

SIXTIETH DAY**Thursday, May 2, 2002**

The Senate of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, convened at 10:24 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Robert Tokunaga, First Assembly of God Church, after which the Roll was called showing all Senators present.

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

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 363 and 364) were read by the Clerk and were placed on file:

Gov. Msg. No. 363, informing the Senate that on April 30, 2002, he permitted the following measure to become law without his signature:

House Bill No. 2167 as Act 58, entitled: "RELATING TO TRAFFIC ENFORCEMENT."

Gov. Msg. No. 364, dated May 1, 2002, transmitting the 2001 Annual Report prepared by the Department of Hawaiian Home Lands, pursuant to Section 222, Hawaiian Homes Commission Act, 1920, as amended.

DEPARTMENTAL COMMUNICATION

Dept. Com. No. 23, from the State Auditor dated April 26, 2002, transmitting a report, "Follow-Up Study of the Hawaii Health Systems Corporation," (Report No. 02-09), was read by the Clerk and was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 638 to 648) were read by the Clerk and were placed on file:

Hse. Com. No. 638, returning S.C.R. No. 16, which was adopted by the House of Representatives on April 30, 2002.

Hse. Com. No. 639, returning S.C.R. No. 107, S.D. 1, which was adopted by the House of Representatives on April 30, 2002.

Hse. Com. No. 640, returning S.C.R. No. 116, which was adopted by the House of Representatives on April 30, 2002.

Hse. Com. No. 641, returning S.C.R. No. 131, S.D. 1, which was adopted by the House of Representatives on April 30, 2002.

Hse. Com. No. 642, returning S.C.R. No. 174, S.D. 1, which was adopted by the House of Representatives on April 30, 2002.

Hse. Com. No. 643, returning S.C.R. No. 180, S.D. 1, which was adopted by the House of Representatives on April 30, 2002.

Hse. Com. No. 644, returning S.B. No. 2582, which passed Third Reading in the House of Representatives on April 30, 2002.

Hse. Com. No. 645, returning S.B. No. 2632, which passed Third Reading in the House of Representatives on April 30, 2002.

Hse. Com. No. 646, returning S.B. No. 2693, which passed Third Reading in the House of Representatives on April 30, 2002.

Hse. Com. No. 647, returning S.B. No. 2705, which passed Third Reading in the House of Representatives on April 30, 2002.

Hse. Com. No. 648, returning S.B. No. 2791, S.D. 2, which passed Third Reading in the House of Representatives on April 30, 2002.

STANDING COMMITTEE REPORT

Senators Matsuura and Sakamoto, for the Committee on Health and Human Services and the Committee on Education, presented a joint report (Stand. Com. Rep. No. 3597) recommending that S.R. No. 71 be referred to the Committee on Tourism and Intergovernmental Affairs.

On motion by Senator English, seconded by Senator Hemmings and carried, the joint report of the Committees was adopted and S.R. No. 71, entitled: "SENATE 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 referred to the Committee on Tourism and Intergovernmental Affairs.

ORDER OF THE DAY**ADVISE AND CONSENT**

Stand. Com. Rep. No. 3587 (Gov. Msg. No. 305):

Senator Matsuura moved that Stand. Com. Rep. No. 3587 be received and placed on file, seconded by Senator Buen and carried.

Senator Matsuura then moved that the Senate advise and consent to the nominations to the State Planning Council on Developmental Disabilities of the following:

JEAN L. JOHNSON, DR.P.H., terms to expire June 30, 2002, and June 30, 2006;

PAUL S. VARGAS JR., term to expire June 30, 2003; and

MARK D. CONLEY, JEAN KIYABU, THOMAS G. NELSON, KIYOKO N. NITZ, PH.D., and DAVID A. WOLL, terms to expire June 30, 2006,

seconded by Senator Buen.

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

Ayes, 22. Noes, none. Excused, 3 (Hogue, Ige, Menor).

Stand. Com. Rep. No. 3588 (Gov. Msg. No. 306):

Senator Matsuura moved that Stand. Com. Rep. No. 3588 be received and placed on file, seconded by Senator Buen and carried.

Senator Matsuura then moved that the Senate advise and consent to the nominations to the Emergency Medical Services Advisory Committee of the following:

KARLEEN K. YOSHIOKA, term to expire June 30, 2005; and

DAVID WILLIAM MAY, GAIL T. TOMINAGA, M.D., and THOMAS A. VEATCH, terms to expire June 30, 2006,

seconded by Senator Buen.

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

Ayes, 22. Noes, none. Excused, 3 (Hogue, Ige, Menor).

Stand. Com. Rep. No. 3589 (Gov. Msg. No. 313):

Senator Matsuura moved that Stand. Com. Rep. No. 3589 be received and placed on file, seconded by Senator Buen and carried.

Senator Matsuura then moved that the Senate advise and consent to the nominations of STEPHEN G. CHONG, WAYNE S. HIGAKI, ROBERT T. OGAWA and ROSE ANN POYZER to the Statewide Health Coordinating Council, terms to expire June 30, 2006, seconded by Senator Buen.

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

Ayes, 22. Noes, none. Excused, 3 (Hogue, Ige, Menor).

Stand. Com. Rep. No. 3590 (Gov. Msg. No. 328):

Senator Matsuura moved that Stand. Com. Rep. No. 3590 be received and placed on file, seconded by Senator Buen and carried.

Senator Matsuura then moved that the Senate advise and consent to the nominations to the State Council on Mental Health of the following:

ALAN BUFFENSTEIN, M.D., term to expire June 30, 2004; and

LINDA COCHRAN, term to expire June 30, 2005,

seconded by Senator Buen.

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

Ayes, 22. Noes, none. Excused, 3 (Hogue, Ige, Menor).

Stand. Com. Rep. No. 3592 (Gov. Msg. No. 327):

Senator Kim moved that Stand. Com. Rep. No. 3592 be received and placed on file, seconded by Senator English and carried.

Senator Kim then moved that the Senate advise and consent to the nominations to the King Kamehameha Celebration Commission of the following:

PATRICIA KAINOA HODSON, term to expire June 30, 2004;

KILAKILA KAMAU, term to expire June 30, 2005; and

SHELLY R. COBB, ROSE MAY ENOS-KU and MARION M. JOY, 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, 22. Noes, none. Excused, 3 (Hogue, Ige, Menor).

Stand. Com. Rep. No. 3593 (Gov. Msg. No. 293):

Senator Kim moved that Stand. Com. Rep. No. 3593 be received and placed on file, seconded by Senator English and carried.

Senator Kim then moved that the Senate advise and consent to the nomination of LAWRENCE M. JOHNSON to the Board of Directors, Hawai'i Tourism Authority, term to expire June 30, 2006, seconded by Senator English.

Senator Kim rose to speak in support of the nominee and said:

"Mr. President, I rise this morning in support of Gov. Msg. No. 293 of Mr. Larry Johnson to the Hawaii Tourism Authority.

"Mr. President, it's no secret that I initially expressed concerns regarding Mr. Johnson's confirmation. However, the confirmation process allowed Mr. Johnson to publicly state his commitment to fully participate in the Hawaii Tourism Authority and he did provide the Committee with a vision statement that is on the member's desks. He responded to questions and answered the concerns I had in his confirmation hearings, and while some may not agree with his answers, he did answer them truthfully and directly.

"Mr. President, it was Mr. Johnson himself in his statements that assuaged my concerns. But it is sad and annoying, Mr. President, that representatives of the Governor had to resort to threatening members that if they did not vote for Mr. Johnson's confirmation that their CIP projects would not be released. I congratulate all of my colleagues who did not allow this kind of badgering or arm twisting to influence them. I thank them for their willingness to support my recommendation and trust my judgment no matter what the recommendation was going to be.

"However, Mr. President, I must ask this question – why is it that when you disagree with someone, including the Governor, and you tell them your reason, they don't accept that reason and they resort to fabricating their own reason, which is false? For example, when I started to question the Hawaii Tourism Authority last Session, people wondered why, what was her agenda? And they finally concluded, Mr. President, that it was a vendetta against the executive director. It couldn't be that the Hawaii Tourism Authority had problems. And when the executive director left, Mr. President, I wondered what excuse they were going to attribute to my continued questioning.

"When I raised initial concerns regarding Mr. Johnson's appointment, Mr. President, once again, my reasons were not accepted. Instead, emails were sent by the Governor stating that it was personal. The Senator from Hawaii Kai was also a victim of this kind of assassination. Mr. President, I'm tired of these kinds of unproductive, childish actions. And in spite of it all, Mr. President, I am recommending that this body confirm Mr. Larry Johnson's appointment to the Hawaii Tourism Authority because of Mr. Johnson and his ability to come before this body and publicly state his commitment to the Hawaii Tourism Authority and not because of all of these childish actions that have taken place.

“Thank you.”

Senator Kawamoto rose to speak in favor of the nominee and said:

“Mr. President, I rise to speak in favor of the nominee.

“Mr. President, we have here before us a nominee that’s a local boy makes good and tries to give back. A local boy could have easily in his young days played ball and went to his nice home, his nice family, but instead stuck around with many of us . . . well maybe not many of us because I was on the Big Island but many of his friends that have played baseball with Larry tell me how he would join in and hang around and eat musubi and eat daikon and join in with the boys after practice. We didn’t have spam musubi, but we had spam. But this is the type of character that Larry was brought up in. This was his roots. I say young because he is as old as I am. I think we’re both 58 grads.

“He grew up and did well. He did well as president of the largest bank of the State, and now in his later years, he’s willing to come back and give back to this community. That’s something, and I urge all my colleagues to vote ‘aye’ on Mr. Larry Johnson.”

Senator Hemmings rose to speak in favor of the nominee and said:

“Mr. President, I rise to speak in favor of the nominee.

“Mr. President, I have it from very reliable sources that this nominee is eminently qualified for the simple reason that he also enjoys malasadas.

“Thank you, Mr. President.”

Senator Matsunaga rose in support of the nominee as follows:

“Mr. President, I rise in support of the nominee.

“Mr. President, I, too, wanted to add my words of praise to the previous eloquent words of the speakers before me. Mr. President, we are considering a nominee who in addition to his extensive business and management experience and achievements has generously donated much of his time and energy to community services. He has been a leader in industry, philanthropic, and environmental organizations. And he has served as a presidential appointee on a commission dealing with international trade policy.

“Mr. President, objectively speaking, this nominee’s qualifications are beyond questioning. Objectively speaking, no one can question his commitment to our State or his personal integrity. Common sense tells us that we would be hard pressed to consider a nominee more accomplished, involved or suitable.

“Mr. President, I urge my colleagues to recognize common sense, take an objective approach, and vote in favor of confirming this nominee.

“Thank you, Mr. President.”

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

“Mr. President, I rise in opposition to the nominee’s appointment.

“It’s really difficult because I don’t have complaints with the nominee. I have complaints with the appointment itself. And yes, Mr. President, I eat my share of spam musubi and malasadas, but this is far beyond what a person eats, how a person grew up, his or her ethnic or racial background. We have been given a solemn duty in this body – and that is to inquire as to the nature of the person’s character, integrity and all of the conditions that surround that individual, before making an appointment or an advice and consent.

“In the past, we have confirmed some very bad people and not exercised our good judgment, basically because either someone asked us to do so because they were friends, or because someone threatened us if we didn’t do so they would do something against us. That should not be the basis of any kind of appointment or consent.

“It’s hard to stand here and probably be the only one to register a vote against someone else, and so I want to make it clear, as I have from the outset – this is not a question of the nominee Mr. Johnson’s character, which I find to be of the highest, or his integrity, which also is unquestioned. I’ve had the pleasure of knowing Mr. Johnson for more than 35 years. I had the pleasure of working with Mr. Johnson for more than 14 years. That’s not the issue.

“I asked questions during the nomination process, which was just several days ago as this Session wound down. I hope that Mr. Johnson feels as I do that the questions were both appropriate and respectful. I did not try any trickery. I did not try to be mean spirited, but I tried to ask questions involving two basic areas: (1) the independence of the position that we’re approving for the new Hawaii Tourism Authority Board; and (2) the ability to listen and to react to the public so that there is public input, particularly on our State’s biggest and probably only major industry since we have not diversified.

“I had questions about the independence of the nominee and I’ll get to those in a moment. As to the second part, listening to the public, because as the Chair of TIA said, for two years now, she has asked questions that have not been asked before. She has made people respond and be accountable and be responsible, which is important and which is what we’re supposed to do, particularly when you’re dealing with the people’s money, and that’s the money that the tourism authority utilizes – more than \$61 million of the people’s money. We found a lot of irregularities. And more importantly, we found stonewalling – people refusing to answer questions or provide information.

“To the credit of Mr. Johnson, he answered every question that I asked the other day. I asked questions about his involvement in a previous program in this State called ‘Thumbs Up,’ which was supposed to get the state and particularly people in the business community to feel better about themselves. Well, people feel better about themselves when there’s something for them to feel better about. All the rhetoric in the world, all the speeches in the world, all the thumbs going up don’t make you feel better if you’re being tax regulated and mandated to death if you have to worry about how you’re going to meet the next payroll. I felt that the heads of the two largest financial institutions in this State were out of touch with the men and women in Kakaako and Waianae and Hawaii Kai and Pearl City who have to go every day and try to meet that payroll and keep that business open.

“Next, the Governor appointed the nominee to the ERTF, the economic revitalization task force. That task force was criticized because it was the same people from this community, the same leaders of big business, of labor unions and organizations that had direct ties to both the Governor and 40

years of Majority Party. The first decision that the ERTF made was to have all of their meetings behind closed doors to shut out the public, the media, and the Legislators. I asked the nominee if he was part of that decision and he said 'no.' I asked him if that decision bothered him and he said 'no.' I asked him if he tried to overturn that decision and have the meetings open to the public, and he said 'no.'

"After the draft plan of the ERTF was proposed with 60 major recommendations, including taxes on everyone but the banks, there were 17 town meetings held around the State. I held one in East Honolulu; maybe some of you attended. At the end of the 17 meeting there were notes taken and a volume this big with suggestions, criticisms, ideas, and support for the ERTF. We asked the public to come forward. We asked for their input. We asked for their ideas. They gave them willingly. The ERTF took all of those suggestions, they went behind closed doors, and they did not adopt one of them, coming out saying that their original plan was still the best and they did not need the input. That's what bothered me about bringing people into this process, one of the major issues that we've been talking about for new board members.

"And then came the question of independence. The other day, had you been down here in room 212 at 9:00 in the morning, you would have seen the biggest of the big in our community – the leaders of this community who make the decisions, and many of you have never seen their faces before but they were all here in support of the nominee. And that's fine. We should be loyal to people. We should support people that we went to school with or played ball with or ate musubi with. That's fine, there's nothing wrong with that. We should be loyal to people that gave money to their particular organizations or their projects. There's nothing wrong with that either. But there comes a point when you ask just how close are those connections and will it affect and impact the independence of the nominee.

"I asked the nominee a question that was reputed to have been said by the Governor on advice from the nominee of whether or not there was any difference between big business and small business. The nominee said he didn't remember giving the Governor any information about that but his belief was there is no difference between the big business – a big regulated government subsidized business – and a small business. That troubled me also.

"I asked the nominee if he, in fact, held a fundraiser for the Governor during the last gubernatorial election at his private residence in which several hundred thousand dollars was raised. He said he did. He answered the question. He said that if there had been another Governor he would have done that too. Unfortunately, we only have one governor at a time so that was the only fundraiser that he held at his private residence.

"There's nothing wrong with that inherently, and again it does not affect character and integrity. But to me it does call into question independence. Are we going to have somebody that is going to be able to think and disagree on his or her own? And I find that extremely difficult. But I still kept an open mind.

"We adjourned that hearing at 10:30 in the morning on Monday. And immediately after, the Governor of this State called a press conference – before a vote was taken, before decisions had been made, before those of us on the Committee had a chance to compare notes and talk. The Governor decided at that press conference to attack me personally. Now he had to do that because he couldn't take away any of my bills that I passed because Republican bills don't pass, Mr. President, as we know. He couldn't take away any of my capital

improvement funds, Mr. President, because Republican capital improvement projects don't pass, as we know. So what did he have left? The Governor of our State, in his last days, a personal, slanderous, lying attack on me, and I resent it. And what he said was, basically, that I had voted 'no,' which I had not done because no vote had been taken, against Larry Johnson because the Bank of Hawaii had fired me.

"Let's set the record straight. First of all, I don't remember ever working with the Governor. I don't remember him being involved in my personnel history. I worked for the Bank of Hawaii from 1968 to 1982. Larry Johnson was not president of the Bank of Hawaii. I voluntarily quit the Bank of Hawaii, and the primary reason for that, as many of you know, is because one of the men that I have admired most in this community, who also ate musubi, was Wilson P. Cannon, who rose from bank teller on Maui to the president and chief executive officer of Bank of Hawaii. No finer man ever walked in this State, no fairer man, no more objective man. We all loved that man, and he died. And his successor was a person who was not even familiar with the work that our department, the economics division, had done. And his immediate response was to take that division, take it away as a separate entity and fold it into the marketing department of the bank. Now marketing and economic research don't go hand in hand because often times they disagree. And it was because of that reason one year later that I left the Bank of Hawaii.

"I'm sure the Governor knows that, but because he can't threaten me and take things away from me, as he threatened my colleagues, and not just one, not just two, not just three or not just four, he did that. That, in and of itself, would not get me to vote 'no' either, as the Chairman of the TIA Committee said, but it is this question of how independent can a person be if you've got the Governor of the State using his power and threats and slander to try to get somebody into an unpaid office? I don't back down and I'm not afraid. And as much as I respect Mr. Johnson, I do not think that he is the right man for this position at this time.

"And by the way, just as a footnote, all of my personal monetary accounts, business monetary accounts, personal mortgage, and stock remain as they have since 1968 with the Bank of Hawaii. But for the Governor of this State to stoop as low as he has, as consistently as he has, to interject himself in politics and try to run this Legislature, someone has to stand up and say – You stay up on the fifth floor. You threaten to veto bills or threaten to take away things if you want to, but we've got a job to do down here and we'll do it.

"When Mr. Johnson is confirmed, I will give him my full support, but I wanted you to know, colleagues, my reasons for voting 'no' today. Thank you, Mr. President."

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

Ayes, 22. Noes, 1 (Slom). Excused, 2 (Hogue, Ige).

Stand. Com. Rep. No. 3594 (Jud. Com. No. 4):

Senator Kanno moved that Stand. Com. Rep. No. 3594 be received and placed on file, seconded by Senator Matsuura and carried.

Senator Kanno then moved that the Senate consent to the nomination of CLARENCE A. PACARRO to the Office of Judge, District Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Matsuura.

Senator Kanno rose to speak in support of the nominee and said:

“Mr. President, I rise to speak in support of the nominee.

“Your Committee received testimony in support of the nominee from the Honolulu Prosecuting Attorney, State Public Defender, Hawaii State Bar Association, Pacific Law Group, and two individuals.

“The Hawaii State Bar Association subjected the nominee to rigorous review and evaluation before rating the nominee as ‘highly qualified’ for that position. That rating is the highest endorsement given by the Bar Association for judicial appointment recommendations. The review includes a thorough evaluation of the nominee based on a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for Judicial Office. The guideline’s criteria include: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability.

“The nominee received his law degree from the Lewis and Clark Law School. He is currently in solo private practice and is also a per diem judge with the District Court of the First Circuit in the Family Court. His experience includes employment at the Honolulu Department of the Corporation Counsel, Honolulu Prosecuting Attorney, and the law firm of Davis Reid & Richards. The nominee is licensed to practice law in Hawaii, the United States District Court for the District of Hawaii, and the Ninth Circuit Court of Appeals.

“Mr. President, your Committee on Judiciary, after full consideration of the background, character, experience and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate consent to the nomination.”

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

“Mr. President, I rise to vote ‘aye’ to support the nominee with reservations.

“Mr. President, the nominee is the son of a dear friend of yours and mine, Mr. Rudy Pacarro. The only reason why I’m going W/R, and I explained to all the judges up for nominations at this time, basically is my concern of the fact that the sentencing of people currently by judges have not deterred criminal activities in the community.

“But I’d just like to add that Judge Ahn was an exception when she gave her last sentence to a driver that was convicted of drunk driving and killed somebody. When she gave that person 22 years and gave the maximum sentence, I praised her for doing that. Again, drunk driving, running red lights is a concern in the community and I don’t believe people will think twice about drunk driving and running red lights. So she did a great job.

“I think all the district courts should look at the method at which she decided to give the maximum sentence. So W/R, Mr. President.”

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

Ayes, 23. Noes, none. Excused, 2 (Ige, Nakata).

At this time, Senator Kanno introduced Judge Pacarro, who was seated in the gallery with his family and friends.

Stand. Com. Rep. No. 3595 (Jud. Com. No. 5):

Senator Kanno moved that Stand. Com. Rep. No. 3595 be received and placed on file, seconded by Senator Matsuura and carried.

Senator Kanno then moved that the Senate consent to the nomination of JOEL AUGUST to the Office of Circuit Judge of the Second Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Matsuura.

Senator Kanno rose to speak in support of the nominee and said:

“Mr. President, I rise to speak in support of the nominee.

“Your Committee received testimony in support of the nominee from the Chairperson of the Board of Land and Natural Resources, a Hawaii State Representative, the Hawaii State Public Defender, the Hawaii State Bar Association, 47 attorneys, a retired judge, and 23 individuals.

The Hawaii State Bar Association also subjected this nominee to its review and evaluation and rated the nominee as ‘highly qualified’ for the position.

“The nominee received an undergraduate degree from Dartmouth College and a law degree from the University of California, Boalt Hall. He is licensed in Hawaii, California, the U.S. District Court, and the U.S. Court of Appeals for the Ninth Circuit. He is currently a partner with Lowenthal & August, and has served from 1990 to the present as a hearings officer for the Maui Planning Commission. Your Committee notes that the nominee has served as a per diem judge with the Family Court of the Second Circuit from 1982 to 1999.

“Mr. President, your Committee on Judiciary, after full consideration of the background, character, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate consent to the appointment.”

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

Senator Chumbley rose to speak in favor of the nominee and said:

“Mr. President, I rise to speak in favor of this nomination.

“I’ve had the opportunity, colleagues, to speak to many of our Maui residents on this nomination, and I think on behalf of the Maui delegation, you can say that we are unanimously in support of this nomination and look forward to Mr. August sitting on the Circuit Court bench.

“Congratulations to him and his family and his wife. Thank you.”

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

Ayes, 25. Noes, none.

At this time, Senator Kanno introduced Judge August and his family.

Stand. Com. Rep. No. 3596 (Gov. Msg. No. 357):

Senator Kanno moved that Stand. Com. Rep. No. 3596 be received and placed on file, seconded by Senator Matsuura and carried.

Senator Kanno then moved that the Senate consent to the nomination of MARCIA J. WALDORF to the office of 4th Judge, Circuit Court of the First Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Matsuura.

Senator Kanno rose to speak in support of the nominee and stated:

“Mr. President, I rise to speak in support of the nominee.

“Mr. President, your Committee received testimony in support of the nominee from the Hawaii State Public Defender, the Honolulu Prosecuting Attorney, the Hawaii State Bar Association, a Program Specialist of the First Judicial Circuit, 16 attorneys, and four individuals.

“The Hawaii State Bar Association also subjected the nominee to its review and evaluation and rated the nominee as ‘highly qualified’ for the position.

“The nominee has been a District Court Judge of the First Circuit Court since 1985, and has served as the Administrative Judge of the District Court for five years. She has substituted as a circuit court judge from time to time and has also served as a district family court judge. She received an undergraduate degree, cum laude, from the University of California at Davis, and a law degree from the University of San Francisco School of Law. Previously, she served as a Deputy Public Defender.

“Your Committee notes that the nominee has been active in domestic violence working groups and judicial education. She has been a member of the Judicial Education Committee, contributing to the content, format, and faculty composition of at least two education seminars a year. She has also been a faculty member as well and trains per diem judges.

“Mr. President, your Committee on Judiciary, after full consideration of the background, character, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate consent to the appointment.

“Thank you.”

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

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

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

At this time, Senator Kanno introduced Judge Waldorf and her family.

At 11:04 o’clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:18 o’clock a.m.

ADOPTION OF RESOLUTIONS

MATTERS DEFERRED FROM TUESDAY, APRIL 30, 2002

Stand. Com. Rep. No. 3591 (H.C.R. No. 200, H.D. 1):

On motion by Senator English, seconded by Senator Hemmings and carried, the report of the Committee was adopted and H.C.R. No. 200, H.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE ESTABLISHMENT OF A TASK FORCE TO STUDY THE FEASIBILITY OF ESTABLISHING A FRESHWATER FISHERY AT THE WAHIAWA RESERVOIR, OAHU,” was adopted.

H.C.R. No. 12:

On motion by Senator English, seconded by Senator Hemmings and carried, H.C.R. No. 12, entitled: “HOUSE CONCURRENT RESOLUTION SUPPORTING THE TANF REAUTHORIZATION ACT OF 2001 (HR 3113),” was adopted.

H.C.R. No. 43:

On motion by Senator English, seconded by Senator Hemmings and carried, H.C.R. No. 43, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF BUDGET AND FINANCE TO ENTER INTO A FINANCING AGREEMENT FOR A NEW ELEMENTARY SCHOOL IN KAHULUI, MAUI,” was adopted.

H.C.R. No. 187, H.D. 1:

On motion by Senator English, seconded by Senator Hemmings and carried, H.C.R. No. 187, H.D. 1, entitled: “HOUSE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO EVALUATE THE OPERATIONAL EFFICIENCY AND PROGRAMMATIC EFFECTIVENESS OF THE STATE’S INTEGRATED SPECIAL EDUCATION DATABASE SYSTEM,” was adopted.

THIRD READING

Stand. Com. Rep. No. 3586 (H.B. No. 1740, H.D. 1):

On motion by Senator Taniguchi, seconded by Senator Hanabusa and carried, Stand. Com. Rep. No. 3586 was adopted and H.B. No. 1740, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO ENTERPRISE ZONES,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

FINAL READING

H.B. No. 1722, S.D. 1, C.D. 2:

On motion by Senator Kawamoto, seconded by Senator Menor and carried, H.B. No. 1722, S.D. 1, C.D. 2, entitled: “A BILL FOR AN ACT RELATING TO TRANSPORTATION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 2416, S.D. 2, H.D. 2, C.D. 2:

Senator Matsuura moved that S.B. No. 2416, S.D. 2, H.D. 2, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Hogue rose to speak against the measure and said:

“Mr. President, I rise to speak in opposition to this measure.

“Colleagues, the bill appropriates \$40,000 to the Executive Office on Aging to convene its so-called long-term care summit. Obviously, this is a very important issue. Many people in the Chamber are very concerned about it.

“The bill states that the summit shall bring together business, labor and government, including state and county agencies, along with community organizations. However, we have seen over the past that the Executive Office on Aging has shown that it has no intention of including business, or at least the insurance industry, the people that know the most about long-term care. These are the people who know the long-term care issue inside and out.

“The last task force included only those predetermined to favor a government run system of financing – in other words, a new tax-based system. The nation’s current service delivery system is starved for financial oxygen because it is overwhelmingly dependent on inadequate government reimbursement through Medicaid and Medicare.

“As with other areas of health care, government funding often masks the true cost of care by only providing dismally low reimbursement rates. This reduces the ability to attract employees that actually provide care to those who need it. Government never has and never will be able to afford to pay for long-term care for everyone. Listen colleagues, never, they will never be able to pay for everyone.

“Increasing the number of private options is not only important but essential for the future well-being of Hawaii’s baby boomers and those who are of middle age and lower. The benefits of Care-Plus were overwhelmingly inadequate. Any tax-based program that would truly cover the cost of long-term care would tax Hawaii residents into poverty.

“The current problems challenging the long-term care industry are largely self inflicted by passing well-intentioned but counterproductive public policy. The results of this long-term care summit will be no different than we have seen for years. It will be business as usual – an unworkable, one-sided, public financing monopoly that will provide woefully inadequate funding to an emergency health care problem.

“I urge my colleagues to vote ‘no.’”

Senator Hemmings rose to speak against the measure and said:

“Mr. President, I rise to speak against S.B. No. 2416.

“I don’t think I can further illuminate on the good points made by the Senator from Kaneohe, but I would like to address an issue that I think we all should be concerned with because it does affect not only this legislation but other things we are doing on a regular basis, and that is the separation of power.

“The Office on Aging, who we’re giving money to, produced during the session, before this bill was even passed out of the House, a brochure announcing this care program. It hadn’t even been put into effect yet. I think I circulated copies of it to you. Throughout the brochure it lauded the program without ever putting in the disclaimer that it was not a reality yet, and it led many of the senior citizens to believe that with this passage by the Legislature, somehow government was going to come in and take care of their long-term health and care problems.

“Mr. President and colleagues, personally I think it’s insulting to the legislative branch of government and to this Senate for the executive branch of government to completely ignore us and proceed with a program that we haven’t approved. They’ve done this in other areas and for that reason and other reasons, I think it’s incumbent upon us to vote ‘no’ against this bill and to allow us to come back next year and take a look at the program with more objective leadership from the executive branch of government.

“Thank you, Mr. President.”

Senator Slom rose to speak in opposition and said:

“Mr. President, I, too, rise in opposition to this bill.

“As one who has attended previous summits, who has served voluntarily on a long-term care task force for two years (a bipartisan task force in this Legislature), as one who has followed this issue for many years, as one who has dealt with the problems personally with my parents, as one who understands the financial, emotional, and physical problems that are attached to this, as one who probably is ready for long-term care right now, this is a dishonest effort, because as the Senator from Kaneohe said, there’s no attempt to have more information generated or to reach a consensus in the community. They couldn’t get the bill passed to tax us \$100 million this year with this Care-Plus. As the Minority Floor Leader said, they had already printed up the brochures but they couldn’t do that so now they’re going to try to lull you and the public into thinking, well let’s study it some more. We’ll spend a little bit more money – \$40,00 in this measure; \$100,000 in the other measure we passed the other day to design a government run tax mandated plan.

“If you don’t want anymore of this, if you want to look honestly and truly and critically at the issues of long-term care, and to explore the many growing private alternatives, please vote ‘no’ on this bill.

“Thank you.”

The motion was put by the Chair and carried, S.B. No. 2416, S.D. 2, H.D. 2, C.D. 2, entitled: “A BILL FOR AN ACT RELATING TO THE HAWAII LONG-TERM CARE FINANCING ACT,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Hemmings, Hogue, Slom).

S.B. No. 2477, S.D. 2, H.D. 2:

Senator Chun moved that S.B. No. 2477, S.D. 2, H.D. 2, having been read throughout, pass Final Reading, seconded by Senator Kawamoto.

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

“Mr. President, I speak in favor of the measure.

“Mr. President, this bill would give the Office of Hawaiian Affairs authority to write grants and to expend this money to support much needed community and public programs.

“Mr. President, one of the provisions in this bill that did not pass is the provision that would grant interim funding to the Office of Hawaiian Affairs. Based upon the critical shortage of funds and the fiscal problems that are facing our State, we were not able to put in any interim funding for this bill. This is unfortunate but it is one of the signs of the problems that we are facing today. Hopefully in the next Session we will address

those problems and we will be able to provide OHA with some of the funding and to live up to the commitment that funds need to be given to them to meet our constitutional mandate.

“Mr. President, I ask all my colleagues to support wholeheartedly this bill. Thank you.”

Senator Hemmings rose to speak in favor of the measure and said:

“Mr. President, I rise to speak in favor of S.B. No. 2477.

“To put it briefly, this bill will allow, through the writing of grants, for the Office of Hawaiian Affairs to better serve their constituency. It will allow them to reach out into the private sector and have them participate in the effort. Therefore, it is a very cost-effective way to administer their programs.

“Thank you, Mr. President.”

Senator English rose to support the measure as follows:

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

“Mr. President, this measure will allow OHA to provide grants to the Hawaiian community outside of the state procurement system, which is needed for OHA to continue to help the Hawaiian community.

“But Mr. President, with all due respect, I want to remind my colleagues that on September 12, 2001, when the Hawaii Supreme Court repealed Act 304, depriving OHA of revenues under certain circumstances, it was also of the opinion that the state should pay OHA its pro-rata share of revenues from the ceded lands. The Supreme Court further said that it is up to the Legislature to develop another formula to provide revenues to OHA within legal guidelines – keywords here, Mr. President, develop another formula to provide OHA revenues within legal guidelines. We have failed to do that, and in failing that responsibility, we have failed the native peoples of Hawaii.

“Mr. President, the Supreme Court did not say that the Legislature should punish OHA and not provide any funding at all, yet, in essence, that is exactly what has happened. OHA has successfully been cut out of the state budgetary process. OHA, the one agency of the State that is responsible to work for the betterment of Hawaiians and Native Hawaiians, will receive no funding at all as a result of our work. I find this extremely difficult to swallow.

“Have we finally said to the Hawaiian people, ‘We will sell your culture to develop our wealth. We will take your lands to build our fortunes. We will use your oceans in any way we please. We will continue to erase your history and traditions by destroying the infrastructure that supports you, and we will start with the Office of Hawaiian Affairs right here in the Legislative Session of 2002.’

“Mr. President, my disappointment is without bounds. To those of my colleagues who have tried to help – aloha and mahalo. Thank you, Mr. President.”

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2477, S.D. 2, and S.B. No. 2477, S.D. 2, H.D. 2, entitled: “A BILL FOR AN ACT RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 2498, S.D. 2, H.D. 1:

On motion by Senator Matsuura, seconded by Senator Menor and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2498, S.D. 2, and S.B. No. 2498, S.D. 2, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO SOCIAL WORK,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

S.B. No. 2885, S.D. 2, H.D. 1:

On motion by Senator Menor, seconded by Senator Taniguchi and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 2885, S.D. 2, and S.B. No. 2885, S.D. 2, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO TAXATION,” having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

THIRD READING

H.B. No. 2487, H.D. 1:

Senator Matsunaga moved that H.B. No. 2487, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Chumbley.

Senator Chun rose in opposition to the measure and said:

“Mr. President, I stand in opposition to this bill.

“Mr. President, before I begin, I’d like to just let my colleagues know that I have many, many comments here. It’s not because I’d like to keep you in your seats, even though you might leave them, but it’s because we did not have an opportunity, as we stated earlier, to go through a report and to have staff and the Committees look through that and to give us a comprehensive understanding of where the testimony and where the problem lies, both pros and cons. And because we don’t have that, I feel that at a minimum I must bring at least some of the concerns to the members because they don’t have a report to read, they were not members of the Committee, and they might not even have access to some of these statements and concerns. So, for those members of the Senate who have read them, who know all the concerns raised by not only our state but other states, this might be old hat for you and you can go to the bathroom if you want.

“For those of you who don’t or those of you who have not had the opportunity to read through the many, many reports prepared not only by the State of Hawaii but other states, for those of you who have not had the opportunity to listen to the testimony, both pros and cons, about this issue, and for those of you who have not had the opportunity to read through some of the many, many criticisms of the Oregon law, I would ask that you at least listen carefully and to know what we’re voting on today. And after hearing me today, if you still feel you need to vote for this because you feel this is the perfect law, this is the way to go, then you must vote your conscience and I applaud you to doing your conscience.

“Let my start by saying this, Oregon right now is the only state in the entire nation that has passed a death with dignity bill. Other states that have looked at this issue have consistently, consistently, looked at it, and after considerable debate and listening to the issues on both sides, said ‘no’ – an opportunity again that we did not have.

“Maine, for example, in 2000 by its voters said no. The State of California, which we oftentimes hold up as an example of how Hawaii should look and go towards the direction that California is going, said no in 1999. In fact, since 1994, when Oregon’s assisted suicide bill passed, at least 55 measures had been introduced in 21 states and all of them have failed. Members, you ask the question, Why? Is it just one single person that’s doing this? Is it just one point of view that’s pervading? Or is there some real good deep reason why all those 54 measures in 21 states have failed? These are the questions you must ask yourself very seriously and with great thought.

“In fact, when we look at it in detail, somebody might argue, ‘well, that’s all happened in the past.’ What about recently, between 1995 and 1999, which is the most recent thing that we have, actually 2000 because of Maine, seven states passed laws prohibiting assisted suicide. So all the rhetoric we hear about the population is going there and this is the national trend, is not supported by what most states are doing now. And yet we’re still saying Oregon should be the leader and Hawaii should follow.

“Those are the concerns, I think, Mr. President, we should look at. But rather than just look in terms of what’s happening in the past, let’s look to see what other people who have looked at this issue and have written about it in a study, let’s see what they say and see if our actions can measure up to their careful analysis.

“For example, California is a good example. California, as I stated, in 1999 had a bill before them called AD 1592, which was called the ‘California Death With Dignity Act.’ I’m taking this report from a book by Rita Marker called Assisted Suicide: The Continuing Debate. In her book, Ms. Marker states and makes this observation:

‘By the time hearings and committee votes on AB 1592 took place, people from across the state – those who were poor, individuals from diverse ethnic groups, disabled persons and the elderly – were present to stage protests outside the capitol and in front of the sponsor’s office.

‘Petitions opposing the measure, circulated within the African-American community, were signed by thousands of people. The League of United Latin American Citizens (LULAC), which is the oldest and largest Latino civil rights organization in the United States, adopted a resolution condemning the legalization of doctor-assisted suicide. LULAC’s, which is the association, ‘resolution stated that “many Latinos do not have health care” and “the poor have a right to live and to receive proper medical care.”

‘As disability rights leader Diane Coleman has observed, assisted suicide is primarily promoted by those who are white, well-off, worried and well.

‘For many people,’ and this is a quote, ‘inequity in health care is a harsh reality, as illustrated by documented disparities in treatment and pain control:

‘African-American patients with a broken arm or leg are less likely to be given pain medication in emergency rooms than white patients who have similar injuries and complaints of pain.

‘African-American cancer patients in nursing homes are severely undertreated for pain – some don’t even get aspirin.

‘Outpatients with cancer who went to clinics that served minority patients were three times more likely to be under-medicated for pain than were patients in other settings.

‘Among minority groups, 35% of Hispanics lack health insurance, followed by 22% of African-Americans, and 21% of Asians. Those who lack insurance are three times more likely than those who are insured to be in poor health, have a higher mortality rate, and significantly reduced access to preventative medical care.

‘African-Americans are 50% less likely to get heart bypass surgery and 25% less likely to get pain medication than their counterparts in other races. And ten different studies in the U.S. have shown that the disparities cannot be explained away by the fact that, as a group, African-American patients tend to be poorer, sicker and have less health insurance than white patients.

‘African-American academics who study bioethical issues have expressed concern that permitting assisted suicide, along with new limits on health care, presents new opportunities to victimize minorities: “People know they don’t get the health care they need while they’re living. So what makes them think anyone’s going to be more sensitive when they’re dying.”

“The report further goes on and says that even Berkeley and Oakland, the most activist counties in California, oppose the bill. ‘The Berkeley City Council, Californians for Disability Rights, and the Oakland-based Committee for the Black Panther Party were firmly against it, pointing out that, at least in the current health system, no assisted suicide bill could be written that would safeguard its use against the poor and people with disabilities.’ And that is from the report by Ms. Marker.

“Members, if there is such a great concern nationwide, even in California, about the impact these bills have on minorities, African-Americans in California, Latinos in California, what impact would it have on minorities and the underserved here in Hawaii? Those questions have not been asked and no answers have been given.

“Mr. President, not only California has studied this issue extensively. New York has also looked at this issue and has decided to reject it. In 1985, I believe, the New York Governor at that time instituted a commission or a task force to look at all these medical end of life issues. In 1994 or 1995, that commission came out with a report regarding assisted suicide and that report is called, When Death is Sought: Assisted Suicide and Euthanasia in the Medical Context. Some of you members might have been given it. I’m not sure whether any of you read it but it contains many interesting, interesting arguments – both pros and cons – on the issue.

“But after recognizing both sides of the issues, the New York Commission specifically stated, and this is a quote from their summary:

‘After lengthy deliberations, the Task Force unanimously concluded that the dangers of such a dramatic change in public policy would far outweigh any possible benefits. In light of the pervasive failure of our health care system to treat pain and diagnose and treat depression, legalizing assisted suicide and euthanasia would be profoundly dangerous for many individuals who are ill and vulnerable. The risks would be most severe for those who

are elderly, poor, socially disadvantaged, or without access to good medical care.

‘In the course of their research, many Task Force members were particularly struck by the degree to which requests for suicide assistance by terminally ill patients are correlated with clinical depression or unmanaged pain, both of which can ordinarily be treated effectively with current medical techniques. As a society, we can do far more to benefit these patients by improving pain relief and palliative care than by changing the law to make it easier to commit suicide or to obtain a lethal injection.’

‘Mr. President, some of our members have said, well, those concerns about the holes in the bill regarding depression has been taken care of because the bill says you have to make sure there is no depression out there. Those are easy answers to very tough issues. And in fact, the New York task force went on and talked about that easy answer and how in the practical world it does not apply and it cannot work.

‘For example, in that report, and if you’re interested it’s on page 126, they say:

‘All proposals for assisted suicide and euthanasia implicitly assume or explicitly require the patient’s primary physician to determine whether the patient has capacity to make an informed decision. For other medical decisions, this requirement has been interpreted to mean that the patient is capable of understanding and appreciating the risks and benefits of the proposed treatment, assessing the alternatives, and reaching an informed judgment. The notion of competence to make treatment decisions, or the capacity to make a particular decision, also presumes that the patient is not clinically depressed. Depression can impair a patient’s ability to understand information, to weigh alternatives, and to make a judgment that is stable over time and consistent with the patient’s values.’

The report further goes on to say:

‘Theoretically, contact with a physician or other health care professional provides the opportunity to screen patients for depression and offer appropriate treatment. In practice, however, this kind of screening and the subsequent offer of effective treatment are not standard care. Most doctors are not adequately trained to diagnose depression, especially in complex cases such as patients who are terminally ill. When an assessment is performed, the medical illness may obscure indicia of depression, rendering the diagnosis difficult. Even if diagnosed, undertreatment for depression is pervasive. In elderly patients as well as the terminally and chronically ill – those groups who would be the likeliest candidates for assisted suicide and euthanasia depression is grossly underdiagnosed and undertreated.

‘Too often, clinicians fail to detect treatable depression or other psychiatric illness, assuming that the depression is expected or beyond treatment. Frequently in the elderly, the symptoms of depression, such as loss of appetite and disrupted sleeping patterns, are mistaken for signs of old age, dementia, or a response to life in a nursing home. One study found that depression was diagnosed in only 15 percent of the depressed elderly, and was treated in only 25 percent of those cases. Another found that 75 percent of elderly patients who committed suicide had seen a primary care physician during the month before dying, but their psychiatric disturbances had been largely undetected.’

‘Mr. President, so much for this so-called protection that we have been trying . . . that they’re placing in this bill about no depression.

‘Another concern raised by the New York study is the inability, the inability, to accurately diagnose a six-months, five-months, seven-months life expectancy for patients who are terminally ill. This is what the New York task force said in their report:

‘One cornerstone of good medical practice is an accurate diagnosis and prognosis for the patient. In many cases, prognostication at the end of life is highly uncertain, even in the hands of the best clinicians. Some diagnoses are clear cut. Many others are not. Once the diagnosis is made, estimating the patient’s life expectancy is typically more art than science. It is neither precise nor entirely predictable.

‘Overall, the risk of misdiagnosis of the patient’s medical or psychiatric condition, the undertreatment of pain, and the risks of abuse must be weighed in relation to their consequences. With assisted suicide and euthanasia, the result will be the patient’s death. How many instances of error or abuse render the risk unjustifiable in light of these consequences? The number of such errors or cases of abuse cannot be quantified. But given the state of the art of diagnosing and treating depression, as well as the inherent fallibility of medicine, such cases will not be rare. Taken together, the risk and the consequences yield a remarkably high price in human life for policies allowing assisted suicide and euthanasia.’

‘Mr. President, the task force made many observations and many arguments in regards to the policies. I’m not going to go through them today. In fact, I’m turning the pages for you so you can see I’m not going there. But one conclusion they made as a policy, and I think we should all take with us today, is this – and that is, this task force stated:

‘On balance, even considering these reasons to legalize assisted suicide, these members,’ who’ve supported it, ‘unanimously concluded that the prohibition against assisted suicide should not be changed. While not a tidy or perfect resolution, it serves the interests of patients far better than legalizing the practice. By curtailing the autonomy of patients in a very small number of cases when assisted suicide is a compelling and justifiable response, it preserves the autonomy and well-being of many others. It also prevents the widespread abuses that would be likely to occur if assisted suicide were legalized.’

‘Basically, Mr. President and members, the task force did fairly and equitably look at all of the issues, both pros and cons, and it noted that even the members of their task force which supported assisted suicide came to the final conclusion that it would not be a good idea from a policy standpoint. And why? Why from a policy standpoint did the task force say no? When looking through the report, it was obvious that their concerns really focused upon the potential abuse and the impact on those who were not well-served by the medical community – those who are in the minority, those who are economically challenged, those who have traditionally been ignored by society.

‘This is what they said as far as their policy statement in regards to why this kind of assisted suicide bill should not be supported. This is what the task force stated:

'The Task Force believes that such a policy poses severe risks to large numbers of patients, especially those who are most disadvantaged. Some of the members also reject this policy because they believe that assisted suicide is morally unacceptable even with the "best" of practices. The care of many patients currently fails to meet generally accepted standards of high-quality clinical practice. These failures are most egregious for poor and socially disadvantaged individuals, and for patients in large, overburdened facilities serving the urban and rural poor. Many will not have the benefit of skilled pain management and comfort care. Indeed, a recent study found that patients treated for cancer at centers that care predominantly for minority individuals were three times more likely to receive inadequate therapy to relieve pain. Many patients will also lack access to psychiatric services. Furthermore, for most patients who are terminally or severely ill, routine psychiatric consultation would be inadequate to diagnose reliably whether the patient is suffering from depressions.'

"Mr. President, I could go on, and on, and on in terms of this report, but I will not because that was just New York's task force and their study. There are other states that came to similar conclusions I think we need to be informed of – for example, Hawaii, our own Hawaii. We had a blue ribbon panel. The blue ribbon panel basically came up with an agreement on matters other than assisted suicide. It came up with the idea about pain management. It came up with the idea of better counseling for those who are terminally ill. It came out with the idea of palliative care. Those are the things the blue ribbon committee unanimously approved and said we should focus on.

"The question we must ask ourselves is, if that was one of the recommendations, why aren't we carrying out with such fervor those recommendations and only focusing on one that was highly charged and which no consensus was gathered? In fact, I would encourage all of you to read the dissenting reports by the blue ribbon panel members into this issue. I'm not going to read all of them but I think there are excerpts from those statements you guys should be made aware of.

"For example, Nayleen Andrade, who is a doctor, had this to say in her individual opinion: 'I believe it is premature to legalize physician-assisted suicide or physician-assisted suicide death in Hawaii until we are able to address the issues of (a) physician training for treatment of the dying; (b) physicians examining the impact that PAS and PASD on the tenets of the Hippocratic oath; (c) how a patient's spiritual, cultural, and social needs are addressed and whether the physician should play a more active role in this area; and (d) if not physicians, who should be responsible for assisting death.'

"Another member of the panel, the Reverend Beth Donaldson, who happens to live on Kauai, had this to say about her opinions: 'I oppose the proposal for PASD because I believe that we have, as a society, the responsibility to enhance the care given to individuals at the end of their lives so that the need and desire for assistance in death would not arise. I believe that to consider legalizing PASD before we have made every possible effort, as outlined in the portion of their recommendations, to enhance the care and quality of life for every person in our communities is premature. This is primarily an issue of social justice. Until we have taken away as many layers of social inequities as possible, such as imbalances and access to financial and medical resources, have enhanced our practice of communications within family systems, as well as among medical professionals, and have broadened our understandings of death and dying, I believe the option for PASD is too vulnerable to these inequities.'

"Sister Rosalani Inamoto, who also sat on the panel, had this to say: 'As a member of the panel who has attended all but three of the monthly meetings, I wish to state clearly and without equivocation that I am against the legalization of physician-assisted suicide and physician-assisted death in the State of Hawaii. There is a need to review the present law, however, and I urge Governor Cayetano to challenge the State Legislature to study the year-and-a-half work of this panel by submitting its report to the Judiciary Committees in both houses for their study, deliberation, and action. Our panel discussions have not focused primarily on the ethics of suicide itself, but on assistance to commit suicide and the direct killing of another person for benevolent motives. Actions that intentionally cause death are often referred to as active euthanasia or simply as euthanasia. Euthanasia performed at the explicit request of a patient is referred to as voluntary.' Basically, her concern was that without studying the impact of suicide itself, the failure of the commission to do that ignored a very important factor in deciding whether to go forward with PAS or PASD.

"Brian Issel, who is another doctor, had this to say: 'This minority statement expresses my strong opposition to legalizing physician-assisted death in our state. The call for physician-assisted death is predominantly due to a failure to relieve end of life suffering even though the means to do so are available. The panel's strong unanimous recommendations about advanced directives, spiritual care, hospice care, relief of pain, depression, and other symptoms identify the means to relieve suffering at this time. A physician does not need to prescribe or otherwise administer a treatment with a primary intention of killing his or her patient and should not be permitted to do so. The present incompetence of our health delivery system in respect to end of life care should not be corrected by legalized killing.'

"Also, the doctor went on the say: 'Polls which indicate the public would like to have physician-assisted death legalized should be interpreted with caution. They are taken of mainly healthy people who imagine the end of life quality issues in relation to their present circumstances. Polls need to be taken of people who find themselves in an end of life setting relevant to the questions being asked. Attitudes as to what defines an acceptable quality of life change dramatically with changing circumstances and need to be continually rechecked in order to insure that a patient's wishes are always respected.'

"Finally, there are two other comments made by nurses Patricia Lee and Stephanie Monet, who I believe also authored the minority report. I urge all my colleagues to read the minority report in regards to their comments and their concerns. There are also concerns raised by Mr. James Peach, an attorney. I think some of you might have received his email, but Mr. Peach is very adamant in his decision not to, at this point in time, adopt physician-assisted suicide or death.

"Mr. President, the main concerns raised time and time again on the problems with physician-assisted suicide by all those who have carefully studied this issue comes down to the practical concerns:

1. It's very difficult to diagnose the end of a lifetime;
2. It's very difficult to diagnose depression; and
3. It unfairly puts the burden upon those that have the least access to medical care.

"In fact, the dissenting report has this to say and makes this comment in regards to physician-assisted suicide, and that is the other problem, a fourth problem of does it lead to the question of the duty to die. And this is what the dissenting report had to say:

'A recent study, which was done in 1996, examined the attitudes of elderly patients and families toward physician-assisted suicide. Results indicated that the relatives were more likely than patients to legalize physician-assisted suicide and to favor it for the terminally ill. Although a clear majority of those queries opposed physician-assisted suicide, the feelings of the family members significantly differed from those of the patients. The people who would be most vulnerable to misuse of physician-assisted suicide were to be the most opposed to it.

'The problem of coercion when dealing with assisted suicide cannot be underestimated. The patient's family, be it out of empathy, frustration, or economic troubles, may consciously or unconsciously exert pressure upon the ill person to choose physician-assisted suicide. Fear of abandonment or guilt could then help convince the ill person that assisted suicide is their duty or only option. In addition to family and economic pressures that will no doubt impact the ill person's decision for assisted suicide, one cannot ignore the broader social and medical context in which assisted suicide would be practiced.

'Brooder, in 1996, provides astonishing insight into the subtle nature at which coercion may surface and the possibility of patients perceiving death as a duty rather than as a right.'

"And this is the quote from the report from Dr. Brooder:

'When the sufferer sees those around him or her suffer, it becomes possible that the sufferer begins to see death as a duty. How unfortunate it will be to see people electing suicide primarily because they feel it is their duty to die. In the name of efficiency, cost-effectiveness, and allowing the rest of the family and community to go about their business to get on with their life, we will have missed what might have been gained by suffering and to recognize that suffering, itself, is a part of what ties communities together.'

"Mr. President, we need to seriously look at the possibility that we are, rather than autonomy, this law will start to impose our feelings, our values on those who are most vulnerable to it. And using our feelings and values say, 'you should be dying.' I think those are the concerns.

"And while the proposed bill says well, the physicians have to be convinced that there is no undue pressure, Mr. President, we must ask ourselves how are those physicians going to be making those inquiries. Do we require the physician to have follow-through visits? Do we require the physician to have him check in with him occasionally before he commits suicide? This bill does not do that. In fact, there are many other problems with this bill, which has been touted to be perfected because Oregon has done it and look, there's no problems there. Of course, the ones who might have problems are already dead.

"Mr. President, in her book, Ms. Marker outlines several problems with the laws which our law does not address. For example: Oregon's assisted suicide law, just like Hawaii's, does not require family members be notified when a doctor is going to help a loved one commit suicide. And that's true. Oregon's bill, and Hawaii's bill, does not require it. It's suggests it, but doesn't require it. How would you like to have your parents, your uncle, your aunty, your grandmother, your grandfather get a sufficient dose of medicine or drugs to kill them and you would never know. Don't you think you would be able to help their depression? Their decision? But the Oregon bill and Hawaii's bill does not address that issue.

"Secondly:

'Oregon's assisted suicide law permits doctors to help mentally ill or depressed patients commit suicide. A referral for counseling is only necessary if, in the "opinion" of the attending physician, the patient requesting death has a "psychiatric or psychological disorder, including depression, causing impaired judgment."

Hawaii's bill has a similar provision. So basically, they're not saying if you're depressed, if you have a psychological disorder or psychiatric disorder, you're not qualified. They're just saying if you have these things, you still could be given a lethal dose of medicine. They just have to make sure that it doesn't cause impaired judgment. Again, it begs the question, what is impaired judgment? Some people might argue that wanting to die is an impaired judgment.

"The report further goes on to say:

'Even then, the law does not preclude people who are depressed or who have psychiatric or psychological disorders from obtaining a prescription for lethal drugs as long as a mental health professional determines that the person's judgment is not impaired.'

How are you going to make that determination?

"The third point raised:

'Oregon's assisted suicide law permits "shopping" for health professionals who will find that a patient is qualified for assisted suicide.'

The same problem that Hawaii's law has. This is what the report said:

'Even if a patient is found to have "impaired judgment," that's assuming they found that, 'Oregon's law does not prohibit a health provider, family member or others from arranging for the patient to be evaluated by other health professionals until one is found who declares that the patient is capable of choosing assisted suicide. Such was the case with an elderly woman who died under the Oregon law.

'Kate Cheney, 85, reportedly had been suffering from early dementia. After she was diagnosed with cancer, her own physician declined to provide a lethal prescription for her. Counseling was sought to determine if she was capable of making health care decisions.

'A psychiatrist found that Mrs. Cheney was not eligible for assisted suicide since she was not explicitly pushing for it, her daughter seemed to be coaching her to do so, and she couldn't remember important names and details of even a recent hospital stay.

'Mrs. Cheney was then taken to a psychologist who said she was competent but possibly under the influence of her daughter who was "somewhat coercive." Finally, a managed care ethicist who was overseeing her case determined that she was qualified for assisted suicide, and the lethal drugs were prescribed.

'Doctor-shopping played a role, as well, in the case of another elderly woman whose assisted suicide death was showcased by CID. Two doctors – including her own physician who believed that her request was due to

depression – refused to prescribe lethal drugs for this woman in her mid-80s who had been battling breast cancer for twenty-two years.

‘But then, CID became involved. Dr. Peter Goodwin, the group’s medical director, determined that the woman was an “appropriate candidate” for death and referred her to a doctor who provided the lethal prescription.’

Again, doctor shopping. Is that what we want?

‘Another problem with the law is that ‘Oregon’s assisted suicide law allows fatal doses of drugs to be mailed to patients.’ In fact, there was one reported case in which it was mailed and received via Federal Express. The same loophole allows that in Hawaii’s law.

‘Another one:

‘Under Oregon’s assisted suicide law, requests for assisted suicide do not need to be made in person.’

And reading Hawaii’s law, that’s true too.

‘Oregon’s law requires that a patient make two oral requests and one written request for assisted suicide within a time span of no less than fifteen days. However, there is no requirement that any of these be made in person. The two oral requests could be made by phone and the witnessed, written request could be sent by mail to the doctor, who could then prescribe the lethal drugs.’

That is not much of a protection, Mr. President.

‘Another problem:

‘Oregon’s assisted suicide law has no safeguards for the patient at the time the lethal drugs are taken.’

We all say that there are protections against them. Yeah, there might be some kind of diagnosis in terms of no depression at the time the request is made, but how do you know on that day that person takes these drugs that he or she is not medically depressed and that their judgment is not impaired? That is a huge loophole and a huge problem that we must address.

‘The Oregon law’s safeguards, illusory though they may be, only cover behavior up through the time the doctor writes the prescription for lethal drugs. The law contains no provisions dealing with what happens after the patient receives the prescription. The prescribed drugs could be stored over time, with no concern for public safety or for protecting the vulnerable patient from those who might benefit from the patient’s early demise.

‘Moreover, even the requirement that the patient’s judgment not be impaired refers only to the time between the patient’s first request for assisted suicide and the doctor’s writing the prescription. Nothing in the law requires that the patient be competent at the time the deadly overdose is taken.’

‘Also, there’s another point:

‘Oregon’s assisted suicide law gives doctors greater legal protection when they prescribe assisted suicide than when they provide pain relief and other end-of-life care to their patients.’

If you look at the bill, the bill basically does not subject the doctors who prescribe these medications if they follow a good-

faith standard. However, on the other portions, which the governor’s blue ribbon panel made recommendations on regarding hospice care, palliative care, the physician has to use an objective reasonable standard of care which is higher than their good faith. Again, what are we favoring more? Are we making it easier for people to die?

‘And finally, one of the other flaws in the Oregon bill is:

‘Oregon’s assisted suicide law does not preclude use of Kevorkian-like devices to induce death. Even though it is generally assumed that Oregon only permits prescriptions for a lethal dose of pills or capsules, the law does not require that the drugs be taken orally.

‘After passage of Oregon’s law, supporters said the new law would permit the types of activities carried out by Jack Kevorkian. In an appearance on Nightline, Geoffrey Fieger (Kevorkian’s attorney) and Peter Goodwin (CID’s medical director) both agreed that the new law would permit use of a death-inducing device such as that developed by Kevorkian.’

Again, is this what we’re intending?

‘Mr. President, I could go on for another couple of pages, but I will spare you those things because the point is, and I think you’ve gotten the point, there are major flaws in these bills. There are major loopholes in these bills. There are major dangers in these bills in regards to how it would actually work in the real life.

‘As the Honorable Senator from Hana said, intellectually, he might agree with that, but deep down inside, he has a problem with that. I think that’s what was happening. I think, intellectually you could see how something works, but deep down inside, we all know that real life is not lived out in an intellectual arena. It is lived out with feelings; it is lived out with the fallacies of human judgment; it is lived out through potentials for mistakes, potential for abuses. And these are the things that we must take into consideration in adopting this bill.

‘Mr. President, earlier I had this idea of asking the makers of the motion to yield to questions, a lot of detailed questions in terms of how this bill would affect patients, how it would affect the elderly, how it would affect the minorities, how it would affect people with disabilities. But Mr. President, I’m not going to do that. I think all of us know deep down inside that this bill would hurt those who are disadvantaged.

‘Mr. President, it’s not only myself, not only these states that have turned down these bills, not only the blue ribbon committee that was appointed by the Governor that have opposed this bill. There are others, others who have studied this issue within their own profession and have found it to be wanting – doctors, the HMA, I believe, have submitted testimony against this bill; psychiatrists are against these bills; nurses are against these bills; the disabled community is against these bills. Are we saying that they’re wrong? Are we saying that their concerns are not valid? Mr. President, I’m not willing to make that judgment and that statement at this point in time in such a hurried manner.

‘Mr. President, this morning I had an interesting conversation with a colleague of mine and I raised some, not all, of these questions and problems. And this colleague very rightfully said, ‘Well, no bill is perfect.’ And that’s true. I haven’t seen a perfect bill yet. My response to him, Mr. President, was if we are dealing with somebody’s life, we should strive to be as perfect as possible. And I reminded my colleague that Hawaii has taken a bold step forward of

prohibiting the death penalty for the same reason. We don't allow the death penalty because for us, even one mistake is one too many.

"I ask my colleagues, are we willing to say that in regards to the medically underserved, the economically underserved, the poor, the disadvantaged, that we're saying you can afford to be that one mistake. Mr. President, I can't do that.

"This morning, we had the fifth grade class from Elelee Elementary School and they were the ones serenading us in the rotunda today and they sang a wonderful song called 'God Bless the U.S.A.' Before they sang their song they were in the auditorium and I just let them know what I was doing and how glad I was that this was the last day of Session and I'd be back home very soon. I told them what we would be talking about today, about physician-assisted suicide, and I said that this was an interesting issue. It has good arguments on both sides. And I was kind of curious as to what they thought about the issue of death and dying and so I asked them the question whether they supported it or not. I didn't know what the answer was going to be. I didn't even know how much they knew about it. I just asked them the question. Almost every hand of that class shot up and they said, No, don't allow someone to die and hasten that death, almost every one. These are children. These are the hearts. The hearts tell you no, it's not right; we should look at it.

"Mr. President, I know I was long. I know, for some of you, you've heard this. I know, for some of you, that these words probably don't mean much. Mr. President, I did not do this because I wanted to punish you folks. I, like the Senator from Kaneohe, do really, truly like all of you and I don't really do this to be mean-spirited, but I think I needed to make it clear and to take a stand that when something of this magnitude comes across, I think we need to seriously look at it. And I want to be very clear that these issues, even though you might disagree with these issues, even though you might disagree with the concerns raised by these panels and these hundreds of people who spent thousands of hours looking at this, even if you disagree with them, at least I had the opportunity, you had the opportunity to listen to them and to think about them.

"Members, after hearing these arguments you still think that it's worth that one death to go ahead and to pass this bill, that's your conscience. But as the Honorable Senator from Maui said, this is a bill that will be with you for the rest of your life. Think about it hard and carefully. Think about it hard and carefully, because it is a decision that you're going to make not only for your life, but also for the lives of others.

"My position is that I think we should think about it more. I think the concerns raised are valid and I'm willing to put the time in there. Are we willing to put the time for that one life? So Mr. President, I urge my colleagues to think carefully on this, and for today's purpose, to vote 'no' on this bill.

"Thank you, Mr. President."

Senator Matsunaga rose to speak in support of the measure and stated:

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

"Mr. President, first let me say that I do appreciate the very comprehensive remarks of the previous speaker. I also hope he'll be buying us dinner. (Laughter.)

"Second, Mr. President, I do want to acknowledge the Senator from Hilo. He has had the courage to stand by his beliefs, maintaining his personal and professional integrity in

the center of a storm, and that, colleagues, is to be admired and not criticized.

"Mr. President, this issue and this debate is not easy for any of us. Many of us have had painful experiences with the loss of a loved one and this subject brings back painful memories for many of us. But, Mr. President, it is our responsibility to face it and it is time for us to face it. Mr. President, I'm hopeful that we in the community will be able to face it and debate it with civility and with respect for opposing points of views.

"Mr. President, it is time, because there are facts and there is a record of experience to draw upon. There's a clear signal from a federal district judge that it is okay to act. And there is an overwhelming level of public support here in Hawaii demanding that we act. Mr. President, if prudence is to be our watchword on this issue, I believe it is prudent for us to take action now.

"Mr. President, H.B. No. 2487, H.D. 1, Relating to Death With Dignity, is a solid bill based on solid experience in the State of Oregon. It imposes nothing on anyone. It forces no one to do anything contrary to individual values or beliefs. On the contrary, Mr. President, it respects our diversity of beliefs. It enhances individual rights, freedoms, and personal autonomy.

"Mr. President, for the terminally ill patient, it restores the sense of control. For the physician, it erases the burden of legal recrimination. For family and friends, it eases the burden of responsibility and guilt. And for the public, it strengthens the focus on improving end-of-life-care, an issue each of us inevitably must face.

"Mr. President, you have heard arguments today, and I'm sure you'll hear more, that passage of this bill will lead to abuses, that perhaps doctors will abuse the law to kill the sick and the vulnerable patients. Mr. President, aside from the ample protections in this bill to prevent those abuses, and I believe the good Senator from Maui adequately articulated those on the Floor the other day, another serious policy question is raised: At what point do we reject a bill that provides compassionate relief to some because of the fear of potential abuses by others?

"Mr. President, we've heard similar arguments on this very Floor about the fear of potential abuses. Critics, for example, of the medical marijuana bill argued that that bill would lead to more drug abuse. That didn't happen. Critics of the industrial hemp bill argued that that bill would also lead to drug abuse. That didn't happen.

"Mr. President, in the majority opinion in *Compassion in Dying v. State of Washington*, 1996, the Ninth Circuit Court of Appeals Judge Stephen Reinhardt addressed this so-called slippery slope argument concluding – 'Opponents conjure up a parade of horrors and insist that the only way to halt the downward spiral is to stop it before it starts.' He went on to cite critics of abortion and their 'inflammatory contentions regarding ways in which the recognition of the right would lead to the ruination of the country' as an example of our slippery slope that has not materialized.

"Mr. President, 'the legalization of abortion has not undermined our commitment to life generally;' he wrote, 'nor, as some predicted, has it led to widespread infanticide. Similarly, there is no reason,' Mr. President, 'to believe that legalizing assisted suicide will lead to the horrific consequences its opponents suggest.'

"Mr. President, there is no slippery slope here. There is no increased risk of coercing a patient to die. In fact, the very

same Ninth Circuit Court of Appeals found that the risk of coercion might be decreased through the safeguards like those that are contained in this bill. Mr. President, this is not euthanasia, because the patient is in control. And this is not the Netherlands where euthanasia is permitted. And even there in the Netherlands, the rate of non-voluntary euthanasia is up to five times lower than in countries where it is illegal, according to the British Medical Journal, The Lancet. This does not make victims of the poor, minorities, or the uneducated. The facts clearly show otherwise, overwhelmingly so.

“When the federal appeals court in the second district considered these issues, it asked: What concern prompts the state to interfere with a mentally competent patient’s right to define his or her own concept of existence, of meaning, of the universe, and of the mystery of human life? The court said none.

“Mr. President, there is no compelling reason to interfere with that individual’s right. I urge my colleagues to vote ‘aye.’”

Senator Slom rose to speak in opposition and said:

“Mr. President, I rise in opposition to this bill.

“We heard a great deal of personal commentary the other night. Many people were surprised to see members of this body openly weep as they recalled situations in the last days of parents or grandparents. I, too, had similar situations with both my mother and my father. I won’t bring you the details, except to say this – my father originally was diagnosed with terminal pancreatic cancer and was given 48-hours to live. And 18 months later when he died, with me, he died with dignity. And he’s buried at Punchbowl today.

“This bill is about death. We live in an age of euphemisms and we talk about changing the words to make people less concerned or less afraid. And we talk about this bill in terms of death with dignity, but the bill does not guarantee death with dignity. It only guarantees death. It talks about involving the state and trying to change criminal laws and liability laws and to ease the burden, ease the burden of patients, family members, physicians, nurses, caregivers, and other people. If we were talking about taxation or regulation, I would be all for it . . . let’s ease the burden, but we’re talking about death and I can’t see that easing the burden is evidence enough for us to be involved.

“Actually, I don’t think that we are qualified. I don’t think that we have the wisdom to make these kinds of decisions, and particularly if you look at some of the other decisions we’ve made on much lesser areas, if I were sitting in the gallery I wouldn’t want to depend on us to do this.

“I don’t question anyone’s integrity or sincerity. There are good people on both sides of this issue in the gallery, outside, down here in the well, and it is a very difficult issue. As the Senator from Maui said the other night, this may be the most important vote that we ever make. I don’t know whether that’s true or not, but I do know if it is, why only 48 hours to consider it? Why the rush to judgment? Why are we forced to do it now? What is the problem that will not wait for additional serious discussion?

“As we’ve seen, people change their minds, conditions change, situations change. We’re making an assumption also that everyone or the vast majority of people that die, die of pain or die without dignity, and that just is not true. And those of us that have been with someone very close who’s had the pain knows that in most cases two things happen: (1) there are

alternatives; and (2) sometimes that pain recedes for no known medical reason or anything else, but it does. Things change.

“The good Senator from Palolo just brought up two of my favorite measures in the past – the medical marijuana bill and the industrial hemp bill. Both of those bills passed this body by a 13 to 12 vote. I was on the winning side, if you call it the winning side, the majority side of both of those, because I argued, I argued very strenuously.

“We should do everything possible to allow options, alternatives, to allay pain, to do anything that we can for anyone that’s in need. That’s what a government is supposed to do. That’s what a legislature is supposed to do. And I note that some of my colleagues who voted against those bills are now saying that medical marijuana for someone in pain was bad but assisting their death is okay. I find that a disconnect.

“I, too, agree with the Majority Floor Leader’s analysis the other night when he said, ‘intellectually, I have no problem with this.’ We can sit around as a group. We can argue back and forth about the merits or demerits of this or any other bill, but then, as the Majority Floor Leader said, then your heart kicks in, then you remember things that actually happened, then you’re talking about real people and circumstances, and you have questions.

“Very early I was asked my position on this measure. Very early I said I want a hearing on it because I support hearings on each and every bill. A hearing was held. I also said from the very beginning, I’m opposed to this measure. I’m opposed to this measure because of the physician-assisted part of it.

“First of all, there would be more people involved than the physician – nurses and, ultimately, family members as well. We’re allowing the physician to prescribe but we’re not guaranteeing the physician will be there. So we’re getting the physician involved and we’re getting other people involved and we’re also assuming that whatever that so-called lethal dose is, that it would work for you, and you, and you, and you, and me the same way. And we know that’s not true either. In fact, that lethal dose may prove to be very painful, very harsh, and may not even do the job.

“As a practical and candid matter, we have suicides every day. And as a practical and candid matter, we have physicians who are compassionate and may increase that dosage and may make certain changes. We do have options. We do have alternatives. What we don’t have is a willing government as an accomplice to death. And that’s what this bill does.

“I guess one of the most recent books that has just been published, The Case Against Assisted Suicide: For the Right to End-Of-Life Care, from the Johns Hopkins University Press, was edited by Kathleen Foley, M.D., who is professor of the Department of Neurology at the Medical College of Cornell University and also attending neurologist for Pain and Palliative Care Service at Memorial Sloan-Kettering Cancer Center. In this book, in the summary, they look at Oregon, because Oregon is the only state that we can look at, and they make this statement:

“It was hoped that Oregon would serve as a laboratory of the states, showing us how assisted suicide would work. But this has not occurred, in part because the law was not written with such an aim in mind and stipulates that the information collected by the state will not be open to public scrutiny. Even more troublesome has been the restrictive manner in which the Oregon Health Division (OHD), charged with monitoring the law, has interpreted its mandate. It limits its yearly reports to general

epidemiological data and collects limited information from physicians who have prescribed lethal medication only.'

"The summary goes on to say:

'Under the Oregon law, when a terminally ill patient makes a request for assisted suicide, physicians are required to point out that palliative care and hospice care are feasible alternatives, but they are not required to do so. They are not required to be knowledgeable about how to relieve either physical or emotional suffering in terminally ill patients, and there is no requirement for courses in pain management, palliative care, or the evaluation of a suicidal patient for physicians wishing to practice assisted suicide. Without such knowledge, the physician cannot present feasible alternatives. It would seem necessary to require a physician lacking such training to refer any patient requesting assisted suicide for consultation with a physician knowledgeable about palliative care.'

But that is not required by either the Oregon law or the Hawaii law.

"I heard that a federal district court judge approves of what's going on. That enthused me until I heard it was the ninth circuit court judge. The ninth circuit court is the joke of the judicial community. It's had more of its decisions overturned and more decisions that have been questioned by other jurists than any other district. But even if it were so, I think that there's more that we have to rely on.

"But for me, when all is said and done – all of the arguments, and they were good arguments on each side – again, we're not talking about a tax increase; we're not talking about pedestrian safety; we are talking about death and the government's role in it. And more importantly, as I've said to those who've asked me from the very beginning, it is physician-assisted death.

"The good Minority Floor Leader the other night made an impassioned presentation and he mentioned the Hippocratic oath. Boy oh boy, we talk about pledges and oaths and it seems that nobody adheres to them anymore. Nobody's word is good. Let's hope that the doctor's word is good. Let's hope that after thousands of years the Hippocratic oath still has value. How does it start out? First – Do No Harm.

"As I've told proponents of this legislation, the thing that has bothered me from the beginning is, if you have an individual who has murdered, raped, or tortured other individuals, and somehow has been injured by the police or law enforcement or by citizens, the doctor, the physician must and does give the maximum care to save that individual's life. Now personally, that would not be my choice, but I would rather err on the side of the physician having one course of action only – and that is to save life. And that's what this debate is all about.

"Thank you, Mr. President."

Senator Sakamoto rose to oppose the measure as follows:

"Mr. President, I rise in opposition to the measure. Just a few remarks, in part, in response to some of the comments that we've been receiving, as well as in part to some of the comments the Senator from Palolo has given.

"First, one of the comments was about this being 'prudent to take action now.' How does a pharmacist know or be assured that the intended lethal dose is to assure it's a terminal situation and indeed if it goes to the right person? He, as well as the Senator from Kauai, says you know, I'm afraid for the patient

who's defined as competent, would a depressed patient also be a competent patient? More than one-half to two-thirds of patients with depression are not diagnosed or treated. Should we be protecting these patients from terminating their lives prematurely?

"An emergency room physician wrote, quoting ethicists saying: 'A patient must never have to suspect that his physician might become his executioner.' Relating to surveys, apparently the Hemlock Society has admitted that older Americans and terminally ill patients tend to be more against legalized physician-assisted suicide than anyone else.

"There was a point about this would ease the burden of responsibility and guilt. One comment was about a person feeling that if he ended his life and suffering, more medical care would be available for his grandchildren and great-grandchildren. And feeling his life is nearing an end anyway, and missing his wife terribly, he might as well opt to end his life. Responsibility and guilt? Increased sightings that patients might feel that they're a burden to others, giving them this choice doesn't ease their responsibility and guilt, they feel more responsible.

"Many times it's an issue of society as a cost containment. Elderly patients sometimes are greedy geezers eating up the nation's health care dollars who should be gently persuaded by others that assisted suicide can be the morally correct thing to do for family and society.

"Mr. President, another comment about the patient is in control . . . well, a proponent of the measure says perhaps this would affect seven to eight residents of Hawaii, annually. And if that's the case, Mr. President, I don't think we should err on the side of placing this mantle of burden of responsibility . . . and it's not only on the patient, because as we all know, if someone is in pain, and if they're diagnosed to die soon, they reach out. They reach out to their loved ones. They reach out to their doctors. They're reaching out to say, 'can you confirm a decision, since now I have an ability to say this is the time.' They're reaching out and it's not just their decision.

"Finally, Mr. President, I do agree with the comment or the issue about a slippery slope. Someone wrote to me that talk of a slippery slope, and all that, is nonsense. I agree. This is not a slippery slope and that is nonsense. This is a cliff and we ought not treat it lightly. We ought to wait and we ought to deliberate in the proper manner, lest we do things that we aren't able to recover from.

"So, Mr. President, I urge our members to vote 'no' and let's have continued discussion to see, indeed, how we can address the many, many issues brought up from the Senator from Kauai and, indeed, how do we deal with many of the issues brought up on both sides that have been addressed.

"Thank you, Mr. President."

Senator Kawamoto rose to speak against the measure as follows:

"Mr. President, I speak in opposition of this bill.

"Mr. President, I'm just a simple guy. I grew up in a Christian family, but basically, I believe in the good Lord giveth, and the good Lord taketh away. The question of why, when, and where remains a mystery of life. And maybe so, that it remains a mystery of life, therefore, I urge my colleagues my colleagues to vote 'no' on this bill."

Senator Hanabusa rose in support of the measure as follows:

“Mr. President, I stand in support of this measure.

“It was somewhat unprecedented on Tuesday evening when we had such a lengthy debate on the measure, especially since it was on Second Reading. Much was shared with all of us and emotions were high and the stories very moving.

“One thing that I do want to point out is that what may have been lost in the process was what I considered to be the magnanimous act of the Chair of the Health and Human Services Committee when he voted ‘aye, with reservations’ to recall this bill, H.B. No. 2487. That act has permitted this discussion that we are having today and the discussion we had on Tuesday evening.

“Unlike other bills, Mr. President, which we have seen recalled, this bill did have a lengthy public hearing by the Chair of Health and Human Services. I remember watching it over the Capitol TV. That hearing was properly noticed and it also received full hearings in the House. What is more important, though, is the fact that the Chair of the Health and Human Services Committee had studied this bill and formulated his opinion based not merely upon his religious belief, for which he has been criticized and falsely accused of, but with a very keen legal eye on the provisions which have been set forth in that bill.

“When the bill was held, the case of *Oregon v. Ashcroft* had not been decided. That decision was made by the United States District Court for the District of Oregon on April 17, 2002. Even before that and after that I have had many discussions with the Chair on this bill and I’ve also had the opportunity to discuss it with the law professor who was part of the Oregon legal team on the Ashcroft case. What it all comes down to, Mr. President, is how we define this bill – what the words physician-assisted suicide means to people and what death with dignity means to people.

“My first reaction to H.B. No. 2487 was that it was very limited in application. Let us discuss this bill and understand what is before us, H.B. No. 2487, not talk about it generically, but let us look at what is clearly before us. The good Senator from Maui, who I’m always reminded from the other Senator from Maui that I must include Anahola, went through details about what is required in this bill. It needs the confirmation of two physicians. It needs the time of 15 days between two oral requests, then 48-hours between a final written request – three separate acts. It needs the determination of competence of that patient and if there is a need for counseling, that also must be part of this process before a physician can prescribe the drugs sought. More importantly, physicians are not required or mandated to participate in this process. And let us not forget that the person must be diagnosed six months to death, a terminal disorder.

“So what does this mean? This bill is really one about choice, Mr. President. It gives the person a choice. The person has six months to live. That person will then decide, if he or she wants to, how they will define their respective death and how that death, in their own minds, will be with dignity. It doesn’t mandate that anyone does it for them. As a matter of fact, you can’t. It doesn’t mandate that a person must do it. It is their choice.

“This bill is not what others have touted it to be. It is not a Kevoorkian model. It is not that some doctor is going to come in and make the decision for you. It is not that your agent or your family members are going to decide that now is the time for you to go so you must go. It is not that. It is for you to decide. It is the individual making the choice. This is why we have to look

at the bill. We have to look at the provisions of H.B. No. 2487 to properly understand what it is saying.

“Let’s look at the roles that the providers, the physicians, the pharmacists, the counselors play. And let us look at what we, as a legislature, through this act is doing in terms of their most critical aspect of it – the immunity that they are granted. The physician goes up until the point after it’s been determined and a second physician has agreed with the determination that this person is competent and has six months to live. That physician prescribes. That physician’s prescription can either be picked up by the individual or that physician can deliver it to the pharmacist. The pharmacist can only . . . contrary to prior representation it cannot be sent UPS. That prescription can only be either picked up by that individual or picked up and delivered by the physician. My hunch is more than likely that physicians will end their whole intervention in this matter at the point that the prescription is made.

“Then let us look at this issue of administration. How do you take that lethal dose? You have to do it. You, the individual, have to do it. No one else can do it for you because the immunity has stopped – no one else. It is your choice. You can rescind your directive. You can choose not to do it at any time. It is you. So when we talk about physician-assisted suicide, physician assistance ends at the point of prescription. Everything after that is up to you.

“When I looked at the bill and I had discussions with people, I said, you know, this means that if you are really not able to feed yourself, not able to put anything in your mouth, or require something to be ground up so you can consume it, and you’re not able to do that, you really cannot administer this, because anyone else put in that position to assist you can be subject to legal challenge, can be subject, potentially, to murder because they are not immunized under this statute. So it is you. It is you, the individual, who will make that choice.

“Now, the Oregon court that recently ruled on April 17, found that these kinds of decisions are for us states to make. It is not something that the federal government has the right to intervene in and that, by the way, was challenged. It was a preemptory challenge based upon the controlled substance act. They said no, this is clearly, Mr. President, within the purview of people like us – the various state legislatures.

“Let us also not forget that we are not doing this in isolation. We have the uniform health care decisions act, which is HRS 327E. Let us look at what choices we give people now. These are, of course, the directives that we execute, and this is part of our laws and we are letting people say this. For example, we have in here, paragraph (6), end-of-life decisions, where you say, ‘I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below.’ Then let’s look at the choice not to prolong life. It says: ‘I do not want my life to be prolonged and if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits.’ We permit people to make those choices.

“Look also at subparagraph (8), relief from pain. It says: ‘If I mark this box [], I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.’ We have passed this law. We have said it. Yes, we haven’t said this is physician-assisted suicide, but we have said you can give me medication to make me comfortable even if it means it hastens my death. And I can direct anyone, whether

it's the physician, the care providers for me, that under those certain conditions, you will not prolong my life.

"So what does this bill do? This bill presents another alternative. It presents an alternative to people who are diagnosed as terminal with only six months more to live. And if they are mobile enough and they are capable to administer this prescription to themselves, then they can make that choice. And that is what this is all about.

"This is about choice, another choice that we're giving the people, in addition to that which we have set forth in the Uniform Healthcare Decisions Act, HRS 327E. We're not reinventing the wheel on this. We've already given these kinds of acts, which, if you read it carefully, you may say, 'hey, this sounds a lot like the physician can assist.' Maybe we don't call it suicide, but they can definitely assist in your death coming sooner rather than later, depending on health directives that we as individuals make. And let's not forget that.

"It is a decision that we are simply permitting people to make for themselves. We are saying, not as government, that you can't do it. We are saying, as government, these are the choices. What choices each and every one of them make is between them and their conscience or it's between them and their God, whoever that God may be for them. It is their individual choice.

"I've had many discussions on this with the Chair of Health and Human Services and we basically disagree. I have resolved all of my discussions, Mr. President, with the conclusion that I can support this measure, because for me, it is the next step to what we have already given the people of this State. It just gives another category of people this opportunity if they wish to administer it to themselves.

"Remember at what point the doctor's intervention ends and at what point they must do it themselves. Therefore, this is a measure that talks about choice. It talks about a person's rights, and it talks about the ability to make that decision.

"For that reason, I urge my colleagues to vote in favor of this measure, to vote in favor of choice, to vote in favor of recognizing that people have the right to control their destinies. As we have said in the past, women have the right to control their bodies, people have a right to control their destinies. And that is what this is about.

"Thank you, Mr. President."

Senator Nakata rose to speak in favor of the measure and said:

"Mr. President, I rise to speak in favor of this bill, but before going into my comments on that, I would also like to thank the Chair of Health and Human Services. I deeply respect him, the experiences he brings to this discussion, what he had to endure in terms of the process of getting this bill to the Floor at this time. I did speak with him about my vote to pull the bill out of his Committee before it was done. I felt an obligation to do that for him to at least inform him.

"My previous experience with a bill being pulled from my Committee was not as pleasant. I was not informed, so I felt that I owed that to him. Procedurally, maybe it's not the best way to handle bills. We need to respect the institution of the Senate. And for those of you who were offended by my action, I do apologize.

"Then for the good Senator from God's country, some of our colleagues say that I misinterpreted your question to me the

other night. I thought you had asked me whether I had any applications to be God, and some of you in this body tell me that you were asking me if I was God. And I will assure you that I am not and I have no aspirations to be that, because throughout history, people who have the presumption to think that they are God, have a tendency to be murderers, and that is not an ambition of mine.

"Pardon me, I'm a preacher so I have to apologize to you. I think I will spill over to preaching in a couple of places here. Scriptures are not set in stone. I will say that. Sometimes I feel like I'm a heretic. I look at the scriptures with maybe more freedom than most do. Scriptures sometimes seem to forbid or allow for slavery and we do not allow for that today. I'll just drop it at that now. Those are examples of how conditions change.

"Conditions do change. This is an issue of choice. In the Garden of Eden story (here I go), there were two trees. And sometimes we forget that there were two trees. The first was the tree of the knowledge of good and evil, the loss of innocence to understand right from wrong, and we know the havoc that has happened from having that ability to choose between right and wrong. The other tree is the tree of life, and I interpret that to mean immortality. We have already taken a bite from the fruit of that tree.

"Medical science has placed decisions of death in our hands. It is no longer just in the hands of God. We decide. And more and more, that decision will fall into our hands. More and more the decisions about the environmental consequences of our actions fall into our hands. As our population grows, water resources become scarce and many speculate that this scarcity may become the cause of more wars than anything else in the future. So, it is choice. We have to make choices on many, many of these major issues. And with medical science able to prolong life far more than it has been able to do in the past, choice comes into our hands.

"I have to laugh because I think of myself as a quiet, meek, and mild person, but I guess around me some storms swirl and I think I help to feed them. For doctors, even the Hippocratic oath may need to be reinterpreted because medical science has moved us so far along. What does it mean to do no harm? In the discussions, there's talk about families that may pressure their loved one into this physician-assisted suicide sooner than that person might want . . . questions of greed. But there are questions from the other side too. There are questions about whether doctors, hospitals, whatever, sometimes keep patients alive too long. And we know that medical costs are greatest in the last few months of life. So there is that side too. I don't want to make accusations, but there is that to consider. We are human beings and we are all subject to sin. Boy, I'm really preaching . . . I'm sorry.

"But there are different sides. In this bill, there is a requirement that the patient be informed of palliative care, of hospice, of pain management. These are all options. We really have been given the awesome task, but we will be given more and more of that task of deciding when our life comes to an end.

"We cannot talk about death without talking about the other side of existence, which is life. Here, decisions need to be made far in advance of the day of our dying. What gives meaning and purpose to our life? And this may be judgmental on my part, but I do believe that those who die a good death, a beautiful death, are frequently ones who have had a strong purpose in life, so that when the time of departing from it comes, they can depart in peace.

“One other aspect of this that I want to touch upon, touched upon by the good Senator from Kauai, and I don’t mean to be contentious, but I have been involved in social justice work all of my life. And yes, it is a concern that those who are poor have a lesser quality of medical care. Among those who have affected me most in the discussion around these issues are the disabled, who express a genuine and legitimate fear that they will be victims of this legislation. As I said, I will be in support of the bill, but listening to them tells me that I need to work, continue to work on the issues of social justice so that these persons can be assured that their concerns will be addressed. It becomes a challenge in my life and I think in all our lives to see that social justice is done.

“There will be errors. I know that. We are human and the errors will be made and people will die unjustifiably. But in all of life there is unfairness. In almost all areas of life there is unfairness. The commitment should be to eliminate that unfairness to work at justice. It’s a difficult weighing process. But in all of that, I have come to support this bill and I would urge my colleagues also to support this bill.

“Thank you.”

Senator Kim rose in opposition with reservations as follows:

“Mr. President, I rise to speak with mixed feelings on this measure, and therefore I will be speaking with reservations in opposition.

“Mr. President, no matter what other states have done, no matter what task forces around our country have said, what doctors, what nurses have said, I believe that this is a personal choice. I believe, after reading this bill last night, that the bill assures that it is one of personal choice. We have heard today about ease of burden, guilt by family members. Mr. President, what this bill talks about is the ease of my burden. I want to make that decision. I am in support of the bill, and that’s why I speak with reservations in opposition, and I will get to that in a minute.

“I believe that it should be my choice, whether I choose to suffer or not suffer, not so much whether my son will make that decision, but that’s the decision that I should choose. And yes, maybe the disadvantaged and the poor may have problems, but, you know, they suffer too, and they may not have the means or the money with which to choose to have alternatives done so they can ease their pain. They should have the choice and this bill does not require them or anyone else to do that.

“What I am bothered about the bill, Mr. President, is that yes it is one of the most important decisions that I will make being in public office. I recognize that and I recognize all of the phone calls and letters and e-mails that I have gotten. And I do not appreciate the threats that people will either vote for me if I vote for it, or vote against me if I don’t vote for it. That is not entered into my decision. And really, I don’t think that they make our decisions any easier because it is one of personal choice and one that I respect every person here for whatever decision they make.

“What bothers me about this decision, Mr. President, is that I am forced to make it in such a short time. I have read the bill and there are a couple of areas in which I am not comfortable with the bill. I would like to see amendments made to it and I don’t believe we need to rush. And yes, this bill may have been around for a while, Mr. President, and while it may have had a full public hearing, I think that there are areas in which we can make even better.

“I am at least bothered by the fact that only a two-week doctor/patient relationship is required. I think that is very bothersome and I would like to see that changed. The fact that no one is required to be with the patient at the time that he or she ingests this lethal medication is of problem to me, Mr. President. I don’t believe that one should have this and make this decision and go into some corner somewhere and take this medication and then die. That is very troubling.

“I’m sure there are other areas in which I have not articulated that can be made better. What does bother me, however, is that those in opposition to this bill do not seem to have the compassion that they will change no matter how many amendments are made to this bill, that they will hoist their feelings and their values and their morals upon the rest of society. Yes, I am of Catholic faith. And yes, my religion says that suicide is not part of our faith, but I am of pro-choice and again, I believe that I should be able to choose whether I should suffer and when that time should come.

“And so, Mr. President, with very, very mixed feelings, I will vote ‘no’ on this measure because I would like to see us when we make this very, very important decision, that we make sure that it is the best decision that we can make. We will not ever have a perfect bill, but intellectually I cannot accept it at this point in time. So I’m very different from my good neighbor here to my left. My heart is for it, but intellectually I believe it can be better and we can make more safeguards.

“Thank you.”

Senator Hogue rose in opposition to the measure and said:

“Mr. President, this is going to be very hard. Like the previous speaker, I am pro-choice. I believe in choice . . . but after reaching deep inside my heart, spending a sleepless night debating over and over and over this issue, I will choose to vote ‘no.’

“I did this, Mr. President, because there was talk earlier about an oath – an oath that doctors take – but there is also an oath that legislators take. There is an oath that we represent our constituents. I have listened to my constituents.

“Last night I still hadn’t made up my mind. I called my chief of staff and said we need to hear from more people. We’ve been deluged by phone calls in the office. I really don’t believe that those necessarily recognize and represent my constituency. They represent those people who have a strong feeling one way or the other. I need to go out and I need to talk with the people in my district. So, a little bit after 7:00 this morning we started walking the district as much as we could get in. Unfortunately, the other night I heard the message that we were going on the Floor at 12:30, so I thought we were going to get about five hours in. I got a call just outside of a nursing retirement home in Kaneohe this morning a little after 10:00 that I’d better get my okole down here because they were already in Session, so I apologize if I look a little harried here.

“I can tell you the results of that poll, if you want to call it a poll, or my discussions with people show how polarized and how emotional and how personal this issue is. The office phone messages were overwhelmingly ‘no.’ The faxes were ‘no.’ The e-mail was mixed. But, outside of a coffee outlet in Kailua, they wanted my to vote ‘yes.’ Outside of a fast-food outlet in Kailua, they wanted me to vote ‘no.’ In the Kailua business district it seemed as if they were leaning towards ‘yes.’ In the Kaneohe business district it seemed like they were leaning towards ‘no.’ At that nursing and retirement home, the feelings were mixed – these were the people who were at the closest to this difficult decision in their lives. Continuing in Kaneohe,

they were again very mixed, very polarized. Some people had some very harsh things to say. Some people had some very favorable things to say.

"I spoke to doctors. I didn't even know that they were doctors when I approached them. Some said 'yes' and some said 'no.' Those who said 'yes' said they had seen the pain that people go through in their final stages of life and they said that no one should have to go through that terrible pain . . . and I agree. I talked to a pharmacist on his way to work who said he would be willing to give this prescription, this lethal prescription, and he knows it's a very, very tough choice. But then I talked to other doctors and other pharmacists and other medical personnel that I met along the way who said that there was no way that they could do this.

"Let me tell you why. It has to do with something I learned right out of college when I was, for a couple of years, a certified public accountant with Price-Waterhouse. I really wasn't the best accountant in the world, but I could add and I could subtract and I could follow what we were supposed to do. But one of the things that they taught us was that if there is the appearance of a conflict of interest, then you must step away. And that's what would happen in the medical community. There would be the appearance of a conflict of interest. Those who would go to their doctors, those that would make this difficult decision, they wouldn't know, they wouldn't know, where their doctor stood. Was he there to save them? Or was he there to perhaps lead them to a choice that they may not want to make?

"I do agree this is a very, very personal choice. My family, we got together and we talked about this, and I can tell you it was mixed in the family . . . very, very difficult decisions to make. My 13-year-old son said, 'Dad, this is about choice. Dad, vote for choice. Vote up.' But others in my family said, 'Dad, how can you make this decision when you don't know totally what the results will be?'

"And that is so true. I started this long discussion and debate in my mind by moderating a panel on this particular subject back in November. I met many of the very good people that are up there and I respect every single one of them. And I want you to know how much I appreciate everything that you had to say in that particular panel. And I met many of the people that are up over here and I respect what they have to say, as well. And many of them came to visit me yesterday and they were respectful and courteous and they understood what a difficult decision that this is to make.

"I understand that there are those on both sides who have extreme arguments, and I've tried very, very hard to dismiss those arguments. There is a man sitting right up there with a hat on who has prostate cancer and I apologize, sir. I'm sorry that I cannot help you make the choice that you want to make. I know you want to make it, but I know deep in your heart you will understand the tortuous decision that I have had to make and why I have decided to choose this way.

"What ultimately led me to this decision, besides the appearance of the conflict of interest in the medical community, is that, as I talked to an elderly woman inside a nursing retirement home in Kaneohe today and I asked her the question of whether or not she could support this, she said, 'you know, at that time in your life as you're approaching death, who's to say whether you'll be in control of that decision?' And I couldn't answer that.

"Can we honestly say, if we pass this measure, that the people who want to make that choice will be in control? What happens if we're wrong?

"This has been so difficult, so emotional. I have cried many times. I apologize for my emotions. I wanted to support this measure, but the debate must go on. We must have proper hearings. We must continue this discussion and I know it will continue to be emotional. But if I have saved just one life, and erred and saved just one, then I have made the right decision.

"Thank you for listening."

Senator Tam rose to speak against the measure and said:

"Mr. President, I stand before this body and the public to declare my 'no' vote on H.B. No. 2487, H.D. 1, relating to death with dignity.

"My 'no' vote on H.B. No. 2487 is based on the views of the following, contrary to the discussion of whatever the merits of the bill may be for or against.

"Number one, upon reviewing the faxes, telephone calls, and e-mails from my senatorial district, I discovered emotionalism and misinterpretations of H.B. No. 2487, H.D. 1, before us. The unclearness of the bill before us by the public is of concern to me. At this time, I find that it is not sufficient on this specific legislative proposal to only have public hearings before the legislative bodies of the House of Representatives and the Senate in formulating a final decision on the outcome of this legislative proposal. Thus, this proposal needs more awareness and discussion throughout the communities of our State, especially in my community.

"As a State Senator, it is my duty and job to embrace democracy. The public has stated very loud and clear that there is a lack of public involvement on this legislative proposal, as evident by the number of people here in the gallery. It's not too often that we have such a crowd here. We welcome them being here to view our legislative process.

"Secondly, the legislative proposal before us was structured by Governor Cayetano's task force made up of his chosen task force members without any community public hearings. Many of you know how I emphasize the need for public hearings. This is not an embracement of democracy, which we all know is open government. The denial of public involvement has resorted in emotionalism and misinterpretation of the legislative proposal. Sorry, Mr. Governor, I'm not your rubber stamp and I never will be.

"The Constitution of the United States and the State of Hawaii states that there are three separate branches of government – executive, legislative and the judicial branch.

"Mr. President and fellow colleagues, in embracing the nickname, which many of you laugh about, 'Mr. Sunshine,' which I have been identified as in the Senate, I clearly state that in fairness to all the parties involved, there needs to be more public hearings during the interim and during the next legislative session before we can make a truly informed and educated decision.

"What I'm stating is the classic example of what I do as a parent of two children – a son who's 10 years old and a daughter who's 9 years old. When there's a disagreement between the two, I pull them aside in a respectful proper environment where we can sit down and I listen to both sides. I try to resolve their disagreement. That is what we're supposed to be doing here and we try to do, but with the emotionalism here, it's very difficult, especially with the misinformation out there.

"In closing, this legislative proposal, for me, is not an issue of whether one is religious or not. Our Constitution of the United States and the State of Hawaii states that there is a separation between church and state. Also, I'm offended by those people from religious orders who call my office and threaten me. How dare you be that way – in the name of God and using the name God. That's an insult to religion. Use this opportunity to communicate to us, but don't threaten us. Use your manners. That's all I ask for. Let's talk story. What you're teaching our young ones out there in terms of threatening all the legislators here is a very poor example for our young ones in the future.

"Let us embrace relationships with communication. Hawaii is a very blessed place and a land of aloha. Why? Because we have a diversity of ethnic cultures bringing relationships between family and so forth. Let's not be like the mainland, whether it be California, New York, or whatever. There's no culture there. There's no unity. When I went to the mainland for college, I was surprised that the youth in the mainland had to pay for their own education. If you do that over here in Hawaii, that's an insult . . . you're not a good parent. So let us all embrace in terms of communication. Please, no insults.

"I have received faxes, by the way, and e-mail from different denominations of religion. Guess what? There are those for and against. This is why I'm a little puzzled in terms of this issue right now. There's too much emotionalism, too much misinterpretations. I, personally, as a Senator from my district, need the time to go out into the community, as my colleague from the Windward side stated earlier, to walk the district. Why? Because the community wants to embrace more communication.

"Quite frankly, I think all of this could have been avoided, and I hate to point fingers, but the administration should have done its job. If they wanted to introduce a proposal, go out into the community first, gather comments, or do it jointly with us, instead of dictating legislation.

"Thank you very much."

Senator Matsuura rose in opposition to the measure and said:

"Mr. President, I respectfully rise in opposition to this bill.

"I would like the prayer that was given this morning to be inserted as if it were my own. Thank you."

The Chair having so ordered, the prayer reads as follows:

"Our Heavenly Father, we come before you in the power and saving grace of our Lord and Savior, Jesus Christ.

"I thank you for your presence and divine appointment with us here today. We welcome you and honor your presence.

"We welcome your Lordship over our lives today and all our days to come.

"I pray, Lord, that you will bless and open the windows of Heaven over this Senate today and pour down your Holy Spirit to reveal your love, your mercy, grace and heart to us that we may truly know you in a way that we have never known you before.

"Father, I pray that you open our hearts and minds to the leading of your Holy Spirit.

"I pray that your love will guide, encourage, exhort, and challenge these Senators that you have chosen to lead this unique and great State of Hawaii.

"I pray that you will give them the strength to be honorable men and women with integrity and courage to stand against the tide of injustice and ungodliness in these islands and our nation.

"I pray, Father, that you will give them wisdom and Godly counsel that they may speak and make the right decisions that will bring unity, honor, and glory to your name.

"I pray that you will give them the heart, grace, mercy, and forgiveness to be true men of compassion and equality.

"I pray, Lord, that surely as there is the power of life and death in the tongue, that these legislators will choose to speak life and righteousness for this State.

"I pray that you will bless and fill those who hunger and thirst for righteousness.

"I pray that your peace that surpasses all understanding will surround and comfort each Senator here today.

"I pray that you will show mercy to those who are merciful.

"I pray that you will bless those that are persecuted for righteousness in your name.

"I pray, oh Lord, that there will be no more compromise to your word, that your word will exalt itself over every situation and circumstance for these islands and this great nation.

"I pray that these leaders, whom you have chosen, will make a firm decisive decision to stand for righteousness and your word.

"I pray you will exalt, encourage, and increase the influence for those who will stand on behalf of your name.

"I also bless and pray on behalf of those who have not heard your message that with compassion, grace and mercy you will make known your great plan of unity and salvation and endless love to them.

"I pray, Lord, that as the heavens are higher than the earth, so are your ways that are higher than ours, and your thoughts higher than our thoughts, that your word will go forth and overrule our thoughts and our emotions, that your perfect will shall be done for our State.

"I pray, Father, that your word will go forth swiftly with love and power and liberty to show us your ways that we may understand and walk in them.

"I pray that your plans and purposes will be fulfilled for each of these honorable men and women here today.

"I pray that you will guard and keep their hearts, minds, and spirits from all evil influences and thoughts that will hinder and distort the truth of your word for their lives for this State and our nation.

"I pray, Father, that you will direct our hearts into the perfect will and love of God that together with unity of all peoples we may fulfill the great destiny you have for us in these islands and our nation.

"I pray that everyone, from young to old, will have a true complete, clear, simple understanding and revelation of our state motto: 'Ua mau ke ea o ka aina i ka pono' – The life of the land is perpetuated by the righteousness of Jesus Christ. May these words compel us and exhort us to our inheritance, heritage, and destiny for these islands and for our nation to this generation and all generations to come that truly we may become one nation under God, with liberty and justice for all.

"I pray, oh Lord, with all my heart that it may start here today and now.

"Guide them and lead them, I pray in the name of our Lord and Savior, Jesus Christ. Amen."

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

"Mr. President and colleagues, I just want to thank everyone here for really sharing from their hearts. Wherever we are on this issue, and for everyone in the gallery and also watching this, I really appreciate that you folks are taking this very seriously because I think it is a very important issue.

"I stand in support of this bill and I don't believe it will be passing this Session, but I'm very grateful for the opportunity to have this discussion.

"By way of background on this issue, I was one of two legislators in 1993 who attended every single informational hearing statewide on this issue. I served on the House Judiciary Committee and I listened intently to the many compelling testimonies of both proponents and opponents of this issue. There were stories I heard of pain and suffering, of human courage and compassion, of family tragedies as well as of hope, and the pleas for respecting the dying individual's dignity and wishes. They were very powerful for me and very moving. These experiences strengthened my commitment to what I could do as a legislator to help people live as comfortably as they could in their remaining time on earth with dignity and in peace.

"During my service as Chair of the House Committee on Human Services and, later, Co-Chair of the Senate Committee on Human Resources, and Chair of the Senate Committee on Health and Human Services, I worked with many of you here, and our community, and the executive branch and enacted landmark legislation relating to hospice care, health insurance coverage, and advanced health care directives, which our Senator from Waianae had mentioned. I also worked with Dr. Len Howard representing the Hawaii Medical Association, at the time, to encourage training opportunities for medical professionals in the area of palliative care and pain management. I'm happy to hear that the EPIC program, which is training many medical professionals in pain management and palliative care, is doing well, and I think we need to support that. I also understand that Kaiser Permanente has taken a leadership role in providing palliative care for its members.

"Hawaii has come a long way in recent years to provide compassionate care for those who near the end of life, and I thank the Legislature and the people of Hawaii for having this foresight, commitment, and compassion for its people.

"With these successes, though, we still see many in the medical profession not honoring the dying patient's advance health care directives or living wills. They are fearful of the living relatives and the possibility of being sued. We are seeing living relatives of the patients attempting to override the patient's last wishes. We still see a real hesitancy on the part of some doctors to administer pain medication to patients for fear of accelerating a patient's death even though our law protects them.

"There are some doctors who have experienced seeing their patients in excruciating pain that no one and no medication available presently can relieve. These patients beg for help, but they cannot get relief from their pain.

"I really felt that this bill affirms the patient's right to choose and to be able to die with dignity and in peace. I hope that this discussion compels the medical professionals to do all they can to care for their patients and explore with them all options of palliative care, pain management, hospice care, and other services available. I hope this discussion compels medical professionals and family and friends to do all they can to love their family members, but also to truly honor their wishes.

"This is an extremely emotional issue and I just, again, wanted to say thank you to all who have shared their personal experiences even though it was very hard. And I do hope that as we discuss, as a community, this very important issue, that we have even strengthened our resolve more to address the suffering that is occurring in our community and help make the end of life for people the best that it can be.

"Thank you, Mr. President."

At this time, Senator Kim moved that H.B. No. 2487, H.D. 1, be recommitted to the Committee on Health and Human Services, seconded by Senator English.

At 1:31 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:41 o'clock p.m.

Senator Kim rose and said:

"Mr. President, by request of my colleagues, I withdraw my motion to recommit."

The Chair so ordered.

Senator English then rose and said:

"I withdraw my second."

The Chair so ordered.

Senator Hemmings rose to speak against the measure and said:

"Mr. President, I rise to speak against this bill.

"What a glorious, glorious day this is and what a journey we have been on as human beings for the last three hours. I never thought that I would stand on this Floor and say how proud I am of this body and the way we've acted today. There hasn't been one hint of partisanship. There hasn't been one hint of politics.

"This body in the last three hours has searched our intellect, and more importantly, colleagues, we've searched our souls. I think it's one of our finest hours. I think I'm so lucky to be on this journey through life and so lucky to be here participating in this because we're blessed not only with an intellect, but yes, we are blessed with hearts and souls. Ultimately, the magic of human life is not in our intellect; it's in our souls.

"Medical science has not placed in the hands of our doctors, death. Medical science has placed in the hands of our doctors, life. After this intellectually challenging and soul-searching debate, this Senate will now vote. How lucky we are to be here at this time, to be so honest with ourselves, and to speak from our hearts on this issue.

"I urge my colleagues – do vote your heart. I will be voting against this measure."

Senator English rose to speak in opposition to the measure and stated:

"Mr. President, I rise in opposition.

"Mr. President, members, there are very few things that are certain in life. When we are born, we accept death. We also accept, as a condition of life, suffering. In fact, the idea of suffering is what makes us stronger, is what gives us the fortitude to change conditions and to change the human condition, and in fact, the condition of all sentient beings.

"Our discussions the other night on this Floor was very emotional for many of us. I recalled my grandparents. Many of you recalled your parents and your grandparents and we talked to each other in a very personal and deep way. I still reflect

now, as we talk about this, about the responsibilities and burdens of life and what has been placed upon each one of us.

“For me, personally, it has been my honor and responsibility to bury every single one of my immediate family – everyone. Twice orphaned, my mother passed when I was 11. My grandparents recently passed. My uncles have passed. So this is very close to me and I’ve come to understand the intricacies and the glories of the dying process from a personal level.

“Like I said the other night, my mind, my intellect, can accept this measure, but my heart cannot, and I’m following my heart.

“There’s an old Buddhist saying, a very, very ancient Buddhist saying that when you enter life, you are crying as you come from the other side and everyone around you is joyous and happy, and when you leave, everyone around you is crying and you are joyous to return.

“I hope that this discussion, this debate, both from the intellect and from the heart, has helped us to create the foundation for dealing with this issue in the next Session. By my count, Mr. President, this measure will fail. There will be 11 votes for it and 14 against it. But nonetheless, I think this issue will be back again, and again, and again, until we finally come to a definitive conclusion.

“This is the first of many of these types of issues to come before legislative bodies across the country. As technology advances, as science advances, and yes, as spirituality evolves, we will be dealing with questions on both ends of the spectrum – what is a life; what constitutes a sentient being; cloning; the dying process; the moment of death; pain management. All of these issues will come before us more and more frequently because of advances in technology and science and, yes, the human spirit.

“So, Mr. President, members, colleagues, I say to you that in the interim and in the time between, take to heart everything that we’ve heard here on this debate and realize that we will be facing it in the future. Also realize that sometimes you have to make decisions based on the greatest good for the greatest amount of people, and you have to be able to put aside your personal feelings and your personal convictions on that issue. We’re heading towards that with death with dignity.

“This is not the time, this is not the place for this decision to happen today. The issue is not, in my mind, yet right. So with that, Mr. President, I say thank you and ask that we call for the question.

“Thank you, Mr. President.”

Senator Chumbley rose in support of the measure and said:

“Mr. President, I rise to speak in support of this bill. I promise I won’t be as long as my fellow colleague from Kauai who’s waving at me.

“I first want to thank the good Senator from Hilo. Senator Matsuura, thank you for allowing this debate to take place. I, too, agree that what you did by allowing this to come to the Floor and for us to engage in this debate truly makes a bond today that we have not seen before on this Floor. It will make each and every one of us better for that debate that we’ve had today and it will make the whole community and society of Hawaii better for that debate.

“The Senator from Kaneohe, you don’t need to apologize for your emotions. This is not appropriate and we reject your apology. (Laughter.)

“Senator Matsuura, before I go on, I do want to ask you to send your mother a message. She called me and asked me if I would reconsider my position. Please apologize to her, because I won’t. But I have a tremendous amount of respect for Ruth, both as a doctor and as a human being. So, please send my apologies to her.

“About three hours ago, there was some discussion about what was going on in other states and what was happening across the country, and that there were 54 measures in 21 states. I think that is at the very heart of some of the things that we’ve experienced today too. That debate across the nation is going to continue.

“Recently, the Supreme Court was drawn into the debate and deliberated on whether there was a right to choose on the matter of one’s death under the US Constitution’s equal rights and due process clause. The Supreme Court of the United States in its decision on June 26, 1997, unanimously declared that no such right is guaranteed under the US Constitution. However, the court left the door open to the states to decide this issue individually. And that’s what we’ve been talking about here today and among those other 21 states across the country.

“Chief Justice Rehnquist in his opinion wrote:

‘Throughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality and practicality of physician assisted suicide. Our holding permits this debate to continue, as it should in a democratic society.’

That’s what we’ve done today.

“Justice Stevens went further in his opinion, stating (and he is a liberal in case you don’t know):

‘There remains room for vigorous debate about the outcome of particular cases that are not necessarily resolved by the opinions announced today. How such cases may be decided will depend on their specific facts. In my judgment, however, it is clear that the so called “unqualified interest in the preservation of human life” is not itself sufficient to outweigh the interest of liberty that may justify the only possible means of preserving a dying patient’s dignity and alleviating her intolerable suffering.’

“The good Senator from Hawaii Kai earlier made a swipe at the Ninth Circuit and the US District Court Judge, Judge Robert Jones, who handed down that decision on the actions of US Attorney General Ashcroft’s attempt to overturn the Oregon law. By the way, he was appointed by the former President Bush in 1990, a Republican. He wrote:

‘The citizens of Oregon, through their democratic initiative process, have chosen to resolve the moral, legal and ethical debate on physician-assisted suicide for themselves by voting – not once, but twice – in favor of the Oregon act.’

“In case you weren’t aware of it, in 1994, Oregon passed this by initiative with a 51 to 49 percent vote, a very slim margin, very similar to our Floor vote just two nights ago, Tuesday night, on a 13/12 vote. When that measure was then appealed to the United States Supreme Court, in 1997 it was put back up for initiative again. That year, three years later, it passed by a

60 to 40 percent margin. The public in Oregon increased their support for the Oregon law.

“In Oregon there’s 3,316,000 people, roughly. In 1999, there were 29,587 deaths in Oregon. In 1999, 27 people chose to use this Oregon law to end their own life. That represents less than 1/100 of 1 percent of the total population. I don’t see this as a slippery slope. In fact, colleagues, in Oregon, as a result of the two votes that were taken by initiatives, the State of Oregon saw a tremendous increase in palliative care, pain management, and hospice services. I hope, today, through these people in the gallery and us, that we will see that kind of change ourselves. You cannot operate outside of those services that we need to give to the public.

“Earlier, I had passed out a list of some of the general policies and basic provisions of the bill, but I won’t go into those. The good Senator from Waianae very articulately raised and addressed all of the concerns that many of you had spoken about. The health care directives that we have in current law now is something that most people aren’t aware of, and I’m glad that she brought that up. I think it’s something that many of us need to look at and say, if we are not going to be successful this year in adopting a death with dignity bill, then let’s work with our communities to help them better understand what is in the law, because there is a tremendous amount there.

“I think, as a state we need to make this decision for ourselves, even though there is a national debate on this. Representations were made that in most states people were primarily white, worried and well off. I don’t think that’s the case here in Hawaii.

“In March of this year, QMark Research and Polling did a statewide poll on this issue – 72 percent of the public agreed with the concept of a right of an individual to end their own life; 23 percent disagreed; and 5 percent weren’t sure. I think that’s a tremendous amount of public support for this issue. That poll had a margin of error of 5 percent. Many of us, and you know more specifically, live and die by polls, and I think that this is a good reflection of what’s happening through our community.

“This is not a partisan issue. The good Senator from Kailua said that he heard not one point of partisanship today, and that’s right, because 75 percent of those who responded to that poll as Democrats supported it, and 69 percent agreed with the right to end one’s life as Republicans.

“The poll goes on to talk about ethnicity and it goes on to talk about race and some of what we are as a community, a very diverse community. You don’t have to be primarily white, worried, and well off to support this concept. Caucasians, 74 percent supported it; Japanese, 80 percent; Hawaiian or part Hawaiian, 72 percent; and Filipinos, 51 percent. I think that’s a good reflection of our community.

“Even those who hold very, very strong religious beliefs can support this – Catholics, 63 percent agreed, 30 percent were opposed; Buddhists, 85 percent supported it, 11 percent were opposed; Protestants, 71 percent support, 27 percent opposition; Mormons, 65 percent support, 27 percent opposition. You can start to see how it crosses both race and religion and goes to an individual’s choice. To me, the most important thing that we’ve had the opportunity to discuss over these last two days is the issue of choice.

“There is a central principle under which America was founded and the ‘Declaration of Independence proclaimed, for the first time in the history of nations, that each person exists as an end in himself. This basic truth – which finds political expression in the right to life, liberty, and the pursuit of

happiness – means in practical terms that you need no one’s permission to live and that no one may forcibly obstruct your efforts to achieve your own personal happiness.’ Think about that, because next year and the year after, this issue will be back before us.

“There was some representation that doctors, nurses, the disabled, the mentally ill, psychologists, and pastors are all against the bill. That’s right, they were. They still are and they still will be. But doctors, nurses, the disabled, the mentally ill, psychologists, and pastors also support this bill. There are as many supporting it, as there are opposed to it.

“In June of this year I’m going on a mountain climbing expedition, so I’ve been doing some exercise and training. This morning when I went down to Kapiolani Park to run at 5:30 this morning, like the good Senator from Kaneohe, I stopped and asked one man, because I couldn’t go back to my community in Maui and ask people, but I did stop and talk to one man. Satoshi is a 78-year-old AJA who lives in downtown Honolulu. He told me that his wife died of cancer in the year 2000, and that she suffered tremendously and it was very painful for him. Satoshi talked about, if this bill were enacted, the opportunity that he would have to make that choice for himself to end his life. He asked a lot of good questions. I was quite impressed. He’s been reading about it in the paper and he was very much in support of it. He said he’s talked to his children and his children are okay that he makes that choice for himself.

“In closing, I think that this is a decision that will allow each of us to make an individual choice, and it should be our individual moral choice. It should be Satoshi’s individual moral choice. It is a choice that we need to make for ourselves.

“Even though it may be fruitless in the vote, I ask that all of you please support this measure. Thank you, Mr. President. I call for the vote by Roll Call, please.”

The Chair so ordered.

Senator Buen rose to speak against the measure and said:

“Mr. President, I rise to oppose this measure.

“First of all, Mr. President, I want to thank the Chair of the Health and Human Services Committee for agreeing to bring this vote to the Floor. The bill was not yanked, as the news media had reported. The Senator had agreed to give all of us the chance to have a discussion on the Floor and call for a vote. I believe the Chair was being fair, open-minded, and responsible to the people of this State.

“Mr. President, in the Health and Human Services Committee (by the way, I am his Vice-Chair), I sat in the hearing that the Chair held. The Chair had brought with him a huge box of testimonies, letters, faxes and e-mails. I asked him what was in that box and he said that there was an overwhelming majority of the people who had written to him or called him opposing this measure.

“I, too, have received those calls from my constituents from Maui, Molokai, and Lanai asking me to oppose this legislation. I feel I need to be responsible as a Legislator. I need to be responsible to my constituents when they write to me and when they call me. An overwhelming majority of my constituents have asked me to oppose this legislation, and therefore I will be opposing it.

“Thank you, Mr. President.”

The motion was put by the Chair and, Roll Call vote having been requested, H.B. No. 2487, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DEATH WITH DIGNITY," having been read throughout, failed to pass Third Reading on the following showing of Ayes and Noes:

Ayes, 11. Noes, 14 (Buen, Bunda, Chun, English, Hemmings, Hogue, Kanno, Kawamoto, Kim, Matsuura, Menor, Sakamoto, Slom, Tam).

FINAL READING

S.B. No. 2179, S.D. 2, H.D. 1, C.D. 2:

Senator Menor moved that S.B. No. 2179, S.D. 2, H.D. 1, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator Taniguchi.

Senator Inouye rose to speak against the measure and said:

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

"Mr. President and colleagues, the concept of lower prices on gas means perceived benefits for consumers, but we must consider what the impacts would be of placing a cap on gas prices for smaller volume stations and what that means for our island economy and community.

"In particular, the effects on the neighbor islands must be taken into careful consideration. For example, there is likely to be a disproportionate impact on the Big Island, where there are many remote, smaller volume stations, approximately half of which are owned by small independent businesses.

"The average volume per station on the Big Island is 61,000 gallons per month versus the Oahu average at 92,000 gallons per month. The cap on the margin multiplied by the smaller volumes would not generate enough revenue to offset the costs of running a smaller station, and there will probably be a similar effect on many smaller stations statewide.

"A fixed margin on the Big Island would rule out new investment in the average station, or reinvestment in an existing station, and would likely lead to many closures.

"Hilo is the farthest port in the State from Oahu and barging costs are correspondingly higher. Additionally, the Kawaihae terminal has a maximum capacity of only 50 percent of a fully loaded barge, thereby resulting in higher per barrel barging costs. This is compounded by truck distribution costs from Hilo and Kawaihae to the rest of the island, which are higher because the Big Island is so large, and because it tends to have many smaller communities.

"Colleagues, let me set the scene on the Big Island for you if this bill is passed. Yes, prices will be lower – certainly a desirable result – but as gas stations begin to close because they cannot make ends meet, more people will be unemployed. When gas stations in the more remote areas close, there will be a gap in services. Will the gas companies, out of some newfound altruism, come in and operate these loss-making stations? I sincerely doubt it. Consumers will then be left with fewer options for obtaining gas and may have to travel for an hour or more to fill their tanks. Gas may be marginally cheaper but the net result is the consumer paying more with the additional mileage, not to mention inconvenience.

"Now that the dockets are open, and the information is available to be reviewed, we should take the time to consider the issue carefully and soberly. It is important that we don't

rush to make a decision on something we haven't really had a chance to discuss at length.

"Let's get the issues out in the open, provide ample opportunity for commentary from the people, and make a balanced, well-thought out decision that answers all of our concerns and takes care of all of Hawaii's people.

"In particular, I would like to hear from my constituents, and at this point, I am not hearing a strong voice from them on the gas cap, except from those who stand to lose their livelihood if this bill is enacted. Indeed, I have not received a single call in support of this bill, and many from ordinary citizens thanking me for opposing this bill in Conference.

"While it is a valid concern that the gas companies, by their own admission, have been overcharging Hawaii's consumers for decades, a knee-jerk reaction for political expediency may potentially resolve only part of the issue and may create unforeseen problems.

"The attorney general has admitted to misrepresenting the profitability of the gas companies in the antitrust lawsuit by highlighting the anomalous profits in Hawaii during 1991, caused by the Gulf War and abnormal movements in the West Coast market. If this is the case, then how many other facts are being misrepresented, misconstrued or misunderstood? Let's not base our decisions on incomplete facts.

"It is imperative that we do not create another program like the photo-cameras, which seems well intentioned at its inception, and then succumbs to public outcry, implementational ridicule and mismanagement.

"We need also to really consider the effects a gasoline cap will have on jet fuel, bunker fuel and those industries that use gasoline for commercial uses. If companies are unable to make a profit on unleaded gas, then they will seek to make them in other areas. The effects of this bill are not limited to the consumer at the pump.

"Colleagues, whichever way you vote on this issue, remember that we are here to represent all of our constituents' best interests, not just those interests that we feel will aid our personal agendas or ambitions.

"The amendment we passed on Tuesday pushed implementation back to 2004. Supporters have said that this will give the next governor and legislature an opportunity to study the problem and hold public hearings. If this is so, then why rush through this legislation today? Let the next legislature decide if they want to deal with this issue, and don't leave this bill hanging over the people. Wait until next session and draft a truly responsible bill that addresses all our concerns from the outset.

"I would remind those who support this bill that DBEDT and the State's own experts in the antitrust litigation suit have testified, on numerous occasions, that market restrictions such as those before us do not benefit the consumer and in many instances have made matters worse.

"This is an issue that requires careful consideration and I do not believe that we as a body have had sufficient discussion to make a truly informed decision. I urge all my colleagues to vote sensibly and vote against this measure so we can take the time next session to consider a more informed plan to lower gas prices.

"Be visionary. Look beyond the short-term benefits to the long-term effects. If you have any doubts at all, then you should take the prudent road and vote 'no' on this bill.

"Thank you, Mr. President."

Senator Kawamoto rose to speak against the measure as follows:

"Mr. President, I rise to speak in opposition to this measure. Mr. President, this must be a precedent – the lead Chair opposing the conference draft.

"Mr. President, I don't know how to start, but let me say, you know that I love you with all my heart. You're like a brother to me, and I would go to the ends of the world if asked of me, and if we should go to combat in our next life and we have the opportunity, it would indeed be my honor to be your wingman!

"But, Mr. President, this bill before us is not here because of its merits and what it will do for our general public! It's here because of combinations of coalitions putting pressure on fellow Senators to break their words to others, to lie, to condone closed door sessions with only the Consumer Protection Chairs and the lead attorney from the Office of the Attorney General providing input to this CD, without the knowledge or authority of this lead Chair and other members of the Conference Committee.

"This version of the present CD before you was a C.D. 6. While the conference members were working on a C.D. 1, what happened to C.D. 2, C.D. 3, C.D. 4, and C.D. 5? We don't know. The C.D. 1 was discussed at caucus, where the Chair's previous position was to review the court's documents and if need be, pass laws to implement gas caps next year and not return to Conference. But as you know, we were overridden and we were asked by the caucus to go back to Conference.

"This CD, Mr. President, was presented to us at 8:50 p.m. on the final day of decking. The managers and proponents of this bill were so arrogant and confident that it would pass regardless if they had all the votes there. They thought they had it skid greased that it would pass with the addition of another chair on the last day for decking fiscal bills. An attempt was made to put an implementation date of 2004, which was immediately rejected without any discussion. But now they didn't realize the backlash of this bill. Therefore, the House, the originators of the bill came back and asked us for an amendment to 2004 as we had previously requested in Conference and was rejected.

"Mr. President, this CD is so flawed with many concerns. As we speak today there is a movement by the House to request that the profit margin of the neighbor islands be lifted to 25 cents, but I don't know what happened to it. They didn't return. They asked me last night about it. We moved it back to 2004, and like the Senator from Kona/Hamakua/North Hilo has said, 'Why the rush?' Let's have a bill that goes to the proper hearings and not this last minute and political pressures of stacking the Conference Committee. This was unusual, at best, and not commonly done. I've seen replacements made on the last night at the last minute but it was because of a quorum, not for stacking to decide the outcome of the vote.

"Mr. President, the adding of a new chair, the Senator from Makiki, and let me say at this time, I do not question the Senator's integrity or abilities. In fact, she happens to be and continues to be a loyal, hardworking, and valuable Vice Chair of my Committee for two years, the Transportation, Military Affairs, and Government Operations Committee, whom I have relied on for the last two years for advice and guidance, and

who I've sought, in the eight years that I've been here, for continued help and understanding.

"But I don't know if it was fair to her or to the Committee to come on as a Chair in the eleventh hour. And I don't know if she was at the informational hearings, if the AG was there, or the hearing we made on the CD, but I'm sure she had knowledge of the subject matter and she was aware of the subject matter because my Committee, TMG, received two gas cap bills of which, after consultation with you and the CPC Chair, we decided not to hear these bills. We decided to review the documents of the courts to make a better decision. So therefore we did not hear those bills. We did pass a resolution but the resolution was not heard in the House.

"Mr. President, I know this was not your doing, but petty politics and coalition movements forced your hand. I know this because two days before the addition of this new member, you told me without my approval that one of my Co-Chairs, CPC Chair, had asked you to add a new member on the Committee. And you told me at that time that you refused his request and I would take this Committee with four Chairs. The last day, I was informed of the fact that you would add the Chair. And if you recall, Mr. Chair, I asked you to remove me as a Chair instead of using a process that was unusual.

"Mr. President, with the new rule of majority chairs promulgated by the proponents of this bill, I thought it was good enough, but this did not guarantee a vote. Therefore, they pressured you to get a new Chair. In Committee you asked me to proceed with the meeting and therefore we went. And as predicted, the vote was 4-3 with the prevailing vote cast by the Senator from Makiki.

"Mr. President, this ill-conceived CD was based on half truths by the AG's office through incomplete graphs that did not show the true picture of the trends of gasoline prices. It showed all the way going up but didn't show it coming down. Statements were made by their consultants on their report on the prospects of the competition working in 1999, 2000 and 2001 which was conveniently left out during the informational hearing, but it was pointed out that they had conveniently left it out.

"Also what they've said is there was massive profits made by all the oil companies. They didn't tell us they were only talking about those oil companies that were in the suit. They didn't tell us about Aloha, Apana and other small companies that had the jobbers. We were told at the hearing that Aloha, since 1990, made 3 percent. Also we were told that these so called jobbers and small oil companies testified if gas caps are implemented, they cannot compete and will leave the market as soon as gas caps are implemented. Fellow Senators, these are the guys who are keeping gas prices low, as I speak today. In Honolulu we see gas prices from \$1.42 to \$1.55, 13 to 26 cents lower than the AG's cap of \$1.68 from April 10 to April 12 week.

"Mr. President, earlier I said that I was a simple man. Also, I'm just a poor old country boy out there and I need to be taught and discussed in simple terms what is happening. I'm not as articulate as many of my colleagues in this body.

"Simply, Mr. President, if Aloha and the small jobbers go away and only the big companies are here, what we now create is a monopoly. The Chair of CPC realizes, as we went out to the neighbor islands, how much the people of Hawaii like monopoly, as we tried to merge the two airlines, Aloha and Hawaiian.

"Mr. President, without the small companies, they would not drive down the gas prices and the gas prices fight would be in

what the AG said – \$1.68. The fight will be in the 1.60 level because they're only dealing with three companies and they won't have the competition to drive down the gasoline prices of the 1.40 level. At the hearing, the AG finally admitted that they did not include the small companies and the jobbers. They did not know that Aloha, since 1990, made only 3 percent.

"Mr. President, we know the AG considered the \$25 million of the \$2 billion lawsuit and have said, basically, they lost the lawsuit. Mr. President, the AG's office is a wounded animal.

"My friend, Mr. Abe Pacheco there, and when I was a young man, we used to go hunting. And if you hurt a wild boar, he loses all rationale. And this is what we're dealing with – the AG's office will admit they lost their case and is wounded, and their rationale is not best.

"Mr. President, to establish laws without the full awareness of its consequences would be wrong.

"Mr. President, this CD calls for gas caps using West coast baseline retail market's margin factor, which would be 16 cents plus 8 cents for the neighbor islands for some of their expenses. The local tax in Honolulu is 51 cents, Hawaii is 43 cents, Maui is 47 cents, Kauai is 47 cents. For April 12-16, 2002, gasoline prices, if you go by this gas cap would be \$1.68 on Oahu; the Island of Hawaii, \$1.69; Maui, \$1.73; Kauai, \$1.73.

"Because of competition, our gas prices were \$1.42-\$1.57. Because of competition, the market value that they received is about 5 cents. It's been 5 cents for a long time. Some 40 years ago when I worked in a gas station for my cousin, Mr. Ishii, they were making about 3 cents profit margin. The neighbor islands are unfortunate. They cannot live within the 16 cents profit margin plus the 8 cents, so they have to have larger margins. That's the reason why the neighbor islands on the House side were looking for an amendment to increase the profit margin to 25 cents.

"Mr. President, the proponents of this CD are again using coalitions to create chaos and make a mockery of the process. Its leadership has been trying for two years to embarrass your office and the good name of this body. With this vehicle they have succeeded. I extend my congratulations. For the first time in eight years, I'm sad to say I'm ashamed of what we've done. Never have I seen so many petitions, so many people back stabbing each other – one's word is no longer important here. Mr. President, I love this institution for what it stands for and the friends I've made here. I apologize to my predecessors like the Nelson Dois, the Dickie Wongs, Senator Inouye, Senator Spark Matsunaga, Yama, Dickie Matsuura, and many others for allowing coalitions to run the Senate and not 25 distinct individual Senators. Loyalty and commitment for the good of this body is not here anymore. To those who caused this turmoil by creating this law, you've done it and did succeed.

"If this is my last day in the Senate, and for many of us it may be, I'm saddened that I allowed it to happen. All that I tried to do and did do in the past eight years have been undone by the way this CD has come to this Floor.

"I urge my colleagues to vote 'no' on this bill because it is ill conceived – so many holes, so many unanswered questions – and with the delay until 2004, it is not necessary to be an urgent issue anymore. Therefore, I thank you very much for your time and aloha."

Senator Hogue rose to speak against the measure and said:

"Mr. President, I rise to speak in opposition to this bill. Also, I want to thank the Senator from God's country for those

great words. Senator, I haven't always agreed with you, but you are a man of integrity, tremendous integrity.

"This bill, Mr. President, is anti-consumer. It is anti-business – it's anti-small business; it's anti-big business – and it's anti-Hawaii's future. It is based on incomplete information. It is based on loose facts. It is based on incorrect pieces of information. And it is based, worst of all, on politics.

"The price controls, or caps, put on gas prices will not only adversely affect the oil companies, but rather the local private gas companies – the guy who runs your local gas station – and it will probably put him out of business. This bill hurts the competitive local market in Hawaii because of a perceived lack of competition at the wholesale level.

"We have plenty of local dealers right now, but we won't if this bill passes. Hopefully, the good people of Mililani, who are represented by the good Chair of the Consumer Protection Committee, who enjoyed the \$1.43 a gallon price that was offered this past week, I hope they enjoyed it. If this passes, soon they may not. I hope they remember who put it there.

"Before we penalize the local dealers, perhaps we should examine the history and motivations behind this plan. Five years ago this body passed Act 257. The Act regulated the maximum rent an oil company may charge a dealer to lease a service station from the oil company. On April 1 of this year, Federal District Court Judge Susan Mollway held that Act 257 effected an unconstitutional taking of property. The court held that the Act did not substantially advance a legitimate state interest because any lost rental profits would be passed along to the consumer in the form of higher oil prices. That made the law unconstitutional – unconstitutional, Mr. President. That ruling was the second federal loss for the attorney general on Act 257. That, combined with the notorious failed civil suit, reveals how unsuccessful this state has been in its efforts to attack the big business of our oil companies.

"Fast forward a couple of weeks . . . the AG's office comes to the Legislature, out of the blue, and convinces one Chair and eventually a Conference Committee to manipulate the intent of the original S.B. No. 2179. Why the eleventh hour attempt? Did the attorney general communicate with all members of this body that Act 257 was struck down? Was he candid with the Committee? Could it be that the attorney general is using the Legislature to pass knee-jerk legislation in hopes of assisting his office in appealing Judge Mollway's decision? Could it be that he hopes that the court will reconsider when it sees that the Legislature has fixed it so that neither dealers nor oil companies can do business competitively in Hawaii? These are properly asked questions.

"In addition, the attorney general's reasoning is simplistic and flawed. This bill, instead of saving Act 257, as he hopes, could fail for the very same reasons that Act 257 did. Or the combined effect of this bill and Act 257 may so impact interstate commerce as to be unconstitutional for that reason as well.

"These are questions we could have asked, Mr. President. We could have had them answered had the attorney general been straight with this body and had the legislation gone through the proper channels. We should have had this open discussion and open debate in open Committee with open testimony. Instead, this bill came up in a backward, improper, and unethical way. And because the present form of this bill never had a real public hearing where such questions or concerns could be presented, and because of the very obvious economic flaws, I urge all my colleagues to do the right thing and vote 'no.'

“Thank you.”

Senator Menor rose to speak in favor of the measure and said:

“Mr. President, I rise to speak in favor of this measure.

“Before I address the merits of the issue, I would like to address a very important matter. Comments have been made by the previous speakers expressing concerns about the process by which this bill has come to the Floor for our final consideration and vote. I would like to clarify for my colleagues on this Floor that depending on whom you speak to in this body, that there are differing opinions and interpretations as to how that process occurred. I believe that the process was open. We conducted full public hearings with respect to the proposal that is before us and I think it was a fair process.

“But you know, Mr. President, whether one agrees with the process or not, I think that ultimately my colleagues should be voting and reviewing this measure today based on the merits, because I think that the issues that are raised in this bill are of such critical importance to the consumers of Hawaii that to do otherwise would not be appropriate. So I respectfully request my colleagues, no matter how you vote, to please look at this bill on the merits.

“And, Mr. President, addressing the merits of this bill, I have said throughout this Session that my criteria for passing out a measure regulating gas pricing were twofold. First of all, it must be the right solution that will bring effective relief to consumers from high gasoline prices. And second, it must be sound legislation – that is, legislation that can withstand a legal challenge.

“I believe that the process by which we reviewed this measure was a very deliberative one, and I’m proud to say that in the final analysis the Senate withstood the pressure from many quarters urging us to pass a quick fix. Instead, the Senate insisted on doing the right thing and moving forward with a strong bill that provides for an effective, workable, and legally defensible regulatory solution to a complex problem.

“I believe that S.B. No. 2179, C.D. 2, the measure that’s now before us, offers that framework for achieving these goals. Mr. President, the passage of some kind of strong regulatory protection for consumers is long overdue in the gasoline market. For too long, Hawaii’s consumers have been forced to pay excessive gasoline prices at the pump. The evidence is overwhelming that Hawaii’s consumers have been unjustifiably paying higher gasoline prices on average than motorists on the mainland. For example, in comparable markets during the period 1985 to 1998, Hawaii’s motorists were paying on average approximately \$0.23 per gallon more than motorists in California.

“Because gasoline is such an indispensable commodity, high gasoline prices have clearly hurt Hawaii’s consumers and businesses.

“During the public hearing that the Conference Committee members held on the Attorney General’s gas price cap proposal, Professor Richard Miller, with whom I have worked on the gas pricing issue this session, testified that gasoline provides some 90 percent of the energy needed to run our transportation economy. Consequently, the excessive prices we have paid for gasoline have inflated the prices of virtually all other products and services we use, thereby increasing our cost of living and reducing the value of wages earned by residents.

“Most troubling, the high prices Hawaii consumers pay at the pump appear to stem not from logistical or operational issues but from high profits earned by the oil companies, at the expense of local consumers.

“Mr. President, for many years, we’ve heard the arguments of the oil companies and they’ve claimed that competition, costs, and taxes drive gasoline prices in Hawaii. However, the State’s anti-trust litigation generated considerable evidence that suggests monopolistic control of the market by the oil companies plays a larger role.

“For example, it costs the same, or even less, to refine gasoline in Hawaii than it does on the mainland. Again, high profits, not high costs, are what’s driving high gas prices in Hawaii. Consider the period between 1988 and 1998. Even without factoring in taxes and transportation costs, retail gasoline prices in Hawaii were consistently higher than in comparable markets on the mainland. In fact, in 1998, the difference between Hawaii gasoline prices and California gasoline prices was about \$.30 per gallon, again excluding all taxes and transportation costs.

“Furthermore, the high and huge profitability of the oil companies in Hawaii is even more evident when one considers the fact that from, again, 1988 to 1995, 22 percent of one of the major oil company’s profits were earned from the company’s Hawaii refinery sales although during the same eight year period, Hawaii’s sales volumes accounted for only 3.1 percent of that oil company’s sales in the U.S. market. In addition, the oil company’s net profit margins during that period were consistently higher than the net profit margins of oil companies in California. I believe that these figures explain why the marketing manager for Chevron in Hawaii admitted under oath in his deposition during the State’s anti-trust litigation – and I have a copy of the deposition transcript which documents his testimony and it explains why he testified under oath – that the majority of the time Chevron’s Hawaii gasoline market was the most profitable in the country.

“Now, despite this compelling evidence that Hawaii’s gasoline market suffers from a serious lack of competition, oil company representatives continue to represent that Hawaii’s market is competitive. Mr. President, this assertion flies in the face of common sense. What we have here in Hawaii is a situation where two oil companies own and operate the only two refineries that supply the bulk of gasoline for motorists in the entire State of Hawaii. And at present, what that means is that these two refineries are supplying 100 percent of the market because there is no indication at present that any gasoline is being imported into Hawaii. Now, how can that kind of duopoly be competitive?

“Moreover, during the State’s anti-trust litigation, there was considerable evidence strongly suggesting one of the major oil companies may have had a policy of restricting the amount of gasoline provided to its dealers or competitors in order to minimize price competition. So the problem is not at the retail level but at the wholesale/refinery level, and that’s where this bill most directly addresses I think what the problem is as it exists in Hawaii.

“Furthermore, statements made by Maxwell Blecher, an attorney for the Tosco Corporation in the State’s anti-trust litigation, directly contradicted the assertions of the oil companies whose very interests he was representing. In his opening statement on behalf of all of the oil companies during the summary judgment hearing, Blecher admitted there is no competition in Hawaii. He stated, and I quote: ‘Once you decide it’s an oligopoly, you’ve got an explanation for the phenomenon of the high prices, the high margins, the high

profits, the lack of vigorous price competition. That explains it all.'

"In light of this compelling evidence, Mr. President, I have come to the conclusion that Hawaii's consumers will not be able to obtain long-term relief from high gasoline prices unless the Legislature acts now to pass strong legislation to control them. For those who argue in favor of free market solutions instead of regulation, I would say that I agree with them, but that in general, the free market should be allowed to work without government interference. However, when it comes to the gasoline market, it is apparent that the free market is not working. Those who argue otherwise are ignoring the fact that a laissez faire approach has been given more than enough time – decades in fact in Hawaii – to correct the pricing hegemony that distorts pricing in this State's gasoline market. The fact that the so-called free market approach has consistently failed to deliver equitable gas pricing in Hawaii justifies the action that we're taking today.

"It has become increasingly obvious, Mr. President, that only strong and effective legislative measures can deliver us from harmful gasoline pricing. I believe that the measure that is before us is exactly the kind of legislation needed to promote the interests of consumers. I believe that this measure establishes a straightforward formula for imposing price ceilings on wholesale and retail gasoline prices that would strike a balance between, on the one hand, the right of oil companies and gasoline dealers to be able to earn reasonable profits with the need to protect Hawaii consumers from price gouging at the pump.

"So in that regard, I ask my colleagues to move ahead on this measure because I think that the drafters of this formula tried to adopt the reasonable approach that would allow oil companies and gasoline dealers in Hawaii to make a similar level of profit and I think that's a reasonable approach that the companies and gas dealers make in comparable West Coast markets.

"Of course, there are detractors. Some argue the Legislature should study this measure further because of its bold provisions and the possibility the State could face lawsuits from the oil companies if it became law. As you know, Mr. President, I initially supported a proposal to implement a legislative review of the gas-pricing issue because I wanted to avoid those very pitfalls.

"I was convinced that earlier proposals submitted by the House would ultimately fail because of legal and other flaws they contained. I feared that if we passed those House measures that we would be back to square one and that there would be more disappointment rather than relief for consumers. And the Attorney General's office and other government agencies that reviewed the House measures agreed with my analysis.

"However, because this measure is based on the Attorney General's proposal that addresses the flaws of the earlier house bills, I am comfortable in supporting this particular measure.

"I would also like to point out that in crafting its proposal, the attorney general's office was very cognizant of potential constitutional issues and is confident that this measure can withstand legal challenges.

"The representative from on the Windward side has expressed concerns in light of the case in which the federal district court invalidated the rent cap law that we passed several years ago. It was in light of that ruling that the attorney general's office crafted a proposal to address those particular legal issues, and I would also like to add that in that particular case where the rent cap law was struck down that it was agreed

upon by all of the parties in federal district court that a legitimate State interest would be a law to reduce high gasoline prices in Hawaii. The problem in that case was that the court did not find a sufficient connection between the rent cap law and a guarantee that gasoline prices would be reduced, whereas in this case I believe we have a much stronger measure which would stand up to constitutional challenges if one were to be initiated in the future.

"I would also like to point out that the Attorney General's office has worked very closely with Barry Pulliam, a senior economist who is a nationally recognized expert on gasoline issues, in developing the provisions of this bill.

"When the law is fully implemented, a significant number of Hawaii consumers will see immediate relief. Neighbor island residents, who have been forced to endure outrageously high gasoline prices, could see their gasoline prices drop by as much as \$.20 to \$.30 per gallon. As for Oahu motorists, I believe that the bill will insure stable, reasonably priced gasoline for the long term.

"Yes, I know, Mr. President, that there are those who will argue this bill is flawed because the gas price cap for Oahu based on current OPIS baseline prices would be set at a higher level than retail prices being charged at certain gas stations on Oahu if implemented immediately. But let's not forget that the gasoline price caps represent the maximum price that oil companies and dealers can charge. If, as the oil industry claims, competition in Hawaii's marketplace has helped keep Hawaii's gasoline prices down in the past, then competitive pressures should be able to keep gasoline prices down in the future. However, if the companies automatically raise their prices to the cap level, in my mind this would provide further proof that manipulation of prices, and not competition, is what's driving gasoline prices in Hawaii.

"Again, we should not lose sight that the ultimate purpose of a gas price cap is to establish a price ceiling to prevent gasoline prices from rising to excessive levels.

"Now, I also recognize that concerns have been raised that this measure could hurt small gas-station owners and dealers, and in response, I'd like to raise several points. I think a critical point which needs to be made is the fact that the provisions of this bill are meant to benefit not only consumers but also dealers throughout the State.

"As you know, Mr. President, during the past few years when the Legislature has reviewed the gas pricing issue we have had many gasoline dealers testifying in our legislative hearings expressing concern that they are going out of business or having a difficult time surviving in Hawaii because they have not been able to earn a reasonable profit because of rising costs, a substantial component of which are wholesale prices and lease rents charged by the oil companies. These costs have been squeezing the profit margins of gasoline retailers. So this bill would go a long way toward addressing long-standing dealers' concerns by controlling wholesale prices and maintaining the lease rent cap for dealers.

"Under this bill, gasoline dealers would also be allowed to tack on an additional \$.16 per gallon to the wholesale price, which is five cents more than the average dealer currently charges, according to the attorney general's office. The formula in this bill should therefore assure the vast majority of gasoline dealers a reasonable profit.

"However, having said that, I would also like to emphasize that I am, along with many of you, very sensitive to the concerns of small gas station owners and dealers, especially on

the neighbor islands and in rural areas. I would like to emphasize that the intent of this bill is not to drive small dealers out of business but rather to control monopolistic gasoline pricing which I think can only be successfully addressed and attacked with strong regulatory measures.

"In this regard, I think that the action that the Legislature took this past Tuesday to delay the gas pricing provisions by one additional year to July 1, 2004, should afford legislators and other government agencies and officials ample time to be able to fine tune this measure and address the concerns of the small gasoline dealers in Hawaii.

"In conclusion, I support S.B. No. 2179, C.D. 2, because it's a pro-consumer measure. I think that it is the final piece in a package of consumer protection measures to which I referred in our Floor Session on Tuesday, which, if passed, would mark this legislative session as being the year of the consumer. I think that this bill moves us significantly in the direction of providing consumers with long term relief from high gasoline prices that they want and deserve. So therefore I strongly urge my colleagues to support passage of this bill at this time.

"Thank you."

At 2:57 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:06 o'clock p.m.

Senator Slom rose to speak against the measure and said:

"Mr. President, I rise briefly in opposition to this bill.

"Well, I've got to tell you, you know I haven't heard comments like the last speaker since the last time I read the minutes of the Soviet Bolshevik presidium – an all out attack on free market, on business, on profits. And they wonder why we are anti-business, or trade as anti-business, or hostile to business in Hawaii.

"We knew we were in trouble with this bill when it starts out by saying 'the Legislature finds that gasoline is an energy resource.' Gee, I thought that we knew that it was an energy resource long before this legislative session came along. But that gives you some of the problems with the process. And as the good Senator, the Transportation Chairman, said, 'this process has been flawed.'

"If there's anything that this bill shows us, anything that it proves without a doubt, it's the need for an elected attorney general, because we're relying on the attorney general, the very same attorney general who when I raised the issue in 1997 about Act 257 being unconstitutional, we were told that everything was okay. Do you think that we can get an honest opinion out of this attorney general right now as to whether or not this bill is unconstitutional? I think not.

"The shame of this, though, is that this bill started out as it said, energy resources – to discuss alternative energy. And that was fine and it's something that we can all rally around, something that we need, something that will release and reduce our dependence on fossil fuel and gasoline products. But it did become a political vehicle and it is a political vehicle. And I beg to differ with those that say that this is both effective and sound. It's not effective. It's not going to do what the proponents say it's going to do, and it's not constitutionally or legally sound.

"Where have price controls ever worked? I would ask the proponents to show me that. Where have price controls of any

kind ever worked? All they do is make sure that they have less product produced and that you will pay even higher prices. It is amazing that this bill really is a continuation of the failed legal challenges made by the State of Hawaii and the attorney general, as so clearly elucidated by the Minority Policy Leader.

"There are people that don't like Chevron, people that don't like big oil. That's fine. That's their privilege, but to stand up in this gallery and to say that this is a consumer-friendly bill and that it will help small business and that it's not aimed at retail gasoline dealers when the retail gasoline dealers come here to the Capitol and tell us otherwise. Who knows better? A lawyer, or someone in the business that has to go through the problems with retail gasoline everyday? I'd put my money on the retail gasoline dealer.

"We are again fooling the public. We are again trying to make them feel good, but at an added price of painting the State of Hawaii into an unenviable corner of the wall that shows everyone, despite our current \$100,000 in advertising, that we are not business friendly – we will attack profits. God forbid that anybody makes profits here. And price gouging . . . it's a nice term. Where has it been proven? Where are the people marching on the gas stations or marching on the Capitol demanding that we regulate this business? It is an affront to us, to the process, to the consumers, and most of all to those small businesses that work in the retail gasoline industry to call this a consumer-friendly bill.

"It is amazing that this bill has been described as bold. It's not bold; it's the oldest thing in the world – control business, regulate prices. If the profits were as high as the proponents say they are and unconscionable, we would have all kinds of people in here doing business. But oil refining, petroleum producing is very difficult, very expensive, and is also subject to taxation, regulations, and mandates. And therein lies our problems. We continue to ignore the cause of the problems for monopolies or duopolies or oligopolies in this State.

"Your Senate Minority, at the beginning of this Session, had a package that called for the disassembling of monopolies in education, health, transportation, energy, right down the line. We had a program that would work. We had a program that would not harm businesses, that would not harm consumers. It was not studied but in the last 48 to 72 hours we have a rushed message from the attorney general and his supporters.

"It is a bad bill. It is not effective. It is unsound, and I ask my colleagues to vote against it. Thank you, Mr. President."

Senator Chumbley rose to speak in favor of the measure and said:

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

"Colleagues, one point I wanted to bring up is I believe it is an aberration that we are currently seeing lower prices in the State of Hawaii right now, and particularly for you who live here on Oahu. On the neighbor islands, we still pay \$1.90 for unleaded regular gasoline and as high as \$2.12 in some of the more rural areas. I believe that there is this aberration because during the past several months, the oil refineries in the majors have purposely driven down the cost of gasoline, particularly here on Oahu, to try to change the public's viewpoint during the litigation on the lawsuit and during the time that we've been looking at this gas cap regulation here in the Legislature. They are trying to get the public to believe that gas prices will be lower in the State of Hawaii.

"Everyone says that we have high prices because of a lack of competition, but yet across the mainland where the competition

is robust in the last three to four months, gas prices have increased significantly. So I do believe that there is an aberration and it is just the attitude of the oil companies and the majors to continue to overcharge the people of our State for gasoline.

"I ask all of you to support this measure. Thank you."

Senator Hemmings rose to speak in opposition to the measure and said:

"Mr. President, I rise to speak against this measure.

"It was just about an hour ago and one piece of legislation ago that I think we experienced one of our brightest moments probably in the history of this Senate with open and honest debate based on intellect and heart. And now we've stepped back into the shadow.

"Though the good Senator from God's land did not use fancy words, his message was loud, clear, concise, and well received. This bill is an end run around the process we're pledged to uphold. It is end run around honest procedures and ethical behavior amongst the leadership in the Majority Party.

"This also is just ill-conceived for political reasons and there's one point that has not been made that I've humorously attempted to make numerous times before. All consumer products in Hawaii are overpriced, and they're overpriced not because of price gouging, not because of monopolistic practices, in some cases, not because of excessive profits, but because of the policies of the very people that are now trying to regulate prices. It's ludicrous. In fact, the most regulated consumer product, electricity, is 75 percent higher than the national average. And you all got my memo on the Wheaties, but that's true of all products. Go to your supermarket. And I might add that the Wheaties on Maui, as most other consumer products on Maui, are considerably higher than they are on Oahu because we've beaten down competition. We've beaten down business. We've taxed and we've regulated to the point that the consumer is paying a heavy burden for living in Hawaii.

"I got called on this very bill by a DJ in Las Vegas who has a more or less Hawaiian based radio station there. He was a very articulate guy, sounded very intelligent. He must have been handsome - his name was Vierra; he's Portuguese. But he said what a huge number of Hawaiians live in Las Vegas. And I naively asked him, though I knew the answer, why? Because they couldn't afford to live in Hawaii.

"Do you really think the prices that our consumers suffer under in Hawaii are due to anything else other than the policies which we enact here or the fact that about a third the price of any gas is tax, the highest tax on gas in the nation? We know what the truth is.

"This is a huge step in the wrong direction and will come back to haunt us in a major way. But we have a chance to support the process and also to support common sense and to support something that made this country great. It's called free enterprise.

"On the last bill, we debated it and something very healthy happened. This body made a decision on the Floor to do what was right, not what was expedient. May I suggest we do the same with this by voting 'no.'

"Thank you, Mr. President."

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

"Mr. President, I stand in support of this measure and would like to speak about a portion of this bill that has not been mentioned thus far.

"Most of the discussion has revolved around part one of the bill concerning the establishment of a maximum wholesale price for gasoline in Hawaii. Not often mentioned is the original intent of this bill, found in the second part of the bill, starting on page 34 of the C.D. 2, and that is that government should lead by example by mandating a reduction in energy use in state facilities and the use of renewable energy from much of the remaining energy demand.

"The original purpose of this bill was to require state government to significantly improve its energy management in state facilities in order to save taxpayer dollars and to reduce emissions that contribute to air pollution and global climate change.

"Hawaii is still dependent on imported fossil fuels for more than 90 percent of its energy requirements and imported oil accounts for the vast majority of this energy dependency. Hawaii needs to wean itself from these imported fossil fuels by using energy more efficiently and by using its abundant renewable energy resources to supply much of the remaining requirements.

"State agencies are among Hawaii's largest energy consumers, spending hundreds of millions of dollars annually on products and services. As such a large consumer, the State should promote energy efficiency, water conservation and the use of renewable energy products, help foster markets for emerging technologies, and create local employment and economic development opportunities. Government should also lead Hawaii in energy efficient building design, construction, and operation.

"S.B. No. 2179 requires state agencies to reduce energy consumption per gross square foot of its facilities by 20 percent by 2007, and 30 percent by the year 2012, relative to 1990 through life-cycle cost-effective measures. Furthermore, 20 percent of the remaining energy requirements would have to be supplied by renewable energy resources. This bill will reduce the use of expensive imported fossil fuels in state facilities by 44 percent, as well as provide an example to other government and private sector individuals and organizations. Additional benefits include a significant reduction in greenhouse gasses and other pollutants and more efficient use of Hawaii's scarce potable water resources. General fund monies are used to pay utility bills.

"This bill would have immediate beneficial impacts on general funds expenditures and benefit the State in many ways. Local energy service companies, also known as ESCOs, using existing and newly hired personnel could accomplish much of these mandated objectives through performance contracting. It may even be possible to obtain some of the projected money savings up front.

"Additionally, local economic development opportunities could come from accelerated development of indigenous renewable energy technologies - as an example, solar water heating, wind energy, and sea water air conditioning.

"The concept of regulating the price of gasoline has considerable support. Hawaii's residents significantly pay more than those in other states and much more than they should.

"I support both the gasoline price controls portion of the bill as well as the energy conservation and renewable energy portion.

"Thank you, Mr. President."

Senator Chun rose to speak in favor of the measure with reservations and said:

"Mr. President, I rise in favor of the bill with reservations.

"Mr. President, I'm not quite sure at this point in time whether or not the proposed bill would negatively impact neighbor island independent dealers. I don't believe the formula contained in the bill adequately addresses their concerns, but because of the 2004 deadline, I'll be supporting this bill.

"Thank you, Mr. President."

Senator Sakamoto rose to speak with reservations on the measure and said:

"Mr. President, I rise with the similar concerns of the previous speaker, with reservations."

The Chair so ordered.

The motion was put by the Chair and carried, S.B. No. 2179, S.D. 2, H.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ENERGY RESOURCES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 18. Noes, 7 (Hemmings, Hogue, Ige, Inouye, Kawamoto, Matsuura, Slom).

RECONSIDERATION OF ACTION TAKEN

H.B. No. 2761, H.D. 1, S.D. 1, C.D. 1:

Senator Matsuura moved that the Senate reconsider its action taken on April 30, 2002, in passing H.B. No. 2761, H.D. 1, S.D. 1, C.D. 1, on Final Reading, seconded by Senator Sakamoto.

Senator Matsuura noted:

"Mr. President, there's a portion of this bill that was not discussed at Conference and was, I guess, accidentally put in there, and that portion conflicts with another bill that we previously passed."

The motion was put by the Chair and carried.

On motion by Senator Matsuura, seconded by Senator Sakamoto and carried, H.B. No. 2761, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COMMUNITY ORAL HEALTH," was recommitted to the Committee on Conference.

At 3:25 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:27 o'clock p.m.

DISCHARGE OF CONFEREES

S.C.R. No. 142 (H.D. 1):

The President discharged the managers who were appointed on the part of the Senate at the conference to be held for the

consideration of amendments proposed by the House to S.C.R. No. 142.

RECONSIDERATION OF ACTION TAKEN

S.C.R. No. 142, H.D. 1:

Senator Kawamoto moved that the Senate reconsider its action taken on April 22, 2002, in disagreeing to the amendments proposed by the House to S.C.R. No. 142, seconded by Senator Fukunaga and carried.

Senator Kawamoto moved that the Senate agree to the amendments proposed by the House to S.C.R. No. 142, seconded by Senator Fukunaga.

Senator Kawamoto noted:

"Mr. President, the House made some minor nonsubstantive changes and we agree that the intent of the measure was in tact."

Senator English rose and said:

"Mr. President, I'll continue to vote 'no' on this resolution because it only deals with Oahu, and considering that we're dealing with statewide issues, if we're going to deal with light rail systems, this is only for Oahu. So I'll continue my 'no' vote on this particular resolution.

"Thank you."

The motion was then put by the Chair and carried, with Senators Slom, Hemmings, Hogue and English voting 'No.'

On motion by Senator Kawamoto, seconded by Senator Fukunaga and carried, the Senate agreed to the amendments proposed by the House to S.C.R. No. 142, and S.C.R. No. 142, H.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO CONVENE A TASK FORCE REGARDING A LIGHT RAIL SYSTEM," was Finally Adopted with Senators English, Hemmings, Hogue and Slom voting "No."

At 3:29 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:31 o'clock p.m.

ADOPTION OF RESOLUTIONS

H.C.R. No. 199, H.D. 1:

Senator Tam, Chair of the Committee on Economic Development and Technology, requested that the referral of H.C.R. No. 199 to the Committee on Economic Development and Technology be waived, and the Chair granted the waiver.

Senator Tam moved that H.C.R. No. 199, H.D. 1, be adopted, seconded by Senator Chun.

Senator Tam noted:

"Mr. President and fellow colleagues, due to the insufficient amount of time, your Committee on Economic Development and Technology did not have a chance to have a hearing on this resolution.

"This resolution designates the month of August in the year 2002 as the Duke Kahanamoku Hoolaula to state his accomplishments as Hawaii's goodwill ambassador to the world

with a multitude of recreational ocean, family and cultural activities.”

The motion was put by the Chair and carried, H.C.R. No. 199, H.D. 1, entitled: “HOUSE 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 adopted.

At 3:32 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 3:33 o’clock p.m.

S.R. No. 71:

Senator Kim, Chair of the Committee on Tourism and Intergovernmental Affairs, requested that the referral of S.R. No. 71 to the Committee on Tourism and Intergovernmental Affairs be waived, and the Chair granted the waiver.

Senator Kim moved that S.R. No. 71 be adopted, seconded by Senator Sakamoto.

Senator Kim noted:

“Mr. President, this Senate resolution passed and was referred to my Committee. Obviously, we have no time left. I agree with the resolution and therefore request the waiver.

“I urge my colleagues to support it. Thank you.”

The motion was put by the Chair and carried, S.R. No. 71, entitled: “SENATE 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 adopted.

At 3:35 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:09 o’clock p.m.

MOTION TO OVERRIDE VETO

H.B. No. 2266, H.D. 2:

In accordance with Article III, Section 17, of the Hawaii State Constitution, Senator Hemmings moved that the Senate override the veto of H.B. No. 2266, H.D. 2, as contained in Gov. Msg. No. 361, seconded by Senator Hogue.

Senator Hemmings rose to speak in favor of the motion and said:

“Mr. President, once again this Legislature, after months of hard work, has sent to the Governor’s office a piece of common sense legislation that passed with 25 affirmative votes in the Senate and 51 in the House, unanimously passed. For the record, this was heard in the appropriate Committees; it did bear the light of scrutiny of the public, and, quite frankly, the attorney general’s office and the executive branch of government was missing in action. They did not participate as much as they could have in the crafting of this legislation.

“Nevertheless, in the governor’s message he says it does not appear that the adequate consideration has been given to the impact of this matter and how it would be implemented. Quite to the contrary, I find, as a member of the legislative branch of government and after all the work we did, that particular comment is somewhat insulting to the integrity of the Legislature in general. We did consider it and we did go over it. And every one of the Governor’s problems with it have been addressed, both in writing and in detail.

“This is not a complicated piece of legislation. Basically, it prevents, from a private landowner, assuming ownership of accreted land. Right now, under common laws the Governor seems to be defending, someone living on a beach can, after a certain period of time, acquire 8, 10, 15 feet of beach land out in front of their property. And if it’s 100 feet wide, it could end up being 800, 1000, 1500 square feet of property for nothing – absolutely zero.

“This bill would simply keep beaches for the public, but also it protects landowners that lose their land because of erosion. If the land does accrete back, they would not lose it. So it protects both parties. But most importantly, it protects the public to maintain one of our most precious resources – public beaches.

“I have to tell you that there are those on beaches that are literally out watering the sand, and we have pictures of it, to grow their line out so they can lay claim to public beach land.

“This is good legislation, but more importantly, it asserts our independence and the legislative branch of government. Now, I do understand that the House has problems with it and I’m sure the House is going to deal with them accordingly, but what’s nice about a bicameral system is that we are not, nor should we be, joined at the hip, walking in lock step to the dictates of anyone other than our responsibility to our constituency and our conscience.

“In closing, Mr. President and colleagues, I appreciate the opportunity to be here to make this motion and support it. It wasn’t too long ago that we did not have this type of bipartisan consideration in the Senate. But I hope that after saying that, that you will give this favorable consideration and vote in favor of the veto override and do what is right, regardless of what the House and the executive branch of government does.

“Thank you, Mr. President.”

Senator Chun rose to speak in opposition to the motion and said:

“Mr. President, I rise in opposition to the motion.

“Mr. President, this is a good bill. There are abuses of the current system of people trying to stabilize their shoreline and gain more land by artificially establishing a vegetation line. However, Mr. President, after reviewing this matter and discussing this matter with the House, including the House Chairman for water/land, they believe that they could craft a better bill next Session. They have agreed, generally, with some of the comments made by the Governor in his veto message and they wish to have the opportunity to work during next Session to correct those things.

“Based upon that, Mr. President, I believe that for us to take an action just to send a message of our independence, which we already have done once, would not at this point in time be something that would be beneficial for the people of Hawaii. The idea and the problems that this bill wishes to take care of are good, are laudable. I think we have a commitment from all

the Chairs and the members that this is something that we're willing to work on next year.

"The problems won't go away and neither will we, Mr. President. Thank you."

Senator Chun Oakland rose to support the motion and said:

"Mr. President, I stand in support of the motion.

"I just wanted to concur with the Senator from Waimanalo. Thank you."

At this time, Senator Slom requested a Roll Call vote, and the Chair so ordered.

The motion was put by the Chair and, Roll Call vote having been requested, the veto of H.B. No. 2266, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ACCRETED LANDS," failed to be overridden by not less than two-thirds vote of all members to which the Senate is entitled, on the following showing of Ayes and Noes:

Ayes, 8. Noes, 17 (Buen, Bunda, Chumbley, Chun, English, Hanabusa, Ige, Inouye, Kanno, Kawamoto, Kokubun, Matsunaga, Matsuura, Menor, Nakata, Sakamoto, Taniguchi).

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 115 to 122) were read by the Clerk and were disposed of as follows:

Senate Resolution

No. 115 "SENATE RESOLUTION RECOGNIZING WITH GRATITUDE EACH OF THE INDIVIDUALS WHO OPENED A DAY OF THE SENATE, TWENTY-FIRST LEGISLATURE OF THE STATE OF HAWAII, REGULAR SESSION OF 2002, WITH AN INSPIRATIONAL INVOCATION."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 115 was adopted.

No. 116 "SENATE RESOLUTION EXPRESSING DEEPEST APPRECIATION TO THE MEMBERS OF THE VARIOUS MEDIA FOR THEIR COVERAGE OF THE ACTIVITIES OF THE TWENTY-FIRST LEGISLATURE, REGULAR SESSION OF 2002."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 116 was adopted.

No. 117 "SENATE RESOLUTION RETURNING ALL BILLS, CONCURRENT RESOLUTIONS, AND RESOLUTIONS TO THE CLERK'S DESK."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 117 was adopted.

No. 118 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SIXTIETH DAY."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 118 was adopted.

No. 119 "SENATE RESOLUTION RELATING TO THE PRINTING OF THE JOURNAL OF THE SENATE."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 119 was adopted.

No. 120 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO DESIGNATE THE EMPLOYEES WHO WILL WORK AFTER ADJOURNMENT."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 120 was adopted.

No. 121 "SENATE RESOLUTION REGARDING COMPLETION OF THE WORK OF THE TWENTY-FIRST LEGISLATURE SUBSEQUENT TO THE ADJOURNMENT THEREOF."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 121 was adopted.

No. 122 "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE."

Offered by: Senators Chun, Kawamoto, Slom.

On motion by Senator English, seconded by Senator Hemmings and carried, S.R. No. 122 was adopted.

Senator Ihara rose on a point of inquiry as follows:

"Mr. President, I rise on a point of inquiry.

"Mr. President, I'd like to inquire when you intend to implement Senate Rule 3, subpart 16? This Rule says, 'It shall be the duty of the President to promulgate, for adoption by the Senate, an administrative and financial manual of guides, the purpose of which is to establish uniformity in administrative practices and to ensure compliance with Senate policies.'"

The President responded:

"Senator Ihara, the administrative rules will be forthcoming. We'd like to work on those rules during the interim and we'd like to do it prior to September or October."

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

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

"I just wanted to say, on behalf of the Minority, that we wanted to thank you for your leadership this Session and all of our colleagues and all of the staff, all of the people that have worked so hard on both sides of the aisle.

"We have our disagreements – we have disagreements in philosophy; we have disagreements of individual bills – but I think that the record will show that this Senate Session tackled all of the tough issues. We did not back away from anything. We have some questions and some problems with process that

need to be fixed, but at least they came out in the sunshine. We discussed these issues. I think that we had more people participating on a regular basis than ever before. And as I say, we took these issues from the outset; we wrestled with them with the specter of difficult financial problems behind us, looking over our shoulder every step of the way.

“As the Minority Floor Leader has pointed out many times, we are extremely grateful to the Chairman of Ways and Means and the Ways and Means Committee. I think we functioned very well. You know, it stands in stark contrast when we go up there for our favorite session which is agree/disagree, agree/disagree. And the Chairman is kind enough to have all of us there, even though he had forgotten I had voted ‘no’ and let me get there one time by accident, whereas the House only picks certain people. And so it is this attitude of inclusion that we had this year – bipartisan inclusion and full and open discussion – that I think is really a positive motion.

“I think that we moved forward on a number pieces of legislation. We spent an inordinate amount of time on things like traffic cams and other issues, but at least we came to conclusions and we had positions. And it was the Senate position, by and large, this entire Session that was a leadership position, Mr. President, and we didn’t equivocate on that. There were circumstances that required changes and modification and discussion, and that’s what it’s all about, and by and large these discussions were made in the open.

“So I know I speak for my colleagues that we were very happy with, first of all, the way that we were treated openly within Committees and on the Senate Floor, and we got to make our points. We were a little disappointed when we thought we had, and still believe we have, a very good program and viable alternatives and we wish that there were another way of giving more time to looking at alternatives rather than taking one course of action. But be that as it may, changes will come. We know that we’re going to take this class picture because this will be an unusual class and there will be different people sitting here amongst us next year. There will be a different administration up on the fifth floor.

“I think that many of the things that we did this year gives the community a direction and an opportunity to get more involved and to know, for example, that they do have an opportunity for direct input and that we are looking for new directions. The Chair of TIA has made this very clear that the new Hawaii Tourism Authority will not be similar to the old Tourism Authority. And I think we’ve let people know that we take our oversight responsibility seriously and we’re going to be asking more questions. We had more debates within Committees, which was a very healthy sign. So, from that standpoint, I think it’s really good.

“The work that was done by the transportation Chair and others, in going to the neighbor islands and getting the neighbor islanders more involved in our issues, we all believe that’s what should be done, particularly in the area of the Aloha/Hawaiian merger. And we had a position very early, and despite what the media were saying and despite what other people were saying that if we didn’t do this, this is what’s going to happen, we did our research; we did our homework; we had our discussion and our debate; we reached our decision; and that was a right decision. And we found out that the sky didn’t fall and that the airlines are employing more people and putting more routes on and expanding the things that they’re doing. So, from that standpoint, the things that we did I think were very positive.

“All of us worked hard and I think that there was a growing recognition that even though this is a part-time job that all of us take it seriously full-time. Why? Because the people of Hawaii

and this State are worth it. And we all look forward to our future. We’re all positive. We may want to go in different paths but I think that we all have the same objective in terms of making Hawaii a better place for all people.

“I guess the only real serious disappoint I have, Mr. President, is that we didn’t have enough time in the hours today to take care of the pooch formerly known as Forgea, now known as Hokget, because I think that if we were really humane and compassionate, colleagues, we would have waived the quarantine requirements (who cares if the military have to go through it, waive the quarantine requirements) and made the former Forgea, now Hokget, a member of the State Senate, because I think that that would show, truly, our direction. (Laughter.)

“But colleagues and staff, everyone again, thank you very much. We had a good Session and we will try even harder. None of us can be satisfied with what we did and we should always look to doing a better job in the future. We’ll try to do it whether we’re in this body or outside of the body.

“Aloha, Mr. President.”

At this time, the President delivered his closing remarks as follows:

“The Chair has an hour-long speech prepared. (Laughter.) I didn’t know Senator Chun could really speak that long. Today it was one hour exactly. (Laughter.)

“Members, Senate colleagues, as we conclude this particular Session, I really want to express my gratitude and mahalo to the Senate Leadership and the Committee Chairs, all of whom worked long and hard, particularly during this very difficult time. Special thanks must go to the Ways and Means Chair, Brian Taniguchi, whose patients and perseverance enabled us to balance the budget under tough circumstances, to say the least. Kudos to Chair Taniguchi, his Committee members, and the Ways and Means staff for their countless hours of hard work.

“Despite the controversies and conflicts that arose this year, our attention this Session never strayed far from the budget. Thanks to a combination of ideas and the energy of many individuals, we managed to balance the budget without cuts in essential public services and without slashing the safety net.

“Our solutions were many, but several stand out. One solution involved a reassessment of certain special and revolving funds – thank you, Senator Slom – as we had called for it on opening day in January. While our use of money in these funds has been described as a raid, I believe it reflects the Legislature’s mounting concern over the use of these funds to screen certain government operations from the annual budget review process. Our requests for the justification of billions of dollars in these funds revealed some major shortcomings of the system and I hope it will provide the basis for true structural reform in the next session and beyond.

“We abstained from touching the hurricane relief fund, as we vowed. While we’ll be using \$29 million in interest, the fund will remain in tact for future emergencies. Two major hurricanes and many close calls since then tell us that we must be prepared for future emergencies. Toward that end, we approved a matching grant pilot program to enable homeowners to install hurricane mitigation measures as we had earlier proposed.

“It’s really important to note that we balanced the budget without failing those most in need. Slightly more than \$10 million was appropriated for various health programs and social

services agencies that serve the needy. This was in addition to current appropriations for health and human services. We also earmarked \$1 million for housing assistance for the needy, introduced a long-term care program, and established a discount program for costly prescription drugs. And while we struggled with our money problems, we did not neglect to address the underlying reason for our financial woes. I speak of the state of our economy, particularly as we continue to feel the after effects of the national economic downturn.

“We approved \$475 million in construction spending, and of this sum, \$210 million has been earmarked for repair and maintenance of our public schools and \$56 million for the University of Hawaii facilities. While our approvals were half of what the Governor originally proposed, we believe the sheer volume of projects should enable the construction industry to thrive while keeping our long-term debt service at a reasonable level.

“Agriculture has been a cornerstone in our economy for more than a century and on opening day I called for the preservation of our network of irrigation systems. I thank Chair Jan Buen for that and I am pleased to report that we appropriated about \$18 million for irrigation and infrastructure improvements throughout the islands. I hope we can continue to aid our farmers, and thus preserve our precious agricultural lands through efforts like these.

“Tourism is our largest industry and is still feeling the impact of our global economic problems. We questioned the Hawaii Tourism Authority’s near total emphasis on marketing, and, thanks to Senator Kim and Senator Taniguchi, we succeeded in setting aside \$1 million for tourist tax revenues for the maintenance and improvements of state parks, which are heavily used by our visitors. Our parks system has suffered from years of budget cutting and this will provide some much needed and long overdue support.

“A little more than three months ago I stood before you to describe our plans and priorities for the 2002 Session. With a few exceptions, we’ve managed to achieve our goals and can adjourn proud that we did what we said we would do. Much of our work this year reflected the Legislature’s desire to exercise greater control over government. Most of our decisions also reflect a greater responsiveness to the public, as it should be.

“Yes, much work remains to be done, but I believe our work this year will provide the inspiration for more changes, more responsiveness, and more accountability in the years to come. That is our lasting obligation to the Senate, the State of Hawaii, the people of Hawaii.

“Finally, as we all go home to campaign this summer, I wish each and every one of you good luck in your campaigns for your elections and I hope all of you win.

“Mahalo and thank you very much.”

At 4:33 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:54 o’clock p.m.

ADJOURNMENT

Senator English moved that the Senate of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, adjourn Sine Die, seconded by Senator Hemmings and carried.

At 4:55 o’clock p.m., the President rapped his gavel and declared the Senate of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, adjourned Sine Die.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate