

THIRTY-SIXTH DAY

Wednesday, March 25, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2009, convened at 11:37 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Josh Green, M.D., Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senator English who was excused.

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

At this time, the following introductions were made to the members of the Senate:

Senator Sakamoto, with the assistance of Senators Kim, Chun Oakland, Slom and Hooser, congratulated and introduced the following principals of the 2009 Hawaii Blue Ribbon Schools: Principal Patricia Dang of Kapalama Elementary School, who was represented by Vice Principal Michelle DeBusca; Principal Michael Ono of Lanakila Elementary School; and Principal Frank Fernandes of Kaimuki Middle School. Also commended was Ms. Karen Heresa of Wilcox Elementary, recipient of the 2008 Milken National Educator Award, who was not able to attend.

At 11:51 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:58 a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 536 to 537) were read by the Clerk and were placed on file:

Gov. Msg. No. 536, dated March 24, 2009, transmitting a Report on the Implementation of Medicaid Home and Community-Based Services, prepared by the Department of Health pursuant to Act 213, Section 38, SLH 2007.

Gov. Msg. No. 537, dated March 24, 2009, transmitting the Hawaii Health Care Workforce Assessment, prepared by the University of Hawaii pursuant to Act 219, SLH 2007.

HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 350) was read by the Clerk and was disposed of as follows:

Hse. Com. No. 350, transmitting H.C.R. No. 89, which was adopted by the House of Representatives on March 24, 2009, was placed on file.

By unanimous consent, H.C.R. No. 89, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THAT THE HOOKAKOO CORPORATION REPORT ON THE PROGRESS AND IMPACTS OF THE MODELS FOR EXPANDED LEARNING TIME BEING PILOTED BY THE HOOKAKOO CORPORATION'S PARTNER CONVERSION CHARTER SCHOOLS," was deferred.

STANDING COMMITTEE REPORTS

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 914) recommending that H.B. No. 1031, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1031, S.D. 1, entitled: "A BILL FOR AN ACT

RELATING TO CHAPTER 480, HAWAII REVISED STATUTES," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 915) recommending that H.B. No. 812, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 812, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DOMESTIC VIOLENCE," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 916) recommending that H.B. No. 618, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 618, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 917) recommending that H.B. No. 267, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 267, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MOTOR VEHICLE RENTAL INDUSTRY," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 918) recommending that H.B. No. 1168, H.D. 2 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1168, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO AIRPORTS," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 919) recommending that H.B. No. 869, H.D. 1 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 869, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RENTAL MOTOR VEHICLES," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report

(Stand. Com. Rep. No. 920) recommending that H.B. No. 1163, H.D. 2 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1163, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO HARBORS," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 921) recommending that H.B. No. 1422, H.D. 1 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1422, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ABANDONED VEHICLES," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 922) recommending that H.B. No. 623, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 623, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE IDENTIFICATION," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 923) recommending that H.B. No. 1040, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1040, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TORT LIABILITY," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 924) recommending that H.B. No. 214, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 214, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS AND MAKING AN APPROPRIATION FOR WĀILUA EMERGENCY BYPASS ROAD REPAIR AND RESURFACING, AND WAIMEA WASTEWATER TREATMENT PLANT UPGRADES FOR THE COUNTY OF KAUAI," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 925) recommending that H.B. No. 1166, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1166, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE PASSENGER FACILITY CHARGE SPECIAL FUND," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Gabbard and Sakamoto, for the Committee on Transportation, International and Intergovernmental Affairs and the Committee on Education and Housing, presented a joint report of the majority of the Committees (Stand. Com. Rep. No. 926) recommending that H.B. No. 863, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the majority of the Committees was adopted and H.B. No. 863, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ESTABLISHING A COUNTY TRANSIT ORIENTED DEVELOPMENT INFRASTRUCTURE REVOLVING FUND," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 927) recommending that H.B. No. 1071, H.D. 3, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1071, H.D. 3, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MORTGAGE SERVICERS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 928) recommending that H.B. No. 1074, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1074, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Fukunaga, for the Committee on Economic Development and Technology, presented a report (Stand. Com. Rep. No. 929) recommending that H.B. No. 610, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 610, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SCIENCE AND TECHNOLOGY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 930) recommending that H.B. No. 1221, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1221, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING PROJECTS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 931) recommending that H.B. No. 1376, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1376, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EDUCATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 932) recommending that H.B. No. 1692, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1692, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Fukunaga, for the Committee on Economic Development and Technology, presented a report (Stand. Com. Rep. No. 933) recommending that H.B. No. 1207, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1207, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMUNITY-BASED ECONOMIC DEVELOPMENT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Water, Land, Agriculture, and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 934) recommending that H.B. No. 1471, H.D. 2 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1471, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO FARMS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Water, Land, Agriculture, and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 935) recommending that H.B. No. 1665, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1665, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIAN FISHPONDS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Water, Land, Agriculture, and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 936) recommending that H.B. No. 899, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 899, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 937) recommending that H.B. No. 1316, H.D. 2 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1316, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TORTS," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 938) recommending that H.B. No. 1415, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1415, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SERVICE OF PROCESS," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 939) recommending that H.B. No. 1417, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1417, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOBILE BILLBOARDS," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senators Fukunaga and Baker, for the Committee on Economic Development and Technology and the Committee on Commerce and Consumer Protection, presented a joint report (Stand. Com. Rep. No. 940) recommending that H.B. No. 988, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 988, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PROCUREMENT," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senators Hee and Gabbard, for the Committee on Water, Land, Agriculture, and Hawaiian Affairs and the Committee on Energy and Environment, presented a joint report (Stand. Com. Rep. No. 941) recommending that H.B. No. 591, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 591, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC UTILITIES," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 942) recommending that H.B. No. 363, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Transportation, International and Intergovernmental Affairs.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 363, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING," passed Second Reading and was referred to the Committee on Transportation, International and Intergovernmental Affairs.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 943) recommending that H.B. No. 1436, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1436, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," passed Second Reading and was referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 944) recommending that H.B. No. 427, H.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 427, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS TO ASSIST ONE PLANET PACIFIC ENERGY, LLC, A PROCESSING ENTERPRISE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 945) recommending that H.B. No. 426, H.D. 1 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 426, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST SEAWATER AIR CONDITIONING PROJECTS ON OAHU," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 946) recommending that H.B. No. 370, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 370, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 947) recommending that H.B. No. 371, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 371, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Gabbard and Fukunaga, for the Committee on Energy and Environment and the Committee on Economic Development and Technology, presented a joint report (Stand. Com. Rep. No. 948) recommending that H.B. No. 279, H.D. 2,

as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 279, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 949) recommending that H.B. No. 1491, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1491, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ETHANOL FACILITY TAX CREDIT," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 950) recommending that H.B. No. 1627, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1627, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 951) recommending that H.B. No. 1628, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1628, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST BIOENERGY HAWAII, LLC," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 952) recommending that H.B. No. 1678, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1678, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 953) recommending that H.B. No. 1273, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1273, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENERGY," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 954) recommending that H.B. No. 1270, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1270, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 955) recommending that H.B. No. 262, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 262, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INSURANCE FRAUD," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senators Gabbard and Espero, for the Committee on Energy and Environment and the Committee on Transportation, International and Intergovernmental Affairs, presented a joint report (Stand. Com. Rep. No. 956) recommending that H.B. No. 590, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 590, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY FACILITIES," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senators Gabbard and Espero, for the Committee on Energy and Environment and the Committee on Transportation, International and Intergovernmental Affairs, presented a joint report (Stand. Com. Rep. No. 957) recommending that H.B. No. 589, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 589, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY FACILITIES," passed Second Reading and was referred to the Committee on Water, Land, Agriculture, and Hawaiian Affairs.

Senators Baker and Gabbard, for the Committee on Commerce and Consumer Protection and the Committee on Transportation, International and Intergovernmental Affairs, presented a joint report of the majority of the Committees (Stand. Com. Rep. No. 958) recommending that H.B. No. 269, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the majority of the Committees was adopted and H.B. No. 269, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REAL PROPERTY," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Gabbard and Espero, for the Committee on Energy and Environment and the Committee on Transportation, International and Intergovernmental Affairs, presented a joint

report of the majority of the Committees (Stand. Com. Rep. No. 959) recommending that H.B. No. 574, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the majority of the Committees was adopted and H.B. No. 574, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 960) recommending that H.B. No. 1059, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1059, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ONE CALL CENTER," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 961) recommending that H.B. No. 896, H.D. 1 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 896, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TOBACCO," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 962) recommending that H.B. No. 1537, H.D. 1 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1537, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AUTOMATED EXTERNAL DEFIBRILLATORS," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Fukunaga, for the Committee on Economic Development and Technology, presented a report (Stand. Com. Rep. No. 963) recommending that H.B. No. 615, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 615, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HARASSMENT," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 964) recommending that H.B. No. 808, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 808, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 965) recommending that H.B. No. 811,

H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 811, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO REGISTERED NURSES," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senator Ige, for the Committee on Health, presented a report (Stand. Com. Rep. No. 966) recommending that H.B. No. 814, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 814, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NURSE AIDES," passed Second Reading and was referred to the Committee on Commerce and Consumer Protection.

Senators Ige and Tokuda, for the Committee on Health and the Committee on Higher Education, presented a joint report (Stand. Com. Rep. No. 967) recommending that H.B. No. 343, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 343, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RURAL PRIMARY HEALTH CARE TRAINING," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Ige and Tokuda, for the Committee on Health and the Committee on Higher Education, presented a joint report (Stand. Com. Rep. No. 968) recommending that H.B. No. 991, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 991, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Ige and Espero, for the Committee on Health and the Committee on Public Safety and Military Affairs, presented a joint report (Stand. Com. Rep. No. 969) recommending that H.B. No. 317, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 317, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOBILE MEDICAL CARE," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Takamine, for the majority of the Committee on Labor, presented a report (Stand. Com. Rep. No. 970) recommending that H.B. No. 1676, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and H.B. No. 1676, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC WORKS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Takamine, for the Committee on Labor, presented a report (Stand. Com. Rep. No. 971) recommending that H.B. No. 1479, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1479, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO LABOR," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator Takamine, for the Committee on Labor, presented a report (Stand. Com. Rep. No. 972) recommending that H.B. No. 442 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 442, entitled: "A BILL FOR AN ACT RELATING TO THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD," passed Second Reading and was placed on the calendar for Third Reading on Friday, March 27, 2009.

Senator Takamine, for the Committee on Labor, presented a report (Stand. Com. Rep. No. 973) recommending that H.B. No. 319, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 319, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO FAMILY LEAVE," passed Second Reading and was placed on the calendar for Third Reading on Friday, March 27, 2009.

Senator Sakamoto, for the Committee on Education and Housing, presented a report (Stand. Com. Rep. No. 974), recommending that S.C.R. No. 39, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.C.R. No. 39, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION URGING THE GOVERNOR TO INCLUDE THE KUKUI GARDENS AFFORDABLE HOUSING PROJECT IN THE STATE'S LIST OF SHOVEL-READY PROJECTS FOR THE PRESIDENT'S PROPOSED ECONOMIC STIMULUS PLAN," was referred to the Committee on Ways and Means.

Senator Hee, for the Committee on Water, Land, Agriculture, and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 975) recommending that S.C.R. No. 66, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 975 and S.C.R. No. 66, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THAT THE UNITED STATES POSTAL SERVICE ISSUE A COMMEMORATIVE STAMP HONORING PRINCE JONAH KUHIO KALANIANA'OLE," was deferred until Friday, March 27, 2009.

Senator Hee, for the Committee on Water, Land, Agriculture, and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 976) recommending that S.R. No. 40, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 976 and S.R. No. 40, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THAT THE UNITED STATES POSTAL SERVICE ISSUE A COMMEMORATIVE STAMP

HONORING PRINCE JONAH KUHIO KALANIANAOLE,” was deferred until Friday, March 27, 2009.

ORDER OF THE DAY

THIRD READING

H.B. No. 520, H.D. 1, S.D. 1:

On motion by Senator Fukunaga, seconded by Senator Baker and carried, H.B. No. 520, H.D. 1, S.D. 1, entitled: “A BILL FOR AN ACT RELATING TO BUILDINGS,” passed Third Reading on the following showing of Ayes and Noes:

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

RECALL OF HOUSE BILL 444

Pursuant to Senate Rule 52, Senator Hooser moved to recall H.B. No. 444, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO CIVIL UNIONS,” from the Committee on Judiciary and Government Operations, seconded by Senator Ihara.

The President then inquired:

“Madam Clerk, have 20 days elapsed since H.B. No. 444, H.D. 1 was referred to committee?”

The Clerk replied:

“Madam President, H.B. No. 444, H.D. 1 was referred to the Committee on Judiciary and Government Operations on February 18, 2009. The required number of days has elapsed since referral.”

The Chair then stated:

“In accordance with parliamentary procedures established pursuant to Mason’s Manual of Legislative Procedures, 2000 Edition, the Chair will provide for limited debate on the motion to recall, but H.B. No. 444, H.D. 1, is not open to debate.”

Senator Hooser rose and said:

“Madam President, I rise today and humbly ask that the members join me in a vote to recall H.B. No. 444, H.D. 1, a bill that extends the same rights, benefits and protections and responsibilities of spouses in a marriage to partners in a civil union. I’m asking for your help and support, members, not as a Majority Leader, but as an individual Senator and as a primary sponsor of the Senate version of this bill, but more so as someone who believes strongly that it is my duty and obligation—that it is our duty and obligation—to treat people equally and to provide and protect the equal rights of all people.”

Senator Tsutsui interjected:

“Madam President, point of order.”

The Chair recognized Senator Tsutsui, and Senator Tsutsui continued:

“I believe the speaker should be speaking to the merits of the motion on the floor and not the merits of the underlying measure.”

The President then said:

“Senator Hooser, please continue your statements as to the procedural motion.”

Senator Hooser continued:

“Yes, Madam President, I’m speaking in support of pulling this bill to the floor because I believe in the principle that it is our duty and obligation to treat people equally and to provide and protect the equal rights of all people. And that is why I am

here today to request that each of the Senators support the pulling of H.B. No. 444, H.D. 1 to the floor because that’s the only way we will have a full and open debate, and ultimately a full and open vote on these issues. And on answering the important question, ‘should we extend the same rights and benefits, protections and responsibilities...’”

Senator Kokubun interjected:

“Madam President, point of order.”

The Chair recognized Senator Kokubun, and Senator Kokubun continued:

“The Senator that is now speaking has some good points that should be addressed on the substance of the issue, but the motion now is to have us vote to determine whether there is a constitutionally-required one-third number of Senators to recall the measure to the full Senate. Thank you.”

The President then said:

“Senator Hooser...”

Senator Ihara interjected:

“Madam President, I rise on a point of parliamentary inquiry or information.”

The Chair recognized Senator Ihara, and Senator Ihara continued:

“I believe the movant has the right to speak to explain why he wants to recall the bill. I believe that it is not in order to debate the merits of the bill, but I believe he has the constitutional right on this constitutional recall motion to explain why he wants to recall the bill.”

The Chair responded:

“Senator Ihara, the point is well taken. Notwithstanding, what we are debating here is the recall motion and it’s a procedural motion in nature and it is the Chair’s ruling that the debate is to the procedural motion of the recall.”

Senator Hooser interjected:

“Madam President, may I ask a question?”

The Chair recognized Senator Hooser, and Senator Hooser continued:

“Am I allowed to describe the bill that we are talking about at all, or just by number?”

The Chair responded:

“You can describe the purpose of the...you can describe for a limited purpose what the bill is—and I think you have done that, Senator Hooser. But if you wish to restate what the bill is, please restate what the bill is.”

Senator Hooser continued:

“Thank you, Madam President. I think it’s important that the purpose of the bill, as is stated on the bill itself—these are not my words, Madam President, and I think they speak to the very fundamental nature of this debate. The question is, in the bill, should we extend the same rights, benefits, and protections, and responsibilities of spouses in a marriage to partners in a civil union? That’s what we’re debating whether or not to pull to the floor from committee. For me, the answer is, ‘Yes, without question, we should do both.’ We should pull this to the floor for a full debate, and we should extend the same rights.

“At the minimum, the question deserves to come to this floor for a public discussion and a public vote, rather than to sit bottled up in committee, hamstrung by a 3-3 tie vote. This is an important, important issue about the fundamental rights of

people, and if it's allowed to sit bottled up—and I'm here today to un-bottle it and to encourage members to vote—it will simply wither away and die an ignoble and anonymous death, stuck undecided and unresolved in committee because of a tie vote. I believe that's what will happen if we do not pull it to the floor and that's what I'm speaking to. This is an important issue. It deserves more than just to sit in that committee, unresolved and undecided because we have a tie. This issue and the people that have brought the issue forward, the people who have worked so hard to get it to where it is today, deserve to have it discussed and voted on by the full Senate, and I am here today to ask for you to join me and allow this to happen.

“H.B. No. 444, H.D. 1 lies stuck in committee because of a tie vote, after travelling over two years through the process. A similar effort to pass legislation died in the House two years ago after the House Judiciary failed to take a vote on it. Advocates were told at the time, ‘Be patient, take the next year off, build a broad based coalition; include labor, religious groups and others around the community in your effort. Get it passed in the House, and we are pretty confident the votes in the Senate will be there.’ So guess what? That is exactly what they did. They were patient. They took a year. They gathered broad based community coalition support—loud, diverse support, strong support—and just a few days ago that coalition issued a statement asking this body to recall the bill from committee to take a full vote in the Senate. And I have an open letter to the Senators speaking to the issue of the recall. It says: ‘As leaders of diverse communities across the islands, we call on you to bring the civil unions bill to the floor for passage. We believe this is a civil rights issue. This is an issue of economic justice. This is about *ohana*.’ This letter is signed by Dr. Amy Agbayani, Co-Chair of the Friends of Civil Rights and Filipinos for Affirmative Action; Shawn Benton, President of the Japanese American Citizens League; Alphonso Bragg, President of Hawai'i NAACP; Puanani Burgess, Principle of One Peace-At-A-Time; Eric Gill, Financial Secretary of the Unite Here! Local 5; Debi Hartmann, Former Chair of the Hawai'i State Board of Education; Lynette Hi'ilani Cruz, Professor of Anthropology, President of Ka Lei Maile Ali'i Hawaiian Civic Club; Faye Kennedy, Co-Chair of the Hawai'i Friends of Civil Rights; Poka Laenui, Director of the Institute for the Advancement of Hawaiian Affairs; Brien Matson, President of the Musicians Association; Wayne Panoke, Executive Director of 'Ilio'ulaokalani Coalition; Vicky Holt Takamine, Executive Director of PA'I Foundation; Alliecn Tasaka and Debbie Shimizu, Co-Chairs of the Hawai'i State Democratic Women's Caucus. These are leaders in our community speaking directly to the issue of pulling the bill from committee and strongly encouraging us to do so.

“H.B. No. 444, H.D. 1 passed the House with a 33 to 17 vote, only one vote shy of a supermajority. Even members of the Minority party and previously-thought conservative Democrats voted in support. Eighteen members of this body of the Senate then indicated they were in support, one more than the supermajority needed to override a veto, and the measure was scheduled for committee hearing. Knowing the possibility of a tie vote was strong, members were polled on the possibility of a recall, such as we're trying today, and at the end of the day 13 said they would support a pull. Shortly thereafter, a marathon public hearing was held, the vote was taken, the results were 3 for and 3 against. The Chair of the committee voted ‘yes’ in support of the bill. The Vice-Chair of the committee voted ‘yes’ in support of the bill. A majority of Democrats on the committee voted in support of the bill, and two Democrats joined with one Republican Minority member to successfully block H.B. No. 444, H.D. 1 in committee. In the end, this bill will live or die, not because of the actions taken by that committee but through our action or inaction as a group, which is why the motion is being made here today on the floor,

which is why I'm asking you to join me in allowing this very important measure to be brought to the full floor for a full and open discussion on its merits. As you can see, we're not allowed to discuss the issue on its merits here today; we're not allowed to discuss why we may or may not support civil unions. We can only discuss this particular measure asking to be pulled from the floor. Why wouldn't we be willing to recall this bill from committee for a full discussion and floor vote? What are the reasons why we would not want to have a full and open discussion on this very important issue? If there are 18 Senators who support the bill, if there are 18 Senators who support extending the same rights, benefits, protections and responsibilities of spouses in a marriage to partners in a civil union, why is there hesitation now? That language, by the way, is not new language. Though the word ‘marriage’ seems to make a lot of people very nervous, that language has been there from the beginning...”

Senator Kokubun interjected:

“Madam President, point of order please.”

The Chair recognized Senator Kokubun, and Senator Kokubun continued:

“I really would request that this discussion be centered on the motion to recall. Thank you.”

The Chair acknowledged the point of order and allowed Senator Hooser to continue.

Senator Hooser continued:

“Madam President, I understand that, and the points I'm going to raise now are the points that have been discussed in the past as reasons why not to recall this bill. When discussed individually and otherwise asking members why they may or may not support the recall of this bill, there were four general objections. Recalling the bill from committee sets a bad precedent, some will say, and somehow violates the internal committee process and structure of the Senate. That's number 1. Number 2: H.B. No. 444, H.D. 1 is likely to be vetoed by the Governor, and so why should we expose ourselves politically when she will veto and the likelihood of being able to override the veto is slim. So why even bother to take it further? Number 3 objection: H.B. No. 444, H.D. 1 is likely to be challenged in court and we could wind up like Connecticut with same-sex marriage being legalized. The fourth most common objection is instead of passing this bill, we should focus on amending the bill, deleting references to marriage, and granting some additional rights but not all the rights. In the interests of time, I will not go into great detail refuting each of those concerns but I will touch briefly on this.

“The ability to recall the bill from committee is a constitutional right that is rarely used but is there for exactly these types of situations. It was created in our Constitution for situations in which bills are kept bottled up in committee. Bills have been recalled for a variety of measures over the years. I've got a list I'd like to introduce into the record: there was a bill in 1994 relating to marriage, H.B. No. 2312. 1996. 1998. 2002. (The Chair having so ordered, the list is identified as “ATTACHMENT A” to the Journal of this day.) Though it is rare, it is not unheard of; it is not uncommon. A review of the votes and the reasons given will clearly show the recalls were made based on the bill being stuck in committee and members feeling strongly that the full Senate needed to debate and vote on the substance of the issue. This is why they recalled in the past, and this is some of the reasons I'm asking for the recall today. A further review of the history also clearly shows that in each case of recall, there was no subsequent breakdown of the committee process. There was no rush or flurry of attempts to recall other bills. A review of the history also shows that many

members here today, who I believe are not in support of the recall, have in the past voted to recall other measures.

“The second objection regarding the veto: Worrying about whether the Governor will veto the measure or not, worrying about whether we have the votes to override or whether the House has the votes to override, and failing to act as a result of that worry, I believe, is a fruitless and self-defeating exercise. If we truly feel that granting full and equal rights—I’m sorry, I apologize for talking about the substance of the bill. If we fully believe that doing what we’re here today, doing what I’m proposing today is the right thing to do, then we should simply call this measure to the floor, have a full and open discussion, and do it, and let the Governor do what she must do. At the end of the day, we must each look ourselves in the mirror and judge ourselves on the action we take; and the decision we make today should be based on what we believe is right and just, and not on what we speculate the Governor may or may not do.

“Number three: Recent concerns raise that this bill is too close to the Connecticut law and the courts may, as a result, legalize same-sex marriage. These concerns, I believe, are unfounded. Though it is very likely—not unlikely—that the law could be challenged in court, Hawai‘i attorney and Professor of Constitutional Law and well-respected attorney Jon Van Dyke has stated clearly and in writing that the likelihood of this occurring is remote, and in fact, he used the word ‘impossible.’ In addition, retired Hawai‘i Supreme Court Associate Justice Steven Levinson has also written, ‘I concur completely with Professor Van Dyke’s analysis.’ I have another letter here from the ACLU attorney Lois Perrin that says, ‘There is no legal basis for any argument that H.B. No. 444, as currently written, will be used as a basis for a lawsuit for same-sex marriage under the Hawai‘i State Constitution.’ I would like to enter those three communications into the record as well. (The Chair having so ordered, the letters are identified as “**ATTACHMENT B**” to the Journal of this day.)

“Last but not least is the objection that we should amend the bill; somehow remove the word ‘marriage’ from the language, reduce the amount of rights we are granting, and pass it back over to the House, an amended version that the Governor is not likely to veto. This option, the one that I do not personally support, remains a possibility.

“I would like to thank the Senator from Ewa Beach, the Senator from Downtown who have each worked very hard, spending many hours trying to craft such an amendment that might be acceptable to the advocates and to the Senate majority. I applaud their efforts and encourage them today to support the vote today and then offer the amendments to the full Senate on Friday. Should a majority of members vote in support of those amendments, I will join you in that support for the final amended vote. I’ll repeat that: Should a majority of members vote in support of those amendments, I will join in that vote of support for the final amended bill.

“In conclusion, Madam President, members, this is a tough issue, probably the toughest one we’ve been involved with in a while. For myself, I think it’s important. I think the reason I was elected was to make these kinds of decisions. You know, we have plenty of pressure from all sides. There’s no shortage of pressure. There are plenty of reasons we can come up with to postpone this vote or to vote ‘no.’ For me, the main reason to vote ‘yes,’ the main reason that I’ve personally have not been able to avoid is one of principle and one of obligation. The principle, of course, is that all people are created equal, and all people deserve to be treated fairly, equally, and with respect and dignity. All people are created equal and that all people deserve to be treated fairly, equally, and with respect and dignity—I cannot say that often enough. The principle that knowing this is the right thing to do, the principle that the people affected by this legislation deserve better and deserve our vote and support.

I’m voting in support of this measure today, and I’m asking you to join me because we owe it to these people. These are our friends, our neighbors, our family members. We owe them a full and open discussion of the issue and a full vote on the floor of this chamber, and I’m here today requesting your support in recalling H.B. No. 444, H.D. 1 to the floor of the Senate, but more than that, I am asking that each of you simply vote your conscience. Vote the issue. Vote the principle. Vote for what you know and believe to be right in your heart. Thank you, Madam President.”

Senator Slom rose in opposition to the motion and said:

“Madam President, I rise in opposition to the motion...”

At this time, Senator Baker rose on a point of order.

The Chair then said:

“Member of the gallery, please have decorum. Thank you.”

Senator Slom continued:

“Madam President, unlike the previous speaker, I will respect your wishes and your ruling and stick within the argument about the recall.

“I must say, however, as a member of the Judiciary Committee, I take great umbrage at the misinformation and false statements made by the previous speaker. If we’re talking about principle and obligation, then one must ask, ‘Where is the principle and obligation if we have a stated procedure? Why do we not follow it?’ And before I go any further, Madam President, let me make sure that I specifically request a Roll Call vote when this debate is finished. (The Chair so ordered.)

“I want to tell you that I was here for the pulling of two of the last measures that the good Senator from Kaua‘i spoke about, and I voted for the pulling. But what the good Senator neglected to tell this body and the gallery was that those bills were pulled because the committee chairs refused to hold hearing on those bills. And when we talk about a bill being stuck in a committee and when the good Senator says we need a full and open debate, where was the good Senator for the 18 hours of full and open debate that this Senate committee held just a few short weeks ago? Eighteen hours, the longest continuous hearing on any single issue ever held in the State Senate; from 9:00 a.m. on Tuesday to 3:00 a.m. on Wednesday. And everyone, everyone, had ample opportunity to stand up and say whatever they wanted to say. We had nearly 1,500 pieces of testimony and nearly 500 people came and testified in that auditorium. It was an amazing sight. It was democracy in action. And I credit the Judiciary Chairman for not only his patience and forbearance, but the ability to allow everyone to be heard. And then what happened? After a full and open debate with arguments back and forth, the committee of six voted, and the vote was 3 to 3, and the bill failed. It is not unusual to have tie votes or tie actions. We have them in athletics, we have them in educational decision making, and we certainly have them in politics. And a tie vote is a vote. Everyone had their opportunity to do that. What could we do differently if we yanked—and notice it is always talked about yanking the bill or forcing—the bill out of the Judiciary Committee after that full and open hearing? What could we do differently in this body on this floor? Well, I think we heard some of it in some of the remarks that were supposed to be addressed to the procedure. By pointing out the political representation on the Committee and pointing out the alleged votes by members of a political party, I think that some members of this body and some of the advocates want to truly politicize this issue. Is it really something that is necessary and needed at this time when we have supposedly been struggling the budget and the livelihood and the standard of living of individuals, families, and businesses in this community? I don’t think so. We have a

process. The process has been followed. We had a hearing. We had a vote, and the vote has been tallied. Now, some people don't like the vote and they want to get their way, and there was ample opportunity to amend this bill prior to and during the hearing. But it was made clear by advocates of this bill they don't want any changes. They don't want anything that is different from erasing the dividing line between so-called civil unions and marriage. That's what they want; and that is their right, and I respect that right. But we have thoroughly legislated it, and now to say we're going to force this onto the floor because some people may have additional political aspirations next year is not going to help this community, is not going to reflect positively on this Senate.

Senator Baker rose on a point of order.

The Chair called for order.

Senator Slom continued:

"So, Madam President, we must vote 'no' on this measure because the bill is not stuck in the committee, the bill is not bottled up in the committee, the bill has not done without hearing. We followed the process. We have done all of that and we came to a conclusion, and the conclusion was there was not enough support to pass this bill at this time. Now the good Senator from Kaua'i brought up four canards about why we shouldn't do this or why we should yank the bill, and he talked about bad precedent and I mentioned what the precedents have been. Certainly we have a constitutional right to do this, but the idea is why should we when we have followed all of the things that we have to do and when everyone has spoken out about this?"

"Secondly, I almost fell off my chair, Madam President, when the good Senator said the Governor is likely to veto this bill. I don't know where he got his information. I would be very, very surprised if the Governor vetoed this bill. And why should the good Senator worry with 23 members out of 25 in this body, and with a record of overriding the Governor's vetoes at whim? Why worry about that?"

"Thirdly, he talked about a challenge being made, and he talked about Connecticut, and he talked about Professor Van Dyke. If he would have gone a little further and given you more accurate information, he would have mentioned that Professor Van Dyke discussed the Connecticut case and there is a basic difference between Connecticut and the State of Hawai'i. The Connecticut case relied upon the state constitution in Connecticut and not the federal Constitution. As Professor Van Dyke pointed out, it would be very difficult in Hawai'i, at the appellate level, to change things here because in 1998 more than 70 percent of the people voted for what they believed to be a definition of marriage between one man and one woman, but they did reserve the final decision to the Legislature, and the Legislature acted, amending chapter 572-1 and 572-1.5, which states: 'marriage in the State of Hawai'i is between a man and a woman.' So, we're not talking about civil rights here. We're not talking about equality. We're talking about trying to erase bright lines and we're talking about, in the end, as so many people testified, money and benefits and not civil rights. We have had the debate—I am certain this debate will continue—but to try to force this on the floor when the committee and its members did their job and when everyone in the community had ample opportunity—not only to testify, not only to send in information—to watch live 18 hours of that debate. That is reason for us to reject this motion, and I urge my colleagues to do so. Thank you, Madam President."

The Chair addressed the chamber and said:

"Members...members of the public...members of the public, you are here to watch the Senators' debate. We would like to ask you to respect the decorum of the Senate chambers. We

would like to ask all sides of this issue to please refrain from any outbursts, and the reason being that the Senators are here to debate a very critical issue that all of you may have—and we believe have opinions of—but please permit us to complete our process."

Senator Ihara rose in support of the motion to recall and said:

"Madam President, I will endeavor to keep my comments within the interpretation that you had laid out. I would hope that the Senate would continue its tradition of not having narrow interpretations of parliamentary rules, but I'll do my best.

"I first want to address the motion itself: the motion to recall the civil unions bill from committee. In 1950, Hawai'i voters ratified a constitutional amendment, article III, section 10, that empowered a minority of legislators to recall a bill for full Senate action. O'ahu delegate Elizabeth Kellerman introduced this proposal, and there was a debate in the 1950 Constitutional Convention on July 7, 1950. In that debate she said: 'If the minority can bring a bill out to the floor, it will give them an opportunity to express their views, and it seems to me that the people ought to know how the members of the legislature feel and stand on certain measures. I believe that everything should be out in the open, and I think this amendment will provide for "putting democracy to work" and I believe this amendment will help to do that, and that is why I am in favor of it.' That was the statement from the proposer of this Constitutional right to recall given to a minority of legislators. This constitutional right of a minority was designed to protect our majority: to protect it from what historians have called 'the tyranny of the majority'. Our democracy depends on hearing the voices of the minority, and the minority right to recall was so important to our constitutional framers that this right was placed in the Hawai'i State Constitution. While a minority has a right to recall and vote on a bill that's in committee, bottled up or otherwise, it is the majority that decides the fate of such a bill. Whether the recall motion succeeds or fails will determine, in fact, whether a minority of same gender couples and families will finally receive the legal rights that heterosexuals already enjoy. I would like to ask fellow Senators, respectfully, especially the majority that may oppose this motion, if it might be possible to honor Hawai'i's constitutional minority right motion to recall a bill from committee, and hold those thoughts about acting against those who may support this motion.

"Martin Luther King said, 'Means we use must be as pure as the ends we seek.' Madam President, I support the motion to recall H.B. No. 444 because I believe there is no better day than today to stand up for the basic human right of every person to enjoy a family relationship without discrimination. I believe today is the day the Legislature could signal its intention to finally use its constitutional authority to grant equal legal rights to gay and lesbian couples. I will vote... I will vote for the recall motion because the denial of equal rights to same gender couples is too important to delay another day. I'm trying to censor some of my speaking as I go along to not be too offensive in bringing up the subject matter.

"Madam President, I believe this motion to recall is an appropriate method for a minority of Senators to invite other Senators to finally debate and vote on the merits of civil unions bill. I am interested in understanding the public policy rationale, hopefully in a future debate, that might be proposed for denying same sex couples the legal rights that heterosexual families already have. I believe it is time, starting today hopefully, to move past the fear of H.B. No. 444, which I believe is legitimate, and face the reality that same gender families exist in our society today. And I believe they deserve equal rights under the laws of the State of Hawai'i. I have let go of my own fear of being disliked as gay and lesbians may have felt sometimes and perhaps intensely by some that may

dislike myself and others who may support this motion to recall. I have compassion for the fear that segments of our community may feel about this bill and their disappointment of those Senators who are supporting this motion, but I say to you that we are standing up for equal protection, equal rights, to same gender couples as civil unions, not as marriage.

"I support the motion to recall because I believe this vote may be the last chance this year to address the civil unions issue and allow the people's elected representatives to vote on whether same gender couples and families should receive the same legal rights as opposite sex couples. To the majority in the Senate, I am presuming that those who support this motion are a minority and I want to speak for the rights of minorities, and as I do sometimes with our political Minority, I do want to stand up for the minorities and invoke this constitutional minority rights' power to bring this issue to the floor if we succeed, if we have nine votes, and then have the debate on the issue. Thank you, Madam President."

Senator Taniguchi rose in opposition to the motion and said:

"This is a very difficult decision for me. I don't have to remind you that I did vote in favor of the bill in committee and have supported the bill, and as Chairman of the committee, actually heard the bill. I didn't anticipate it would take 18 hours, but I think we did have a thorough hearing on the bill, and I think we at least touched upon a lot of the issues that are intertwined with this bill. But I am voting today in opposition to this motion because I believe it is premature. I believe we still have some time. I did ask the Senator from Kaua'i to hold off on his motion, but he felt the necessity to do so today. I believe if we have additional time, it will allow us to work on possibly passing this bill or possibly amending this bill. Approving the motion today, I believe, will foreclose all that, and I ask my colleagues to vote in opposition to this motion. Thank you."

Senator Baker rose in support of the motion and said:

"Some might ask, particularly after the Chair's remarks, why a current committee chair would support a move to recall a bill from somebody else's committee: 'Don't you support the committee process?' I can hear some of my colleagues asking. Yes, I do in fact support the committee process because it is integral to how we get our work done, and for 99 percent of the time I think it works well. Bills are heard. Testimony is taken. Decisions are made. Most all of our committees have an uneven number of members so tie votes are rare, even rarer on this floor. There are, however, those unique situations when the committee system, I believe, doesn't work as it was intended, and that is what I believe has transpired with the action on H.B. No. 444, H.D. 1. After long hours of hearings and much deliberation, the Chair of the committee did in fact make a motion to pass the bill unamended, but the committee with all of the members present could not move the bill forward, but didn't flat-out reject the Chair's recommendation either. In addition, I believe that a bill of such importance as this one deserves to be handled by the entire body on a clear vote. The framers of our Constitution provided a procedure for such situations as we are in today. In invoking that safety valve, I believe we are honoring our rules and paying tribute to the integrity of the process afforded to us by our Constitution. I ask my colleagues to join me, so that the entire Senate can address an issue which will impact many people in our state. It is because I believe in the process that I stand in support of this measure. In my view, it is simply the right thing to do. *Mahalo.*"

Senator Kokubun rose in opposition of the motion to recall and said:

"You know, I certainly respect the Constitutional provision regarding recall, particularly when there is a situation where a measure is being held in committee by a chair or not being heard at all. This situation, in my opinion, though was very different. Let me first thank the Chair and members of the Judiciary and Government Operations Committee for providing, through a public hearing, the opportunity for people to express themselves on an issue of great interest. It is also important to note that, as mentioned previously, the hearing took close to 18 hours to complete and provided all who wished to testify that opportunity. It is also to the credit of the Chair and committee members that they listened intently and participated for the duration of the hearing, including decision making that occurred after the extended hearing ended at 3:00 a.m. Notably, at the conclusion of the hearing, people who participated in the hearing, whether they were for or against the measure, expressed gratitude for the respect and courtesies provided to all by Chair Taniguchi and the committee members. Chair Taniguchi and the members of the Judiciary and Government Operations Committee, thank you for representing the Senate with forthrightness and earnestness. As we all know, the committee vote ended in a deadlock. My point is that the bill received an extraordinary hearing and decision making process. This is not a situation where a measure is being held by a chair. The Senate Committee structure and the leadership demonstrated by chairs and members functions very well. This situation does not rise, in my opinion, to the level of abuse that requires the extraordinary action of recall. I ask my colleagues to support the integrity of the Senate and its functions, and vote 'no' on this motion. Thank you, Madam President."

Senator Kidani rose and said:

"Thank you Madam President. As a candidate for this office I supported..."

The Chair interjected:

"Senator Kidani, for what purpose do you rise?"

Senator Kidani responded:

"Sorry, I stand in support of this measure. As a candidate for this office, I supported civil unions because I believed that it was the right thing to do. I supported the pull from committee because three weeks ago I thought the Chair and Vice Chair also supported that measure, and I made commitments based on that. I can't turn my back on those commitments because other senators have changed their mind. As a freshman senator, I know I have a lot to learn and I have to hit the ground running. And I'm sorry if this vote is not what you guys want to hear, but it is my conscience. So today, in honor and in memory of Ah Quon McElrath, I will cast a vote in support. Thank you."

Senator Tokuda rose in opposition to the motion and said:

"We all have very different reasons for supporting or opposing pulling this bill to the floor, and let me be very clear: My opposition to this pull does not in any way diminish or change my strong support for civil unions and my desire to live in a society where equal rights and equal treatment exists for all. But that is not what we are discussing today. While some may disagree, the discussion we're having right now is not on the merits or the importance of the bill, but rather our legislative process and the exception to the rule that we are considering today. To many, the work that we do is quite a mystery and we do this work on behalf of the people that we serve. While many may not understand the complexity of our calendar or how our committee system works, they do know that a process exists by which an individual may voice their opinion prior to decisions being made. And, like decisions made in all other sectors of government, business, and in our everyday life, they expect us to stand by the decisions that are made. While not pulling the bill to the floor in deference to the process and out of respect to

the committee structure and its chair may seem cold and overly technical, at the end of the day our process validates the decisions that we make. Our system has been established on the basis that the process legitimizes the purposes we act upon. It gives weight and credence to the decisions that we make, and if there are questions or a lack of trust in how we do things and how things are done, what faith will people have in what we have done? This is very difficult for me, Madam Chair and colleagues, for even as I stand before you here today and look around the room at all of you, it's not your faces that I see. I see many of the faces of my friends, family members, loved ones and constituents who have waited for equality and justice for too long, and I feel the full weight of their disappointment and loss upon me. This issue has once again seriously divided our communities when really ensuring equal treatment and equal rights for all should unite us. The hate, the stereotypes, the misinformation and threats we have heard on this has been nothing short of blasphemous. It has made it clear to me that while this debate has been about civil unions, we still have such a long way to go in seeing each other as human beings—all equal, all unique, and all free to be who we are under the eyes of whatever, if any, God we so choose. While I do not support the motion to pull this bill to the floor, my support for equal rights, civil rights, remains unwavering. Today is the day when there will be no winners, for when one individual is denied the rights of others, we all lose. But there will be a tomorrow, and I remain committed to the fight going forward. Thank you."

Senator Slom rose in brief rebuttal and said:

"I just want to comment on a couple statements that had been made. As I had mentioned in my original remarks, I certainly understand our constitutional right to do this and the good Senator from Kaimuki read passages from someone who I knew and respected, Mrs. Kellerman. But just because you put a right into a document doesn't mean that you are to use it frivolously. It is there, and I would fight for the right to have it there, for use in extraordinary circumstances. And as you've heard today, this is not an extraordinary circumstance. We followed procedure, we had the hearing, we had people testify, and then we took a vote. And that is absolutely different from the other situations which I described where I supported pulling bills because the chairmen of those committees refused to have open hearings. We've had the hearing. We've had the debate. And when it comes to minorities, I absolutely know what it means to be a minority, particular in this political house. My colleague, Senator Hemmings and I—every day we come to work, it's 23 to 2. And many times, if you look at the votes, it'll even be 24 to 1; I can't even convince him to vote with me. But that's the nature of the political system and as long as it's done transparently, and with openness, and we follow the procedures, you can't say, 'Well, I don't like it here, and so I want to change the rules.' Can't do that.

"I also want to reiterate some statement that was made—a quotation from Dr. Martin Luther King, who we all respect and admire. During that 18-hour hearing, there were many African Americans who spoke, and each one of them—each one of them—said that they were not comfortable with the fact that people were using Dr. King to speak on this issue because he never made one utterance about civil unions or same sex marriages. So to use his name and take it out of context, I think, is not something that we should be doing.

"Also, to paint those of us that either voted 'no' on the bill or are going to vote 'no' on this procedure as being afraid, or being disrespectful, or being somehow uncomfortable with individuals because of their lifestyle, is missing the point entirely. We are talking about the condition of law. We're talking about procedures, both in the judiciary and also in the legislative branch, that we should follow. If we do it on one issue and one area, we should do it on all others.

"And then the statement was brought up that how unique this was that the Judiciary Committee had only six people and it resulted in a tie of 3 to 3. Well, Madam President, as you well know, there are fourteen Senate committees and five of those committees have even numbered members: Education and Housing, the Health Committee, the Human Services Committee, the Judiciary Committee, and even the Ways and Means Committee. Five out of the fourteen. So, it's possible to have tie votes. It's very rare. And when people listen to the testimony, generally they're not that equal or not that split, but in this case, we were.

"So, don't make shabby the process by doing this. Vote your conscience, by all means. Keep your promises, by all means, but in the end all of us will do the right thing as our conscience demands. And maybe, Madam President, the last thing to say is maybe we could get out of this quandary if we ordered an environmental impact statement of civil unions before we vote. Thank you, Madam President."

The Chair addressed the chamber and said:

"Members...members of the gallery, members of the public, may we have order."

Senator Tsutsui rose in opposition to the motion and said:

"Madam President, it has been said today on the Senate floor that this bill will sit here and wither and die. It has also been said that we can't wait any longer, and I also heard a statement saying that this is our last chance.

"Madam President, colleagues, I disagree. We still have time. I have seen several members propose various amendments and unfortunately, because of one person's political agenda, one person's political timeline, we are being asked to vote on a measure prematurely."

Senator Ihara interjected and said:

"I believe our parliamentary procedures do not allow the criticism of another member of the Senate or ascribing a motive to a motion."

The Chair acknowledged Senator Ihara and said:

"You are correct. I'm not quite sure which member it's being ascribed to, but you may proceed, Senator Tsutsui, with that admonishment."

Senator Tsutsui continued:

"Thank you, Madam President. Madam President, you know, I believe, again, we still have time to work on a measure. We have time to work on a measure that will bring this community together, not divide them as this procedure is trying to do. Madam President, I believe with your leadership we can continue to engage with individuals on both sides of the issue, and to have a measure that would both provide equality and the protection of civil rights for every single person in our state. Thank you, Madam President."

Senator Baker rose again in support of the motion and said:

"Once again, I rise in support of this motion. As I was looking through the materials that I brought down to the chamber with me, I came across a small bumper sticker that you'll start seeing cropped up around. It says, '*Practice Aloha*'. As we are about to cast our votes, maybe that's the Hawaiian value that we need to keep in our mind as we exercise our right to vote. Thank you."

The motion to recall H.B. No. 444, H.D. 1 from the Committee on Judiciary and Government Operations was put by the Chair and, Roll Call vote having been requested, failed on the following showing of Ayes and Noes:

Ayes, 6. Noes, 18 (Bunda, Espero, Gabbard, Galuteria, Green, Hanabusa, Hee, Hemmings, Ige, Kim, Kokubun, Nishihara, Sakamoto, Slom, Takamine, Taniguchi, Tokuda, Tsutsui). Excused, 1 (English).

The Chair addressed the chamber and said:

“Members of the public. Members of the public. Please, please respect the decorum of the Senate. Thank you.”

At 12:55 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:56 p.m.

The Chair addressed the chamber and said:

“Members of the public, as you leave the chamber we ask that you please do it quietly.”

The Chair continued, making the following announcements:

“The deadline for filing bills moving laterally to final committee that need to pass Second Reading is 9:00 p.m. tonight.

“Referrals and re-referrals are made in accordance with the Supplemental Order of the Day that may be distributed to your offices later this afternoon.”

RE-REFERRAL OF HOUSE BILLS

The Chair re-referred the following House bills that were received:

H.B. No.	Re-referred to:
H.B. No. 754, H.D. 1	Jointly to the Committee on Tourism and the Committee on Ways and Means
H.B. No. 901, H.D. 2	Committee on Water, Land, Agriculture and Hawaiian Affairs, then jointly to the Committee on Judiciary and Government Operations and the Committee on Ways and Means

ADJOURNMENT

At 12:58 p.m., on motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Friday, March 27, 2009.

ATTACHMENT A

Bills Recalled from Committee in the Senate

1994

HB 2312- Relating to marriage.

Referred to JUD. Recall from JDC failed by:

- Yes votes- Rick Reed, Brian Kanno, James Aki, Stan Koki, and Mary George. (5)
- No votes- Senators Rosalyn Baker, Anthony Chang, Lehua Fernandes Salling, Carol Fukunaga, Rey Graulty, Gerald Hagino, Milton Holt, Donna Ikeda, Randy Iwase, Ann Kobayashi, Andy Levin, Matt Matsunaga, Richard Matsuura, Mike McCartney, Norman Mizuguchi, Dennis Nakasato, Malama Solomon, Joe Tanaka, and Elois Tangpalan. (19)
- Excused- Bert Kobayashi.

1996

HB 2366- Proposing an amendment to the constitution of the State of Hawaii defining marriage in the State of Hawaii.

Referred to JDC. Recalled successfully from JDC:

- Yes votes- Senators Malama Solomon, Joe Tanaka, Donna Ikeda, Milton Holt, Randy Iwase, Whitney Anderson, Michael Liu, James Aki and Robert Bunda. (9)
- No votes- Senators Rosalyn Baker, Avery Chumbley, Lehua Fernandes Salling, Carol Fukunaga, Rey Graulty, David Ige, Les Ihara, Brian Kanno, Cal Kawamoto, Andy Levin, Matt Matsunaga, Richard Matsuura, Mike McCartney, Norman Mizuguchi, Rod Tam, Brian Taniguchi. (16)

1998

HB 2973- Relating to partial-birth abortions.

Referred to HEV. Recalled successfully from HEV:

- Yes votes: Malama Solomon, Joe Tanaka, Sam Slom, Norman Sakamoto, Randy Iwase, James Aki, Robert Bunda, Marshall Ige, Whitney Anderson. (9)
- No votes: Senators Rosalyn Baker, Avery Chumbley, Suzanne Chun Oakland, Lehua Fernandes Sallings, Carol Fukunaga, David Ige, Les Ihara, Brian Kanno, Cal Kawamoto, Andy Levin, Matt Matsunaga, Mike McCartney, Wayne Metcalf, Norman Mizuguchi, Rod Tam, Brian Taniguchi. (16)

2002

HB 2487- Relating to death with dignity.

Referred to HHS, JDC. Recalled successfully from HHS:

- Yes votes- Senators Lorraine Inouye, David Matsuura, Russell Kokubun, Jan Yagi Buen, J. Kalani English, Avery Chumbley, Matt Matsunaga, Les Ihara, Carol Fukunaga, Rod Tam, Suzanne Chun Oakland, David Ige, Colleen Hanabusa, Bob Nakata, Bob Hogue. (15)
- No votes- Senators Robert Bunda, Jonathan Chun, Fred Hemmings, Brian Kanno, Donna Kim, Ron Menor, Cal Kawamoto, Norman Sakamoto, Sam Slom, Brian Taniguchi. (10)

ATTACHMENT B

JON M. VAN DYKE
 Professor of Law and Carlsmith Ball Faculty Scholar
 William S. Richardson School of Law
 UNIVERSITY OF HAWAII AT MANOA
 2515 Dole Street
 Honolulu, Hawai'i 96822
 Tel: 808-956-8509
 Fax: 808-956-5569
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March 23, 2009

Senator Gary Hooser
 Hawaii State Senate
 State Capitol
 Honolulu, Hawaii 96813

Dear Senator Hooser:

This letter is written in response to your request for a professional opinion regarding HB 444 HD 1. This opinion is based on my professional background, which includes teaching Constitutional Law since 1968 at Catholic University, the Hastings College of Law, and (since 1976) at the William S. Richardson School of Law at the University of Hawaii, but it is offered in my individual capacity and is not presented as the views of the University of Hawaii.

This letter addresses the concern that even though HB 444 HD1 is designed only to allow same-sex couples to establish "civil unions," the effect of this enactment might, in fact, be to enable same-sex couples to have the status of "marriage," in light of the decision of the Connecticut Supreme Court in *Kerrigan v. Comm'r of Public Health*, 89 Conn. 135, 957 A.2d 407 (2008). This concern has been raised because, in *Kerrigan*, the Connecticut Supreme Court ruled that same-sex couples who had established civil unions under Connecticut law could establish a legally-cognizable injury in being excluded from the institution of marriage and hence that the Connecticut law that restricted marriage to heterosexual couples violated the equal protection rights of the same-sex couples under the Connecticut Constitution.

This same result could not, however, be reached by the appellate courts of Hawaii if HB444 HD1 is passed, because of the differences between the Connecticut and Hawaii State Constitutions. It is important to emphasize that the *Kerrigan* decision was based on the Connecticut State Constitution, specifically Article First § 20, and not on the U.S. Constitution. The Connecticut Supreme Court was very careful in this regard and constantly referred to the "state constitution" rather than to the federal constitution.

1

The Hawaii Constitution contains language in Article I, Section 5 that is similar to the language in Connecticut's Article First § 20, stating that no person shall be "denied the equal protection" of the law, but Hawaii's Constitution now contains the additional provision in Article I, Section 23 (added in 1998) stating that: "The legislature shall have the power to reserve marriage to opposite-sex couples." This constitutional amendment granted additional power to Hawaii's Legislature and the Hawaii State Legislature has, in fact, reserved marriage to unions "between a man and a woman" in H.R.S. §§ 572-1 and 572-1.5. It would therefore be impossible for an appellate court in Hawaii to reach a result similar to that reached in Connecticut in the *Kerrigan* decision, *i.e.*, it would be impossible for a Hawaii appellate court to rule that allowing same-sex couples to establish "civil unions" but not "marriages" violated the Hawaii State Constitution.

Such a result would be impossible because it would ignore the requirement to read the Hawaii Constitution as a whole, and thereby to give meaning to Article I, Section 23 (as well as Article I, Section 5). Such a result would also be inconsistent with fundamental concept of the Separation of Powers, the doctrine that separates powers and responsibilities between the Judicial and Legislative Branches. In Hawaii, unlike Connecticut, our Constitution gives the Legislative Branch sole responsibility to determine eligibility for "marriage," and that power is thus removed from consideration and review by the Judicial Branch.

The Hawaii Supreme Court, in fact, already reached that very result in 1999 after Article I, Section 23 was added to the Hawaii Constitution. In *Baehr v. Miike*, No. 91-1394-05 (Hawaii Supreme Court, Dec. 9, 1999) (described in David Orgon Coolidge, *the Hawaii Marriage Amendment: Its Origins, Meaning and Fate*, 22 U. HAWAII L. REV. 19, 108-09 (2000)), the Hawaii Supreme Court ruled that the approval by the voters of what became Article I, Section 23 took the question of who was eligible to enter into a "marriage" out of "the ambit of the equal protection clause." "Whether or not" H.R.S. §§ 572-1 and 572-1.5 were previously constitutional, the Court explained, these statutes had been given "new footing" by the amendment, and therefore they "must be given full force and effect."

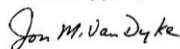
The enactment of HB 444 HD 1 would not change the Hawaii Constitution in any manner, and hence any challenge to H.R.S. §§ 572-1 and 572-1.5 after passage of HB 444 HD 1 would lead to the same result that the previous challenge met in December 1999. Hawaii's Constitution gives the responsibility of defining marriage to the State Legislature, and Hawaii's appellate courts will decline to address any challenge to the definition established by the Legislature.

Because Hawaii's Constitution is different in this important manner from the Connecticut Constitution, therefore, the enactment of HB 444 HD 1 would not lead to any Hawaii appellate opinion comparable to the *Kerrigan* decision, and the definition of "marriage" established by the Hawaii Legislature in H.R.S. §§ 572-1 and 572-1.5 would be allowed to stand.

2

Please let me know if I can be of any further assistance on this or any other matter.

Sincerely yours,



Jon M. Van Dyke

ATTACHMENT B cont.

Jacce Mikulanec

From: Lois Perrin [lperrin@acluhawaii.org]
Sent: Monday, March 23, 2009 6:47 PM
To: Jacce Mikulanec; boshiro@capitol.hawaii.gov
Subject: RE: HB444 and Kerrigan v. Connecticut

Importance: High

Dear Representative Oshiro:

In responding to your question regarding *Kerrigan v. Connecticut* – there is no argument that HB444 as currently drafted, is – or could be – a “backdoor” attempt to attain marriage under the Hawaii Constitution.

Simply put, there is no legal basis for any argument that HB444, as currently written, will be used as the basis for a lawsuit for same-sex marriage under the Hawaii State Constitution. A lawsuit for marriage based on the equal protection clause of the Hawaii Constitution (Article 1, Section 5) would almost certainly fail on its face because of Article 1, Section 23 of the Hawaii Constitution, which provides: “The legislature shall have the power to reserve marriage to opposite-sex couples.”

Three principles of statutory construction – which apply in like force to constitutional construction – compel this result. As the Hawaii Supreme Court has explained:

First, legislative enactments are presumptively valid and should be interpreted in such a manner as to give them effect. Second, laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another. Third, where there is a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter, the specific will be favored. However, where the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored.

Richardson v. City and County of Honolulu, 76 Hawai'i 46, 54-55, 868 P.2d 1193, 1201-02 (1994) (citations, internal quotation signals, and brackets omitted).

A lawsuit alleging that HB444 must be construed as authorizing marriage in accordance with Article 1, Section 5 (equal protection) would fail because, to reach that result, the Court would have to ignore Article 1, Section 23 (marriage). These provisions must be interpreted with reference to each other. The Hawaii Constitution contains a *general* provision on equal protection and a *specific* provision authorizing the Legislature to define marriage; an argument that Section 5 compelled same-sex marriage would put Sections 5 and 23 in plain conflict, and the specific provision – Article 23 – would prevail.

Kerrigan v. Connecticut is not applicable in Hawaii because *Kerrigan* involved the Connecticut Supreme Court's interpretation of the Connecticut Constitution. The Connecticut Constitution is fundamentally different from the Hawaii Constitution because, in 1998, Hawaii voters approved what is now Article 1, Section 23 of the Hawaii Constitution. This provision alone makes Connecticut's Constitution – and the Connecticut Supreme Court's interpretation thereof – inapposite. A new *statute* – in this case, HB 444 – does not change the interpretation of what the *Constitution* means.

We are, of course, available for questions.

1

Best regards,

Lois K. Perrin
 Legal Director
 \CLU of Hawaii

From: Jacce Mikulanec [mailto:mikulanec@capitol.hawaii.gov]
Sent: Monday, March 23, 2009 8:51 PM
To: Lois Perrin
Subject: FW: HB444 and Kerrigan v. Connecticut

From: Blake Oshiro [mailto:BOshiro@ahfi.com]
Sent: Monday, March 23, 2009 4:23 PM
To: Clyde Wadsworth; Alan R. Spector; jvandyke@hawaii.edu; TBorelli@lambdalegal.org
Cc: Jacce Mikulanec
Subject: HB444 and Kerrigan v. Connecticut

Aloha all:

I apologize for putting in everyone's emails without some bcc's or privacy, but based on the need for an expedited response, I was hoping some (if not all) of you could take a look at this most recently raised objection.

As I understand it, tomorrow, the Senate Leadership will meet in the morning and then there will be a caucus in the afternoon to discuss the potential pull of HB444 to the floor. Apparently, there is now an attack to the bill that it is a “backdoor” attempt to get marriage based on the *Kerrigan v. Connecticut* decision.
<http://www.jud.state.ct.us/external/supapp/Cases/ARocr/CR289/289CR152.pdf>
 This argument is being made by someone who is very influential in the discussion and will likely have the ability to sway the ultimate decision and vote.

I have never tried to hide the fact that HB444's language was based largely on Connecticut, simply because it was the most clear and straight-forward. However, now, it is being characterized as a way to allow advocates to get positioned for a Hawaii Supreme Court challenge to effectuate marriage.

However, as I see it, this argument is completely misplaced and misleading. The *Kerrigan* case is *easily* distinguishable because our Hawaii State Constitution was specifically amended to empower the legislature to define marriage. Even if the Hawaii Supreme Court found that there was an equal protection violation under similar reasoning with *Kerrigan*, the constitutional amendment makes that a moot issue and under the separation of powers doctrine, would NOT be able to order the legislature to re-define marriage.

Please let me know if this evaluation or reasoning is incorrect or if there are other points that I missed. I need to get a response to Senator Hooser immediately and before his meetings and I am hoping to have as much “legal” and “constitutional” expertise chime in as possible.

Please contact me if you have any questions.
 Blake

2

Jacce Mikulanec

From: steven levinson [s_levinson@lycos.com]
Sent: Monday, March 23, 2009 11:37 PM
To: Blake Oshiro
Subject: [RE]Fwd: Re: Civil Unions HB444 and Kerrigan v. Connecticut

Dear Representative Oshiro,

Thank you for your email dated March 23, 2008. I concur completely with Professor Van Dyke's analysis, in particular, with Professor Van Dyke's conclusion that the *Kerrigan* decision is inapposite to any construction of the relationship between HB 444 and the Hawai'i Constitution. In my personal opinion, although article I, section 23 of the Hawai'i Constitution authorizes the Hawai'i legislature to define marriage as it sees fit as a matter of public policy, including a definition that would extend to same-sex couples, it in no way compels the legislature to define marriage as available to same-sex couples, and HB 444 does not do so. Indeed, article I, section 23 gives the legislature a monopoly over that policy decision; that being the case, the courts could not compel a statutory definition of marriage that includes same-sex couples. Accordingly, HB 444, which affords same-sex partners to a civil union the same rights and benefits as those enjoyed by partners to a statutory marriage relationship, is not only consonant with article I, section 23 of the Hawai'i Constitution, but is very possibly compelled by article I, sections 3 and 5. However, as I understand HB 444, civil union is a relation that remains distinct from marriage, although the statutory rights and benefits afforded by state law would be the same as to both relations.

Sincerely,

Steven H. Levinson
 Associate Justice, Hawai'i Supreme Court, Retired

-----[Received Mail Content]-----

> Subject: Fwd: Re: Civil Unions HB444 and Kerrigan v. Connecticut

> Date: Mon, 23 Mar 2009 18:18:36 -1000

> From: "Blake Oshiro"

> To:

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>Justice Levinson:

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>I hope this finds you well. I hope you don't mind but I got your email from one of the UH Law students who organized the forum we were at. If you have the time, if you could please review the emails below where I pose a question to Professor Van Dyke, et al. re the nonapplicability of the *Kerrigan v. Connecticut* decision (link provided below) as well as Professor Van Dyke's response. If you could let me know if you concur with his analysis, that would be extremely helpful as we are trying our best to get the Senate to pass the civil unions bill.

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>If you have any questions or require any additional information, please contact me.

>Sincerely,

>Rep. Blake Oshiro

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>>>> Jon Van Dyke 3/23/2009 5:51 PM >>>

>Attached is a letter I have prepared for Senator Hooser regarding this

>concern. Please let me know if this arrives safely at your end and if

>there are any other ways I can be of assistance. Best wishes, Jon

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