

SECOND DAY

Thursday, January 22, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:42 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Mrs. Pat Fujikawa, Moanalua Gardens Missionary Church, after which the Roll was called showing all Senators present with the exception of Senator Whalen who was excused.

The President announced that he had read and approved the Journal of the First Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1 to 40) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 1, submitting for consideration and consent, the nomination of PATRICK W. BORDER to the office of Judge, 16th Division, Circuit Court of the First Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was referred to the Committee on Judiciary and Hawaiian Affairs.

Gov. Msg. No. 2, submitting for consideration and consent, the nomination of CRAIG H. NAKAMURA to the office of Associate Judge, Intermediate Court of Appeals, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was referred to the Committee on Judiciary and Hawaiian Affairs.

Gov. Msg. No. 3, dated April 2, 2003, transmitting the Detailed Expenditure and Status Report prepared by the Department of Public Safety, Correctional Industries Division, pursuant to Act 170, SLH 1995, was placed on file.

Gov. Msg. No. 4, dated April 29, 2003, transmitting the Housing and Community Development Corporation of Hawaii's Funds Report for Fiscal Year Ending June 30, 2001, was placed on file.

Gov. Msg. No. 5, dated June 6, 2003, transmitting the Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree for the Month of February, 2003, prepared by the Department of Health pursuant to Act 259, Section 34, SLH 2001, was placed on file.

Gov. Msg. No. 6, dated June 6, 2003, transmitting the Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree for the Month of March, 2003, prepared by the Department of Health pursuant to Act 259, Section 34, SLH 2001, was placed on file.

Gov. Msg. No. 7, dated July 16, 2003, transmitting the 2002 Annual Report on Special Purpose Revenue Bond Financing of Electric and Gas Utility Capital Improvement Programs, prepared by the Public Utilities Commission pursuant to Act 262, SLH 1998 and Act 57, SLH 1999, was placed on file.

Gov. Msg. No. 8, letter dated July 9, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Defense in the amount of \$21,397,500, was placed on file.

Gov. Msg. No. 9, letter dated July 9, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Defense in the amount of \$2,387,500, was placed on file.

Gov. Msg. No. 10, letter dated July 29, 2003, pursuant to Act 200, Section 11, SLH 2003, sending notification that she has approved the transfer of \$49,000 from design to plans for Item E-4, Hawaii Health Systems Foundation, Hawaii, was placed on file.

Gov. Msg. No. 11, dated July 30, 2003, transmitting a Report on the Mental Health Services from the Child and Adolescent Mental Health Division for the Quarter Ending June 2003, prepared by the Department of Health pursuant to Act 259, Section 33, SLH 2001, was placed on file.

Gov. Msg. No. 12, dated July 30, 2003, transmitting the Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree for the Month of April, 2003, prepared by the Department of Health pursuant to Act 259, Section 34, SLH 2001, was placed on file.

Gov. Msg. No. 13, dated July 30, 2003, transmitting the Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree for the Month of May, 2003, prepared by the Department of Health pursuant to Act 259, Section 34, SLH 2001, was placed on file.

Gov. Msg. No. 14, dated July 30, 2003, transmitting a Detailed Quarterly Report on Projected and Actual Expenditures from the Behavioral Health Administration for the Quarter ending March 31, 2003, prepared by the Department of Health pursuant to Act 259, Section 36, SLH 2001, was placed on file.

Gov. Msg. No. 15, letter dated August 1, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Agriculture in the amount of \$29,739, was placed on file.

Gov. Msg. No. 16, letter dated August 6, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Business, Economic Development and Tourism, in the amount of \$437,066, was placed on file.

Gov. Msg. No. 17, letter dated August 6, 2003, pursuant to Act 200, Section 111, SLH 2003, sending notification that she has approved the transfer of \$10,000 from construction to design for health and safety requirements statewide, Act 177, Item K-17, SLH 2002, was placed on file.

Gov. Msg. No. 18, letter dated August 8, 2003, pursuant to Act 200, Sections 133 and 134, SLH 2003, sending notification that she has approved the following transfers for the Department of Business, Economic Development and Tourism: transfer of operating funds in the amount of \$70,000 from BED 144 Statewide Planning and Coordination to BED 142 General Support for Economic Development and \$57,720 from BED 102 Business Services to BED 142 General Support for Economic Development; and the transfer of one permanent position count from BED 144 to BED 142 and one temporary position count from BED 102 to BED 142, was placed on file.

Gov. Msg. No. 19, letter dated August 26, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Health in the amount of \$200,000 for the Traumatic Brain Injury Implementation Grant, was placed on file.

Gov. Msg. No. 20, letter dated August 26, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Health in the amount of \$99,694 for the Early Childhood Comprehensive Systems Grant, was placed on file.

Gov. Msg. No. 21, letter dated August 29, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Land and Natural Resources in the amount of \$50,000, was placed on file.

Gov. Msg. No. 22, dated September 1, 2003, transmitting the Annual Reports for the Housing and Community Development Corporation of Hawaii for Fiscal Years 2001 and 2002, pursuant to Chapter 201G, HRS, was placed on file.

Gov. Msg. No. 23, dated September 8, 2003, transmitting the 2002 Annual Report on the Juvenile Justice State Advisory Council prepared by the Office of Youth Services, pursuant to Section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended, was placed on file.

Gov. Msg. No. 24, letter dated October 31, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Health, in the amount of \$2,137,365 for the Bioterrorism Hospital Preparedness Program, was placed on file.

Gov. Msg. No. 25, letter dated September 8, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Health, in the amount of \$725,000 to implement the Hawaii Systems Change for Community Living, Community Personal Assistance Services and Supports, was placed on file.

Gov. Msg. No. 26, letter dated September 10, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Transportation, in the amount of \$3,000,000, was placed on file.

Gov. Msg. No. 27, letter dated September 12, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Agriculture, in the amount of \$10,000, was placed on file.

Gov. Msg. No. 28, dated September 12, 2003, transmitting the Strategic Plan for the State Foundation on Culture and the Arts for Fiscal Year 2003-2008, was placed on file.

Gov. Msg. No. 29, letter dated September 12, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Human Services, in the amount of \$226,348, was placed on file.

Gov. Msg. No. 30, dated September 12, 2003, transmitting the 2002 Annual Report prepared by Department of Hawaiian

Home Lands pursuant to Section 222 of the Hawaiian Homes Commission Act, 1920, as amended, was placed on file.

Gov. Msg. No. 31, dated September 16, 2003, transmitting the Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree for the Month of June, 2003, prepared by the Department of Health pursuant to Act 259, Section 34, SLH 2001, was placed on file.

Gov. Msg. No. 32, dated September 16, 2003, transmitting the Detailed Quarterly Report on Projected and Actual Expenditures from the Behavioral Health Administration for the quarter ending June 30, 2003, prepared by the Department of Health pursuant to Act 259, Section 36, SLH 2001, was placed on file.

Gov. Msg. No. 33, letter dated September 22, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Human Services, in the amount of \$268,245 for FY 03 Economic Development Initiative, Special Projects Grant, was placed on file.

Gov. Msg. No. 34, letter dated September 26, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Public Safety, in the amount of \$72,609, was placed on file.

Gov. Msg. No. 35, dated September 26, 2003, transmitting the Monthly Notification of Expenditures from the Director of Health Relative to the Felix Consent Decree for the Month of July, 2003, prepared by the Department of Health pursuant to Act 259, Section 30 (sic), SLH 2001, was placed on file.

Gov. Msg. No. 36, dated October 17, 2003, transmitting the Enterprise Zones Partnership Annual Report 2002-2003, prepared by the Department of Business, Economic Development and Tourism, was placed on file.

Gov. Msg. No. 37, letter dated October 23, 2003, pursuant to Act 200, Section 129, SLH 2003, sending notification that she has approved the expenditure of federal funds in excess of levels authorized by the Legislature for the Department of Transportation, in the amount of \$419,892, was placed on file.

Gov. Msg. No. 38, dated December 1, 2003, transmitting the Annual Report on the North Shore Paukaiula Streambank Erosion and Riparian Area Community Project, prepared by the Department of Land and Natural Resources pursuant to S.C.R. No. 223 (1995), was placed on file.

Gov. Msg. No. 39, dated December 1, 2003, transmitting the Annual Report on Geothermal Royalties, prepared by the Department of Land and Natural Resources pursuant to Section 182-18, HRS, was placed on file.

Gov. Msg. No. 40, dated December 1, 2003, transmitting the Report on Operations of the Filing Office for Financing Statements Under the Uniform Commercial Code, Secured Transactions (Revised Article 9), prepared by the Department of Land and Natural Resources pursuant to Section 490:9-527, HRS, was placed on file.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 1 and 2) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 1, transmitting H.C.R. No. 1, which was adopted by the House of Representatives on January 21, 2004, was placed on file.

At 11:48 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:48 o'clock a.m.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, H.C.R. No. 1, entitled: "HOUSE CONCURRENT RESOLUTION RELATING TO RECESS DAYS FOR THE REGULAR SESSION OF 2004," was adopted.

Hse. Com. No. 2, transmitting H.C.R. No. 2, which was adopted by the House of Representatives on January 21, 2004, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, H.C.R. No. 2, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO ADDRESS THE LEGISLATURE ASSEMBLED IN JOINT SESSION," was adopted.

SPECIAL COMMITTEE REPORT

Senator Hanabusa, for the Special Committee to conduct an interim study on Senate Rules, presented a report (Spec. Com. Rep. No. 1) of the conclusions and recommendations of the Committee.

The President then ordered the Clerk to file Spec. Com. Rep. No. 1.

INTRODUCTION OF SENATE BILLS

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the following bills passed First Reading by title and were deferred:

Senate Bill

No. 2096 "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE FILIPINO COMMUNITY CENTER."

Introduced by: Senators Kawamoto, Espero, Aduja, Baker.

No. 2097 "A BILL FOR AN ACT RELATING TO BOATING."

Introduced by: Senator Kawamoto.

No. 2098 "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS AND MAKING AN APPROPRIATION FOR THE KULAMALU LONG-TERM CARE FACILITY IN KULA, MAUI."

Introduced by: Senators English, Baker, Tsutsui, Bunda.

No. 2099 "A BILL FOR AN ACT RELATING TO LIVE EXOTIC ANIMAL TRAVELING EXHIBITS."

Introduced by: Senator Ihara, by request.

No. 2100 "A BILL FOR AN ACT RELATING TO CRUELTY TO ANIMALS."

Introduced by: Senator Ihara, by request.

No. 2101 "A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLES II, III, AND XVII OF THE CONSTITUTION OF THE STATE OF HAWAII TO PROVIDE FOR INITIATIVE."

Introduced by: Senator Ihara, by request.

No. 2102 "A BILL FOR AN ACT RELATING TO TAXATION OF MARIJUANA."

Introduced by: Senator Ihara, by request.

No. 2103 "A BILL FOR AN ACT RELATING TO STATE HOLIDAYS."

Introduced by: Senator Ihara, by request.

No. 2104 "A BILL FOR AN ACT RELATING TO PROCUREMENT."

Introduced by: Senators Espero, Kanno, Aduja, Hooser, Baker.

No. 2105 "A BILL FOR AN ACT RELATING TO CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION."

Introduced by: Senators Espero, Aduja, Sakamoto, Kawamoto, Kim, Baker, Menor.

No. 2106 "A BILL FOR AN ACT RELATED TO INTEGRATED SOLID WASTE MANAGEMENT."

Introduced by: Senators Espero, Aduja.

No. 2107 "A BILL FOR AN ACT RELATING TO HIGHWAYS."

Introduced by: Senators Espero, Aduja, Kanno.

No. 2108 "A BILL FOR AN ACT RELATING TO EDUCATION."

Introduced by: Senators Sakamoto, Aduja, Chun Oakland, Baker, Hemmings.

No. 2109 "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE X, SECTION 2, OF THE HAWAII STATE CONSTITUTION TO EXPAND THE BOARD OF EDUCATION TO SEVENTEEN MEMBERS."

Introduced by: Senators Sakamoto, Chun Oakland, Baker, Kim, Tsutsui, Aduja.

No. 2110 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR FAMILIES FOR RESOURCES FOR EARLY ACCESS TO LEARNING."

Introduced by: Senators Sakamoto, Chun Oakland, Baker, Kim, Tsutsui, Aduja.

No. 2111 "A BILL FOR AN ACT RELATING TO PARENT-COMMUNITY NETWORKING CENTERS."

Introduced by: Senators Sakamoto, Chun Oakland, Baker, Aduja.

No. 2112 "A BILL FOR AN ACT RELATING TO PUBLIC SCHOOL TEACHER TAX CREDIT."

- Introduced by: Senators Sakamoto, Baker, Tsutsui, Aduja.
- No. 2113 "A BILL FOR AN ACT RELATING TO EDUCATIONAL PROGRAMS."
- Introduced by: Senators Sakamoto, Aduja, Baker, Kim, Tsutsui.
- No. 2114 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR SAFETY AND SECURITY IMPROVEMENTS FOR UNIVERSITY OF HAWAII CAMPUSES."
- Introduced by: Senators Sakamoto, Aduja, Chun Oakland, Baker, Kim.
- No. 2115 "A BILL FOR AN ACT RELATING TO EDUCATION."
- Introduced by: Senators Sakamoto, Chun Oakland, Baker, Hemmings, Aduja.
- No. 2116 "A BILL FOR AN ACT RELATING TO CONSTRUCTION."
- Introduced by: Senator Sakamoto.
- No. 2117 "A BILL FOR AN ACT RELATING TO CONSTRUCTION."
- Introduced by: Senator Sakamoto.
- No. 2118 "A BILL FOR AN ACT RELATING TO CONSTRUCTION."
- Introduced by: Senator Sakamoto.
- No. 2119 "A BILL FOR AN ACT RELATING TO DESIGN PROFESSIONAL CONCILIATION PANEL."
- Introduced by: Senator Sakamoto.
- No. 2120 "A BILL FOR AN ACT RELATING TO THE DESIGN PROFESSIONAL CONCILIATION PANEL."
- Introduced by: Senator Sakamoto.
- No. 2121 "A BILL FOR AN ACT RELATING TO PROCUREMENT."
- Introduced by: Senator Sakamoto.
- No. 2122 "A BILL FOR AN ACT RELATING TO REGULATION OF FARM PRODUCE."
- Introduced by: Senator Hooser.
- No. 2123 "A BILL FOR AN ACT RELATING TO IMPOSITION OF A SURCHARGE ON TRAFFIC FINES TO BE PAID TO THE COUNTIES."
- Introduced by: Senators Hooser, Chun Oakland, Sakamoto, Tsutsui, English, Menor, Kawamoto, Hemmings.
- No. 2124 "A BILL FOR AN ACT RELATING TO PROPERTY LEFT IN A DANGEROUS CONDITION."
- Introduced by: Senators Hooser, Sakamoto, Tsutsui, English, Espero, Menor, Kawamoto, Ihara, Ige, Slom.
- No. 2125 "A BILL FOR AN ACT RELATING TO CONVEYANCE TAX."
- Introduced by: Senator Hooser.
- No. 2126 "A BILL FOR AN ACT RELATING TO INTEREST AND USURY."
- Introduced by: Senators Hooser, Chun Oakland, Ige, Sakamoto, English, Menor, Espero, Hemmings, Kawamoto, Ihara.
- No. 2127 "A BILL FOR AN ACT RELATING TO HERBICIDE USE."
- Introduced by: Senators Hooser, Espero, Menor, Chun Oakland, Ige, Slom, Ihara.
- No. 2128 "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST INDUSTRIAL ENTERPRISES."
- Introduced by: Senators Hooser, English, Espero, Menor, Hemmings, Chun Oakland, Ihara, Ige, Slom.
- No. 2129 "A BILL FOR AN ACT RELATING TO SOLID WASTE MANAGEMENT."
- Introduced by: Senators Hooser, Chun Oakland, Espero, Menor, Ihara, Ige, Slom, Hemmings.
- No. 2130 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE OPERATION AND MAINTENANCE OF THE EAST KAUAI IRRIGATION SYSTEM."
- Introduced by: Senators Hooser, Espero, English, Menor, Chun Oakland, Ihara, Ige, Slom, Hemmings.
- No. 2131 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE DEPARTMENT OF DEFENSE."
- Introduced by: Senators Hooser, Espero, Menor, Kawamoto, Chun Oakland, Ihara, Ige, Slom, Hemmings.
- No. 2132 "A BILL FOR AN ACT RELATING TO GENETICALLY ENGINEERED CROPS."
- Introduced by: Senators Hooser, Espero, Menor.
- No. 2133 "A BILL FOR AN ACT RELATING TO PROCUREMENT."
- Introduced by: Senators Hooser, Chun Oakland, Espero, Menor, Kawamoto, Hemmings, Ige, Slom, Ihara.
- At 11:50 o'clock a.m., the Senate stood in recess subject to the call of the Chair.
- The Senate reconvened at 12:43 o'clock p.m.
- Senator Hogue rose on a point of personal privilege as follows:
- "Mr. President, I want to rise on a point of personal privilege at this time.
- "Mr. President, on behalf of myself and my colleagues, I just want to point out that I really do object to the use of the Majority Party constantly going behind closed doors in these

recesses during the Session. I don't really believe that the public is being served. It is incongruous, in my mind, that we are public servants doing the public's bidding, supposedly in an open forum, and yet work continuously is decided behind closed doors.

"People talk to me all the time about coming up here and sitting in the Chamber and they wait for the debate, and the debate doesn't happen. Instead, the debate goes on behind closed doors. Ironically, in a little bit, we are going to be debating open government. So, it seems that what happened today behind closed doors is that you were debating open government behind closed doors. How ironic is that?"

The President interjected:

"Senator Hogue, you will have your time. Your time will be debated and you will stand up and you will voice your opinion at that juncture. So, Senator Hogue . . ."

Senator Hogue continued:

"I totally understand that and I'm not here to debate that. I'm here to debate the overuse of going behind closed doors during Session. Can we cut that out a little bit?"

The President stated:

"Senator Hogue, I will call you out of order."

Senator Hogue rose and said:

"Thank you."

ORDER OF THE DAY

ADOPTION OF RESOLUTIONS

MATTERS DEFERRED FROM WEDNESDAY, JANUARY 21, 2004

S.R. No. 1:

By unanimous consent, action on S.R. No. 1, entitled: "SENATE RESOLUTION AMENDING THE RULES OF THE SENATE OF THE TWENTY-SECOND LEGISLATURE," was deferred until Friday, January 23, 2004.

S.R. No. 2:

Senator Ihara moved that S.R. No. 2 be adopted, seconded by Senator Chun Oakland.

Senator Ihara rose in support of the measure as follows:

"Mr. President, I rise in support of S.R. No. 2.

"The purpose of this resolution is to implement one of the, quote, 'alternatives' offered in Special Committee Report No. 1, submitted to the Senate in December. It actually was on today's Order of the Day. This proposal in S.R. No. 2 is listed on page 13. It is not a recommendation of the Committee. It is one of the alternatives.

"This resolution proposes to provide in the Rules an appropriate basis for referring bills to committee. The basis proposed in this resolution is the basis of committee jurisdictions as described in Senate Rule 17.

"The Senate Rules today, do not provide any basis or criteria to guide Leadership in deciding bill referrals. This resolution

would provide a criteria. This criteria, as I mentioned, is already-agreed-upon jurisdictions of the committees.

"The concept in this resolution is very simple, one that most people and Senators, including myself, thought was already in the Rules. And for the most part, I believe past practice has been that referrals were based on the proper purview of the committees.

"If that's the case, then you might ask, why is this resolution needed? I want to read what leaders of several citizen groups have said in their testimony submitted and attached to Special Senate Committee Report No. 1:

The League of Women Voters said: 'Any person or group that has a bill introduced in the Legislature has the right to expect that its bill is accorded the proper respect, beginning with a referral to the committee that has jurisdiction over that particular subject matter.'

Interfaith Alliance of Hawaii said: 'We firmly believe that referral of bills to standing committees must be based upon the jurisdiction currently described in Senate Rules. To do otherwise raises public suspicion and further disengages a portion of the populace.'

The Hawaii Green Party said: 'Interpretations of committee responsibilities should not be "gamed" (I'm not quite clear what they mean about the word gamed, but) should not be "gamed" to allow a Chair to capture control over any bill he or she wants to hear, regardless of the normal purview of that committee.'

A citizen leader said: 'I have in the past been aware of times when bills have been assigned to committees that do not have jurisdiction over the subject matter. This has not only made me distrustful of the good intentions of the Senate, but it has caused many voters to withdraw from the process in distrust and disgust.'

Christian Unity and Interreligious Concerns said in their testimony: 'Change the Senate's arbitrary any-committee-referral rule with assignment of bills to committees of relevant subject matter. The current rule is subject to blatant manipulation.'

I'm not sure I agree with all of these statements, but the perception, Mr. President, is there.

"These citizens clearly want bills referred to committees based on their proper jurisdictions.

"But their statements are mild compared to a newspaper editorial. Last year there was controversy over a bill to ban fluoridation in our drinking water, and it appeared obvious, at least from the public's point of view, that the Senate Health Committee should have been part of that referral, but it wasn't.

"The March 2, 2003, Honolulu Star Bulletin editorial said, and it is, I'll warn you, a little bit harsh: 'Instead of confronting another debate about fluoridating water in Hawaii, legislative leaders have decided to stifle the Democratic process through manipulating the rules that govern how bills are heard. The end-run around their own canons provides another example of how elected officials who are supposedly representing voters' interests break the public trust through sneaky maneuvers on camouflaged measures.' I told you that was harsh.

"My point in reading these public statements, Mr. President, is that I believe the Senate should strive to base its bill referrals

on the committee jurisdictions already listed in our Rules. I believe this resolution will help us move in that direction.

"I will be voting in support of this resolution, and I request a Roll Call vote or a similar method, as long as the votes of the Senators are noted. Thank you, Mr. President."

Senator Hanabusa rose in opposition to the measure as follows:

"Mr. President, first, I'd like to take this opportunity to thank the members of the Judiciary and Hawaiian Affairs Committee, along with two members of Leadership, Vice President Kim and Senate Majority Caucus Leader Tsutsui, for serving on S.R. No. 147.

"I rise to speak in opposition to this Senate resolution and would like to set forth the reasons why so that members of the public who participated in the process, as well as my colleagues, can understand what transpired.

"First of all, Mr. President, it was the first time any house of this Legislature actually put forth its Rules. This particular issue was really not part of the resolution before the public. Something that we did as the Committee was to hear what the people were raising as their concerns. So we really kind of deviated from the resolution of this body. But the public, for the first time, they felt empowered in the participation process and that's why they brought up everything about our process that they were concerned about.

"The referral issue came up, and the referral issue was one that was misunderstood, because what people thought was that somehow these bills went to all of these committees and there was no rhyme or reason for it. So we explained to them, and it's part of the report, as to how the referral process is done.

"Mr. President, the sentiments of the people were really not so much about the referral process itself, or the fact that we have an appeal process to yourself, Mr. President, but it was because they did not like Senate Rule 17 in terms of the jurisdiction. They did not like when certain Committee Chairpersons received a particular bill. But that's not the referral process.

"The reason why, Mr. President and colleagues, that I cannot support this amendment is that it's amending our Rule to say, 'based upon the jurisdiction of the committees as described in Senate Rule 17.' Mr. President, as part of your Leadership that does the referral after SMA does the initial pass, I can't concur with this. Because what this then does is it makes it possible for a bill to be killed because, arguably, every Committee Chair, I'm sure, could find some way to say that this bill should be theirs. So at the very minimum – the very minimum, Mr. President – at least three Committee Chairs can do it. I can rattle off one Committee Chair who, based on his jurisdiction, can say every bill comes to him, and it isn't the good Senator from Manoa on Ways and Means. But that's because that is how our Senate Rule reads.

"Senate Rule 17 is not the issue here, Mr. President. It is the referral process, and I believe that the way the language reads now and, in addition to that, the way that we have done it in terms of our custom and practice, once the public understood – and we were remiss in not making it clear to the public as to how we do our referrals – that that was the problem. To put this in and then we'll then, I believe, put out our custom and practice and say not only would we have to refer based upon the jurisdiction of the committees, which is the language here, it would also say any appeal process would also be bound by this.

"Based upon that, Mr. President, I cannot support S.R. No. 2 and would like to say that I heard the public loud and clear who came forward to our committee meeting. I heard their concerns and I honestly believe that it is not the referral base to all committees that they believe that every committee who has jurisdiction should have the right for that. I believe they did not like the way we adopted our Rules and where certain bills went to certain committees.

"Mr. President, I will be voting against S.R. No. 2 and ask that my colleagues do the same. Thank you."

Senator Slom rose in support of the measure and said:

"Mr. President, I rise in support of S.R. No. 2.

"The real issue here is not the referral process and not jurisdiction. Again, it is part of the openness in government. And while it was laudable that the committee heard from the public and included the public, that's what we're supposed to do. We tell the public we want their input. We tell the public we want them to participate, and the fact that they don't ask a specific question is because they don't really understand what we do. And particularly, as my colleague, the Minority Floor Leader said, so much of it, too much of it is behind closed doors, even though we're supposed to be meeting in open session.

"What this resolution simply does is to say that there's nothing wrong with custom and practice, but that you really can't separate referral from jurisdiction because Rule 17 is a fact. And if we're going to give credence to all of the Rules equally and treat them equally, then the whole reason for jurisdiction is to make sure that the referral process is related to it. And if there is a problem or if there's a situation where it might become unwieldy because there would be too many committees involved, and that is a possibility, then that is something that properly should be debated in public before this entire body and before the public.

"So as the maker of this resolution said, it is just a simple matter but it's an important matter. And we should also ask ourselves, by passing this resolution, do we add to the openness and the discussion of government or do we detract from it? I've heard no response that really says that this is going to cause us problems. I do hear, however, that it may cause some discomfort to those individuals within this body that like this system that allows them to deviate from Rule 17 and from usual and customary practice. Therefore, I urge my colleagues to support very strongly this and the other resolutions which will strengthen and open the entire process of this Legislature.

"Thank you, Mr. President."

The motion was put by the Chair and, Roll Call vote having been requested, S.R. No. 2, entitled: "SENATE RESOLUTION AMENDING THE RULES OF THE SENATE TO REQUIRE REFERRAL OF BILLS BASED ON THE JURISDICTION OF COMMITTEES AS DESCRIBED IN THE RULES," failed to be adopted on the following showing of Ayes and Noes:

Ayes, 8. Noes, 16 (Aduja, Baker, Bunda, English, Espero, Hanabusa, Hooser, Inouye, Kanno, Kawamoto, Kim, Kokubun, Menor, Sakamoto, Taniguchi, Tsutsui). Excused, 1 (Whalen).

S.R. No. 3:

By unanimous consent, action on S.R. No. 3, entitled: "SENATE RESOLUTION AMENDING THE RULES OF THE SENATE RELATING TO COMMITTEE

PROCEDURES ON DEFERRING CONSIDERATION ON A BILL," was deferred until Friday, January 23, 2004.

S.R. No. 4:

By unanimous consent, action on S.R. No. 4, entitled: "SENATE RESOLUTION AMENDING THE RULES OF THE SENATE TO AUTHORIZE THE PRESIDENT TO ADOPT CONFERENCE COMMITTEE PROCEDURES," was deferred until Friday, January 23, 2004.

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

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

"I take great pride in the openness of the Senate in the announcement section of our procedures because we let things come to the Floor to be discussed in an open and honest manner in front of the people of Hawaii.

"Yesterday, Mr. President, we voted on a resolution to bring the superintendent from the Department of Education to this Legislature to address us. We had very strong feelings about that issue, Mr. President, and I think you heard some nay votes from your Senate Minority. But out of respect for the day and for the proceedings, we did not want to make an issue of it. But I think in the interest of fairness, in the interest of openness in government, in the interest of having a fair, level playing field in debating this very important issue of public education, something should be said.

"First, there's not a precedence to bring a head of a department to this Legislature to plead a particular side of an issue. That is done in committee hearings. We had a very fine briefing from Pat Hamamoto, the Board of Education and the Department of Education in our Joint Senate Ways and Means and House Finance Committee hearings on the budget. If we did this, why don't we bring Director Koller and Fukino to discuss health and their issues and their agenda?

"The other issue is justification. We are seeking the truth on matters of this nature and if there's justification to bring one particular point of view, then in the interest of fairness, there should certainly be an opportunity to bring the other point of view. The question is, are we going to invite Laura Thielen or Bill Ouchi or some of the people who have worked so hard trying to offer an alternative to the status quo an opportunity to address this Legislature? I think not.

"Procedurally, this is uncalled for, and unfortunately, we did not get a chance to debate this or discuss it in an open, honest manner before it was brought to us for a vote yesterday. But I think the record should reflect that we are doing the wrong thing. Pat Hamamoto, for the record, is in a tremendous conflict of interest position. She's hired by the BOE. She works for the DOE. Are we going to get their agenda or are we going to have an open and honest discussion on education reform?

"I'm not going to debate the issue now, Mr. President, I think there'll be the whole Session to debate it. Unfortunately, we're having a hard time finding common ground. But before Pat Hamamoto talks, we wouldn't have this discussion at all if the system were working. There is an old cliché that's worth repeating: a definition of insanity is to do the same thing and expect different results. I don't think the Department of Education or the Board of Education in the last 30 years has ever demonstrated the will to depart from business as usual and just ask for more money to solve the State's single biggest and most expensive problem – our education system.

"Mr. President, thank you for allowing me to speak on this issue. I think it's very important. I'm sorry we didn't have a chance, but out of respect for yesterday, I thought it would be better to discuss it today.

"Thank you, Mr. President."

ADJOURNMENT

At 1:05 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, January 23, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate