

FORTY-FOURTH DAY

Wednesday, April 3, 2002

The Senate of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, convened at 11:53 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Sam Slom, Hawaii State Senate, after which the Roll was called showing all Senators present with the exception of Senators Hemmings and Matsuura who were excused.

The President announced that he had read and approved the Journal of the Forty-Third Day.

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

Senator Sakamoto, on behalf of President Bunda, recognized Waialua Elementary School Second Grade Teacher Jill Hirota and congratulated her on being named the 2002 Hawaii State Teacher of the Year. Ms. Hirota was not able to be present.

Senators Chun, Nakata, Chun Oakland, Kokubun, Buen and Kanno then introduced and congratulated the following individuals who were named District Teachers of the Year: Leah Aiwohi, Chiefess Kamakaha Middle School; Lani Chang, Waiahole Elementary School; Aileen Dang, Kalakaua Middle School; Helen Kobayashi, Waiakea High School; Janet Sato, Baldwin High School; and Linda Uehara, Kapolei Middle School.

Senator Hanabusa introduced John Kahoonahano and Paige Barber representing the Nanakuli Neighborhood Housing Services, Inc., and commended them on their efforts to promote home ownership.

Senator Chumbley, on behalf of Senator Buen, Senator English, and himself, introduced Masaru "Pundy" Yokouchi and commended him for his devotion and countless contributions to the world of arts and for his tireless efforts to make the arts accessible to all of the people of Hawaii.

At 12:17 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:25 o'clock p.m.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 254, dated March 29, 2002, transmitting the Coastal Zone Management Annual Report for Fiscal Year Ending June 30, 2001, prepared by the Department of Business, Economic Development and Tourism, Office of Planning, pursuant to Section 205A-3, HRS, was read by the Clerk and was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 333 to 341) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 333, informing the Senate that the House has disagreed to the amendments proposed by the Senate to the following House bills:

H.B. No. 1011, H.D. 1 (S.D. 1); and
H.B. No. 2120, H.D. 1 (S.D. 1),

was placed on file.

Hse. Com. No. 334, transmitting H.C.R. No. 103, H.D. 1, which was adopted by the House of Representatives on April 2, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 103, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE STATE ENVIRONMENTAL COUNCIL, THE DEPARTMENT OF LAND AND NATURAL RESOURCES, SIERRA CLUB, HAWAII CHAPTER, LAND USE RESEARCH FOUNDATION, CONSERVATION COUNCIL OF HAWAII, ESTATE OF JAMES CAMPBELL, EARTHJUSTICE LEGAL DEFENSE FUND, UNIVERSITY OF HAWAII, AND OTHER INTERESTED PARTIES, TO ANALYZE POTENTIAL AMENDMENTS TO HAWAII'S ENDANGERED SPECIES LAW, CHAPTER 195D, HAWAII REVISED STATUTES, TO FURTHER THE GOALS OF PROTECTING AND PROMOTING THE RECOVERY OF HAWAII'S UNIQUE AND IMPERILED FLORA AND FAUNA," was deferred until Thursday, April 4, 2002.

Hse. Com. No. 335, transmitting H.C.R. No. 123, which was adopted by the House of Representatives on April 2, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 123, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE UNITED NATIONS TO CONSIDER THE ESTABLISHMENT IN HAWAII, OF A CENTER FOR THE HEALTH, WELFARE, AND EDUCATION OF CHILDREN, YOUTH, AND FAMILIES FOR ASIA AND THE PACIFIC AND REQUESTING SUPPORT FOR THE CENTER FROM THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES," was deferred until Thursday, April 4, 2002.

Hse. Com. No. 336, transmitting H.C.R. No. 190, which was adopted by the House of Representatives on April 2, 2002, was placed on file.

By unanimous consent, action on H.C.R. No. 190, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING A REPORT BY THE PATIENT SAFETY TASK FORCE OF THE HEALTHCARE ASSOCIATION OF HAWAII," was deferred until Thursday, April 4, 2002.

Hse. Com. No. 337, returning S.B. No. 2498, S.D. 2, which passed Third Reading in the House of Representatives on April 2, 2002, in an amended form, was placed on file.

On motion by Senator English, seconded by Senator Hogue and carried, the Senate disagreed to the amendments proposed by the House to S.B. No. 2498, S.D. 2, and requested a conference on the subject matter thereof.

Hse. Com. No. 338, returning S.B. No. 410, S.D. 3, which passed Third Reading in the House of Representatives on April 2, 2002, was placed on file.

Hse. Com. No. 339, returning S.B. No. 2341, S.D. 1, which passed Third Reading in the House of Representatives on April 2, 2002, was placed on file.

Hse. Com. No. 340, returning S.B. No. 2518, S.D. 1, which passed Third Reading in the House of Representatives on April 2, 2002, was placed on file.

Hse. Com. No. 341, returning S.B. No. 2725, which passed Third Reading in the House of Representatives on April 2, 2002, was placed on file.

JUDICIARY COMMUNICATION

Jud. Com. No. 3, submitting for consideration and consent, the nomination of PAUL T. MURAKAMI to the Office of Judge, District Family Court of the First Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of six years, was read by the Clerk and was referred to the Committee on Judiciary.

STANDING COMMITTEE REPORTS

Senators Chun and Matsuura, for the Committee on Hawaiian Affairs and the Committee on Health and Human Services, presented a joint report (Stand. Com. Rep. No. 3112) recommending that S.C.R. No. 15, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 3112 and S.C.R. No. 15, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION CREATING A WORKING GROUP OF REPRESENTATIVES FROM HAWAIIAN ORGANIZATIONS, THE DEPARTMENT OF HAWAIIAN HOME LANDS, AND THE DEPARTMENT OF HEALTH TO FORM A COALITION TO PROVIDE BETTER ACCESS TO STATE VITAL STATISTICS RECORDS," was deferred until Thursday, April 4, 2002.

Senator Inouye, for the majority of the Committee on Water, Land, Energy, and Environment, presented a report (Stand. Com. Rep. No. 3113) recommending that the Senate advise and consent to the nominations of MEREDITH J. CHING and CLAYTON W. DELA CRUZ to the Commission on Water Resource Management, in accordance with Gov. Msg. No. 177.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3113 and Gov. Msg. No. 177 was deferred until Thursday, April 4, 2002.

Senator Inouye, for the Committee on Water, Land, Energy, and Environment, presented a report (Stand. Com. Rep. No. 3114) recommending that the Senate advise and consent to the nominations of PRAVIN DESAI, STEVEN LEE MONTGOMERY, PH.D., and RANDALL F. SAKUMOTO to the Land Use Commission, in accordance with Gov. Msg. No. 186.

In accordance with Senate Rule 36(6), action on Stand. Com. Rep. No. 3114 and Gov. Msg. No. 186 was deferred until Thursday, April 4, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3115) recommending that H.B. No. 1842, H.D. 1, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3115 and H.B. No. 1842, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE PRACTICE OF PHARMACY," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3116) recommending that H.B. No. 2056, H.D. 2, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3116 and H.B. No. 2056, H.D. 2, S.D. 2, entitled: "A BILL FOR AN

ACT RELATING TO SOCIAL WORK," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3117) recommending that H.B. No. 2169, H.D. 2, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3117 and H.B. No. 2169, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COFFEE," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3118) recommending that H.B. No. 2467 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3118 and H.B. No. 2467, entitled: "A BILL FOR AN ACT RELATING TO NATUROPATHY," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3119) recommending that H.B. No. 1941 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3119 and H.B. No. 1941, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURE," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3120) recommending that H.B. No. 2514 pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3120 and H.B. No. 2514, entitled: "A BILL FOR AN ACT RELATING TO TATTOO ARTISTS," was deferred until Friday, April 5, 2002.

Senator Chun, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3121), recommending that S.C.R. No. 173 be referred to the Committee on Economic Development and Technology.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 173, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO DESIGNATE THE MONTH OF AUGUST 2002, AS THE 'DUKE PAOA KAHANAMOKU HO'OLAULEA' TO COMMEMORATE THE LIFETIME ACCOMPLISHMENTS OF DUKE PAOA KAHANAMOKU," was referred to the Committee on Economic Development and Technology.

Senator Chun, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 3122), recommending that S.R. No. 108 be referred to the Committee on Economic Development and Technology.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 108, entitled: "SENATE RESOLUTION REQUESTING THE GOVERNOR TO DESIGNATE THE MONTH OF AUGUST 2002, AS THE 'DUKE PAOA KAHANAMOKU HO'OLAULEA' TO COMMEMORATE THE LIFETIME ACCOMPLISHMENTS OF DUKE PAOA KAHANAMOKU,"

was referred to the Committee on Economic Development and Technology.

Senator Inouye, for the Committee on Water, Land, Energy, and Environment, presented a report (Stand. Com. Rep. No. 3123), recommending that S.C.R. No. 98, as amended in S.D. 1, be referred to the Committee on Commerce, Consumer Protection and Housing.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 98, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE PUBLIC UTILITIES COMMISSION TO OPEN A NEW DOCKET CONCERNING STANDBY CHARGES APPLICABLE TO NON-UTILITY DISTRIBUTED ENERGY RESOURCES AND CUSTOMER RETENTION DISCOUNTS OFFERED BY PUBLIC UTILITIES," was referred to the Committee on Commerce, Consumer Protection and Housing.

Senator Inouye, for the Committee on Water, Land, Energy, and Environment, presented a report (Stand. Com. Rep. No. 3124), recommending that S.R. No. 38, as amended in S.D. 1, be referred to the Committee on Ways and Means.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 38, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE STATE AUDITOR TO CONDUCT A PROGRAM AND FINANCIAL AUDIT OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES HISTORIC PRESERVATION DIVISION," was referred to the Committee on Ways and Means.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3125) recommending that H.B. No. 1713, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 1713, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES," passed Second Reading and was placed on the calendar for Third Reading on Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3126) recommending that H.B. No. 1715, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 1715, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES," passed Second Reading and was placed on the calendar for Third Reading on Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3127) recommending that H.B. No. 2315, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 2315, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE OBSTRUCTION OF INGRESS OR EGRESS," passed Second Reading and was placed on the calendar for Third Reading on Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3128) recommending that H.B. No. 2817, H.D. 1, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.B. No. 2817, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII RULES OF EVIDENCE," passed Second Reading and was placed on the calendar for Third Reading on Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3129) recommending that H.B. No. 1864, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3129 and H.B. No. 1864, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VISITATION," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3130) recommending that H.B. No. 2266, H.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3130 and H.B. No. 2266, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ACCRETED LANDS," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3131) recommending that H.B. No. 2426, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3131 and H.B. No. 2426, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CRIMES AGAINST CHILDREN," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3132) recommending that H.B. No. 2433, H.D. 1, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3132 and H.B. No. 2433, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD SUPPORT ENFORCEMENT," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3133) recommending that H.B. No. 2496, H.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3133 and H.B. No. 2496, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CHILD CARE," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3134) recommending that H.B. No. 2507, H.D. 3, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3134 and H.B. No. 2507, H.D. 3, entitled: "A BILL FOR AN ACT RELATING TO REGISTRATION OF DIVORCES AND ANNULMENTS," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3135) recommending that H.B. No. 2537, S.D. 1, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3135 and H.B. No. 2537, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AQUATIC RESOURCES," was deferred until Friday, April 5, 2002.

Senator Kanno, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3136) recommending that H.B. No. 2550, H.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3136 and H.B. No. 2550, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO APPURTENANT RIGHTS UNDER THE WATER CODE," was deferred until Friday, April 5, 2002.

Senator Menor, for the Committee on Commerce, Consumer Protection and Housing, presented a report (Stand. Com. Rep. No. 3137) recommending that H.B. No. 2832, H.D. 1, S.D. 1, as amended in S.D. 2, pass Third Reading.

By unanimous consent, action on Stand. Com. Rep. No. 3137 and H.B. No. 2832, H.D. 1, S.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TIME SHARING PLANS," was deferred until Friday, April 5, 2002.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 3096 (Gov. Msg. No. 230):

Senator Buen moved that Stand. Com. Rep. No. 3096 be received and placed on file, seconded by Senator English and carried.

Senator Buen then moved that the Senate advise and consent to the nominations of DEAN T. AOKI, HAROLD R. DECOSTA, CHARLES W. FLEMING, DEAN M. GEORGIEV, STEPHEN G. LARACUENTE and CHRISTINA M. PILKINGTON to the Disability and Communication Access Board, terms to expire June 30, 2006, seconded by Senator English.

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

Ayes, 23. Noes, none. Excused, 2 (Hemmings, Matsuura).

Stand. Com. Rep. No. 3097 (Gov. Msg. No. 233):

Senator Buen moved that Stand. Com. Rep. No. 3097 be received and placed on file, seconded by Senator English and carried.

Senator Buen then moved that the Senate advise and consent to the nominations of WINNIFRED AOKI, DONNA M. BUHRMAN, J. COURTNEY FITZSIMMONS, RANDOLPH C. HACK, FRANCINE M.L. KENYON, KEVIN KIMURA, VIRGINIA M. KLINE, ALISA MITCHENER, CHARLOTTE GEORGE SMITH, ANDRICK C. TONG and LINDA WONG to the Statewide Independent Living Council, terms to expire June 30, 2005, seconded by Senator English.

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

Ayes, 23. Noes, none. Excused, 2 (Hemmings, Matsuura).

Stand. Com. Rep. No. 3098 (Gov. Msg. No. 238):

Senator Buen then moved that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

SANDRA LEE KOFEL, term to expire June 30, 2004; and

KATHLEEN DELAHANTY, DOROTHY (NANI) FIFE and JOANNE H. KEALOHA, terms to expire June 30, 2005,

seconded by Senator English.

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

Ayes, 23. Noes, none. Excused, 2 (Hemmings, Matsuura).

Stand. Com. Rep. No. 3099 (Gov. Msg. No. 239):

Senator Buen moved that Stand. Com. Rep. No. 3099 be received and placed on file, seconded by Senator English and carried.

Senator Buen then moved that the Senate advise and consent to the nomination of ROSEMARY C. ADAM-TEREM, PH.D., to the Reproductive Rights Protection Committee, term to expire June 30, 2006, seconded by Senator English.

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

Ayes, 23. Noes, none. Excused, 2 (Hemmings, Matsuura).

Stand. Com. Rep. No. 3100 (Gov. Msg. No. 232):

Senator Kawamoto moved that Stand. Com. Rep. No. 3100 be received and placed on file, seconded by Senator Fukunaga and carried.

Senator Kawamoto then moved that the Senate advise and consent to the nomination of ALLAN L. PARKER to the Hoisting Machine Operators Advisory Board, term to expire June 30, 2006, seconded by Senator Fukunaga.

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

Ayes, 23. Noes, none. Excused, 2 (Hemmings, Matsuura).

ADOPTION OF RESOLUTIONS

MATTERS DEFERRED FROM TUESDAY, APRIL 2, 2002

Stand. Com. Rep. No. 3085 (S.C.R. No. 110):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 110, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING DEVELOPMENT AND IMPLEMENTATION OF A STRATEGY FOR STATEWIDE ERADICATION OF PEST FRUIT FLIES," was adopted.

Stand. Com. Rep. No. 3086 (S.R. No. 60):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 60, entitled: "SENATE RESOLUTION REQUESTING DEVELOPMENT AND IMPLEMENTATION OF A STRATEGY FOR STATEWIDE ERADICATION OF PEST FRUIT FLIES," was adopted.

Stand. Com. Rep. No. 3087 (S.R. No. 28):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 28, entitled: "SENATE RESOLUTION DECLARING THE WISHES OF THE SENATE WITH RESPECT TO THE PRESERVATION AND PROTECTION OF EXISTING AGRICULTURAL LAND RESOURCES AND THEIR COMPONENTS," was adopted.

Stand. Com. Rep. No. 3088 (S.C.R. No. 60):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 60, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH TO DEVELOP A STRATEGIC PLAN TO COORDINATE PROGRAM SUPPORT OF SUBSTANCE ABUSE AND MENTAL HEALTH RESIDENTIAL TREATMENT PROGRAMS FOR ADOLESCENTS," was adopted.

Stand. Com. Rep. No. 3089 (S.C.R. No. 65):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 65, entitled: "SENATE CONCURRENT RESOLUTION SUPPORTING CONGRESSIONAL ENACTMENT OF MEDICARE COVERAGE OF ORAL CANCER DRUGS," was adopted.

Stand. Com. Rep. No. 3090 (S.C.R. No. 71):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 71, entitled: "SENATE CONCURRENT RESOLUTION EXPRESSING SUPPORT FOR A WOMEN'S HEALTH PLATFORM THAT RECOGNIZES SERIOUS INEQUITIES IN THE HEALTH PREVENTION AND TREATMENT OF WOMEN, AND CALLS FOR THE ELIMINATION OF THESE INEQUITIES TO IMPROVE THE HEALTH STATUS OF WOMEN IN HAWAII," was adopted.

Stand. Com. Rep. No. 3091 (S.R. No. 33):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 33, entitled: "SENATE RESOLUTION EXPRESSING SUPPORT FOR A WOMEN'S HEALTH PLATFORM THAT RECOGNIZES SERIOUS INEQUITIES IN THE HEALTH PREVENTION AND TREATMENT OF WOMEN, AND CALLS FOR THE ELIMINATION OF THESE INEQUITIES TO IMPROVE THE HEALTH STATUS OF WOMEN IN HAWAII," was adopted.

Stand. Com. Rep. No. 3092 (S.C.R. No. 75, S.D. 1):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 75, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A REPORT BY THE PATIENT SAFETY TASK FORCE OF THE HEALTHCARE ASSOCIATION OF HAWAII," was adopted.

Stand. Com. Rep. No. 3093 (S.C.R. No. 102):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.C.R. No. 102, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A REVIEW OF THE

HEALTH CARE NEEDS OF WEST MAUI RESIDENTS," was adopted.

Stand. Com. Rep. No. 3094 (S.R. No. 59):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and S.R. No. 59, entitled: "SENATE RESOLUTION REQUESTING A REVIEW OF THE HEALTH CARE NEEDS OF WEST MAUI RESIDENTS," was adopted.

Stand. Com. Rep. No. 3095 (H.C.R. No. 88):

On motion by Senator English, seconded by Senator Hogue and carried, the report of the Committee was adopted and H.C.R. No. 88, entitled: "HOUSE CONCURRENT RESOLUTION DECLARING 2003 AS THE YEAR OF THE HAWAIIAN FORESTS," was adopted.

THIRD READING

H.B. No. 1768, H.D. 1, S.D. 1:

On motion by Senator Kawamoto, seconded by Senator Kim and carried, H.B. No. 1768, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VEHICLE REGISTRATION," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Hemmings, Matsuura).

RE-REFERRAL OF SENATE CONCURRENT RESOLUTIONS

The Chair re-referred the following concurrent resolutions that were offered:

Senate Concurrent Resolution	Referred to:
No. 30	Committee on Tourism and Intergovernmental Affairs
No. 138	Jointly to the Committee on Education, the Committee on Water, Land, Energy, and Environment and the Committee on Hawaiian Affairs, then to the Committee on Ways and Means

RE-REFERRAL OF SENATE RESOLUTION

The Chair re-referred the following resolution that was offered:

Senate Resolution	Referred to:
No. 11	Committee on Tourism and Intergovernmental Affairs

RECALL OF SENATE BILL 2961

In accordance with Article III, Section 12, of the Hawaii State Constitution, and pursuant to Senate Rule 51, Senator Chumbley moved to recall S.B. No. 2961, entitled: "A BILL FOR AN ACT RELATING TO VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS," from the Committee on Labor and the Committee on Tourism and Intergovernmental Affairs, seconded by Senator Matsuura.

Senator Hanabusa rose on a point of order as follows:

“Mr. President, I rise to a point of order.

“Mr. President, I believe that the Senate Rules are being violated in that under Rule 3 of the President, which refers to your duties, Mr. President, under subsection 15, it sets forth that you shall establish final dates for acts in the Legislature, including the final dates for Third Readings of Senate bills. In addition, Mr. President, you’re to coordinate the dates for introducing bills and you are to do this with the Speaker of the House to establish other final dates.

“Mr. President, the Third Reading for Senate bills has passed. Therefore, I believe that this is an issue that is out of order and as a point of order I believe the Senate Rules have been violated and this cannot be entertained at this time.”

Senator Chumbley rose and said:

“Mr. President, I rise on a point of order.”

Senator Hanabusa interjected:

“Mr. President, I believe you have to rule on my point first, with all due respect, and then if Senator Chumbley, the Senator from Maui, has a subsequent point, then it can be taken up.”

The President then said:

“I believe we can take that matter up at a later time.”

Senator Hanabusa inquired: “Which matter?”

The Chair answered: “Your matter.”

At 12:30 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:31 o’clock p.m.

The President then inquired:

“Mr. Clerk, have 20 days elapsed since S.B. No. 2961 was referred to committee?”

The Clerk replied:

“Mr. President, S.B. No. 2961 was referred to the Committees on Labor and Tourism and Intergovernmental Affairs on January 31, 2002. The required number of days have elapsed since referral.”

The Chair then stated:

“The Chair will provide for limited debate to allow the movant to state the reasons for the motion to recall.”

Senator Chumbley rose and said:

“Thank you, Mr. President.

“As previously mentioned, colleagues, pursuant to Article III, Section 12, of the State Constitution – ORGANIZATION; DISCIPLINE; RULES; PROCEDURE – I want to read directly from the Constitution: ‘Twenty days after a bill has been referred to a committee in either house, the bill may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled.’

“Mr. President, in the spirit of the Constitution and our Rules, I do believe that there is a requisite number of individuals that would like to have this bill recalled to the Senate Floor for debate. With that, Mr. President, I will allow for the call of the vote, please.”

Senator Chun rose and said:

“Mr. President, thank you to the maker of the motion for at least providing a copy of not only the proposed bill that they wish to recall but also the proposed amendment. The proposed amendment and the bill contain provisions which would allow employee unions to form their own VEBA trust, voluntary employee benefits association trust, and to opt out, basically, from the new joint employer/union trust funds created by Act 88 that we passed last year.

“Mr. President, as I stated when we passed Act 88, there are problems that were ongoing in the present system that Act 88 was intended to . . .

The President interjected:

“Senator Chun, are you talking to the motion of recall?”

Senator Chun replied:

“Yes, I am talking in regards to the motion for the recall, Mr. President, and I will get to the point, but first I wanted to give everybody an adequate background in terms of what we’re really doing today.

“First, going back to the Act 88, Act 88 was intended to address some very, very real concerns raised by the Auditor about the loss of millions and millions of dollars by the state health fund.”

Senator Chumbley interjected:

“Mr. President, point of inquiry.”

The Chair recognized Senator Chumbley, and Senator Chumbley continued:

“Mr. President, the issue of this measure is not before this body right now. The issue before us is the recall of this measure, and I would ask that the presiding officer call for the vote.”

Senator Chun responded:

“Mr. President, I think I’m entitled . . .”

The President interjected:

“Senator Chun, please be specific to the recall, otherwise you will be called out of order.”

Senator Chun retorted:

“I believe I will be getting to the point unless I’m very rudely interrupted again. But Mr. President, the point of this is that after weeks and weeks of debate and study about this, and public comment by everyone concerned, Act 88 was done. Now what we’re trying to do with pulling this bill from Committee is to basically ignore public input, ignore testimony, ignore facts that have been clearly mandated and basically recognized by the Legislature in other bills, and ramrod something through without public disclosure, without public debate, without public testimony.

"That, I believe, Mr. President, would violate not only the Constitution, but the spirit of our statutory laws requiring us to get public comment. All of us agree that public input is required, but what we're doing here is ignoring that and saying, just for the sake of expedience because we want to get more votes, we're going to ignore that important public policy. But be that as it may, if you want to do that, fine, Mr. President. That's okay, because you folks need to vote your own conscience.

"What really kind of concerns me is that we could have avoided all of this abuse of the right for public testimony, the right for the public to participate in this arena . . ."

Senator Ihara interjected:

"Mr. President, point of order.

"I believe that the Senator now speaking has some good points that should be addressed on the substance of the issue. The issue before us now is whether to . . . actually, the issue is to have a vote to determine whether there is the constitutionally required one-third number of Senators to exercise its right to take up the matter. And that's . . ."

Senator Chun interjected:

"Mr. President, is this a ruling of a point of order or is this a rebuttal to an argument?"

Senator Ihara responded:

"The point of order is that the speaker . . ."

Senator Chun interjected:

"If it's a point of order, he needs to be ruled on his point of order, not on an argument."

The Chair stated:

"Senator Chun, please proceed."

Senator Chun continued:

"I'm just trying to wrap-up, Mr. President, because you asked me."

The President remarked:

"Please wrap-up and we'll take the vote."

Senator Chun responded:

"Right, thank you. Mr. President, what really concerns me is this abuse of the public process, this abuse of public testimony input. It could have been easily avoided if the members of those Committees, who if you folks have the votes, could have easily voted to have the Committee Chair have a hearing on that bill. I don't know why that wasn't done. I think we need to ask ourselves, are we really making a public display to try to do what is popular at the risk of avoiding public testimony and the light that it brings to these issues?"

"For those reasons, Mr. President, I feel I cannot in good conscience vote to support the pulling of this bill. If this bill was heard in Committee, I think if we had testimony on this bill, I think I'd be open to listen to it. I'd be open to asking questions and to finding out really what the impact of what this bill is going to be doing. But without that kind of public testimony, how are we supposed to really know the impact of

this bill? In fact, one of the Senators that spoke today has in previous issues made it very clear that all Senators, when they're voting on this Floor, should know the impact of every bill that comes before them with public testimony.

"So for those reasons, I take those comments to heart and I would say I'd be very, very hard-pressed to vote to support this motion at this time.

"Thank you, Mr. President."

The motion to recall S.B. No. 2961 from the Committee on Labor and the Committee on Tourism and Intergovernmental Affairs was put by the Chair and, Roll Call vote having been requested, carried on the following showing of Ayes and Noes:

Ayes, 11. Noes, 12 (Buen, Bunda, Chun, English, Hanabusa, Kawamoto, Kim, Kokubun, Nakata, Sakamoto, Slom, Taniguchi). Excused, 2 (Hemmings, Matsuura).

The President then made the following observation:

"Members, S.B. No. 2961 has been recalled and is accordingly in possession of this body."

Senator Chumbley rose and said:

"Mr. President, I'd like to request a recess for the purpose of a Majority Caucus, please."

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

The Senate reconvened at 1:31 o'clock p.m.

Senator Nakata rose on a point of personal privilege and stated:

"Mr. President, I'm rising on a point of personal privilege.

"The action that we have just taken is something that I have to say offends me. I'm the Chair of the Labor Committee. I was never approached by any of my colleagues requesting a hearing on the VEBA bill. I was asked whether I would hold a hearing, and basically I said no. No one followed up by asking me to hold a hearing.

"We had thorough discussions of all the issues last year. The fundamental move last year was to consolidate the union health plans into one trust with the state fund. That was the basic trust of the action that we took last year. And what we are doing today may undo that. This is not a bill . . ."

Senator Ihara interjected:

"Point of order, Mr. President.

"Mr. President, I believe the Senator is raising some concerns that speak to the merits of some issues that will be raised, and if he could confine his remarks to the point of personal privilege parameters."

Senator Nakata responded:

"I believe I'm getting to that. That was the move to consolidate and I believe that this move is going in the other direction.

"I was Chair last year and I'm Chair this year. Neither myself nor the Chair of the other Committee to which this was assigned was approached about holding a hearing, and we are

now going into a process that could and will result in suspending at least many of the Rules of our body and the Rules of the House. All I want to say is that I wish that someone had had the courtesy to talk to me about this.

“Thank you.”

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

“Mr. President, I rise on a point of personal privilege.

“Mr. President and colleagues, I want to publicly apologize to the previous speaker if he is offended by the fact that I am exercising my constitutional rights and my rights under the Senate Rules. However, I do want to say that I am genuinely sorry to the good Senator for doing so, but my constitutional rights and the rights of the body come before those of the feelings of an individual.

“So for that, Senator, I apologize to you.”

Senator Ihara then moved to suspend Senate Rule 3(15) and the first decking and first crossover deadlines of the 2002 legislative timetable for S.B. No. 2961.

The President then recognized Senator Hanabusa who rose on a point of order as follows:

“Mr. President, I rise on a point of order.

“Mr. President, my previous point of order, which was premature, was on Rule 3, subsection 15, and that was because of the fact that I believe we’re violating the final date which you, Mr. President, established along with the Speaker as to the Third Reading of the Senate bills.

“I understand, now, that there is a motion to suspend that Rule. But what is more troubling, Mr. President, is that the constitution which we have referred to so much under section 15 . . .”

Senator Ihara interjected:

“Mr. President, point of order.

“Mr. President, I believe that a motion to suspend the Rules is non-debatable. I ask that the Roll Call or the vote be taken.”

Senator Hanabusa stated:

“Mr. President, I believe a point of order overrides . . .”

The Chair interjected:

“The ruling is that the Senate Rule or suspension of the Rule is a non-debatable item, a non-debatable motion. It’s been moved and we will take the vote.”

Senator Hanabusa interjected:

“Mr. President, I call for an appeal to the body. I believe a point of order takes precedence over a motion.”

At 1:36 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:46 o’clock p.m.

The President made the following observation:

“A point of order has been made. Senator Hanabusa, will you restate your point of order.”

Senator Hanabusa responded:

“Thank you, Mr. President.

“My point of order is whether Senate Rule 3, subsection 15, has in fact been violated by this proposed second reading of the bill.

“Mr. President, that provision of Rule 3, which we all passed, is basically entrusting you with the establishment of final dates for action on legislation, including, though not limited to, the final days for introducing bills, the dates of mandatory recess pursuant to Article III, Section 10, of the Constitution, the final date for third reading of Senate bills, the final date for third reading of House bills, the final date for approving Conference Committee agreements and drafts of bills, the final date for final reading of the General Appropriation Bill, and the final date for final reading of the Supplemental Appropriation Bill. The President shall coordinate the date for introducing bills and may coordinate with the Speaker of the House to establish the other final dates.’

“Mr. President, that is in line with Article III, Section 15, of the Constitution, which of course says that no bill should become law unless it has passed three readings in each of the Houses on separate days. Now, Mr. President, the third reading of the Senate bills, that deadline has come and gone, and that’s the deadline that you established with the Speaker. We are on the third reading cut-off date for House bills.

“Mr. President, this action violates Rule 3, subsection 15, in that in order to move these internal procedures, as well as the dates that you have set, I believe you need the concurrence of the Speaker of the House, which we do not have before us now.”

President Bunda made the following ruling:

“The Chair rules that the motion to suspend Rule 3(15) is in order and that the suspension only applies to the internal Senate timeline table.”

Senator Hanabusa rose on appeal as follows:

“Mr. President, I appeal the decision on my point of order, which I believe that’s what you are doing, to the whole body.”

The Chair announced:

“There has been an appeal. Is there a second to the appeal?”

Senator Slom stated: “Second.”

The Chair stated:

“It’s been moved and seconded. We will vote on sustaining the ruling of the Chair.”

Senator Hanabusa asserted:

“Mr. President, that’s not what’s before us. What is before us is the appeal on my point of order which is a fully debatable issue under the Mason’s Rules, and that is what we’re entitled to, a full debate, and that is what I am exercising at this point.”

Senator Chumbley remarked:

"Mr. President, the speaker is correct. This is a debatable issue, so, go for it."

Senator Hanabusa continued:

"Thank you, the good Senator from Maui. Thank you very much. I'm glad somebody else reads Mason's. It's not exactly something you want to read to sleep.

"In any event, Mr. President, fellow colleagues, what we're talking about here is the integrity of our process. Set aside whether or not you're for this bill, against this bill or whatever it may be. This is an issue of the integrity of our process. We come into this body governed by the Constitution, the Hawaii Revised Statutes, and this orange booklet which the good Senator from Maui, Hana, was nice enough to design because he didn't like our other one, which sets forth our Senate Rules and we have agreed to abide by the Senate Rules.

"I believe one of our good colleagues has even referred to them as the rules of engagement, albeit that I don't think that's what they intended it to be, but that's what it may actually come to be.

"What you are doing here, if you suspend these Rules or if you rule . . . I stand corrected. My appeal is from the Senate President's ruling against the fact that I believe that this Rule is violative of the process. If you find that Senate Rule 3(15) has in fact been violated, you are going to support the preservation of this process. And colleagues, this is not just our process. There are many people who have come to rely upon all of these internal deadlines and deadlines that the public is made aware of as far as when bills will pass, when conference committees will set up, and when we will adjourn. These are all matters that the public knows and has trusted us to do.

"We have, through the process, established when hearings are going to be held, when the bills are going to pass, and people have come to expect that out of us. And what we're doing here is ignoring that whole process.

"My good colleague from Kaimuki/Kapahulu/Ala Wai, Senator Ihara, the good Senator from Ala Wai has stood up many times, making statements about the openness of government, and we have made a very good effort to have that openness of government. Yet, in this particular situation, what we are being asked to do is suspend rules, ignore the process, ignore what we have all come to expect both Houses to act and participate as, simply because we want to get to this bill. That is not what is at issue. What is at issue is our process, and whether we are going to stand by these Rules that we have enacted.

"We entrusted the President to set those deadlines in good faith with the Speaker of the House. And he in good faith established those deadlines. And now we're going to try to say, 'Hey, at least erase our portion.' The public doesn't have a right to rely upon what we have agreed to. The House doesn't have a right to rely upon what we agreed to because we just changed the Rules. No one wants to be in a situation when the rules can be arbitrarily changed and when they cannot rely upon a process that we have all said that we would abide by.

"That is what is at issue here, not the merits of the bill. What is at issue here is our process – the integrity of this body, the integrity of our Rules. And that is why I ask that you vote to overrule the Chair's ruling on my point of order.

"Thank you very much."

Senator Ihara rose and said:

"Mr. President, I rise to speak in favor of sustaining the ruling of the Chair and I have a few points.

"One is, in the Senate Rule 85, subsection 2, on page 31 of the Senate Rules, it says, 'Any rule may be suspended for a particular purpose upon a majority vote of the members of the Senate.' So this motion is in order.

"Secondly, the Constitution specifically provides that the legislative bodies, the House and Senate, adopt its own internal procedures and rules. And so we have the power to do that. But most importantly, I do not believe that a procedural motion should stop the consideration on the merits of a recalled bill. We are dealing with a recalled bill and the Constitution provides for that power to allow discussion and debate on the merits of the recalled bill. So I'm speaking for sustaining the ruling of the Chair.

"One of the other things that the previous speaker mentioned about public input, I understand that if this bill is considered and kept alive and passes on second reading, that the Education Chair will be having an informational meeting with public input. And I'm hoping that we have as much public input as we can prior to a final vote.

"Thank you, Mr. President."

Senator Slom rose and said:

"Mr. President, I rise in support of the point of order and in opposition to the President's ruling.

"Little did I know just two short hours ago when I was asked to give the prayer and I told you to do the right thing that it would cause all these problems. My classmate, Senator Kawamoto, reminded me of that. (Laughter.)

"Do we have the right to suspend the rules? Of course we do. We can do anything we want. It just takes 13 votes and we can do it. The question is, though, did we violate the Rule? And the answer has got to be yes, of course we did. We violated the spirit of the Rule. We violated the substance of the Rule.

"When we talk about rules and disenfranchisement, no one knows that better than the three members of the Minority. We have a problem all the time with our bills getting heard, with certain procedures and everything else, but we've been good soldiers. We have, for the support and the integrity of this body, gone along with rules once they were adopted, saying 'Okay, that's the way it is,' just like if you're in a sporting event. And now we see that we're in the fourth quarter; it's fourth down and 35 to go and we're going to change the rules in terms of how many yards we need. And one must really ask the question, why. Why are we doing that? Where is the pressure coming from?

"I recall several years ago we voted to recall a bill out of committee, a bill which had been heard where ample testimony had been given in which one of the Co-Chairs did not want to move it anywhere, and this body voted to bring it out. And I thought that was a legitimate function. But I don't see the same situation here. And the fact that we had not one, not two, but three Committees involved and nothing happened until today, makes one wonder what the real reasoning behind this is. And of course, just being part of the Minority, the emerging Majority, we don't know because every time we come here to do business and vote, you guys run around into another door, close the door, and we don't know what's going on.

“But what I can tell you is this – the word is integrity. It’s integrity in the process. And so, yes, we can change the process, but there better be a good reason. You heard from the Labor Committee Chair. And it’s not just a question of feelings; it’s a question that there was ample opportunity to do this but there were no reasons given until today. And so one has to ask that question, why are we doing this and in this manner? And if in fact we do this, if we do this and we do it unilaterally, certainly we can change our internal calendar. But it has an impact not only on the rest of the Senate and everything that we’ve done or might do in the future, but also in the House across the way.

“What is to be gained by this? If we do this, I have a number of questions about the fiscal impacts and so forth. But I don’t think we should get that far because I think the overriding consideration is that we made the rules, we all agreed to abide by those rules, and unless there was an egregious trampling of those rules, unless someone lost their rights, unless there was something extraordinary that happened, then we should keep to the integrity of these rules.

“Thank you, Mr. President.”

Senator Chumbley rose and said:

“Mr. President, I rise to speak in support of the Chair’s ruling and against the appeal.

“I go back to the Constitution. The Constitution allows us to go through this process. There’s been some points raised about what is the integrity of the process? What is our individual integrity? And you make it sound as though this action today to recall this bill is something dirty. It’s not dirty. It’s a protected right under the Constitution. It is our right to be able to do this. This is the beauty of the democracy we live in and the debate that we can engage in today on this Floor.

“Doing the right thing is important. Having this debate about this issue is important, simply because we want to get to the issue, that’s exactly right. Let’s get to the issue of the debate on this bill. We don’t want to get hung up on procedural questions.

“Part XI, Rule 85, section 2 allows us to suspend our Rules. There’s nothing in our Rules that says we can’t suspend our Rules. There’s nothing in the Constitution that says we can’t suspend the Senate Rules and act upon what we feel is right.

“We want the ability to debate the issue. Let’s get to that point and stop with the procedural maneuvering.

“Thank you.”

Senator Chun rose and stated:

“Mr. President, I’d like to ask if the maker of the motion would yield to a question, because I’m kind of confused just like Senator Chumbley in terms of what we’re doing here.”

The Chair posed the question to Senator Ihara, and Senator Ihara having answered in the affirmative, Senator Chun inquired:

“I hear what the Senator from Maui has stated. My understanding, and correct me if I’m wrong, is that we have recalled the bill already. And so, if the bill is recalled, why . . .

Senator Hanabusa interjected:

“Point of order, Mr. President. I don’t mean to interrupt our good Senator from Kauai, but I believe what’s being debated is

my appeal and not the motion, so I think he is out of order at this time.” (Laughter.)

Senator Chun commented:

“I believe it’s in order not to disagree with the Honorable Vice President.” (Laughter.)

Senator Hanabusa then said:

“Thank you, Mr. President.”

Senator Chun continued:

“But anyway, we need to rule on the Honorable Senator’s . . .

The Chair inquired:

“Are you finished with your question?”

Senator Chun answered:

“No, I’m not. The question would be, Why do we need to suspend the rules under Rule 3(15) if we already have recalled the bill?”

Senator Ihara replied:

“My personal response is that I made the motion on the recommendation of the Clerk. I personally do not believe that we need to suspend the Rules because I believe that no procedural motion should impede the discussion on the merits of a recalled bill.”

Senator Chun then rose and said:

“If I may stand in support of the appeal, Mr. President.

“Now that I’ve gotten a proper answer, I’m not here to discuss the merits of the recall, the merits of the bill. What I’m saying over here is why are we engaging in these procedural arguments of suspending a rule that has nothing to do with the merits of the bill. And that’s the reason why I asked. I didn’t raise this procedural question. I didn’t raise and start this procedural fight. And so I’m confused as to why we’re starting a procedural fight if some of the supporters of the bill say let’s get to the merits. We did not start the procedural fight.

“But now that it’s started, (laughter) let me continue a bit more. Let’s assume the motion was properly made and was required as per the Clerk. Let’s assume that. The problem I have with the current appeal, or the ruling of the current appeal, is that again everybody goes back to the Constitution. Let me read what the Constitution says. Article III, Section 12, specifically says: ‘By rule of its proceedings, applicable to both houses, each house shall provide for the date by which all bills to be considered in a regular session shall be introduced.’ The applicable portion over here is ‘By rule of its proceedings, applicable to both houses.’ We’ve ignored the provision about both houses, and that’s the point being made over here – why are we suspending our own Rules which the Constitution allows and say we can act on our own when the Constitution says it has to be applicable to both Houses. So I believe the appeal has merit in terms of whether we’re violating the Constitution or not because the wording of the Constitution is very clear.

“Going further, if we want to look at the Mason’s Manual of Legislative Procedure, which our Rules say we should follow, it specifically states that no rule, even a waiver of a rule, can override the constitutional mandates. And I have not yet heard in terms of any constitutional argument or constitutional

provision or an opinion on the Constitution why we can unilaterally, unilaterally change an agreement as required by the Constitution that was reached between both the Senate and the House.

“Thank you, Mr. President.”

Senator Chumbley rose and said:

“Mr. President, I just wanted to provide a short rebuttal to the previous speaker.

“He makes reference to a . . .

Senator Chun interjected:

“Point of order, Mr. President.

“Rules state that no member shall speak more than twice. I believe he’s spoken more than twice on this matter.”

The Chair stated:

“Senator Chumbley, you may proceed.”

Senator Chumbley continued:

“Thank you, Mr. President.

“Mr. President, the section that the previous speaker spoke about, for the members’ information, was a constitutional amendment that was passed in 1984 that was adopted in the Constitution because it was an attempt to set a cutoff date for the introduction of bills in the Legislature. It had nothing to do with the issues as the previous speaker had stated. It simply had to do with establishing a cutoff date between the House and the Senate for the introduction of bills.

“Thank you, Mr. President.”

Senator Hanabusa rose and said:

“Mr. President, I believe I’m entitled to the final word on this, since I’m the movant party.

“Mr. President, We had comments that . . .”

Senator Chumbley interjected:

“Point of order, Mr. President. The speaker has spoken once already.”

The Chair having recognized Senator Hanabusa, Senator Hanabusa continued:

“I think there is something wrong with the air there, Mr. President. (Laughter.) Could you check? He’s seeing double or something.

“Mr. President, one of the previous speakers, I believe it was the good Senator representing the Ala Wai, said that we’ll have an informational meeting. Mr. President, under our timelines, what you’re talking about is some kind of an informational meeting that must be done by Friday. Today, it is after two o’clock right now, so by Friday. So we’re supposed to have this whole thing and it’s supposed to satisfy all of the requirements, the posting requirements, which I assume by making it informational we’re going to avoid the posting requirements. We’re going to do all of these things, Mr. President, and I still contend that it violates the Rule 3, subsection 15, which we entrusted you to do.

“Mr. President, this is a situation where we are talking about the integrity of this body. It is not a situation of recalling a bill after 20 days where it can still have a full hearing and it can still proceed on. This is not even going to have a hearing in the normal course, which the people have been accustomed to, to have with us. This is going to be an informational briefing so we don’t have to have somebody stand up at the end saying, ‘I would like to suspend Rule 20 because I can’t post on time.’

“And then on top of that, Mr. President, it’s not referred to Education. The original referral of this bill is LBR/TIA. Education isn’t even listed. So why would a committee that doesn’t have jurisdiction over the bill be the one that holds an informational meeting, which is then supposed to satisfy the requirements of basically keeping the public apprised of what we’re going to do.

“And Mr. President, in closing, members, I know we don’t look at this page. It’s the preamble of our Rules. We say ‘The members of the Senate do hereby reaffirm the Senate’s dedication to upholding the Constitutions of the United States and the State of Hawaii, to providing for openness and fairness in all of its proceedings, and to promoting collaboration and consultation in its committee work.’ Now Mr. President, how are we, or what we’re doing today, satisfying what we as Senators hereby affirmed in the preamble.

“Again, members, this is a question of our process, the integrity, the chairmanships, and really what this is all about is in terms of openness and what the public is entitled to know.

“Thank you, Mr. President.”

Senator Kim rose and said:

“Mr. President, point of information.

“For how long is this suspension of this Rule going to be?”

At 2:07 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:08 o’clock p.m.

Senator Ihara rose and said:

“Mr. President, I have what I think is my final comment.

“I know there’s been a number of remarks made regarding the integrity of the process. As the Senator from Kauai mentioned, our State Constitution, Article III, Section 12, empowers the Legislature to adopt its own rules. We have adopted our own rules. Rule 85(2) says that we may, by majority vote, suspend a rule. The original motion was to suspend the rule, and basically it’s for a particular bill and it is to make an exception to the legislative calendar for the constitutionally empowered and rights of a recalled bill.

“Thank you.”

Senator English rose and stated:

“Point of clarification, Mr. President.

“We have before us an appeal to the body of a ruling, so can we ask the Clerk to explain to the body so that it’s very clear what a ‘yes’ vote means and what a ‘no’ vote means.”

The Chair responded:

“Senator, a ‘yes’ vote will sustain the ruling of the Chair, and a ‘no’ vote will go against the Chair.”

Senator Chumbley rose and said:

“Point of information, Mr. President.

“I just wanted to clarify for the members that when a bill is recalled to the Floor, there is no specific committee jurisdiction of that bill any longer. It’s the property of the body, and the presiding officer can appoint someone to take this measure to an informational briefing that may not have been originally empowered as the chairperson of that particular bill. So, for example, the Labor Committee or the TIA Committee may not necessarily have to take this bill for an informational briefing. The Chair has the power to appoint because it’s in the jurisdiction of the entire body.

“Thank you.”

The President then announced:

“We will vote on sustaining the ruling of the Chair. All those in favor of sustaining the ruling of the Chair say ‘aye’ . . .”

Senator Hanabusa interjected:

“Roll Call vote, Mr. President.”

Senator Kim rose and said:

“Point of clarification, Mr. President.

“In voting on this, we’re not voting to suspend the rules, we’re just voting on the appeal?”

The Chair replied:

“We’re voting on the appeal.”

The motion to sustain the ruling of the Chair was then put by the Chair and, Roll Call vote having been requested, carried on the following showing of Ayes and Noes:

Ayes, 15. Noes, 8 (Buen, Chun, English, Hanabusa, Kokubun, Nakata, Slom, Taniguchi). Excused, 2 (Hemmings, Matsuura).

The President made the following observation:

“The ruling of the Chair stands. We’ll go back to the motion that was made by Senator Ihara. We needed a second to the motion.”

Senator Chumbley stated:

“Mr. President, I second the motion.”

The motion to suspend Senate Rule 3(15) and the first decking and first crossover deadlines of the 2002 legislative timetable for S.B. No. 2961 was then put by the Chair and carried.

Senator Ige then moved that S.B. No. 2961, entitled: “A BILL FOR AN ACT RELATING TO VOLUNTARY EMPLOYEES’ BENEFICIARY ASSOCIATION TRUSTS,” pass Second Reading and be placed on the calendar for Third Reading, seconded by Senator Inouye.

Senator Chun interjected:

“Mr. President, I request a Roll Call vote.

“Point of order, Mr. President. I request a Roll Call vote on the initial motion that was made on the suspension of the rules. It very, very quickly went through and I don’t know whether or not any ‘no’ votes were recorded or how many ‘aye’ votes were recorded.”

Senator Chumbley interjected:

“Point of order, Mr. President.”

Senator Chun continued:

“That was my point of order, Mr. President.”

Senator Chumbley, having been recognized, then asserted:

“Mr. President, the vote was called for and the presiding officer indicated that that vote had passed. That vote has already been taken. The bell has been rung. You cannot recount that vote, Mr. President.”

Senator Chun responded:

“In that case, Mr. President, on a point of order, I move to reconsider.”

The Chair inquired: “Do we have a second?”

Senator Hanabusa stated: “I second the motion.”

At 2:13 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:30 o’clock p.m.

Senator Ige rose and stated:

“Mr. President, I would like to withdraw my motion.”

Senator Inouye then rose and said:

“Mr. President, I’d like to withdraw my second, as well.”

The Chair then made the following observation:

“If there are no objections from the members, we will be reconsidering the previous vote on the previous motion and that motion is to suspend Rule 3(15) and the first decking and first crossover deadlines of the 2002 legislative timetable for S.B. No. 2961.”

Senator Chun rose and said:

“Point of inquiry, Mr. President.

“If we’re suspending that, what are the new deadlines, Mr. President?”

The Chair responded:

“We are just voting on the suspension of the rule, and the deadline will be for this particular bill only up until Friday.”

Senator Ihara rose to state:

“So, for clarification, could you explain what a ‘yes’ vote means and a ‘no’ vote means.”

The Chair replied:

"A 'yes' vote will suspend Rule 3(15) and the first decking and first crossover deadlines of the timetable for said bill."

The motion to suspend Rule 3(15) and the first decking and first crossover deadlines of the timetable for S.B. No. 2961 was put by the Chair and, Roll Call vote having been requested, carried on the following showing of Ayes and Noes:

Ayes, 13. Noes, 10 (Buen, Chun, English, Hanabusa, Kim, Kokubun, Nakata, Sakamoto, Slom, Taniguchi). Excused, 2 (Hemmings, Matsuura).

The Chair then noted:

"The motion to suspend the Rule and first decking and first crossover deadlines has been carried."

Senator Chun rose and said:

"Mr. President, I think my earlier point of inquiry . . ."

The President interjected:

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

Senator Chun answered:

"On a point of inquiry. I think my earlier one was a bit premature."

"On a point of inquiry, what is the new deadline, then, for this particular bill?"

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

The Senate reconvened at 2:35 o'clock p.m.

The President then said:

"Senator Chun, your inquiry will be taken on advisement. There is no actual deadline."

Senator Ige then moved that S.B. No. 2961, entitled: "A BILL FOR AN ACT RELATING TO VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS," pass Second Reading and be placed on the calendar for Third Reading, seconded by Senator Inouye.

Senator Chun stated:

"Mr. President, on a point of inquiry, I'd like to ask if the maker of the motion would yield to a question?"

At 2:36 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:39 o'clock p.m.

Senator Chun rose and said:

"Mr. President, I withdraw my point of inquiry."

Senator Fukunaga then offered the following amendment (Floor Amendment No. 3) to S.B. No. 2961:

SECTION 1. Senate Bill No. 2961 is amended as follows:

1. By amending Section 1 of the bill to read as follows:

"SECTION 1. The purpose of this Act is to allow for the establishment of an employee organization sponsored trust that would provide health benefits for state and county employees of a particular bargaining unit, as well as future and existing retirees, that wish to participate in such a trust. The trust would be established as a voluntary employees' beneficiary association (VEBA) trust pursuant to section 501(c)(9) of the Internal Revenue Code of 1986, as amended. The trust would be funded by employer contributions negotiated pursuant to a collective bargaining agreement and employee contributions to be determined by the trust's board of trustees for active employees.

The Act also provides for retiree coverage for any employee who retires from the State or its various counties on or after July 1, 2003, who is a member of the employee organization which has established a VEBA trust under section 2 of this Act pursuant to an applicable collective bargaining agreement effective on or after July 1, 2003. Existing retirees who are members of an employee organization, who were previously covered by a collective bargaining agreement, will be provided a one-time election to join the employee organization sponsored VEBA trust once such a trust is established if they wish to do so. Retiree coverage provided by an employee organization's VEBA trust would be funded by employer contributions made directly to the VEBA trust by the employer.

This requirement of establishing a VEBA trust in order to be exempt from participation in the Hawaii Employer Union Trust Fund is intended to be a cost-containment measure in response to the ever increasing costs of health care throughout the State. It is also the intent of this Act to impose upon the trustees of these types of trusts the fiduciary duties required by the Employee Retirement Income Security Act of 1974, as amended."

2. By amending § -1 of section 2 of the bill by adding a definition of "retiree" to read as follows:

"Retiree" means an individual who has retired or will retire from the State of Hawaii or its various counties."

3. By amending § -2 of section 2 of the bill to read as follows:

"§ -2 **Establishment of the trust.** An employee organization must meet the following requirements if it is to establish a voluntary employees' beneficiary association trust under this chapter and be exempt from chapter 87A:

- (1) The employee organization shall establish a tax-exempt trust pursuant to section 501(c)(9) of the Internal Revenue Code of 1986, as amended, known as a Voluntary Employees' Beneficiary Association (VEBA) trust;
- (2) The trust may offer health benefits in accordance with section 501(c)(9) of the Internal Revenue Code of 1986, as amended, and related regulations;
- (3) The trust shall provide for a plan of benefits it intends to provide for its members, and a summary plan description of the benefits and rules of the plan, which will meet the standards and requirements of the Employees Retirement Income Security Act of 1974, as amended. The trust shall furnish a copy of the summary plan description and its amendments to each employee covered under the plan with a copy to the department of human resources and development for the State of Hawaii, and to the department of education, University of Hawaii and the respective human resource departments of each county as their interest may appear; and

(4) The employee organization has an applicable collective bargaining agreement with the employer.”

4. By amending § -5 of section 2 of the bill to read as follows:

“§ -5 **State and county contributions to trust; active employees.** Upon the establishment of a trust satisfying the requirements of section -2 by an employee organization, the State through the department of budget and finance and the several counties through their respective departments of finance, or the University of Hawaii shall pay to the trust a monthly contribution equal to the amount specified in the applicable public sector collective bargaining agreement from July 1, 2003, and thereafter.”

5. By amending § -6 of section 2 of the bill to read as follows:

“§ -6 **State and county contributions to trust; retired employees.** (a) Any individual who becomes a retiree on or after the establishment of an employee organization sponsored trust pursuant to section -2, and who is a member of that employee organization, shall be enrolled in that employee organization sponsored trust established pursuant to section -2 and the applicable collective bargaining agreement under which the retiree was covered at the date of retirement.

(b) Any retiree, prior to an employee organization sponsored trust being established pursuant to section -2, who is a member of that employee organization, and who was previously covered by a collective bargaining agreement, shall be given a one-time option to transfer participation from the Hawaii employer union health benefit trust to the corresponding employee organization VEBA trust once established pursuant to section -2.

(c) Upon the establishment of a trust satisfying the requirements of section -2 by an employee organization, the State, through the department of budget and finance and the several counties through their respective departments of finance, or the University of Hawaii, shall pay to the trust for each retiree who participates, a monthly contribution pursuant to the applicable collective bargaining agreement which shall not exceed the base monthly contributions or the specific contribution limits set forth in chapter 87A.”

6. By adding §§ -7 and -8 to section 2 of the bill to read as follows:

“§ -7 **Termination of the trust.** Should an employee organization or a collective bargaining agreement which establishes a trust under section -2 terminate or cease to provide health benefits, the participants in such trust shall be given the opportunity to return to the Hawaii employer union health benefits trust upon the date that health benefits cease to be provided. All participants electing to return to the Hawaii employer union health benefits trust shall be given the same rights and benefits as if the participant had first participated in the Hawaii employer union health benefits trust from the inception of that trust.

§ -8 **Violation of the chapter; enforcement.** The attorney general shall enforce any violation of this chapter in addition to any other U.S. federal agency or other state agency that has regulatory oversight over the trust established under this chapter.”

7. By amending section 3 of the bill to read as follows:

“SECTION 3. This Act shall take effect upon its approval.”

Senator Fukunaga moved that Floor Amendment No. 3 be adopted, seconded by Senator Inouye.

Senator Fukunaga rose and stated:

“Mr. President, this amendment would basically allow an employee organization-sponsored trust that provides health benefits to go forward in providing specific benefits for state and county employees of a particular bargaining unit, as well as for the future and existing retirees. What this bill does not do is propose to change any of the employer contributions for active members of the bargaining unit nor the retirees established under Act 88.

“What we would be voting on today is essentially a process which will allow for individual bargaining units to establish VEBA trusts and to allow those trusts to offer their members better or improved benefits with the same cost to the state.

“As such, I urge all members to vote in support of this measure. Thank you.”

Senator Hanabusa rose to speak in opposition to the amendment and said:

“Mr. President, I rise to speak in opposition to the amendment.

“Mr. President, I believe, first of all, that there are various points about S.B. No. 2961, as amended, that we as members of the Senate must really consider. First of all, as the good Senator from Kahaluu said, last year we debated at great length, with a lot of public hearing and a lot of public input, the whole concept of what is now Act 88, S.B. No. 1044.

“What is very troubling about this particular amendment is that it still makes the concept of VEBA available to each and every collective bargaining representative or labor organization. I know, members, that it has been argued to be the HSTA VEBA, and we have had members – some of them have left now – of the HSTA who have sat here. But members, this is not an HSTA bill. It does not say that this is only available to the HSTA. This is available to each and every union, if they so choose.

“Now members, what does that mean? All of us have been reading the papers. We know what is going on in terms of the present health fund. We know that there are many questions about the state’s money. We also know that we are in dire economic times.

“HGEA and UPW have refused to cooperate with the audit – refused. We don’t even know how much money they have. The teachers did, and we have a report of approximately \$13 million to \$13.6 million that they have in their reserves. Of course, their representative says that money is ‘theirs’ and not the state’s.

“Members, when we create a VEBA that we’re going to have no accountability over, none, we do not have any representatives on this trust. Remember, in the private sector and in the new state health fund, both the employer representatives as well as the union representative sit in equal number, actually having equal votes, so that both the provision of the benefits as well as the watching over the funds and how it’s spent are equally balanced. That is what is normally seen in the private sector in terms of accountability. We don’t have that here.

“In Act 88, remember we put on a retiree representative, and some of the retirees were not satisfied because, let’s face it, they

represent a sizable portion of the health benefits participant pool. Out of the 80,000, they represent 30,000 members. And they felt they should have had more, but we gave them at least one to represent their interest.

“When we do this, members, and look at Section 6, we are telling them, telling the retirees that they will be members of this trust if they retire after it is established. They are not going to have a choice. They’re going to be covered. What does that mean? The previous speaker did say that we’re not going to affect any of the amounts, but what we don’t have here for the retirees is any kind of protection for them in the future that they will have the same benefits that the state plan has.

“The state plan requires the maximum of \$924 for a retiree couple, post or pre-65 with 25 years of service when they retire and anyone who is post-65 the sum of \$684 per month. These are per month. And in addition to that, for those who are 65 and over, those who have had to contribute to Medicare because of social security to get their Medicare Part B, we refund them. I believe it is \$50 a month now. That’s the amount of refund that we provide them. There is nothing in this bill that’s going to show or protect them that they will be entitled to at least those minimum benefits.

“What we’re doing is we’re treating our retirees in a disparate manner. Those who are in the state fund will have the minimum of those benefits that I just said. Those who will have no choice but will be forced into this VEBA situation are going to be at the good graces of whoever is running the trust.

“Now, we have not been able to audit. We have not been able to tell them how they will establish their respective trust. We can’t tell them how they’re going to spend their money. We don’t even know how they spend it now, and the problem is we are going to tell our employees that they can go into this trust and we’re not going to have any protections for them.

“We even made promises. One of the major promises that we made, and that is the reason why I was such a strong proponent of Act 88, was the preservation of the retiree benefits in the future. Look around. Look at the private sector. Ask how many of them can still provide retiree benefits at no cost to the retiree and it means covering the retiree and their family. I contend that there are very few, practically non-existent. And if they are there, they’re probably struggling with how they’re going to continue to maintain those benefits. And here we are, we have come up with a system that hasn’t lasted more than a year. It’s got two years to be in the planning stage. We’ve only given it, technically, four months because they convened in January this year. We’ve only given them four months, and now we’re saying, okay, we’re going to give them the opportunity, not the teachers now. This is every single union, including UPW and HGEA who have basically poo-poo’d us when we’ve wanted to look at their books and when we’ve asked for audits. We are giving them the opportunity to do this.

“But more importantly, what about the money? We know there’s \$13.6 million. We know that there’s all this other money. What about that money?

“Members, the State Health Fund since 1995 has received \$55 million back, 55 million. We are going to refund to those employees who participated in the state health fund \$23 million. Why? Because that’s the 60/40 and we have that obligation. We passed that law that says, hey, when the refunds come in, or rebates come in, they will go back to the counties or the state general fund and to the employees who contributed. They will get back the 23 million. Are these employees who are in these trusts? Do they even know that they’ve had rebates? Do they even know whether or not they are entitled to them? They’re

probably not. That is what this is all about. We don’t even have all the information. We don’t even know how much money is out there.

“We took very bold steps to create a system last year that was fair and equitable to all, and now we’re going to undo it without even giving it the opportunity to see whether or not they can get the same benefits that they felt that they got that was better.

“And I’ve said it before and I’ll say it again, this is not a bill against teachers. This is not a position against teachers or against any other union member. We have an obligation to treat all employees alike, and that is what we’re doing. And it shouldn’t make a difference. Yes, the teachers have said constantly, ‘I like the fact that my child can be covered to 25 years of age.’ Under the proposed new State Health Fund, why can’t we say that all employees who have children up to the age of 25 and in college that they too should be covered.

“This is an equity issue. It’s a fairness issue, and it’s a leveling the playing field for everyone issue. We all understand the basic concepts that when we’re talking about health insurance and we’re talking about what is going to be provided, that yes, there is a risk pool. Yes, the retirees do cost more. But that’s why we must balance it out with the younger guys, the people who may not use the fund as much. That’s what this all comes down to, and we are pulling out of the pool, or we could be pulling out of the pool all of these various organizations.

“What should bother us the most, especially in light of federal investigations and so forth, is what are we going to tell the other taxpayers? Are we going to tell them that the \$13.6 million or \$13 million that’s out there is all the money of the union? No. If we paid for most of it, when that money comes back most of that money belongs to the state, and I’m talking about the monies that can go to the general fund and create programs. We have heard in WAM by people coming forward that \$1 million will represent a lot of projects and we’re just going to turn our backs. We’re not going to look and we’re not going to do our fiduciary obligations to the rest of the state.

“What about HGEA? What about UPW? How much money do they have? And we’re not even going to get to those fundamental questions. Instead, we’re going to say, ‘okay, set up your funds. Go ahead, set up these trust funds.’ And you hear such things like, well, with these trust funds we’ll comply with ERISA; we’ll comply with all of these various regulations.

“Mr. President, my fellow colleagues, you know, if there were ERISA compliance or if ERISA applies, we wouldn’t be here; ERISA would preempt, very simply. But we are here because it doesn’t apply. Why doesn’t it apply? Because the state is the employer and a state employer is not – not – a covered employer under ERISA or any of the federal labor laws.

“So what are we doing here? We’re not giving a system even the opportunity where we voted last year to say that they will have two years to do it. We’re not even giving them that opportunity. Instead, we’re saying, ‘Nope, all of you unions, you can now come in and you can now form the various trusts, and you have to take all the retirees.’ What about those retirees? Who’s going to represent them? What’s going to happen to them? And I know people say, ‘Well, the unions will look out for them.’ Let me tell you something, retirees are the silent, silent majority because they are not employees anymore. They are not entitled to union representation for the most part, and they have to be out there advocating for themselves. Who is going to watch them? And we are not going to do anything to

these respective funds to say that we will be watching over you. How can you say that? We haven't been able to watch over them till now. They can arrogantly look at us and say, 'We're not going to give you any information because it's not us. It's some third party entity.' So we are going to continue to create these third party entities before we even know if the structure we put in a year ago is going to work.

"For those reasons, I stand in strong opposition to this amendment to the bill."

Senator Chun then inquired:

"May I ask the maker of the motion to yield to a question, Mr. President?"

The President posed the question and Senator Fukunaga having answered in the affirmative, Senator Chun continued:

"I'm reading the amendment and there's no definition of employee organization. Is the employee organization the same as exclusive representative as defined in HRS Chapter 89?"

Senator Fukunaga answered:

"I believe that would be correct."

Senator Chun then said:

"Thank you, Mr. Chair. Thank you, Senator Fukunaga.

"Mr. President, I stand in opposition to the Senate floor amendment.

"Mr. President, I've always been firm and clear in my opposition and position on these bills and it is that my first concern is the retirees as the good Senator from Waianae stated. Any time the HSTA or other unions have come to me I've always said you've got to find a way to take care of the retirees. And up until now I've always heard them say, we'll think about it; we'll make a proposal; I'll let you know. This is the very first time that something has come in front of us at least showing a proposal by somebody, I'm not quite so sure who wrote this, that they are going to take care of the retirees. And I was in a way kind of happy that they finally came up with that, but after reviewing this proposed draft, I believe it's a false hope that they're giving me and the other retirees.

"And this is what I mean. In Section 6 (b), it specifically says, 'for those of you who are retired, you can participate in these VEBA trusts if you meet two conditions,' and only if you meet these two conditions. The first condition is you have to be a member of the employee organization as stated by the Honorable Senator. It's basically the exclusive representative as defined in HRS Chapter 89.

"The second thing they have to do is be covered by collective bargaining agreements. That sounds nice and neat. However, the practical problem of that is there is no way an existing retiree can meet these criteria. One, they can meet the second one. They can say that yes, I've been covered by a collective bargaining agreement, but they are not going to be able to say they are a member of an exclusive representative under HRS Chapter 89 because once you retired . . . and that's the way it's stated, a retiree who is a member of the employee organization. But once you're retired, Mr. President, you are not a member of that employee organization. You are retired. An exclusive representative only represents employees in regards to the HRS Chapter 89 negotiable items, and if you're not an employee, you're not a member. You can join an associate organization

later on but that is not an exclusive representative under Chapter 89.

"So automatically they're raising a flag saying yes, we'll cover you and this is the criteria, and at the same time through the back door saying, 'By the way, you don't qualify so we're never going to cover you.' I find that particularly distressing. Now, whether it was done intentionally or not, I don't know. And that's one reason why we should have had public hearings on these. These concerns could have been brought out. Testimony could have been solicited. Better minds than mine could have said, 'Hey, we could have handled it this way.' The language could have been better. But that's not before us. We are in a rush, for some reason, to put something through. Whether or not it was intended to get the retirees out and give them a false sense of hope is another story, but it's there, nonetheless.

"Let's assume we can get beyond that. Let's assume that maybe we can take care of the retirees. What have we really done for the retirees? I'm not going to reiterate the comments made by the Honorable Senator from Waianae because I would adopt them as my own, but I want to make the point very clearly that there are no assurances on any of these VEBA trusts by any union that they will put a retiree on those VEBA boards to represent them and to make sure that the plans that these VEBA boards are going to be doing will benefit and is tailored for the retirees. In other words, it can be the same situation that we're having right now where the other union funds specifically designed their plans only for the actives and say that's what you've got. And if you don't like it, go back to the state.

"So that's the second false hope that they're raising without some kind of assurances that these retirees will have a voice in these VEBA trusts. It's another false hope. That's two things that I don't feel are covered adequately by this bill in regards to protecting our retirees.

"The third point is related to the second. If you don't have a director on the VEBA board, who's going to negotiate these retirement benefits or these contributions? Because the bill specifically says that if you are a retiree and you're a member, the state's contribution is going to be based upon a negotiation between the state and the VEBA trust. If you don't have a director or a board member there, who's going to negotiate on your behalf? Who's going to be there to say, 'Yes state, I want you to pay \$100 for this plan to help the retirees.' Or, is the board going to say, 'You know, state, we're going to negotiate this under Chapter 89. I would rather have the higher salary. I'd rather take my money from salary, and you know benefits, we can lessen that. And yes, I know that by lessening benefits we're going to hurt the retirees. But that's okay, because my active members are going to get more money and that's who votes for me.' That is the concern. There is no provision in here to insure that a retiree's issues are going to be known; that someone's going to represent the retirees, and that they're going to be adequately taken care of and provided for and their concerns made.

"The fourth point is this bill does not take care of the problems that the Auditor has been bringing out in her reports and what we've heard in the press recently. There have been tremendous amounts, millions of dollars in refunds by HMSA to the employee trust funds. And those refunds have not found a way either back into the pockets of the union members themselves or have not found its way back to the persons or the entity that actually contributed to those amounts, that is the state. They're being kept.

"A bill that wants to be fair, that wants to be honest, needs to address these issues. It needs to say that hey, if we're going to

be paying this amount and we negotiate it based upon your representation that that's how much it's going to cost, fair is fair. If it didn't cost that much or if you get a rebate, then it should come back. And if you're going to be charging the members a percentage for their participation, they should get that back too. And if you're going to be charging the retirees, and there's nothing in there about them not charging retirees, if you're going to be charging the retirees, then you should pay the retirees back too. Instead, there is nothing to protect the members. There is nothing to protect the state to make sure that these refunds are not kept and used for other purposes.

"Now the only thing I've heard is from just one union, HSTA. They made a statement in the papers saying, 'Oh, we don't have any of the state money. We spent it all.' If they spent it all that means that what they have left is their members' contributions, so why haven't they given the members back their refund, the \$13 million. And if their comment in the paper was, 'Well, we gave them back additional benefits,' then let's see whether they can document that \$13 million of additional benefits were given to these members. And if so, let's see whether or not \$13 million of additional benefits was voted on and approved by the members or did the members say, 'Do what you want with the money. I don't want it back.'

"These are protections that the State must have. These are protections that I think are sorely lacking in this bill and these are protections that should be discussed and brought in front of a public hearing.

"And again in going back, I would agree with the Honorable Senator from Waianae that by bypassing these hearing provisions it just makes a mockery of what we're doing. I recall back in February of this year, February 28 of this year, when the Ways and Means Committee was having hearings on bills, bills that were substantially amended by the first committee, one of our members actually stood up and said, 'You know, we should look very carefully at passing bills that were substantially amended without another public hearing' and this was the statement. It says there are a number, and this is quoted from our actual Journal, 'there are a number of bills that were amended substantively in the first committee, and by having decision making only,' which is what we are doing today, 'and not accepting testimony, the public doesn't have a chance to comment, and actually, members don't know how the community feels about the bill that's been amended because there was no chance for testimony.'

"Those concerns were heard by Ways and Means. Those concerns were heard by the leadership and we had public testimony on those bills that were substantially amended. And now, we're going back against that. We're going back to the old ways of hiding bills, of ignoring the public, and trying to quickly in the back room correct mistakes or issues or make deals on the side. I find that particularly offensive, Mr. President, and I will vote 'no'."

Senator Chun Oakland rose to speak in favor of the amendment and said:

"Mr. President, I rise to speak in favor of this motion.

"Mr. President, I believe that S.B. No. 2961 combined with the proposed floor amendment is primarily about three things – security, flexibility, and cost saving. That is to say security in ensuring that the health insurance needs of public employees will be met, flexibility for public employees with regard to the type of health insurance coverage they want, and cost savings for public employees, public employees, and most importantly, for all taxpayers in the State.

"The bill provides employee organizations with the opportunity to be exempted from the Hawaii Employer-Union Health Benefit Trust Fund mandated under Chapter 87A, Hawaii Revised Statutes, by establishing a Voluntary Employees' Beneficiary Association, or VEBA trust to provide health benefits for its members.

"The VEBA trust must be established pursuant to a collective bargaining agreement and Section 501(c)(9) of the Internal Revenue Code, and subject to the requirements and standards of the Employee Retirement Income Security Act of 1974, as amended, otherwise known as ERISA.

"These standards are not to be taken lightly. In fact, with these added requirements and federal standards, employee organizations that establish VEBA trusts will be even more accountable to public employers and their constituencies due to the enhanced oversight by both the Internal Revenue Service and the U.S. Department of Labor. On the State level, the Attorney General is charged with the responsibility of monitoring each VEBA trust's compliance with the law.

"With regard to flexibility, currently, the HSTA's VEBA trust offers more health insurance options to its beneficiaries than the State's Public Employees Health Fund and does so at a lower cost. For example, the HSTA's VEBA trust offers a lower co-pay under its HMSA plan – 10 percent to the State's 20 percent, student health insurance coverage up to age 25, free Hepatitis B immunization, and a chiropractic benefit. HSTA's VEBA trust also provides its members with a long term disability income protection plan and long term care insurance.

"The floor amendment before us today further enhances the flexibility of the proposed VEBA trust by allowing retirees to participate in a VEBA trust established by their former employee organization. As was done for active employees, I expect the employee organizations to custom tailor health benefit plans for these members as well – plans better suited for their needs rather than a 'one size fits all' plan currently offered by the Public Employees Health Fund.

"If the Employer-Union Trust Fund is able to provide such benefits to public employees at the same cost, so be it. But I believe we should not abolish an entity that would compete with and act as a measuring stick against what the Employer-Union Trust should be able to provide to its beneficiaries.

"Finally, the issue I think that concerns all of us is cost. A single trust for all public employees and retirees would not realize any meaningful economies of scales given Hawaii's current health insurance marketplace made up primarily of 2 players – HMSA and Kaiser.

"By forcing all state employees and retirees into one pool in a market with only 2 players that essentially offer very different products (HMSA offers fee-for-service plans, while Kaiser provides HMO plans) actually weakens the State's bargaining position since the State has no alternative but to do business with HMSA and Kaiser. Smaller health insurers like HMAA do not have the resources to support such a large group, and thus, the State basically backs itself into a corner since there is really no other option but to deal with HMSA and Kaiser. The smaller pools that would result from the establishment of VEBA trusts would actually be more effective in negotiating with a wider range of health insurers since the VEBA trust would be small enough to consider smaller health insurers or opt for self insurance.

"No matter what types of health benefits options are provided to VEBA trust beneficiaries, these options will not increase the State's employer contributions since the enactment

of Chapter 87A, Hawaii Revised Statutes, has effectively switched the State from a defined benefit model of providing health benefits to a defined contribution model.

"Mr. President and colleagues, I believe that the measure before us provides us with the best possible solution to the grave situation we face – balancing ever-increasing health benefits costs against providing the health benefits public employees deserve. I will be voting 'aye' on this measure and urge my colleagues to vote as well.

"Thank you."

Senator Nakata rose to speak against the amendment and said:

"Mr. President, I rise in opposition to the amendment. The words of the Senator from Waianae and the Senator from Kauai expressed much of what I feel.

"The issue of fairness, I think, is very basic. The previous speaker talked about benefits that are available under the VEBA trust. These are items that the trustees of the new union/employer trust are looking at. They know that one size doesn't fit all. There will be more flexibility in that plan than what exists today.

"To have things like coverage for children in college to age 25 to have some form of long-term care should be available to all state employees, not just to the teachers, and I think that would be the philosophy adopted by the new trustees. There is a need for fairness, and if we split this all up again, we won't have that. There will not be equity.

"The retirees are a major concern. They cost a lot and if they are thrown in with the actives under the union trust . . . and I don't intend this to sound like aspersions on the actives, but face it, the cost of the retirees is very high – 900-something a month, within a couple of years, 10,000/11,000 a year. They don't really have membership in the union who actually speaks for them in that situation. It's a natural thing for those who are actives who have children, who have those kinds of needs, to look first to their own needs.

"Intentions are good. They do intend to help the retirees, but in the kind of crunch that's coming or upon us in health care – people living longer, new technology, new drugs – costs will inevitably rise. So the pressures will be on. Those pressures are real. So the protection for the retirees would be better in the combined trust. They have a representative. There are other members who are not active union members who represent more of a broader based interest. I believe the retirees will be better off in the new system.

"One other feature that concerns me about the proposed amendment are the teachers who move from the active roster to the retired situation. At that point they don't have a choice. They are in the VEBA trust. They may look at the state plan. The state plan may be better for them, but they don't have a choice at that point to opt out. That potentially is a problem.

"We have to look at what we're doing very carefully. I believe we did that a year ago, and in the process we're into now, I don't believe that enough care can be taken to protect all of these interests to assure equity. For that reason, I will be voting against the amendment.

"Thank you."

Senator Slom rose in opposition to the amendment and stated:

"Mr. President, I rise in opposition to the amendment.

"Well, an awful lot has been said today, but an awful lot has not been said. And I think part of the problem is, as the previous speaker just said, we spent a year on this legislation last year. We talked about it. We had hearings. We had passions running high. It was very emotional. And then we reached a decision. And part of that decision had to do with protecting the retirees.

"Now, everybody so far today has spoken about the retirees. But let's keep it in perspective. Prior to last year, the union ignored and excluded its retirees. Why? Because, let's be candid, they cost more and you can get a better deal without them. Secondly, when the bill started moving last year the union tried to frighten and scare the retirees, and tell them that they weren't going to get any benefits, that they were going to be cut out. And now, now they're telling them, 'oh, e-komomai, you're welcome; we'll bring you in.' Which voice are you supposed to believe? Which voice are you supposed to trust? The unfortunate thing is that the retirees have been used and are being used as political hostages.

"This issue is not about health care, because we weren't talking about health care. Let's talk about why we only have two major health providers in this State. Why this Legislature, why this State in 1974 enacted the prepaid health care act, the monopoly act that no other state has followed, which has destroyed competition. And if we want to talk about people having health care, why don't we talk about, at any time, all of the people in the private sector that would love to have one-half of what public employees have. Well, they do have one-half because they get to pay for it, but they don't have health care of their own. And we haven't done anything for them.

"And this is not about health care. And when the proponents and sponsors of this bill get up and say it has no financial impact, they're insulting our intelligence. That's what the legislation and the debate was all about last year. It was based on the response from the Legislative Auditor's report that said if we did nothing, that by the year 2013 the bill alone just for public employees' health care cost in this State would exceed \$1 billion per year. That's why we acted last year.

"And this bill, as has been said, that became law doesn't even go into effect until next year. We haven't tried anything. But the proponents cannot come on this Floor and say this does not have financial impact or implication. They cannot because it's not true. It already has financial implications. If we reverse ourselves, what we're doing is turning our backs on the State Auditor and turning our backs on the facts and figures that show that we have a mounting problem.

"Act 88 was a way of giving that security and guarantee to retirees that we will honor our promises and we will have the money to take care of them. If we do this now, all bets are off – all bets are off – because as we saw today we can change the Rules any time we want. As we saw yesterday, we raided \$123 million in special earmarked funds. Today we raided \$50 million in hurricane relief funds. We're raising taxes; we're increasing spending; we increasing debt; and yet our best and our brightest continue to leave this State because they complain, and rightly so, we don't do anything to provide incentives for people that want to work. All we do is vote for more benefits. Well, the people that are paying those benefits are diminishing in number. We're not doing anything to encourage economic stimulation in this State. And just like the talivan cameras, this has come down to money. That's what it's all about.

"I remember a year ago, during the strike, when all of us had teachers in our offices all day long and it was a pleasure. And don't get me wrong and don't misconstrue or misunderstand, this is not about education, and there's not one person in this body, or in the body across the hall, that is anti-education or anti-teacher. But you've got to be accountable. And when the teachers came in last year with their little written scripts that had been given by the union and they asked, 'Senator, how do you stand on this? And Senator, what would you do for this? And Senator, how are you going to vote over here?'" And their last question was, 'How do you stand on the VEBA trust, Senator?' And I asked the teachers that came to me, what the impact was on them on the VEBA trust. And you know, not one of them knew because their union hadn't talked to them about it.

"This is about money, about securing money, about lack of accountability. It's also about, as has been brought up earlier, the Attorney General of this State filing two lawsuits against two other unions for lack of accountability. It's also about 43 federal indictments, about a union official. What were those indictments based upon? The mismanagement and fraud and theft of health fund monies.

"If we just give monies out here and do not require accountability and do not inquire as to where the money's going and who's going to be taking care of it, and how much it costs, then we are derelict in our duty and we have breached our duty, and every one of us should be sued. And maybe that will happen.

"But for now, for now, this process that seeks to separate the state taxpayers from its money for a purpose that is not well defined, once we create this, if that's what we're going to do, we're going to turn our backs on what we did last year, there will be no cost savings. How can there be cost savings? We're still in it for the 60 percent. The unions will still take the money and not be accountable for it, and certainly not refund any money that they can get back, although that may be harder to do because with every retiree, the cost will go up and HMSA has already indicated that their premiums are going to go up next year, maybe substantially.

"Instead of us working on health care and increasing the benefits for all of us in this community, private sector and public sector, we continue to try to take the pie and reshape the size of the slices and give it out to the people that have the political clout or make the statements 'if you do this you might get an endorsement from me.'

"Life is too short. The reason that this State is always at the bottom of the rung in every economic rating, the reason that all of our relatives and our children are suffering is because we think short-term and we think about spending up the money that we have right now or going into debt, rather than doing the things that will encourage and provide incentives for future economic growth. We've done nothing along those lines in this Session and we're doing nothing now.

"And this bill is just a symptom. How can we be saying we don't have any money and yet we're not concerned about where the money went and where the money is going to go in the future. Mr. President, I submit it is dereliction on our part.

"The other unfortunate thing is the division that this kind of legislation has brought to our community and to this body and to the body across the way. It's very interesting the people that support or oppose. They cross philosophical lines and ethnic lines and cultural lines, but again I repeat, every single one of us is supportive of our teachers and education. But there's got to be that responsibility and accountability as to where the money

goes. And now that we even know that there are clouds on where money has gone and the lack of accounting, for us to continue to do these things does not make any sense. And to do it without public input and by bypassing the processes which we all agreed to is a travesty.

"Thank you, Mr. President."

Senator Chumbley rose to support the amendment as follows:

"Mr. President, I rise to speak in support of the amendment and the main bill.

"Well, I guess it's a sad day, colleagues, and the cat must be out of the bag. The previous speaker, in all of his passion, kept referring that this is all about money. This isn't all about money. This is about another Senator's comment about fairness – fairness and being fair to teachers. You cannot take a broad-brush paint for the HSTA VEBA trust that's in place right now with the same kind of criticisms that you can brush the HGEA and the UPW health funds. That's simply unfair. Under the VEBA trust bill they were accountable. They were held responsible. There was disclosure. We knew what was going on. So let's set it straight that they are different than what was happening under the other old trust funds.

"This proposed measure does not attempt to repeal Act 88 which was put into place, which will result in some cost savings to the State and will result in further accountability. This is about giving them a chance on something that is a proven product. The VEBA trust has worked. The VEBA trust has been demonstrated to be accountable, to provide benefits to the members and the teachers, at a greater level than what we could provide under the State plan. What's wrong with that? Why is that so bad?

"Under the defined contribution concept of Act 88, the union will now bargain with the State for how much money it will get for its health fund. And if for some reason the VEBA trust would not be competitive with the employees' union trust, well then, those members in VEBA are going to go back to their union and say, 'Look, your VEBA is not working. We want to go back to employees' union trust fund.' Let the market drive those decisions. Give them a chance. It's been a proven product.

"There was some discussion about retirees, and I think all of us have a concern about the retirees and how they are going to be impacted. Under the employees' union trust, I believe there is to be one retiree as a trustee – one retiree out of how many? Yes, that retiree will have a seat at the table and can raise issues, but that retiree who is a trustee can simply get out-voted by the other members.

"Now, in this proposed VEBA plan it doesn't speak to the composition or the governance of the Trust, but I am willing to trust and I am willing to believe that if the VEBA is established and if HSTA chooses to go in that direction that they're going to appoint several retirees on their governance board. The retirees are one of their own. They're not going to discard them and throw them out. I think they've got more compassion than that. So let's be realistic. We're trying to guess what's going to happen way in advance of something taking place.

"The broad brush just doesn't work in this case. There may be some issues here that need to be debated and that will come out in an informational briefing process. But let's give it a chance.

"I want to conclude with an E-mail message that I received from a teacher in Kula and put some human face back to the debate because I think this is really the basic fairness of the issue:

'Many legislators continue to say they are acting in the best interest of the State. Regardless of their intentions, this amounts to a significant take back for teachers.

'Coming off the heels of a 19-day teachers' strike to get respect and recognition for our profession, coming off the heels of a battle after battle to get our hard fought contract implemented, coming off the heels of Act 100 denying our collective bargaining rights and the payroll lag, the decrease in retirement benefits for prospective employees to name a few of the anti-worker measures passed in Hawaii in the last few years, and facing a continuing teacher shortage, facing the hiring of Columbus teachers at a significantly higher cost, facing severe budget cuts, facing more Band-Aid legislation with little real commitment to the vast majority of the students in Hawaii's public schools – yes, we find this take-away unacceptable.'

This is about fairness. Give them a chance. If it doesn't work, the VEBA trust will fold and they'll go back to the employee union trust.

"A previous speaker said that the money that is currently in this VEBA trust is the money of the union. It is not the money of the union. It is the money of the beneficiaries. And under the VEBA trust, that money can only be used for the benefit of those beneficiaries, the members. It can't be used for union activities. It can't be used to pay the salaries of those who work at HSTA. It's for the benefits for the teachers.

"We had a long debate earlier about the suspending of the Rules and how we shouldn't be doing this. Well, before Act 88 was adopted there was a set of rules in place. There were statutes governing how the money was to be ported over to the unions under the existing union trust funds. Everybody operated under those rules. HSTA operated and they were able to negotiate a benefit package for less than what we were porting to them under the employee health system. So now, we want to change the rules on them and go back and take away their \$13.6 million. I don't think that's fair. I think that money should remain with the Trust and that money should be used to offset future cost increases or provide further reductions as the employee contribution to the health care coverage that the VEBA can offer.

"Let's be fair about this. Let's give them a chance. That's all they're asking for. Thank you."

Senator Fukunaga rose again and said:

"Mr. President, I'd like to amplify and echo the comments of the prior speaker.

"In response to some of the earlier points raised regarding the VEBA trust and its lack of accountability, a VEBA trust established pursuant to Section 501C-9 of the Internal Revenue Code is subject to numerous reporting and filing requirements which include the following: One is the filing of an independent annual audit which includes full disclosure of all transactions with parties of interest and include any prohibited transactions under the Employees Retirement Income Security Act or ERISA. It also includes IRS filing and requirements and reporting requirements. It would also require that anything filed with these federal agencies would also be filed with the State Comptroller's Office and the Department of Human Resources and Development. That means that the State agencies would

also have access to this information, which is something that has been talked about when we've said that there have been prior audits in which various health plans have not turned over information sought by state agencies.

"Finally, just to point out that the current VEBA trust that HSTA has organized has actually done a great deal to address some of the problems that retirees face. Of the 25,000 covered policies for long-term care insurance in the State of Hawaii, 12,000 of those policies have been issued by their VEBA trust to their member beneficiaries. So when we talk about whether or not this type of VEBA trust would be one that would be compassionate and care about its members, I think facts speak louder than words.

"For all of the foregoing reasons, I urge you to vote in support of the amendment."

Senator Hanabusa rose and said:

"Mr. President, I didn't mean to be rude to my colleagues, however, I had the opportunity to review S.B. No. 2961, S.D. 1, and let me begin with some very grave concerns.

"Under this law at Section 6, subsection (c) – 'a monthly contribution pursuant to the applicable collective bargaining agreement which shall not exceed the base monthly contributions or the specific contribution limits set forth in chapter 87A' – this is what is the limit for the retirees. It does not say that the retirees will get equal to. It does not say the retirees will get the same coverage as any other retiree. It says that it leaves to the active union the ability to negotiate the amounts for them.

"Now, what makes that very problematic, members, is the fact that when you look at the definition of an employee, they are not covered as an employee. They are also not covered by the employee organization because the employee organization only represents employees as an accepted principle in labor law. That is why when it comes to retiree benefits we have to be very careful. When we say in the law that it will not exceed, that's yes, saying that as a state we shouldn't be concerned. But we are concerned because that also means that in the collective bargaining process this is a money item, and it also means that retiree benefits could be less and the money could be shifted elsewhere because they don't have an obligation to the retirees. Retirees are not employees and under the law they are only entrusted, entrusted with the representation of employees.

"There have been various other statements, Mr. President, that must be answered.

"The audit that Marion Higa did in 1999, the VEBA that HSTA had did not participate in it. They say, depending on whom you talk to, that they did provide information. But Marion Higa's position is that information came three to five months after her report was published, not finished, actually bound and published. That's when she got some information and she didn't get exactly what she wanted. But it didn't make any difference because the report was done.

"When we talk about who will comprise the VEBA, they're correct. The proponents of the bill are correct. We cannot get into the governance of a union entity. But this is not even the governance of a union entity. Be aware of what we're doing. It is like Royal State in a way. We are giving monies to a separate entity that isn't even the union. The union is who owes the responsibility to the members. We are saying, you can have this separate entity. We don't even know who comprises it, what the relationship is, and neither do we have a say. But that is who we are entrusting the state's funds with.

"The bottom line here is when we negotiated, when the State negotiated their collective bargaining agreement with all unions, they agreed to basically a 60/40 division. We were going to pay 60 percent of the cost and employees pay 40. To many, that's a lot of money. But the 40 percent is what all employees pay, whether you're supposed to be in the State or any place else. The problem is or the reason why that was agreed to is because this State does provide 100 percent premium benefits to the retirees upon their retirement.

"So when the statement is that the 13.6 million is really the quote, unquote, 'beneficiaries' money,' that's not true. This 13.6 million is no different than the 55 million, which the State receives back. We put on the State, by law, the requirement to refund, as it should get refunded because this is money that was not spent for a benefit. And out of that money, 23 million will be returned to the plan participants. If any of you were in the plan at that time, you will be getting your check back. But to say that 13.6 million is just the union's fund, that is not true. And it is not the union's money and it is not their VEBA's money, and a portion of it probably is the beneficiaries' monies as they are called, but actually it is not. It's the members' money, whoever bought through that plan. It is their money and they should get it back. If they want to then transfer it to the union or their VEBA trust, that's their business, but they should get it back. This is not a moneymaking operation. This is a fiduciary obligation that we all have.

"It is unfortunate, but we must keep in mind that irrespective of which union you're talking to, this bill, as written, will empower any union to do this.

"The filings . . . 501C-9, or the Internal Revenue audits, or whether or not it's under ERISA, let me tell you something, it doesn't matter if the employer is not covered. The real people who are able to audit and who are able to keep people's feet to the fire is the Department of Labor which has the enforcement powers of ERISA, and that is the Federal Department of Labor. They do not have jurisdiction in this particular case. The only reason why they have jurisdiction in the UPW situation is because it represents private sector employers. Other than that, it does not.

"So what are these reporting requirements? How are we going to say to the taxpayers we're going to give this money to, not the union now, this separate entity. We're going to give them millions and millions of dollars and we are crossing our fingers and we're trusting that they will take care of retirees in the future. I think not. And you say, 'give it a chance.' Well you know what? Give Act 88 a chance. Why did we do that? After all of this time, why did we do that? So we give Act 88 all of three months or four months since they got sworn in. That's giving a law a chance? That's giving a law that we're trying to make it so everyone will be equally treated, that's giving that a chance?

"That's why, members, I again ask that you vote down S.B. No. 2961, S.D. 1."

Senator Sakamoto rose in support of the amendment and said:

"Mr. President, I rise in support of the measure.

"I wasn't in support of the unusual procedures to bring the matter forward, but obviously this is an important matter. I've been asked and would join with anyone else in having an informational briefing tomorrow. I don't have a time for it or place yet, but we'll work it out with your permission, Mr. President.

"My hope would be that if indeed this body feels that this measure will pass in some form, I don't believe it has to pass in this form. I think many issues have been brought up on this Floor that warrant possibly another floor amendment come Friday. And I would hope that it seems that the momentum is for something to pass. And I would hope that both sides on this Floor, as well as the other party, would use the time between now and then as if this were a conference and the last day to do something, but certainly improve the measure if indeed it looks like something will pass.

"So Mr. President, we hope we use the time going forward meaningfully to improve the measure to the best of our ability. Thank you."

At 3:40 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:43 o'clock p.m.

Senator Kim rose with reservations and said:

"Mr. President, I, too, did not support any of the procedural measures to get this on the Floor. However, now that it is here, I would like you to record a vote with reservations for me.

"I would like the parties to get together. I would like us to be able to amend the measure to take care of some of the concerns so that we don't feel like we're up against the wall, come Friday, and not able to make any amendments, because I think that some of the concerns raised have a lot of merit and I would hope that HSTA and other interested parties will also agree to addressing some of these concerns.

"Thank you."

Senator Chun rose again and said:

"Mr. President, I'll take them up about the offer of trust. Let's see this. Let's assume we have a hearing over here. Everybody agrees that the issues that were raised today about the retirees . . ."

Senator Chumbley interjected:

"Mr. President, is the speaker speaking for or against the measure?"

The President posed the question and Senator Chun responded:

"I'm speaking for the measure with reservations, Mr. President.

"Let me say this. Let's talk about trust. Let's look at trust. Let's have a hearing, because I've been saying let's have a hearing because all these issues have never been publicly talked about. Members of the public have never been invited to testify. Retirees have not been invited to let us know what the impact of this bill is. Fine, if there's an offer from the Honorable Chair of the Education Committee that they're going to do that and solicit public input and also try to admit and to change the defects of this bill, let's see what comes out from that process.

"I'm willing to trust you that these issues about the retirees can be addressed. I'm willing to trust you that these issues about there is no audit right now can be addressed even under VEBA because VEBA does not apply, the federal law does not apply to purely state employee organizations. Let's see if that

can be worked out. Let's see if we can work out whether or not refunds can be given back to the members and to the State rather than to be kept. Let's see whether we can actually do something to help the State and the retirees, and if we can't do that then I can say I tried to trust and will vote on a bill that I can support.

"At this point and time, yeah, let's see, let's see whether you can craft something rather than make it through the back door and slide it underneath the doorstep. Let's put it out in the open and see whether you can really, really craft something, if you're really willing to amend something, or you just want to ramrod it through without protection for the public and the retirees."

Senator Sakamoto rose and said:

"Just a brief clarification, Mr. President.

"The Senator from Kauai was looking at me. I'm holding the informational briefing. I wasn't planning to be the facilitator of the revisions, but my hope is that other people will step to the plate and do that. I appreciate the opportunity to continue to improve the measure.

"Thank you."

Senator Hogue rose in support of the amendment and said:

"Mr. President, I also rise in support of this measure. I'll vote with reservations.

"I think there are some legitimate concerns which have been raised here today, and I hope that they will be brought up in the informational meeting tomorrow about true sunshine, about what the qualifications are for 501C-9, about the financial impact regarding retirees. I think the question was raised about whether the retirees are members of the HSTA or not and what kind of impact that will have. Also, some questions regarding the auditor, as well, I think these are all legitimate questions and I hope the members of HSTA will bring forward some answers to those.

"I definitely support the teachers and I support the efforts of the HSTA in bringing this forward to the table. I think it's a very legitimate discussion and I'm glad we're having it, and I hope we get some answers before a final vote on Friday.

"Thank you, Mr. President."

Senator English rose to support the amendment with reservations and said:

"Mr. President, I rise in support of the measure with reservations.

"Mr. President, colleagues, I voted against the procedural maneuverings to get this bill here mainly because we have to protect the integrity of the body. But since we did not do that, and since it is before us, and since the door is open . . . I predict maybe some other bills will be following the exact same route and we'll be used to that and ready to suspend the rules at any given moment. But nonetheless, since it is here, I much rather prefer the amendments to the original bill. And that's why I can support this with reservations because if we're going to do this, I want it to be done right and well, and that's why I can support this with reservations.

"Thank you."

Senator Ige rose in support of the amendment and stated:

"I would just like to note my full support of the floor amendment as well as the measure before us and I'll save more detailed comments for the debate on Friday.

"Thank you."

Senator Chumbley rose and said:

"Mr. President, I have a point of inquiry as to a clarification on procedures.

"Am I correct in understanding that the first vote is going to be on the motion of the amendment that is before us. The second vote, Mr. President, would be on the vote for the main bill, S.B. No. 2961, so it will require two votes."

The President answered:

"Right. The first vote is to adopt Floor Amendment No. 3, and the second vote will be placing the amendment on the calendar for Third Reading."

Senator Chumbley then said:

"Thank you, Mr. President. I'd like to request a Roll Call vote for each action."

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

Ayes, 16. Noes, 6 (Buen, Hanabusa, Kokubun, Nakata, Slom, Taniguchi). Excused, 3 (Chun, Hemmings, Matsuura).

The President made the following observation:

"Floor Amendment No. 3 has been adopted. The motion on the Floor is to pass S.B. No. 2961, as amended, on Second Reading and to place it on the calendar for Third Reading."

The motion was then put by the Chair and carried, Roll Call vote having been requested, S.B. No. 2961, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS," passed Second Reading and was placed on the calendar for Third Reading on Friday, April 5, 2002, on the following showing of Ayes and Noes:

Ayes, 16. Noes, 6 (Buen, Hanabusa, Kokubun, Nakata, Slom, Taniguchi). Excused, 3 (Chun, Hemmings, Matsuura).

At 3:52 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:54 o'clock p.m.

Senator Sakamoto, Chair of the Committee on Education, requested a waiver of the notice requirement pursuant to Senate Rule 20 for S.C.R. Nos. 137 and 138.

Senator Sakamoto noted:

"We just received the re-referral notice today."

The Chair then granted the waiver.

Senator Chumbley rose on a point of inquiry as follows:

"Mr. President, could you ask the Clerk if it's necessary to waive Senate Rule 20 for the purposes of the informational briefing as far as public notice of that briefing?"

At 3:57 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:58 o'clock p.m.

Senator Kim, Chair of the Committee on Tourism and Intergovernmental Affairs, requested a waiver of the notice requirement pursuant to Senate Rule 20 for S.C.R. No. 30 and S.R. No. 11.

Senator Kim noted:

"Mr. President, the reason for the waiver is that I received a notice from the Clerk's Office saying that all bills needed to be decked by Thursday morning. Our Committee had planned to hear this Thursday afternoon and being that our Committees meet on Tuesday and Thursdays, Tuesday we'll probably be in Session all day and therefore we plan to hear these measures on this Thursday."

The Chair then granted the waiver.

ADJOURNMENT

At 4:00 o'clock p.m., on motion by Senator English, seconded by Senator Hogue and carried, the Senate adjourned until 12:00 o'clock noon, Thursday, April 4, 2002.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate