

SIXTY-SECOND DAY

Friday, May 8, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2009, convened at 10:14 a.m. with the President in the Chair.

The Divine Blessing was invoked by Mr. Hakim Ouansafi, President of the Muslim Association of Hawai'i, after which the Roll was called showing all Senators present.

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

At 10:24 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:33 a.m.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 672 to 678) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 672, informing the Senate that on May 7, 2009, the Governor signed into law Senate Bill No. 301, S.D. 2, H.D. 1 as Act 55, entitled: "RELATING TO THE HAWAII REGISTERED AGENTS ACT," was placed on file.

Gov. Msg. No. 673, informing the Senate that on May 7, 2009, the Governor signed into law House Bill No. 1175, H.D. 3, S.D. 2, C.D. 1 as Act 56, entitled: "RELATING TO TAXATION," was placed on file.

Gov. Msg. No. 674, dated May 7, 2009, transmitting the Governor's statement of objections to Senate Bill No. 1111, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," which was returned to the Senate without approval and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

May 7, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL
NO. 1111

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1111, entitled 'A Bill for an Act Relating to Taxation.'

The purposes of this bill are to increase the transient accommodations tax from 7.25 percent to 8.25 percent for the period July 1, 2009 to July 30, 2010, and to further increase the tax to 9.25 percent from July 1, 2010 to June 30, 2015. The money from this tax increase would be deposited into the general fund.

This bill is objectionable because an increase in the Transient Accommodations Tax will prolong our state's ability to recover its economic vitality. It will raise the cost of visiting Hawaii, discourage both leisure and business travelers, and comes at a time when Hawaii's hospitality industry is experiencing its steepest decline in 22 years.

Hawaii's economy cannot recover from the current economic recession without a recovery in tourism. Almost three-quarters of private sector employment in the State is linked, either directly or indirectly, to tourism. The 66.9 percent statewide

hotel occupancy rate recorded this March represents a 16.6 percent plunge from a year earlier. It is the 13th consecutive monthly decline in an industry that employs over 100,000 residents of our state. These occupancy rates were only achieved after hotels and rental units slashed daily room rates more than 12 percent. Despite the efforts to keep hotel rooms occupied, the visitor industry has lost 6,200 jobs in the past 12 months. As our hospitality industry fights to keep workers employed, we should not make their job harder by raising the taxes they must pay to the State.

Some have argued that a Transient Accommodations Tax increase will not discourage visitors since a tax of 8.25 or 9.25 percent is still less than the double-digit room tax rates seen on the mainland. However, it must be noted that even as room rates continue to fall in Hawaii, the average room rate statewide is \$170 per night, whereas the average room rate nationwide is only \$100 per night. In real dollars, tourists have to pay more to come to Hawaii. According to the American Hotel and Lodging Foundation, Hawaii visitors pay an average of \$25.79 per night in lodging taxes versus the national average of \$12.69.

Passage of this bill has resulted in adverse coverage in the national press that has resulted in comments that Hawaii is trying to take our economic frustrations out on our visitors. As the *State of Aloha* that depends upon our hospitality for our economic well-being, this is the wrong message to be sending.

For the foregoing reasons, I am returning Senate Bill No. 1111 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,"

was placed on file.

In accordance with Article III, Section 17 of the Hawai'i State Constitution, Senator Hooser moved that the Senate override the veto of S.B. No. 1111, S.D. 1, H.D. 1, C.D. 1, as contained in Gov. Msg. No. 674, seconded by Senator Sakamoto.

Senator Slom rose to speak in opposition to the motion to override and stated:

"You know, it seems just incredible that we're talking about the economic difficulties in the state, and the number one economic engine in the state is our visitor industry; and we've watched by every indicator how that industry keeps slowing down. We have the Vice President of the United States telling people not to travel. We have more economic news of gloom with layoffs in the future; and yet, this body, this Legislature, wants to raise the hotel room tax, wants to further penalize those people that have a choice as to where they come. Some people have said that it's only the tourists and the tourists won't mind paying a couple of extra dollars per person per night, but that's not the point. They're already paying plenty when we look at Hawai'i compared to other destination areas—the cost of arriving here, the daily cost of maintaining a stay here. And those legislators that think that it's okay because we're just going to tax the tourists are absolutely wrong. We're taxing the employees of this industry because if this industry continues to sink, there will be more layoffs in this industry and that will have more negative impact across the state. Those of you that did not attend yesterday outside would've seen hundreds of employees from the visitor industry. You've all had visits from people in the industry begging you not to do this; that this is the wrong thing, the wrong time, the wrong measure. But today you want to show your political muscle. This is not the only

way that we could balance the budget. We're going to look at other tax measures as well. But no state, no nation has ever spent and taxed themselves into prosperity. And all this will do, if you override this veto, it will further delay the true economic recovery of this state, but it will have deleterious effects, not as much on the tourists as it will on our local people. *Aloha.*"

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

"Madam President, the Governor has stated in a recent speech on May 6 that if the TAT increase is allowed to stand, it will deter visitors from coming to Hawai'i. It will also decrease spending at our retail stores and restaurants, causing further job loss, because when visitors pay more in hotel taxes, they have less to spend on the rest of their vacation, including food, activities and gifts. If this is true, Madam President, then why did the hotels, along with the retail merchants and the HTA, just two weeks ago, voice support for an increase of the GET? The 1 percent GET increase would tax not only the visitor hotel accommodations, but their food, activities and gifts. If the hotels are concerned about the visitor having less to spend on the rest of their vacation, then their support of the GET increase contradicts their arguments.

"The 1 percent increase in the TAT is only \$1 on a \$100 room. Oh but wait a minute, how many \$100 hotel rooms are there really for our visitors? In fact, if you look at the statistics, of the 74,000 rooms that we have in the state of Hawai'i, over 50 percent range from \$250 on up to over \$500. The industry representatives say that the TAT shows up in the cost of the vacation package, thus making the package less competitive compared to other destinations. The fact is the cost of the hotel, besides the airfare, is the largest component of the vacation package cost. If an additional 1 percent or 2 percent on a \$200 room—that is \$2 to \$4—is going to deter the visitor, then why not cut the hotel room rate by a measly \$10? The harsh reality is that while the industry complains about the room tax, the hotel room rates continue to rise all the time. In fact, the reason Hawai'i often loses large conventions is because the hotels will not block the rooms or give reasonable room rates. While the government keeps the TAT down and low compared to many jurisdictions on the mainland, the hotels have no trouble raising their rates when the demands are high and dropping the rates minimally during bad times. Case in point: During the 9/11, statistics show that the room rates dropped by only an average of \$4. The Governor stated in her speech that for every 1 percent point increase in the hotel room tax, 3,200 jobs will be lost in Hawai'i. If this is true, then why is it that every time the hotels raise their rates by 10 percentage points, we haven't lost 32,000 hotel jobs? When the Legislature raised the TAT in 1998, from 6 percent to 7.25 percent, we did not see a loss of 4,000 jobs. Tourism boomed to over 7 million visitors, forcing HTA and the industry to consider programs to target less numbers and higher spending visitors. I challenge the Governor to show us when in the past that the 1 percent increase in TAT amounted to a loss of 3,200 jobs. These are irresponsible and inconsistent statements that cannot go unchallenged. I urge the members to override this veto. Thank you."

Senator Baker rose to speak in opposition to the motion to override and stated:

"This is a very uncomfortable position for me to take because it puts me at odds with my colleagues in the Majority in this chamber, and that's something that doesn't happen often. But I also represent one of the larger destination districts in the state, from Makena to Wailea to Lahaina, Ka'anapali and Kapalua. Many of my constituents either work in the hotel industry, work in visitor condominiums or B&Bs. We've already seen a layoff of many jobs, and I know more are coming because our occupancy is in decline. I had intended to bring a prop from a newspaper headline from the other day talking about how low

our occupancy is. These are different times. This is not 1997. This is not even 2002. It's a different time and requires different actions, and it will engender different outcomes. Because we have taken the tack of basically saying '*aloha*' to our tech industry with other measures that have been adopted, we are going to need to rely more and more on the visitor industry; and I believe that a different approach—a smaller increase in the TAT—would not have had the negative outcome that this one will. And so it is with regret that I will be voting 'no' and voting to sustain the Governor's veto."

Senator Slom rose in rebuttal and said:

"Of course I have no regret in voting 'no' on this, but I would just like to comment a little bit on some of the things that the good Senator from Kalihi had mentioned. First of all, the previous speaker did point out quite correctly that we're not comparing apples with apples when we talk about when we had boom times here. The hotels in fact have lowered their rates—are lowering their rates—are doing all kinds of things to stay competitive, but I think it's difficult when everybody says, 'Just cut your prices.' I heard somebody on the radio this morning say, 'Well, we'd be okay if all the stores just reduced all of their prices and everything.' And if you're talking about retail outlets, you're talking about groceries; particularly, you're talking about a 1 to 2 percent margin that they operate on. You can't cut your costs when the labor costs keep rising, when the taxes keep rising, when the employer mandates keep rising, when the costs of permitting and other government requirements keep rising, and that's where we are at this point.

"But I think the main thing is—and I do not wish to validate the decision that was made by some spokespeople from both retailing and visitor industry—they were given a stupid question: Which would you rather have, a bullet in the head or be beheaded? And so they said, 'Oh, well it's preferable to raise the general excise tax.' It was a stupid question, and they shouldn't have fallen for that. They should have said, 'No tax increase because it's going to hurt everybody.' But our first job in an industry is to protect the industry, protect the jobs, because if you continue to have a weakening economy and you continue to lose visitors, then as I said, the real recipients of this tax increase are going to be the employees and their families. And we talk in here all the time about rising welfare demands and all of that; you're going to see even more of that. We know that to be the case. We don't have to guess, just like we know that we're going to have a reduction on May 28 from the Council on Revenues. But having known this, you're still willing to go ahead and do this, and I think that's irresponsible. Thank you."

Senator Hemmings requested a Roll Call vote and the Chair so ordered.

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

"I'd like to respond if I could to a couple of the comments made by those in opposition. To say that it's a stupid decision to choose one tax increase over another is a statement that... You know, I first of all don't like the word 'stupid.' I taught my children not to use that word, so I won't use it again to refer to the statement that was referred to as 'stupid'. So I won't use that word.

"You know, I think we're in a position here where we had to make tough choices. I mean, we're required by the Constitution to balance our budget and there is not enough money to go around. So, it is a choice of bad choices. Which of the bad choices do we need to choose? Do we need to raise one tax or raise another tax? Do we need to cut education more than mental health? Or do we cut homeless services more than libraries? Or do we cut environmental protection? Or do we

cut tax credits from the high tech industry more or less? So it is a choice the people have to make; and the visitor industry did express to us that they preferred a general excise tax increase, and I believe that that is a reasonable statement for them to make. I do not believe that it is an unreasonable statement, which I prefer to the word 'stupid'. I think reasonable and unreasonable is a better choice of words.

"You know, the research I've done and certainly living in District 7 and looking at why people visit our state, I believe the number one reason they visit our state is because it's a beautiful place to come to: because the people are warm and wonderful, because we have a tremendous and vital culture, and because of our natural environment. And I think if we want to keep that, we need to pay a price for it. It's not because whether it's \$1 or \$2 or \$3 or \$4 more than some other location. And we could have made the choice of keeping some of our parks closed, paying less for services that help the mentally ill, and the list goes on and on and on, but we didn't. We chose to cut everywhere and to raise taxes on a very limited basis and in a very limited number of situations. It's a hard choice, it's a difficult choice, but we had to make that choice.

"You know, one issue I have with this and the grand spectacle the Governor put on yesterday—bussing in the employees, bringing in the people from the tourism industry and having them chant, 'Veto, veto, veto,' and then going down vetoing—is that the Governor chooses to oppose taxes that she doesn't like, but yet during the same legislative session she proposes her own slate of taxes, her own set of fee increases. With her Recreational Renaissance program, she'd like to raise the fees to tourists and our parks; so instead of them paying \$1 or \$2 more for the hotel room, they would pay \$2 or \$5 more to go to Koke'e or other places like that. So she prefers those tax increases, but she doesn't prefer this tax increase. She prefers raising the highway taxes for a highway modernization fund, but wants to veto these. She wants to modernize and raise the harbor fees, but yet she doesn't like the taxes that we propose. But she's not holding press conferences on the taxes she proposes and has supported in the past.

"Balancing the budget is a difficult situation and it requires a little give from everyone, and I believe this budget does so and am encouraging everyone to vote in support of the override. Thank you."

Senator Hemmings rose to speak in opposition to the motion to override and stated:

"I am inspired by the previous speaker—good-looking guy. We do make tough choices; and in this process we usually make choices that curry favor with those who support us and which, for Sam and I, don't leave us many choices and special interest groups that participate here. And what we're doing today is we're making a choice as a state to make the tough choices to balance our budget. On one hand, the two of us on this side of the aisle would love to see us balance the budget through making tough choices on how we spend our money. On your side of the aisle, you seem to think that increasing taxes, fees, regulations, and all of that will bode our economy well and we'll all be happy a couple years from now. And we can debate statistics on all of these bills and, from your perspective, raising a tax a dollar or two here or there for staying in a hotel room is just a dollar or two increase. But when you look at the total revenue impact of all of these, you begin to see a different picture. You see that we're taking a \$100 million out of income tax that could be spent through increased jobs over the next two years. We're seeing that we're taking approximately \$90 million in hotel room tax out of the industry that could save jobs from people that are being laid off. So the one or two dollars, they do add up. How much payroll in hotel industry could have met with the \$80 million we've taken out of their budgets,

money that can't be spent because it's been taken away in taxes?

"And there are tough choices to be made, but we could have made tough choices in our budget process so we wouldn't need to raise taxes to balance it. And we always mention education, but I really believe that if we ever had an audit of the public education system, we probably could cut several hundred million dollars by just eliminating the bureaucracy and the expense of paid people that are doing curriculum specialists on potty training or all the other God-knows-what jobs that the bureaucracy performs. But we'll never know exactly how much money we can save. We know this year in this budget we're subsidizing the state hospital systems by \$200 million. Why didn't we, several years ago as was suggested then, allow some of these bigger hospitals to become privatized or let someone else in the market help provide choice and better access and possibly more competitive prices, so we wouldn't have to spend in this budget \$200 million subsidizing hospitals? And the list goes on and on and on and on. It was mentioned about the Recreational Renaissance. Well, that plan came from the good public workers who worked so hard and labored so diligently and passionately in the DLNR to improve our parks for everybody, including the tourists, and make them affordable. Something that's done very successfully—if you go to a national park, Haleakala or the Big Island, you'll see how well-kept those park are. So across the board, we could make choices and we could've reduced state spending so we wouldn't have to raise taxes. We're going to be taking hundreds of millions of dollars out of our economy to, in my estimation, sustain a huge portion of government that doesn't need to be sustained, and could be done better, or maybe eliminated completely.

"But I agree with the previous speaker; we have to make tough choices, and you will and we will. What we do have is a history of what has happened in Hawai'i and, quite frankly, I think it's no surprise that we're not a good place to do business and we are a one-industry economy, which is tourism. Just recent headline in a newspaper says, 'island hotel indexes fall in 3 different categories' about the productivity of the industry. And in previous times, good times, maybe the hotel industry could stand the jerk. But I would suggest that people aren't coming to Hawai'i because there's a worldwide financial crisis and people aren't coming because they don't have the money. So, how smart are we, selling a product that people can't afford and telling the industry that's selling the product, 'People can't afford it, but we're going to help you. We're going to raise the prices.' Because that's basically what we're telling the market, and they'll respond. So, I would urge you to sustain the Governor's veto and make a contribution to sustaining our economy and the single industry that's been able to survive here in Hawai'i despite our policies. Thank you, Madam President."

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

"Basically our state government is a service company. We are a service conglomerate. We provide services to the homeless. We provide services for education, for those who need help that are struggling. We provide services to those who need hospital care. We provide services in the criminal system. And we have choices if we want to maintain a certain of quantity of services, or perhaps there's services that people feel we don't need.

"Looking at what Ways and Means did, apparently general fund budget cuts totaled \$1.147 billion. Some of the critics to tax increases say, 'Well, tighten your belts, tighten your belts. State government is bloated.' \$1.147 billion sounds like a lot of belt-tightening, and a lot of that to me is reducing the quantity of service. We talk about wanting to be a place to do business and for the tourists—if they want to see more homeless people

in Kapi'olani Park, if they want to see people needing mental help helped sitting outside Kalākāua Beach on Kalākāua Avenue at Waikiki Beach. I don't think so. We don't think so. Belt tightening, \$1.147, transfers, reduction of tax credits... I believe Ways and Means and Finance did a good job at attempting to reduce where we can, reducing the quantity of services from the state needs to produce. Federal stimulus, thankfully, \$115 million is added in to help and that's not permanent.

"If we want to maintain a certain level of excellence because visitors don't want to come to a state, come to a destination where the services are not excellent in terms of what the state needs to do—highways, airports, harbors, educated workforce—we need to make tough choices. We could leave a 6 foot deep hole that perhaps we could refill with reduced services or reducing the quality of our workforce or reducing the compensation to our government workers. I believe this revenue measure in part reduces the 6 foot deep hole and perhaps 4 feet deep; if we pass all of the measures today, perhaps the hole is 2 feet deep. Public workers do need to share in getting us out of the hole. But a 6 foot deep hole for an educational assistant to have 10 percent pay cuts, they cannot survive, and the services they provide to our students are vital. There are many examples. We need to do what we need to do. If we can provide the reasonable quantity of services while doing an excellent job, visitors will come, our residents will grow, and our state will thrive. Thank you."

Senator Ihara rose to speak in support of the motion to override with reservations and stated:

"I would like to explain my concerns about this bill, although I will be voting for it. I have, as you know, declined to support an extension of this session. Because we extended the session by two days, we are deciding to override these vetoes, and I believe there are the votes to do that. However, I would have wanted to have all the pieces on the table all at once during a special session so that we can see, using a holistic approach rather than a piecemeal approach, on what each sector, how much program reductions and budget cuts and fund transfers. And we've already decided the salary reductions for non-union employees and it leaves the last group, the union employees, I believe, either fortunate for having to provide a lesser share of the deficit or unfortunate and unlucky in having to perhaps provide a larger burden because we don't know what the final deficit will be. We are deciding this now before the Council on Revenues' projections, and if it goes down as far as some think that could pose a problem to the last group that may carry the burden or be fortunate in finally reducing the deficit that we now have. I have a particular concern about this bill because its intention is to raise revenues and I do support that—it's necessary and I hope that happens—but I am concerned that it may actually cause a decline in our tourism industry. Thank you, Madam President."

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

"Imagine going to work one day and being told, 'You need to fill a gap because we're going to have a shortage of \$2 billion.' That was the task of your Legislature this year. Our nation's economy is in a major downfall right now. It's affecting us certainly here, and when you look at the bigger picture, the total picture, nobody likes the position which we're currently in. As lawmakers, as public servants, this is the worst case scenario for serving our constituents and our state: being in a recession, being in an economy where jobs are being lost, people are suffering. And this session we saw it when they came to our offices, and not only government officials and government workers, but non-profit agencies/organizations, and the elderly, and the needy. And you could see it in their eyes,

and you could see it in their demeanor, and you could hear it in their voices that they all need help and they all need assistance.

"Now, we could take some philosophies and just say, 'Well, let's just cut. Let's cut. Let's cut. Let's cut. Let's cut programs. Let's cut departments. Let's cut budgets. Let's lay off workers. Let's cut, and we don't have to look at any revenue generation because the economy is bad.' There are some people who certainly believe that. But we had to look at the total picture because our responsibility here is to deal with the 1.2 million people in this state, and they are across the spectrum—rich, poor, elderly, youth, working, unemployed, animals (we've helped some animals this session)—but it's tough. It's difficult, and I applaud the WAM Chair, the Finance Chair, and the committee members for wading through this whole process over the last four months. And the decisions which we came up with, it was a multiple approach. We looked at all possibilities, all solutions. We are cutting government budgets. We are cutting the budgets of non-profits that we have assisted. In my district, in your districts, they are hurting. They are concerned. The bank of last resort, state government, has told many of them, 'No, we don't have the money to give you and to assist you at this time.' It is a bad situation for them; and from that, it will filter in to our constituents and the individuals in our state are citizens which we help.

"We are cutting vacant positions and not funding those. We are laying off a few state workers. We are looking at pay cuts in the executive branch, legislative branch, and the judicial branch. We are transferring some funds from special funds to general funds. We are relying on our federal government with the stimulus money. Of course it's only a one-time, two-time deal. We know that it is not permanent, but thank goodness that federal money is coming our way. Although, earlier there were many who were critical of what the federal government is doing. My goodness, can you imagine the big hole we would be in today without that stimulus money?"

"And then we had to look at the issue of revenue generation, and today we will be addressing several bills on revenue generation. And yes, the TAT is one that we would prefer not to raise, but when you look at the actual numbers, as the WAM Chair spoke earlier, for those rooms that are \$200, \$300, \$400, \$500, those people can afford to come to Hawai'i. And as the good Senator from Waimanalo stated, for those that cannot come to Hawai'i, they shouldn't come to Hawai'i because it is not affordable. But if the average room at \$200 is going to be an additional \$2 a day or \$14 a week, I believe that is a reasonable increase that the travelers coming to Hawai'i—because they want to be in Hawai'i—will be more than willing to pay.

"I was talking with my parents recently about traveling. 'Why don't you go on a cruise to Alaska? Why don't you go to the Vatican and watch the Father Damien ceremony.' At no time did we talk about, 'Well, let's double check what the hotel room tax.' And I think if most people are like me, we don't think about the hotel room tax; and our hotel room tax is not that high compared to many other locations—California, New York, other places. We are competitive, no doubt. And from the perspective of a percentage, it's less than 1 percent a day on the cost of a hotel room.

"So colleagues, the hotel industry does not like this. It is not something we want to do, but we believe we must do it because it is just one part of the total solution. And we know that when the economy is strong and times are good, these hotels make money. We're talking about some billion dollar corporations when you look at Hilton, Marriott, Sheraton. Yes, there are smaller operators and we understand their concerns and needs, but this is a cycle that we are in that is unfortunate but we are stuck in it, and we're not going to blame certain individuals or administrations or the people on why we're here, but we are

here. And I believe this Legislature has worked diligently and hard to put this solution forward. It's a great solution, and members, to override is the proper thing to do. Thank you."

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

"You know, I remember, I think it was 1985—because Governor Cayetano ran for Lieutenant Governor I believe in '86—and he was in the Senate and I was in the Senate when the first TAT was implemented. It was a long time ago. Borreca was still here. Bill Kresnik was here. Jerry Burris was here. They were in this side of the well. Mark Matsunaga ran around. It was a long time ago. And I remember the arguments back then, in the implementation of the TAT, and those of you who were here may also remember; and it was very similar to the arguments being made by the Minority members this morning: People not going to come, it's not a good time to raise taxes, the industry's going to collapse. I remember the banks with the— at the time, it was the green and white striped computer printouts that flopped out. I can't remember the economist's name, but he stood on the tabletop and he flopped this thing out to demonstrate that people not going to come, and the industry's going to go to hell in a hand basket. And I remember Senator Buddy Soares—good friend of ours—and he was in the tourist industry at the time, and he came to Cayetano and myself during a recess and he said, 'Hey, Ben...' And before he could finish his sentence, I remember Cayetano saying, 'Not this one, Buddy. I've been waiting too long for this.' I remember Cayetano saying, 'At least there'll now be another revenue stream that will be unlike the GET that everyone has to pay.' And I remember him saying that if somebody has to pay the taxes, it would be better for the visitors than for the local people. And I remember him saying that because I was a freshman in the Senate at the time; and the Legislature, in its wisdom, voted for the tax and established for the first time a transit accommodations tax. And what happened? The economy got better than it was at the time; more visitors came. And what happened to the hotel rooms? They went up. They went up and up, and then the Japan bubble came and more high end resorts—Wailea, Four Seasons—were built. And more people came and the tax became an afterthought.

"But if, in fact, as some have said this morning that people won't come, well that's what they said in 1985. But if they won't come, then it would suggest that we should be removing the tax. Then they'll come? I don't think so. Let's be clear. I don't think so. The global economy is in a financial crisis. That's why they're not coming. If you, like me, have been receiving e-mails on the resolution with relationship to Islam, the people who say they're not coming aren't saying because you're raising the tax; it's because of the resolution. The reality is all of us know that we're a one-industry state. That's the same argument made 25 years ago and that hasn't changed, has it? The only thing that's changed is other destination resorts have opened and proliferated at our expense. That's not rocket science; that's reality.

"So I'm sure Borreca and Burris, since they're still writing—I think Kresnik may be retired, I have no idea where Mark Matsunaga is—I'm sure if they go in the archival articles, they will see that many of the arguments that have been made this morning haven't changed since 1985. And in fact the more things change, the more things stay the same. No one likes to raise taxes, but let's face it. Let's be real. If you're going to raise the tax, the visitor industry is a less bitter pill to swallow than a tax on local people. I will vote to override. Thank you."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of S.B. No. 1111, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," was overridden by not less than two-thirds

vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Baker, Bunda, Fukunaga, Green, Hemmings, Slom).

Gov. Msg. No. 675, dated May 7, 2009, transmitting the Governor's statement of objections to House Bill No. 1741, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE CONVEYANCE TAX," which was returned to the Senate without approval and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

May 7, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1741

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1741, entitled 'A Bill for an Act Relating to the Conveyance Tax.'

The purpose of House Bill No. 1741 is to increase the rate of the conveyance tax on all transfers or conveyances of properties with a value of \$1,000,000 or more. This bill also reduces from July 1, 2009 to June 30, 2012, the distribution of conveyance tax moneys into the Rental Housing Trust Fund and the Natural Area Reserve Fund.

This bill is objectionable because it would discourage investments, adversely impact land transactions to promote business and housing development, and further slow our economic recovery by extracting money out of the pockets of families and businesses.

In the first quarter of 2009, sales of single family homes were down 35 percent compared to the first quarter of 2008. March 2009 was the 9th consecutive month of double-digit increases in Hawaii's foreclosure rate. Reversing these trends cannot be achieved by adding to the tax burden. Economic recovery depends on encouraging capital investment, yet this bill does the opposite.

Although there is the perception that only the wealthy will be impacted by this bill, the reality is this bill increases the conveyance tax by over 230 percent on purchases of commercial, industrial, and agricultural properties.

Legislators fail to recognize that the sale or purchase of non-residential property means properties are being conveyed that will provide space for a business, house the production of goods or services for consumers, and provide a site for employment of our residents.

What is equally unfortunate is the conveyance tax increase will also adversely impact affordable housing projects and non-profit organizations, including churches, schools, and youth organizations. For example, an affordable housing project like Kukui Gardens on Oahu, which sold for \$72 million, would pay \$504,000 or over half a million dollars more in conveyance taxes if this bill became law.

Even religious or non-profit organizations that are recipients of donated property would have to pay the higher conveyance tax rates on the property donation. Further, kamaaina landowners who are transferring larger properties for agricultural farms, housing development, and environmental programs would also be adversely impacted, if not discouraged,

from doing the right thing when they are faced with tax payments 230 percent higher than current levels.

Whether it is the non-residential property that will house a business producing goods and services for consumers or a charity providing much-needed services in the community, this conveyance tax increase ultimately impacts everyone.

For the foregoing reasons, I am returning House Bill No. 1741 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,"

was placed on file.

In accordance with Article III, Section 17 of the Hawai'i State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 1741, H.D. 1, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 675, seconded by Senator Sakamoto.

Senator Slom rose to speak in opposition to the motion to override and stated:

"You know, the conveyance tax is one of those taxes that's kind of slipped under the radar. We've raised it four times in the last six or seven years. And people say, 'Well, it doesn't really add that much.' It's just like all of the arguments that you make. It only adds a few cents or a dollar, or a couple dollars, to a transaction. And again, remember that the conveyance tax is for the purchase, for the sale, for recordation of leases. That's what it was originally for; now it is a revenue stream. And this latest increase will affect not just the wealthy, but it will affect people that invest. And as the Governor pointed out in her veto message and yesterday, non-profits are not exempt from this. And so if you have apartment buildings or affordable housing—or the example that she gave, Kukui Plaza, which was estimated at \$70 million—if the law had been in effect, the conveyance tax on that conveyance would be over half a million dollars, over \$500,000. So, when we look at this as: (a) not being very much—it is; (b) it's only affecting the wealthy... Again, and that seems to be the theme of everything this session has done—separate out people that we like to call 'the wealthy' and then hammer them. This is going to affect a lot of people. And again, one of the things that will help us in overcoming our economic malaise will be the economic stimulation of private investment funds, not government funds that are ethereal and will evaporate in one or two years. It's measures like this that will, in fact, deter people from investing. Thank you."

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

"Members, let us not lose sight of the purposes of this measure, which relates directly to our quality of life. Clearly, the purposes for which it is intended are issues that are dear to the hearts of all of us who live here in Hawai'i. First, it recognizes that our land is a finite resource and that we need to protect it, and we need to preserve legacy lands in the public domain; as well as to be sure that certain uses, such as agriculture, are maintained on these lands.

"The second most important aspect of this bill has to do with the preservation of our natural resources and the recognition that they are vital to our quality of life and to our cultural values. The programs that benefit from the Natural Area Reserve fund include our Watershed Partnership programs, which protect the sources of our fresh water and work in partnership with the private sector to provide maintenance and improvement. It also provides the funds to manage our Natural Area Reserves, which are critical areas in our state, duly

recognized because of their value for either being habitat for endangered species or just as being very, very special areas that deserve this kind of acknowledgement and protection.

"The third benefit is the need to provide shelter for our residents who are most in need of housing. And this is really focusing on the rental housing trust fund and the development of rental housing that would benefit those who are in the lower to moderate income levels.

"I think these programs are essential for providing a bright future and a positive vision for Hawai'i, and there's a clear nexus between the Conveyance Tax and the beneficial purposes for which it is intended. So I would ask all my colleagues to support this motion to override the veto. Thank you."

Senator Hemmings rose to speak in opposition to the motion to override and stated:

"You know, we're raising taxes to help these laudable programs, but we also raided funds that support those programs, so it seems somewhat contradictory. Secondly, we do have to look at the larger picture of how much money, once again, is taken out of our economy that could be utilized to create more jobs and payroll and hire more people. You know, in this whole discussion this morning so far on these two bills, we've heard a lot about how responsible this budget is and how we've done such an equitable job in sharing the sacrifice that has to be made. And yesterday we did the grand thing of saving a couple million dollars by even reducing our salary; I think it was five percent or something like that. But I challenge you, Majority party, in this rhetorical question, and I'm hoping one of you can rise and enlighten me: What sacrifice has been made by government labor unions? How much pay cut have they given? In the budget, someone had the audacity to say, 'Oh, we laid off 11 people.' Well, those were exempt positions. But please, one of you please stand up and tell me. It's been suggested that if we had been equitable, we would've cut everybody's pay in the state that's collecting a check, including ours, by five percent. That would have preempted the need for these tax increases that we're voting on; that alone could have saved \$160+ million a year. But I challenge you: Stand up and tell me what sacrifice this special interest group has made. This special interest group with the greatest fringe benefits of any public employees in most any state in the nation—including 14 days off a year, 21 paid holidays the minute they sign up, 21 days sick days without needing a doctor's notice, pay comparable or, in most parts by most people, categories better than their counterparts in private sector. And you're right; I'm not bashing them. Most of them—60, 70 percent of them—do a wonderful job. They're conscientious and hard working, just like the people in the DLNR that produced that wonderful recreational renaissance plan. I applaud them. They do a good job, but everybody else in this state that does a good job has all taken a hit. Please, please, one of you stand up. Defend what you're doing. Tell me what sacrifices they've made. And don't give me that lame excuse that you can't cut their budget because of collective bargaining. I checked with the Attorney General; we can do anything we want. We're the Legislature. We make the budgets, not the collective bargaining people. If we cut funding for jobs, that's what the collective bargainers have to work with, but we're doing just the opposite. We're fattening the coffers so this group can walk away without contributing. And these are good people, but you know what? So is everybody else that's sacrificing and making huge contributions. There are a lot of other good people. The people with the companies that have been laid off, that went bankrupt. Some of them we drove out of town or some of the policies of some people we drove out of town, like Superferry. Those were good people that worked for that company. The people who have taken pay cut across the board, who are working more and getting paid less—they're good people. We're all in this together. I challenge

you: Please, please, someone stand up and tell me how this budget and these tax increases, how the sacrifices of public workers that are unionized have contributed to helping us in this time of plight for our state? And I would like to call for a Roll Call on this vote also, Madam President.” (The Chair so ordered.)

Senator Sakamoto rose in support of the motion to override and stated:

“My understanding is the Governor has, through the media, asked for furlough days for our public workers. One size fits all; one size furlough, everybody furlough. By the way, maybe \$250 a month more in health benefits. I think the Governor has had opportunities to collective bargain several times; and if the previous speaker thinks we can collective bargain, then by all means, we’ll do that. I believe, Madam President, you can do a better job doing that than has transpired thus far, at least based on what we know and what the media has portrayed. But if furlough days amount to, say, two days a month is 10 percent of somebody’s pay, and if that somebody’s making \$30,000 and that somebody says, ‘Well, tough beans. Furlough,’ now you have \$27,000. I think for people in that pay category, that’s very difficult to survive a 10 percent pay cut. That’s a 6 foot hole. If a \$100 million is 5 percent, perhaps that’s survivable. And I think the Governor has every opportunity, and I believe should work to agree with different public sector unions—the four of them, primarily—on how they can address the previous Senator’s question. I think that is to be rolled out by collective bargaining and not by us. So I respectfully don’t agree that we can set pay rates here. I believe there’s processes for dealing with that, and I hope in the next month that will be dealt with, but I don’t believe it should be one size fits all. I believe for those workers who are making \$30,000, they shouldn’t have the same reduction as someone who perhaps is making \$60,000 or \$90,000 or \$120,000 or \$150,000. I believe there ought to be a thoughtful process on how to deal with different bargaining units but not the one size fits all approach. Not everybody should have a furlough and 5 percent or 7½ percent or 10 percent reductions. Not everybody should have to pay \$200 a month more in health insurance. That’s not fair, especially for the workers on the bottom half of the pay range. Thank you very much.”

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

“My remarks will focus specifically on what the Governor asserts and what the fine Senator from Hawai‘i Kai refers to, with regard to this measure’s potential to adversely impact affordable housing projects like Kukui Gardens, which resides in District 12—the district that I represent—which sold for \$72 million and how the conveyance tax would bring in half a million dollars more if it became law. I just want to point out to the Governor and to the good Senator that those conveyance taxes were waived. So, one can only surmise the type of wordsmithing going on with regard to examples of vast, adverse, impact on any projects with regard to this tax increase. Thank you, Madam Chair.”

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 1741, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO THE CONVEYANCE TAX,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 21. Ayes with Reservations, 3 (Baker, Ige, Ihara). Noes, 4 (Bunda, Green, Hemmings, Slom).

At 11:32 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:43 a.m.

Gov. Msg. No. 676, dated May 7, 2009, transmitting the Governor’s statement of objections to House Bill No. 1747, H.D. 1, S.D. 1, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TAXATION,” which was returned to the Senate without approval and which reads as follows:

“EXECUTIVE CHAMBERS
HONOLULU

May 7, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1747

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1747, entitled ‘A Bill for an Act Relating to Taxation.’

The purposes of House Bill No. 1747 are to increase the State income tax rates for certain income brackets and revise the standard deduction and personal exemption. The bill amends Hawaii’s income tax law by (1) increasing the State income tax rates for income earners above a specified level for taxable years 2009 through 2015; (2) increasing the standard deduction amount and the allowable personal exemption amount, for taxable years 2011 through 2015; and (3) increasing the amount of the personal deduction by ten percent for the 2011 through 2015 tax period. The bill provides that no penalty or interest shall be imposed because of underpayment of taxes attributable to the increase in the tax rates. The bill also establishes a repeal (sunset) date of December 31, 2015.

This bill is objectionable because it increases the tax burden on Hawaii’s families and small businesses by increasing the marginal income tax rate by as much as 33.3 percent. Hawaii currently has the eighth highest top personal income tax rate in the United States. By increasing the top marginal tax rate from 8.25 to 11 percent, this bill will make Hawaii the state with the highest personal income tax rate in the nation. Although there is the misconception that only wealthy people will be affected, this bill will adversely impact almost 37,000 persons, of which about 27,000 are sole proprietors, partnerships, or subchapter “S” corporations whose owners report their business income through personal income tax returns.

In this broad recession which affects both the wealthy and poor and where recovery depends on people investing, buying consumer goods, and donating to charities, a tax increase will put an unnecessary strain on everyone’s pocket book. Small business owners who count their business income as personal income will find it more difficult to support and grow their enterprises. This could mean more business closures, layoffs, and fewer job opportunities.

Furthermore, these tax increases will make it more difficult to attract high caliber talent to Hawaii—professions such as psychiatrists, neurosurgeons, astronomers, or engineers—who earn higher salaries and who will be deterred by our high taxes as well as our high cost of living. In an economy in serious need of top quality talent and a kick start, this is a bad idea that is not worth the revenue impact this bill is expected to produce.

During these difficult economic times, when we need to take action to support our families and businesses, we should not be taking actions to balance the State budget at the expense of the taxpayers.

For the foregoing reasons, I am returning House Bill No. 1747 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,”

was placed on file

In accordance with Article III, Section 17 of the Hawai‘i State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 1747, H.D. 1, S.D. 1, C.D. 1, as contained in Gov. Msg. No. 676, seconded by Senator Sakamoto.

Senator Slom rose to speak in opposition to the motion to override and stated:

“You know of all the bills that we’ve talked about—tax increases and those that didn’t go through this year—this bill probably has been the one that has had the most erroneous information. It’s been maligned. In fact, I recall hearing the Speaker of the House saying, ‘Well, it’s a tax on the rich people of Kahala and they can afford to pay it.’ In fact, this is not a tax on the rich people of Kahala. This is a tax on many thousands of people, particularly small business people, who, like I as a sole proprietor, file my income on my income tax, thus increasing the gross income that I report. What this tax rate does is increase the rates from 8.25 percent currently to a high of 11 percent, which would then place us squarely on top of the highest tax rate in the United States, surpassing California, which has the top rate of 8.55 percent. Those small businesses and others who add gross amounts to their personal income tax are the ones that are going to be penalized.

“Two things about the bill: It says it’s going to sunset in 2015. Well, we understand how sunset works here; it doesn’t work, particularly if it’s an increase in revenues, fees or taxes. We don’t repeal them. We just extend the sunset. Secondly, there are two good provisions in the bill which my colleague and I have advocated for years, and that is an expansion of the standard deduction and an increase in the personal exemption. I’ve talked about this several times, even yesterday, about how we have the lowest personal exemption in the United States. What this bill does is raise the standard exemption and that’s good. It increases the personal exemption by a paltry 10 percent, but I guess 10 percent is better than nothing. The only problem is this tax would go into effect and apply to incomes filed and generated during 2009, and the standard deduction and the personal exemption would not go into effect until 2011. So it is a bill that’s going to have a tremendous impact.

“Again, you know, for my colleagues that say that this particular bill is only this amount, and this particular bill is only this amount, they all add up and pretty soon they don’t spell ‘mother’. And particularly hard hit are the small businesses in our community, and this is just one more step to penalizing them. Thank you.”

Senator Hemmings rose to speak in opposition to the motion to override and stated:

“Sometimes we get so caught up on our perspective of life and our day-to-day events, we don’t realize that debates like this have been going on for thousands of years. Earlier in the session, I read a quote from Cicero from 55 B.C. about him worrying about the Roman Empire spending and taxing its way into problems. We’re very fortunate that we do have history to look at. More importantly, we have a neighbor to look at: California. And we can look at what they have done and the results it has produced, including some of the alternatives that they have not enacted to balance their economy.

“One of the great intellects of the country writes for the Washington Post; his name is George Will. I’d like to read some excerpts from an article that appeared just recently: ‘Liberal orthodoxy has made the state dependent,’—and this is California and it could be Hawai‘i—‘on a volatile source of revenues—high income tax rates on the wealthy. In 2006, the top 1 percent of earners paid 48 percent of the incomes taxes. California’s income and sales taxes are among the nation’s highest and its business conditions among the worst, as measured by 16 variables directly influenced by the Legislature. Unemployment, the nation’s fourth-highest, is 11.2 percent. Required by law to balance the budget, the Legislature has ‘solved’ the problem by, among other things, increasing the income, sales, gas and vehicle taxes.’ Sounds familiar. He goes on his article and he writes about some of the solutions that could have been enacted to avoid this crisis, and you’ve heard about those things on the floor of this Legislature for the last nine years that I’ve been here. He writes: ‘If, since 1990, [California] state spending increases had been held to the inflation rate plus population growth,’—in other words, if their spending increases government had mirrored the growth of the economy—‘the state would have had a \$15 billion surplus instead of a \$42 billion deficit.’ But let’s look at the results that he writes about because these are statistics that could be heckled here: ‘For four consecutive years, more Americans have moved out of California than have moved in. California’s business costs are more than 20 percent higher than the average state’s. In the past decade, net out-migration of Americans has been 1.4 million. California is exporting talent while importing Mexico’s poverty.’ Does this all sound familiar? Well this bill, along with its companions, is another step in this direction that California took, and you know they’re bankrupt. I would suggest that we should learn the lessons from others’ mistakes, because business as usual—raising taxes and constricting our economy with these confiscatory policies—will take us down the road of California. I would urge my colleagues to vote ‘no’. Thank you, Madam President.”

Senator Sakamoto rose to speak in support of the motion to override with reservations and stated:

“I agree with the speaker, the Senator from Hawai‘i Kai, for the business portion of it. For partnerships and certain limited liability corporation partnerships, when they do earn money, if they are taxed on this schedule. In fact if they had left the money in the company versus taking it out to buy goods or taking it out to invest elsewhere—it might be detrimental in the long run. So I would be in favor of moving this forward, but I would hope the Tax Department and knowledgeable people can determine to what extent a partner is taking the money out. Therefore let’s tax them—versus attempting to leave the money in, but being taxed on it because of their business structure. I think we should see if there’s a way to save them from paying the tax if indeed they’re leaving the money in the company, and brighter minds need to look at that. Thank you very much.”

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

“You know, it’s been said earlier, it’s not easy, it’s not something that we seek, to raise taxes but it’s something that’s necessary. It’s one of the choices being made to balance this budget. You know one of my very, very closest friends called me a few days ago and asking, ‘Please do not raise these taxes.’ And I explained to him as best I could the situation, and he wasn’t happy. He’s not going to be happy. Another friend called about the high tech tax credits, Act 221; he’s not going to be happy either. I have friends calling about relatives and neighbors with mental health issues, who are concerned about the services that they were getting that are being cut. Friends that are concerned about cervical cancer. People I know that do not leave their homes to go outside their homes to look for a job

or to meet with friends because they can't afford proper dental care. Others with severe disabilities who no longer have a companion to take them shopping or take them to the movies because of the budget cuts. I've talked to ranchers who are concerned about the cut to invasive species, worried about their pasture land.

"Again, it's a question of choices, and this was a difficult choice but I believe it's a choice that reflects our philosophy on the Majority side that all will need to share. We are all in this together. The Minority and the executive branch consistently reflect it's every man for himself or every woman for themselves. I believe our philosophy is different. The Minority, the executive branch, consistently bash public workers, bash public education. All government is bad and all tax increases are bad—the Sean Hannity, Karl Rove, Rush Limbaugh, Sarah Palin, Fox News perspective of the world. I would encourage them to change the channel. We're all in this together, Madam President. We all need to share a little bit. For that reason I encourage all members to vote in support of the override. Thank you."

Senator Hemmings rose in rebuttal and said:

"I'm flabbergasted by the self-serving, contradictory rhetoric this morning. We have one Senator stand up and say, 'Let's pass a conveyance tax because it's because it's going to help the environment,' while that same bill cuts funding to the very programs, including affordable housing. Then we have another Senator stand up and say, 'We all have to share.' And I agree. And I rather resent by innuendo of being accused of bashing public employees. I've said every time I've brought up this issue that most public employees are good, hard-working people. But I ask again, in the face of the contradictory rhetoric in class warfare tax policies: How are the public workers sharing? Please, please tell me. What cut have they taken? What sacrifice have they made?"

"And speaking of class warfare, it's absolutely incredulous, once again, about the sacrifice that everybody's making and how we're going to tax the rich when the facts are—and you know it—that because of our insidious excise tax and our tax on food and sometimes the tax we levy on people who are sick, that we are the most regressive state in the nation for taxing the poor. How dare you try to imply how wonderful you all are in the Majority party because you're just taxing the rich, because you're taxing the poor even more. And the point is, in any good society we do need a certain amount of taxes—no one denies that—but we also have to have a balanced economy that encourages growth and not dependency. And you're right: There is a philosophical difference, and what you see is what you get. What you see in California, we will get in Hawai'i.

"But please, please, stand up, one of you. Tell me how the public workers are sharing, and don't give me that lame excuse once again that it's up to collective bargaining. It's not. If we don't put the money in the budget, it's not there to bargain for. And I know for a fact since I've been in this Senate that every collective bargaining year you guys all fatten the calf by raiding funds to put it in the general fund for collective bargainers to say, 'Hey, we can give 5, 6 percent pay increase', and they don't have to strike because they get the luxury of going to binding arbitration, so we'll just fatten the coffers. You guys were even going to close a whole department one year—DCCA—one-time slug of money. 'Ah, they got enough money. Give them what they want.'

"Raiding funds: You want to talk about raiding funds? One year, you took all the money for human service programs and put it in a bill and held it hostage—human services—so you could raid funds, and took it off the books. I know what's going on here and so does the public. They're finally catching up with you.

"So don't give us this self-righteous, Majority party's here taxing the rich guys and we care for the little guy and we all got to share, because that's shibai. You're taxing everybody, and you tax the poor the most. Fact. And there's a special interest group that takes 70 percent of what the state's spending that's not sharing one cent in the sacrifices we all have to make. I don't mind open and honest debate, and I appreciate, Madam President, that it's open. At least you still allow us to have open debate, because I think there's some in your caucus would just as soon not have that. But let's also be honest. I'm voting 'no'."

Senator Nishihara rose to speak in support of the motion to override with reservations and said:

"I'll be voting 'with reservations' because I concur with the comments and concerns raised by the good Senator from Moanalua. Thank you."

Senator Hooser rose and said:

"Madam President, the Minority Leader's remarks..."

The Chair interjected:

"For what purpose do you rise?"

Senator Hooser responded:

"I rise in rebuttal and in support of the override. I would be remiss if on the last day of the session I did not address some of the misstatements stated no doubt in the emotional fervor of the moment. I'm not sure if it was the 'change the channel comment', that I didn't mean to rile up the good Senator.

"You know, there was talk about 'let's be honest, let's talk about contradictory, let's talk about shibai.' You know, we're here balancing a state budget brought on by world events, national events, national economy—problems, in large part, that we have no control over. And this tax increase, which is reluctant and which does have a sunset, is one small part of a package that involves cuts, tax credit reductions, fund transfers, and tax increases. It's not about just beating up on the rich.

"But I think I would be remiss if we did not point out that we were here today also because of the constitutional mandate, because it's our responsibility, and because the executive branch and the Minority party has not done their job over the last six years. The Minority party, the executive branch, has been in charge of this government, at the head of this government for the last six years, and I have seen nothing at all that they've done to streamline government, to modernize government, to transform the way government works, to cut the fat. No, none of the promises of the so-called 'new beginning' have I seen. Actually, I've seen the legislative branch take the initiative in the Department of Business and Economic Development, the Bureau of Conveyances, and trying our best with the public housing situation. But the executive branch and the Minority party have done nothing, and there's plenty they could do without legislative authority. So I think we should tell it like it is. We've seen nothing in the way of streamlining, modernizing, cutting government from the executive branch. All we've seen is grand announcements. We're going to buy Turtle Bay. We're going to have an innovation economy. We're going to have new harbors, new highways, new recreation. Well, that sounds like tax and spend to me. Let's raise the fees on harbors, highways and recreation, and spend money. I didn't hear of a health care renaissance. No, it's tax and spend. For six years, nothing except press conferences, grand announcements, while the Legislature's done the heavy lifting. We're here today, unfortunately, because of a combination of situations. We're here raising taxes we don't want to raise. We're here cutting budgets, reducing services that we don't want to do. We're here in spite of the inaction of

the executive branch and we've done the heavy lifting, and we need to override the veto. Thank you, Madam President."

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 1747, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Baker, Bunda, Gabbard, Green, Hemmings, Slom).

Gov. Msg. No. 677, dated May 7, 2009, transmitting the Governor's statement of objections to House Bill No. 895, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES," which was returned to the Senate without approval and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU
May 7, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 895

Honorable Members
Twenty-Fifth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 895, entitled 'A Bill for an Act Relating to Tax on Tobacco Products Other Than Cigarettes.'

The purpose of this bill is to increase the tax rate on tobacco products other than cigarettes, including smokeless tobacco, snuff, cigars, and pipe tobacco.

This bill is objectionable because it contains major technical flaws that defeat the purpose of the legislation and will make it virtually impossible to implement. First, this bill temporarily suspends the current 40 percent tax on all tobacco products other than cigarettes. Although this error may have been unintentional, it will, in effect, create a tax holiday for many tobacco products from the date the bill becomes law until September 29, 2009. This provision runs counter to the stated purpose of the bill and represents a major flaw that cannot be overlooked.

Second, provisions in this bill cannot be reconciled with existing statutes and proposed legislation to increase the tax on cigarettes. The bill sought to tax "little cigars" at a rate comparable to the cigarette tax rate and set forth the cigarette tax rate of 11 cents as of October 1, 2009, 12 cents on September 30, 2010, and 13 cents on September 30, 2011. However, this language would lower the cigarette tax rate, which is supposed to go into effect on July 1, 2010 from 14 cents per cigarette to 12 cents per cigarette on September 30, 2010. Similarly, the bill would lower the cigarette tax rate that would go into effect on July 1, 2011 from 15 cents per cigarette to 13 cents per cigarette on September 30, 2011. It is questionable what the actual intent of the Legislature is and whether the Legislative Reference Bureau can properly reconcile these matters when codifying these provisions into statutes.

Finally, most retailers and manufacturers nationwide recognize a difference between large and small cigars and are accustomed to labeling them accordingly. This bill creates a new category of cigars, which would require Hawaii retailers to establish a different labeling system in order to calculate the correct tax. The tax is to be imposed based on the ring gauge size of the cigar. However, manufacturers and retailers are not

required to identify the ring gauge of their product and the federally established labeling requirements on these products do not require that the size be listed. Further, the federal Bureau of Tobacco and Firearms uses weight rather than ring gauge for the purposes of determining the federal tax on these types of tobacco products. Thus, to impose the tax, the Hawaii Department of Taxation would have to measure the size of cigars themselves or require wholesalers or distributors to do so. This would be extremely burdensome for Hawaii wholesalers and retailers and may prove impossible to enforce.

My position against smoking and the encouragement of healthy lifestyles remains steadfast. Unfortunately, the technical flaws in this bill defeat its stated purpose to lower the usage of certain types of tobacco products.

For the foregoing reasons, I am returning House Bill No. 895 without my approval.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,"

was placed on file

In accordance with Article III, Section 17 of the Hawai'i State Constitution, Senator Hooser moved that the Senate override the veto of H.B. No. 895, H.D. 2, S.D. 2, C.D. 1, as contained in Gov. Msg. No. 677, seconded by Senator Sakamoto.

Senator Slom rose to speak in opposition to the motion to override and stated:

"This is really interesting for me; I think it's a paradoxical thing, as the Minority leader said yesterday. The Governor vetoed this bill because of technical flaws in the bill, and she points out that the legal analysis of the bill shows there was no clear intent in this bill that the current wholesale tax of 40 percent on other than cigarette tobacco products continue until date, I guess the end of September; and so it is her feeling that that 40 percent tax is going to be, I guess, a cessation. It will not be in effect as of today through September 29. She also points out that there is a problem with the definition of 'little cigars' and that impacts your recent increase on cigarettes; that in fact the unintended consequence will be that the tax on cigarettes will actually be reduced because of the unclear language here. As you know, I voted 'no' against this bill because I think it was a bad bill to increase the taxes, pure and simple. There was one thing though, that in the governor's message we both agreed on, and that is that the definition which was created in this bill of a 'little cigar' is a new definition, which is not used locally or nationally or by the Bureau of Tobacco and Firearms. In fact, they use a distinction of weight to distinguish between cigars for taxation purposes, and every retailer and wholesaler across the country and locally uses this same definition. The technical flaw here is that in creating a new type of cigar, then someone is going to have to follow up on this. Now I don't know how many staff they have in the Department of Taxation, but either they're going to have to go and measure the circumference of every cigar that's being smoked or they're going to put an additional burden on retailers and wholesalers to make them do it, because as I say, it's not standard issue. So even though we disagree on the reasons for the veto, I still will sustain her veto. Aloha."

Senator Baker rose and said:

"I rise in support of this measure albeit with some reservations because there are some technical flaws in this measure. However..."

The Chair interjected:

“Senator Baker, you rise in support of the override?”

Senator Baker responded:

“I rise in support of the override. Sorry. There are some technical issues with this measure, however some of them, I believe, based on a measure that we passed a number years ago with supposedly similar flaws will not jeopardize the measure's implementation. The updated policy on the cigarette tax has been established by a measure the Governor has already signed and is actually the prevailing policy. I believe the reviser of statutes can do with this measure what was done with an earlier cigarette tax measure and make sure that all of the sections align.

“The bigger trouble, of course, is the supposed drafting error that would appear to give a tax holiday for other tobacco products. I'm hoping that we can come back and fix that, assuming that we come back for anything else in the special session. It's unfortunate that this wasn't caught before it came to this point. I'm hoping, however, that perhaps I am misreading the language and the tax department and AG will work diligently to ensure that these revenues continue to be collected. I do know that the tax enforcement section in the attorney general's office looks at all matters relating to conformity for retailers, wholesalers, and others to comply with all laws regarding the collection of all appropriate taxes on tobacco. So I'm looking to them for some assistance in this area.

“With regard to the question raised about the definition for ‘little cigar’: It's actually an amalgam of two definitions as I recall from the federal government, one in a federal tax act and another in one of the other acts that Congress passed. So, there really shouldn't be any difficulty for retailers, wholesalers, or others knowing how to price and tax appropriately ‘little cigars’. And so, I will be voting in favor of this measure wishing that we had drafted a bill with more clarity but I think the underlying policy is a good one, and I'm confident that we can fix any of the technical issues that surround it. Thank you, Madam President.”

At 12:13 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:14 p.m.

The motion was put by the Chair and carried, Roll Call vote having been requested, the veto of H.B. No. 895, H.D. 2, S.D. 2, C.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES,” was overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 23. Noes, 2 (Hemmings, Slom).

Gov. Msg. No. 678, informing the Senate that on May 7, 2009, the Governor allowed the following measure to become law without signature, which reads as follows:

Senate Bill No. 521, S.D. 2, H.D. 1 as Act 57, entitled: “RELATING TO REAL PROPERTY.”

“Dear Madam President and Members of the Senate:

Re: Senate Bill No. 521 SD2 HD1

On May 7, 2009, Senate Bill No. 521, entitled ‘A Bill for an Act Relating to Real Property’ became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill would require the registrar's office within the Bureau of Conveyances to provide within ten days after the end

of each week an image and index of all instruments and documents recorded during the week to a county designated as a central clearinghouse. Further, the registrar is prohibited from charging for the information and the bill prescribes the seven specific pieces of information the Bureau of Conveyances must provide and the manner in which the information must be delivered.

Currently the Bureau of Conveyances already provides to several entities on a daily basis in electronic format data on all of the transactions that have occurred in the registrar's office for the previous day. At least one county, the City and County of Honolulu, has the ability to extract from this data the information needed by all counties for real property assessment purposes. However, the City and County of Honolulu instead relies on a third party to provide their real property assessment information. This bill would unnecessarily shift this burden to the Bureau of Conveyances and require that they provide this data within a statutorily set deadline, regardless of the impact on their other duties.

Further, this bill prescribes the exact data that must be provided, making it difficult, without changing the law, to revamp the format or type of information the counties may require. Additionally, this bill restricts the State from charging the county for the work involved in providing the information every week. While the State does not currently charge for the electronic data they provide to third parties on a daily basis, we should not be precluded from considering charges at a future time when it may be warranted.

The State remains receptive to entering into written agreements with the counties to ensure that the counties receive the data they need in a manner that best fits their individual requirements.

For the foregoing reasons, I allowed Senate Bill No. 521 to become law as Act 57, effective May 7, 2009, without my signature.

Respectfully,

/s/ Linda Lingle
LINDA LINGLE
Governor of Hawaii,”

was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 730 to 731) were read by the Clerk and were placed on file:

Hse. Com. No. 730, informing the Senate that the following bills passed Final Reading in the House of Representatives on May 7, 2009:

H.B. No. 34, S.D. 1, C.D. 1;
H.B. No. 36, H.D. 1, S.D. 2, C.D. 1;
H.B. No. 128, H.D. 1, S.D. 1, C.D. 2;
H.B. No. 200, H.D. 1, S.D. 1, C.D. 1;
H.B. No. 300, H.D. 1, S.D. 2, C.D. 1;
H.B. No. 343, H.D. 1, S.D. 2, C.D. 1;
H.B. No. 381, H.D. 2, S.D. 1, C.D. 1;
H.B. No. 427, H.D. 1, S.D. 1, C.D. 1;
H.B. No. 690, H.D. 2, S.D. 2, C.D. 1;
H.B. No. 754, H.D. 1, S.D. 1, C.D. 2;
H.B. No. 876, H.D. 1, S.D. 2, C.D. 2;
H.B. No. 899, H.D. 1, S.D. 1, C.D. 1;
H.B. No. 900, H.D. 2, S.D. 1, C.D. 1;
H.B. No. 982, H.D. 3, S.D. 1, C.D. 1;
H.B. No. 989, H.D. 1, S.D. 2, C.D. 1;
H.B. No. 994, H.D. 1, S.D. 2, C.D. 1;
H.B. No. 1016, H.D. 2, S.D. 1, C.D. 2;

H.B. No. 1271, H.D. 3, S.D. 2, C.D. 1;
 H.B. No. 1364, H.D. 1, S.D. 1, C.D. 1;
 H.B. No. 1464, H.D. 3, S.D. 2, C.D. 1;
 H.B. No. 1471, H.D. 2, S.D. 1, C.D. 1;
 H.B. No. 1483, H.D. 1, S.D. 1, C.D. 1;
 H.B. No. 1504, H.D. 1, S.D. 2, C.D. 1;
 H.B. No. 1627, H.D. 2, S.D. 2, C.D. 1;
 H.B. No. 1628, H.D. 1, S.D. 2, C.D. 1;
 H.B. No. 1678, H.D. 1, S.D. 2, C.D. 1;
 H.B. No. 1807, H.D. 1, S.D. 2, C.D. 1;
 S.B. No. 21, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 43, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 109, S.D. 2, H.D. 3, C.D. 1;
 S.B. No. 266, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 387, S.D. 1, H.D. 1, C.D. 2;
 S.B. No. 423, S.D. 1, H.D. 2, C.D. 1;
 S.B. No. 464, S.D. 2, H.D. 2, C.D. 2;
 S.B. No. 884, S.D. 2, H.D. 1, C.D. 1;
 S.B. No. 892, S.D. 1, H.D. 2, C.D. 2;
 S.B. No. 1107, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 1202, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 1206, S.D. 1, H.D. 1, C.D. 1;
 S.B. No. 1218, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 1222, S.D. 1, H.D. 1, C.D. 2;
 S.B. No. 1352, S.D. 2, H.D. 2, C.D. 1;
 S.B. No. 1461, S.D. 2, H.D. 1, C.D. 2;
 S.B. No. 1665, S.D. 2, H.D. 1, C.D. 1;
 S.B. No. 1673, S.D. 2, H.D. 2, C.D. 1; and
 S.B. No. 1674, S.D. 2, H.D. 2, C.D. 1.

Hse. Com. No. 731, informing the Senate that the House has agreed to the amendments proposed by the Senate to H.B. No. 426, H.D. 1, and H.B. No. 426, H.D. 1, S.D. 1 passed Final Reading in the House of Representatives on May 7, 2009.

ORDER OF THE DAY

MISCELLANEOUS COMMUNICATION

The following communication (Misc. Com. No. 5) was read by the Clerk and was placed on file.

Misc. Com. No. 5, from the Hawaii Family Forum and the Hawaii Catholic Conference, dated May 6, 2009, submitting the signatures of over 10,000 Hawaii citizens requesting that HB444, HD1, be held in committee for the 2009-2010 Legislative Session.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 134 to 138) were read by the Clerk and were disposed of as follows:

S.R. No. 134 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SIXTY-SECOND DAY."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 134 was adopted.

S.R. No. 135 "SENATE RESOLUTION RELATING TO THE PRINTING OF THE JOURNAL OF THE SENATE."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 135 was adopted.

S.R. No. 136 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO DESIGNATE THE EMPLOYEES WHO WILL WORK AFTER ADJOURNMENT."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 136 was adopted.

S.R. No. 137 "SENATE RESOLUTION REGARDING COMPLETION OF THE WORK OF THE TWENTY-FIFTH LEGISLATURE SUBSEQUENT TO THE ADJOURNMENT THEREOF."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 137 was adopted.

S.R. No. 138 "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 138 was adopted.

At 12:16 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:17 p.m.

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

"Madam President, about a month ago your Ways and Means Committee and the Committee on Transportation and International Affairs held a public hearing on a resolution to audit the Department of Transportation. During that hearing, the committees learned that DOT had a \$1.5 million contract for an AVI system called the 'Automated Vehicle Identification' system at the Honolulu International Airport that was nine years old, and as of that meeting in April, the system was not operational. They did tell us that the state had not paid the contractor and that the contractor had put up a surety bond in the amount of \$1,495,000. However upon reviewing the contract documents that I requested from DOT, the documents show that the representative from DOT did not tell us the truth. Records show that the state indeed had paid the contractor \$1.2 million of the contract. Airport officials also assured the Committee and legislators that the contract had until April 30—which has passed—to install the operational system.

"Well, a few days ago I received a letter from DOT signed by Brian Sekiguchi, the Deputy Director of Airports, of which I sent copies to the committee members, and I will read you what he wrote: 'Dear Chair Kim: This is to inform you that on April 30, 2009, the Oahu district staff met with Mr. Thomas N. Terayama, President of Ted's Wiring Service, and determined that his company did not meet the established deadline of April 30, 2009, to install and have operational the automated vehicle identification system at the Honolulu International Airport pursuant to the contractor requirements under Project No. AO1112-23. We have initiated default proceedings to remit the surety bond in the amount of \$1.4 million to the Department of Transportation, State of Hawai'i. Sincerely, Brian Sekiguchi.'

"But hold on. This morning, I learned that there may be a kink in this: That I'm now being told that while the deputy director and the director of DOT believed that April 30th was the deadline for this 9-year old contract, the district head or division head or airport head—I'm really not sure who, someone who oversees the contract—had supposedly given the contractor another extension. It seems that the right hand does not know what the left hand is doing, and this was very evident in the committee hearing among the DOT representatives at the hearing. But now we learn that it's also happening with the department directors who are also aware of what is going on. This is certainly something that I believe the Legislature must correct and we must demand accountability, and you can rest assured that the Committee on Ways and Means will be holding

a follow-up hearing to get to the bottom of this fiasco shortly. Thank you.”

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

“Several days ago, I had spoken about the three finalists for Kamehameha Schools trustee, one being a former Democrat appointee to the Department of Hawaiian Homelands, one being the present head of HCDA and previously was head of the Land Use Commission, and then the other being astonishingly enough a sitting member of the Governor’s cabinet. Well, not to be undone by the Governor’s cabinet member, I recall that at the time I said that what was astounding to me was that Randy Roth, the co-author of the 2006 *Broken Trust*, had said that both Soon and Kane are excellent candidates and added that Kane, whom he worked with in the Lingle Administration—presumably when Kane was the head of the Republican party—has done an impressive job at the Department of Home Lands and would be ‘a terrific trustee.’ And I had said that well, evidently, Professor Roth believes in the school of ‘do as I say, not as I do.’

“Not to be undone by what evidently is the short list of 68 candidates for Kamehameha Schools, the University of Hawai‘i presently is undergoing a search for its own president, and one of the finalists—and again it’s a gang of three like Kamehameha Schools—one of the finalists is a woman named M.R.C. Greenwood. In the *San Francisco Chronicle* dated Saturday, November 5, 2005, there was an article that the University of California second-in-command Provost M.R.C. Greenwood abruptly resigned because of an investigation regarding the possibility of impropriety in Greenwood’s decision to promote her friend, UC Santa Cruz Vice Provost Lynda Goff, to jobs at UC headquarters in Oakland. And that in addition to a salary carrying \$192,100 and in addition to being friends, Greenwood and Goff evidently owned rental property together in Davis, California, at the time. They’re also looking into one of Greenwood’s subordinates, an individual named Winston Doby, whether he did anything improper to help Greenwood’s son, James Greenwood, land a job in August as a paid senior intern at UC’s new campus in Merced. But they said, this article indicated that it was—at least at the time of publication—a mere investigation. It did end by saying that this is not the first time Greenwood has faced controversy. Some regents objected last year when she was hired as Provost at a salary of \$380,000, nearly \$100,000 more than her predecessor; and that at the time she needed a higher salary to cover the cost of buying a home near UC headquarters in downtown Oakland and that UC gave her a \$125,000 relocation incentive to move 70 miles from Santa Cruz to Oakland, in addition to \$17,950 for temporary housing and another \$9,527 for moving expenses, and a low-interest loan to buy a condominium in Oakland. Well, on January 9, 2006, the investigation of Greenwood’s hiring of Lynda Goff was concluded, and the conclusion was that former UC Provost M.R.C. Greenwood, one of three finalists for the president’s office at the University of Hawai‘i system, had indeed violated the university policies regarding conflict of interest. I wonder where the citizen’s panel was when these articles were published. Or maybe, like I said with regard to the Kamehameha Schools trustees search, at least with two of them, you needed to reach up to touch bottom. Dr. Greenwood evidently violated university conflicts policy when she offered Dr. Goff’s successive appointments in the Office of President and failed to disclose this fact to general counsel. The article further went on to indicate that her son, James Greenwood, is at the center of another hiring controversy. Evidently, the University of California senior officials had concluded, with the University of California Office of the University Auditor, in a report that this matter does not appear to have been the subject of extensive critical thinking about the possible perceptions regarding the propriety of hiring the provost’s son. I’m going to stop there because I think it says it

all. If the previous president ran into problems at the university system, can you imagine now knowing what at least the Senate knows about one of three finalists? This is the State of Hawai‘i and this is the situation in Hawai‘i, given short committees and in the case of the Kamehameha Schools trustee, the probate court and the author of *Broken Trust*. Only time will tell. In 30 days, probate court will decide which of the three is the anointed one, and only time will tell on the fate of M.R.C. Greenwood. But can’t you just wait for the other two of the three on the short list for the University of Hawai‘i presidential search? Thank you, Madam President.”

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

“Madam President, I guess being a member of the freshman class, this is the first time I get a chance to exercise this mechanism of point of personal privilege. We never had such a mechanism in the House; and for the first exercise of it, I’d like to express my appreciation to you, Madam President, and certainly to all of my colleagues because I think this has been a very educational session for me. I guess as the good Education Chair has indicated, learning is a continuing process, and I think there was a lot of confirmation of that for me this session. Certainly the scope of the challenges that we face as a Legislature, or as the Senate body, was daunting, but I found this experience very invigorating. Thank you very much.”

The Chair made the following announcement:

“The Chair has a few comments, and I’m going to make it short because I was going to pass until I received an e-mail from a staffer from one of the good Senators. And this person felt compelled to write because he felt that we are not acknowledging what he considers to be the extraordinary work that our Data Systems has provided. He called upon his own experience in the federal government and compared it and said that they were absolutely extraordinary, and I think that we have, not intentionally, but we do tend to ignore our permanent support staff. So I’d like to take this opportunity, on behalf of all the Senators, to thank the permanent support staff. In this particular situation, he asked us to, of course, single out the Data Systems, but I think we also must thank the Clerk’s office, Sergeant-At-Arms, as well as the Print Shop—which we have converted, and they’ve done a great job of converting—and of course our Journal, and all the other support staffs that come with them.

“I think we also should look back at this time and think about what we went through. This is probably one of the most difficult sessions that anyone has had to go through in recent times; and when you think about it, it’s because we were really just strapped by the economic situations and how it would affect the budget. And we do know Ways and Means Chair Donna Kim has had an extremely difficult time in many situations passing bills that I know personally just tugged at her to even do, but realizing that we had to balance that budget. But when you look at what we started with, and I went back and I rarely do this, but I went back and looked at the opening day remarks. One of the things we said we would propose was an unemployment insurance fund to be used in the short term to keep employees as part of your workforce; and thanks to Senator Takamine we did accomplish that. There is a bill that does exactly that.

“We did say we’d examine tax credits to ensure that they’re performing and enhancing the economy as they should. This may have been controversial for some, but there is a bill that, in fact, did that. And though we may have had vigorous debate on whether it should have taken the form that it did, nonetheless we did not shy away from actually addressing it and coming up with a resolution.

“We did follow the national trend in adopting the streamlined sales tax, and I was very pleased, after the many discussions that we’ve had, to be able to tell Senator Fukunaga that the House actually attributed \$10 million in the budget to streamline tax. And I’m sure it took a lot for them to do that, but they did do it and it is something that we had pointed out.

“We did say we would examine the executive, judicial, legislative pay, and that bill also passed. And I know that that caused my good friend Senator Taniguchi a lot of consternation, but he did do it, even if it was something that we went back and forth on.

“And we do know that there was a sense of betrayal that many of our Native Hawaiian community felt over the Supreme Court case that went up, came back 9-0; and under the leadership of Senator Hee we came up with the resolution. The Senate position is SB1677, and we all know that what has happened there is what is going to result with the complete settlement of that matter between OHA, three of the four plaintiffs, and the State of Hawai‘i. And it will be a dismissal without prejudice, which to me is a very critical element of that; and it also incorporates a position of the Senate that we took about two years ago, which is that a two-thirds affirmative vote would be necessary before any of the public lands would be sold, and it was enhanced with the fact that of course even transfers would fall into the category of requiring notification to Office of Hawaiian Affairs before any of it takes place.

“We had concerns about the health systems, and you know we must give much credit to Senator Ige for his leadership in this area, and I know Senator Ige has shared that with the neighbor island Senators. I was privy to many of their meetings, and they met over the interim and even through this session to try and fix HHSC, and I think the bill that they came up with was extraordinary in the sense that at every turn we always wondered whether or not we would have something. But it’s, I think, Senator Ige’s personality and his ability to work with everyone that resulted with that—even the House, his ability to convince the House.

“But we also must thank Senator Ige for a more important task, and that was that in addition to everything else that he had to do, he did do what we asked him as our Majority technology leader. We went successfully through this session paperless, and I think that without his knowledge of how these things, these computers work, how it interfaces, and I believe with the support of Data Systems, we were able to do this. And I also think many of you Senators should thank your staff members as I also thank the Clerk’s office when they went out of their way to help us make it work. They gave their time and sat with Senator Ige and their little group—we could call it a task force—and provided the input and made it all work. So I believe that when the rest of the nation looks upon what we did, it will be in line with that award that Senator Ige managed to secure for us from the NCSL when it comes to being extremely progressive in how we handle this thing called paper.

“We had asked, remember early on, and we said we would pass a resolution and we did and that was for the FMAP, and the FMAP has been an integral part of the balancing of our budget.

“We did, under the leadership of the new Energy Chair, Senator Gabbard, we did look at all the energy issues, and I believe that even in these difficult times we have passed those bills which many of the technology stakeholders were pleased with and staying with us until the wee hours.

“And of course, there’s always been the issue of the preservation of agriculture and how we would face that. In terms of our state lands, I believe that we’ve managed to protect them from being lost, but we still need to revisit next session

with that interesting bill between Senator Hee and Senator Bunda about the preservation of lands in perpetuity—well, actually it was about a hundred years—in agricultural use.

“But those are the things that we as a Senate set forth as we set out for this legislative session, and I think when you look at it, I think though this session may be remembered for many things, I think we forget about the real things that we accomplished as well. I think the health systems merits major, major accolades because of what it means for the rural hospital systems as well as for the neighbor islands; the ability to balance the budget which is part of today’s override session as well. But more importantly than that, colleagues, I thank you as your President for a wonderful session. As strange as that may sound, the one thing that I look forward to at the end of the session is to think back and to make sure that whatever differences and trials and tribulations that we may have all gone through, that we are still smiling on this day and people are still speaking to each other. And I think that’s a major thing because what I think distinguishes the Senate from any other body is the fact that we are considered, for some reason, the older body—and maybe that may not be too far from the truth—but we’re also considered the wiser body, and I am proud to say that I believe that it is an adjective well-deserved by everyone in this room. And it has been an honor and a privilege to be a part of you and to sit with each and every one of you, so I thank you for that.

“At this time we would like to take a short recess to inform the House that the Senate is ready to adjourn sine die. Before I call ourselves out, please at least 13 of you come back. We can’t end this session, but recess subject to the call of the Chair.”

At 12:39 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:48 p.m.

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

“I do apologize; I was told that I was not aggressive enough earlier to get your attention, you know. Let me say on behalf of the Minority—and I know you were thanking everybody but you forgot to thank the Minority, and I know that was just an oversight that you really wanted to thank your Minority because without the Minority there would not be half the levity and all of that.

“I just wanted to say a few words. You know, it’s kind of interesting coming to work every day when you’re outnumbered eleven and a half to one. When you introduce bills and they’re not even heard in session, but yet, yet, you have respect for your colleagues, you enjoy the Senate, and as Senator Takamine knows and as he said, ‘There’s a big difference between that body over there and this one here.’ We do have more lively debate and also, like herding cats, we have 25 individuals here. And from time to time, one never knows exactly how one is going to respond or vote, but as the President knows, your Minority generally supports the Majority bills 95 percent of the time. We have few bills that we disagree on, and we’re very passionate in our disagreement.

“I enjoy my colleagues, each and every one of them—particularly the ones that try to tell us how we should be and what we should watch on TV. By the way, for the Majority leader, good news for you. CNN called me today about the outrageous Islamic resolution that we passed, so I’ll watch CNN tonight.

“We have humor. We have investigation. The spritely Senator from Kalihi back there is the queen of investigations, and as you know, Republicans love to serve on investigative committees. And because it was done so professionally, I

supported the recommendations of the Committee just as you, Madam Chair, earlier when we set the tone for Senate investigations with the Felix Committee. We had a bipartisan group from the House and the Senate, and I think we uncovered a great deal of information which has turned into helpful change and legislation.

“The good Senator from Kahaluu, when he’s not wearing his cowboy hat and riding, he’s always getting the lowdown for us on some lowdown people, and I appreciate that because I think it is important that we discuss things. And oftentimes I get a little frustrated, as you know Madam President, when you folks love to call a recess and go behind closed doors. You get the rubber hoses out, you get the good bento food, and then everybody comes out and they all vote ‘aye, aye, aye.’ I think we should have even more spirited discussions on the floor of the Senate, because it is to the benefit of the people of this state. They know where we’re coming from, and there are different positions that we elucidate.

“I, for one, am disappointed about the tax proposals that have been adopted, but we will see how this plays out and we will see what has to be done. I’m also, as you know, very suspicious about the federal funding. At best, we know that it’s only going to last one year or two years. And the problem is by putting back things into the budget, by creating additional positions and revenue sources, we’re going to be stuck because we’re going to have that permanent demand for expenditures over the years.

“But all in all, I think it has been a session that people will remember. They’ll remember it for different reasons, and I’m so excited that the good Senator from Kahaluu yesterday indicated that we will co-sponsor a full, total, and complete audit of OHA. We could do that after the session today, Senator, if you’d like. We can, you know, write it out. The only thing we were arguing about whether it’s going to be called the Hee-Slom or the Slom-Hee audit.

“But I think that the freshmen in our group this year, I think they accounted themselves very well. They added to our discussions. I think we probably had more people up the gallery than ever before, so I know that was a Majority trick to get people to come here and it worked. We have really tough issues, and in most cases there’s not easy answers. And so, on behalf of your loyal Minority, I want to thank you too, Madam President, particularly for the openness and allowing us free reign and free speech. We try not to take advantage of it. We try to raise legitimate points, as the good Minority Senator had said. I know that there are some people within your caucus that would be very happy if there were 25 of you with D’s here, and then all the votes would be easy and you could get out on time. You could, you know, call the session to order at 11:30 and 11:45 you’d all be gone because everybody would be in lock-step. But I hope that you will think and agree that it is important that if issues are brought up and questions are asked, that the real point is to try to solve the problems, answer the questions and move on, because without a doubt I know that all of us have the best intentions of the State. So thank you again for a session. We’ll be back next year. *Aloha.*”

At this time, the Chair rose and said:

“Senator Slom, it was not an oversight because when I referred to the Senators as my colleagues, I’m sure we all feel that once we’re in this room, we’re all Senators and you’re all colleagues.”

Senator Slom replied:

“Excuse me, Madam President, but at least Senator Espero mentions us by name in his poem. You know, you mentioned everybody else. Are we chopped liver? You didn’t mention us. Thank you, Madam President.”

The Chair replied:

“Thank you, Senator. I will note that next time. But I did have an oversight. I forgot to mention our respective support staff that is bi-party: the Senate Minority Office and well as the Senate Majority Office, which we would not be able to do many of the things we do without them.”

ADJOURNMENT

Senator Sakamoto moved that the Senate of the Twenty-Fifth Legislature of the State of Hawai‘i, Regular Session of 2009, adjourn Sine Die, seconded by Senator Slom and carried.

At 12:56 p.m., the President rapped her gavel and declared the Senate of the Twenty-Fifth Legislature of the State of Hawai‘i, Regular Session of 2009, adjourned Sine Die.