereira	Independent Schools	Independent Schools Rep/Elementary/Oahu
717	Gail Edyth Weaver	Charter School Network	Licensed Teacher/Secondary/Maui
718	Caroline Sue Wong	HASSA (Hawaii Association of Secondary School Administrators)	Education Officer/Secondary/Oahu

Thank you for your attention to detail in ensuring our Teacher Standards Board continues to represent the best interests of the people of Hawaii. These are all highly qualified and committed nominees who will contribute significantly to the Board. Please contact Eric Barsatan, Boards and Commissions Manager, at 586-0783 or Eric.Barsatan@hawaii.gov if you have any other questions.

Sincerely,

Linda Lingle
LINDA LINGLE



GOV. MSG. NO. 788

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 23, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Sirs and Mesdames:

I hereby withdraw the following name from Senate consideration and confirmation:

GM 712 KELLY MICHELE NOELANI CASTELLANO
Hawaii Teacher Standards Board

Should there be any questions regarding this letter, please call Eric Caceres Barsatan, Boards and Commissions Manager, at 586-0783. Thank you.

Sincerely,

LINDA LINGLE



GOV. MSG. NO. 796

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 25, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Sirs and Mesdames:

I hereby withdraw the following name from Senate consideration and confirmation:

GM 717 GAIL EDYTH WEAVER
Hawaii Teacher Standards Board

Should there be any questions regarding this letter, please call Eric Caceres Barsatan, Boards and Commissions Manager, at 586-0783. Thank you.

Sincerely,

LINDA LINGLE



The Senate
State of Hawaii
STATE CAPITOL
HONOLULU, HAWAII 96813

April 25, 2007

Ms. Kelly Michele Noelani Castellano
216 Punhuc Place, Apt. B
Honolulu, Hawaii 96817

Dear Ms. Castellano:

Please accept my sincere appreciation for your desire to become a member of the Hawaii Teacher Standards Board. Your resume and timely response to the questions that were previously sent to you were well documented and outstanding. Unfortunately, it was agreed to withdraw your nomination in Governor's Message 712, at this time.

In the hearing on April 13, 2007 and a subsequent hearing on April 24, 2007, the committee deliberated on questions raised by the Hawaii State Teachers Association regarding the Governor's procedure used to comply with the provisions of HRS 302-801 in the appointment of members to the board. Because of the ambiguity in the Governor's procedure, the committee was unable to clearly and legally move forward with your confirmation process. Therefore, as agreed to by the Manager of the Boards and Commissions, your nomination to the board was withdrawn by the Governor.

I am hopeful that the nomination process in HRS 302-801 will be addressed and clearly defined in administrative rules or legislation during the next term. In the meantime, please accept my sincere appreciation for your time, effort and desire to serve in the Hawaii Teacher Standards Board. The duties and responsibilities of the board members are challenging and demanding. As I mentioned at the hearings, the decision to withdraw your nomination was not a reflection on your competency or qualifications, but a reflection on the process.

Again, please accept my sincere aloha for your desire to improve the professionalism and teacher excellence in our schools. If I may be of further assistance to you, please do not hesitate to call me at 586-8585.

Sincerely yours,

Norman Sakamoto
Chair
Senate Committee on Education



The Senate
State of Hawaii
STATE CAPITOL
HONOLULU, HAWAII 96813

April 25, 2007

Ms. Gail Edyth Weaver
506 Hoolalahala Street
Kihei, Hawaii 96753

Dear Ms. Weaver:

Please accept my sincere appreciation for your desire to become a member of the Hawaii Teacher Standards Board. Your resume and timely response to the questions that were previously sent to you were well documented and outstanding. Unfortunately, it was agreed to withdraw your nomination in Governor's Message 717, at this time.

In the hearing on April 13, 2007 and a subsequent hearing on April 24, 2007, the committee deliberated on questions raised by the Hawaii State Teachers Association regarding the Governor's procedure used to comply with the provisions of HRS 302-801 in the appointment of members to the board. Because of the ambiguity in the Governor's procedure, the committee was unable to clearly and legally move forward with your confirmation process. Therefore, as agreed to by the Manager of the Boards and Commissions, your nomination to the board will be withdrawn by the Governor.

I am hopeful that the nomination process in HRS 302-801 will be addressed and clearly defined in administrative rules or legislation during the next term. In the meantime, please accept my sincere appreciation for your time, effort and desire to serve in the Hawaii Teacher Standards Board. The duties and responsibilities of the board members are challenging and demanding. As I mentioned at the hearings, the decision to withdraw your nomination was not a reflection on your competency or qualifications, but a reflection on the process.

Again, please accept my sincere aloha for your desire to improve the professionalism and teacher excellence in our schools. If I may be of further assistance to you, please do not hesitate to call me at 586-8585.

Sincerely yours,

Norman Sakamoto
Chair
Senate Committee on Education

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 COLLEGE STREET
HONOLULU, HAWAII 96813
(808) 526-1000

MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINGOZA
FIRST DEPUTY ATTORNEY GENERAL

April 23, 2007

Mr. Eric C. Barsatan
Manager, Boards and Commissions
Office of the Governor
State Capitol, Room 415
Honolulu, Hawaii 96813

Dear Mr. Barsatan:

Re: Gubernatorial Appointment of Gail Edyth Weaver to
Hawaii Teacher Standards Board

This letter is written to confirm our earlier oral advice regarding the Hawaii Charter School Network's submission to the Governor of Gail Edyth Weaver's name for appointment to the Hawaii Teacher Standards Board ("HTSB"). We understand that Senator Norman Sakamoto has asked you to obtain written confirmation of our earlier advice, and that the Hawaii State Teachers Association disagrees with the advice we provided.

The question you asked us to advise on was: Given the provisions of Haw. Rev. Stat. § 302A-801(b), may the Governor appoint a person whose name was included in a list of nominees submitted by the Hawaii Charter School Network ("HCSN"), to the HTSB?

Briefly, our answer was that the Governor's appointment of Ms. Weaver comported with Haw. Rev. Stat. § 302A-801(b) because Ms. Weaver was nominated by the HCSN, and the HCSN qualifies as an "organization [n] representative of the constituencies of the [HTSB]."

Haw. Rev. Stat. § 302A-801(b) provides:

(b) Except for the chairperson of the board of education, the superintendent, and the dean of the college of education, the governor shall appoint the

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Mr. Eric C. Barsatan
April 23, 2007
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members of the [Hawaii Teacher Standards] board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, and organizations representative of the constituencies of the board. To the extent possible, the board membership shall reflect representation of elementary and secondary school personnel from all islands.

The provision that was the focus of our advice is underlined.

Essentially, our advice was what it was because the HTSB was established to prescribe certification standards for public school teachers, the board's membership includes licensed teachers and educational officers (or school administrators including principals, vice-principals and professional employees), public charter schools employ teachers and school administrators, public charter schools need and want qualified teachers, and the Charter School Administrative Office confirmed that almost all of the State's public charter schools are members of the HCSN.

Moreover, using similar words, both Webster's New Collegiate Dictionary (1974), and Black's Law Dictionary (Rev. 4th ed. 1968), define "constituent" as "one who authorizes another to act for him." Black's elaborates that "in the language of politics, as a correlative to 'representative,' the constituency of a legislator being those whom he represents and whose interest he is to care for in public affairs." In addition, Webster's second definition for "constituency" is "the people involved in or served by an organization." Consistent with these definitions, we concluded that the phrase "representative constituencies of the board" should be construed as referring to those who use or need the standardization and certification services that the HTSB was established to provide, including the Department of Education and the State's public charter schools. The legislative history to Haw. Rev. Stat. § 302A-801 and its predecessor, Haw. Rev. Stat. § 297D-3 (Supp. 1995), does not contradict our conclusion or otherwise suggest that the words used in subsection (b) are used in any way other than in this ordinary sense.

We also do not think it is material that the HTSB was established in 1995, four years before the Legislature authorized the establishment of public charter schools. The ultimate purpose for establishing the HTSB, was "to ensure that

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Mr. Eric C. Barsatan
April 23, 2007
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qualified teachers will be employed to educate Hawaii's public school children," see Haw. Rev. Stat. § 297D-1 (Supp. 1995). Charter schools are public schools, see Haw. Rev. Stat. § 302B-1 ("Charter school" refers to those public schools . . .), and employ licensed teachers, see Haw. Rev. Stat. § 302B-10 ("The [DOE], in conjunction with the [charter school administrative] office, shall facilitate and encourage the movement of instructional personnel between the [DOE] and charter schools; provided . . . (2) [l]icensed charter school teachers, as determined by the Hawaii teacher standards board, who are not yet tenured in the [DOE] and are entering or returning to the [DOE] after full-time employment of no less than one full school year at a charter school, shall be subject to no more than one year of probationary status;"). In addition, the detailed implementation plan charter schools are required to submit in order to secure a charter must include "[a] plan for identifying, recruiting, and retaining highly-qualified instructional faculty." See Haw. Rev. Stat. § 302B-5(d) (2).

Based upon all of these considerations, we advised that the State's public charter schools need and can be expected to use the services of the HTSB to the same extent as the DOE, and ought therefore to qualify in the same sense as the DOE qualifies, as a "constituent" of the HTSB.

Very truly yours,
Charleen M. Aina
Charleen M. Aina
Deputy Attorney General

APPROVED:
Mark J. Bennett
Mark J. Bennett
Attorney General

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sakamoto5 - Allen

From: Justin.Menolascino@hawaii.gov
Sent: Friday, October 19, 2007 11:36 AM
To: sakamoto5 - Allen
Cc: Eric.Barsatan@hawaii.gov; Marc.miranda@hawaii.gov
Subject: HTSB Interims

Hi Allen,

I'm following up on your email to Nani Medeiros a few days ago. Gail Weaver was nominated by the Hawaii Charter School Network and Kelly Castellano was nominated by her School Community Council. We've received confirmation that both of these organizations fall within statutory requirements of "constituencies of the board." The formal letter from Governor will be forthcoming for all of the nominees with the packets submitted to Senate President Hanabusa once we know when the Senate will convene. Please let us know if you have any other questions.

Thank you,

Justin Menolascino
Boards and Commissions
Office of the Governor - State Capitol
415 South Beretania St.
Honolulu, HI 96813

Phone: (808) 586-0781
Fax: (808) 586-0019
Justin.Menolascino@hawaii.gov
www.hawaii.gov/boards

HTSB
Interim
ADPT's
Castellano:
Weaver



1200 Ala Kapono Street • Honolulu, Hawaii 96819
Tel: (808) 833-2711 • Fax: (808) 839-7106 • Web: www.hstha.org

Roger K. Takabayashi
President
Will Okubo
Vice President
Karelyn R. Mossman
Secretary-Treasurer
Ann Lee Husted
Executive Director

October 22, 2007

The Honorable Norman Sakamoto
State Senate
State Capitol, Room 230
Honolulu, Hawaii 96813

Dear Senator Sakamoto:

We are disappointed that the governor's office is again attempting to appoint the two individuals, whose names she had previously withdrawn, to the Hawaii Teacher Standards Board. We want to reiterate our position regarding the 2007 legislative Governor's Message 712 of the appointment of Kelly Castellano to the Hawaii Teacher Standards Board, and the 2007 legislative Governor's Message 717 appointment of Gail Weaver to the Hawaii Teacher Standards Board. We want to stress that our protest in no way reflects on the individuals that are being nominated, but we are protesting the fact that the governor's office circumvented the intent of the law.

In October 2006, the Hawaii State Teachers Association nominated four incumbents for reappointment to the Hawaii Teachers Standards Board. The teachers nominated were all serving on the board at the time of the nomination. Three teachers are National Board certified teachers, and the fourth was named social studies Teacher of the Year.

Two of the four names were submitted for confirmation. After the confirmation by the Senate of the first two teachers for the board, the governor's office submitted two names not submitted by the Association and not nominated by "the departments, agencies, or organizations representative of the constituencies of the board".

Subsequently, the governor's office submitted two names to fill the other two soon-to-be-vacant positions. The individuals nominated were not in accordance with HRS Section 302A-801 because no other departments, agencies, or organizations, except the Hawaii State Teachers Association, submitted nominations for consideration. We believe that the governor's

The Honorable Norman Sakamoto
October 22, 2007
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office solicited a letter of nomination from the Charter School Network after the fact.

When we objected to the nominations, the vote on the confirmation was deferred by your committee. Shortly after this, GM 712 was withdrawn.

In the interim, the governor's office solicited a letter from the Charter School Network to legitimize Gail Weaver's nomination. Another hearing was held to decide Weaver's confirmation. At that meeting, that nomination was withdrawn by the governor's office.

When the 2007 session ended, the governor appointed the two individuals whose names she had previously withdrawn to the Teacher Standards Board.

We are disappointed that the governor's office did not contact -- and has not contacted -- our office regarding our nominees. We would have preferred that we work together to ensure that the Standards Board has members that represent the best that the profession can offer. In the last three years, the Standards Board has been in the process of developing the renewal requirements and renewal process, the professional practice criteria, and the procedure for revocation - all of which are high-stake issues that will impact whether or not a teacher will remain in the profession. The board needs the expertise that the four encumbered teacher board members possess.

Thank you for the opportunity to re-state the HSTA's position. Please feel free to contact me at 833-2711 for any clarification.

Sincerely,

Roger Takabayashi
President

RT:cr



**GOVERNOR'S MESSAGES RECEIVED AFTER THE ADJOURNMENT OF THE
SECOND SPECIAL SESSION OF THE LEGISLATURE SINE DIE**

Gov. Msg. No. 125, informing the Senate that on October 31, 2007, she signed into law House Bill No. 2 as Act 1 (Second Special Session of 2007), entitled: "RELATING TO SENTENCING."

Gov. Msg. No. 126, informing the Senate that on November 2, 2007, she signed into law Senate Bill No. 1 as Act 2 (Second Special Session of 2007), entitled: "RELATING TO TRANSPORTATION."

Gov. Msg. No. 127, letter dated November 4, 2007, transmitting a copy of Executive Order 07-10 which establishes conditions and protocols for a large capacity ferry vessel company's inter-island operations, pursuant to Act 2, Section 4, Second Special Session 2007.

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

Hse. Com. No. 3, returning S.B. No. 1, S.D. 1, which passed Third Reading in the House of Representatives on October 31, 2007.

Hse. Com. No. 4, transmitting H.R. No. 2, which was adopted by the House of Representatives on October 31, 2007.

STANDING COMMITTEE REPORTS

SCRep. 1 Economic Development and Taxation on Gov. Msg. Nos. 16, 17, 18 and 19

Recommending that the Senate advise and consent to the nominations of the following:

BOARD OF DIRECTORS OF THE HAWAII STRATEGIC DEVELOPMENT CORPORATION

G.M. No. 16 BLENN AKIRA FUJIMOTO, for a term to expire 6-30-2008;

G.M. No. 17 BLENN AKIRA FUJIMOTO, for a term to expire 6-30-2012;

G.M. No. 18 DARREN T. KIMURA, for a term to expire 6-30-2010; and

G.M. No. 19 DANTON S. WONG, for a term to expire 6-30-2009

Your Committee reviewed the personal histories, resumes, and statements submitted by the nominees, and finds Blenn Akira Fujimoto, Darren T. Kimura, and Danton S. Wong to have the necessary qualifications to be nominated to serve as members on the Board of Directors of the Hawaii Strategic Development Corporation. Your Committee recognizes and notes that these nominees were selected and named after the Hawaii Strategic Development Corporation's (HSDC) Hydrogen Fund manager; and will bring a fresh business perspective to fulfill HSDC's purpose of providing investment capital to businesses in order to stimulate economic growth, employment, and economic diversification.

Testimony in support of Blenn Akira Fujimoto's nomination was submitted by the Department of Business, Economic Development, and Tourism, the Hawaii Strategic Development Corporation, the Honolulu Japanese Chamber of Commerce, and three individuals.

Mr. Fujimoto received his Bachelor of Business Administration in Finance from the University of Hawaii at Manoa, and he is also a graduate of the Pacific Coast Banking School at the University of Washington. He currently serves as the Vice Chairman of Central Pacific Bank and as the Chief Executive Officer of Central Pacific HomeLoans, which is a wholly-owned subsidiary of Central Pacific Bank. At Central Pacific Bank, Mr. Fujimoto oversees the entire Hawaii market, including thirty-eight branches of Central Pacific Bank and five full-service mortgage offices of Central Pacific HomeLoans statewide. He is responsible for increasing the Bank's market penetration and providing sales and service programs that will create solid banking experiences for bank customers. Prior to joining Central Pacific Bank in 2000, Mr. Fujimoto served for twenty years with Bank of Hawaii, most recently as Vice President and District Manager of the Ala Moana District where he oversaw six traditional branches and a supermarket branch.

Mr. Fujimoto is affiliated with and has served on several professional and community organizations, including as a board member for the Boys & Girls Club of Hawaii, Enterprise Honolulu, Manoa Valley Theatre, the Pacific and Asian Affairs Council, the Aloha United Way, and the Pacific Coast Banking School.

Mr. Fujimoto's responses during his confirmation hearings demonstrate that he will be a tremendous resource to the Board of Directors of the Hawaii Strategic Development Corporation. He has the education, experience, and commitment to assist the Board in encouraging economic development and diversification in Hawaii through innovative actions in cooperation with private enterprises, and establishing programs to stimulate private capital investment in Hawaii toward investments that promote the welfare of citizens, economic growth, employment, and economic diversification. Mr. Fujimoto's demonstrated commitment to and professional experience in banking and finance will prove to be valuable assets for the Board of Directors of the Hawaii Strategic Development Corporation.

Testimony in support of Darren T. Kimura's nomination was submitted by the Department of Business, Economic Development, and Tourism and the Hawaii Strategic Development Corporation.

Mr. Kimura received his Bachelor of Business Administration from the University of Hawaii at Manoa and attended Portland State University where he studied Electrical engineering. He is a Certified Energy Manager, Certified Demand Side Manager, Certified Distributed Energy Professional and Certified Sustainable Development Professional. Mr. Kimura is a serial energy entrepreneur who is currently the Chief Executive Officer and President of Sopogy, Inc., which specializes in the development, design, manufacturing, and distribution of solar power technology. Furthermore, he is the Chief Executive Officer and Chairperson of Energy Industries, which is a Hawaii-based energy services company with branches in Oregon, Washington, California, Texas, Illinois, and the Philippines. Over his career, he created several companies, which he led to multimillion dollar success and liquidity. Mr. Kimura founded Energy Industries in 1994 and Energy Laboratories in 2000. He is experienced in acquisitions, having led the purchase of the Quantum companies.

His entrepreneurship accolades include the Emerging Entrepreneur of the Year 2000, the Inaugural Top 40 under Forty 2000, the SBA Young Entrepreneur of the Year 2002 for California, Hawaii and Arizona, the Hawaiian Electric Trade Ally of the Year 2006, the Technology Leader of the Year 2006, and the Green Entrepreneur of the Year 2007.

Mr. Kimura's written remarks assure that he will provide invaluable entrepreneurial experience to the Board of Directors of the Hawaii Strategic Development Corporation. He has the education, experience, and commitment to assist the Board in encouraging economic development and diversification in Hawaii through innovative actions in cooperation with private enterprises, and establishing programs to stimulate private capital investment in Hawaii toward investments that promote the welfare of citizens, economic growth, employment, and economic diversification. Mr. Kimura's demonstrated commitment to and professional experience in acquisitions, venture financing, and entrepreneurship are important assets for the Board of Directors of the Hawaii Strategic Development Corporation.

Testimony in support of Danton S. Wong's nomination was submitted by the Department of Business, Economic Development, and Tourism, the Hawaii Strategic Development Corporation, and six individuals.

Mr. Wong received his Bachelor of Arts degree in Economics from Stanford University and his Doctor of Jurisprudence from Hastings College of Law, University of California. Prior to attending college, he attended two years at the United States Coast Guard Academy. Mr. Wong is currently a Partner with Chun, Kerr, Dodd, Beaman & Wong, A Limited Liability Law Partnership. Prior to joining his current law firm, he was an Associate and then Partner at Case & Lynch.

Mr. Wong's practice has been concentrated in the areas of real estate acquisitions, sales, financing and development; commercial lending (primarily asset-based lending); commercial leasing; business consultation; and related areas. He has participated in transactions involving the

acquisition, financing, development, operation, and sale of resort hotels, golf courses, commercial office buildings, shopping centers, residential condominium projects, vacant land, and on-going business concerns.

Mr. Wong has received an "AV" rating in the Martindale-Hubbell Legal Directory and is listed in the Hawaii section of The Best Lawyers in America and in Honolulu Magazine, July 2003 issue, as one of the Best Lawyers in Hawaii 2003. He is a past director of the Real Property and Financial Services Section of the Hawaii State Bar Association, was a contributing editor to the Hawaii Conveyancing Manual III (1992), published by the Hawaii Institute for Continuing Legal Education, and has participated as a panelist in numerous seminars on real estate. Mr. Wong has served as a member of the Chinatown Review Committee of the City and County of Honolulu, and the Chinese Bicentennial Celebration Committee for the Chinese Chamber of Commerce, and currently is a director of the Hawaii Heritage Center, Friends of Iolani Palace, and legal advisor to Kalaniana'ole Athletic Club.

Mr. Wong's comments reflects his desire to apply the benefits of his prior business and legal experience to assisting the Board of Directors of the Hawaii Strategic Development Corporation in supporting industry sectors that advance technological innovation. He has the education, experience, and commitment to assist the Board in encouraging economic development and diversification in Hawaii through innovative actions in cooperation with private enterprises, and establishing programs to stimulate private capital investment in Hawaii toward investments that promote the welfare of citizens, economic growth, employment, and economic diversification. Mr. Wong's demonstrated commitment to and professional experience in the areas of acquisitions, finance, and law will prove to be valuable assets for the Board of Directors of the Hawaii Strategic Development Corporation.

As affirmed by the records of votes of the members of your Committee on Economic Development and Taxation that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 3. Noes, none. Excused, 2 (English, Ige).

SCRep. 2 Judiciary and Labor on Gov. Msg. No. 1

Recommending that the Senate consent to the nomination of the following:

INTERMEDIATE COURT OF APPEALS

G.M. No. 1 RANDAL K.O. LEE, for a term of ten years

Upon review of the background information submitted by the nominee, Randal K.O. Lee, your Committee finds that Randal K.O. Lee is currently a judge of the Circuit Court of the First Circuit of the State of Hawaii and has held this position since 2005.

Prior to his appointment to the bench, Judge Lee spent twenty-three years with the Department of the Prosecuting Attorney of the City and County of Honolulu. During his time as a prosecutor, Judge Lee handled litigation involving campaign spending, white-collar crime, public corruption, and serious felony trials. Judge Lee also served as the supervisor of the Circuit Court, Family Court, District Court, and Traffic Court Trials sections.

Prior to joining the Department of the Prosecuting Attorney, Judge Lee worked for the Office of the Public Defender in its Appellate Branch and Family Court Trials Branch for approximately one year.

Judge Lee also has teaching experience ranging from teaching trial advocacy courses to teaching an introductory law class at Leeward Community College. Judge Lee also finds time to volunteer with various agencies and organizations.

Judge Lee is a graduate of the University of Hawaii and received his Juris Doctorate Degree from the Southwestern University School of Law.

Testimony in support of Judge Lee was submitted by the Attorney General; the Department of the Prosecuting Attorney of the City and County of Honolulu; the State of Hawaii Organization of Police Officers; the law firm of Van Buren, Campbell and Suzuki; and seventy-nine individuals.

Testimony in opposition to Judge Lee's nomination was submitted by the Honolulu Hawaii division of the National Association for the Advancement of Colored People and seven individuals.

The Hawaii State Bar Association submitted testimony of no position on Judge Lee as the vote of the Board of Directors of the Hawaii State Bar Association resulted in an equal split between finding the Judge Lee "not qualified" and finding him to be "qualified or better".

Your Committee finds that there was a large amount of testimony in support of Judge Lee's nomination to the Intermediate Court of Appeals. Many testifiers supported Judge Lee for his hard work and dedication as both a prosecutor and a judge and testified that he would be a great asset to the Intermediate Court of Appeals.

However your Committee also finds that concerns were raised by those who submitted testimony in opposition to Judge Lee's nomination.

Concerns were raised regarding Judge Lee's professional conduct while he was prosecuting one case and while presiding over another case. Judge Lee stated that he had disclosed relevant information to your Committee regarding both those situations.

Your Committee notes the important concerns raised by those who testified in opposition to Judge Lee's nomination, as well as the vote of the Board of the Hawaii State Bar Association, but believes that Judge Lee was forthright in addressing the concerns and that the entire Senate should be allowed to vote on whether Judge Lee should be confirmed to the Intermediate Court of Appeals.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 6. Ayes with Reservations, 4 (Hee, Kokubun, Nishihara, Taniguchi). Noes, none. Excused, none.

SCRep. 3 (Joint/Majority) Judiciary and Labor, Transportation and International Affairs and Energy and Environment on S.B. No. 1

The purpose of this measure is to facilitate the establishment of inter-island ferry service, and concurrently to protect Hawai'i's fragile environment by clarifying that neither the preparation of an environmental assessment nor a finding of no significant impact nor an acceptance of an environmental impact statement is required as a condition precedent to the operation of a large capacity ferry vessel and by providing strong measures to protect the environment from the operation of any large capacity ferry vessel.

Specifically, this measure would also:

- (1) Allow a large capacity ferry vessel company to operate and to utilize Kahului Harbor improvements and other improvements on other islands, pursuant to any operating agreement with the State;
- (2) Declare that the operation of large capacity ferry vessels between the islands of O'ahu, Maui, Kaua'i, and Hawai'i, including harbor facilities on each island and specifically the improvements to Kahului Harbor is in the interest of required public convenience and necessity, and prohibiting the revoking or modification of any certificate of public convenience and necessity on the basis that environmental assessments or environmental impact statements have not been prepared or completed;
- (3) Clarify that the construction, use, or operation of any facilities or improvements authorized by any agreements between a large capacity ferry vessel company and the State is not subject to or require any county permit or approvals, and may continue while an environmental review under this measure is in progress;
- (4) Require the Governor to impose, by executive order, conditions and protocols on a large capacity ferry vessel company's inter-island operations to mitigate significant environmental effects that the Governor determines may be caused by such inter-island operations, and provide specific environmental protection factors that the Governor must consider accordingly;
- (5) Require the large capacity ferry vessel company to agree to abide by the conditions and protocols imposed by the Governor to protect the environment as a condition precedent to commencing operations;
- (6) Reserve to the Legislature the sole right to review the adequacy of any conditions or protocols imposed by the Governor, and to impose any other conditions or protocols it deems necessary and appropriate to protect the environment and communities to enable the limited operation of the large capacity ferry vessel while the environmental review under this measure is in process;
- (7) Establish an environmental review process for state actions in connection with a large capacity ferry vessel in lieu of but consistent with the requirements of chapter 343, Hawai'i Revised Statutes, relating to environmental impact statements;
- (8) Require the Department of Transportation to prepare or contract to prepare an environmental impact statement for the improvements made to commercial harbors throughout the State that require the expenditure of public funds to accommodate the use thereof by large capacity ferry vessel company and the secondary effects of those operations on the State's environment, including the operation of a large capacity ferry vessel company;
- (9) Provide for an environmental review process similar in substance to chapter 343, Hawai'i Revised Statutes, and its implementing Hawai'i Administrative Rules, with the draft and final environmental impact statements, and their acceptance by the Office of Environmental Quality Control;
- (10) Establish within the Department of Transportation a temporary Hawai'i inter-island ferry oversight task force to study the State's actions regarding the establishment of the operations of the large capacity ferry vessel and any impacts therefrom on ocean and marine animals and plants including whale avoidance; water resources and quality; harbor infrastructure; vehicular traffic; public safety and security; spread of invasive species; cultural resources, including hunting, fishing, and native Hawaiian resources; consequences to and impact upon the State's economy; and other natural resources and community concerns;
- (11) Require the ferry oversight task force to report monthly to the Legislature and the Governor at the end of each month, commencing December 31, 2007, and a final report on findings and recommendations no later than twenty days prior to the convening of the Regular Session of 2009;
- (12) Require the Auditor to conduct a performance audit of the state administration's actions in exempting harbor improvements relating to the operation of large capacity ferry vessels from chapter 343, Hawai'i Revised Statutes;
- (13) Clarifying that any previously made appropriation or previously authorized expenditure of funds for any inter-island ferry operations of a large capacity ferry vessel company, or improvements or operating expenses to accommodate its provision of inter-island ferry service shall be approved and authorized to the extent necessary to effectuate this measure; and
- (14) Provides for a release, waiver, indemnification, and defense in favor of the State by every large capacity ferry vessel company that operates pursuant to this measure from any action that may be caused by or relating to any judicial action arising from the establishment and operation of the large capacity ferry vessel.

Your Committees received testimony in support of this measure from the State Attorney General; Department of Transportation; Department of Business, Economic Development, and Tourism; Department of Agriculture; Hawai'i Superferry; Island Oil and Supply Co., Ltd.; Container Storage Co. of HI. Ltd.; MortgageSource, LLC; Masonry Institute of Hawaii; Hurricane Powerwash LLC.; R.W. Almonte Enterprises, Inc.; The Coffee Store KIHAI; Epoxy Restoration LLC; Scion Evolution Car Club Hawaii Chapter; Chucks Corvette Clinic; Shaka Gear.com; Carrier Hawaii; Carey Hawaii/Town & Country Limousines; Weatherguy.com; Seafarers International Union; KapohoKine Adventures, LLC; Paradise Found Realty; Island Grower Supplies; Hawai'i Food Industry Association; Hawaiian Dredging Construction Company; Garden & Valley Isle Seafood, Inc.; Fairway Navigation, Inc.; APC Voice & Data Communications; Point-of-Sale Management Solutions; Ohana Road TV ABC; Window Works LLC; Maui-Lana'i Ferry; Kaua'i Chamber of Commerce; Terra Mar Travel, Inc.; VR Business Brokers Hawai'i Island Office; Maui Chapter of the AARP; Island Controls, Inc.; Ali'i Court Reporting; Hamakua Macadamia Nut Company; Reid E. Choate & Associates, LLC; Hilo Art & Glass Supply; Paddle Surf Hawai'i LLC; Hawai'i Performance Warehouse; Ocean Marine Insurance Agency, Inc.; Aloha JDC Rentals; Kasprzycki Designs Inc.; DNC Contracting, Inc.; AAA Roofing and General Contractors Inc.; Noguchi & Associates, Inc.; 87Zero Industries; Arita-Poulson General Contracting; Aloha Land Realty; Women of Our World, Inc.; Golden Mart; Hawaiian Phototropic; South Pacific Insurance Agency; Big Island Brokers; Hawaiian Isle Inspections; Penmar Hawai'i Corporation; Eurotours Hawaii, Inc.; Nanea Kai, Inc., dba Ocean Sports; Mandalay Properties Hawaii LLC; A&B Properties, Inc.; Alaka'i Mechanical Corp.; Dollar Rent A Car/Pacific Area; Dental

Arts LLC; Convention Television (CTV); Pacific Sport Events and Timing; Walz Engineering, Inc.; Kohala Ranch; Kensco Homes LLC; Christ Church Episcopal; Gamma Knife Center of the Pacific; Hawai'i Farm Bureau; BIA-Hawai'i; Winners' Camp; and 1,655 individuals.

Testimony in opposition was received from United Natural Foods, Inc.; Pacific Whale Foundation; Na Kupuna Na Mo'opuna, Unlimited; Pukulani Plant Co. Inc; 1000 Friends of Kauai; Maui Tomorrow Foundation, Inc.; Maui Tomorrow, Inc.; Conservation Council for Hawai'i; Sierra Club Hawai'i Chapter; Life of the Land; Friends of Haleakala National Park; American Friends Service Committee; and 338 individuals. Comments were received from the University of Hawai'i at Manoa, Environmental Center and two individuals.

Your Committees find that this measure is intended to address a unique and critical situation that began with an administratively granted exemption from the environmental impact statement process that the Hawai'i Superferry relied on and culminated more than two years later with an adverse ruling by the Hawai'i Supreme Court. The court held that the administrative exemption was erroneously granted and remanded the case to the Second Circuit Court which then ordered environmental impact statement procedures be completed before commencement of operations, as a "condition precedent" to the operation of the Hawai'i Superferry.

The intent of your Committees is to observe the holding of *The Sierra Club, et al. vs. the Department of Transportation, et al.*; Hawai'i Supreme Court, Opinion No. 27407, August 31, 2007, while allowing the Hawai'i Superferry to commence operations, with due consideration given to the very legitimate issues concerning the environment such as the transportation of invasive species and whale avoidance protection. Other issues include the impact on traffic congestion, water quality, cultural resources, and the economy.

Your Committees find that the current situation is unique in that seldom, if ever, has a judicial determination overturned harbor improvements and business operations that were previously authorized by the government and approved by the lower court more than two years earlier. As such, your Committees believe that the Legislature must reluctantly intercede to provide a remedy to rectify an otherwise paradoxical situation that literally stopped a project dead in the water after an ostensibly valid exemption had been granted from the required environmental review procedures.

While your Committees take the extraordinary action of passing this measure in Special Session to balance the interests of economic development and alternative transportation with the interests of environmental protection, your Committees also believe that the Legislature must take extraordinary steps to stem the potential liabilities that the State may face in the future if nothing is done. A key operative provision of this measure establishes that, any large capacity ferry vessel company that operates pursuant to any of the rights conferred by this measure, by such operation, the company waives its rights to sue the State for any losses incurred due to any adverse judicial or administrative determinations. Accordingly, the intent of this measure should not be considered a template for relief in future situations involving the operations of a large capacity ferry vessel pursuant to the provisions of this measure.

Your Committees note that the measure itself iterates the potential benefits of the operation of a large capacity vessel company using a new class of large capacity ferry vessels. As such, your Committees believe that the Hawai'i Superferry should be provided with the opportunity to operate while environmental concerns are studied and catalogued. Additional consideration should be given to the fact that, due to Hawai'i's geographic location and proneness to hurricanes, as well as the harsh reality of the immediate aftermath of Hurricane Iniki which saw people waiting for days or even weeks to either leave the island or obtain emergency supplies or relief, alternative modes of inter-island transportation must be developed.

Specifically with regard to Kaua'i, your Committees note that the Hawai'i Superferry is under no obligation to suspend operation to the Garden Island. As a precautionary measure, the Hawai'i Superferry has chosen not to operate meanwhile between O'ahu and Kaua'i until the instant issue before the Legislature is finally resolved. Passage of this measure provides assurance that the environment of Kaua'i would be protected through the imposition of interim conditions and protocols by the Governor as well as oversight by the task force.

Your Committees also note that, although there has been some concern raised over the Governor and the state administration being the branch of government charged with the responsibility of establishing and enforcing the protocols required under the measure, it is the Governor and the state administration that has the expertise, manpower, and constitutional responsibility to execute enactments of the Legislature.

Your Committees find that this measure is necessary to balance the need for alternative means of inter-island transportation with the need to protect the environment of the State and of the unique environment of each island, as well as each community's unique sense of place and values. Your Committees are cognizant of the testimony on this measure and of the opinions voiced by the public during informational briefings on the Neighbor Islands to the effect that the quality of life would be affected negatively by the operation of the Superferry prior to any environmental review.

Meanwhile, it is the duty of the Legislature to craft legislation that balances competing interests and benefits the population as a whole. Without diminishing the validity and respecting greatly the public input from the informational briefings on Kaua'i, Maui, and the Big Island, your Committees understand that there were a number of concerned citizens who chose not to voice their opinions in person, as evidenced by the overwhelming amount of testimony submitted for the hearing at the State Capitol. Nevertheless, your Committees heard from those on the neighbor islands who feel passionately about this issue, which was enlightening and informative.

Your Committees believe that the operation of the vessel and the protection of the environment are not mutually exclusive. Your Committees find that the operation of the Hawai'i Superferry vessel concurrently with the preparation of environmental studies, on balance, is in the best interests of citizens of Hawai'i as a whole.

Your Committees also considered whether Hawai'i Superferry should be allowed to operate at all. Your Committees conclude in the affirmative. Your Committees find that Hawai'i's citizens deserve to have an alternative means of transportation as an island state to move people, cargo, and automobiles from one island to another in the same day. Your Committees find that an inter-island water transport system is a necessity in times of emergency and for civil defense purposes.

Your Committees have amended this measure as follows:

(1) Requiring the Hawai'i Superferry to comply with the following conditions:

(A) Regarding whale encounters:

(i) Applying with the National Oceanic and Atmospheric Administration for an incidental-take permit; and

- (ii) Requesting an observer from the National Marine Fisheries Service, a division of the National Oceanic and Atmospheric Administration, to be onboard its vessels at all times when traveling through the Hawaiian Islands Humpback Whale National Marine Sanctuary;
- (B) Regarding invasive species:
 - (i) Posting signage and notifying passengers beforehand of all bans, inspections, and check-in procedures and deadlines;
 - (ii) Posting signage and notifying passengers beforehand of all bans such as the ban on the transport of fishing gill nets and fishing nets for commercial use, or rocks, soil, or dirt or sand without a permit from the appropriate government agency;
 - (iii) Requiring passengers to declare all plants, fruits, seeds, and any other biological medium and confiscate any agricultural pests or invasive species, as defined by the Department of Agriculture by rule;
 - (iv) Inspecting or cause to be inspected all vehicles prior to boarding, including the trunks of all cars, the beds of all pickup trucks and the undercarriage and interiors of all vehicles; and
 - (v) Promptly notifying the appropriate governmental agency regarding any violation or potential of invasive species, agricultural, conservation or other law; and
- (C) Any other conditions or protocols the Governor deems necessary and appropriate to protect the State's environment.
- (2) Requiring the Governor to notify the Legislature of all conditions or protocols established, including the entities consulted in establishing the conditions or protocols.
- (3) Allowing the Governor to amend the conditions and protocols to ensure the reasonable, efficient, and expedient application of environmental protection measures;
- (4) Requiring the Governor to review and determine the efficacy and appropriateness of all conditions or protocols established and report to the Legislature at the end of each fiscal quarter and the costs incurred by the State in establishing and maintaining the enforcement activities required under the measure;
- (5) Modifying the oversight task force membership by deleting the Director of Business, Economic Development, and Tourism and inserting therefor the Director of Agriculture;
- (6) Amending the indemnity and waiver of liability language to clarify that it applies to actions that occurred prior to the effective date of the measure and does not apply prospectively, as recommended by the Attorney General; and
- (7) Making technical, nonsubstantive amendments to conform the other provisions of the measure with the amendments made by your Committees.

With regard to the prospect of applying for an incidental take permit and requesting an observer from the National Marine Fisheries Service be onboard its vessels, your Committees note that the Hawai'i Superferry indicated that it was amenable to such actions.

Your Committees emphasize that, with regard to the amendment described in paragraph (1)(A)(i) of the listing of amendments above, the term "applying", or "apply", as it is used in the measure, are not intended to imply or require that the Hawai'i Superferry complete the application process to obtain an incidental take permit, but rather that the Hawai'i Superferry start the process to obtain the permit.

Furthermore, your Committees note that, with regard to the amendments described in paragraph (1)(B)(i)-(iv), of the listing of amendments above, the Hawai'i Superferry has testified that it will voluntarily institute these procedures to do its part to protect each island's unique environment. In addition, the Department of Agriculture has also initiated the process to inspect agricultural products prior to transport on the Superferry in a similar manner that it does for the shipment of goods or cargo by other inter-island modes of transportation.

Your Committees strongly recommend:

- (1) That Hawai'i Superferry, using trained employees, confiscate any natural resource, as defined in section 128D-1, Hawai'i Revised Statutes, of which the taking or transporting is prohibited by statute or administrative rule;
- (2) That the Hawai'i Superferry establish an education program, similar to what is provided at Hanauma Bay, that educates passengers and users of the Superferry on the potential detrimental environmental impacts that may be caused by irresponsible or negligent behavior or actions;
- (3) That the Departments of Land and Natural Resources and Agriculture dedicate sufficient resources to monitor the Hawai'i Superferry's activities and enforce invasive species, agricultural, conservation, and environmental laws; and
- (4) That the Governor establish, assess, and collect fees from the Hawai'i Superferry to offset the costs incurred by the State in implementing procedures to protect the State's and each island's environment.

Your Committees also emphasize that, with the enactment of this measure and throughout its term, the operations of the Hawai'i Superferry and the procedures followed for the environmental impact statement by the Department of Transportation shall be governed by this measure and not by any similar law in effect prior to this measure's effective date.

Your Committees believe that this amended measure reflects a prudent and reasoned approach to providing an alternative means of inter-island transportation while respecting and protecting the communities and environment of each island of our State.

Your Committees also believe that the unprecedented acrimony that has arisen from debates and actions on this issue stems from a fundamental lack of communication with the public regarding the actions taken by the Hawai'i Superferry and the state administration. Your Committees firmly support the public's right to be kept informed on this issue and that the Legislature should stand ready to provide the public, through the reporting requirements incorporated in this measure, with information on the operation of the Hawai'i Superferry.

Finally, your Committees are particularly concerned that this measure has caused a public rancor and division heretofore rarely seen in this land of Aloha. Sadly, the issue before your Committees has unearthed deeper concerns that reach beyond those of pitting the oversimplified and

overused cliché of development versus environment. The operation of the Superferry and the ensuing process to find a resolution to this unique situation has resulted in a pained community. Segments of our population have been pitted against each other, with the divide drawn along the lines of neighbor island versus Oahu, urbanites versus rural dwellers, locals versus newcomers, employed versus unemployed, conservation versus business, wealthy versus poor, and further. Your Committees believes that, regardless of how this issue is resolved, clearly, a time of healing must ensue where mutual respect, trust, and most of all, aloha, must be re-established and above all, prevail.

Toward the objective of healing the rifts caused or enlarged by this issue, your Committees also believe that the convening and operation of the oversight task force could serve as a means by which these rifts can be closed, or at very least, minimized. With its diverse membership, it is the hope of your Committees that the representatives on the oversight task force will begin to understand each other's positions, empathize with one another's passions, and finally, that respect may grow from their mutual experiences in working together.

For all those involved in advocating their positions on this issue, as a starting point to heal the divisiveness, your Committees feel the need to restore the aloha that has made Hawai'i a unique as a place of welcome, tolerance, and friendliness. To this end, your Committees believe that, to date, most of the discussion on this issue has focused on the negative aspects and potential impacts associated with the operation of the Superferry. Your Committees would like the focus to shift to the positive aspects and consequences that will result from the Superferry's operation. As stated by Mr. Kauila Clark, a testifier who is a Native Hawaiian cultural practitioner, this measure is in keeping with the spirit of aloha, as it will eventually bring families together. Your Committees were moved by Mr. Clark's explanation of how the meaning of the word "aloha" was taught to him by noted kupuna, Pilani Paki, through the use of the word as an acronym for all it encompasses. In Pilani Paki's teachings, the following unuhi laula loa was used:

- "Akahai" Meaning kindness to be expressed with tenderness;
- "Lokahi" Meaning unity, to be expressed with harmony;
- "Olu'olu" Meaning agreeable, to be expressed with pleasantness;
- "Ha'aha'a" Meaning humility, to be expressed with modesty; and
- "Ahonui" Meaning patience, to be expressed with perseverance.

Your Committees believe that these are the true traits of character that express the charm, warmth and sincerity of Hawai'i's people.

In exercising the power vested in the Legislature in fulfillment of their responsibilities, obligations, and service to the people, your Committees believe that the Legislature, Governor and the Governor's executive officers of each department, the justices and judges of the courts of the Judiciary, will strive to reaffirm their commitment to exercising their duties, and that the people of Hawai'i should also reaffirm their commitment to living their lives within the meaning of aloha. In doing so, Hawai'i as a whole will continue to evolve into a much greater place than one that is simply the sum of its parts.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Transportation and International Affairs and Energy and Environment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1, S.D. 1, and be placed on the calendar for Third Reading.

Signed by the Chairs on behalf of the Committees. Ayes, 10. Ayes with Reservations, 7 (Gabbard, Hee, Ihara, Menor, Nishihara, Taniguchi, Trimble). Noes, 4 (English, Hooser, Kokubun, Tsutsui). Excused, none.

SCRep. 4 Tourism and Government Operations on Gov. Msg. Nos. 102, 103, 104 and 105

Recommending that the Senate advise and consent to the nominations of the following:

PROCUREMENT POLICY BOARD

- G.M. No. 102 DARRYL WAYNE BARDUSCH, for a term to expire 6-30-2008;
- G.M. No. 103 DARRYL WAYNE BARDUSCH, for a term to expire 6-30-2012;
- G.M. No. 104 KEITH T. MATSUMOTO, for a term to expire 6-30-2011; and
- G.M. No. 105 PAMELA A. TORRES, CPCM, for a term to expire 6-30-2010

Your Committee received testimony in support of Darryl Wayne Bardusch from the Department of Accounting and General Services; U.S. Army Contracting Agency Element, Pacific; and three individuals.

Mr. Bardusch has been employed since 1987 as a contract attorney with the U.S. Army Garrison, Hawaii. He received an A.B. degree in Political Science from the University of Illinois; a Juris Doctorate degree from Southern Illinois University; and an L.L.M. in Taxation from the Washington University School of Law. The nominee has completed numerous procurement law courses at the Judge Advocate General's School. From 1983 to 1987 he was a Judge Advocate officer serving as a contract attorney for the Aviation Systems Command. Mr. Bardusch is a member of the bars of Illinois and Missouri.

Mr. Bardusch stated to your Committee that he would assist the State Procurement Office in establishing policy. Such policy should implement procedures that conform with the statutes. He is concerned about public perception of fairness when implementing the Hawaii public procurement code. He believes more checks and balances are needed in procurement procedures so that different people are responsible for different responsibilities along the purchasing chain, like the federal government.

Your Committee received testimony in support of Keith T. Matsumoto from the Department of Accounting and General Services; Cellular Bioengineering, Inc.; The Research Corporation of the University of Hawaii; and one individual.

Mr. Matsumoto is employed as a consultant with the Hawaii Technology Development Venture which provides assistance to the Office of Naval Research Program Manager and the contracting and administrative staff. He received a Bachelor of Science in Engineering from the University of Pennsylvania, and a Masters of Business Administration from the University of Michigan. He has worked as the Chief Operating Officer and Chief Financial Officer for Alu Like Enterprises, Inc. (2005-2006); Executive Contracts Specialist and Chief Projects Executive, and Acting Chief Capital Projects Officer for the Honolulu Board of Water Supply (2004-2005); Vice President and Program Manager for the Pacific

Technology Applications Corporation, a subsidiary of the Pacific International Center for High Technology Research (1997 to present); and Vice President and Chief Operating Officer and Treasurer for the Pacific International Center for High Technology Research (1995-2001).

Mr. Matsumoto has been actively involved in numerous professional associations and volunteer community organizations.

Mr. Matsumoto testified that he seeks to develop and implement a "State Certified Procurement Specialist" program which would include procurement education and training. The training would ideally be mandatory for chief procurement officers who would be required to attend in order to obtain certification. Staff persons under the chief procurement officer would also receive mandatory training. His interest in serving on the Policy Procurement Board is to support a strong, clear, fair, and consistent procurement system to ensure the best value is obtained for goods and services for the people of the State.

Your Committee received testimony in support of Pamela A. Torres from the Department of Accounting and General Services and one individual.

Ms. Torres is the Owner and President of Federal Contract Solutions, a consulting company that provides guidance to contractors and the government. She received a BA degree in Business Management from Chaminda University and a Masters of Business Management from the University of Phoenix. The nominee has attained a DoD Level III Certification, Secret Clearance, and a Certified Professional Contracts Manager (CPCM) designation. She has served as President of the National Contract Management Association Aloha Chapter. Ms. Torres has over twenty years experience in federal contracting with broad and varied contract experience in the award and administration of complex, multi-million dollar information technology contracts.

Ms. Torres testified that she believes that fairness is the heart of procurement. She believes her qualities are integrity, breadth and depth of procurement experience, and the ability to see things from a fresh perspective and to communicate her vision to others.

Your Committee has serious concerns about the proper functioning of the Procurement Policy Board, specifically in the areas of oversight of procurement practice, adoption of administrative fines, and making audits and monitoring the implementation of rules. Your Committee notes that all the nominees, when queried about whether they would be willing to discuss procurement issues and practices with the Chair and Vice Chair of your Committee, responded in the affirmative.

As affirmed by the records of votes of the members of your Committee on Tourism and Government Operations that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, none.

SCRep. 5 Human Services and Public Housing on Gov. Msg. Nos. 85, 86, 87

Recommending that the Senate advise and consent to the nominations of the following:

BOARD OF DIRECTORS OF THE HAWAII PUBLIC HOUSING AUTHORITY

G.M. No. 85 ANNE MARIE BECK, for a term to expire 6-30-2011;

G.M. No. 86 RENÉ BERTHIAUME, for a term to expire 6-30-2011; and

G.M. No. 87 SHERRILEE K. DODSON, for a term to expire 6-30-2011

Your Committee reviewed the personal histories, resumes, and statements submitted by the nominees, and finds Anne Marie Beck, René Berthiaume, and Sherrilee K. Dodson to have the necessary qualifications to be nominated to serve as members on the Board of Directors of the Hawaii Public Housing Authority.

Testimony in support of Anne Marie Beck's nomination was submitted by Executive Chambers, the Department of Human Services, and two individuals.

Ms. Beck received her Bachelor of Arts degree from Rutgers, The State University of New Jersey and her Master of Business Administration from Pennsylvania State University. She currently serves as the Executive Director for the Honolulu Habitat for Humanity where she assists in facilitating the construction of Habitat homes with the help of volunteer labor, raises money for the organization, encourages the increase in the number and quality of service of its volunteers, and provides mortgage assistance and education. Her prior work experience includes serving as the Community Reinvestment Act Program Administrator for the Bank of Hawaii as well as serving as a loan officer for American Savings Bank where she designed the first Community Development Lending Program for the bank.

Ms. Beck is affiliated with and has served on several professional and community organizations, including as the President of the Boys & Girls Club of Hawaii – Papakolea Clubhouse, a member of Envision Hawaii, a Board Member of the Friends of the Hawaii Commission on the Status of Women, and the Secretary and Vice President of the Hawaii Community Reinvestment Act Association, to name a few.

As the Executive Director of the Honolulu Habitat for Humanity and with her extensive experience in community development and lending, Ms. Beck clearly demonstrates that she will be a tremendous resource to the Board of Directors of the Hawaii Public Housing Authority. She has the education, experience, and commitment to assist the Board in providing Hawaii residents with affordable housing and shelter without discrimination, developing affordable rental and supportive housing, and delivering public housing efficiently and in a fair manner. Ms. Beck's demonstrated commitment to and professional experience in the lending industry and the area of community development will prove to be valuable assets for the Board of Directors of the Hawaii Public Housing Authority.

Testimony in support of René Berthiaume's nomination was submitted by Executive Chambers; the Department of Human Services; the Workforce Development Council, Department of Labor and Industrial Relations; and five individuals.

Mr. Berthiaume graduated from Farrington High School in Honolulu. He attended the University of Hawaii at Manoa where he studied Special Education and Physical Education and the University of San Francisco where he studied Rehabilitation Administration Management. He currently serves as a Vice President and a Housing Development Specialist for Network Enterprises, Inc. where he is responsible for the development of transitional and permanent housing for homeless veterans through planning, marketing, and other efforts. Prior to his position, he served as a Vice President and General Manager for Network Enterprises, Inc. where he oversaw and managed all daily operations of the

company's Research and Development Division, coordinated housing projects, and developed the company's first Correctional Industries Joint Venture Program. He has also served as the Operations Manager for the Opportunities for the Retarded Inc. (Helemano Plantation) and as a Program Coordinator for the Hawai'i Association for Retarded Citizens (Ruger Center).

Mr. Berthiaume currently serves as the Chairperson for the State Rehabilitation Council, which is a twenty-one membership council that advises the Vocational Rehabilitation Division of the Department of Human Resources Development. Your Committee notes that section 78-4, Hawaii Revised Statutes, prohibits an individual from serving on more than one state board or commission that is expressly created by a state statute or the state constitution. However, your Committee recognizes that section 348-8, Hawaii Revised Statutes, which establishes the State Rehabilitation Council, exempts the members who are serving on the Council from section 78-4. Mr. Berthiaume testified to your Committee that he was reassured by the Governor's Office at the time of his nomination that he would be allowed to concurrently serve on the State Rehabilitation Council and the Board of Directors of the Hawaii Public Housing Authority, pursuant to the exemption from section 78-4 under section 348-8.

Mr. Berthiaume is affiliated with and has served on several professional and community organizations, including the Affordable Housing and Homeless Alliance, the Alliance of Health and Human Services, the American Rehabilitation Association, the Better Business Bureau, the National Rehabilitation Association, and the State of Hawaii Welfare Reform Task Force, to name a few. He was honorably discharged from the United States Marine Corps after five years of active duty and is a member of the National Coalition for Homeless Veterans.

With over thirty years of progressive employment with Hawaii's non-profit agencies specializing in the areas of human services, construction, and housing, Mr. Berthiaume clearly demonstrates that he will be a tremendous resource to the Board of Directors of the Hawaii Public Housing Authority. He has the experience and commitment to assist the Board in providing Hawaii residents with affordable housing and shelter without discrimination, developing affordable rental and supportive housing, and delivering public housing efficiently and in a fair manner. Mr. Berthiaume's demonstrated commitment to and professional experience in the areas of human services and housing will prove to be valuable assets for the Board of Directors of the Hawaii Public Housing Authority.

Testimony in support of Sherrilee K. Dodson's nomination was submitted by Executive Chambers, the Department of Human Services, and seven individuals. One individual submitted testimony in opposition to Ms. Dodson's nomination.

Ms. Dodson received her Bachelor of Arts degree in Political Science and a Minor in Hawaiian Studies from the University of Hawaii at Manoa, and her Doctor of Jurisprudence from the Western State University College of Law. She currently serves as the Executive Director for the Habitat for Humanity Maui where she assists in facilitating the construction of Habitat homes with the help of volunteer labor, raises money for the organization, and encourages the increase in the number and quality service of its volunteers. Prior to her employment at Habitat for Humanity Maui, Ms. Dodson served as an attorney, a substitute teacher for Kamehameha School, and a professor of Law and Ethics for the Masters and undergraduate programs at the University of Phoenix.

Ms. Dodson is affiliated with and has served on several professional and community organizations, including as a Certified Mediator for Mediation Services of Maui, an Officer and Board Member of First Night Maui, a member of the Maui Humane Society, an Officer for the Lupus Support Group of Maui, and a volunteer for the National Kidney Foundation and the Organ Donation Center of Hawaii. She is also a recipient of a Weinberg Fellowship and the Hawaii Community Foundation PONO Fellowship, and is the winner of the Pioneer in Excellence Award by Habitat for Humanity International.

Your Committee notes the testimony received from one individual in opposition to Ms. Dodson's nomination. Ms. Dodson submitted a written response to your Committee, which alleviated any concerns that your Committee had and resolved the issues that were raised in the opposing testimony.

As the Executive Director of the Honolulu Habitat for Humanity, Ms. Dodson clearly demonstrates that she will be a tremendous resource to the Board of Directors of the Hawaii Public Housing Authority. She has the education, experience, and commitment to assist the Board in providing Hawaii residents with affordable housing and shelter without discrimination, developing affordable rental and supportive housing, and delivering public housing efficiently and in a fair manner. Ms. Dodson's demonstrated commitment to and experience in the areas of law and community service will prove to be valuable assets for the Board of Directors of the Hawaii Public Housing Authority.

As affirmed by the records of votes of the members of your Committee on Human Services and Public Housing that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 5. Noes, none. Excused, none.

SCRep. 6 Human Services and Public Housing on Gov. Msg. No. 88

Recommending that the Senate advise and consent to the nomination of the following:

COMMISSION ON THE STATUS OF WOMEN

G.M. No. 88 ELENA M.H. CABATU, for a term to expire 6-30-2010

Your Committee reviewed the personal history, resume, and statement submitted by the nominee, and finds Elena M.H. Cabatu to have the necessary qualifications to be nominated to serve as a member on the Commission on the Status of Women.

Testimony in support of Elena M.H. Cabatu's nomination was submitted by the Department of Human Services and six individuals. One individual submitted comments.

Ms. Cabatu is a graduate of Georgetown University, where she received a Bachelor of Arts degree in English and Linguistics. She currently serves as the Community Relations and Program Manager for the Hilo Medical Center where she manages internal and external communications regarding hospital affairs, including coordinating media outreach with local media, planning and executing communication plans, and improving public opinion and awareness. Previously, Ms. Cabatu served as a Project Associate for the Communications Consortium Media Center in Washington, D.C. where she managed the Media Tracking System for the Global Health, Population, and Development 2015 Project; served as the Assistant Editor of the www.PUSHJournal.org that provides free full-text news stories from more than fifty thousand top news outlets worldwide to over one thousand reporters; and assisted in maintaining other various media databases for journalists located worldwide. She continues to do consulting work for the Communications Consortium Media Center as a Media Analyst for the Global Health, Population, and Development 2015 project.

Since September 2007, Ms. Cabatu has been serving as an interim member for the Commission on the Status of Women and is nominated for a four-year term. Since her interim appointment, she has demonstrated a strong desire to learn about the issues presented to the Commission on the Status of Women, and she has the education, experience, and commitment to assist the Commission in working for equality for women and girls in the State by acting as a catalyst for positive change through advocacy, education, collaboration and program development. Ms. Cabatu's demonstrated commitment and professional experience will prove to be valuable assets for the Commission on the Status of Women.

As affirmed by the record of votes of the members of your Committee on Human Services and Public Housing that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 5. Noes, none. Excused, none.

SCRep. 7 Judiciary and Labor on H.B. No. 2

The purpose of this measure is to amend Hawaii's extended sentencing statutes to ensure that the procedures used to impose extended terms of imprisonment comply with the requirements set forth by the United States Supreme Court and the Hawaii Supreme Court.

Specifically, this measure requires that:

- (1) A jury determine the facts necessary to impose an extended term of imprisonment, unless the right to a jury determination is waived by the defendant; and
- (2) Facts necessary to impose an extended term of imprisonment are proven beyond a reasonable doubt.

In addition, the provisions of this measure apply retroactively to sentencing or resentencing proceedings pending on or commenced after its effective date, whether the offense was committed prior to, on, or after the effective date.

Testimony in support of the measure was submitted by the Attorney General, the Department of the Prosecuting Attorney of City and County of Honolulu, the County of Hawai'i Police Department, and one individual.

Comments were submitted by the Office of the Public Defender, which did not object to the purpose of the measure in terms of amending Hawaii's extended sentencing law to comply with the requirements of the United States Supreme Court and the Hawaii Supreme Court, but did raise an issue as to making the amendments to the current law apply retroactively.

Your Committee finds that as a result of a line of United States Supreme Court cases, and *State v. Maugaotega*, ___ P.3d ___, 2007 WL 2823760, Oct. 1, 2007 (No. 26657), Hawaii's current extended sentencing procedure was deemed unconstitutional because it requires a judge and not a jury to find facts, other than those of prior or concurrent convictions, necessary to enhance a defendant's sentence beyond the ordinary or standard term authorized by the jury's verdict.

Your Committee further finds that this measure remedies this issue by amending the existing enhanced sentencing law to conform it to the requirements set forth by the United States Supreme Court and the Hawaii Supreme Court.

Your Committee notes that this measure does not entitle a defendant who has previously been sentenced to an extended term of imprisonment to be resentenced pursuant to the procedures set forth in this measure unless the defendant is otherwise legally entitled to be resentenced.

Your Committee also notes the concerns raised by the Office of the Public Defender with regards to the retroactive application of this measure. However, your Committee finds that this measure does not subject any defendant to additional punishment or other disadvantage and that this imposes a more significant burden on the prosecution that under past and current law.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 2 (Hee, Kokubun).

SCRep. 8 Commerce, Consumer Protection and Affordable Housing on Gov. Msg. No. 14

Recommending that the Senate advise and consent to the nomination of the following:

PUBLIC UTILITIES COMMISSION

G.M. No. 14 LESLIE HARUO KONDO, for a term to expire 6-30-2008

Your Committee reviewed the personal history, resume, and statement submitted by the nominee, and finds Leslie Haruo Kondo to have the necessary qualifications to be nominated to serve as a Commissioner on the Public Utilities Commission.

Testimony in support of Leslie Haruo Kondo's nomination was submitted by the Public Utilities Commission, Department of Budget and Finance; a Councilmember, City and County of Honolulu; Hawaii Consumers; and twenty-one individuals.

Mr. Kondo received his Bachelor of Science degree in Industrial Engineering from Northwestern University and received his Doctor of Jurisprudence from the William S. Richardson School of Law at the University of Hawaii at Manoa. Upon graduation from law school, he served as a Law Clerk for Chief Justice Herman T.F. Lum at the Hawaii Supreme Court, and then served as an Associate Attorney at the private law firms of McCorriston Miho Miller Mukai and Tom & Petrus, and finally as Partner at Chun & Nagatani. In February 2003, he left private practice to serve as the Director of the Office of Information Practices where he administered the State's public records and open meetings laws. Mr. Kondo is a member of the Hawaii State Bar Association and currently serves as a Director for the Make-A-Wish Foundation of Hawaii.

Mr. Kondo has been serving as an interim Commissioner for the Public Utilities Commission. Since his interim appointment, he has demonstrated a strong desire to learn about the issues presented to the Public Utilities Commission, and he has the education, experience, and commitment to assist the Commission in regulating franchised or certificated public service companies operating in the State. Mr. Kondo's demonstrated commitment to and professional experience in law will prove to be a valuable asset for the Public Utilities Commission.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 5. Noes, none. Excused, 2 (Espero, Ige).

SCRep. 9 Commerce, Consumer Protection and Affordable Housing on Gov. Msg. Nos. 11, 12 and 13

Recommending that the Senate advise and consent to the nominations of the following:

BOARD OF DIRECTORS OF THE HAWAII HURRICANE RELIEF FUND

G.M. No. 11 GARY Y.K. CHOCK, S.E., for a term to expire 6-30-2011;

G.M. No. 12 MICHAEL P. HAMNETT, for a term to expire 6-30-2009; and

G.M. No. 13 DENNIS MICHAEL SUGIHARA, for a term to expire 6-30-2011

Your Committee reviewed the personal histories, resumes, and statements submitted by the nominees, and finds Gary Y.K. Chock, S.E.; Michael P. Hamnett, Ph.D.; and Dennis Michael Sugihara to have the necessary qualifications to be nominated to serve as Directors on the Board of Directors of the Hawai'i Hurricane Relief Fund.

Testimony in support of Gary Y.K. Chock, S.E.'s nomination was submitted by the Department of Commerce and Consumer Affairs and the Department of Accounting and General Services.

Mr. Chock received his Bachelor of Science degree in Civil Engineering at the University of Hawaii at Manoa and his Master of Science degree in Civil Engineering from Stanford University. He currently serves as President of Martin & Chock, Inc., which provides services covering all phases of structural engineering. He has been responsible for a number of major structural engineering projects in Hawaii, Guam, and Asia, including the Keola La'i Condominium, the Pinnacle Honolulu, the Waikiki Landmark, the First Hawaiian Center, the Leopalace Resort in Guam, and the Taman Dayu Resort in Java, Indonesia, to name a few. Several of these high-rise projects utilized many aspects of performance-based wind engineering and seismic design; wind-tunnel testing and dynamic analysis; and applications of probabilistic hazard analysis.

Mr. Chock is affiliated with and has served on several professional organizations, including as the President of the Structural Engineers Association of Hawaii; a member of the International Building Code Structural Committee; a member of the American Society of Civil Engineers ASCE-7 Task Force Committee on Wind Loads; a member of the Earthquake Engineering Research Institute; and a member of the American Association for Wind Engineering. As the 2007 President of the Structural Engineers Association of Hawaii, he organized the Association's response to the October 15, 2006 Kiholo Bay Earthquake on the Big Island by coordinating the filed investigation of the structural impacts of the earthquake for the internationally recognized Earthquake Engineering Research Institute.

Mr. Chock has also served on several state initiatives on disaster relief, including the Hawaii State Earthquake Advisory Committee, the Hawaii State Hurricane Advisory Committee, the Multi-Hazard Science Advisory Committee, the Hurricane Shelter Criteria Committee, the Uniform Statewide Building Code Task Force established under S.C.R. No. 17, S.D. 2 (2005), and the State Building Code Committee. Furthermore, his work has been published in several academic and professional periodicals and books.

As a licensed Structural Engineer in Hawaii and California and with extensive knowledge about local building codes, Mr. Chock clearly demonstrates that he will be a tremendous resource to the Board of Directors of the Hawai'i Hurricane Relief Fund. He has the education, experience, and commitment to assist the Board in managing and controlling the moneys in the Hawai'i Hurricane Relief Fund, monitoring the availability of hurricane property insurance in the State, and adopting a plan of operation and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the Hawai'i Hurricane Relief Fund. Mr. Chock's demonstrated commitment to and professional experience in engineering will prove to be a valuable asset for the Board of Directors of the Hawai'i Hurricane Relief Fund.

Testimony in support of Michael P. Hamnett, Ph.D.'s nomination was submitted by the Department of Commerce and Consumer Affairs; the Office of the Director of Civil Defense, Department of Defense; and three individuals.

Dr. Hamnett received his Bachelor of Arts degree in Philosophy and English Literature from Upsala College in New Jersey, and his Master of Arts and Doctorate degrees in Social-Cultural Anthropology with an ethnographic focus in Oceania from the University of Hawaii at Manoa. Dr. Hamnett is currently the Executive Director for the Research Corporation of the University of Hawaii (RCUH) where he serves as the Chief Operating Officer of a \$300,000,000 per year research and training support service agency, and provides leadership in the development of research and training in the State. Prior to his position at the RCUH, he served as the Director of the Social Science Research Institute at the University of Hawaii and as a Research Coordinator for the Pacific Islands Development Program of the East-West Center at the University of Hawaii.

Dr. Hamnett is affiliated with and has served on several professional organizations and state initiatives, including as the Chairperson and Program Director of the Hawaii Statewide Hazard Mitigation Forum, the Co-Chairperson of the Hawaii Energy Policy Forum, the Principal Investigator for the Hawaii State Hazard Mitigation Planning Project, the Program Director of the Hawaii Coral Reef Initiative Research Program, and the Co-Chairperson of the Hawaii Hurricane Relief Fund Technical Advisory Committee, to name a few. Furthermore, his work has been published in several academic and professional periodicals and books.

Dr. Hamnett clearly demonstrates that he will be a tremendous resource to the Board of Directors of the Hawai'i Hurricane Relief Fund. He has the education, experience, and commitment to assist the Board in managing and controlling the moneys in the Hawai'i Hurricane Relief Fund, monitoring the availability of hurricane property insurance in the State, and adopting a plan of operation and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the Hawai'i Hurricane Relief Fund. Dr. Hamnett's demonstrated commitment and professional experience will prove to be valuable assets for the Board of Directors of the Hawai'i Hurricane Relief Fund.

Testimony in support of Dennis Michael Sugihara's nomination was submitted by the Department of Commerce and Consumer Affairs.

Mr. Sugihara is a graduate of University High School and received his Bachelor of Business Administration from the University of Hawaii at Manoa. With over thirty-five years of experience in the insurance industry, he is a licensed insurance agent for Atlas Insurance Agency, Inc. and previously for Continental Insurance Agency of Hawaii, Ltd. (prior to its merger with Atlas Insurance Agency, Inc.). Mr. Sugihara is a long time member of the East Manoa Lions Club and has coached the Manoa Youth Baseball League for a combined total of ten years. He retired from the Hawaii Air National Guard in 1991 after twenty-three years of service.

As a licensed insurance agent in Hawaii and with extensive knowledge about the local insurance industry, Mr. Sugihara clearly demonstrates that he will be a tremendous resource to the Board of Directors of the Hawai'i Hurricane Relief Fund. He has the education, experience, and commitment to assist the Board in managing and controlling the moneys in the Hawai'i Hurricane Relief Fund, monitoring the availability of hurricane property insurance in the State, and adopting a plan of operation and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the Hawai'i Hurricane Relief Fund. Mr. Sugihara's demonstrated commitment to and professional experience in the insurance industry will prove to be a valuable asset for the Board of Directors of the Hawai'i Hurricane Relief Fund.

As affirmed by the records of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 5. Noes, none. Excused, 2 (Espero, Ige).

SCRep. 10 Health on Gov. Msg. No. 22

Recommending that the Senate advise and consent to the nomination of the following:

ADMINISTRATOR FOR THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

G.M. No. 22 RONALD E. TERRY, for a term to expire 6-30-2011

Your Committee reviewed the personal history, resume, and statement submitted by the nominee, and finds Ronald E. Terry to have the necessary qualifications to be nominated as the Administrator for the State Health Planning and Development Agency.

Testimony in support of Ronald E. Terry's nomination was submitted by the Department of Health, The Queen's Health Systems, Sanford Health Services Division, Hawaii Pacific Health, Medical Service Corporation International, and three individuals.

Mr. Terry received his Master's in Health Administration from the Medical College of Virginia at Virginia Commonwealth University. He has twenty-seven years of experience in executive healthcare management and has extensive experience in health care facility development, physician and staff relations, and healthcare budgeting and financing. Mr. Terry served as Vice-President of Hospital Operations at Wahiawa General Hospital and as Executive Director of Hawaii Credential Verification Service, Inc.

Mr. Terry testified to his support of the certificate of need process. He has worked in states that did not have the certificate of need process in place and has experienced first hand how the lack of this process has been detrimental to health care services in rural communities. Mr. Terry also stated that, although we can look at making improvements to the healthcare system, he has not come across a process that serves all communities better than the certificate of need process. He understands the challenges of meeting Hawaii's future health care needs and is committed to working collaboratively to improve access to quality health care for our community. Mr. Terry's extensive experience, education, and dedication to community service will enable him to be a valuable asset to the State Health Planning and Development Agency.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 3. Noes, none. Excused, 2 (Menor, Whalen).

SCRep. 11 Health on Gov. Msg. Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33

Recommending that the Senate advise and consent to the nominations of the following:

BOARD OF DIRECTORS OF THE HAWAII HEALTH SYSTEMS CORPORATION

- G.M. No. 23 SHAWN CANNON, for a term to expire 6-30-2009;
- G.M. No. 24 AVERY B. CHUMBLEY, for a term to expire 6-30-2009;
- G.M. No. 25 ANDREW DON, M.D., for a term to expire 6-30-2009;
- G.M. No. 26 ROGER K. GODFREY, for a term to expire 6-30-2011;
- G.M. No. 27 ROSANNE C. HARRIGAN, EdD, for a term to expire 6-30-2011;
- G.M. No. 28 CATHERINE L.N. KIM, for a term to expire 6-30-2011;
- G.M. No. 29 BARRY TOSHIO MIZUNO, for a term to expire 6-30-2009;
- G.M. No. 30 MABEL JEAN ODO, for a term to expire 6-30-2009;
- G.M. No. 31 CLIFFORD L. NAKEA, for a term to expire 6-30-2011;
- G.M. No. 32 BARRY KOJI TANIGUCHI, for a term to expire 6-30-2011; and
- G.M. No. 33 RICHARD JAMES VIDGEN, for a term to expire 6-30-2011

Your Committee reviewed the personal statements, histories and resumes submitted by the nominees, and finds Shawn Cannon, Avery B. Chumbley, Dr. Andrew Don, Roger K. Godfrey, Rosanne C. Harrigan, Catherine L.N. Kim, Barry Toshio Mizuno, Clifford L. Nakea, Mabel Jean

Odo, Barry Koji Taniguchi, and Richard James Vidgen to have the necessary qualifications to be nominated to the Board of Directors of Hawaii Health Systems Corporation.

Testimony in support of Shawn Cannon's nomination was submitted by the Hawaii Health Systems Corporation.

Ms. Cannon is a resident of Kailua-Kona and is nominated to fill one of the West Hawaii resident board membership requirements. She is a Registered Nurse and currently serves as the Branch Manager for CareResource Hawaii, Island of Hawaii. Ms. Cannon has worked in the community as a healthcare professional for seventeen years. She also serves as Chair of the Health Services Committee of the West Hawaii Community Health Center. Ms. Cannon's extensive experience and desire to serve her community will enable her to be a valuable asset to the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Avery B. Chumbley's nomination was submitted by the Hawaii Health Systems Corporation and one individual.

Mr. Chumbley is a resident of Wailuku and is nominated to fill one of the Maui resident board membership requirements. He is President and COO of Wailuku Agribusiness Company, Inc. He has served in the Hawaii State House of Representatives from 1992-1994 and the Hawaii State Senate from 1994-2002. He also serves on the Board of Directors of the Pacific Cancer Foundation. Mr. Chumbley's knowledge and experience will prove to be a valuable asset to the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Dr. Andrew Don's nomination was submitted by the Hawaii Health Systems Corporation and Hawaii Medical Association.

Dr. Don resides in the State and is nominated to fill one of two of the Governor's appointment requirements of board membership. Dr. Don serves as active and consulting staff for Maui Memorial Medical Center and has served as such since 1973. He currently serves as Chairman of the Hawaii QUEST Medical Advisory Committee. Dr. Don received his Medical Doctorate degree from Tulane University in 1966. He has extensive credentials, including Military service, and has demonstrated a strong commitment to providing quality health care in the community. Hawaii Health Systems Corporation is fortunate to have Dr. Don serve on the Board of Directors.

Testimony in support of Roger K. Godfrey's nomination was submitted by the Hawaii Health Systems Corporation and three individuals.

Mr. Godfrey resides in the State and is nominated to fill one of two of the Governor's appointment requirements of board membership. In 1958, he received his MBA from Stanford University and is currently retired. He has served on the Board of Directors of the Tax Foundation of Hawaii and the Oahu Workforce Investment Board. Mr. Godfrey's experience and dedication to his community will be a valuable asset to the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Rosanne C. Harrigan's nomination was submitted by the Hawaii Health Systems Corporation.

Dr. Harrigan is a resident of Oahu and is nominated to fill one of the two Oahu resident board membership requirements. She currently serves on the Board of Directors for Hawaii Health Systems Corporation. She currently is a professor at the University of Hawaii John A. Burns School of Medicine and also currently works as a Nurse Practitioner for Waimanalo Health Center. She has published numerous books and articles related to health care and nursing, and has demonstrated her commitment to community service. Dr. Harrigan's extensive experience, background, and reputation in the health care industry will enable her to continue to be a valuable asset to the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Catherine L.N. Kim's nomination was submitted by Hawaii Health Systems Corporation.

Mrs. Kim is a resident of Kahului and is nominated to fill one of the Maui resident board membership requirements. She is a graduate of the University of Hawaii at Manoa with a Bachelor's degree in Business Administration. She currently works for Maui Soda and Ice Works, Ltd. as Vice President of the Production Division of Roselani Ice Cream. She has extensive community experience including serving as a member of the Committee on the Status of Women, County of Maui, the Maui Chamber of Commerce, the State Health Planning and Development Agency Tri-Isle Subarea, and the Certificate of Need Review Panel. The Hawaii Health Systems Corporation Board of Directors will greatly benefit from Mrs. Kim's extensive experience and knowledge.

Testimony in support of Barry Toshio Mizuno's nomination was submitted by Hawaii Health Systems Corporation and four individuals.

Mr. Mizuno is a resident of Hilo and is nominated to fill one of two of the West Hawaii resident board membership requirements. He retired from Puna Geothermal Venture in December of 2006 and has since been the principal owner and Energy Consultant of BTM, LLC. He is a Certified Public Accountant in the State, is a past board member of Hilo Family Practice Center, and currently serves as a board member of the Hilo Medical Center Foundation. Mr. Mizuno's experience, knowledge, and desire to serve his community will enable him to be a valuable asset to the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Mabel Jean Odo's nomination was submitted by Hawaii Health Systems Corporation.

Mrs. Odo is a resident of Kalaheo, Hawaii and is nominated to fill one of two of the Kauai resident board membership requirements. Prior to her retirement, Mrs. Odo served as a school teacher in Kauai for forty-one years. She has received several awards, including Kauai District Teacher of the Year and Kauai District Special Education Teacher of the Year. Mrs. Odo currently serves as secretary, treasurer, and Vice Chairman of Hawaii Health Systems Corporation. Mrs. Odo's experience and dedication to her community will greatly benefit the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Clifford L. Nakea's nomination was submitted by the Hawaii Health Systems Corporation and three individuals.

Mr. Nakea is a resident of Kapaa, Hawaii and is nominated to fill one of two of the Kauai resident board membership requirements. He served as a Circuit Court Judge from 2000 to 2005 and District Court Judge from 1980 to 2000. Prior to his judgeship, Mr. Nakea was a partner in the law firm of Case Kay Clause and Lynch, he served as a Deputy Prosecutor in Kauai and Honolulu. Mr. Nakea's extensive legal expertise and demonstrated community service will enable him to be an integral part of the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Barry Koji Taniguchi's nomination was submitted by the Hawaii Health Systems Corporation and four individuals.

Mr. Taniguchi is a resident of Hilo and is nominated to fill one of two of the East Hawaii resident board membership requirements. He is a graduate of Hilo High School and University of Hawaii Hilo and Manoa. He is a Certified Public Accountant and President and Chief Executive Officer of KTA Super Stores and K. Taniguchi, LTD. Mr. Taniguchi has extensive experience and memberships in many community

organizations. He is dedicated to community service and would serve as a valuable asset to the Hawaii Health Systems Corporation Board of Directors.

Testimony in support of Richard James Vidgen's nomination was submitted by the State Senator representing the First Senatorial District and the Hawaii Health Systems Corporation.

Mr. Vidgen is a resident of Kailua-Kona and is nominated to fill one of two of the West Hawaii resident board membership requirements. He is a Realtor and Agricultural and Marketing Consultant. He has numerous career accomplishments regarding local agricultural businesses and is President of MacFarms of Hawaii. Mr. Vidgen served on the Governor's West Hawaii Advisory Committee from 2003 to 2007 and continues to serve on the Kona Community Hospital Management Advisory Board and the Kona-Kohala Chamber of Commerce. Mr. Vidgen's experience, community dedication, and understanding of the challenges facing health care institutions in Hawaii will enable him to serve as an important asset to the Hawaii Health Systems Corporation Board of Directors.

As affirmed by the records of votes of the members of your Committee on Health that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 3. Noes, none. Excused, 2 (Menor, Whalen).

SCRep. 12 Health on Gov. Msg. Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44

Recommending that the Senate advise and consent to the nominations of the following:

HAWAII HEALTH SYSTEMS CORPORATION OAHU REGIONAL BOARD

- G.M. No. 34 PATRICIA ANNETTE LANOIE BLANCHETTE, M.D., for a term to expire 6-30-2010;
- G.M. No. 35 CLEMENTINA D. CERIA-ULEP, for a term to expire 7-1-2010;
- G.M. No. 36 STEPHANIE A. MARSHALL, for a term to expire 6-30-2009;
- G.M. No. 37 MICHAEL REED MASUDA, for a term to expire 6-30-2009;
- G.M. No. 38 MARIE MILKS, for a term to expire 6-30-2010;
- G.M. No. 39 PAUL DOUGLAS NIELSON, M.D., for a term to expire 6-30-2010;
- G.M. No. 40 JERRY ROBERT SMEAD, for a term to expire 6-30-2009;
- G.M. No. 41 MARC SHLACHTER, M.D., for a term to expire 6-30-2009;
- G.M. No. 42 ELDON L. WEGNER, for a term to expire 6-30-2010;
- G.M. No. 43 MARY C. WESSELKAMPER, for a term to expire 6-30-2010; and
- G.M. No. 44 DONALD WILLIAM WOOD, for a term to expire 6-30-2009

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Patricia Annette Lanoie Blanchette holds an Associate of Arts degree from University of Hawaii, West Oahu, and a Bachelor of Arts degree in Pre-Professional Studies, a Doctor of Medicine degree, and a Master of Public Health degree from the University of Hawaii at Manoa. She completed an internship and residency program in Internal Medicine at Dartmouth-Hitchcock Medical Center and a fellowship in Geriatric Medicine at Harvard Medical School. She currently serves as the Chair of the Department of Geriatric Medicine at the John A. Burns School of Medicine, the Director of Geriatric Education at Kuakini Medical Center, the Founding Director of the Pacific Islands Geriatric Education Center, the Founding Director of the John A. Hartford Foundation Center of Excellence in Geriatric Medicine, Founding Co-Director of the National Parkinson Foundation, and the Graduate Faculty Member of the Biomedical Sciences Interdisciplinary Program and Cell and Molecular Biology.

Dr. Blanchette is being nominated for appointment to the Hawaii Health Systems Corporation (HHSC) Oahu Regional Board as a nominee of the Oahu regional management advisory committee. Dr. Blanchette also serves as the Chief Medical Officer for Hawaii Medical Center East and as Medical Director for Kuakini Geriatric Care, Inc., Maunalani Nursing & Rehab Center, Pearl City Nursing Home & Oahu Care Facility, and the Palolo Chinese Home. She is actively involved in numerous community and professional organizations in the State and has received several awards and honors for her work, research, and training, including millions of dollars in grant moneys, throughout the State, the country, and the world.

Testimony in support of Dr. Blanchette was submitted by the Hawaii Medical Association and one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Clementina D. Ceria-Ulep holds a Bachelor of Science degree in Nursing and a Master of Science degree in Nursing Administration from the University of Hawaii at Manoa, as well as a Doctor of Philosophy degree in Nursing Administration from the Medical College of Virginia. She currently serves as an associate professor at the School of Nursing & Dental Hygiene at the University of Hawaii at Manoa and is being nominated for appointment on the HHSC Oahu Regional Board as a nominee of the House of Representatives. Ms. Ceria-Ulep has previously served as a registered nurse, a teaching assistant, a nursing supervisor, an assistant director of nursing, and an acting director of nursing throughout her career. She is actively involved in numerous community and professional organizations in the State.

Testimony in support of Ms. Ceria-Ulep was submitted by two individuals.

Upon review of the background information submitted by the nominee, your Committee finds that retired Colonel Stephanie A. Marshall holds a Bachelor of Science degree in Nursing from Duquesne University and a Master of Science degree in Nursing from the University of California at San Francisco. She also completed the Johnson and Johnson - Wharton Fellows Program in Management for Nurse Executives at the University of Pennsylvania. Colonel Marshall currently serves as the Director for Community Partnerships at the University of Hawaii at Manoa School of Nursing and Dental Hygiene and is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the Oahu regional management advisory committee. She has enjoyed a long and successful military career, has remained actively involved in numerous

community and professional organizations, has been highly decorated during her time in service, and has conducted research, training, and been published for her work in the area of nursing.

Testimony in support of Colonel Marshall was submitted by three individuals.

Upon review of the background information submitted by the nominee, your Committee finds that Michael Reed Masuda holds a Bachelor of Business Administration degree and a Master of Business Administration degree from the University of Hawaii. He currently serves as the Trust Division Manager at Central Pacific Bank and is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the Senate. Mr. Masuda has enjoyed a long career in the banking industry and is an active member of various community and professional organizations in the State.

Testimony in support of Mr. Masuda was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Judge Marie Milks holds a Bachelor of Arts degree in History/Asian Studies from the University of Hawaii and a Juris Doctor degree from Georgetown University Law Center. She is a retired judge who also serves as an adjunct professor at the William S. Richardson School of Law. Judge Milks is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the Oahu regional management advisory committee. She previously served as a district court judge, a circuit court judge, a public defender, and a research assistant in the State Legislature and the U.S. Department of Justice. Judge Milks has received multiple awards for her work and contributions to the community and remains actively involved in numerous community and professional organizations within the State.

Testimony in support of Judge Milks was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Paul Douglas Nielson attended Brigham Young University and the University of Utah where he received a Doctor of Medicine degree. He completed a residency program in Family Practice at McKay Dee Hospital in Ogden, Utah. He currently serves as the Director of Health Services at Brigham Young University Hawaii and the Medical Chief of Staff at Kahuku Hospital. He is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the medical staff of the Oahu regional public health facilities. Dr. Nielson is also actively involved in community and professional organizations in the State.

Testimony in support of Dr. Nielson was submitted by the Hawaii Medical Association and one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Jerry Robert Smead holds a Bachelor of Arts degree in Microbiology from the University of Hawaii at Manoa and a Bachelor of Science degree in Pharmacy from Oregon State University. He currently serves as the Assistant Director of Pharmaceutical Services for Kaiser Permanente Hawaii Region, Assistant Clinical Professor of Pharmacy Practice at Creighton University, and Assistant Clinical Professor of Pharmacy Practice at Oregon State University. Mr. Smead is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the House of Representatives. Mr. Smead has practiced as a pharmacist in several positions throughout his career, has received grants, conducted research and been published for his work in the field, and remains actively involved in community health organizations in the State.

Testimony in support of Mr. Smead was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Marc Shlachter holds a Bachelor of Science degree in Microbiology from The Ohio State University and a Doctor of Medicine degree from the University of Cincinnati College of Medicine. He completed an internship with the University of Cincinnati and a pediatric residency program with Kapiolani Children's Hospital, currently known as Kapiolani Medical Center. Dr. Shlachter maintains a private practice in Koolauloa and serves as the Kahuku High School Football team physician. He is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the medical staff of the Oahu regional public health facilities. Dr. Shlachter also serves as the Medical Director for Crawford's Convalescent Home and Bobby Benson Center and is an Assistant Clinical Instructor of Family Practice at the John A. Burns School of Medicine.

Testimony in support of Dr. Shlachter was submitted by the Hawaii Medical Association and one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Eldon L. Wegner holds a Bachelor of Arts degree in Sociology from the University of Redlands and a Master of Arts degree and a Doctor of Philosophy degree in Sociology from the University of Wisconsin. He currently serves as a Professor of Sociology at the University of Hawaii at Manoa and is being nominated for appointment to the HHSC Oahu Regional Board as a nominee of the Senate. Dr. Wegner is an accomplished professor who has received numerous grants and conducted extensive research in a variety of areas. He is actively involved in numerous community and professional organizations and has been the recipient of multiple awards for his work.

Testimony in support of Dr. Wegner was submitted by three individuals.

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Mary C. Wesselkamper holds a Bachelor of Arts degree in History and Government from Edgecliff College, a Master of Social Work degree from the University of Michigan, and a Doctor of Philosophy degree in Social Welfare from the Graduate Center of the City University of New York. She currently serves as the President of Chaminade University and is being nominated for appointment to the HHSC Oahu Regional Board as the nominee of the Oahu regional management advisory committee. Dr. Wesselkamper has previously served as a dean of a school of arts and science, an associate professor of social work, director of a social work field instruction program, and the head of a community and social services program. She is also actively involved in numerous educational and community organizations in the State.

Testimony in support of Dr. Wesselkamper was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Donald William Wood holds a Bachelor of Arts Degree in Economics and Sociology from the University of Saskatchewan and a Master of Public Health degree, a Master of Arts degree in Sociology, and a Doctor of Philosophy degree in Sociology from the University of Hawaii at Manoa. He currently serves as a Professor and the Chair of the Department of Sociology at the University of Hawaii at Manoa and is being nominated for appointment to the HHSC Oahu Regional Board as the nominee of the Oahu regional management advisory committee. Dr. Wood has taught for many years and served in various capacities in positions in the field of public health services and administration. He has received numerous awards for his work, has conducted

extensive research, made countless presentations, is highly published, and is a member of multiple professional and community organizations in the State and beyond.

Testimony in support of Dr. Wood was submitted by four individuals.

Your Committee questioned the nominees present regarding their backgrounds, qualifications, and desire to serve on the board. Your Committee finds that all nominees for the board have expressed a willingness to serve and that, as a whole, the nominees reflect a highly qualified cross-section of many disciplines. Your Committee believes this unique representation will allow the board to adequately address the needs and plans for improving health care facilities and providing improved health care services for the residents of Oahu.

As affirmed by the records of votes of the members of your Committee on Health that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 3. Noes, none. Excused, 2 (Menor, Whalen).

SCRep. 13 Intergovernmental and Military Affairs on Gov. Msg. No. 89

Recommending that the Senate advise and consent to the nomination of the following:

ADVISORY BOARD ON VETERANS' SERVICES

G.M. No. 89 HERBERT C. LUM, for a term to expire 6-30-2010

Your Committee received testimony in support of the nominee from the Office of Veterans Services and Advisory Board on Veterans Services.

Mr. Lum received a Bachelor of Science degree in accounting from the University of Southern California, a Master of Arts degree in business management from Central Michigan University, and a Certified Public Accountant designation in California. He serves in the Marine Reserves and was called to active duty in the Korean War as a combat intelligence officer with the 7th Marine Regiment, 1st Marine Division, U.S. Marine Corps. Mr. Lum was awarded the Combat Action Award, Korean Service with Five Stars, three Presidential Unit Citations, and several other Korean, United Nations, and U.S. awards.

The nominee was involved substantially as the Organizational Facilitator in the establishment of the West Hawaii Veterans Cemetery Development and Expansion Association, and is a member of the Veterans League of Hawaii Island. In addition, he holds membership in the Disabled American Veterans, Korean War Veterans Association, and the Chosin Few Aloha Chapter. Mr. Lum is also active in community organizations and activities.

Your Committee believes that the nominee is eminently qualified for membership to the Advisory Board on Veterans Services, and would make a valuable contribution to the board in issues concerning veterans.

As affirmed by the record of votes of the members of your Committee on Intergovernmental and Military Affairs that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 3. Noes, none. Excused, none.

SCRep. 14 Judiciary and Labor on Gov. Msg. Nos. 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 and 101

Recommending that the Senate advise and consent to the nominations of the following:

LANGUAGE ACCESS ADVISORY COUNCIL

G.M. No. 90 LITO M. ASUNCION, for a term to expire 6-30-2011;

G.M. No. 91 MARCELLA ALOHALANI BORNSTEIN BOIDO, for a term to expire 6-30-2009;

G.M. No. 92 EARNEST CHUNG, for a term to expire 6-30-2008;

G.M. No. 93 EARNEST CHUNG, for a term to expire 6-30-2012;

G.M. No. 94 CANISIUS TKEL FILIBERT, for a term to expire 6-30-2010;

G.M. No. 95 DOMINIC K. INOCELDA, for a term to expire 6-30-2008;

G.M. No. 96 DOMINIC K. INOCELDA, for a term to expire 6-30-2012;

G.M. No. 97 GERALD HISASHI OHTA, for a term to expire 6-30-2008;

G.M. No. 98 GERALD HISASHI OHTA, for a term to expire 6-30-2012;

G.M. No. 99 MAUREEN NAMAOKALANI RAWLINS, for a term to expire 6-30-2009;

G.M. No. 100 TIN MYAING THEIN, for a term to expire 6-30-2010; and

G.M. No. 101 SUZANNE MARIE ZENG, for a term to expire 6-30-2011

Upon review of the background information submitted by the nominee, Lito M. Asuncion, your Committee finds that Mr. Asuncion has been serving on the Language Access Advisory Council in an interim capacity since June 8, 2007 as the member representing a state immigrant agency. Mr. Asuncion is currently the Program Planner for the Hawaii County Office of Aging. Mr. Asuncion has also worked as an immigration information specialist for the Hawaii County Office of Management and was a program specialist and trainer for the Hawaii/American Samoa Bilingual Education Support Center.

Mr. Asuncion has been honored as a Certified Information and Referral Specialist in Aging, and is a member of the American Society of Aging and the Hawaii Pacific Gerontological Society.

Testimony in support of Mr. Asuncion was submitted by the Department of Labor and Industrial Relations, the Office of Language Access, the Congress of Visayan Organizations, the Filipino Coalition for Solidarity, the Hawaii State and Hawaii Island Rural Health Association, and three individuals.

Your Committee finds that Mr. Asuncion will continue to be an asset to the Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Marcella Alohalani Bornstein Boido, your Committee finds that Ms. Boido has been serving on the Language Access Advisory Council in an interim capacity since June 8, 2007 as the member representing a professional interpreter's organization. Ms. Boido currently serves as a court interpreter in both the state and federal court system. She has extensive experience as an interpreter and translator not only in the legal field but in the scientific, medical, technical, and business fields as well. Ms. Boido also has experience doing research and teaching.

Testimony in support of Ms. Boido's nomination was submitted by the Department of Labor and Industrial Relations, the Office of Language Access, the Hawaii Interpreter Action Network, and one individual.

Ms. Boido's wealth of knowledge and experience continue to make her well suited to be a member of the Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Sister Earnest Chung, your Committee finds that Sister Chung has been serving on the Language Access Advisory Council in an interim capacity since June 8, 2007 as the member representing a covered entity. Sister Chung is currently the Social Policy Director of Catholic Charities Immigrant Services section. She has previously served as the Director of the Alzheimer's Association's Community Outreach and Education program and serves on various community boards, including the board of directors of Kukui Gardens, St. Francis Health Care Systems, and the Hawaii Catholic Conference.

Testimony in support of Sister Chung's nomination was submitted by the Department of Labor and Industrial Relations, the Office of Language Access, the Maryknoll Sisters, the Hawaii Family Forum, the Hawaii Catholic Conference, and one individual.

Sister Chung's dedication to community service makes her an excellent choice as a member of the Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Canisius Tkel Filibert, your Committee finds that Mr. Filibert has been serving on the Language Access Advisory in an interim capacity since June 8, 2007. Mr. Filibert is currently a cultural equity specialist for the Micronesian Cultural Awareness Project, as well as a program specialist for the Sheltered Instruction Observation Protocol. Mr. Filibert also serves a program director of the Territories and Freely Associated States Education Grant Program and the Pacific Vocational Education Improvement Program, as well as serving as a program specialist for the Multicultural Education and Family Literacy Program. Mr. Filibert is also active in the community, volunteering his time with numerous groups and is also a Palauan interpreter for the state and federal courts.

Testimony in support of Mr. Filibert was submitted by the Department of Labor and Industrial Relations, the Office of Language Access, and two individuals.

Mr. Filibert's extensive experience related to language and cultural programs make him a key component to a well-rounded Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Dominic K. Inocelda, your Committee finds that Mr. Inocelda has been serving on the Language Access Advisory Council in an interim capacity since June 8, 2007. Mr. Inocelda is a manager of various programs at the Susannah Wesley Community Center. He has also worked as a researcher for the Legislature, as well as with the County of Maui Youth Services Center. Mr. Inocelda is also a licensed social worker and received his Master's Degree in Social Work from the University of Hawaii in 1981.

Testimony in support of Mr. Inocelda was submitted by the Department of Labor and Industrial Relations and the Office of Language Access.

Your Committee finds that based upon his background and experience, Mr. Inocelda's continued service on the Language Access Advisory Council would be a great benefit to the council.

Upon review of the background information submitted by the nominee, Gerald Hisashi Ohta, your Committee finds that Mr. Ohta has been serving on the Language Access Advisory Board in an interim capacity since June 8, 2007. Mr. Ohta is currently an Affirmative Action Officer for the Department of Health. Mr. Ohta is also involved as a Refugee Health Coordinator and serves on the Hawaii Supreme Court Committee on Equality and Access to the Courts, as well as the Hawaii Civil Rights Commission Committee on Diversity. Mr. Ohta is also a part of the Inter-Agency Council on Immigrant Services' Language Access Working Group.

Testimony in support of Mr. Ohta was submitted by the Department of Labor and Industrial Relations, the Department of Health, and the Office of Language Access.

Your Committee finds that Mr. Ohta's broad range of experience will bring a unique perspective to the Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Maureen Namakaokalani Rawlins, your finds that Ms. Rawlins has been serving on the Language Access Advisory Board in an interim capacity since June 8, 2007. Ms. Rawlins is currently the Director of 'Aha Punana Leo. Ms. Rawlins is also an Adjunct Assistant Professor in Hawaiian Language and is also the Chairperson of the Native Hawaiian Education Council. Ms. Rawlins received her Bachelor of Arts degree in Hawaiian Studies and is currently a Masters of Arts candidate.

Testimony in support of Ms. Rawlins was submitted by the Department of Labor and Industrial Relations and the Office of Language Access.

Your Committee finds that Ms. Rawlins educational and professional experiences make her an excellent choice for the Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Dr. Tin Myaing Thein, your Committee finds that Dr. Thein has been serving on the Language Access Advisory Board in an interim capacity since June 8, 2007. Dr. Thein is the Executive Director of the Pacific Gateway Center, which oversees various community-based programs assisting immigrants, refugees, and low-income individuals. Dr. Thein has also served as a lead trainer for the United Nations Development Program and as a Private Voluntary Organization Officer for USAID. Dr. Thein has also been a professor with the University of Hawaii's Graduate School of Public Health.

Testimony in support of Dr. Thein was submitted by the Department of Labor and Industrial Relations, the Office of Language Access, the Board of Directors of the Pacific Gateway Center, Aloha United Way, and one individual.

Your Committee finds that with over twenty five years of experience in community and economic development programs, Dr. Thein will continue to be a key asset to the Language Access Advisory Council.

Upon review of the background information submitted by the nominee, Suzanne Marie Zeng, your Committee finds that Ms. Zeng has been serving on the Language Access Advisory Board in an interim capacity since June 8, 2007. Ms. Zeng, an instructor at the University of Hawaii, teaches courses ranging from translation techniques, interpretation skills, principles of court interpreting, as well as community interpreting. Ms. Zeng also serves as freelance interpreter. Ms. Zeng received her Ph.D. in Chinese Linguistics from the University of Hawaii in 1996 and her Master's of Arts degree in East Asian Languages and Literature in 1989.

Testimony in support of Ms. Zeng was submitted by the Department of Labor and Industrial Relations and the Office of Language Access.

Ms. Zeng has a number of years of experience as an interpreter and is active in teaching interpretation skills and techniques. Based on this, your Committee finds that Ms. Zeng will serve the Language Access Advisory Council well.

As affirmed by the records of votes of the members of your Committee on Judiciary and Labor that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 2 (Hee, Kokubun).

SCRep. 15 Water and Land on Gov. Msg. No. 106

Recommending that the Senate advise and consent to the nomination of the following:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

G.M. No. 106 JOSEPH L. DWIGHT IV, for a term to expire 6-30-2008

Your Committee received testimony in support of the nominee from the Department of Business, Economic Development, and Tourism; Hawaii Community Development Authority; and three individuals.

Mr. Dwight is the President and General Manager of First American Title Company, Inc. He received a BA degree from the University of Hawaii at Manoa and a JD degree from the William S. Richardson School of Law. He worked for the law firm of Stubenberg & Durrett, Attorneys at Law, from 1995 to 2000. The nominee holds membership in the Young Presidents' Organization, The Pacific Club, Mid-Pacific Country Club, and Hawaii State Bar Association. Mr. Dwight is a trustee of the Le Jardin Academy.

Your Committee notes from the written testimony of Mr. Dwight that he takes his appointment very seriously. He states that Hawaii is a unique place and he has an obligation to ensure that the State remains so for the sake of future generations, particularly as to the Kaka'ako and Kalaeloa areas.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Whalen).

SCRep. 16 Water and Land on Gov. Msg. No. 108

Recommending that the Senate advise and consent to the nomination of the following:

KANEOHE BAY REGIONAL COUNCIL

G.M. No. 108 BENJAMIN KEOLAMA'ALAH LINDSEY, for a term to expire 6-30-2009

Your Committee received testimony in support of the nominee from the Department of Land and Natural Resources.

Mr. Lindsey is the Lead Advocate for Native Rights, Land and Culture at the Office of Hawaiian Affairs. He previously served as Cultural Historian with the State Historic Preservation Division of the Department Land and Natural Resources. Mr. Lindsey received a B.A. degree in Hawaiian Affairs from the University of Hawaii at Manoa. He is a member of and has served on the Board of Directors of the Kawaihae Canoe Club. He is the Office of Hawaiian Affairs' nominee to the Kaneohe Bay Regional Council.

Mr. Lindsey's background and knowledge in native Hawaiian culture and practices add considerable perspective to the management of Kaneohe Bay. He has an appreciation and respect for the waters of the State. As such, his presence on the Council will be a great asset.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Whalen).

SCRep. 17 Water and Land on Gov. Msg. No. 109

Recommending that the Senate advise and consent to the nomination of the following:

LAND USE COMMISSION

G.M. No. 109 KYLE JAMES KALEO CHOCK, for a term to expire 6-30-2010

Your Committee received testimony in support of Kyle James Kaleo Chock from the Department of Labor and Industrial Relations; University of Hawaii – West Oahu; one Hawaii State Representative; two Honolulu City Councilmembers; Building Industry Association of Hawaii;

Watanabe Ing & Komeiji; Child & Family Service; Iron Workers Stabilization Fund; NORDIC Construction, Ltd.; ILWU Local 142; Hawaii State AFL-CIO; HGEA; The Chamber of Commerce of Hawaii; Hawaii Institute for Public Affairs; Bank of Hawaii; Nalo Farms; Hawai'i Hotel & Lodging Association; Hawaii Business Roundtable; Hawaii Carpenters Union; 100th Infantry Battalion Veterans; Laborers-Employers Cooperation and Education Trust; Alan Shintani, Inc.; Alexander & Baldwin, Inc.; Lanakila; Outrigger Enterprises Group; Iroquois Point Island Club; Kiewit Building Group; Kaneohe Ranch; CC Engineering & Construction, Inc.; Ralph S. Inouye Co Ltd; Hidano Construction Inc.; International Union of Painters and Allied Trades District Council 50; General Contractors Association of Hawaii; PMCI Hawaii; Koga Engineering & Construction, Inc.; KUD International; Hawaii Vinyl Fencing Inc.; First Hawaiian Bank; Hawaiian Dredging Construction Company; International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local Union Number 625; Land Use Research Foundation of Hawaii; KAHEA; Winer Meheula & Devens; Harrison & Matsuoka; and nineteen individuals.

Mr. Chock is currently the Executive Director of The Pacific Resource Partnership, where he develops and manages programs that support unionized construction and fosters strategic relationships with developers. The nominee has worked for AIG Hawaii as a Group Sales Account Executive; Honolulu Community College as Executive Assistant to the Chancellor; Stryker Weiner & Yokota Public Relations, Inc., as Senior Account Executive; and former Honolulu City Council Chairman Jon Yoshimura.

Mr. Chock's community service includes serving on the Board of Directors of Lanakila Rehabilitation Foundation; Board of Directors of Child and Family Service; The Nature Conservancy Corporate Council for the Environment; and Board of Directors of Housing Hawaii.

As a member of the Nature Conservancy's Council for the Environment and in his role at the Pacific Resource Partnership, Mr. Chock has gained a deep understanding of land use and environmental conservation and the many issues facing the community. Your Committee believes he has a great appreciation for the need to look at land use issues from all stakeholder perspectives. Mr. Chock's collective experiences, balanced point of view, and collaborative approach enable him to serve the needs of the public as a Land Use Commissioner. He takes very seriously his responsibility to shape the future development of Hawaii.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 5. Noes, none. Excused, none.

SCRep. 18 Water and Land on Gov. Msg. No. 112

Recommending that the Senate advise and consent to the nomination of the following:

COMMISSION ON WATER RESOURCE MANAGEMENT

G.M. No. 112 DONNA FAY K. KIYOSAKI, for a term to expire 6-30-2011

Your Committee received testimony in support of the nominee from the Department of Land and Natural Resources; Alexander & Baldwin, Inc.; Matsui Chung; Oceanit; and one individual.

Ms. Kiyosaki was most recently with Waimana Enterprises, Inc., as Senior Vice President of Development. She was responsible for business development opportunities and activities including expansion and leveraging of company assets and infrastructure. Additionally, she negotiated contracts and agreements with potential business partners, customers, and investors. She has had previous experience as Chief Engineer for the Honolulu Board of Water Supply, Hawaii County Department of Public Works, and Hawaii County Department of Water Supply; and as Administrator, Rural Line Extension Program for the Hawaii Electric Light Co., Inc. Ms. Kiyosaki has worked as an engineer for the Honolulu Department of Transportation Services, Okahara & Associates, Inc., and M&E Pacific, Inc. She received a Bachelor of Science degree in Civil Engineering from Stanford University, and is a Registered Professional Engineer in Hawaii. The nominee also has extensive involvement in various professional associations and community organizations.

Ms. Kiyosaki's professional and educational background as a civil engineer in the field of water management and conservation makes her a valuable addition to the commission. In her short time as an interim appointment, she has demonstrated an immediate and in-depth grasp of the various water resource issues brought before the Commission on Water Resource Management.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 3. Noes, none. Excused, 2 (Hee, Whalen).

SCRep. 19 Judiciary and Labor on Gov. Msg. No. 3

Recommending that the Senate advise and consent to the nomination of the following:

DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

G.M. No. 3 DARWIN CHING, for a term to expire 12-6-2010

Upon review of the background information submitted by the nominee, Darwin L.D. Ching, your Committee finds that Mr. Ching is currently the interim director of the Department of Labor and Industrial Relations, a post he has held since August 9, 2007. He also serves as a hearings officer for the Department of Hawaiian Home Lands.

Mr. Ching has been an attorney since 1976, when he graduated as part of the first graduating class of the Richardson School of Law at the University of Hawaii. He has practiced in several different fields as a private attorney, engaging in various types of litigation including personal injury, business law, and family law. Mr. Ching has also served with the Department of the Attorney General and as a Supervising Deputy Prosecuting Attorney for the City and County of Honolulu.

Mr. Ching also has several years of arbitration experience and has undertaken labor-related private arbitrations involving the United Public Workers and the Hawaii Governmental Employees Association.

Prior to becoming an attorney, Mr. Ching was a social studies teacher at Kaimuki Intermediate School.

Mr. Ching is also active in the community, contributing his time to Palama Settlement by serving on its Board of Directors for Community Organization. He has also served as a member of the Hawaii Board of Education.

Testimony in support of Mr. Ching was submitted by the Department of Transportation; the Comptroller; the Office of Hawaiian Affairs; the Director of Business, Economic Development, and Tourism; the Director of the Department of Hawaiian Home Lands; the Hawai'i Occupational Safety and Health Advisory Committee; the Ironworkers Union, Local 625; the Ironworkers Union Stabilization Fund, Local 625; the Hawaii Laborers'-Employers Cooperation and Education Trust; the State of Hawaii Organization of Police Officers; the United Public Workers, AFSCME, Local 646, AFL-CIO; the Hawaii Building and Construction Trades Council; The Chamber of Commerce of Hawaii; the Hawaii State Teachers Association; the Hawaii Carpenters Union; the Hawaii Operating Engineers Industry Stabilization Fund; the Hawaii Government Employees Association; the Hawaii State AFL-CIO; the Hawai'i Civil Rights Commission; the Hawaii Medical Association; Hawaiian Dredging Construction Company; the Building Industry Association of Hawaii; the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO; and eighty-nine individuals.

Testimony in opposition of Mr. Ching's nomination was submitted by one individual.

One individual submitted comments.

Your Committee finds the overwhelming testimony submitted in Mr. Ching's favor shows that Mr. Ching is an innovative, committed, and dedicated individual. The testimony also demonstrates that Mr. Ching has played a positive role during his short time with the Department of Labor and Industrial Relations. Mr. Ching has many years of varied experience that will serve him well as the Director of Labor and Industrial Relations.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 2 (Hee, Kokubun).

SCRep. 20 Public Safety on Gov. Msg. No. 4

Recommending that the Senate advise and consent to the nomination of the following:

DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY

G.M. No. 4 CLAYTON A. FRANK, for a term to expire 12-6-2010

Your Committee received testimony in support of the nominee from the Department of Public Safety; Department of Accounting and General Services; Department of Health; Department of Transportation; Department of Labor and Industrial Relations; State Attorney General; two State House Representatives; Office of Hawaiian Affairs; Crime Victim Compensation Commission; the Mayor of Hawaii County; Kulani Correctional Facility; Maui Community Correctional Center; Women's Community Correctional Facility; Waiawa Correctional Facility; Maui Economic Opportunity, Inc.; Hina Mauka; State of Hawaii Organization of Police Officers; United Public Workers; Ironworkers Stabilization Fund, Local 625; International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Hawaii Government Employees Association; Local 665 Hawaii's Technicians for Film, Television, Stage, and Projection; and fifty-three individuals. Testimony in opposition was received from four individuals.

Mr. Clayton Frank received a Bachelor of Arts degree in Sociology and a Masters of Art degree in Social Work from the University of Hawaii at Manoa. He has been the Interim Director of the Department of Public Safety since May of 2007. Prior thereto he served as Warden/Administrator of the Halawa Correctional Facility from April 2003 to May 2007; as Warden/Administrator of the Oahu Correctional Facility from March 1991 to April 1992 and again from June 1999 to April 2003; Institutional Division Administrator from November 1995 to May 1999; Inspections and Investigations Officer from January 1995 to November 1995 and again from April 1992 to May 1994; Acting Director for Law Enforcement from May 1994 to December 1994; Acting Warden/Administrator from March 1990 to March 1991; Corrections Supervisor I and II from November 1985 to May 1990; and as social worker and probation officer during 1981 to 1985. Mr. Frank has extensive training in correctional and law enforcement work from the National Institute of Corrections.

Although it has been a short period of time since Mr. Frank was appointed as Interim Director, he has demonstrated through his actions that he possesses not only the ability to lead the department, but he has begun to define his vision to move the department forward and to address long-standing issues of concern. These issues include re-integration of the prison population, consolidation and efficiency of state law enforcement entities, and long-term maintenance and repair of aging correctional facilities. Testimony indicated that Mr. Frank has been able to begin the process of repairing fractured lines of communication and oftentimes strained working relationships within the Department of Public Safety. He has worked tirelessly with his staff and the union to address overtime costs and other issues of critical concern to the employees. He has been forward-thinking in exploring partnership opportunities with private, non-profit, and faith-based organizations to address recidivism. He plans to further expand re-entry services throughout the State.

Testimony further indicated that Mr. Frank has worked with the Attorney General to address issues concerning the provision of mental health services at the Oahu Community Correctional Facility. The Attorney General found him to be intelligent, honest, knowledgeable, ethical, honest, involved, and deeply caring about the department and the inmates in his charge.

Your Committee notes from the written statement of Mr. Frank that his hopes for the department are intertwined with his desire to assist and encourage all employees to achieve their full potential in their professional lives. From his twenty-six year tenure with the department, he believes the majority of the employees are good, hard working, diligent individuals who are committed to excellence. He has made employee development a priority to build a strong foundation for the department and for the offenders entrusted in their care.

Your Committee notes further the testimony in opposition to the nominee based upon a lawsuit against the department that named Mr. Frank as a defendant. The State lost the lawsuit and ultimately paid just under two million dollars to the three plaintiffs. Apparently, Mr. Frank was a supervisor at that time who allegedly knew of the incidents in his official capacity. Following the lawsuit, no administrative action was taken against him. Mr. Frank testified he learned from the lawsuit and has made an effort to apply this knowledge to his administrative protocols, including instituting sexual and gender harassment training of corrections officers and supervisors. Accordingly, Mr. Frank indicated he would look into requiring regularly scheduled periodic sexual and gender harassment training. Mr. Frank also testified that he learned the importance of

being aware of the impact of his decisions and to be more mindful of his acts, which he has similarly stressed to the employees and supervisors. He has instituted a protocol to handle claims of sexual and gender harassment, including ultimately referring the matter to the Attorney General for possible prosecution. Finally, your Committee believes that Mr. Frank's extensive experience of over twenty-five years in corrections and social work offsets this objection.

In response to questions from your Committee regarding the ultimate responsibility for actions or non-actions of department personnel, the nominee said that the "buck stops with me," meaning that he takes the ultimate responsibility for the mistakes of his personnel. With regard to the number of returning women prisoners from the mainland, Mr. Frank is mainly concerned that worthwhile rehabilitation and reintegration programs are available to the returning inmates so that they do not worsen their situation when returning home.

Your Committee notes further from Mr. Frank's vision statement that his overall vision for the department is to have it improve on development and delivery of programs designed to address the "criminogenic needs of the offender," and to ensure a "seamless transition from the facilities to the community" by linking offenders to services before they walk out of the facilities.

Your Committee believes that Mr. Frank possesses the following qualifications that warrant his confirmation:

- (1) His long experience in corrections and vast knowledge of the corrections system;
- (2) His commitment to improving the prison system and the morale of employees;
- (3) His satisfactory performance to date as Interim Director; and
- (4) His enthusiasm for bringing home the women prisoners now on the mainland.

As a safeguard, your Committee intends to keep abreast of the workings and any problems of the Department of Public Safety. To this end, each of your Committee members welcomes public comment at any time.

As affirmed by the record of votes of the members of your Committee on Public Safety that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, none.

SCRep. 21 Agriculture and Hawaiian Affairs on Gov. Msg. Nos. 6, 7, 8, 9 and 10

Recommending that the Senate advise and consent to the nominations of the following:

ISLAND BURIAL COUNCIL, ISLAND OF HAWAII

G.M. No. 6 JAMES G. LEE, JR., for a term to expire 6-30-2009;

ISLAND BURIAL COUNCIL, ISLANDS OF KAUA'I AND NI'HAU

G.M. No. 7 MICHAEL Y.M. LOO, for a term to expire 6-30-2008;

G.M. No. 8 MICHAEL Y.M. LOO, for a term to expire 6-30-2012;

ISLAND BURIAL COUNCIL, ISLAND OF O'AHU

G.M. No. 9 ANGELA LISA LEIMAILE EHIA-QUITEVIS, for a term to expire 6-30-2008;

G.M. No. 10 ANGELA LISA LEIMAILE EHIA-QUITEVIS, for a term to expire 6-30-2012

Your Committee reviewed the personal histories, resumes, and statements submitted by the nominees, and finds James G. Lee, Jr. (Island of Hawai'i); Michael Y.M. Loo (Islands of Kaua'i and Ni'ihau); and Angela Lisa Leimaile Ehia-Quitevis (Island of O'ahu) to have the necessary qualifications to be nominated to serve as members on the Island Burial Councils.

Testimony in support of James G. Lee, Jr.'s nomination was submitted by the Department of Land and Natural Resources and one individual. Five individuals submitted testimony in opposition to Mr. Lee's nomination.

Mr. Lee graduated from Maryknoll School and received his Bachelor of Arts in Business Administration from Chaminade University. He currently serves as the Director of Development for W.H. Shipman Ltd. where he is responsible for the management and development of all industrial, commercial, and residential properties owned and operated by the company. Furthermore, he is responsible for ensuring that these properties are maintained and operated in a manner that is in the best interest of the company, and consistent with the company's commitment to be a good corporate citizen. Previous to his employment at W.H. Shipman, Ltd., Mr. Lee served as a Project Manager for Oceanside 1250, a Vice President for JGL Enterprises, and a Housing and Community Development Specialist for the Department of Housing and Community Development, City and County of Honolulu.

Your Committee notes the testimony received in opposition to Mr. Lee's nomination, specifically citing his prior employment at Oceanside 1250, the developer of the Hōkūli'a project on the Big Island, and raising concerns that his prior involvement with this project poses a conflict of interest if he serves on the Island Burial Council, Island of Hawai'i, especially given the frequency in which agenda items regarding the Hōkūli'a project are posted. Via speakerphone, Mr. Lee testified to your Committee that he feels that he can still be an effective member of the Island Burial Council despite his prior employment at Oceanside 1250, and if any conflict of interest arises relating to Hōkūli'a, he hopes that the Deputy Attorney General assigned to the Council will provide further guidance to him. Mr. Lee further stated that he believes that the Island Burial Council should not revolve around a single landowner, and to judge him solely on his past affiliation with the Hōkūli'a project would be a disservice to the Council.

Your Committee further notes the peculiar situation the Island Burial Council, Island of Hawai'i is in as the Council is unable to meet due to its current vacancy for a landowner or developer representative on the Council and the quorum problems this vacancy has caused without representation from this category. Despite concerns raised over his prior employment with the Hōkūli'a project, your Committee is assured that Mr. Lee can still be an effective member of the Council and notes that his current employment with W.H. Shipman, Ltd. poses a minimal conflict of interest.

Mr. Lee is nominated to represent the large property owners and developers on the Island of Hawai'i. He has the education, experience, and commitment to assist the Island Burial Council, Island of Hawai'i in determining the preservation or relocation of previously identified Native Hawaiian burial sites; assisting the Department of Land and Natural Resources in the inventory and identification of Native Hawaiian burial sites; and making recommendations regarding appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any other matters relating to Native Hawaiian burial sites. Mr. Lee's demonstrated commitment to and professional experience in the areas of land use, land management, and land development will prove to be valuable assets for the Island Burial Council, Island of Hawai'i.

Testimony in support of Michael Y.M. Loo's nomination was submitted by the Department of Land and Natural Resources and twelve individuals.

Mr. Loo is a graduate of St. Louis School in Honolulu and received his Bachelor of Arts in Speech Communications from the University of Hawai'i at Mānoa. He currently serves as President and Owner of Building Solutions, Inc., which is a real estate management and consulting firm primarily associated with directing real estate and development activities for Princeville at Hanalei on the Island of Kaua'i. Prior to his current position, he held various positions with Princeville Corporation with ascending responsibility and authority, including project management, facility operations and maintenance, and land and community development.

Mr. Loo is nominated to represent the large property owners and developers on the Islands of Kaua'i and Ni'ihau. He has the education, experience, and commitment to assist the Island Burial Council, Islands of Kaua'i and Ni'ihau in determining the preservation or relocation of previously identified Native Hawaiian burial sites; assisting the Department of Land and Natural Resources in the inventory and identification of Native Hawaiian burial sites; and making recommendations regarding appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any other matters relating to Native Hawaiian burial sites. Mr. Loo's demonstrated commitment to and professional experience in the areas of land use, land management, and land development will prove to be valuable assets for the Island Burial Council, Islands of Kaua'i and Ni'ihau.

Testimony in support of Angela Lisa Leimaile Ehia-Quitevis's nomination was submitted by the Department of Land and Natural Resources, KAHEA: The Hawaiian Environmental Alliance, and one individual.

Ms. Ehia-Quitevis received her general equivalency diploma from the Waipahu Community Adult Education Program, and has completed several courses in ho'oponopono, Hawaiian history, oli, and 'ōlelo, and facilitation training. She currently works at Hālau Lōkahi Public Charter School as a Community Coordinator for the Aho Loa Program and has been a Kia'i 'Āina or a Native Hawaiian Cultural Monitor with Garcia and Associates, and a Native Hawaiian Coordinator and Community Resource Manager at Kanu O Ka 'Āina Learning 'Ohana.

Ms. Ehia-Quitevis is affiliated with and is currently serving on several community and cultural organizations, including as a member of Friends of Kūkaniloko, a Board Member for Nā Ki'i Ke 'Āno, a member of the Hawaiian Civic Club of Wahiawā, and a Board Member for the Aloha 'Āina Society. Of particular note, in 2006, she was the recipient of the Kalaniana'ole Award, which recognizes an outstanding Hawaiian Civic Club member for service to the community-at-large by the Association of Hawaiian Civic Clubs.

Ms. Ehia-Quitevis is nominated to serve as a regional representative for the Waialua region on the Island of O'ahu. She has extensive knowledge and experience in caring for and protecting the iwi and is committed to continuing the legacy of the kūpuna. Ms. Ehia-Quitevis not only has a strong sense of kuleana to teach future generations to care for their community and the iwi kūpuna, but also hopes to be a bridge between the community and the Island Burial Council, Island of O'ahu, and restore trust between these groups. She has the understanding and requisite cultural sensitivity to assist the Island Burial Council, Island of O'ahu in determining the preservation or relocation of previously identified Native Hawaiian burial sites; assisting the Department of Land and Natural Resources in the inventory and identification of Native Hawaiian burial sites; and making recommendations regarding appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any other matters relating to Native Hawaiian burial sites. Ms. Ehia-Quitevis will be a valuable asset to the Island Burial Council, Island of O'ahu.

As affirmed by the records of votes of the members of your Committee on Agriculture and Hawaiian Affairs that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Record of votes for James G. Lee, Jr. and Angela Lisa Leimaile Ehia-Quitevis: Ayes, 4. Noes, none. Excused, 2 (Gabbard, Hee).

Signed by the Chair on behalf of the Committee. Record of votes for Michael Y.M. Loo: Ayes, 4. Noes, none. Excused, 2 (English, Hee).

SCRep. 22 Health on Gov. Msg. Nos. 45, 46, 47, 48, 49, 50, 51 and 52

Recommending that the Senate advise and consent to the nominations of the following:

HAWAI'I HEALTH SYSTEMS CORPORATION EAST HAWAI'I REGIONAL BOARD

- G.M. No. 45 SIDNEY MITSUO FUKU, for a term to expire 6-30-2009;
- G.M. No. 46 BRENDA SUE HO, for a term to expire 6-30-2010;
- G.M. No. 47 ROBERT DAILY IRVINE, for a term to expire 6-30-2010;
- G.M. No. 48 BRIAN M. IWATA, for a term to expire 6-30-2010;
- G.M. No. 49 DENNIS DON LEE, for a term to expire 6-30-2009;
- G.M. No. 50 CAROL IADELUCA MYRIANTHIS, R.P.T., PSYD, for a term to expire 6-30-2009;
- G.M. No. 51 ALAN M. OKAMOTO, for a term to expire 6-30-2009; and
- G.M. No. 52 CRAIG Y. SHIKUMA, M.D., for a term to expire 6-30-2010

Your Committee reviewed the personal statements, histories and resumes submitted by the nominees, and finds Sidney Mitsuo Fuke, Brenda Sue Ho, Dr. Robert Daily Irvine, Brian M. Iwata, Dr. Dennis Don Lee, Dr. Carol Iadeluca Myrianthis, Alan M. Okamoto, and Dr. Craig Y. Shikuma to have the necessary qualifications to be nominated to the Hawaii Health Systems Corporation East Hawaii Regional Board.

Testimony in support of Sidney Mitsuo Fuke's nomination to the East Hawaii Regional Board was submitted by eleven individuals.

Mr. Fuke is a resident of Hilo, Hawaii. He served as County of Hawaii Planning Director for eight years and has been a self-employed Planning Consultant over the past twenty years. In addition, he has served as President of Hospice of Hilo and continues to serve as a board member. Mr. Fuke's experience and dedication to the community will enable him to be a valuable asset to the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Brenda Sue Ho's nomination to the East Hawaii Regional Board was submitted by fifteen individuals.

Mrs. Ho is a resident of Keaau, Hawaii. She currently serves as Executive Director of Hospice of Hilo. She has been living and working in the community for the past seventeen years and is keenly aware of the critical healthcare issues facing the community. Mrs. Ho has proven community dedication, particularly in the healthcare field, together with her experience and knowledge will greatly benefit the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Dr. Robert Daily Irvine's nomination to the East Hawaii Regional Board was submitted by three individuals.

Dr. Irvine is a resident of Hilo, Hawaii and has served as a community physician for many years. He received his medical degree from Columbia University in 1966 and has been affiliated with Hilo Medical Center since 1973. Dr. Irvine has an impressive list of awards and accolades in the healthcare field. Dr. Irvine's dedication to the community and improving healthcare for East Hawaii, coupled with his extensive knowledge and expertise, will prove to be a valuable asset to the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Brian M. Iwata's nomination to the East Hawaii Regional Board was submitted by three individuals.

Mr. Iwata is a resident of Hilo, Hawaii. He is a Certified Public Accountant and a partner with Taketa, Iwata, Hara, and Associates, LLC. His area of expertise is in tax planning and preparation for individuals, businesses, non-profits, estates, and trusts. Mr. Iwata will be an excellent addition to the East Hawaii Regional Board of the Hawaii Health Systems Corporation, bringing expertise in the field of accounting to assist in crucial financial matters facing healthcare in the Hilo community.

Testimony in support of Dr. Dennis Don Lee's nomination to the East Hawaii Regional Board was submitted by five individuals.

Dr. Lee is a resident of Hilo, Hawaii. He has served the Hilo medical community since 1985 and has seen the healthcare needs of the island of Hawaii first-hand. Since 2001, he has served as the Psychiatric Medical Director at Hilo Medical Center. Since 2006, Dr. Lee has been an Assistant Clinical Professor at the University of Hawaii John A. Burns School of Medicine, Department of Psychiatry. Dr. Lee's extensive experience, education, and dedication to the community will allow him to be a valuable asset to the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Dr. Carol Iadeluca Myrianthis's nomination to the East Hawaii Regional Board was submitted by four individuals.

Dr. Myrianthis is a resident of Hilo, Hawaii. She received her Doctoral Degree in Psychology from the California Coast University in 2003. She is co-owner of Pahoa Physical Therapy/ Rural Rehabilitation Clinic and has over twenty eight years of experience in the physical therapy field. Dr. Myrianthis has served as President of the Hilo Medical Center Foundation and has also been a member of the Hawaii Health Systems Corporation Corporate Board. She is very aware of the difficulties facing the healthcare field in the Hilo community. Dr. Myrianthis's experience, knowledge, and community dedication will greatly benefit the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Alan M. Okamoto's nomination to the East Hawaii Regional Board was submitted by six individuals.

Mr. Okamoto is a resident of Hilo, Hawaii. He is an attorney with Nakamoto, Okamoto, and Yamamoto, L.C., focusing on real estate, business transactions, and estate planning. Prior to working with the law firm, he worked as Deputy and Assistant Corporation Counsel for the County of Hawaii. Born and raised in Hilo, Mr. Okamoto has a strong desire to improve the community and the healthcare services it needs. He has extensive board and organization memberships and is well-respected in the community. Mr. Okamoto's knowledge and experience will greatly benefit the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Dr. Craig Y. Shikuma's nomination to the East Hawaii Regional Board was submitted by three individuals.

Dr. Shikuma is a resident of Hilo, Hawaii. He graduated from Hilo High School in 1969 and received his Doctor of Medicine degree from the University of Hawaii John A. Burns School of Medicine in 1977. He is currently the Medical Director at Hilo Medical Center's Extended Care Facility, has a private practice in Hilo, and is an Assistant Clinical Professor at the University of Hawaii John A. Burns School of Medicine, Department of Medicine. Dr. Shikuma is acutely aware of the healthcare issues facing Hawaii and is extremely dedicated to improving healthcare in the community. Dr. Shikuma's proven community dedication, knowledge, education, and expertise in the healthcare field will make him an essential part of the East Hawaii Regional Board of the Hawaii Health Systems Corporation.

As affirmed by the records of votes of the members of your Committee on Health that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Menor).

SCRep. 23 Health on Gov. Msg. Nos. 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62

Recommending that the Senate advise and consent to the nominations of the following:

HAWAII HEALTH SYSTEMS CORPORATION WEST HAWAII REGIONAL BOARD

G.M. No. 53 ALISTAIR WILLIAM BAIROS, for a term to expire 6-30-2009;

G.M. No. 54 BARRY BLUM, for a term to expire 6-30-2010;

- G.M. No. 55 JOHN D. CORNILLEZ, for a term to expire 6-30-2009;
- G.M. No. 56 JAMES W. HIGGINS, for a term to expire 6-30-2010;
- G.M. No. 57 DAVID BRUCE MAKALIU KAAPU, for a term to expire 6-30-2010;
- G.M. No. 58 BRUCE MAKAREWICZ, for a term to expire 6-30-2009;
- G.M. No. 59 RICHARD M. MCDOWELL, M.D., for a term to expire 6-30-2010;
- G.M. No. 60 LEON PASKER, for a term to expire 6-30-2009;
- G.M. No. 61 RICHARD J. TAAFFE, for a term to expire 6-30-2010; and
- G.M. No. 62 ELIZABETH HEIMAN ZAGORODNEY, for a term to expire 6-30-2010

Your Committee reviewed the personal statements, histories and resumes submitted by the nominees, and finds Dr. Alistair William Bairos, Dr. Barry Blum, John D. Cornillez, James W. Higgins, David Bruce Makaliu Kaapu, Bruce Makarewicz, Dr. Richard M. McDowell, Leon Pasker, Richard J. Taaffe, and Elizabeth Heiman Zagorodney to have the necessary qualifications to be nominated to the Hawaii Health Systems Corporation West Hawaii Regional Board.

Testimony in support of Dr. Alistair Bairos's nomination to the West Hawaii Regional Board was submitted by two individuals.

Dr. Bairos is a resident of Kealahou, Hawaii. He received his medical degree from Dalhousie University School of Medicine, Halifax, Nova Scotia, Canada in 1977 and completed his surgical residency at San Joaquin County Hospital in Stockton, California in 1985. Dr. Bairos currently is a general surgeon in private practice in Hawaii and is an active staff member of Kona Community Hospital and North Hawaii Community Hospital. Dr. Bairos's experience and education will enable him to be a valuable asset to the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Dr. Barry Blum's nomination to the West Hawaii Regional Board was submitted by two individuals.

Dr. Blum is a resident of Kealahou, Hawaii. He received his medical degree from the University of Rochester School of Medicine in 1965 and completed his orthopedic surgical residency at Stanford Medical Center in 1971. Dr. Blum is an orthopedic surgeon and currently serves as the Medical Director at Kona Community Hospital and has been affiliated with the hospital since 1988. He has published several scholarly articles and is active in the community. Dr. Blum's education, experience, and community dedication will enable him to serve as a valuable asset to the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of John D. Cornillez's nomination to the West Hawaii Regional Board was submitted by two individuals.

Mr. Cornillez is a resident of Kapaau, Hawaii. He received his bachelor's degree in Business Management from Brigham Young University in Hawaii in 1985 and served the Hawaii Army National Guard from 1985 to 1995. He is a Registered Financial Consultant and owns the independent insurance broker firm, The Cornillez Group LLC. Mr. Cornillez's knowledge and expertise will allow him to be a valuable member of the West Hawaii Regional Board of the Hawaii Health Systems Corporation, representing the North Kohala community.

Testimony in support of James W. Higgins's nomination to the West Hawaii Regional Board was submitted by two individuals.

Mr. Higgins is a resident of Kailua-Kona, Hawaii and a Punahou graduate. He received his Bachelor of Science in Economics degree from the University of Pennsylvania-Wharton School of Finance and Commerce in 1964. He was also an officer in the U.S. Navy and served from 1964 to 1967. Mr. Higgins currently serves as the chairman of the Kona Hospital Foundation. Prior to his retirement, he worked as a Branch Manager-Financial Consultant with Smith Barney. Mr. Higgins's knowledge and expertise will allow him to be a valuable member of the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of David Bruce Makaliu Kaapu's nomination to the West Hawaii Regional Board was submitted by two individuals.

Mr. Kaapu is a resident of Kailua-Kona and an attorney specializing in quiet title, business law, and general litigation. He has worked in the West Hawaii community for more than seventeen years and is committed to resolving many of the healthcare related challenges facing the State. He has also served on the YMCA Corporate Board of Directors Hawaii Islands, is currently serving as Director of Friends of NELHA and the Agriculture Leadership Foundation of Hawaii. Mr. Kaapu's experience and community dedication will allow him to be a valuable asset to the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Bruce Makarewicz's nomination to the West Hawaii Regional Board was submitted by two individuals.

Mr. Makarewicz is a resident of Kailua-Kona. He is the owner of Advanced Drug Testing Services, LLC, and currently serves as President on the Board of the West Hawaii Community Health Center. He has served on many community boards and has a strong work history in clinical labs and drug testing labs. Mr. Makarewicz brings valuable work experience coupled with board services that will greatly benefit the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Dr. Richard M. McDowell's nomination to the West Hawaii Regional Board was submitted by two individuals.

Dr. McDowell is a resident of Holualoa, Hawaii. He received his medical degree from the University of California at Los Angeles in 1975. Currently, Dr. McDowell serves as Chairman of the Department of Emergency Medicine at Kona Community Hospital and is Medical Director of the West Hawaii Fire Department Paramedics. He has published several scholarly articles and asked to give numerous lectures relating to emergency medicine and quality health care management. Dr. McDowell has a keen understanding of the challenges facing the West Hawaii healthcare system and has been very involved in bringing necessary change and improvement to West Hawaii. Dr. McDowell's experience, knowledge, insight, and community dedication make him a valuable addition to the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Leon Pasker's nomination to the West Hawaii Regional Board was submitted by one individual.

Mr. Pasker is a resident of Kailua-Kona. He is an active practicing litigation attorney with Lacy & Jackson, LLC, specializing in business law, contracts, trust, probate, estate, landlord tenant, real estate, and other civil financial law. He currently serves as Director for Bridge House, a non-

profit in-patient rehabilitation facility for dual diagnosed recovering clients. Prior to moving to Hawaii, he worked as a trial attorney for the U.S. Department of Labor, litigating cases on behalf of the agencies within the department. Mr. Pasker's vast legal experience and knowledge, coupled with his dedication to the healthcare community will enable him to be a valuable asset to the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

Testimony in support of Richard J. Taaffe's nomination to the West Hawaii Regional Board was submitted by the Hawaii Primary Care Association and two individuals.

Mr. Taaffe is a resident of Kailua-Kona. He currently serves as the Executive Director of West Hawaii Community Health Center. His prior experience includes serving as CEO of La Familia Medical Center in Santa Fe, New Mexico, where successfully managed a multitude of issues from increasing cash reserves and overseeing a \$10 million budget to secure federal, state, and local appropriations. Mr. Taaffe has extensive experience with many of the challenges surrounding medical systems and is committed to improving the healthcare system in Hawaii. Mr. Taaffe's membership on the West Hawaii Regional Board of the Hawaii Health Systems Corporation will greatly benefit the West Hawaii community.

Testimony in support of Elizabeth Heiman Zagorodney's nomination to the West Hawaii Regional Board was submitted by one individual.

Ms. Zagorodney is a resident of Kailua-Kona. She currently serves as Executive Director of the American Cancer Society, West Hawaii office. Through her current position she has become acutely aware of the challenges facing West Hawaii's healthcare community. In addition, she has vast experience with the Asian market which has enabled her to become well acquainted with the numerous cultural and ethnic diversity issues in Hawaii. Ms. Zagorodney's experience and dedication to the healthcare community will enable her to be a valuable asset to the West Hawaii Regional Board of the Hawaii Health Systems Corporation.

As affirmed by the records of votes of the members of your Committee on Health that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Menor).

SCRep. 24 Health on Gov. Msg. Nos. 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73

Recommending that the Senate advise and consent to the nominations of the following:

HAWAII HEALTH SYSTEMS CORPORATION KAUAI REGIONAL BOARD

- G.M. No. 63 NORMAN AKITA, for a term to expire 6-30-2010;
- G.M. No. 64 LAVERNE L. BESSERT, for a term to expire 6-30-2009;
- G.M. No. 65 LINDA FAYE COLLINS, for a term to expire 6-30-2009;
- G.M. No. 66 TIMOTHY BLAKE CRANE, M.D., for a term to expire 6-30-2010;
- G.M. No. 67 ROSELIND BARBARA BULATAO-FRANKLIN, for a term to expire 6-30-2010;
- G.M. No. 68 RICHARD B. GODING, M.D., for a term to expire 6-30-2009;
- G.M. No. 69 RANDALL J. HEE, for a term to expire 6-30-2010;
- G.M. No. 70 JODY KJELDSSEN, for a term to expire 6-30-2009;
- G.M. No. 71 DAVID JOHN PETERS, for a term to expire 6-30-2010;
- G.M. No. 72 MARIANO TORRES, M.D., for a term to expire 6-30-2010; and
- G.M. No. 73 ESTELITA CABAL TRINIDAD, for a term to expire 6-30-2009

Upon review of the background information submitted by the nominee, your Committee finds that Norman Akita holds a Bachelor of Arts degree from Brigham Young University and a Master of Social Work degree from the University of Hawaii. He is a retired consultant for property rental and investment management services and is being nominated for appointment to the Hawaii Health Systems Corporation (HHSC) Kauai Regional Board as a nominee of the Kauai regional management advisory committee. Mr. Akita has previously been employed by the State and is formerly a co-owner of Akita Enterprises. He is actively involved in community and organizations in the State.

Testimony in support of Mr. Akita was submitted by two individuals.

Upon review of the background information submitted by the nominee, your Committee finds that LaVerne L. Bessert holds a Bachelor of Arts degree from Midland Lutheran College in Fremont, Nebraska, and a Master of Science Degree from the Oregon College of Education in Monmouth, Oregon. She is currently employed as the Principal Real Estate Broker for Maile Properties of Kauai and the Principal/Director of Kauai Health Career Services. Ms. Bessert is being nominated for appointment to the HHSC Kauai Regional Board as a nominee of the Kauai regional management advisory committee. She has previously been employed as a teacher, a broker-in-charge, and a real estate instructor. She is also actively involved in numerous community and professional organizations in the State.

Testimony in support of Ms. Bessert was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Linda Faye Collins holds a Bachelor of Arts degree in Political Science from the University of California at Berkeley. She currently serves as the President and Chief Executive Officer of Kikiaola Land Co., Ltd., Waimea Plantation Cottages, Waimea Plantation Community Development, and the Lodge at Kokee Concession. Ms. Collins has previously been employed as a manager of planning and development, a business owner, an assistant editor, an executive assistant, a paralegal, and an educator. She is actively involved in numerous community and professional organizations in the State and is the recipient of a number of awards and honors.

Testimony in support of Ms. Collins was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Timothy Blake Crane holds a Bachelor of Arts degree in Microbiology from the University of Kansas and a Doctor of Medicine degree from the University of Nebraska. He completed an internship in Internal Medicine at the University of Nebraska Medical Center, a residency program in Ophthalmology at the University of Nebraska Medical Center, and a fellowship in Neuro-ophthalmology at the Jules Stein Eye Institute at the UCLA Center for Health Sciences. He currently serves as the President of Crane Eye Care and is being nominated for the HHSC Kauai Regional Board as a nominee of the medical staff of the Kauai public health facilities. Dr. Crane also serves as an assistant clinical professor of ophthalmology at the University of Hawaii School of Medicine, a consultant in ophthalmology at Tripler Army Medical Center, and a visiting lecturer with the Jules Stein Eye Institute at UCLA. He is actively involved in various community and professional organizations in the State and around the world.

Testimony in support of Dr. Crane was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Roselind Barbara Bulatao-Franklin holds a Bachelor of Arts degree in Speech from the University of Puget Sound and a Master of Education & Curriculum degree from the University of Hawaii at Manoa. She is retired from her position as the Director of the Office of Continuing Education and Training at Kauai Community College and is being nominated for appointment to the HHSC Kauai Regional Board as the nominee of the Kauai regional management advisory committee. She has previously served as a public information officer, the executive director of various commissions and programs, human resources director, and director of public relations. She is actively involved in numerous community organizations and has received recognition for her professional achievements throughout her career.

Testimony in support of Ms. Bulatao-Franklin was submitted by two individuals.

Upon review of the background information received on the nominee, your Committee finds that Richard Goding holds a Bachelor of Science degree in Biochemistry from Oklahoma State University and a Doctor of Medicine degree from Georgetown University. He completed an internship in General Surgery at the University of Hawaii at Manoa, a residency program in Orthopedic Surgery at St. Vincent's Medical Center and New York Medical College, a fellowship in Foot and Ankle Surgery at Royal North Shore Hospital in Sydney, Australia, and a fellowship in Shoulder and Knee Surgery at Perth Orthopedic and Sports Medicine Center in Perth, Australia. Dr. Goding currently serves as the primary surgeon at Kauai Orthopedics and an orthopedic surgeon at West Kauai Medical Center. He is being nominated for appointment to the HHSC Kauai Regional Board as a nominee of the medical staff of the Kauai regional public health facilities. Dr. Goding is a member of numerous professional and community organizations within the State.

Testimony in support of Dr. Goding was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Randall J. Hee holds a Bachelor of Science degree in Mechanical Engineering from Oregon State University and a Master of Business Administration degree from the University of Hawaii at Manoa. He currently serves as the President and Chief Executive Officer of Kauai Island Utility Cooperative and is being nominated for appointment to the HHSC Kauai Regional Board as a nominee of the House of Representatives. Mr. Hee has previously served as a chief of operations, a safety manager, a consultant engineer, a plant manager, an operations superintendent, and an engineering manager. He is actively involved in numerous community and professional organizations within the State.

Testimony in support of Mr. Hee was submitted by one individual.

Upon review of the background information received on the nominee, your Committee finds that Jody Kjeldsen holds a Bachelor of Science degree in Marketing from Arizona State University. She currently serves as the Executive Director of the Poipu Beach Resort Association and is being nominated for appointment to the HHSC Kauai Regional Board management advisory committee. Throughout her career, Ms. Kjeldsen has previously served as a marketing manager and national sales marketing manager. She is involved in community organizations within the State.

Testimony in support of Ms. Kjeldsen was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that David John Peters holds a Bachelor of Science degree in Psychology from Southwest Missouri State University. He currently serves as the Chief Executive Officer for Ho'ola Lahui Hawai'i and is being nominated for appointment to the HHSC Kauai Regional Board as a nominee of the Senate. Mr. Peters has previously served as an executive director, client services director, and community organizer for the AIDS Project of the Ozarks; a juvenile officer; and a computer technician, reference assistant, and library assistant for Springfield Greene County Libraries. He is actively involved in community and professional organizations and has made numerous presentations regarding health care issues within the State and throughout the country.

Testimony in support of Mr. Peters was submitted by the Hawaii Primary Care Association and one individual.

Upon review of the background information received on the nominee, your Committee finds that Mariano Torres holds a Doctor of Medicine degree from the John A. Burns School of Medicine. He currently serves as an internist with the West Hawaii Medical Center/Kauai Veterans Memorial Hospital. Dr. Torres is being nominated for appointment to the HHSC Kauai Regional Board as a nominee of the medical staff of the Kauai regional public health facilities. Dr. Torres has been a practicing internist for over two decades and is involved in community organizations within the State.

Testimony in support of Dr. Torres was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Estelita Cabal Trinidad currently serves as a nursing home administrator with the Kauai Care Center LLC and is being nominated for appointment to the HHSC Kauai Regional Board as a nominee of the House of Representatives. She has previously been employed as a director of nursing, unit manager, nursing quality improvement coordinator/nursing acuity analyst, relief nursing supervisor, house nursing supervisor, staff nurse, and IV therapist. Ms. Trinidad has completed numerous training and certification programs in the field of nursing. She is also actively involved in community and professional organizations within the State.

Testimony in support of Ms. Trinidad was submitted by two individuals.

Your Committee reviewed the background information on all nominees and believes each to be highly qualified and willing to serve on the HHSC Kauai Regional Board. Your Committee believes that the nominees possess the requisite knowledge and commitment to work towards the goals of the HHSC Kauai Regional Board.

As affirmed by the records of votes of the members of your Committee on Health that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Menor).

SCRep. 25 Health on Gov. Msg. Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 84

Recommending that the Senate advise and consent to the nominations of the following:

HAWAII HEALTH SYSTEMS CORPORATION MAUI REGIONAL BOARD

- G.M. No. 74 ZADOC WHITE BROWN, JR., for a term to expire 6-30-2009;
- G.M. No. 75 GRANT Y.M. CHUN, for a term to expire 6-30-2009;
- G.M. No. 76 GINA MARIE FLAMMER, for a term to expire 6-30-2010;
- G.M. No. 77 G. STEPHEN HOLADAY, for a term to expire 6-30-2009;
- G.M. No. 78 DONNA LEE MCCLEARY, M.D., for a term to expire 6-30-2010;
- G.M. No. 79 LEE EIJI MIYASATO, for a term to expire 6-30-2009;
- G.M. No. 80 HOWARD K. NAKAMURA, for a term to expire 6-30-2010;
- G.M. No. 81 KAREN TOSHIYO OURA, for a term to expire 6-30-2009;
- G.M. No. 82 BETTY JANE OTT, for a term to expire 6-30-2010;
- G.M. No. 83 SUSAN K. STEWART, for a term to expire 6-30-2010; and
- G.M. No. 84 RICHARD CLAY SUTHERLAND, for a term to expire 6-30-2010

Upon review of the background information submitted by the nominee, your Committee finds that Zadoc White Brown, Jr. holds a Bachelor of Arts degree from Princeton University and currently works as a stockbroker for Smith Barney. He is being nominated for appointment to the Hawaii Health Systems Corporation (HHSC) Maui Regional Board as a nominee of the Maui regional management advisory committee. Mr. Brown's previous work experience includes service with Dean Witter and Brown Management Company, as well as service with the Hawaii Army National Guard. He is actively involved in numerous community and professional organizations in the State.

Testimony in support of Mr. Brown was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Grant Y.M. Chun holds a Bachelor of Arts degree in Political Science from the University of Southern California and a Juris Doctor degree from University of California Hastings College of Law. He currently serves as the Vice President of A&B Properties, Inc. and is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the Maui regional management advisory committee. Mr. Chun's prior work experience includes service as a managing director for the County of Maui and as an associate with private firms within the State. He is actively involved in numerous community and professional organizations in the State.

Testimony in support of Mr. Chun was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Gina Marie Flammer holds a Bachelor of Arts degree in Political Science from the University of California at Santa Barbara, a Master of Public Administration degree from Washington University in Washington, D.C., and is a Certified Financial Planner. She currently serves as the Vice President and Secretary of the Kula Community Association and Chair of the Association's Health and Safety Committee. Mrs. Flammer is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the House of Representatives. Her previous work experience includes service as a financial planner, a policy analyst, a member of a county health and human services commission, a research assistant, and a contracting and planning assistant.

Testimony in support of Mrs. Flammer was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that G. Stephen Holaday holds a Bachelor of Science degree from Iowa State University and a Master of Business Administration degree from the University of Hawaii. He currently serves as the President of Alexander & Baldwin, Inc.'s agribusiness group of companies and is being nominated for the HHSC Maui Regional Board as a nominee of the Senate. Mr. Holaday's prior work experience includes service as a controller, chief financial officer, treasurer, and certified public accountant. He was also a member of the United States Army and is actively involved in various community organizations in Maui and throughout the State.

Testimony in support of Mr. Holaday was submitted by two individuals.

Upon review of the background information submitted by the nominee, your Committee finds that Dr. Donna Lee McCleary holds a bachelor's degree from the University of Cincinnati and a Doctor of Medicine degree from the Medical College of Pennsylvania. She completed a pediatric residency, and subsequently served as chief resident at Sinai Hospital in Baltimore, Maryland. Dr. McCleary currently maintains a private pediatric practice, while also serving as the Vice President of the Hawaii Permanente Medical Group and Medical Director for the Kaiser Medquest Program. She is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the medical staff of the Maui regional public health facilities. Dr. McCleary has served on numerous community and health organizations within the State.

Testimony in support of Dr. McCleary was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Lee Eiji Miyasato holds a Bachelor of Science degree in Biology and a Doctor of Medicine degree from the University of Washington. He completed an internship in Internal Medicine at Good Samaritan Hospital in Portland, Oregon, and a residency program in Diagnostic Radiology and a fellowship in Angiography & Interventional Radiology at the University of Virginia Health Sciences Center. Dr. Miyasato currently serves as an Interventional Radiologist,

President of Maui Radiology Associates, and as a partner with Maui Diagnostic Imaging. He is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the medical staff of the Maui public health facilities. He is actively involved in numerous community and professional organizations and has made presentations at several medical events.

Testimony in support of Dr. Miyasato was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Howard K. Nakamura holds a bachelor's degree in Civil Engineering, with master's equivalent, from Cornell University. He is currently retired and is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the Senate. Mr. Nakamura previous work experience includes service as President, Executive Vice President, and Consultant for the Wailea Resort Company, Ltd., managing director for the County of Maui, a planning consultant, a planning director, a planner, and an engineer. He is actively involved in numerous community organizations within the State.

Testimony in support of Mr. Nakamura was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Karen Toshiyo Oura holds an associate's degree and a Bachelor of Science degree in Anthropology from the University of Hawaii. She currently serves as the Assistant Administrator/Chief Clinical Executive for Maui Memorial Medical Center and is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the House of Representatives. Mrs. Oura's prior work experience includes service as a chief nurse executive, director of patient care services, assistant director of nursing, nursing supervisor, and critical care nurse. She is actively involved in various community and professional organizations within the State.

Testimony in support of Mrs. Oura was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Betty Jane Ott currently serves as the Chief Financial Officer/Deputy Director of the Community Clinic of Maui, Inc. and is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the Maui regional management advisory committee. Her prior work experience includes service as an accountant, a business owner, a bookkeeper, a sales associate, and a secretary. Ms. Ott is actively involved in numerous community organizations within the State.

Testimony in support of Ms. Ott was submitted by the Hawaii Primary Care Association and two individuals.

Upon review of the background information submitted by the nominee, your Committee finds that Susan K. Stewart holds a Bachelor of Arts degree in Zoology from the University of California at Los Angeles and a Doctor of Medicine degree from the University of California at San Francisco. She completed an internship and residency program in Internal Medicine at Gorgas Hospital, Panama Canal Zone. Dr. Stewart currently serves as an Internal Medicine Hospitalist for the Hawaii Permanente Medical Group and Chief of the Wailuku Kaiser Clinic and is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the medical staff of the Maui public health facilities. She has previously served as a staff physician, assistant chief of medicine, clinical instructor, and chief resident. She is actively involved in various community and professional organizations within the State.

Testimony in support of Dr. Stewart was submitted by one individual.

Upon review of the background information submitted by the nominee, your Committee finds that Richard Clay Sutherland holds a Bachelor of Science degree in Civil Engineering from Colorado State University and a Juris Doctor degree from Boston College Law School. He is currently a solo practitioner, practicing mainly in the areas of real estate, business, and estate planning. He is being nominated for appointment to the HHSC Maui Regional Board as a nominee of the Maui regional management advisory committee. Mr. Sutherland has been employed in private practice in the State throughout his entire legal career, but also worked as an engineer and as a staffer for the Senate Committee on Ways and Means. He is also actively involved in numerous community and professional organizations within the State.

Testimony in support of Mr. Sutherland was submitted by one individual.

Your Committee notes that, based on representations made by the Hawaii Health Systems Corporation Board of Directors, all nominees have indicated an interest and willingness to serve on the HHSC Maui Regional Board. Your Committee believes that, based on the review of the nominees' backgrounds and question posed to the nominee present, the nominees represent a group of qualified individuals who have begun to meet and demonstrate a commitment to working together towards the goals of the HHSC Maui Regional Board.

As affirmed by the records of votes of the members of your Committee on Health that are attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominees, has found the nominees to be qualified for the positions to which nominated and recommends that the Senate advise and consent to the nominations.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Menor).

SCRep. 26 Health on Gov. Msg. No. 114

Recommending that the Senate advise and consent to the nomination of the following:

BOARD OF DIRECTORS OF THE HAWAII HEALTH SYSTEMS CORPORATION

G.M. No. 114 RAYMOND SHIGEO ONO, for a term to expire 6-30-2009

Testimony in support of Raymond Shigeo Ono was submitted by Mayor Mufi Hannemann of the City and County of Honolulu and the Hawaii Health Systems Corporation.

Mr. Ono is a resident of Oahu and a Honolulu native. He graduated from Iolani School in 1972. He received his Bachelor of Science degree in 1976 and his Masters in Business Administration degree in 1978, both from Willamette University. He serves on the boards of the Aloha United Way, Boy Scouts of America, First Hawaiian Bank Foundation, Iolani Alumni Association, and the Rehabilitation Hospital of the Pacific. Mr. Ono is a past board member of St. Francis Medical Center, past vice-chair of the Judicial Salary Commission, and past commissioner of the Western Interstate Commission for Higher Education. Currently, Mr. Ono serves as Executive Vice President of First Hawaiian Bank. He has an exceptional reputation in the business community and strong community values that will enable him to significantly contribute to qualified governance on the Hawaii Health Systems Corporation Board of Directors.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Menor).

SCRep. 27 Water and Land on Gov. Msg. No. 110

Recommending that the Senate advise and consent to the nomination of the following:

LAND USE COMMISSION

G.M. No. 110 NORMAND R. LEZY, for a term to expire 6-30-2008

Your Committee received testimony in support of Normand R. Lezy from Matson Terminals; Hawk Sing & Ignacio; Schlack Ito Lockwood Piper & Elkind; Moseley Biehl Tsugawa Lau & Muzzi; Computer Sciences Corporation; Pacific Hawaii Designs, LLC; and thirty-four individuals.

Mr. Lezy is an attorney in private practice with Leong Kunihiro Leong & Lezy. He received a B.A. degree from the University of Hawaii at Manoa and a J.D. degree from the William S. Richardson School of Law. He has professional experience in the fields of admiralty and maritime law; longshore and harbor workers law; aviation law; construction litigation; intellectual property law; insurance litigation and bad faith law; and general litigation.

Your Committee notes the written testimony of the nominee that he will work hard with his colleagues on the commission to ensure that objective, even-handed decisions are made that fulfill the commission's responsibility to preserve and protect Hawaii's lands while encouraging the most suitable uses of lands.

Your Committee has concerns regarding the nominee, such as his admission that he has no land use experience, no environmental impact statement experience, no water availability or water needs experience, and little knowledge of county or state land use jurisdictions. Notwithstanding, your Committee recommends that the Senate consent to the nomination to allow Mr. Lezy to gain experience and understanding of the duties of the Land Use Commission.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Ayes with Reservations, 4 (Fukunaga, Hee, Kokubun, Tokuda). Noes, none. Excused, 1 (Whalen).

SCRep. 28 Water and Land on Gov. Msg. No. 5

Recommending that the Senate advise and consent to the nomination of the following:

CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES

G.M. No. 5 LAURA H. THIELEN, for a term to expire 12-31-2010

Your Committee received testimony in support of the nominee from the Office of the Governor; State Attorney General; Department of Health; Department of Land and Natural Resources; Department of Business, Economic Development, and Tourism; Department of Labor and Industrial Relations; Department of Agriculture; Department of Transportation; State Department of Defense; Office of Hawaiian Affairs; Aloha Tower Development Corporation; Mayor of Hawaii County; one State House Representative; one Honolulu City Councilmember; The Nature Conservancy; KAHEA; Architects Hawaii Limited; Wai'anae Coast Community Alternative Development Corporation; John M. Knox & Associates, Inc.; Historic Hawai'i Foundation; Feather & Fur Clinic; Rick Gaffney & Associates Inc.; Oceanic Institute; The Trust for Public Land; Civil and Public Works Branch, U.S. Army Engineer District, Honolulu; SunPower Corporation; Connections Public School Charter; 'Ahaui Mälama I Ka Lökahi; Townscape, Inc.; Bitstream Inc.; Parker Ranch; Honolulu Board of Realtors; F.T. Opperman Construction, LLC; Stanford Carr Development, LLC; Laborers-Employers Cooperation and Education Trust; Alakea Design Group, LLC; Ocean Tourism Coalition; Leeward Insurance Agency, Inc.; Ameron International; Mouse Builders Inc.; Kanu o ka 'Aina New Century Public Charter School; Outrigger Enterprises, Inc.; Hawai'i Alliance for Community-Based Economic Development; Title Guaranty of Hawaii, Inc.; Hawaii Academy of Arts & Science; Fidelity National Title & Escrow of Hawaii, Inc.; Chun Rair & Yoshimoto LLP; Bendet, Fidell, Sakai & Lee; Hawaii Escrow & Title; Myron B. Thompson Academy; Kikiaola Land Company; Hawai'i Forest Industry Association; and ninety-two individuals. Testimony in opposition was received from six individuals.

Ms. Thielen is currently the acting Chairperson of the Department of Land and Natural Resources. She was previously the Director of the State Office of Planning. She has practiced law for the Legal Aid Society of Hawaii and a law firm. She received a B.A. degree in political science from the University of Colorado and a J.D. degree from Case Western Reserve School of Law. She also holds a Master's in Public Policy from Georgetown University Public Policy Institute.

Ms. Thielen states in her written testimony her priorities and goals to: (1) transform the department from resource management to resource stewardship; (2) increase compliance with resource protection laws and rules through education, and civil and criminal enforcement; and (3) develop the full mission of the State Historic Preservation Division. Her future specific steps are: (1) implementation of an ocean resource management plan; (2) strategic planning for enforcement and compliance; and (3) increasing resource stewardship efficiency and effectiveness through improved technology and administrative support.

Your Committee queried the nominee on her plans to improve the State Historic Preservation Division. She stated her priorities as: (1) filling vacant positions to bring the division up to full staffing; (2) seeking salary differentials to fill the archeologist and cultural specialist branch manager position; (3) decreasing the backlog of cases; (4) establishing a record-keeping system to track cases from the time the division receives the case; and (5) revising the minimum qualifications for specialists to match federal standards. She sees the historic preservation function of the department as a means to protect and preserve historic and cultural sites. Her ambition is to establish a global positioning system resource map that is publicly accessible for the public and particularly for developers and contractors. Such a mapping system would also greatly aid the

historic preservation division in making the location of historic or cultural sites readily available, thereby avoiding the current, time-consuming practice of conducting paper-based research.

Your Committee further queried the nominee about the General Growth Properties site on the Ward Properties as to the Native Hawaiian burial sites, which now number approximately sixty-five. Ms. Thielen felt that the division had done everything required under law. Unfortunately, the `iwi were discovered seriatim, which calls for construction to stop each time for an archeological inventory survey. If a discovery is made, the division may order a removal of the `iwi or allow the `iwi to remain in place. The developer remained very cooperative throughout and did more mitigative work than was required.

Your Committee is also concerned with the problems at the Bureau of Conveyances that have given rise to three investigations into alleged mismanagement. The three investigations are being made by the State Ethics Commission, State Attorney General, and a joint legislative investigative committee. Your Committee believes that it is important to ensure that government represents the public interest fairly when real property changes hands. The broad question is whether the various private title companies, and the landowners they represent, are treated fairly. There is yet a broader possibility of eventual administrative relocation of the bureau to another department. While findings and recommendations on these issues are outside of the jurisdiction of your Committee for purposes of this confirmation proceeding, it is still incumbent upon the nominee to resolve the mismanagement, lack of fiscal accountability, and low employee morale problems of the department as soon as possible.

The nominee seems to have a grasp of what is needed to rectify the problems at the Bureau of Conveyances. She states in her written testimony: "The Chairperson of the Department is responsible for the nuts and bolts management of the agency: making sure the divisions and program managers are operating effective programs and managing staff; recruiting and getting positions filled with qualified people; providing training and resources for staff to do their jobs; and, setting priorities for the resources allocated to the agency. The Chair is responsible for developing solutions to chronic problems that plague the department and interfere with the mission, and to work with staff to successfully implement those solutions." When this statement is viewed in the light of the Bureau of Conveyances, it as though Ms. Thielen had the Bureau of Conveyances in mind when she wrote it. Accordingly, your Committee will hold the nominee to her testimony.

Your Committee has many strong concerns about the nominee, among these concerns are:

- (1) That the nominee is not qualified, and neither is the Administrator of the State Historic Preservation Division to be the State Historic Preservation Officer under section 6E-5, Hawaii Revised Statutes, a federally designated position;
- (2) That federal funds may be in jeopardy for funding for the State Historic Preservation Division if qualified persons as prescribed by federal law are not part of the division's decision-making team;
- (3) That the nominee is undertaking "programmatic agreements" for transportation projects and projects with the counties, without benefit of statutory or administrative rule authority, leading to a lack of oversight standards of the projects;
- (4) With regard to the ocean management resource plan, the establishing of in-stream flow standards should be the highest priority; and the nominee's statement that it could take two years to complete is not acceptable;
- (5) With regard to fishers and the fishing community, the nominee's statement that the nominee is working proactively with them has been disputed by the fishers, who would like the nominee to meet with them in a roundtable discussion with all parties at the table; the nominee stated instead that community meetings would be held on the possible rule changes; your Committee believes that the nominee may not be taking the fishers seriously enough;
- (6) With regard to the Kawai Nui Marsh, the nominee is willing to meet City and County of Honolulu officials and key stakeholders as to the transfer of title, but the nominee is held up by the nominee's interpretation of land board actions; instead, the nominee should be placing the matter on the land board agenda for November so as not to lose \$4.1 million in federal funding, particularly in view that City and County of Honolulu officials have expressed their willingness to negotiate the issues and share in the costs; and
- (7) That the nominee should consult with the Society of Hawaiian Archeologists and various stakeholder groups when filling vacancies in the State Historic Preservation Division in order to create job descriptions, set minimum qualifications, and in developing a functional division.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.

Signed by the Chair on behalf of the Committee. Ayes, 4. Noes, none. Excused, 1 (Whalen).

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 HAWAII AMENDING THE RULES OF THE SENATE OF THE TWENTY-FOURTH LEGISLATURE OF THE STATE OF	1			1
S.R. No. 2 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE LAST DAY OF THE SECOND SPECIAL SESSION OF 2007.	47			47
S.R. No. 3 INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE.	47			47

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. 1 RELATING TO TRANSPORTATION.	10 10	10									
H.B. No. 2 RELATING TO SENTENCING.	10 10	10	29	47				53		1	