

FIFTY-SEVENTH DAY

Wednesday, April 28, 1999

The Senate of the Twentieth Legislature of the State of Hawaii, Regular Session of 1999, convened at 11:44 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Owen Tanoue, Kalihi Union Church, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Fifty-Sixth Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 351 and 352) were read by the Clerk and were placed on file:

Gov. Msg. No. 351, informing the Senate that on April 26, 1999, he signed the following bills into law:

Senate Bill No. 484 as Act 37, entitled: "RELATING TO PERSONAL PROPERTY";

Senate Bill No. 716 as Act 38, entitled: "RELATING TO THE NATURAL ENERGY LABORATORY";

Senate Bill No. 808 as Act 39, entitled: "RELATING TO LIQUOR LICENSES";

Senate Bill No. 1062 as Act 40, entitled: "RELATING TO AGRICULTURAL PARK LEASES";

Senate Bill No. 1086 as Act 41, entitled: "RELATING TO BOATING PENALTIES";

Senate Bill No. 1216 as Act 42, entitled: "RELATING TO BICYCLING";

Senate Bill No. 1326 as Act 43, entitled: "RELATING TO LENDER EXEMPTIONS";

Senate Bill No. 1403 as Act 44, entitled: "RELATING TO THE TRAFFIC CODE";

Senate Bill No. 1641 as Act 45, entitled: "RELATING TO THE PUBLIC LIBRARY SYSTEM";

House Bill No. 10 as Act 46, entitled: "RELATING TO MOTOR VEHICLES";

House Bill No. 791 as Act 47, entitled: "RELATING TO REAL ESTATE BROKERS AND SALESPERSONS";

House Bill No. 936 as Act 48, entitled: "RELATING TO COMMERCIAL PAPER";

House Bill No. 996 as Act 49, entitled: "RELATING TO MEETINGS OF STATE AND COUNTY BOARDS";

House Bill No. 1072 as Act 50, entitled: "RELATING TO REVERSE MORTGAGES";

House Bill No. 1120 as Act 51, entitled: "RELATING TO PERSONAL CARE SERVICES PAYMENT";

House Bill No. 1125 as Act 52, entitled: "RELATING TO RECOVERY OF MEDICAL PAYMENTS";

House Bill No. 1350 as Act 53, entitled: "RELATING TO THE USE OF RECYCLED OIL"; and

House Bill No. 1703 as Act 54, entitled: "RELATING TO WAIMANALO."

Gov. Msg. No. 352, dated April 27, 1999, transmitting his statement of objections to House Bill No. 1431 which he has returned to the House of Representatives without his approval and which reads as follows:

"EXECUTIVE CHAMBERS
HONOLULU

April 27, 1999

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1431

Honorable Members
Twentieth 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. 1431, entitled 'A Bill for an Act Relating to Public Financial Disclosure Statements.'

The purpose of House Bill No. 1431 is to require public financial disclosures, without dollar amounts, from members of the University of Hawaii Board of Regents, the Board of Land and Natural Resources, the Board of Agriculture, and the Hawaiian Homes Commission.

The University's Board of Regents has adopted a rather stringent conflict of interest policy that requires the regents to declare any possible conflict and to recuse themselves from matters that might have even an appearance of conflict. Since the Legislature has given the University autonomy over its own affairs, I believe that the regents should be allowed to administer their own conflict of interest policy without further legislatively imposed requirements.

Moreover, service on all of these boards is voluntary and uncompensated. Public disclosure of private financial interests of the uncompensated members appears to be unnecessarily burdensome, especially when there has been no problem with the existing requirements, and may have a chilling effect on my ability to convince the most appropriate and qualified individuals to serve on these boards.

On the other hand, if public financial disclosures are considered to be necessary notwithstanding the seemingly unnecessary burden and the probable chilling effect, there appears to be no rational basis for requiring the members of only these four boards out of the 160 state boards and commissions to file public financial disclosures. The members of other executive and regulatory boards and commissions should likewise be required to file public financial disclosures.

For the foregoing reasons, I am returning House Bill No. 1431 without my approval.

Respectfully,

/s/ Benjamin J. Cayetano
BENJAMIN J. CAYETANO
Governor of Hawaii"

DEPARTMENTAL COMMUNICATIONS

The following communications (Dept. Com. Nos. 35 to 37) were read by the Clerk and were placed on file:

Dept. Com. No. 35, from the Department of Business, Economic Development & Tourism dated April 26, 1999,

transmitting the March 1999 issue of the Quarterly Statistical and Economic Report.

Dept. Com. No. 36, from the Department of Education, Office of the Superintendent, dated April 9, 1999, transmitting "The Superintendent's Eighth Annual Report on School Performance and Improvement in Hawaii," pursuant to Section 302A-1004, HRS.

Dept. Com. No. 37, from the State Auditor dated April 27, 1999, transmitting a report, "Financial Audit of the Hawaii Public Employees Health Fund," (Report No. 99-18).

HOUSE COMMUNICATION

Hse. Com. No. 732, informing the Senate that the House has disagreed to the amendments proposed by the Senate to the following House concurrent resolutions:

H.C.R. No. 4, H.D. 1 (S.D. 1);
H.C.R. No. 6 (S.D. 1);
H.C.R. No. 9, H.D. 1 (S.D. 1);
H.C.R. No. 47 (S.D. 1);
H.C.R. No. 56, H.D. 1 (S.D. 1);
H.C.R. No. 64, H.D. 1 (S.D. 1);
H.C.R. No. 94 (S.D. 1);
H.C.R. No. 220, H.D. 1 (S.D. 1);
H.C.R. No. 232, H.D. 1 (S.D. 1);
H.C.R. No. 236, H.D. 1 (S.D. 1); and
H.C.R. No. 237, H.D. 1 (S.D. 1),

was read by the Clerk and was placed on file.

STANDING COMMITTEE REPORTS

Senator Kawamoto, for the Committee on Transportation and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 1808) recommending that the Senate advise and consent to the nominations of T.B. LYONS III, HARVEY A. SHAPIRO, GEORGE KAWAKAMI, LEILANI CHRISTY LEE and HERNANDO R. TAN to the State Highway Safety Council, in accordance with Gov. Msg. No. 279.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1808 and Gov. Msg. No. 279 was deferred until Thursday, April 29, 1999.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 1809) recommending that the Senate advise and consent to the nominations of DAVID FUERTES, JOHN ISOBE, LORRAINE M. MENDOZA, DAVID B. FISHER, JOYCE L.E. KAAIHUE, ALAN T. MURAKAMI and YOU SOUKASEUM to the Community-Based Economic Development Advisory Council, in accordance with Gov. Msg. No. 288.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1809 and Gov. Msg. No. 288 was deferred until Thursday, April 29, 1999.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 1810) recommending that the Senate advise and consent to the nominations of JONATHAN A. KOBAYASHI, RICHARD L. LIM, DAVID A. OKA, TETSU AIKO, WILLIAM M. MCKILLOP and PHILIP M. JOHNSON, Ph.D., to the Board of Directors, Hawai'i Strategic Development Corporation, in accordance with Gov. Msg. No. 336.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1810 and Gov. Msg. No. 336 was deferred until Thursday, April 29, 1999.

Senator Inouye, for the Committee on Economic Development, presented a report (Stand. Com. Rep. No. 1811)

recommending that the Senate advise and consent to the nomination of BARRY T. MIZUNO to the Board of Directors, Natural Energy Laboratory of Hawai'i Authority, in accordance with Gov. Msg. No. 338.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1811 and Gov. Msg. No. 338 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1812) recommending that the Senate advise and consent to the nomination of JENNIFER M.H.F. KIM to the Board of Public Accountancy, in accordance with Gov. Msg. No. 268.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1812 and Gov. Msg. No. 268 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1813) recommending that the Senate advise and consent to the nominations of MELVIN S.H. FONG and CHRISTIANE W. CHRIST, O.M.D., to the Board of Acupuncture, in accordance with Gov. Msg. No. 269.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1813 and Gov. Msg. No. 269 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1814) recommending that the Senate advise and consent to the nomination of NICHOLAS G. OPIE, D.C., to the State Board of Chiropractic Examiners, in accordance with Gov. Msg. No. 274.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1814 and Gov. Msg. No. 274 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1815) recommending that the Senate advise and consent to the nominations of GREGORY S. ENDO, MARK H. FUJIMOTO and ROBERT Y. KATSURA to the Board of Electricians and Plumbers, in accordance with Gov. Msg. No. 275.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1815 and Gov. Msg. No. 275 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1816) recommending that the Senate advise and consent to the nominations of RONALD K. MIGITA, GERALD H. TAKEUCHI and LORNA A. NISHIMITSU to the Board of Directors of the Hawai'i Hurricane Relief Fund, in accordance with Gov. Msg. No. 277.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1816 and Gov. Msg. No. 277 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1817) recommending that the Senate advise and consent to the nominations of JASON Y. UCHIDA, N.D., CHARLES H. TURNER and AUDREY INABA to the Board of Examiners in Naturopathy, in accordance with Gov. Msg. No. 280.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1817 and Gov. Msg. No. 280 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1818) recommending that the Senate advise and consent to the nomination of ERIC HIGASHIHARA to the Pest Control Board, in accordance with Gov. Msg. No. 281.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1818 and Gov. Msg. No. 281 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1819) recommending that the Senate advise and consent to the nominations of JAN K. YOKOYAMA and JONI S. KANAZAWA, P.T., to the Board of Physical Therapy, in accordance with Gov. Msg. No. 282.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1819 and Gov. Msg. No. 282 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1820) recommending that the Senate advise and consent to the nomination of DAVID S. WEISS, Ph.D., BARBARA B. SLOGGETT, Ph.D., and GINGER A. KOLONICK to the Board of Psychology, in accordance with Gov. Msg. No. 283.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1820 and Gov. Msg. No. 283 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1821) recommending that the Senate advise and consent to the nominations of LINDA D. CHIU, M.D., FAITH Y. LEBB, THELMA YOSHIDA, FAYE A.T. MATSUNAGA and JANICE S. SHINTANI to the Board of Speech Pathology and Audiology, in accordance with Gov. Msg. No. 286.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1821 and Gov. Msg. No. 286 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1822) recommending that the Senate advise and consent to the nominations of JAY A. CAMBRA, D.D.S., and STANWOOD H. KANNA, D.D.S., to the Board of Dental Examiners, in accordance with Gov. Msg. No. 290.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1822 and Gov. Msg. No. 290 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1823) recommending that the Senate advise and consent to the nominations of CLIFFORD R. SMITH and JAMES P. CHUNG to the Elevator Mechanics Licensing Board, in accordance with Gov. Msg. No. 293.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1823 and Gov. Msg. No. 293 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1824) recommending that the Senate advise and consent to the nominations of JAMES H. YASUDA and ROBERT S.J. HU to the Board of Trustees, Hawai'i Public

Employees Health Fund, in accordance with Gov. Msg. No. 296.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1824 and Gov. Msg. No. 296 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1825) recommending that the Senate advise and consent to the nominations of BUSTER M. KOMORI and DAVID D.S. CHUN to the Motor Vehicle Industry Licensing Board, in accordance with Gov. Msg. No. 311.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1825 and Gov. Msg. No. 311 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1826) recommending that the Senate advise and consent to the nominations of BARBARA J. DIRKS, O.D., FRANKLIN Y.P. LAU, O.D., and ERNEST K. OSHIRO, O.D., to the Board of Examiners in Optometry, in accordance with Gov. Msg. No. 313.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1826 and Gov. Msg. No. 313 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1827) recommending that the Senate advise and consent to the nominations of STANLEY A. WADA, CLYDE J. EUGENIO, ERNIE BELLO and KENNETH T. TOKUNAGA to the Contractors License Board, in accordance with Gov. Msg. No. 333.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1827 and Gov. Msg. No. 333 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1828) recommending that the Senate advise and consent to the nominations of BENJAMIN M. ONO, M.D., THOMAS SIDNEY KOSASA, M.D., RAMON K. SY, M.D., and ANN H. KOBAYASHI to the Board of Medical Examiners, in accordance with Gov. Msg. No. 337.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1828 and Gov. Msg. No. 337 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1829) recommending that the Senate advise and consent to the nominations of WAYNE M. SHINTANI, PATRICK PETTI, RALPH Y. FUJINAKA and MILTON W.Y. LUM to the Credit Union Advisory Board, in accordance with Gov. Msg. No. 181.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1829 and Gov. Msg. No. 181 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 1830) recommending that the Senate advise and consent to the nomination of PATRICIA CHOI to the Real Estate Commission, in accordance with Gov. Msg. No. 284.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1830 and Gov. Msg. No. 284 was deferred until Thursday, April 29, 1999.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1831) recommending that the Senate advise and consent to the nominations of CAROL RAE BAPTISTA, CURTIS K. SAIKI and DON I. SAKAI to the Board of Taxation Review, First Taxation District (Oahu), in accordance with Gov. Msg. No. 316.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1831 and Gov. Msg. No. 316 was deferred until Thursday, April 29, 1999.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1832) recommending that the Senate advise and consent to the nominations of RANDOLPH R. CABANILLA and MIMI S.J. HU to the Board of Taxation Review, Second Taxation District (Maui County), in accordance with Gov. Msg. No. 317.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1832 and Gov. Msg. No. 317 was deferred until Thursday, April 29, 1999.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1833) recommending that the Senate advise and consent to the nomination of JOSE R.S. DIOGO to the Board of Taxation Review, Fourth Taxation District (Kauai), in accordance with Gov. Msg. No. 319.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1833 and Gov. Msg. No. 319 was deferred until Thursday, April 29, 1999.

Senators Fukunaga and Levin, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1834) recommending that the Senate advise and consent to the nomination of RICHARD SAKANASHI to the Board of Taxation Review, Third Taxation District (Hawai'i), in accordance with Gov. Msg. No. 344.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1834 and Gov. Msg. No. 344 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1835) recommending that the Senate advise and consent to the nominations of ALISON M. DINGLEY, THOMAS H. KAAIAI, JR., JUDITH AKAMINE, GARY L. BLAICH, M.D., and GODFREY "KAIPO" KEALALIO II, to the Hawai'i Advisory Commission on Drug Abuse and Controlled Substances, in accordance with Gov. Msg. No. 291.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1835 and Gov. Msg. No. 291 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1836) recommending that the Senate advise and consent to the nominations of WAYNE T. HIKIDA, CLARA KATEKARU, FELY LIBRE, WINIFRED N. ODO, LINDA SPRATT, JILL N. TOKUDA and HARRIET O. YOSHIMORI to the Policy Advisory Board for Elder Affairs, in accordance with Gov. Msg. No. 292.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1836 and Gov. Msg. No. 292 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1837) recommending that the Senate advise and consent to the nominations of GAIL T. TOMINAGA, M.D., F.A.C.S., VIRGINIA MARIE KAPALI, DELBERT M. NISHIMOTO,

ANDY SCHWARTZ, M.D., TOBY L. CLAIRMONT and DARREN J. ROSARIO to the Emergency Medical Services Advisory Committee, in accordance with Gov. Msg. No. 294.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1837 and Gov. Msg. No. 294 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1838) recommending that the Senate advise and consent to the nominations of J. COURTNEY FITZSIMMONS, DONNA M. BUHRMAN, EPE ANDERSON, HEATHER PROUD, SHARON SHORE, LINDA WONG, LYN A. PASAK, LORI G. ODELL and RANDOLPH C. HACK to the Statewide Independent Living Council, in accordance with Gov. Msg. No. 304.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1838 and Gov. Msg. No. 304 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1839) recommending that the Senate advise and consent to the nominations of LESLIE ROSS, Ph.D., SHELLY A. ABE OGATA, KUHIO ASAM, M.D., POE SUA'AVA III, WILLIAM S. BUD BOWLES, MARILYN JEAN MOE and SANDRA JANE MIYOSHI to the State Council on Mental Health, in accordance with Gov. Msg. No. 309.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1839 and Gov. Msg. No. 309 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1840) recommending that the Senate advise and consent to the nominations of DOROTHY (NANI) FIFE, JAMES (JIM) C. BEAMAN and JOANNE H. KEALOHA to the State Advisory Council on Rehabilitation, in accordance with Gov. Msg. No. 314.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1840 and Gov. Msg. No. 314 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1841) recommending that the Senate advise and consent to the nominations of JANE RENFRO SMITH and LESLIE WILKINS to the State Commission on the Status of Women, in accordance with Gov. Msg. No. 323.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1841 and Gov. Msg. No. 323 was deferred until Thursday, April 29, 1999.

Senator Chun Oakland, for the Committee on Health and Human Services, presented a report (Stand. Com. Rep. No. 1842) recommending that the Senate advise and consent to the nominations of VIRGINIA M. PRESSLER, M.D., EVELYN CHONG, ESPERANZA N. CADAVONA, KATHERINE ANNE O'REILLY, JOHN L. NOLAND, CHARLES C. DUARTE, HELEN SMALLEY-BOWER, LAMBERT K. WAI, DAVID PFEIFFER, Ph.D., DIRK K. WASANO and MILLICENT L.K. ROGERS to the State Planning Council on Developmental Disabilities, in accordance with Gov. Msg. No. 334.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1842 and Gov. Msg. No. 334 was deferred until Thursday, April 29, 1999.

Senators Kanno and Taniguchi, for the majority of the Committee on Commerce and Consumer Protection, presented

a report (Stand. Com. Rep. No. 1843) recommending that the Senate advise and consent to the nomination of GREGORY G. Y. PAI, Ph.D., to the Public Utilities Commission, in accordance with Gov. Msg. No. 193.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 1843 and Gov. Msg. No. 193 was deferred until Thursday, April 29, 1999.

At 11:50 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:52 o'clock a.m.

ORDER OF THE DAY

MATTER DEFERRED FROM TUESDAY, APRIL 27, 1999

ADVISE AND CONSENT

Stand. Com. Rep. No. 1785 (Gov. Msg. No. 306):

Senator Hanabusa moved that Stand. Com. Rep. No. 1785 be received and placed on file, seconded by Senator Tanaka and carried.

Senator Hanabusa then moved that the Senate advise and consent to the nomination of DANA NAONE HALL to the Island Burial Council, Islands of Maui and Lanai, term to expire June 30, 2003, seconded by Senator Tanaka.

Senators Tanaka, M. Ige and Iwase then requested their votes be cast "aye, with reservations," and the Chair so ordered.

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

Ayes, 24. Noes, 1 (Buen).

Senator Hanabusa then moved that the Senate advise and consent to the nomination of MEI LEE WONG to the Island Burial Council, Islands of Maui and Lanai, term to expire June 30, 2003, seconded by Senator Tanaka.

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

Ayes, 25. Noes, none.

ADVISE AND CONSENT

Stand. Com. Rep. No. 1805 (Gov. Msg. No. 145):

By unanimous consent, action on Stand. Com. Rep. No. 1805 and Gov. Msg. No. 145 was deferred to the end of the calendar.

Stand. Com. Rep. No. 1806 (Gov. Msg. No. 146):

By unanimous consent, action on Stand. Com. Rep. No. 1806 and Gov. Msg. No. 146 was deferred to the end of the calendar.

Stand. Com. Rep. No. 1807 (Gov. Msg. No. 157):

Senator Fukunaga moved that Stand. Com. Rep. No. 1807 be received and placed on file, seconded by Senator Levin and carried.

Senator Fukunaga then moved that the Senate advise and consent to the nomination of RAY K. KAMIKAWA as Director of Taxation, term to expire December 2, 2002, seconded by Senator Levin.

Senator Kawamoto rose in support of the nominee and stated:

"Mr. President, I rise in favor of this nominee.

"Mr. President, as you know, we worked very hard in trying to get a 'state resident' definition. You know, we did not have a definition for the work force. We had a seminar. Mr. Kamikawa came to the seminar and provided information and came to the second meeting and provided information on a good logical definition of a 'state resident.' We have before this legislative session a possibility where we can define 'state resident' so that the federal government can address Public Law 8078. In which they said that if Hawaii's unemployment is higher than the national average, Hawaii's state residents would have preference in federal contracts. Mr. Kamikawa provided us with a workable definition and that's what we're using.

"His efforts in helping the economy in this area is tremendously appreciated. Therefore, I urge all my colleagues to support the nominee, Ray Kamikawa."

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

Ayes, 25. Noes, none.

At this time, Senator Kawamoto introduced Ray Kamikawa who was seated in the gallery.

MATTERS DEFERRED FROM EARLIER ON THE CALENDAR

ADVISE AND CONSENT

At 11:56 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:58 o'clock a.m.

Senator Chumbley then said:

"Mr. President, I request an end of calendar on Gov. Msg. No. 145."

The Chair replied:

"Your request is denied. We will take advise and consent on Stand. Com. Rep. No. 1805."

Senator Chumbley responded:

"A brief recess, Mr. President."

The Chair ordered the Clerk to continue.

Stand. Com. Rep. No. 1805 (Gov. Msg. No. 145):

Senator Chumbley interjected:

"Mr. President, a brief recess, please."

At 11:59 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:00 o'clock noon.

Senator Chumbley moved that Stand. Com. Rep. No. 1805 be received and placed on file, seconded by Senator Matsunaga and carried.

Senator Chumbley then moved that the Senate advise and consent to the nomination of MARGERIE S. BRONSTER as Attorney General, term to expire December 2, 2002, seconded by Senator Matsunaga.

Senator Matsunaga rose to support the nominee as follows:

"Mr. President, I rise in support of the confirmation of Margery Bronster to the office of Attorney General.

"Mr. President, each of the members of the Senate, today, must be asking themselves two questions: (1) What do we think of Margery Bronster for State Attorney General? and (2) Will she be good for the people of the State as Attorney General? To state the obvious, we have three choices today -- we may vote 'aye'; we may vote 'aye, with reservations'; and we may vote 'no.'

"Mr. President, Ms. Bronster has been a solid and often stellar Attorney General. According to testimony, letters, phone calls, faxes, e-mails, she is an intelligent, caring, tough and courageous lawyer who supports law enforcement, protects the State's interests, and is fearless when it comes to advocating on behalf of the people of Hawaii. Mr. President, I am wholeheartedly in support of the nomination without any reservations, whatsoever.

"However, Ms. Bronster is not perfect. Even those of us who are her friends know that she can be overbearing at times. That being said, you cannot expect a department head with limited resources to be perfect. No department head has ever been able to address all the areas of concern under their jurisdiction. Even this Legislature, with all its power, cannot satisfy everyone's needs. If solving every problem and meeting every need was a standard for confirmation, then no department head would ever be confirmed.

"In assessing this nominee, Mr. President, we must look at Ms. Bronster's entire record, including her impressive list of accomplishments during her relatively short tenure as Attorney General. We can't simply judge her solely on a few shortcomings, however valid, without at least giving her a fair chance, along with the adequate resources, to address them. Recall that even though all the nominees for department posts this session had shortcomings, they were all confirmed. When we voted on those nominees, we looked at their overall performance, questioned them regarding their apparent shortcomings, and we voted to confirm. All of them will be given an opportunity to work to address those concerns. Mr. President, shouldn't we afford Ms. Bronster the same consideration?

"Many members have expressed reservations about Ms. Bronster -- reservations regarding her management style; reservations regarding the allocation of resources; reservations regarding statements attributed to her, regarding the timeliness of her response to our colleagues' inquiries. And many of these concerns may be valid, Mr. President. However, we cannot hold Ms. Bronster wholly accountable for matters for which she is only partially responsible. We cannot hold her responsible for resolving the entire Felix matter, especially after the Superintendent of Education, Paul LeMahieu has stated that she has provided appropriate services to the DOE on that matter. In Monday's *Advertiser*, Mr. LeMahieu stated, 'I don't know what else or more an attorney general should do.'

"Mr. President, everyone has faults -- Achilles was vulnerable at the heel; Shaquille O'Neal cannot shoot free throws -- but we have not been striking the Governor's nominations because they have had a few faults, and we should not start now.

"If members have reservations about the nominee, then they should vote 'aye, with reservations.'

"Our role, Mr. President, is not to say whether Ms. Bronster would be the best choice for Attorney General, or even whether she is the superior choice for Attorney General. We are here to review what is and has always been the Governor's prerogative. That is his choice for Attorney General. We are not a rubber stamp, but we are also not a selection committee. Mr. President, just because the Governor's choice would not be your first choice for Attorney General is not a sufficient reason

to vote 'no.' If you have reservations, you should vote 'aye with reservations.'

"If members recognize that Ms. Bronster has both good qualities as well as shortcomings, then they must understand that a 'no' vote will deprive this State of all the positive qualities that she has to offer, and let's consider her accomplishments over the past four years. She has brought to our State over \$1 billion from the tobacco litigation, raising our initial allotment from \$800 million to a whopping \$1.3 billion. That would even make Senator Inouye proud. She has taken on the big oil companies, a move which was followed very shortly by a steep drop in local gas prices. She has gotten our beleaguered prisons out from under the prison consent decree. She has brought to a close the seemingly never ending stadium litigation, bringing the State an additional \$10 million above and beyond original estimates. She has been a leader of law enforcement and a strong advocate in the fight against domestic violence. And finally, she has conducted investigations into matters that no other Attorney General has ever dared look into. This is what she brings to the job. And this is the kind of person that the people of this State will lose if we vote 'no' on this confirmation.

"In addition, Mr. President, we must consider that if we vote not to confirm, future attorneys general will know that if they go after the politically powerful they will pay with their jobs.

"Ms. Bronster has all that too rare quality called integrity. Unfortunately, Mr. President, while integrity inspires accolades from some, it often garners animosity from others. Integrity can make enemies. In Ms. Bronster's case, it has made her some very, very powerful enemies.

"With this in mind, we must understand one thing -- that the public, as well as future appointees, will watch this vote to see whether a person can investigate the politically powerful and still keep their job. It is my hope, Mr. President, that we have the right answer to this question here today.

"Mr. President, no Attorney General has ever dared to ignore the status quo and tackle the issues that Ms. Bronster has, and chances are, the Governor will not be able to find another one who will. Mr. President, the people of Hawaii stand to lose much if we vote 'no' on this confirmation. And I would not be surprised if many voters decided not to forgive us for doing so.

"Mr. President, I urge my colleagues to vote 'yes.' Thank you."

Senator Slom rose in support of the nominee with reservations and said:

"Mr. President, perception is extremely powerful and the perception today is that we're going to do something historic. I stand and vote for the confirmation with reservations.

"I have said from the outset and from the time that I first ran for office, I would always try to fairly and equitably listen to all of the evidence, listen to all of the people, and make up my mind accordingly, and that's what I've tried to do. Over the last week-and-a-half we have logged in our office and at my home and at my business office more than 327 personal phone calls, 117 e-mails, 112 faxes, 17 letters. Among those were very thoughtful people. Among those were threats, intimidation, warnings which I do not appreciate for my wife and children and my staff members. But I'm not swayed by threats or innuendo or ultimatums. In the end, as I said, I listened to everyone. I attended all the hearings. I read all the testimony. And it was life long personal friends of many different persuasions that came to me and their perception is that this nomination is extremely important and that this must be done today. And the perception is that if we don't do this that it damages further the reputation of this Senate.

"Mr. President, I've only been in this Senate for three years. I don't know whether I'll be back in this Senate, but I have a great deal of regard for the Senate as an institution and for my colleagues. And I know that it's extremely difficult to take very difficult positions. And whenever you do, you anger a number of people, and yet that's what you have to do.

"But I will tell you this, Mr. President, in the three years that I've been here, I have never had the kind of personal response on any issue that I've had on this issue. I've never had the depth of commitment and passion and explanation that I've had in the last week-and-a-half.

"Do I have problems with the Attorney General? You bet, I do. That's why I was one of the first people to come out and say that I had those problems, and my inclination was to vote 'no.' Those problems have not gone away. They involve: poor administration within the department; the cost of that department; the tremendous increase and the number full-time deputy attorneys general in that department and yet still going outside for additional attorneys; the problems that individuals, agencies and departments have had in trying to get legal assistance especially as related to Felix-Cayetano issues; the problems that individual voters have had after the election when the Attorney General's deputy ruled that even though individual citizens have a right to examine ballots that the fact that the Elections Officer did not make administrative rules, even though he has been in that process for 18 years, supersedes the right of individuals -- that bothers me a great deal; the fact that the Attorney General's staff came and begged for and argued for an extension of immunity in this so-called Y2K problem, the original bills that they argued for that I voted against sought eleven-and-a-half years of immunity that no matter what this State would do that they should be immune -- that bothers me; the fact that some people have a very difficult time in getting decisions rendered -- that bothers me; the Attorney General's position in the original Shell-Texaco case which was very negative and had a tremendous impact on many small service station business owners -- that troubled me.

"But you know, Mr. President, in the three years that I've been here, I've taken a lot of unpopular positions. I've tried to argue forcefully for tax and spending reductions, reduction in government, and tried to do the right thing. And I get a little frustrated and discouraged when we're voting on a major tax bill and the vote comes out 20 to 5 for more taxes, more government, more debt, and I only get five or six phone calls from outside. I get very concerned when the other day we approved the head of the Department of Human Services for another four years, when this one department and this one individual had one responsibility -- to take care of our children. After all, that's what we say every single day here, it's our keiki. We're certainly not here for ourselves, is it? It's for our keiki. And yet there were so many mistakes made that led to deaths and nobody wanted to take responsibility, no one wanted to blame anybody or be accountable and the vote on that issue was 19 to 6.

"So, my problems with the Attorney General, from the beginning, have been management, style, money, micro-managing. And to me, they pale towards the problems in these other areas that I've outlined and other areas too, where nobody seems to think it's that important.

"I promised my constituents that I would listen to them, and I listened through the threats and harangues and everything else. And I told them I would do the right thing as I see it. And so today, I'm going to cast my vote, as I say, with reservations, in hopes that these problems are controlled. And to those of the public that called me and said that I had become a member of the 'old boy' network, I'm still too young for that. (Laughter.) For those of you that said I was in the pocket of the Bishop Estate, their pocket isn't big enough to hold me, and I remind you that they voted for and supported my opponent three years ago and I'm a commercial lessee and I write out a big check to them every month. I have no special interest, direct or indirect.

"And if the perception is that we continue with this Attorney General in order to make change in this State, that's what I campaigned on and that's what I believe. And I will challenge the people that are in this gallery -- many of whom have never been down here before, many of whom have never picked up a telephone before -- then walk the walk as well as talk the talk. And if you want change, then make sure that you see it through. And don't do it for one person or one personality. Make sure that we have the changes that are necessary in this community, in this State, and not for me and not for my colleagues, but for our children, if you really believe that.

"Thank you, Mr. President."

Senator Inouye rose in support of the nominee as follows:

"Mr. President and fellow colleagues, for many weeks there has been much discussion and extensive media coverage concerning the nomination of Ms. Bronster for another four years as our State Attorney General. In spite of all this close scrutiny, Ms. Bronster, in her own words, has told the people of Hawaii that she is, quote, 'committed to do my very best every moment that I have left,' unquote. I truly believe that this is the kind of commitment to the job that she has shown for the past four years. She has faced daunting challenges and handled them with a dedication above and beyond the call of duty without regard to personal gain.

"This nomination should not be one of politics. This should be a nomination with concern for the greater public good. In my view, Ms. Bronster has shown that she has tackled issues large and small with the public's best interest at heart. She's been criticized for not providing sufficient AG resources to such issues as the Felix consent decree. I believe she has managed her resources as best she could for what she had.

"Before voting on whether or not to confirm her, I suggest that we all do some self reflection. Have we as Legislators given her the resources needed to do the work she has been expected to do?

"I believe there is no finer public servant than Margery Bronster. She gave up a lucrative private sector career to serve the people of Hawaii, and I believe she has done so with the utmost of professionalism and dedication.

"Mr. President, for the reasons I've stated, I urge my colleagues to vote 'yes' in confirming Ms. Bronster for another four years as our State Attorney General.

"Mahalo."

Senator Iwase also rose in support of Ms. Bronster and said:

"Mr. President, I'm rising to speak in support of the nomination.

"Mr. President, each session there are about one or two issues which define us in the public's eye. And over the past few years we have failed the public. On these defining issues, we have not fulfilled their expectations that we be responsive to their concerns. In 1999, the confirmation of Margery Bronster will define this Senate.

"Like the Senator from Hawaii Kai, I have received over 500 communications -- more than I've received on any other issue. The public's expectation, at least based on what I've received, is to support the confirmation. Some of the communications were from my constituents, many were not -- 484 in support of the nomination and 12 in opposition.

"Mr. President, this past Monday, I voted 'no' on the confirmation of a cabinet nominee. And at that time, I stated that broad discretion must be granted to the Chief Executive in appointing his cabinet and that we should reject the nominee

only if there are documented facts establishing substantial and compelling reasons to vote 'no' against the nominee.

"At the 1950 Constitutional Convention, Delegate Crosley stated, 'There is validity in the principle that we should shape up responsibility to where it belongs. The Chief Executive is responsible for the administration of government. He is responsible for appointing these department heads.' This sentiment was echoed at the 1968 Constitutional Convention where there was discussion on eliminating the requirement of Senate confirmation for the removal of department heads with the exception of the Attorney General and the Board of Regents. Moreover, in words that should be remembered here today, the committee report in support of eliminating the requirement stated, 'The confirmation requirement often invites political maneuvering outside the public arena. This makes recruiting of good executive talent more difficult.' At that Constitutional Convention was a delegate named Nelson Doi, then a 13-year member of the State Senate, and he made a speech in support of the proposal. And again with words we should heed today, because I think we ought to really seriously consider what he said, let me read to you, with your indulgence, what Delegate Doi said:

"The thing that bothers me the most, it happens quite often when we have important nominations come down from the Governor's office to the Senate, especially people in the cabinet, it happens that the confirmation is postponed and postponed right up to the end of the session, if possible. Why is this done? So that when it gets to the very close, the very end of session, you find many bills just before the point of passage. All the business of the Senate is then waiting to be acted on, and this is the time when you must get your vote to pass a particular measure or confirm a particular nominee. And what happens here? You exchange the vote for a nominee, for a bill. You exchange the vote for a special legislation for a vote on the nominee. And this is what happens.

"Mr. Chairman, I am compelled here to tell the story and this, I believe, is the truth. This happens almost every time we have a big nominee coming down from the Governor's office. And if this be true, then we are abusing the power of confirmation."

"Mr. President, we must never abuse this very important power of confirmation. These are department heads who run departments that serve the people of this State. We must respect the principles of separation of power and give leeway to the chief executive to select and be responsible for the cabinet choices. We must recognize, recognize that no nominee is free of blemish or fault. I believe that where substantial and compelling reasons exist, we are duty bound to reject the nominee. However, where such a record does not exist, we have the obligation to confirm.

"Mr. President, for the past few years, on the defining issues before this body, we have sorely and we have sadly disappointed the public. The public wants us to do right. They are waiting for us to do right.

"Mr. President, the Attorney General's office is where I started as an attorney. It is my home. I still consider it my home. There are good people there. It is an office that is to be respected. It's not an office that is to be abused. It is not an office to play politics with. We must do the right thing. Mr. President, we must not abuse the power of confirmation. We must support this nomination, and I will do so today.

"Thank you very much."

Senator Levin then rose to support the nominee and said:

"Mr. President, I rise to speak in support of the nominee without reservation.

"Mr. President, I don't have the eloquence of some of my colleagues, but I am proud to stand with the speakers from Hamakua, Mililani, and especially the speaker from Palolo, and I ask that the remarks of the speaker from Palolo be incorporated in the record as if they were my own."

The Chair so ordered.

Senator Bunda, rising in support of the nominee with reservations, then stated:

"Mr. President, I rise in support of this nomination with reservations.

"Mr. President, the current controversy surrounding the Attorney General's confirmation has pitted Margery Bronster against the Bishop Estate. Lost in all of this are the real issues concerning the people of our State -- the budget, our depressed economy, and providing accountability in our educational system. These issues should take priority over this confirmation process.

"Mr. President, I believe that the Attorney General's preoccupation with the Bishop Estate case has adversely affected her management of her Department. Granted, some of the problems reported by her critics existed before she took office. But her performance today is being evaluated by the public not on her administrative ability or lack of it, but solely on her crusade against Bishop Estate. However, Mr. President, I really don't feel that the Attorney General's removal from office would bring about any meaningful resolution to the Bishop Estate lawsuit, nor will it resolve the other crucial issues facing our State. We need to bring closure to the Bishop Estate controversy which has taken up an extraordinary amount of time and our State's limited resources.

"Mr. President, if the trustees are found guilty of wrongdoing, then Margery Bronster's preoccupation with this case will ultimately be forgiven. If it is the trustees who are vindicated, then it will be Margery Bronster and the Governor who will be held responsible for the expenditure of our taxpayers' money. Therefore, Mr. President, I'm voting 'yes, with reservations' today in hope that this controversy over her confirmation will be taken as a strong signal to Ms. Bronster to fix the administrative problems within her department. I sincerely hope that this debate will result in a stronger focus on those issues that affect us all, not just the condition of Bishop Estate.

"I believe it is the time to see some light at the end of the tunnel. We as legislators are often called upon to make hard decisions based on a perspective of the 'big picture.' We cannot make reasonable decisions based on a 'single-issue' mentality. We should expect the same from our Attorney General, Margery Bronster.

"Thank you, Mr. President."

Senator Chun then rose in opposition and said:

"Mr. President, I speak in opposition to the nomination.

"Mr. President, I'll be the first to speak in opposition. I don't know what people out there think about me, but I will state my reasons because I will always state my reasons and my concerns. I will never hide them from anybody.

"I agree with the discussions that have been made supporting the nomination. I agree that we should protect abuses of power. I agree that we should protect the institution of the Senate and the integrity of the separation of powers. But the problem I have is I disagree with the statement made today that when there are doubts, we should always give the nod to the Governor. On most every situation I would agree except for the Attorney General because the Attorney General serves as the attorney and legal adviser for the Legislative Branch. Because

of this obligation that she has, she is also our attorney, my attorney. I need to be as comfortable as the Governor with her legal advice and her character as I would my own personal attorney. And Mr. President, at this point in time I have not come to that conclusion.

"Let me explain the reason why I'm not comfortable at this point in time. First of all, in discussing with the departments why there are failures in performing their duties, the consistent theme is that the Attorney General's office has not given them sufficient support. By itself, I don't give that much credence because being a former government attorney myself, I know the problems of the Attorney General's office and the deputies over there. I know how hard they work and how much demands are placed upon their time and energy. However, I feel as a Senator I need to go into more detail and so I asked them, Why? What led to those things? What is the problem? And I found time and time again, in my informal discussions with them, that oftentimes, at least the perception is there, that it has arisen because there have been disputes or fights between the Attorney General and the department heads. And that concerns me. Now if it is because of overwork, I can accept that, but when a department head and division chiefs or employees come back and say, the reason why they feel they're not being serviced is because the Attorney General has a fight with their department, that raises a red flag in my mind.

"I went further and asked other people, Why is this happening? I even asked some of the Governor's own people about this perception and they agreed that there is this perception out there, and they agreed that there were disputes between Ms. Bronster and other department heads. And they have agreed that those disagreements have affected the working relationships between the Attorney General's department and that department. And that is the heart of my concern. If the Attorney General uses her position and lets personal differences get involved with the work of servicing other departments, then the question I need to ask is, Who's next? Because if she's my legal advisor and if she has disputes with the Senate or the House, what assurances do I have that she would not treat us the same way?

"Now, I'm not going to say that this is an absolute, that there is no way she can be confirmed. But this has raised a concern in my mind. I brought those concerns to Ms. Bronster, and Ms. Bronster has said in front of me that she will work on those areas. But, Mr. President, I need more assurances. I need more assurances that she will do more than just work on it, because, Mr. President, once we confirm her, that's it. We have no recourse. The Governor might be able to fire her, but not the Senate. If she doesn't follow through with those commitments, we have no recourse. That's what concerns me. In light of that, I have offered Ms. Bronster an opportunity to see if we can have a trial period in which she would have at least an opportunity to see whether she can work her way through those situations. I have offered her the opportunity, at least a suggestion, that she sit down, withdraw the name and serve as an interim attorney general. During the interim she can begin to work on her relationship with other departments. She can begin to work with her relationship with the Legislature. If during this period she has shown that she can go beyond her disputes and her disagreements and work closely with others, then I say we should bring it up for confirmation next year. However, that option was not accepted, either by Ms. Bronster or the Governor.

"I've also offered, as an alternative, if Bishop Estate is the true rallying cry in that if Ms. Bronster is not confirmed the Bishop Estate matter will fall apart, I've offered her the opportunity, or at least the suggestion, that she be retained as special counsel in charge of Bishop Estate. This would allow that litigation to continue. That offer and that option were not accepted either.

"That raises a question in my mind, Mr. President, that if options, if compromises, if discussions regarding working out

differences are not acceptable to Ms. Bronster now, will it be acceptable to her in the future? I think I've been reasonable. I think I've been forthright in terms of my concerns. I think I've discussed it many times with Ms. Bronster and I have to be honest, I am not quite 100 percent comfortable because if I'm being asked to retain my own attorney to represent me to give me clean legal advice, I need to be 100 percent sure. And I'm not going to give the benefit of a doubt when it is gray.

"The other thing that has concerned me about these situations with Ms. Bronster is that I have gotten many calls, and I have to be honest -- some of them from my island; many of them from Honolulu and I hope they come to Kauai and vote for me one day. Anyway, I have gotten many calls from them and in all those calls, especially the ones from my island, I have made a point to call them up and I listen to them. And yes, Ms. Bronster, you have a lot of support on Kauai also. I listened to them. I listened to their points. I told them my viewpoints. We might have disagreed on some. We agreed on some others. But in all those things, I make a point to listen to them and give them an opportunity to voice their opinion, and agree to disagree sometimes. I think that's really what the heart of the problem is that I have with the nominee. I don't believe right now she has shown me the ability to agree to disagree. I have a lot of respect for somebody who can do that. I think we need to look for people who have the ability to go beyond disagreement and to work together for the common good. That's what I'm looking for in all nominees.

"That's one reason why I did vote for Ms. Chandler because if the vote for Ms. Chandler was a vote based on public opinion or public perception, honestly, I think she would have lost. But I had to go beyond public perception and I went and asked Ms. Chandler about the specific concerns I had and her answers were satisfactory, and I was comfortable with her sincerity. I was comfortable with the people of her department saying that she does have the heart, that she is willing to listening; she is willing to change; she is willing to go forward. And for those reasons, I did vote for Ms. Chandler.

"Mr. President, also there've been other phone calls which have not been so gracious -- phone calls making threats; phone calls, and I don't know from what department it is but phone calls from the state government saying that if I vote against Ms. Bronster or any other Governor's nominee that I will be punished. Mr. President, I do not take well to those threats. Maybe in the past those threats might have worked with other people sitting here in this desk, but today, as I stand today, I will make a decision what I feel is right, not because I can benefit from the government by saying I can get certain projects through or maybe made to look good in front of my voters. I do not take well to those. There has to be a new era. There has to be a new generation of people who are willing to stand up, no matter how unpopular it is and say you cannot bribe me for my vote. You can talk to me about the factors, you can talk to me about the basis for the decision, but don't bribe me, don't threaten me. I don't take well to those.

"For Ms. Bronster, I wish her well. I really don't know Ms. Bronster, what this vote is going to be on the floor today, and if it's for your favor, I'll be happy. If it's against you, I'm not going to be happy about that. But if it's for you, I would want to say this, I want her to show all of us that these concerns of mine, whether she has the ability to agree to disagree and not let personal differences interfere with her ability to offer straight and honest legal advice, whether we will be punished or not punished by her office for supporting or not supporting the nominee . . . I think that will be interesting. For me, either way, whether the votes goes, I'll be interested to see what happens. And if the vote goes against, I'll be interested to see if the state government does act to punish the ones who voted 'no,' because that will tell us where our state government is. That will tell us whether there is a new generation of people wanting to do what is right or bending to what the popular vote is. That will tell us, Mr. President.

"But as I stand here today, I'm willing to stand up and tell everybody what my concerns are. I'm willing to open myself up and say go ahead, if you disagree, fine; I agree to disagree. I am open to saying, I'm putting myself out, if people want to vote me out, fine. I'm open to saying, if you want to punish me, punish me. But this kind of bribery, this kind of threat, these kinds of trade-offs for votes that are not based on the merits have got to stop. And it's got to stop someplace, and to me, I'm going to stop it right here by my vote.

"Thank you very much, Mr. President."

Senator Hanabusa also rose to speak against the nominee as follows:

"Mr. President, I also rise to speak in opposition to the nominee.

"Mr. President, as I thought about this issue, I recalled that the last time I sat and pondered a nominee as carefully as I did this one, was Ms. Himeno who came before this body for confirmation to the Supreme Court. I signed a petition in opposition. I do not take those acts very lightly. I am a practicing attorney, as Ms. Bronster and Ms. Himeno are, but yet there are times when we must stand for principle.

"Mr. President, by the Attorney General's own words, the Department of the Attorney General is responsible to preserve and uphold the State's laws and constitution for all citizens of Hawaii.

"My colleagues, I'm not unlike you, I have received calls as well. As a matter of fact, I think they called my colleague from Hawaii Kai first, and then they called me, and then they say, 'I have a lot of relatives in Waianae and I'm going to tell them all to vote against you.' I have received about three or so calls from my district, and they also say they're going to do some kind of campaign against me. But their issue is always the Bishop Estate, unquestionably the Bishop Estate. And I felt that Ms. Bronster's actions on the Bishop Estate warrants that even if this body were to not confirm her, that she should continue as a special attorney in that area, and I've made those sentiments known in the press. I've also shared my view that I believe a lot of the issues regarding Bishop Estate is really for the IRS, and this morning's paper confirmed that. The Internal Revenue Service, after all, is the ultimate power when it comes to a nonprofit tax-exempt corporation.

"However, what we are faced here with, is the Attorney General. What is the Attorney General? My colleagues, the Attorney General is really a department head. Unlike other department heads or directors, she has a special status because she serves as the chief legal officer for all of the State, including the Legislature. Now, as the department head and the chief legal officer, the responsibility falls on her, definitely and squarely, as to state laws and the Constitution.

"This brings me to the issue that my colleagues are very well aware of that has brought me at odds with the Attorney General's office since, almost, coming to the Senate, and that's the voter issue. As you all know, there is no fundamental constitutional right as sacred as the right to vote. And I will tell you it doesn't matter whether it's one vote; two votes; 10,000; 50,000 votes -- every single vote matters. The manner in which the Attorney General's office treated that issue, the declarations filed in the Supreme Court, the arguments made, and what the people's perceptions were of my constituents, was extremely hurtful. And yet it took three months from my letter, five months from the time the pleadings were made before we received any response from the Attorney General.

"The right to vote, the encouragement of people to participate, my colleagues, that is the fundamental issue that brings all of us here -- the right to vote. You cannot treat flippantly, everyone's right. And we want to encourage people. We want to encourage those who may feel disenfranchised to

vote. This is what I am talking about. And you do not need the chief legal officer's deputy attorney general or statements attributed to that office to dissuade people, especially people of my district.

"Then this brings us to another concern. The Bishop Estate matter, as I stated earlier, has basically blanketed and controlled this process. I bet if my colleagues were to stack the responses and e-mails they received, you would have a ream for Bishop Estate and maybe a couple pages of 'others,' but it's primarily Bishop Estate. This is not to say Bishop Estate is not an important issue. But my colleagues, Bishop Estate is a private trust.

"What about the public trust?"

"As you all know, I sit as chair of Water, Land, and Hawaiian Affairs. We have heard, colleagues, the Budget Director come before us and say, 'Well, you know, our bond rating can't get any worse. We're only above Guam.' Why? Why is that? It is because we have not resolved the ceded lands issues; we have not resolved our disputes with OHA. I have come to learn that OHA has seven other lawsuits that they're ready to file against the State. And you know, what do we know about the status of ceded lands, colleagues? Those who are on Water, Land, and Hawaiian Affairs, as well as in the Majority, know that I have asked time and time again to have the administration's position told to us through the Attorney General's office as far as OHA and the negotiations. And what have we heard? Nothing.

"If the administration had put even a fraction of the effort expended on the confirmation of the Attorney General to address the ceded lands issue, we would maybe have an OHA settlement today. Let us not forget the Attorney General is a participant in that process.

"And colleagues, we want to move this economy forward. We want to infuse money into this economy. It's CIP projects and we are paying a premium. The taxpayers are paying a premium on those bonds because we have such a lousy bond rating. That lousy bond rating is due to the OHA disputes. Now that is an issue of the public trust.

"Again, members of my committee, we have sat there on individual claims. People who are talking about the Bishop Estate, let me call your attention to the Hawaiian Homes Commission. Let me call your attention to the fact that this body in 1988 began the process and in 1991 agreed to pay the individual claims. And from then forth we had a process. So what then happens? In 1997, the Attorney General's office doesn't like the results, so they come before us again, this year, after 43 percent of those claimants have gone through the process and say, let's change the rules. I told the Attorney General's office, 'You know, only you can come here and tell us to change the rules now because you don't like the results. You must do your job. If you, representing the State, if you, representing the Hawaiian Homes Commission, have lost these claims, then come with us and pay them.

"We had to listen, the members of the committee, and watch the kupunas come forward, many of them who will never see their dream come true of being on a homestead because this process has taken so long. And I would like to see them paid some reparation, some form of compensation before they, too, pass on. Most of them have no husbands anymore. They can't get on the homestead. They can't afford it. What about that, colleagues? That is a public trust. Those are the kinds of issues that you should be concerned about. Those are the kinds of issues that should bother you. Those are the kinds of issues that you have to judge a department head by.

"We've heard of colleagues talk about the fact that they voted against Susan Chandler. Susan Chandler is a department head. We don't believe that Susan Chandler is hands-on on all of the various cases, but we hold her accountable, and that's

exactly the same standard that I'm saying that you hold the Attorney General to. You sit here, you say, well she micro-manages; there's all these different problems that we're faced with, but that's okay. But we hold other department heads accountable for the performance of those who work for them because, after all, they're department heads. They run the whole department or are responsible for its results or lack thereof.

"Colleagues, I'd also like to tell you something else. Once the press kindly noted my opposition, I received further calls. One was of real interest. It was another commission who called and said now that we know how you feel about the Attorney General, we'd like to ask if you could amend a bill and give us the right to hire a special attorney. I told them, 'You know, show me, show me why you need it.' And I received a stack of papers, these papers here, and they asked one question. We pay for a specific Attorney General with federal funds, and yet we're not given access. And the Attorney General's office has told us, if we don't like it, you just go to a general pool. But they are paying with federal funds for this attorney. And they asked the question, Is that proper? Can you deny us access to this attorney which we pay for with federal funds? And there is a contract entered into that says that this attorney shall solely serve this commission, unless they -- the commission and the Attorney General -- both agree otherwise. They didn't agree that this attorney could be used for other matters. And what's the retribution for asserting their right -- they will go to a general pool.

"Members, my colleagues, we are here to advice and consent. I do not take that responsibility lightly and I believe that the Attorney General's office is not there for any private trust. It is there for the benefit of the public. We serve the public trust. That is our priority. We have very limited resources and we must prioritize it. And I ask you again, for those who may not know which way they're going to vote, prioritize what it is that we must do as the elected body. It is not an easy thing to turn your back on or to try and put less emphasis when the population is calling about a private entity and how, of course, people don't like the idea that you have an entity that powerful or perceived to be as powerful. But we must judge and we must do what we must do in the public's interest.

"As even the Attorney General said, for all citizens of Hawaii -- for all citizens -- and let's not forget our trust responsibilities of our own, the public trust.

"Thank you, Mr. President."

Senator Kawamoto rose to speak in opposition to the nominee and stated:

"Mr. President, I rise to speak in opposition of the nominee.

"Again, Mr. President, for the second time this session with deep regret, I break one of my favorite DJ's from the '50s and '60s, Mr. Lucky Luck, cardinal sin about speaking anything bad about anyone. But I must say that I have received, as the others have, numerous phone calls, threats and all those things that happened. Well, the threats, they can do as they please. This is a free country. They can organize opposition to my election in 2002, that's fine. I welcome their efforts in that area.

"As for those who sincerely thought that I should not oppose the nominee, here's some concerns that I have. There are no qualms about the nominee's ability, talents to litigate, to, as the Governor said, the most aggressive Attorney General we've had in this State. There are no doubts about those abilities. There's no doubt about that she did a great job or is doing a great job with Bishop Estate, the gasoline. I think if the State had a medal for citizenship or whatever it calls, they should give her a medal for that.

"But, Mr. President, I'm here to speak for those that are unable to be here because they're out trying to do their jobs to

the best of their ability to provide for the needs of the State to take care of the physically challenged, and that is the special needs education program. These people are very talented, just as the nominee. These people have the heart, just as the nominee. These people have the dedication, just as the nominee, and there are many of those people. When people tell me you need to weigh the value of the situation, sure, monetarily, the Bishop Estate, the tobacco outweigh the teachers' salaries, the teachers' support, the supplies, truly, but these are individuals. These are employees of the State who are trying to do their best to do what's asked of them, without question. Today they're there to do that.

"But, Mr. President, as the Senator from Waialae, Kahala and Palolo had said, in here we have a letter from Dr. LeMahieu about his perception that the Attorney General did a good job for the education department. Mr. LeMahieu, I think you should go down to the teaching level, the front line, and talk to these teachers and principals, from whom I have received 50 or more letters here. Some of it says, let me quote . . . and my good friend the Senator from Mililani and Waipahu, you know, he told me, he took me aside one day, he says, 'Kawamoto, you've got to go get some facts. Get letters. Do what you need. This is the way you gotta do that.' And I normally take his advice because it's free. Maybe I have to loan him my golf clubs but no monetary value in that, Senator. But anyway, here's the facts, Senator. It says here, 'School level decisions are now very involved and all staff needs to make legal sound decisions. Parents bring tape recorders to conferences. They bring advocates. They bring attorneys. School staff needs to feel as supported. As principal, I've addressed the situation such as child falls down from equipment, parents threaten to sue. Parent says teacher hits child, threatens to sue. Parent accuses another child for hurting her child, threatens to sue the teacher. Most educational officers will carry personal liability insurance due to the threats,' unquote, of a lawsuit.

"Another letter: 'The Deputy Attorney General who represents us do not believe that the educational officers are professionals.' What are they? Another quote: 'Due processing hearing was filed in October, held in May. The entire period between October and May was spent in negotiation to settle the hearing that we clearly could have won. As a result, we lost the hearing because we were inadequately prepared and the Attorney General's office refused to appeal the officer's decision.' Another quote: 'DOE must prevent frivolous lawsuits and needs expertise to mediate the cases of plaintiff attorneys and have them think twice for charging ahead against school personnel. Attorneys need to be accessible to school personnel on many issues as a result of federal compliance.'

"Mr. President, you know, also in this package of things I have here is a letter from Mr. Walter Kupau. You know, in there he says that he will support Ms. Bronster, but I want to be like him. I want to be like him as he protects his carpenters. I want to be like him to protect the employees of the State. You know, it's some of our fiduciary job. He needs to protect the rights and interests of his carpenters. We as Legislators and as Attorney General need to protect the rights and personal liability of our teachers and principals.

"Mr. President, these employees go out every day doing the most difficult and challenging tasks that we have in education system. These warriors are teachers and principals of special ed. It's a tough task to begin with. And doing it with threat of a lawsuit over their head makes this job a little more difficult. These plaintiff officers are telling these teachers increase your personal liability in your home owners because we're coming after you, your husband or your wife, whatever it may be, that you're going to be personally liable for these IEP. IEP means individual education program for each special ed student. Granted, the Attorney General has come out and said, and we've asked her to do this, has said that we're immune. But where is the policy down there telling them they're immune. It's not down there because you go throughout the State and all

these letters are from the neighbor islands, throughout the state there's the same conception. If they are immune, then tell them. Give them memos. Tell the plaintiff attorneys, hands off, whatever you have to do. But avoid the possibility of a threat there.

"These teachers are leaving the profession; they're taking leave of absence. Some of them, long time residents, are leaving to go to the Mainland, breaking off family ties and going to the Mainland. They're tired. They're frustrated. How much money is that? The personal lifestyle of these individuals -- Is it worth more than the lawsuit from the billion dollars we got from the tobacco company? Maybe not monetary-wise, but quality of life is important also.

"It is our job to protect and give them the tools they need to do their jobs. We need to stand by them. They are public servants.

"This is so important that this year, Mr. Shishido, interim District Superintendent of the Honolulu District, some of the teachers came to see me and they wanted to hire their own attorney for special ed. Is it so important to all of us that this bill still goes forward from the Education Committee? It still goes forward and Ways and Means is thinking about providing that opportunity.

"And this is not the first case. We've seen ERS come for a special attorney. We've seen the Tax Department ask for a special attorney. Ladies and gentlemen, the Attorney General's office has 161 deputies, the largest law firm in the State of Hawaii, and yet they cannot provide for their concerns. (And Mr. Chumbley is saying 161. It was 171 and the Attorney General, after our interview, told me she had 161, so that's from her.)

"The desire to be involved with all the contracts that go into different departments that goes into the Attorney General, the departments won't tell you this, but the workers will tell you. Get down and talk to the workers. They said turning something into the Attorney General's office for opinion is a deep, deep, deep black hole. Lucky if it comes out after six months. I'm taking the average. I'm sure somebody's going to send me something saying one day, but I'm just taking the average.

"The other thing, Mr. President, I was disappointed, extremely disappointed that as I went through my process of researching and trying to find to make the right decision . . . One of it was again my good friend lawyer from Mililani and Waipahu, he says, you may have to bring her in; you have to talk to her. I said okay, so I did. I brought her in, April 23, Friday, I think it was 10:30 or 9:30. I may have forgotten the time. We talked for about an hour, discussed the issues, discussed my concerns. We did that. Before she left, I asked her if she had any questions. She said, I have one question, Are you ready to help confirm me or not? I said, at this time I'm not ready to make that commitment as of yet, but I'll think about it over the weekend. At 4:15, I received a fax letter, and I don't have the letter; I thought I had it, but I don't have the letter; the Governor took it. I don't have a letter. It said that one of your bills, there's a probability that it may be unconstitutional. That's okay too, that's part of her job. But I hope it's not coincidental or if it is coincidental and it's not due to the fact we wanted to play games. I don't like to play games, especially when it deals with people. I hope that wasn't so.

"But let me tell you, we have worked very hard on the military construction bills. We had five bills, three resos and it's getting difficult to pass some of these. But regardless, we have asked the Attorney General to come to these symposiums. We asked the Attorney General to come as Mr. Kamikawa was asked. We asked her to come to the second solution symposium. She wasn't there or her staff wasn't there. We packaged all these five bills and three resos and we sent it over to the AG's office. No comment. And nine days before the session ends, she sends me this letter or her staff, not she. I

take that back. Her staff signs a letter to me saying that one of my bills could be unconstitutional. I hope it's not part of the threats. I hope it's not part of the effects of these efforts of trying to do a good job and trying to make the decision.

"Mr. President, many other concerns . . . I'm sure many of my fellow Senators will be rising to speak for those. But again, we need to provide when we have talented people in their own right trying to do a good job for the State of Hawaii, for the Education Department, trying to be out there to teach our students, to educate them to live a normal quality of life, it is our duty and our commitment to protect these people. And many say, Why don't you ask her to do it and give her a second chance? We've done that. We in the Ways and Means Committee, I've sat in there for five years . . . we in the Ways and Means Committee, we interviewed all the department heads. We asked them questions. We asked them about concerns about their constituents. They answer us. And when we get these kind of letters that come to us, we have concerns. We have concerns because we give them 161 attorneys. We spend money on the department. And yet, the basic right of these employees are not protected. The basic right of a working man and woman is not protected. And I blame the head of the Attorney General's office, the nominee who has been the AG for the past four years.

"Thank you very much."

Senator Tanaka rose to speak against the nominee and said:

"Mr. President, it's always nice to follow the Senator from God's country and I swear I'm not going to keep it that long. I think they need a break.

"Mr. President, I rise in opposition of Gov. Msg. No. 145.

"Mr. President, I had the same concerns as many of my colleagues that spoke against, even with reservations. I concur with them. But I have also left my door open because I felt that it's important to let the people voice their concerns. And as we all know, they did. We had tons and tons of calls, e-mails and everything, and I want to thank them for participating in this process.

"One point of interest was my neighbor island, so I expected many calls or faxes or e-mails, but I received few -- no more than six, I think. And that concerns me. I don't know if this problem is only for Oahu. I think Maui is part of the State and I think we should all be concerned.

"My opposition to her, aside from all of the others that we heard, is that, as a seating Senator here, she has not responded, in fact she has disregarded my letter dated November 6, 1998, as co-chair of Economic Development. In the process of running the so-called committee, I needed a legal opinion. I've waited and waited -- none. Then on July 29, 1998, I wrote to the AG once again for the same request saying that we needed to get ready for the next session. Again, no response. Later I had a phone call. But, Mr. President, as a seating Senator I think I deserve a written legal opinion from the AG's office. If she disregards me, what can I expect for the general public. And I felt very bad for my constituents, and especially for the people that requested the legal opinion, that I had nothing to give them. And this is the third year and I still don't have anything to give them.

"So that's only one of my concerns and I have many. So with that I'll keep it short.

"Thank you, Mr. President."

Senator Tam, also rising in opposition, then said:

"Mr. President, I rise to speak against the confirmation of Margery S. Bronster.

"First of all, I'd like to state for the record, I am not here to argue on the confirmation of Gov. Msg. No. 145. I'm here to state in terms for the record in terms of how I'm voting. Many people have different reasons, but let me tell you in terms of my justification. I have made my decision based on a solid foundation of rational reasonings, not based on emotionalism of the present lawsuits at hand, namely that which has entered the picture, the Bishop Estate. In fact, I am not a friend of the Bishop Estate, the people associated which are considered in opposition towards me. My opposition has been expressed by their opposing me this past election last year.

"The Committee on Government Operations and Housing for which I have the responsibility of being chairman is responsible for evaluating all departments of the State of Hawaii with regards to their productivity and efficiency in the delivery of public service. Thus, in deciding on the confirmation of Ms. Bronster, I must base my decision on the nominee's management capabilities, not on legal abilities only. If I may also remind everybody, I am not only a Legislator. My background is in personnel and I have been in the negotiation area and also in the management area in personnel. I'm also a former budget analyst within the State and also in the private sector. And I'm also a businessman in the private sector at this time. In fact, ironically as a businessman, my wife says that she would not want to work for me. Why? Because I have hard standards. In fact, quite frankly, I've told her several times, jokingly, that I would fire her if she were employed by me.

"While evaluating the Office of the Attorney General, we discovered that many, many departments within the State government have voiced concerns about not receiving timely legal assistance from that office under the current acting director. Several departments have requested and subsequently received legislative and Governor's approval to retain their own counsel, legal counsel. My staff has taken the pains of documenting from 1995 to the present, the many departments within our State government who have requested legislation allowing them to retain their own legal counsels, and they include such departments or agencies as, (1) the University of Hawaii (I remember that one last year, basically, a very, very strong fight by the University of Hawaii, all parties involved be it in terms of the President, the Board of Regents which are appointed by the Governor, the faculty members, the students, the community at large); (2) the Office of Consumer Protection; (3) Ombudsman, which represents the public in terms of the concerns out there; (4) Department of Taxation; (5) Insurance Division of the Department of Commerce and Consumer Affairs (now this Insurance Division represents our consumers out there and protects the consumers from illegalities of insurance companies); (6) This year, the Department of Education, which I fully support, because why? Our young ones are crying out there for legal assistance which we are not providing at this time during our present course of direction.

"Once again the Governor has approved departments and agencies to hire their own legal counsel. By the way, we did not cut the Department of the Attorney General's budget when we gave these positions of legal counsel to the other departments. We enabled her to keep on this legal counsel, whereby taking care of the concerns. But these concerns, as I mentioned in terms of servicing the public, are not being taken care of in terms of a timely manner at this time.

"Once again, these departments would not request to retain their own counsel if the Office of the Attorney General was managed efficiently. All these separate requests add to the cost of State government. And one wonders in the general public, why has the cost of government increased? Well, mainly so because government productivity and efficiency is bad. And here, we have to vote on confirmation of management. If I am to vote on a 'yes' for Margery Bronster, I'll be guilty of enlarging government due to the lack of productivity and efficiency.

"Based primarily on these occurrences, we can only conclude that the Office of the Attorney General needs to be reorganized from a management standpoint in order to increase productivity and efficiency. Delivery of services and support of state government, to Legislators and to the public is most inefficient at this time. It takes months for a simple response. What needs to be done, and I did talk to the Governor in doing so, is to establish time tables to get responses. I have problems within my office whereby from experience I've asked for legal opinions and it has taken months. Now, I get repercussions from my constituents because I'm supposedly not doing my job, but I must wait, unfortunately, for the Attorney General's office to respond to the legal concerns I have.

"The Governor has acknowledged, through his lieutenants, that there is a problem with administration at the Attorney General's office at this time. We had offered to consider alternatives and have asked for a plan. However, to this date we are not in receipt of a plan.

"This has become a very personal and emotional issue to many of our constituents and the public in general, and we have personally received telephone calls from our supporters voicing support of Ms. Bronster. And I think she appreciates that. I think she appreciates that in terms of what she's doing on the legal side, but people are not emphasizing the management side. We realize that people are basing their support for Ms. Bronster essentially on her willingness to take on the Bishop Estate. However, it is her management of the Office of the Attorney General that is in question.

"The current acting Attorney General lacks the principles of management, which consist of: (1) unity of command; (2) delegation of authority; (3) acceptance of responsibility; (4) knowledge of the job; (5) leadership; (6) integrity; (7) ability to make sound and fair decisions; (8) stimulating a positive work environment; (9) pride in quality job performance; (10) teaching employees; (11) seeking easier and better ways of doing work; (12) delivery of service with available resources; (13) cost control and cost reduction of budgetary responsibility; and of course, my favorite as you have all heard me say this year time and time again, and I realize that people have laughed at me in the past but I'm very serious about it -- goals and objectives with an action plan to reach those goals and objectives and, essentially, a timetable with that. And this is a problem that we have in government. Currently, we do not have goals and objectives and especially, if I may state, in the Attorney General's office.

"As you all know, and many of you laughed at me out there in the community, that when I had marathon sessions of two days with all the departments, all 15-plus departments and agencies, on what are their goals and objectives and their action plans, it was actually very educational for me. I found out that the Attorney General's office only has surface goals, no objectives, no action plans, no timetable. And it bothers me. Goals and objectives and action plans are used to develop a budget. And our responsibility here in the Legislature is to develop a budget. Right? How are we able to develop a budget without goals and objectives and action plans? It's very questionable.

"And let me give you a personal experience and I'm very happy about it. When I first got married 11 years ago, I told my wife that we're going to buy a house, and we're going to buy a house in two years. And we were able to do it because we budgeted correctly based on our goal. So I was able to buy the house through my own means without any assistance. And quite frankly, I'm very proud of it. And that's how much goals and objectives mean to me.

"The many phone calls have encouraged us to re-examine our position. However, I for one am more convinced than ever that we should oppose Ms. Bronster's reappointment. Within the last few days, the phone calls have evolved into threats, which have further reaffirmed that I am doing the right thing. I

forgive those in the community who have threatened me, and there was a former police officer that called me about eleven o'clock about a day-and-a-half ago and threatened me. But I have to forgive those because of their state of mind -- emotionalism based on the Bishop Estate. I have to deal with this issue on a non-emotional state of mind, and therefore I'm trying my best to do so.

"By the way, for those of you in the community who will ask the question and have asked me personally, Where's the Rod Tam that's an independent person, a liberal person who votes for rational reasons? Well, I'm still here. Quite frankly, I would not be here at this time. No. Economically, I'm suffering. I qualify at this time for welfare. Believe it or not. Economy is difficult but I'm willing to make a tough decision here. And by the way, I didn't get to this position because I took the easy way out. Some of you heard about the experience I had with Huna Street, whereby opposing the old boys' machine, a 122-unit condominium built off of Kuakini Street. I was threatened constantly for two years, but here I am because I believe what I'm doing is right.

"Also too, there's one issue here today and I thank my colleagues for resolving it. We concluded in conference this morning. That is the Aloha Tower Marketplace. We stood up to the old boys whereby we decided not to give in politically. And so I appreciate my colleagues for supporting that.

"As a State Senator, the public expects that we will neither be influenced by political pressures or the emotions of the time. Therefore, we must remain objective in this matter and vote what we know to be in the best interest of the public. In closing, my greatest concern is a lack of the formation of goals and objectives with the action plans in the present and future operations of the Office of the Attorney General. We legislators must depend on goals and objectives and action plans to budget for public services.

"I previously had a public hearing on Senate Resolution No. 70 and the first Deputy Attorney General attended and he even admitted this year there is inefficiency and unproductivity in the Attorney General's office at this time. And I asked him in terms of what are we going to do about it. He said, I don't know. I said, well let's work together on it, but do you have an idea? He said, I don't know. Now, that's the kind of leadership that we have in that office and it worries me. It really does.

"We have a hard time putting the budget together today. How are we going to put this budget together? I don't know because we don't have any direction from the administration. If we go overtime this session, quite frankly we're all at fault. But basically, let me say this, we don't know what the administration's priorities are. What are their goals and objectives? There's no action plan at hand. The public is demanding that the State government be more productive, efficient and accountable in spending tax dollars.

"Therefore, Mr. President, I am voting against the confirmation of Ms. Bronster as Attorney General in the State of Hawaii. And if I may say, I'm sorry, Governor Cayetano. It's nothing personal against you but remember our conversation on Monday evening I had mentioned to you of my concerns, serious concerns. I mentioned why not appoint Ms. Bronster as a special counsel to take care of the Bishop Estate and other cases in court so that we don't go astray, and your response was to me, vote up or down and we'll take care of it after confirmation in terms of productivity and efficiency. No presentation of a model. That worries me. Basically, are we going to continue what we're doing now? I just wanted to see a simple model and I couldn't get it.

"Lastly, my message is that I use this motto: 'Do not be afraid of threats, for remember, fear is fear itself.'

"Thank you."

At 1:27 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:38 o'clock p.m.

Senator Sakamoto then rose to support the nominee with reservations and said:

"Mr. President, I rise to speak in support with reservations.

"Mr. President, I've had some of the similar concerns mentioned by different members of this body today, especially the management type of concerns, and I've had the opportunity to look into some of these issues.

"Firstly, on the Felix issue, which certainly is a concern to all of us, part of the response from the Attorney General's office, particularly regarding that issue, is related to providing attorneys. I know there are some problems, but I'd like to just summarize and not go into the whole letter. Part of it says that had attorneys been provided at all of the different evaluation processes, their feeling was that, that probably might 'only serve to increase the adversarial nature of the process.' As far as for me, I'm not in favor of having attorneys fencing with attorneys in the Felix case, when what we're all out to get is the best care for our children. We need to spend the resources on the children, not to have attorneys fencing with other attorneys.

"In regard to some of the unfortunate feelings of being liable, by people on the front line, as the Senator from Waipahu mentioned, in this letter it indicates that unfortunately there are some consultants from the Mainland that helped to train some of the school officials, and it says, 'Unfortunately, those consultants did not know or understand that school officials in Hawaii are state employees and enjoy the protection of the state's sovereign immunity, unlike educators in other states who are employees of school districts and are not school officials.' So, Mr. President, unfortunately, many people did suffer unduly or did fear unduly, but I believe, with this letter and with the concerns raised, those issues will be resolved. We are not about going backwards. We are about going forward, Mr. President.

"And relating to the concerns mentioned, everybody is concerned about Felix issues. Related to the staff, related to concerns about micro-management, etc., I was really surprised that I received, and I believe some of my other colleagues here received this petition. This petition is not members of the community, but this petition is from 'We are the employees of the Department of the Attorney General, State of Hawaii, and we support the confirmation of Margery S. Bronster as Attorney General.' So certainly, this is 'make a difference' day. Where else in this State have you seen employees willing to say we stand behind our boss? (Applause.)

"We can all agree that there were problems in the past. I myself had concerns, but certainly today is 'make a difference' day. Today, is 'make your vote count' day, Mr. President. Each of us has a vote to count and certainly they will be counted.

"Unfortunately, as the Senator from Mililani mentioned, this session comes down to the Bronster session. So here we are in the Bronster session when we all said at the beginning of this session it was the economy; it was education; and here we are -- the Bronster session.

"All I can say is, each person, no matter what they said prior, needs to think about what we will be, not tomorrow, not next year, what we will be maybe five years from now, because this will not be forgotten as the Bronster session. And really our job here, our ethical job, is to do what is best for the people of Hawaii.

"Thank you, Mr. President."

Senator Anderson then rose to oppose the nomination as follows:

"Mr. President, at this time I will be voting 'no.'

"I think it's most impressive to have this many people here. I don't think I've seen almost as many since we did the same sex marriage and our faxes were going crazy and the economy was still down at that time. It hasn't improved.

"I think that you've all heard the problems that we're having with education and the Waihee/Felix problems within the system. I think that you've heard all of the good things that the AG has done, like the gasoline, having the gas tax go down. Well, in reality that wasn't the Governor's nor the AG's position. It was Keoni Dudley when he ran for lieutenant governor. That was his issue and he fought it every day. Then they picked it up. Because the Mainland was so dominantly lower in gas costs, Keoni picked it up as his issue, and then they ran with it.

"While we're here, I'm going to say that there were two questions that our Senator from . . . Senator Matsunaga, I keep forgetting which district everybody is from . . . what do we think as Senators and what do we think for the people. Well let me tell you, I didn't see one Hawaiian down here, calling me up and raising hell when the Governor of this State got rid of Kali Watson as a director. And we as Hawaiians at the Association of Hawaiian Civic Clubs convention gave him a standing ovation for a job well done, and when he was fired it was stated he didn't give me the Hawaiian vote the way it should have been. I didn't hear too many Hawaiians grumbling at that time and I thought that was unusual.

"The ceded lands, some people don't understand what we're doing. We develop state land or lands that we buy and develop and there's revenue. And then on the ceded lands next door, we build schools, we build hospitals, and there's no income for the 20 percent. So now they're fighting in court, but the AG says you can sell land and you can do other things.

"There was a group, yesterday, that came to see me and they're worried about the trustees and the pay that they're getting. And again, ladies and gentlemen, that's our fault. We did the land reform bill. In the old days, the Bishop Estate was land-rich, money-poor. They couldn't even pay their teachers. What they did is say, 'Hell, hold on to your paychecks until another week when we have enough money in there.' Nobody really cared in those days. Once everybody said we want that land and we passed a law for the land reform act, they had to sell Bishop Estate lands, Campbell Estate lands, other estates. They were working on a commission and their commission is fat only because we made it that way.

"I look at every Hawaiian issue and I'm Part-Hawaiian. And when it comes to Bishop Estate and you have land that is appraised like Ka Iwi Shores for \$80 million, and then we take it for \$11 million, that's a loss, ladies and gentlemen, of \$69 million. And then when they take my tax money because the trustees are making too much money and they say we're gonna fight this, I'm losing out as a Hawaiian and I'm losing out as a taxpayer. And I don't think that's fair.

"When I fight for you on Waiahole/Waikane, when we were doing the Waiahole Ditch, water that was stolen years ago, got cheap pay for the people who ran plantations, AmFac made a lot of money. When we bought that ditch, we gave them \$10.5 million and I said let's lease it; let's put it under condemnation; let them give it to us. There's all kinds of things that could have been done, but no, we're going to buy it. So I wrote the AG a letter saying 'On behalf of the constituents, can I sue the Governor.' It took months before I got any reply that they didn't break any laws. And when I read the committee report, we have laws on the books that circumvented everything that the Governor needed to do to give AmFac \$10.5 million. The

Waiahole Ditch now costs you over a million dollars, per year, for repairs and maintenance.

"That's my job here. I'm here to represent you the best possible way that I can. That's why they make us State Legislators. They don't say you're the Senator from Waimanalo/Kailua. You're a State Legislator.

"When I have people from the neighboring islands call me and tell me that they're not getting sufficient help from the Attorney General's office in those dads that don't pay support. When you can have them say that they're not getting the proper feedback on child abuse, on legal areas that they're asking, I owe them to follow up on that. If you had to wait four months for me to give you an answer to some of your questions, you'd tell me that I'm lax and not doing my job and what a rotten person I am. But it's not my fault if we can't give you the information as readily as we'd like to.

"We've said before, for education -- two attorneys; for Bishop Estate -- seven to nine . . . 171, even though my colleague corrected us and said that the AG said she only has 161. We also allow her to hire outside attorneys. Ladies and gentlemen, you come here, you're looking at one issue. As I stand before you, there are many issues. We have put in many bills to help our economy and nothing has happened and I don't get the calls and the need from you folks.

"Now, I listened to the Attorney General this morning on television and they were talking about conflicts and how everybody, as far as she is concerned I guess, should state their conflicts. Part of what I say, I think it's maybe the media's fault that they don't tell you how often I stand on this floor and say my wife works for Bishop Estate, but she had 41 years with Hawaiian Airlines. And since the 70's I've had to stand on this floor and say I had a conflict of interest, Mr. President, my wife works for Hawaiian Airlines. When I fought Bishop Estate, some of the very people today said you have the audacity to fight Bishop Estate. Who do you think you are? Today they're saying, Who do you think you are, sticking up for Bishop Estate? I'm sticking up for programs that Hawaiians have lost -- program after program.

"When I first got elected, Kinau Kamalii was our Minority Leader in the House. We had 28 Hawaiians. Today, I'm the last in the Senate. I think there's four or five. Everybody says you have too much. But you really don't look at the issues and that's why I have to stand here and fight on a cultural part of it, and then I have to look at the needs of the people and where we're squandering your money. And it's been 40 years. And none of you seem to really care that the educational system has second to none. I don't think that there's really second to one, because we're the worst. We're going down hill.

"A conflict of interest that I mentioned earlier, Senator Matsunaga works at the same or, I guess, with the same law firm. I think that's a conflict. I think that it's a conflict that I didn't even know that Margery Bronster wasn't Bronster. I didn't even care. She was the AG. Just recently that I naively found out that her husband owns Servco. That's Bishop Estate land. Is that a conflict? Or is it a conflict that there's almost non-bid contracts for that company? That's a conflict. They gave the Governor \$6,000, over and above what they should have, and what happened? The Campaign Spending said well, like other corporations they were late and they filed late. I don't think that that's fair.

"And the last conflict that I have, ladies and gentlemen, this morning my son-in-law received a call from the school. He works up there as a maintenance person. He used to work for me until my business was going down the tubes. And my daughter's been there a long time. She used to be a receptionist. Now she's a secretary for six different people. I don't think that their salary is probably one combined of what some of you make. But they were told that if your father-in-law doesn't vote the way we want, you'll lose your job. And let me

tell you, ladies and gentlemen, that makes me angrier than hell. I don't care what you do to Whitney Anderson, but don't you pick on my family! Because I've signed Ethics Commission reports year in and year out. And if these people down here who work for the media don't print it often enough, then that's not my fault. I have never denied who I am, what I am, or what I intend to do.

"Thank you very much for listening, Mr. President, and thank you ladies and gentlemen for coming."

Senator Nakata rose to speak on the appointment and said:

"Mr. President, I rise to speak on this appointment."

The President interjected:

"Are you for or against?"

Senator Nakata replied:

"I will get to that. I have agonized over this decision like I've never agonized over any decision in my life.

"Shortly after the Governor's Message came down, I started saying that I would be voting against this nomination because of the firing of Bill Tam at the water commission, under conditions which I didn't think were proper. But that was to be just a protest vote. I did not imagine that we would be in this kind of situation that we are today.

"Subsequently, I started to change my mind, as most of you in this body know, and I started to change my mind because I liked what she was doing with regard to the Bishop Estate -- not the estate, the trustees -- let me be clear on that -- not the estate, the trustees. I have been fighting with this entity for nearly 30 years of my life over water issues, over land issues, planning and zoning issues.

"As the discussion became more and more heated, I tried to back away from commitments I had made to vote against this nomination. I did. I went so far as to commit, also, that I would vote for it, but as I was making my way to the chambers for this session, I was reminded again of that water case. This was the biggest case that has been before the Water Commission in its brief history. Mr. Tam is someone who had taken, with another deputy, the biggest case in this State's history -- the Hanapepe Water Case. They took it to the U.S. Supreme Court, and they won.

"As I was sitting here listening to all of the speeches, details of the firing kept running through my mind. The circumstances were these. When that Waiahole Ditch case started, Ms. Bronster chose to argue the State's case before the Water Commission. Her deputy, Mr. Tam, her employee, was counsel to the Water Commission. I do not believe that she should have entered the case in that way. She could have asked one of her other deputies to handle the State's case, and when I asked her about it, she said that the Governor asked her to enter that case. Remember now, after being confirmed, she is independent of the Governor. He cannot fire her. It is only this body that can fire her.

"Having argued the case under circumstances which she said were not related to this case, she fired him. I believe that as soon as she entered that case, the entire supervision of Mr. Tam should have been passed on to her First Deputy, but the firing was done by her. Granted, Mr. Tam can be a prickly person, but he is a dedicated civil servant. He missed a court appearance on, I believe it was, Maui at 9:00 a.m. one morning. He did call the Judge at 8:00 a.m. He accepted the fines that were imposed on him. The reason he missed that court appearance was a serious accident that happened to his girlfriend the night before.

"The timing of the firing is what now bothers me as I stand here. It was as Mr. Tam was preparing the position of the Water Commission on the Waiahole Ditch case which, if you recollect, was a massive case -- 27 parties involved, 27 attorneys, boxes and boxes of testimony. The Water Commission begged her to let him continue. Then they begged her to let him just finish out that case. She refused. The Commission did not have confidence in the deputy assigned because of the massiveness of the case and because that deputy had not sat through the hearings. My suspicion is that Dr. Miike, who was on the Commission at that time and also has training as an attorney, probably worked on the Commission's position. This incident raises questions of conflict of interest -- the timing does.

"And so for that reason, with apologies to Ms. Bronster, with apologies to others who I may have told that I would be voting up, I will have to vote against this nomination.

"Thank you."

Senator Matsuura then rose in opposition to the nominee as follows:

"Mr. President, I rise in opposition to this nomination.

"Like many of you, I also received a lot of threats. But what really disturbed me this morning was when I turned on the television and I actually saw a threat from the Attorney General herself against one of our colleagues. When she, on the morning of her nomination, told the press that she will now proceed with a criminal proceedings indictment against one of our colleagues, that is not only a threat against him, it is a threat against us as a Senate. It's for that reason, I'm strongly opposed to this nomination.

"Thank you."

Senator Buen also rose to oppose Ms. Bronster and said:

"Mr. President, I rise in opposition on the confirmation of Attorney General Margery Bronster.

"For more than weeks, I have been bombarded with phone calls, letters, media interviews, faxes, e-mail and visitors, regarding Ms. Bronster. Many have been for her confirmation, while many have been in opposition. And I, too, have received personal insults and direct innuendos of corruption, threats and other vile remarks which had no foundation or facts. Nevertheless, Mr. President and colleagues, I have welcomed and given everyone an opportunity to voice his or her opinion.

"I wish that these calls were to share ideas on how to help families and children and how to improve our economy -- not calls on Bishop Estate matters or emotional calls.

"Mr. President, I have many concerns about Ms. Bronster's performance in running the Attorney General's office. The media has elaborated those concerns so I will not dwell on them. However, as a member of the Ways and Means Committee, I have noted in our committee hearings this year, that the Department of Education (DOE) came forward and told us that only two attorneys were assigned to them. This untenable situation has already been mentioned because my other colleagues have also heard these same statements as members of the Ways and Means Committee. And as the Senator from Waipahu/Pearl City had said earlier, many teachers were concerned about the lack of legal help from the Attorney General's office. Mr. President, at this time when we're crying for special education teachers, our own homegrown, local teachers, special ed teachers are leaving for the Mainland for fear of liability suits of not having legal representation. I have had calls from my friends and neighbors from Maui telling me that they have not had the legal representation when they go into meetings with the special ed children's parents. These parents bring their own attorneys

while our teachers don't have any legal representation. I think there is a liability here. And I asked Dr. LeMahieu, yes go down and talk to the teachers. Get it from them. This situation along with requests from many departments to hire their own attorneys bring about many concerns about her managerial incompetence in discharging her duties.

"The decision not to confirm Ms. Bronster was mine and mine alone. Never was I influenced by anyone. I based my decision on testimonies, hearings and other research which I did on my own.

"In closing, Mr. President, I stand by my decision to oppose Ms. Bronster's nomination.

"Thank you."

Senator Chun Oakland rose to support the nominee and said:

"Mr. President, I speak in favor of this nomination.

"I would like to ask the Clerk to insert the words of the Senators from Palolo and Hamakua into the Journal as if they were my own.

"I believe Margery Bronster has demonstrated great courage. Her perseverance and dedication to public service is very admirable. We have much work to do as a State. I have had very positive working relationships with both Margery Bronster and her department despite the increasing workload and decreasing resources we have given to her department. I look forward to working with Margery Bronster, the Department of the Attorney General and the community to continue to deal with very critical issues.

"I believe that the Attorney General's office, in the four years that I have worked with her and her department, have worked very diligently and tried to address the challenges of providing the legal expertise to afford educational opportunities for children with mental health service needs through the Felix consent decree. But I, like many colleagues, feel we must do more in this area.

"I appreciate the support that she has given with regards to the Hawaii State Hospital, the increase in cases of elder abuse, neglect and fraud in the State. The services that we need to provide to people with developmental disabilities, the increase in cases that we've seen in child protective services -- the workload is so great. We need to do a lot more in the area of child support enforcement and that is an area that I would like to see much more focus on. I appreciate the work that has been done in the area of the tobacco settlement and medicaid fraud.

"Last, but not least, I do believe that we, including the Attorney General, must work more closely and cooperatively with OHA and the Department of Hawaiian Home Lands, because we do need to fairly address the issues of our Hawaiian people.

"On that note, I hope that we do support this Attorney General. Thank you."

Senator Chumbley then rose to support the nomination of Ms. Bronster and said:

"Mr. President, I rise to speak in full support of this nominee with no reservations whatsoever.

"Mr. President, I've listened to the many issues raised by the members thus far. These same issues have been raised in the past few weeks, both in our confirmation hearing in the Judiciary Committee and in the media. I believe that there has been sufficient public debate and will not attempt to address these individually.

"However, Mr. President, these issues share one common weakness -- none of them, none of them rise to the level of justifying a 'no' vote. If any member believes that any one issue is problematic, then the member should vote 'yes, with reservations.' The only reason to vote 'no' is that a member wants to stop or remove Attorney General Margery Bronster.

"I would like to remind the members that our task today, pursuant to Article V, section 6, of our State Constitution, is to advise and consent to the gubernatorial nomination. I have heard no compelling arguments as to why we shouldn't choose to consent to this nomination. I wonder if some of our colleagues are confused, because in this same section of our Constitution, we are also empowered to remove the attorney general as the chief legal officer on this State. However, that is not what this vote is about today -- we have not been asked by the Governor, nor by the people of this State to remove the Attorney General. Quite the opposite, Mr. President, we have been asked by the Governor, with the support of the people of this State, to consent to this nomination today.

"Two years ago, when voting on another highly debated issue, I stated that my vote was guided by our oath of office, which requires us to uphold our Hawaii State Constitution. Today, I feel equally compelled to follow that pledge. I am troubled that some of our members may be using our constitutional authority and responsibility as an opportunity to cast a vote in order to simply send a message. One message might be to the administration that 'we don't like your politics.' Another message might be that 'we are protecting our friends in high places.' Yet another message might be to members within our own body that 'we don't agree with your leadership style or actions on other issues.'

"Mr. President and colleagues, I believe that using our constitutional authority to 'send a message' is an irresponsible, an irresponsible exercise of that authority and one which lacks accountability -- which raises the final point which I would like for all of us to consider. In exercising our constitutional authority, to whom are we ultimately accountable? I believe that we are accountable to the people of this State. And based upon what I have heard from the hundreds of telephone calls, faxes, e-mail messages, and letters, just as my colleagues have, Ms. Bronster has the support of the people of our State of Hawaii. From what I have read and what I have heard from recent media accounts, Ms. Bronster does have the support of our people. Who am I, or who are we, as a body, sending a message to, when we take vote? We are sending a message to the people of our State.

"And I want the people of our State to know that I'll be voting 'yes' to support Ms. Bronster.

"Mr. President, I would also like to clarify several points that were made that I think needs some clarification. There was a previous statement that we have no ability to remove the Attorney General. As I stated, Mr. President, Article V, Section 6 of our Constitution does empower this body, the Senate, to remove the Attorney General from her position.

"The second point, there was a comment made that maybe the Governor should withdraw and then reappoint her as an interim AG. That's unconstitutional. Once this body has received the Governor's Message, we're compelled to vote either up or down. The Governor can withdraw that nomination, however, under the Constitution, the Governor cannot reappoint her as an interim Attorney General. This was similar to the Greg Pai situation.

"The third point is, I don't believe that Ms. Bronster has the character that would retaliate against someone simply because there is an unpopular and legal decision to be made that would go against some member who may be voting against her.

"Fourth point, there were comments made about the threat of lawsuits to teachers. I want to read from an Attorney General's

letter dated April 27: 'It is critical to the State's successful implementation of the Felix consent decree, that the record be corrected and that the teachers and all who are involved in the implementation know that the legal support is available for the effort. For the record, of the approximately 15 lawsuits currently pending involving the Department of Education Special Education Program, none of these suits, none of these 15 suits are against teachers. All suits properly named either the DOE or the educational officials, and they, the teachers, are all being fully represented by the Attorney General's office.'

"Fifth point, Mr. President, Mark Fukunaga gave a legal contribution to Governor Cayetano in his campaign. He gave him the maximum contribution of \$6,000. He was negligent in reporting that contribution in a timely manner. The contribution, however, was not illegal. He was as negligent as hundreds of other companies and corporations throughout this State were because of a change that we had made to the campaign spending laws.

"Mr. President, I support Margery Bronster for our Attorney General and I ask that at the appropriate time, Mr. President, may we have a roll call vote.

"Thank you."

Senator Kanno rose to speak against the nominee as follows:

"Mr. President, I rise to speak against the nominee.

"Mr. President, I'd like to begin by commending Ms. Bronster for her work on the Bishop Estate investigation, the tobacco lawsuit and the gasoline pricing lawsuit. With respect to these three areas, her courage and leadership must be commended.

"There are, however, a number of critical issues that have been brought forward about Ms. Bronster.

"As the State's chief legal officer, we need the most highly qualified individual whose opinions are respected by the courts, State agencies and those in public service.

"The legal counsel she provided to the Office of Elections added to the public mistrust of our election system. When a large number of spoiled ballots were counted in one Waianae District, she blamed the low education levels of the people of Waianae.

"When the blank ballots were an issue on the constitutional amendments, she issued an opinion that there shall be a constitutional convention. A legal challenge in the courts resulted in the Attorney General and the State losing on the matter.

"Her role in the ceded land dispute and the Hawaiian Home Lands settlements have angered many in our community.

"In the book purchasing controversy with our library system, Ms. Bronster defended the State and lost. It was found that the State didn't comply with the State Procurement Law.

"The Felix consent decree is one of the most troubling issues affecting all of our schools. Out of the 161 attorneys in her office, only two are assigned to work on Felix. School administrators and teachers are left feeling they have been left hanging out to dry.

"Along with Felix, the State is also struggling under a consent decree for the State Hospital. As the State's chief legal officer, it is her obligation to ensure compliance with these consent decrees. Failure to do so means potential risks of further court infractions and millions of dollars in State expenditures.

"State agencies have indicated a difficulty in getting timely responses from the Attorney General.

"In an audit of the Health Fund released yesterday by the State Auditor Marion Higa, auditors found that 11 of 13 contracts that should have been effective from July 1, 1996 to June 30, 1999 have not been signed yet. According to the Health Fund, the Attorney General's office did not approve signing the contracts. These 11 contracts represent a cost of approximately \$200 million for each year. The two signed contracts equal \$3.2 million. The audit indicates, 'its failure to properly execute the contracts not only means the enforcement of contract provisions is unlikely but also that both the Health Fund and the State are at risk if contractual disagreements arise.'

"It has also come to my attention that the Budget Director and others have not complied with opinions issued by Ms. Bronster.

"In deciding on Ms. Bronster's nomination, I believe we must consider the good that she has done with the Bishop Estate investigation, the tobacco lawsuit and the gasoline pricing lawsuit. That must be weighed with the concerns that have been brought forward.

"This question about Ms. Bronster needs to be asked: 'Is there someone who is more qualified to be Attorney General?' The answer I have heard from many is 'Yes. There are others who are more qualified.'

"As chief legal officer for the State of Hawaii, we need the most highly qualified person. Someone whose opinions will hold up in the courts. Someone whose opinions will be respected by those in her own administration. Someone who will provide proper legal counsel to State agencies in a timely manner.

"Is she the most qualified? When Ms. Bronster is held to this highest of standards, I have to say 'No, she is not the most qualified for this position.'

"I urge my colleagues to vote 'no.'"

The motion was put by the Chair and failed to carry on the following showing of Ayes and Noes:

Ayes, 11. Noes, 14 (Anderson, Buen, Chun, Fukunaga, Hanabusa, D. Ige, M. Ige, Kanno, Kawamoto, Matsuura, Mizuguchi, Nakata, Tam, Tanaka).

At 2:24 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:32 o'clock p.m.

Stand. Com. Rep. No. 1806 (Gov. Msg. No. 146):

Senator Levin moved that Stand. Com. Rep. No. 1806 be received and placed on file, seconded by Senator Chun Oakland and carried.

Senator Levin then moved that the Senate advise and consent to the nomination of EARL I. ANZAI as Director of Finance, term to expire December 2, 2002, seconded by Senator Chun Oakland.

Senator Tam rose in opposition to the nominee and said:

"Mr. President and fellow colleagues, I rise to speak against Mr. Earl I. Anzai as the State of Hawaii's Director of Finance.

"I make it a practice, if I may before starting, to always give justification in terms of my vote. I've learned that rather than letting negative perceptions be available in people's minds, you might as well make it clear in people's minds, because the

human mind is more negative than positive. And so I had to vote in terms of what is the rational basis. So here it goes.

"My opposition is based on the basis of the acting Finance Director not only representing the Governor but also representing us, the Legislature. He's only recommended to us for confirmation. The Legislature represents elected Representatives and Senators who embrace our form of government called democracy. Democracy embraces the public hearing process which we go through painfully for 60 working days, away from our families and so forth, eating improperly, eating at 12 o'clock midnight, which I do for dinner many times and many of you do also.

"Democracy embraces the public hearing process, thus what it means is public involvement. Unfortunately, I'm not trying to criticize Mr. Anzai, but he has stated, publicly, his opposition of the public hearing process in disclosing proposed budget allocation restrictions by the Governor. Democracy is very dear to my heart. I was raised on that basis. They call it brainwashed or whatever you may call it, but that's what I've learned through our public educational system. If I'm wrong, then we're teaching our students, our young ones, wrongfully. But I don't think so. This is what we all personally enjoy. I've been to other countries and, if I may say openly, I've been to countries where they have communism, and believe me, when you are in a country of communism you feel like everybody is watching you all around. You may be a diplomat there representing, say in this case, Hawaii, but you feel very, very cautious in what you're doing and you're very, very cautious in what you're saying also too. But I've been lucky when I traveled abroad, and things have gone smoothly in that regard.

"We are public servants of Hawaii's citizens and are obligated, obligated to protect our form of government called democracy through the voices of Hawaii's citizens. You know, I take it very seriously when we're sworn into office. I remember at the start of this legislative session, I had to take the oath of office to abide by our form of government called democracy, the open hearing process. And it's not an easy process, but it invites comments whether they be for or against, and I appreciate that process and we should really embrace it, whether it be from us as Legislators or from administration, all government officials across the State of Hawaii. And for us to deny that process to the citizens of the State of Hawaii is wrongful. One should give up their citizenship, if I may say harshly.

"Also, the second reason of my concern is that the acting Finance Director opposes what has been very dear to me in working all these years -- the use of the federal impact aid money for our students. We receive money from the federal government on a yearly basis. I believe this year we're going to receive about \$25 million. But you know what has happened to this \$25 million over the years? When we receive it, respectively, it is co-mingled into the general fund. It is not used for education which is supposed to be above that of the general funds we budget for education. And what has it been called? Whether it be the administration in the past of Ariyoshi, administration of Governor Waihee, or even the current administration, they say it is a reimbursement. Yes, technically, it is a reimbursement, but it's what the federal calls it. But they didn't mean for it to intend that for every dollar that we receive from the federal, we're going to return back the money to the general funds. Their intention was that the federal imposes a burden because they have employees of the federal government who have children who go to public schools, and this is their way of saying, well, let's give a helping hand to the states. Put in more money for education. Take care of the needs, the repairs and maintenance of the schools. Many of you know that is very dear to me -- taking care of safety and health, textbooks, computers, and whatever. We need those things. Otherwise improper education occurs.

"But what has happened, as I stated, every dollar that comes in goes back into the general fund. So our students in the

public schools do not get to benefit from that. And I have time and time again, over the years, stated that this is wrong, but time and time again, especially currently, the present Finance Director has stated no. The terminology for reimbursement is that the dollar we receive from the federal shall go back into the general fund, and I really believe that's wrong. And for that reason I'm voting 'no.'

"Thank you."

Senator Fukunaga also rose in opposition to the nominee and said:

"Mr. President, I rise to speak in opposition to this nomination.

"Mr. President, the past four years have been enormously difficult financial times for the State of Hawaii. They require us to exercise extreme care in identifying ways in which we may balance the State's budget as we seek to rebuild the State's economy.

"Let me provide just one example of the reasons for my opposing the nomination of this State Budget Director. In late 1996, the nominee requested an Attorney General's Opinion about whether he could include budget restrictions in the State's financial plan, pursuant to Hawaii Revised Statutes, Chapter 37. On January 13, 1997 the nominee received the Attorney General's Opinion which reaffirmed an earlier 1983 Attorney General's opinion which stated, in essence, that budget restrictions could not be used to balance the State's financial plan.

"Relying on the State Constitution and the Hawaii Revised Statutes, the earlier opinion said, in part: '... the Governor cannot substitute his judgment for that of the Legislature by reducing expenditures, for that would result in an abuse of power by the Governor of the executive spending power. While the allotment system authorizes the Governor to reduce expenditures where unanticipated revenue shortfalls occur, it does not permit the Executive Branch to prioritize authorized expenditures and to reallocate resources, for to do so would be usurpation of the Legislature's appropriation powers.'

"Mr. President, although the nominee received the Attorney General's Opinion that said that he could not balance the budget using budget restrictions, he nevertheless proceeded to do just that in the financial plan that he has submitted to the 1999 Legislature. What this means is that the Legislature cannot properly exercise its oversight role and examine whether the expenditures being proposed are prudent, whether they will ensure effective delivery of services and whether government can in fact remove some of the obstacles that hinder our economic recovery. This robs the Legislature of the opportunity to exercise its proper role of providing oversight over state spending.

"I believe that the development of the State's spending policy represents the most important blueprint for our government's operations. Without an accurate picture of how we are spending public dollars and how and when we will be reducing such spending, I cannot in good conscience support Mr. Anzai's nomination.

"I regretfully urge my colleagues to vote in opposition.

"Thank you."

Senator Anderson then made the following request:

"Mr. President, I have some remarks on my vote that I would like to insert into the Journal."

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

"MR. ANZAI DOES NOT TELL THE STORY STRAIGHT"

"Mr. Anzai described the monies in the highway fund as 'surplus.' The administration proposed transferring funds from the highway fund to the general fund which the legislature subsequently acted upon. Other economists, as stated prior to the transfer, indicated the highway fund will have a deficit in four years and the gas taxes will need to be increased to make up for the shortfall. In short, Mr. Anzai's advice to the legislature led to a raid of the highway fund and the bottom line is that taxes will rise.

EMPLOYEES RETIREMENT FUND

"Mr. Anzai also encourages raiding the Employees Retirement Fund. This year, Mr. Anzai wants to raid the ERS funds to give money to the counties and to pay for school repairs. In 1995, Mr. Anzai was extremely reluctant to reduce the state contribution to the ERS below a 5 percent salary increase assumption in order to protect the integrity of the retirement system, as he stated in a November 12, 1995 Advertiser article. The very next year, he changed his position and presented testimony in WAM supporting a 4 percent assumption. As of this morning, April 28, 1999, it now earns about 3.5 percent down from \$9 billion to \$8.2 billion.

"As he stated in the above mentioned article, 'Raiding the retirement fund would betray public trust. We cannot raid an already underfunded pension system just because it would be an easy way to solve today's budget crisis.' Yet, this is exactly what Mr. Anzai is advocating today.

DETERMINING HAWAII'S BOND RATING

"Mr. Anzai continuously testifies that the Legislature must protect the State's bond rating. The year end balance of the general fund is an important element in determining the State's bond rating and consequently, the interest rate to be paid on bonds sold. In 1995, he advised the Legislature the State must keep 5 percent of the amount of the general fund (\$150 million) to meet the bond counsel's standard. Later, he testified that the State must keep a 2 1/2 - 3 percent or 75-100 million dollars in the general fund or the State would lose its current bond rating. However, when there was a danger the general fund might dip to \$42 million, Mr. Anzai testified that \$50 million in the general fund was safe. This is totally contrary to his own previous statements.

BUDGET REALITIES

"How much is really in the general fund as compared to yesterday or tomorrow? In September 1998, Mr. Anzai announced a state surplus of \$154 million which he anticipated would increase to \$234 million for FY 1999. In fact, the surplus was not due to prudent fiscal management; it was a result of non-funding of State employee raises (\$70m), the payroll lag (\$45m), and raiding of a number of special funds. This is another example of how Mr. Anzai adjusts his statements to the facts at hand. How much will really be in the general fund at the end of FY 1999? Does even Mr. Anzai know?

ARROGANCE

"Mr. Anzai can be non-responsive and in fact, arrogant in committee hearings. Mr. Anzai illustrated this arrogance when he walked out of an important WAM hearing on performance based budgeting. Before the Senators completed questioning Mr. Anzai, he left to testify in another committee.

"In a January 13, 1997 opinion, the Attorney General advised against using spending restrictions to balance the budget. The budget presented was not prioritized and over-sized, contrary to advisement of the Attorney General. When questioned in a WAM hearing as to why he ignored the advice, Mr. Anzai is

quoted as saying that he 'either overlooked it or didn't even consider it. I don't even remember it.' In preparing the Administration's budget, figures should reflect the Administration's priorities and should not institutionalize budget balancing by restrictions and lapsing of funds, but should come up with a balanced budget that's based on forethought instead of afterthought.

"Mr. Anzai is dawdling in his role of reforming the budget process, obviously not taking it as seriously as he should. The 1998 Legislature passed a bill requiring a committee to meet and develop a performance based budget that is transparent and understandable to the public. As a member of the committee and as the State Budget Director, Mr. Anzai has not been proactive in this role.

"Earl Anzai should pursue all of his roles and duties aggressively in order to address the needs of a state that is in increasing economic woes. Time is money."

The motion was put by the Chair and failed to carry on the following showing of Ayes and Noes:

Ayes, 10. Noes, 15 (Anderson, Buen, Bunda, Chun, Fukunaga, Hanabusa, D. Ige, M. Ige, Ihara, Kanno, Kawamoto, Matsuura, Mizuguchi, Slom, Tam).

At 2:44 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:46 o'clock p.m.

Senator Kanno, for the Committee on Commerce and Consumer Protection, requested a waiver pursuant to Senate Rule 20 for Gov. Msg. No. 236, and the Chair granted the waiver.

APPOINTMENT OF CONFEREES

S.B. No. 1518 (H.D. 1):

The President appointed Senators Kanno and Taniguchi as additional co-chairmen on the part of the Senate at the conference to be held for the consideration of amendments proposed by the House to S.B. No. 1518.

S.C.R. No. 184, S.D. 1 (H.D. 1):

In accordance with the disagreement of the Senate to the amendments proposed by the House to S.C.R. No. 184, S.D. 1, and the request for a conference on the subject matter thereof, the President appointed Senators Chumbley, Matsunaga, co-chairmen, Chun Oakland as managers on the part of the Senate at such conference.

At 2:49 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:50 o'clock p.m.

ADJOURNMENT

At 2:51 o'clock p.m., on motion by Senator Chun, seconded by Senator Slom and carried, the Senate adjourned until 7:30 o'clock p.m., Thursday, April 29, 1999.