

ELEVENTH DAY

Friday, February 6, 2004

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:08 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Deacon Walter Yoshimitsu, St. John Vianney Church, Kailua, after which the Roll was called showing all Senators present with the exception of Senators Inouye and Kim who were excused.

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

At 11:15 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:25 o'clock a.m.

ORDER OF THE DAY

THIRD READING

H.B. No. 2585, H.D. 1:

Senator Taniguchi moved that H.B. No. 2585, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Kokubun.

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

"Mr. President, I rise to speak in support of H.B. No. 2585, H.D. 1, our legislative appropriations bill.

"Mr. President, both the Senate and the House, are holding the line on spending. Our legislative budgets remain flat with no increase from last year's budget. I also want to note that our attached agencies – the Legislative Reference Bureau, the State Ethics Commission, and the Ombudsman – have not increased their respective budgets.

"H.B. No. 2585 increases the auditor's budget by a little over \$3 million to allow the auditor to conduct the annual audits, audits of departments in accordance with Act 4 of the 2003 Special Session.

"Mr. President, our Auditor, Marion Higa, has been recognized for her in-depth, incisive, and sometimes scathing audits of departments and agencies. Even Governor Lingle has recognized the work of our auditor.

"Mr. President, I can assure you that Ms. Higa will apply the same high levels of professionalism and excellence to the audit of the departments as she has done with her past audits.

"I ask that all members vote 'aye.' Thank you, Mr. President."

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

"Mr. President, I rise in opposition to H.B. No. 2585.

"We had a very lively discussion and a good discussion yesterday in the Ways and Means Committee, but not all the committee members were there and not the rest of our

colleagues. So, let me tell you why I stand in opposition to this bill.

"First of all, we certainly reinforce our support for the Office of the Legislature Auditor and for the work that has been done and will be done in the future. I don't think that's an issue, the support. However, there were some troubling questions that were raised yesterday and not answered or not answered in a position that would, I think, assure a fiscally sound legislative body.

"First and foremost, as I pointed out yesterday, and it has been not just for this bill but for other bills, there was no total amount given in the bill. So, one had to add up all of the separate appropriations to come up with a figure, and colleagues should know that the total amount of this bill is \$23 million. That means that the cost of running this Legislature is \$23 million – the Legislature and the allied agencies that the Chairman of Ways and Means talked about. Of that \$23 million, while the appropriations are not increasing, the Chairman did point out the issue about an additional \$3 million for the Office of the Legislative Auditor, and that's where I think one of the problems was created because we heard testimony from Mr. Saito, the Chief Financial Officer, the Comptroller for the State of Hawaii, the head of DAGS, and we looked at the figures for doing the audits of the various agencies, which are now going to be taken over by the auditor, and we're not rearguing Act 4. What we are looking at, though, is why the cost would be 25 percent more than the actual figures that had been presented prior to that?

"In questioning the auditor, her answer was that she was estimating the cost of inflation. And when it was pointed out that, in fact, we have had very little inflation in the state and that we're not expecting any, in fact, the real issue for a lot of people has been the threat of deflation in the state, her estimate of the inflationary and other costs in producing the documents came to about 12 percent above what the actual costs have been and were projected by DAGS. So, that left another 13 percent. The answer was that that money would not be lost but would be deposited in the revolving special fund of the legislative auditor.

"Now, Mr. President and colleagues, as you know, I have been railing against special funds from the moment that I entered this body eight years ago. And I think for good reason, because what happens is, whenever we create special funds, whenever we pump money into those special funds, a year or two or three to five years later, the Legislature in its wisdom, empties those funds and the funds go into the general fund for other purposes.

"So, I have a problem with the figures – why they are so inflated, number one; why we need to build up an additional balance at this time, number two. There certainly are other methods and other agencies that could use the funding at this time. The estimate, by the way, of the additional \$3 million was a faulty estimate. It was based on a figure that allegedly came from the executive in the executive budget of \$6 million. That budget figure never appeared from the executive. In fact, it came from the Legislature and was reduced significantly in actual terms by the executive branch.

"The other point that came up yesterday was, if we're looking at the agency's amounts, then really we should look at the other amounts too, as part of that overall \$23 million, but we found out that the legislative auditor, in fact, does not audit the Legislature. So, those monies that go into the expenditures for the Legislature, while they may have remained flat, they still

represent a significant amount of money, and perhaps we should be turning our attention to looking more closely at our own expenditures.

“And finally, Mr. President, we’ve now completed, or will complete today, 11 days of the 60-day Legislative Session, and it’s always interesting to me that the first bill that we always rush through is the bill to pay for ourselves. We’re told that we have an ice epidemic; we’re told that we have an educational crisis, but the first bill that we always rush through to send to the Governor, and even have special times for the Session and even get the committee report in record speed, is the bill for more expenditures by the Legislature.

“So, while that is prompt, we also had questions about the promptness of whether or not these financial audits are going to take place. For these and other reasons, I’m compelled to vote ‘no’ on this budget.

“Thank you, Mr. President.”

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

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

“As an aside, I want to thank the Majority for having a short recess to discuss this issue behind close doors. I would hope that you can have the discussion out here, but that’s just my personal opinion.

“I had trouble with this particular request from the legislative auditor because she’s asking for a 25 percent increase and I’m not sure that she has actually backed up her claims. One of the things that the legislative auditor should be employing every single department to do is to practice fiscal responsibility, and yet I’m not sure that the answers that were given for a 25 percent increase really stand muster. And certainly the auditor’s office has been having difficulty just getting her work done on time and turning in some of the reports in on a timely manner.

“Also, there’s a matter that doesn’t really seem to make a whole heck of a lot of sense to me, and that is that when the auditor’s department in past sent some of these different audits out to independent CPA firms, one of the things that these independent CPA firms would do is to compile the financial statements. They would spend part of their time during the process, maybe as much as half or two-thirds of the time, in the compilation process. Okay, that’s the preparation of the financial statements, the gathering, all of that stuff and then the rest of it would be done in audit services. So, for example, if it went out to, say, Price Waterhouse, and I used to work for Price Waterhouse as a young CPA, and say the entire bill for Price Waterhouse was \$100,000, about \$50,000 of that would be compilation and \$50,000 of that would be audit service. But what the legislative auditor is saying is that she and her office don’t do compilation, that she will be asking the different departments to do the compilation and she wants to charge as much as Price Waterhouse charged for the outside independent audit.

“So, essentially, what is happening here is that the departments are doing the compilation, then the legislative auditor is doing the audit services and yet the legislative auditor is charging the different departments the full cost. So, we’re suggesting that the cost is much less than this, because she and her office are only doing audit services and so that full cost should not be as high as she is actually charging the

departments. So if that’s the case, why is there an extra 25 percent added on?

“So for these reasons, I will be voting ‘no.’ Thank you, Mr. President.”

Senator Hemmings rose to speak against the measure and stated:

“Mr. President, I rise to speak against H.B. No. 2585, H.D. 1.

“Mr. President, I’d like to agree with the good Senator from Manoa, the Chairman of the Ways and Means Committee, that this Legislature is run cost effectively and efficiently. I think we ask all our people, who don’t have the protection in the instances of civil service or labor unions, to work extra long and extra hard hours and they do produce great work. I think we do have a very efficient branch of government here and I compliment the Majority Party for having it that way. But, that’s not always true in every instance. We joined you in lauding the efforts of the legislative auditor in the past and we all agree that she’s done an excellent job of ferreting out some of the problems we face in government so we can address them.

“This latest move, though, to remove some of the audit functions from the executive branch of government to the legislative branch of government, is a policy change. It’s not her initiative. It’s the initiative of this Legislature, and we find fault with it. It seems to be more political than necessary. In many instances, it does pose a problem for the executive branch of government. For instance, in the Comprehensive Annual Financial Reporting Requirements, what they call a CAFRR, they have to be on time and be fairly well done. Otherwise, it jeopardizes our Chief Financial Comptroller who happens to be the head of DAGS. It doesn’t jeopardize the Department of the Legislative Auditor.

“With that in mind, we have discovered in our investigations, in a very, very healthy hearing yesterday, it was democracy at its best, where differing opinions were aired openly and honestly and we had a wonderful debate. And once again, I would like to congratulate the Chairman of the Ways and Means Committee for allowing it to proceed. There is some information that was brought forth that shows that possibly this added responsibility and the added cost which won’t entirely justify being given to the legislative auditor, should be questioned. For instance, we know, as a matter of record, which was acknowledged in questioning, that the legislative auditor does about 12 to 15 audits a year and has been late in reporting back for them to this Legislature. Of them, two of them have still not been reported to us, and they do have an impact on us being able to do our job. There were hearings the other day on mental health parity in the House of Representatives, but there was no audit that we requested so we could make informed decisions on that debate.

“So the facts are undeniable that the legislative auditor is late. And that poses a problem for something like CAFRR. You might ask why? Well, the legislative auditor in her wonderful work she’s done in years past, has done an excellent job of holding departments feet to the fire on employment practices. She’s singled out the Quest Program and also the Office of Hawaiian Affairs for high employee turnover. National statistics on employee turnover in all agencies of government say that they average between 7 and 10 percent. In the last 10 months in the legislative offices of the legislative auditor, there has been close to 50 percent turnover. This is problematic and may result in untimely submission of reports that we need to stay legal and protect our bond rating and get our job done.

“So, I will suggest that before we give this office additional responsibility and an additional \$3 million that we take a serious look at how that office is functioning. I might suggest that it might be time to audit the auditor and do a management audit of the auditor to give her assistance in ferreting out the problems that she’s facing retaining her employees and submitting her reports on time.

“For this reason and for fiscal responsibility and accountability, I, too, will be voting ‘no’ against this legislation.

“Thank you, Mr. President.”

Senator Hanabusa rose to speak in favor of the measure as follows:

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

“Mr. President, today the Judiciary and Hawaiian Affairs Committee had an informational briefing on a report by the auditor. And for the first time, something struck me, and I think that’s part of the problem that we’re faced with here. It struck me that if you look at the cover of her reports, it says ‘The Auditor.’ You hear all of our discussions and we say ‘the legislative auditor.’ As a result of that, what it seems to be, as the good Senator from Maunawili is talking about, is that somehow we’re doing a policy change.

“Mr. President, that’s the farthest thing from the truth. In fact, we, as a body, should look historically at what has happened here, because as we are going to engage in this Session, the discussion of most constitutional amendments that I remember (of course I haven’t been here that long, but), we should realize at that point what we are doing.

“The concept is the auditor. An auditor is found from the beginning of the Organic Act. The changes to the Organic Act was to incorporate the Supreme Audit Institution’s and U.S. Accounting Office’s principles of post audit for government entities. We have seen discussions from that time to 1950, the constitutional convention, 1968 constitutional convention. The one thing that has not changed, Mr. President, is the fact that you find the office or the description of the auditor in Article VII, Section 10 of our Constitution presently, and that is not Article III, which is the Legislature, and neither is it Article V, which is the executive branch. It is a separate branch. And the reason why is because we’ve always felt, or the people of this State, actually correctly, have felt that we need an auditor.

“So, now we look as this issue of funding. The funding of the audit.

“Mr. President, I didn’t know this, but I think that maybe many of my colleagues don’t know this as well, so let me read part of the Standing Committee Report of the 1978 Constitutional Convention. They said then:

‘Your committee also reviewed the issue of auditing in the executive branch and, as suggested by House Resolution 595, H.D. 1, 1978 Regular Session, which was directed to your Committee, considered whether all post-audits should be consolidated under the constitutionally established auditor.’

And that, if you look at all of her reports, she makes it very clear, she’s giving this report pursuant to Article VII, Section 10.

‘While executive auditing would appear to be self-auditing, an anomalous situation which the original 1950 Constitution attempted to correct, executive auditing persists because it

pre-dates the establishment of the office of the auditor. Nothing appears to have been done to correct the situation, and the result is that auditing in the executive branch continues even though the legislative auditor is constitutionally assigned to perform that function.

‘Your Committee considered including language in the Constitution which would clarify that the duty of the auditor to certify to the accuracy of financial statements shall be exclusive. However, your Committee finds that it is already the duty of the auditor to certify to the accuracy of all financial statements. The problem is that the legislature has not clarified the statutes or made the necessary funding arrangements so that the function of certifying to financial statements can be discharged by the auditor without duplication of the function by the executive branch.’

Mr. President, if there’s a duplication of function, it is the executive branch, not the auditor. And you notice I didn’t reference her as the legislative auditor.

‘Therefore, your Committee views the issue at this time as one for legislative rather than constitutional remedy. It is the intent of your Committee that the legislature will proceed to amend the statutes and make the necessary funding arrangements so that the function of conducting financial audits leading to certifications will be discharged by the auditor. It is also your Committee’s intent that the assignment to the auditor of the function of financial audits requiring certification does not preclude the executive branch from conducting audits of its accounting and internal control systems, management reviews and analyses, program and performance evaluations, and other examinations and studies necessary for the efficient conduct of executive operations.’

“So, Mr. President, what we have done here, albeit rather late, is to fulfill the role of the people of the State of Hawaii. This is the intent for the office of the auditor – that it shall be the final say. And, Mr. President, we hear about, well, you know, they cost us more. Mr. President, she has a different mandate than an internal audit of the executive branch functions. She has to actually, and this goes back, Mr. President, to the 1950 Constitutional Convention, which says ‘the auditor is one of the important elements in financial management. It is his (and I’m happy to say that subsequently they kind of made it neutral, they took out the his) it is his responsibility to analyze appropriations, authorizations, and expenditures to determine whether payments comply with the legal requirements and to ascertain whether all revenues have been properly accounted for. It is also the responsibility of the auditor to submit recommendations covering means and methods for improving financial management.’ It also goes on to point out to all these different legislative constitutional histories that I’ve reviewed, that one of the things that the auditor is to do is to ensure that we have complied with the constitution and the laws of this State.

“These are wide responsibilities, more than simply financial management or financial auditing of an internal manner, which is what the executive branch does. It can go ahead and audit itself, but because we, over the years, have said and called her the ‘legislative auditor,’ I believe it’s given people the sense that what we’re dealing with here is some kind of audit that the Legislature is doing. We’ve all been wrong. We kind of owe her an apology, Mr. President.

“She is the auditor of the State of Hawaii, created by the constitution, enacted by the people of this State. They have entrusted her with the responsibility of making sure all branches of government perform as it should, and to say and to give her clear mandates as to what she is to do. She does more than to

say whether the money is there or isn't there. For those who may have overheard or participated in the Judiciary and Hawaiian Affairs hearing today, you saw that, because she made recommendations which the Department of Hawaiian Home Lands said we are enacting. We are moving forward and implementing all of her recommendations because that is part of her responsibility, which the people of the State of Hawaii have entrusted to her as a function of our constitution.

"So my fellow colleagues, as we look and we start to debate constitutional amendments, let's remember this, because if there's any entity that probably should be blamed for the confusion that we have today, it is us. We didn't do this sooner, and now it may be late, but, it's time for us to actually do it. Let's note, it saddened me when Governor Cayetano vetoed the bill, because I felt that it was a necessary step that the Legislature should have taken back then and that was a function of Felix and those of us who participated in it. But now we have made and remedied that problem by passing the bill last year. But even back in 1978, it said the problem now is the second part, the money.

"Mr. President, I ask that my colleagues join me in fulfilling our responsibility as set forth in the Committee Reports of the 1978 Constitutional Convention and follow what the will of the people is, which is that she shall do it and she shall have the sufficient funds to do it.

"Thank you, Mr. President."

Senator Hemmings rose in rebuttal and said:

"Mr. President, I rise in rebuttal.

"Mr. President, I am most appreciative of the well researched anarchist brief to this proposed legislation, and I wish to congratulate the very erudite and articulate Chair of the Judiciary Committee for pointing out that for over 25 years the Majority Party, who has had all the power, has failed to comply with simple constitutional intent concerning the auditor. As I stated in my opening remarks, I do not fault the auditor for the policy change. I fault the people in charge of the Legislature for that problem.

"I also would like the record to note that this was said last year and it's possibly something we should take into consideration, with all the constitutional amendment proposals and the judgements we get from the Supreme Court on our constitution, that it may be once again time for this state to convene a constitutional convention. I will tell you in our research that a number of states' audit functions are conducted in many different ways, not through the legislative process or the legislature, but are conducted in the executive branch of government, and some states there are even independent auditors that are elected by the people. So there may be better ways to do this process and free it up from the political machinations that we both indulge in.

"The third point that I think bares rebuttal, even though it was not mentioned in the very erudite briefing of the previous speaker, it doesn't address the problems the auditor personally is having in the audit process of timeliness with late audits and employment practice issues.

"For these reasons, I will continue to urge this body to take a deep breath and let's do what's right and hold this proposal off until we can do it the right way.

"Thank you, Mr. President."

Senator Aduja rose to speak in support of the measure and said.

"Mr. President, I rise in support of H.B. No. 2585, H.D. 1, and to speak of the need of checks and balances and accountability in government.

"The work of the auditor has been both praised and criticized over the years by members of both political parties. This is true as well of the recent audit of the Department of Health with respect to its administration of the statewide solid waste program.

"Mr. President, in my humble opinion, this report merits our highest praise. As Chair of the Joint Legislative Task Force on Waste Management and Recycling, I can personally attest to the audit's thoroughness and accuracy. The audit's findings validated the findings of the task force. The task force conducted numerous landfill site visits on Oahu, Maui, Molokai, Kauai and the Big Island in the past November and December. Just as the auditor's report indicated, and I quote, 'the Department of Health is not carrying out its solid waste management responsibilities for public health and environmental protection.' It further on continues and says, 'prior audits,' Mr. President, 'pointed out management problems that continue to exist. For example, the department is still not properly monitoring, inspecting, or enforcing solid waste regulations, particularly for landfills.'

"The quality of the work that the auditor, Marion Higa, and her able staff have done, and continue to do, deserves our applause and even criticism by members of both political parties. But, more importantly, Mr. President, no measure should be taken to suppress either. Yet, I sense the executive branch seeks to impair the auditor's ability to discharge her duties and responsibilities, especially with reference to administrative officers and agencies. Instead, the executive branch indicates a desire to audit itself. I find this at once absurd and unacceptable.

"We, as Legislators, are the policymakers of this State. In our best judgement, we created the Office of the Auditor to ensure accountability in the management of the policies we make to assure us a desirable level of checks and balances in government. We created the Office of the Auditor to search for and identify instances of waste, fraud, abuse, malfeasance, misfeasance, and nonfeasance within the executive branch as may be directed by the Legislature.

"Our Governor, who had in her campaign praised the work of the auditor, now appears to be singing to a different tune. Her new lyrics indicate the end of her high-profile 'New Beginning,' and the words now appear to be 'to do more with less.'

"In this case, we are not separated by political partisanship. We are separated by the constitutional division of the legislative, administrative, and judicial branches of government. In creating the office, the Legislators intended for it to serve those of us who seek the truth, which in the end is going to be our ultimate salvation.

"To the auditor's most recent critics, I have three thoughts for you: (1) dissent is healthy; (2) better late than never; and (3) the truth will prevail.

"Colleagues, Mr. President, please join me in support of H.B. No. 2585, H.D. 1. Thank you very much."

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

“Mr. President, I rise in support of this bill.

“Mr. President, in the past, members from both sides of the aisle have repeatedly attested to the integrity and the proficiency of the Office of the Auditor and the auditor herself. In fact, the Governor, in her campaign, said, ‘I will authorize a complete independent audit of the state’s finances in cooperation with the state auditor, Marion Higa.’ Sections 7 and 8 of H.B. No. 2585, H.D. 1, simply appropriates funding for that. So it leads me to ask, What’s changed? What’s changed in the last 12 months that have made some very critical of the auditor and her office?”

“Mr. President, this leads me to my second question. Is there something to hide? I believe there’s nothing to hide. I believe that our state departments and their directors are doing a wonderful job. And if an audit is performed, I believe it’s a great opportunity for these departments to improve their efficiency. If they are truly to move forward with making government work better, an accurate financial accountability and openness is key. With a complete audit of the state’s finances, we’ll be ready to identify weaknesses and mismanagement, ultimately giving the public a better understanding of where state revenues come from and how they are used.

“And, Mr. President, if the Majority Party has failed over the past 25 years, as referenced by the Minority Leader, then I will ask him to join us today and do what is right and support this measure.

“Thank you, Mr. President.”

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

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

“I, for one, have not changed my opinion of the legislative auditor. I worked for the executive branch of government for many years. She turned out many good reports. I read them faithfully. That’s not to say that the reports in some sense were not geared to gain the headlines in the newspaper, because you need publicity to gain public support to take corrective action that this body must do to improve government.

“Friday, last, I had a few words about bureaucracy. And since you weren’t at yesterday’s meeting, let me tell you what I saw. On one hand, I saw the executive branch which felt threatened. On the other hand, I saw a bureaucrat who was seeking to extend the character of the office, the power of the office, which would ultimately lead to a greater and widespread recognition in compensation. As a follower of bureaucracy, I think this should be brought to your attention – that when we undergo policy changes that will lead to an increase in government with no meaningful improvement, then it is appropriate to say no.

“The strength of the legislative auditor is in making management audits. If we, at this time, expand the scope of the office, the danger is that we will get less focus from that office in reports that we need to do our job properly. The second thing is the timing of this change. Previous speakers have eluded to problems in management, problems in turnover, and is this the appropriate time to double or triple the budget? I think it is not.

“All I ask is be thoughtful in coming to your conclusion. I do regret that I am voting ‘no’ today.”

Senator Slom rose and said:

“Mr. President, just a few follow up comments that are necessary.

“Again, let me reiterate my total support for the office of the legislative auditor and for the individual, but it’s like any other office and any other individual. The reason we have audits and the reason we scrutinize operations is to make sure that everything is being done the way it should be. And let’s make no mistake – our issue on our side of the aisle today is with the funding itself, and specifically with the timeliness of reporting, not with the office, not with the constitutional background.

“Two of the previous speakers from the Majority Party said the same thing, which is totally incorrect. They said that the executive branch audits itself. That is not true, they know it’s not true. The executive branch has always sent out audits. The audits are done by independent recognized auditors using recognized CPA standards. As a matter of fact, the audits, the CAFRR of the State of Hawaii has been awarded for 14 consecutive years, mostly over Democratic administrations, top awards for their reporting and for their independent accuracy.

“The other point that I would make again is that we are really questioning this 25 percent increase, which was not documented yesterday. There were no specifics as to why an increase of this magnitude was being sought. Now, if we could all get together and say, wait a minute, if you’re not challenging the office and you’re not challenging the functions, all you’re challenging is the money, if the Majority Party were to say let’s amend this bill and reduce the \$3 million request to \$1 million, I think that you would have our support on this bill. But that has not been suggested. You want to hold on to that 25 percent increase, which has not been directed.

“Finally, on this question of state auditor versus legislative auditor, it’s true that there are mixed definitions that are given. Even the speakers today referred to the office as the legislative auditor. But let’s remember, it is the Legislature that appoints and confirms this auditor, it is the Legislature that funds this auditor, and finally, it is the Legislature, not the executive branch, not the public, that directs what studies and what audits this legislative auditor will make.

“And that, Mr. President, is the issue. So if there will be an amendment offered to reduce this amount to a more reasonable \$1 million, I will sign on and support it gladly.

“Thank you.”

Senator English rose to speak in support of the measure as follows:

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

“You know, Mr. President, this discussion has been very healthy and I appreciate it. But I just have to come back to this one particular point – it’s a separation of powers issue, separation of government issue. The previous speaker said, well, the executive doesn’t audit itself. You know, it’s true. What they do is they hire someone. That’s what the auditor does as well, is hire someone else to do the audit.

“Yesterday in the Committee, their whole debate was that, well, why is the auditor hiring someone else to do the job. So, you can’t have it both ways. And I’m glad that they agree with us, that, yes, you hire a firm to do it. But ultimately, the one who is a client is the one that bothers me. And in the executive branch when the executive is the client that hires someone to do an audit on themselves, I’m very uneasy with that. I don’t care who’s in control of the executive. What I care about is the

independence of the branches and the idea of checks and balances in our system.

“So, the debate is healthy. I think this is healthy and I also agree with something that the previous speaker said, except in the opposite direction. What he said is, that we should amend this bill. We should amend this bill, I don’t agree we should decrease the money. I think we should give the auditor more money because then she can audit more departments, and she can audit more executive functions. Because that is where we have not been, well, frankly, we have not been living up to the constitutional mandate. So, I agree, we should amend the bill. We should give them more money to do more audits so that we can get better accounting for the citizens of the people of Hawaii.

“Thank you, Mr. President.”

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

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

“You have to feel a bit flabbergasted at the opposition to the state auditor who has been one of the most popular figures in our state government over the past many years.

“Mr. President, as Legislator, one of our primary responsibilities is approval of our state budget. Each year we vote to allocate millions, hundreds of millions, billions of dollars, billions of hard earned public dollars to various state agencies in order that they may provide the services expected and needed in our community. Once that critical budget vote is taken, those funds are then transferred to the responsibility of the executive branch. The Governor then, together with the various leaders of the various departments, is responsible for implementing the programs and spending that money wisely and efficiently.

“The office of the state auditor plays a key role, a valuable role in ensuring that government and all the various agencies involved are held accountable – accountable for the money given to them to do their job. It is the office of the state auditor that we count on to root out and expose waste, fraud and corruption. It is the office of the state auditor whose job it is to evaluate the various programs and agencies in state government to make recommendations as to how they might become more efficient.

“I agree with my colleague from Maui. I would like to support and strengthen the office of the state auditor, her office and give her additional tools and resources for which to do her job – increasing efficiency and accountability in government and making sure tax dollars are spent wisely. This should concern all of us. After all, this not our money we are spending, this is the people’s money, hard-earned money earned at honest jobs, many times by people working two or three jobs. We owe it to them to support the state auditor in her efforts to make sure that money is properly accounted for and spent wisely.

“Some of you in this chamber opposed to this measure seek rather to muzzle the activity of the state auditor and to restrict the office’s ability to audit the books of various state agencies. Why? Why would individuals who just 18 months ago, the greatest, and certainly the loudest cheerleaders of them all for the auditor’s office, why are they now less than enthusiastic, even, in fact, in opposition to supporting the increased auditing and thus the potential for increase accountability of government operations? Why? Why, is the question I’m asking? Why are those who would normally be proponents of increasing efficiency and accountability, known far and wide for their

inspired rhetoric on the Floor of this Chamber emphasizing and reemphasizing and emphasizing again the importance of weeding out waste and corruption and the importance of increasing accountability and efficiency, why are they now attempting to tie the hands and the purse strings of the state auditor’s office? Why do they now want to limit the auditor’s ability to do her job properly? What has changed?

“The performance record and ability of the state auditor certainly has not changed. Her reputation for hard hitting, direct, and to the point audit reports is well known statewide, and that has not changed. Her office certainly cannot be accused of favoring Democrats. She has more than proved her independence during the past years of auditing the recent Democratic Governor and his departments.

“So, what has changed? What is so different today that would cause this radical change of opinion with regards to the office of the auditor? If we were honest and open with ourselves about this matter, we will admit that the only thing that has changed, the only thing of significant that has changed is that we have a new Governor and new department heads. Perhaps those that were so full of glee when the departments under the former Governor received critical audits, are somewhat less than enthusiastic about the same possibility occurring today. Perhaps it was fear, perhaps it was lack in trust that stands in the way of supporting the auditor in managing these financial audits.

“Mr. President, colleagues, I will ask you today to vote in support of the measure now before us. I ask that you cast your vote in support of keeping the state auditor’s office strong, strong and viable. I ask that you vote in support of giving the state auditor’s office the tools and resources it needs to continue its fine work in holding our state government accountable to the people of this State.

“Thank you.”

Senator Whalen rose and said:

“Mr. President, I call for the question.”

At this time, Senator Whalen called for the previous question, seconded by Senator Tsutsui.

At 12:09 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:11 o’clock p.m.

The motion for the previous question was then put by the Chair and carried.

Senator Ihara rose and inquired:

“Mr. President, what is the vote on that? It takes two-thirds vote, I believe . . .”

The President interjected:

“It’s three-fifths, 15 votes.”

Senator Ihara continued to inquire:

“Were there 15 votes?”

The President replied: “Yes.”

Senator Ihara questioned: “How do you know?”

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

The Senate reconvened at 12:14 o'clock p.m.

The President then stated:

"To answer Senator Ihara's question, I did hear three noes, and the rest yes."

The motion was put by the Chair and carried, H.B. No. 2585, H.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE LEGISLATIVE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, AND THE OMBUDSMAN," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 4 (Hemmings, Hogue, Slom, Trimble). Excused, 2 (Inouye, Kim).

RE-REFERRAL OF SENATE BILLS

The Chair re-referred the following Senate bills that were introduced:

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| Senate Bill | Referred to: |
| No. 2137 | Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means |
| No. 2178 | Jointly to the Committee on Energy and Environment and the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means |
| No. 2822 | Jointly to the Committee on Labor, the Committee on Transportation, Military Affairs, and Government Operations and the Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means |
| No. 2836 | Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs |
| No. 2912 | Jointly to the Committee on Science, Arts, and Technology and the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means |
| No. 2935 | Jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Health, then to the Committee on Ways and Means |
| No. 2961 | Committee on Labor, then to the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means |
| No. 2994 | Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means |
| No. 3064 | Jointly to the Committee on Health and the Committee on Human Services, then to the Committee on Judiciary and Hawaiian Affairs |
| No. 3177 | Jointly to the Committee on Energy and Environment and the Committee on Water, Land, and Agriculture, then to the Committee on Ways and Means |

No. 3209 Jointly to the Committee on Health and the Committee on Human Services, then to the Committee on Judiciary and Hawaiian Affairs

At this time, Senator Aduja rose and said:

"Mr. President, I do have some comments that I'd like to make in rebuttal to the Senator from Waimanalo's comments. Therefore, Mr. President, may I have your permission to insert such comments into the Journal?"

"Thank you, Mr. President."

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

"Mr. President, I rise to offer a rebuttal to statements made by the good Senator from Waimanalo.

"Mr. President, criticisms about the auditor being late in submitting four out of fifteen audit responses are misplaced. These late audits involve management audits as requested by the Legislature typically through joint concurrent resolutions, such as the recently completed audit on solid waste management.

"Such audits are not financial audits that are subject to Act 4, which require a Comprehensive Annual Financial Report ('CAFR') necessitating federally mandated due dates and other stringent guidelines.

"The issue before us in House Bill 2585, House Draft 1, is to provide adequate funding to the auditor to enable her office to contract with private firms to conduct CAFR audits—just as DAGS did. In these instances, the auditor can require her contractors to get such audits done in a timely manner—just as DAGS did.

"Mr. President, DAGS has been performing these financial audits of state departments and agencies for many years. Transferring the responsibility of conducting CAFR audits from DAGS to the auditor is definitely not a criticism of the performance or efficiency of DAGS.

"Mr. President, this transfer, however, brings the State government's practices in line with our Constitutional requirements. Having audits conducted by a neutral party which, while part of the legislative branch of government, is Constitutionally mandated to report to both the Governor and the Legislature.

"Mr. President, if the auditor is able to perform such duties just as DAGS did, then why not leave the audits with DAGS? It is because the Constitution provides that audits are to be performed by the auditor, and not by DAGS.

"As such, I, again, fully encourage this honorable body to support House Bill 2585, House Draft 1, and to give the auditor sufficient funds so that she can perform her core functions as mandated by our Constitution."

ADJOURNMENT

At 12:20 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., Monday, February 9, 2004.